Volume 38, No. 13, Pages 10895 to 11840,
November 16 – December 10, 2023

FCC Record

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U.S. GOVERNMENT
INFORMATION
GPO

FCC Record Volume 38, No. 13, Pages 10895 to 11840, November 16 – December 10, 2023

FEDERAL COMMUNICATIONS COMMISSION

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Citation Form: 38 FCC Rcd 1 (2023)

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Federal Communications Commission Record

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

In the Matter of	)	
	)	
TracFone Wireless, Inc.	)	File No.: EB-IHD-22-00033718
	)	NAL/CD Acct. No.: 202432080003
	)	FRN: 0006855639
	)	
	)	

ORDER

Adopted: November 29, 2023 **Released: November 29, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether TracFone Wireless, Inc. (TracFone or Company), a wholly owned subsidiary of Verizon Communications Inc. (Verizon), violated the Commission's rules governing the provision of Lifeline service as an Eligible Telecommunications Carrier (ETC), and its provision of broadband internet access service under the Emergency Broadband Benefit (EBB) Program. Specifically, the investigation considered whether TracFone sought and/or obtained Lifeline or EBB support for, or failed to de-enroll, ineligible subscribers without eligibility documentation or whose applications were supported by falsified tax forms; sought and/or obtained Lifeline support for subscribers who should have been de-enrolled and/or not claimed for reimbursement because they lacked qualifying usage of their Lifeline-supported service; sought and/or obtained EBB support for subscribers who should not have been claimed for reimbursement because they lacked qualifying usage of their EBB-supported service; and for directly or indirectly compensating field enrollment representatives based on commission, rather than on an hourly basis. Requiring compliance with these regulations helps to ensure that limited funding support is reimbursed to Lifeline and EBB providers for serving only qualifying subscribers, based on verified eligibility, and using enrollment agents who are not compensated on a commission basis.

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 TracFone's compliance with sections 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, 54.417(a), 54.1606, 54.1608(a) and (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 TracFone'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[3] and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,[4] the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

[1] 47 CFR §§ 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, 54.417(a), 54.1606, 54.1608(a) and (c).

[2] *See Id.* § 1.93(b).

[3] 47 U.S.C. § 154(i).

[4] 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree**.**

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 David L. Haga, Esq., Associate General Counsel, Verizon, on behalf of TracFone Wireless, Inc., 1300 I Street, NW, Suite 500 East, Washington, DC 20005, and Nancy J. Victory, Esq., DLA Piper, 500 Eighth Street, NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
TracFone Wireless, Inc.	)	File No.: EB-IHD-22-00033718
	)	NAL/CD Acct. No.: 202432080003
	)	FRN: 0006855639
	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and TracFone Wireless, Inc. (TracFone), a wholly owned subsidiary of Verizon Communications Inc. (Verizon), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether TracFone violated sections 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, 54.417(a), 54.1606, 54.1608(a) and (c) of the Commission's rules (Rules) and orders governing the provision of Lifeline service as an Eligible Telecommunications Carrier (ETC), and its provision of broadband internet access service under the Emergency Broadband Benefit (EBB) Program. Specifically, the Bureau investigated whether TracFone improperly: sought and/or obtained Lifeline or EBB support for, or failed to de-enroll, ineligible subscribers without eligibility documentation or whose applications were supported by falsified tax forms; sought and/or obtained Lifeline support for subscribers who should have been de-enrolled and/or not claimed for reimbursement because they lacked qualifying usage of their Lifeline-supported service; sought and/or obtained EBB support for subscribers who should not have been claimed for reimbursement because they lacked qualifying usage of their EBB-supported service; and for directly or indirectly compensating field enrollment representatives based on commission, rather than on an hourly basis. To resolve this matter, TracFone agrees to (i) implement a compliance plan, (ii) pay a $17,487,000 civil penalty, and (iii) pay the Commission's $6,013,000 Notice of Apparent Liability (NAL) issued to TracFone in 2020 for apparent Lifeline rule violations.[1]

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.[2]

(b) "ACP Rules" means sections 54.1806, 54.1807(b), 54.1808(c), and 54.1809(c) of the Commission's rules and other Communications Laws related to the Affordable Connectivity Program (ACP).

(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 Enforcement Bureau of the Federal Communications Commission.

(e) "CD Acct No." means account number 202432080003, associated with payment obligations described in paragraph 24 of this Consent Decree.

[1] *TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020).

[2] 47 U.S.C. § 151 *et seq.*

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

(g) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which TracFone is subject by virtue of its business activities, including but not limited to the Lifeline and EBB Rules.

(h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 17.

(i) "Covered Employees" means all employees and agents of TracFone who perform, supervise, oversee, or manage the performance of duties that relate to TracFone's responsibilities under the Lifeline and EBB Rules.

(j) "EBB Rules" means sections 54.1606 and 54.1608(a) and (c) of the Commission's rules and other Communications Laws related to the Emergency Broadband Benefit program.

(k) "Effective Date" means the date by which both the Bureau and TracFone have signed the Consent Decree and the Bureau has released an Adopting Order.

(l) "Investigation" means the investigation commenced by the Bureau in EB-IHD-22-00033718 regarding whether TracFone violated the Lifeline and EBB Rules from January 1, 2019, forward, during which TracFone provided Lifeline-supported services, as well as broadband internet access service under the EBB program.

(m) "Lifeline Rules" means sections 54.405(e), 54.406(b), 54.407(c), 54.410, 54.416, and 54.417(a) of the Commission's rules and other Communications Laws related to the Lifeline program.

(n) "NAL" means the Notice of Apparent Liability for Forfeiture issued to TracFone on April 2, 2020, proposing a $6,013,000 forfeiture for apparent violations of the Lifeline Rules, *TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020).

(o) "NAL Account No." means account number 202032080017 associated with payment obligations described in paragraph 23 of this Consent Decree.

(p) "Operating Procedures" means the standard internal operating procedures and compliance policies established by TracFone to implement the Compliance Plan.

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

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

(s) "TracFone" or "Company" means TracFone Wireless, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

II. BACKGROUND

3. *Legal Framework*. The Commission's Lifeline rules establish specific requirements that ETCs must fulfill in order to claim and receive federal Lifeline support.[3] Section 54.407(a) of the Commission's rules states that Lifeline support shall be paid to an ETC "based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible

[3] *See* 47 CFR §§ 54.400 – 54.422. The Universal Service Administrative Company (USAC) is the administrator of the federal universal service programs, including Lifeline, and it collects and distributes universal service funds in accordance with the Commission's rules. *See* 47 CFR §§ 54.701(a), 54.702(b).

telecommunications carrier serves directly as of the first of the month."[4] The key tenets of the rules prescribing which customers can be claimed by ETCs for discounted Lifeline service are: (1) disbursements of Lifeline support can only be based on the number of "actual qualifying low-income consumers" served by an ETC as that term is defined in Commission rules,[5] (2) such qualifying low-income consumers must be served directly by the ETC as of the first day of the month, and (3) such consumers must have been determined to be eligible by the National Verifier, state Lifeline administrator, or other state agency.[6]

4. The Lifeline Rules require ETCs to "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services."[7] Section 54.409 requires Lifeline subscribers to meet certain income-based criteria or to participate in a qualifying program.[8] In addition, in order to claim reimbursement, a Lifeline subscriber must have used the service during the prior 30 days or cured the non-usage.[9] Otherwise, the subscriber must be de-enrolled for non-usage of the service.[10] Moreover, ETCs are prohibited from offering or providing to enrollment representatives, or their direct supervisors, any commission compensation that is based on the number of consumers who apply for or are enrolled in the Lifeline program with that ETC.[11] Lifeline providers are required to maintain records to document compliance with all Commission and state requirements governing Lifeline.[12]

5. EBB service providers were permitted to claim program support for providing discounted broadband internet access service during the emergency period of the EBB program,[13] based on the number of actual qualifying low-income households the provider served each month.[14] All participating providers were required to implement policies and procedures for ensuring that their EBB households were eligible to receive the discount benefit.[15] Two possible criteria for EBB qualification were for a

[4] *Id.* § 54.407(a).

[5] *Id.*; *see also* 47 CFR §§ 54.409 (establishing the criteria to constitute a "qualifying low-income consumer"); 54.410(b)–(c) (establishing procedural requirements for determining whether a consumer is a qualifying low-income consumer).

[6] 47 CFR §§ 54.400(a), 54.407(a), 54.409.

[7] *Id.* § 54.410(a). Each ETC must make annual certifications that, among other things, it has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services. 47 CFR § 54.416(a).

[8] 47 CFR §§ 54.400(a), 54.409. A consumer's household income must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or the consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit. 47 CFR § 54.409(a). The Federal Poverty Guidelines are updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). Consumers residing on Tribal lands may also qualify to participate in the Lifeline program if their household participates in certain Tribal-specific federal assistance programs. 47 CFR § 54.409(b).

[9] 47 CFR § 54.407(c)(2).

[10] *Id.* § 54.405(e)(3).

[11] *Id.* § 54.406(b).

[12] *Id.* § 54.417(a).

[13] *Id.* §§ 54.1602(a), 54.1603(a). The temporary EBB program transitioned to the longer-term ACP effective December 31, 2021, to offer eligible low-income households discounts off the cost of broadband service and connected devices. *See Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (2022).

[14] 47 CFR § 54.1608(a).

[15] *Id.* § 54.1606(b).

household to have income at or below a certain threshold[16] or for at least one member of the household to have experienced a documented substantial loss of income during the emergency period.[17] A provider could not provide a consumer with EBB-supported service or seek reimbursement for such service, unless and until it had confirmed household eligibility, and retained all documentation related to the enrollment.[18] A participating provider had to certify that every subscriber claimed had used the supported service at least once during the service month being claimed in order to claim that subscriber for EBB program reimbursement.[19]

6. *Factual Background*. TracFone is a mobile virtual network operator that resells prepaid mobile wireless telecommunications services nationwide, including Lifeline service under its SafeLink Wireless brand.[20] In 2020, the Commission issued an NAL against TracFone for apparent Lifeline rule violations for claiming ineligible subscribers in Florida and Texas during 2018.[21] TracFone submitted a written response opposing the NAL on June 1, 2020.

7. During the period from January 1, 2019, forward examined during the Commission's Investigation, TracFone provided Lifeline-supported services, as well as broadband internet access service under the EBB program until the EBB program ended effective December 31, 2021.[22]

8. Following its acquisition by Verizon, TracFone self-identified and reported to the Commission and the Universal Service Administrative Company (USAC) certain instances in which it previously may have violated Lifeline and/or EBB program rules. After certain of those disclosures and having received a referral from USAC,[23] the Bureau issued TracFone an LOI on May 16, 2022,[24] and a Supplemental LOI on October 24, 2022,[25] to obtain information about TracFone's process for determining customer usage for Lifeline and EBB, as well as other compliance issues. Specifically, the Bureau investigated whether TracFone: (i) claimed program support for Lifeline or EBB subscribers who should have not been claimed for reimbursement because they lacked qualifying usage of their service; (ii) improperly sought and/or obtained Lifeline or EBB support for ineligible subscribers without eligibility documentation or whose applications were supported by falsified tax forms; (iii) improperly certified that EBB customers had used the service to support reimbursement claims; and (iv) indirectly compensated Lifeline field enrollment representatives based on commission, rather than on an hourly basis.

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[16] *Id.* § 54.1605(a)(1).

[17] *Id.* § 54.1605(a)(4).

[18] *Id.* § 54.1606(b).

[19] *Id.* § 54.1608(c).

[20] *See* Response to Letter of Inquiry from David Haga, Associate General Counsel, Verizon for Tracfone, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Jun. 15, 2022) (on file in EB-IHD-22-00033718) (Jun. 15, 2022, LOI Response) at 15-16, Responses to Questions 3 and 4.

[21] *TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020) (proposing forfeiture penalty of $6,013,000 to be paid to the U.S. Treasury).

[22] *See* Jun. 15, 2022 LOI Response at 17, Response to Question 8.

[23] *See* Letter from Christopher G. Smith, Director, USAC Compliance and Fraud Risk, to Keith Morgan, Deputy Bureau Chief, FCC Enforcement Bureau (May 4, 2022) (updated referral from May 2021 concerning, *inter alia*, TracFone's Lifeline usage rule compliance).

[24] Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Richard Salzman, President, TracFone Wireless, Inc. (May 16, 2022) (on file in EB-IHD-22-00033718) (LOI).

[25] Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to David L. Haga, Associate General Counsel, TracFone Wireless, Inc. (Oct. 24, 2022) (on file in EB-IHD-22-00033718) (Supplemental LOI).

9. TracFone filed responses to the LOI on June 15, 2022, and October 13, 2022.[26] It responded to the Supplemental LOI on December 2, 2022.[27] TracFone voluntarily disclosed to the Commission that, during the period at issue in the Investigation, its flawed processes with respect to determining customer usage resulted in improper Lifeline claims for customers who had not used the service in the prior 30 days,[28] it improperly considered a subscriber's receipt of an inbound text message to constitute qualifying Lifeline usage,[29] and it improperly claimed support for a group of customers who were enrolled jointly in both the Lifeline and EBB programs but lacked qualifying usage of one of the services.[30] TracFone further stated that it had a group of field enrollment representatives hired by a subcontractor who apparently relied on falsified tax documents to support enrollments for Lifeline and EBB subscribers.[31] After TracFone worked with auditors it retained to help determine the extent of the improper claims from the Lifeline and EBB funds, TracFone reimbursed the Universal Service Fund (USF) a total of $22,654,154 in claim revisions for Lifeline from January 2019 through October 2021 completed December 29, 2022, and it reimbursed the EBB/ACP fund a total of $17,880,598 by February 28, 2023.[32] TracFone also stated it had identified 79 field enrollment agents employed by subcontractors that were engaged by master agents who had commission-based compensation tied to customer enrollments, despite TracFone's contractual prohibitions against such commission-based compensation.[33]

10. To resolve these matters, TracFone and the Bureau enter into this Consent Decree and agree to the following terms and conditions, which take into consideration TracFone's voluntary disclosures and its cooperation with the Bureau during the Investigation.

III. TERMS OF AGREEMENT

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

12. **Jurisdiction**. TracFone 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.

13. **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.

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 with respect to all potential violations of the statute and rules governing

[26] *See* Jun. 15, 2022 LOI Response; Letter from David Haga, Associate General Counsel, Verizon for Tracfone, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Oct. 13, 2022) (on file in EB-IHD-22-00033718) (Oct. 13, 2022 LOI Response).

[27] *See* Letter from David Haga, Associate General Counsel, Verizon for Tracfone, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Dec. 2, 2022) (on file in EB-IHD-22-00033718) (Dec. 2, 2022 LOI Response).

[28] *See generally* Oct. 13, 2022 LOI Response. *See also* Jun. 15, 2022 LOI Response at 1-9 and 19-21, Response to Question 12.

[29] *See* Dec. 2, 2022 LOI Response at 4-6, Response to Question 44.

[30] *See id.* at 6-9, Response to Question 45.

[31] *See id.* at 25-28, Response to Question 49.

[32] For the period September 2021 through October 2021, which were the months at issue in the Bureau's Investigation of TracFone's Lifeline processes for determining customer usage, TracFone reimbursed the USF $2,244,498.

[33] *See* Dec. 2, 2022 LOI Response at 11-18, Response to Question 46.

Lifeline and EBB. In consideration for the termination of the Investigation, TracFone 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 TracFone concerning the Lifeline and EBB matters that were the subject of the Investigation, or to set for hearing the question of TracFone's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the Lifeline and EBB matters that were the subject of the Investigation.[34] Notwithstanding the foregoing, this Consent Decree is intended to resolve only the Enforcement Bureau's investigation regarding TracFone's compliance with the Lifeline and EBB rules, including specifically the matters described in paragraph 8, and does not terminate any other investigations that have been or might be conducted by other law enforcement agencies or offices.[35]

15. **Admission of Facts**. TracFone 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 paragraph 9 contains a true and accurate description of the facts underlying the Investigation. No other admissions are made by TracFone.[36]

16. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, TracFone shall designate a senior corporate manager with the requisite corporate 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 TracFone complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Lifeline, EBB, and ACP Rules prior to assuming his or her duties.

17. **Compliance Plan**. For purposes of settling the matters set forth herein, TracFone agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Lifeline Rules and with the terms and conditions of this Consent Decree. TracFone may use a combination of any existing and/or new measures and processes to ensure future compliance, but, at a minimum, will have in place the following procedures:

(a) **Operating Procedures**. Within thirty (30) calendar days after the Effective Date, TracFone shall establish Operating Procedures that all Covered Employees must follow to help ensure TracFone's compliance with the Lifeline Rules. TracFone's Operating Procedures shall include internal procedures and policies specifically designed to ensure that it does not submit claims for reimbursement for subscribers who are ineligible because they lack qualifying usage of Lifeline service, that ineligible subscribers are timely identified and de-enrolled, that enrollments in Lifeline conform to the customer eligibility determinations made by the National

[34] *See* 47 CFR § 1.93(b).

[35] Nothing in this Consent Decree shall prevent the Commission or its delegated authorities from investigating and adjudicating any alleged violations of the Commission's Rules stemming from any potential noncompliance matters that TracFone continues to investigate as of the Effective Date, as specifically referenced in TracFone's November 20, 2023 letter to Commission Staff. *See* Letter from David Haga, Associate General Counsel, Verizon for Tracfone, to Commission staff (Nov. 20, 2023) (on file in EB-IHD-22-00033718).

[36] It is TracFone's position that, while it is paying the 2020 NAL as part of the resolution of the matters set forth in this Consent Decree, TracFone expressly denies any liability in connection with the alleged violations contained in the NAL, including with respect to violations associated with eligible subscribers in the state of Texas. TracFone's position is that those alleged violations stem directly from the Texas Low-Income Discount Administrator ("LIDA") database's failure to accurately identify all eligible subscribers. TracFone states that its payment of the NAL should not be deemed an admission or waiver in connection with any other proceeding involving the same or similar subject matter(s).

Verifier using the National Lifeline Accountability Database (NLAD) or via such other mechanisms for determining customer eligibility as may be contemplated by the program rules, and that field enrollment representatives are not improperly compensated by providing sales-based commissions tied to enrollments. TracFone shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Lifeline Rules.

(b) **Compliance Manual**. Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Lifeline Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure TracFone's compliance with the Lifeline Rules. TracFone shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. TracFone shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

(c) **Compliance Training Program**. TracFone shall establish and implement a Compliance Training Program on compliance with the Lifeline Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of TracFone's obligation to report any noncompliance with the Lifeline or EBB Rules under paragraph 18 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. Compliance training pursuant to the Compliance Training Program shall be an annual requirement. In the first year, TracFone shall require all existing Covered Employees to have been trained within one hundred twenty (120) calendar days after the Effective Date, and any person who becomes a Covered Employee at any time thereafter shall be trained within one hundred twenty (120) calendar days after the date such person becomes a Covered Employee, provided that any Covered Employee must be trained prior to soliciting any customer to enroll in Lifeline. TracFone 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.

18. **Reporting Noncompliance**. TracFone shall report any material noncompliance with the Lifeline or EBB Rules and/or with the terms and conditions of this Consent Decree within thirty (30) calendar days of a report made to the Compliance Officer. In complex cases that require additional investigation, TracFone may seek up to an additional thirty (30) calendar days, which shall not be unreasonably denied, to make such a report of material noncompliance. In determining whether such noncompliance is material, any close calls will be resolved in favor of reporting. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that TracFone 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 TracFone has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov with an electronic copy to EnforcementBureauIHD@fcc.gov.

19. **Compliance Reports**. TracFone shall file compliance reports 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 TracFone's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Lifeline Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of TracFone,

stating that the Compliance Officer has personal knowledge that TracFone: (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 material 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.[37]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of TracFone, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of material noncompliance; (ii) the steps that TracFone 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 TracFone 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 to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Georgina Feigen at Georgina.Feigen@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov, with an electronic copy to EnforcementBureauIHD@fcc.gov.

20. **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 16 through 19 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

21. **Section 208 Complaints; Subsequent Investigations**. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act[38] against TracFone or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by TracFone with the Communications Laws.

22. **ACP Rule Compliance.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from investigating and adjudicating alleged violations of the Commission's ACP Rules against TracFone or its affiliates, including potential ACP noncompliance with sections 54.1806, 54.1807(b), 54.1808(c), and 54.1809(c) of the Rules, regardless of when such misconduct took place. The foregoing shall apply to alleged violations of the ACP Rules that accrued prior to or during the period of the Bureau's Investigation. However, any such violations of the ACP Rules shall not be deemed violations of the terms or conditions of this Consent Decree. This Consent Decree will not have the effect of reviving or further extending any statute of limitations period of any alleged violations of the ACP Rules that are otherwise time-barred, except that all applicable tolling agreements between TracFone and the Bureau that were in effect prior to the Effective Date shall remain in effect pursuant to the terms therein, and the Parties are not restricted from entering into additional tolling after the Effective Date.

[37] 47 CFR § 1.16.

[38] 47 U.S.C. § 208.

23. **Notice of Apparent Liability Payment.** TracFone will pay the Commission's $6,013,000 Notice of Apparent Liability, FCC 20-45, NAL Account No. 202032080017,[39] within thirty (30) calendar days of the Effective Date.

24. **Civil Penalty**. TracFone will pay a civil penalty to the United States Treasury in the amount of $17,487,000 within thirty (30) calendar days of the Effective Date. TracFone 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).[40] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. TracFone shall send electronic notification of payment to Patrick McGrath at Patrick.McGrath@fcc.gov and EnforcementBureauIHD@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 Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[41]

- 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[42] or printed CORES form[43] 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).[44] 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 to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing

[39] *See TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3459 (2020).

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

[41] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[42] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[43] 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.

[44] 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 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 confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

25. **Event of Default**. TracFone agrees that an Event of Default shall occur upon the failure by TracFone to pay the full amount of the Civil Penalty or to pay the Notice of Apparent Liability Payment on or before the due date specified in this Consent Decree.

26. **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 and/or Notice of Apparent Liability 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 and/or Notice of Apparent Liability 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 TracFone.

27. **Waivers**. As of the Effective Date, TracFone 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. TracFone 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 TracFone nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and TracFone shall waive any statutory right to a trial *de novo*. TracFone hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[45] relating to the matters addressed in this Consent Decree.

28. **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.

29. **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.

30. **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 TracFone does not expressly consent) that provision will be superseded by such Rule or order.

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

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

32. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation except as otherwise agreed to by the Parties in paragraph 22 of this Consent Decree.

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

34. **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.

35. **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.

36. **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

_____
Andrea Short
Chief Litigation Counsel – Verizon
On Behalf of TracFone Wireless, Inc.

_____
Date

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 23-1084
Released: November 21, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON AMERICAN ELECTRIC POWER SERVICE CORPORATION'S REQUEST FOR WAIVER OF SECTION 90.621(b)

WT Docket No. 23-390

Comment Date: December 21, 2023
Reply Comment Date: January 5, 2024

By this Public Notice, we seek comment on American Electric Power Service Corporation's (AEP) request for waiver[1] of section 90.621(b) of the Commission's rules to permit AEP's operation of "800 MHz low-power temporary repeaters and talk-around on mobile units" in remote areas throughout its multi-state service territory that are outside the range of its existing 800 MHz network.[2]

AEP is one of the largest providers of electric service in the United States and serves almost 5.6 million customers across 11 states.[3] AEP requests low power temporary fixed facilities and mobile-to-mobile talk-around on twelve (12) 800 MHz frequencies to be used only in remote areas outside the range of its fixed network across its 11-state service territory, without reference to the co-channel distance separation specified in section 90.621(b).[4]

Section 90.621(b) of the Commission's rules governs the required separation distances for fixed stations operating on frequencies in the 806/851–824/869 MHz band, and its underlying purpose is to ensure licensees can maintain interference-free operations.[5] In its waiver request, AEP detailed the steps it intends to take that will ensure its proposed operations on the requested frequencies will not cause interference to co-channel licensees.[6] These include operation on a secondary, noninterference basis, as well as a notification process to co-channel licensees and procedures that specify how AEP plans to otherwise comply with the protection requirements on an ongoing basis.

The Bureau seeks comment on AEP's request. Interested parties may file comments on or before the date indicated on the first page of this document.

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[1] American Electric Power Service Corporation, ULS File no. 0010577631 (dated June 8, 2023) (Application), https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=14102475; Attachment to Application labeled "Waiver Request for Service Area Operations" at 1 (attached June 8, 2023) (Waiver Request).

[2] Waiver Request at 1. AEP's service territory includes Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia. *Id.*

[3] *Id.*

[4] *Id.* at 2.

[5] 47 CFR § 90.621(b).

[6] Waiver Request at 2–4.

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). AEP filed its Request electronically in the Commission's Universal Licensing System. We have opened a new docket, **WT Docket 23-390**, to facilitate consideration of the Request and have moved AEP's Request into this docket. Parties should file all comments and reply comments in **WT Docket 23-390**.

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).[7]

- 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 Katherine Patsas Nevitt at Katherine.Nevitt@fcc.gov or Christine Parola at Christine.Parola@fcc.gov.

-FCC-

[7] *See* Federal Communications Commission, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (June 30, 1998).

[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

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DA 23-1085
November 16, 2023

FCC RELEASES CIRCUIT CAPACITY DATA FOR U.S.-INTERNATIONAL SUBMARINE CABLES AS OF DECEMBER 31, 2022

The Office of International Affairs today released circuit capacity data for U.S.-international submarine cables as of December 31, 2022.[1] Pursuant to section 43.82 of the Commission's rules, cable landing licensees and common carriers must file annual Circuit Capacity Reports through the Commission's online filing system.[2] The data include:

- **Cable Capacity Operator Reports -** Submarine cable landing licensees must file capacity information for each cable system as of December 31st of the current reporting period (available capacity) and two years from the current reporting period (planned capacity).

- **Cable Capacity Holder Reports -** Submarine cable landing licensees and common carriers that owned or leased capacity on a submarine cable between the United States and any foreign point must file capacity information as of December 31st for the following categories: (1) Owned Capacity; (2) Net Indefeasible Rights-of-Use (IRUs); (3) Net Inter-Carrier Leaseholds (ICLs); (4) Net Capacity Held (categories 1-3); (5) Activated Capacity; and (6) Non-Activated Capacity.[3]

The circuit capacity data as of December 31, 2022 are presented through the Tables and Attachments set out below and can be downloaded at https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables.

[1] 47 CFR § 43.82. Current circuit capacity data, as well as data for reporting year 2016 and years following, can be viewed on the FCC website. *See* FCC, *Circuit Capacity Data for U.S.-International Submarine Cables*, https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables. The Office of International Affairs no longer releases an annual International Circuit Capacity Report. *See Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket Nos. 17-55 and 16-131, Report and Order, 32 FCC Rcd 8115, 8128-29, para. 28, n.109 (2017). The annual Reports for reporting years 2014 and 2015 can be found at the FCC website. FCC, *International Circuit Capacity Reports*, https://www.fcc.gov/reports-research/reports/international-circuit-capacity-reports.

[2] 47 CFR § 43.82. Individual cable operator data and capacity holder data are withheld from public distribution for those filing entities that requested confidential treatment.

[3] Filing Manual for Section 43.82 Circuit Capacity Reports at 6-7, paras. 32-34 (IB Feb. 2020), https://docs.fcc.gov/public/attachments/DOC-362660A1.pdf. The aggregate capacity holder data represent data for U.S.-international submarine cables that were in service as of the end of the reporting period.

- **Table 1 – Section 43.82 Circuit Capacity Filers (2022)** – Entities that filed a cable operator and/or capacity holder report.
- **Table 2 – Number of Reports Filed by Submarine Cable Operators (2022)**
- **Table 3 – Submarine Cable Operator Reports (in Gbps) (2022/2024)** – Available and planned capacity for each U.S.-international submarine cable, with regional totals.
- **Table 4 – Submarine Cable Operator Capacity Trend Data (in Gbps)** – Detailed capacity trend data for each U.S.-international submarine cable.
- **Table 5 – Submarine Cable Capacity Holder Reports by Region (2022)** – Capacity holder data (i.e., cable capacity leased or owned) on a regional basis.
- **Table 6 – Comparison of Capacities Reported from Cable Operator Reports and Capacity Holder Reports (2022)** – Comparison of total available capacity reported in the cable operator reports with total owned capacity in the capacity holder reports, on a regional basis.
- **Attachment A** – U.S.-International Submarine Cables – Landing Points by Region, Cable, and Foreign Landing Point as of December 31, 2022
- **Attachment B –** U.S.-International Submarine Cables – Landing Points by Region, Foreign Landing Point, and Cable as of December 31, 2022
- **Attachment C –** U.S.-International Submarine Cables – Landing Points by Number of Landing Points Per Country and Region and a Frequency Table Summarizing Foreign Landing Points Per Country as of December 31, 2022

For additional information, contact Stacey Ashton, Telecommunications and Analysis Division, Office of International Affairs, Stacey.Ashton@fcc.gov, (202) 418-2214.

- FCC -

2022 Circuit Capacity Data For U.S.-International Submarine Cables

Table	**1**	**Section 43.82 Circuit Capacity Filers (2022)** – Entities that filed a cable operator and/or capacity holder report.
Table	**2**	**Number of Reports Filed By Submarine Cable Operators (2022)**
Table	**3**	**Submarine Cable Operator Reports (in Gbps) (2022/2024)** – Available and planned capacity for each U.S.-international submarine cable, with regional totals.
Table	**4**	**Submarine Cable Operator Capacity Trend Data (in Gbps)** – Detailed capacity trend data for each U.S.-international submarine cable.
Table	**5**	**Submarine Cable Capacity Holder Reports by Region (2022)** – Capacity holder data (i.e., cable capacity leased or owned by all filing entities) on a regional basis.
Table	**6**	**Comparison of Capacities Reported from Cable Operator Reports and Capacity Holder Reports (2022)** – Comparison of total available capacity reported in the cable operator reports with total owned capacity in the capacity holder reports, on a regional basis.
Attachment	**A**	U.S.-International Submarine Cables – Landing Points by Region, Cable, and Foreign Landing Point as of December 31, 2022
Attachment	**B**	U.S.-International Submarine Cables – Landing Points by Region, Foreign Landing Point, and Cable as of December 31, 2022
Attachment	**C**	U.S.-International Submarine Cables – Landing Points by Number of Landing Points Per Country and Region and a Frequency Table Summarizing Foreign Landing Points Per Country as of December 31, 2022

Source: Office of International Affairs, Federal Communications Commission

For definitions of terms and instructions on filing procedures, please refer to the Filing Manual (Feb. 2020)
For further information on current and past reports, see https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables

Table 1
Section 43.82 Circuit Capacity Filers (2022)

No.	Entities	Submarine Cable Operator Reports	Submarine Cable Capacity Holder Reports
1	AARNet Pty Ltd		✓
2	ALGAR TELECOM S/A		✓
3	AMCS LLC		✓
4	American Samoa Hawaii Cable, LLC	✓	✓
5	American Samoa Telecommunications Authority		✓
6	ANGOLA CABLES		✓
7	Antel		✓
8	Antelecom N.V.		✓
9	Antilles Crossing-St. Croix, Inc.	✓	✓
10	Aqua Comms (Americas) Inc	✓	✓
11	ARCOS-1 USA, Inc.	✓	✓
12	AT&T Corp.	✓	✓
13	Atlantic Teleconnection Operating Company Limited		✓
14	Australia-Japan Cable (Guam) Limited	✓	✓
15	Bharti Airtel Limited		✓
16	Bharti Airtel (USA) Ltd.		✓
17	BT Americas Inc.		✓
18	Cable and Wireless (BVI) Limited		✓
19	Cable and Wireless Americas Systems Inc.	✓	✓
20	Cable Andino, Inc.		✓
21	Caribbean Crossings Ltd.	✓	✓
22	Cedar Cable Ltd.	✓	✓
23	CenturyLink Communications, LLC		✓
24	China Mobile International Limited		✓
25	China Telecom Global Limited		✓
26	China Telecommunications Corporation		✓
27	China United Network Communications Group Company Limited		✓
28	Chunghwa Telecom Co., Ltd.		✓
29	Cirion Technologies Solutions, LLC	✓	✓
30	City of Ketchikan	✓	✓
31	Claro S.A. (Embratel)		✓
32	COLT Telecommunications		✓
33	Columbus Networks USA, Inc.	✓	✓
34	Crosslake Fiber USA LP	✓	✓
35	Crown Castle Fiber LLC		✓
36	CWC New Cayman Ltd.	✓	✓
37	Deutsche Telekom North America, Inc.		✓
38	DOCOMO PACIFIC, INC.		✓
39	Edge Cable Holdings USA, LLC	✓	✓
40	FLAG Telecom Limited	✓	✓
41	France Telecom Long Distance USA, LLC d/b/a Orange Carriers USA		✓
42	Global Caribbean Network	✓	✓
43	Global Transit 2 Limited		✓
44	Global Transit Limited		✓
45	GlobeNet Cabos Submarinos America, Inc.	✓	✓
46	GTI Corporation		✓
47	GU Holdings Inc.	✓	✓
48	Hannon Armstrong KCS Funding, LLC		✓

No.	Entities	Submarine Cable Operator Reports	Submarine Cable Capacity Holder Reports
49	Hawaiian Telcom Services Company, Inc.	✓	
50	Hawaiki Submarine Cable USA LLC	✓	✓
51	HUB Advanced Networks, LLC	✓	✓
52	Interoute US LLC	✓	✓
53	KDDI America, Inc.		✓
54	KT Corporation		✓
55	Latam Telecommunications, L.L.C.	✓	✓
56	Ledcor Industries (USA) Inc.	✓	
57	Level 3 Communications, LLC	✓	✓
58	Marine Cable Corporation		✓
59	Megaport (USA), Inc.		✓
60	Microsoft Infrastructure Group, LLC		✓
61	Microsoft Operations Pte Ltd	✓	✓
62	National Telecom Public Company Limited		✓
63	Network i2i Limited		✓
64	Neutral Networks USA LLC	✓	✓
65	New Century InfoComm Tech Co., Ltd.		✓
66	NTT America, Inc.		✓
67	NTT Ltd Japan Corporation	✓	✓
68	ONATI Honotua Division (U.S.)	✓	✓
69	Optibulk Havfrue AS		✓
70	Orange Business Services U.S., Inc.		✓
71	Pacific Carriage Limited Inc.	✓	✓
72	PC Landing Corp.	✓	✓
73	PCCW Global, Inc.		✓
74	PLDT Inc.		✓
75	PPC 1 Limited	✓	✓
76	PT Telekomunikasi Indonesia International		✓
77	PTI Pacifica Inc.		✓
78	Puerto Rico Telephone Company, Inc.		✓
79	Reach Services USA		✓
80	Rogers Telecom (US) Inc.		✓
81	RTI Connectivity Pte. Ltd.	✓	✓
82	Seabras 1 USA, LLC	✓	✓
83	SETAR N.V.		✓
84	Singapore Telecom USA, Inc.		✓
85	SMITCOMS, Inc.	✓	✓
86	SoftBank Corp.		✓
87	Sprint Communications Company L.P.	✓	✓
88	St. Thomas & San Juan Telephone Co., Inc.		✓
89	StarHub Ltd		✓
90	TA Resources N.V.		✓
91	Tata Communications (America) Inc.	✓	✓
92	Telefonica Larga Distancia de Puerto Rico, Inc.		✓
93	TeleGuam Holdings, LLC		✓
94	Telekom Malaysia Bhd		✓
95	Telia Carrier U.S. Inc.		✓
96	Telstra Incorporated	✓	✓
97	Telxius Cable USA, Inc.	✓	✓
98	The Bahamas Telecommunications Company Limited	✓	✓
99	TI Sparkle North America, Inc.		✓

No.	Entities	Submarine Cable Operator Reports	Submarine Cable Capacity Holder Reports
100	Truestone, LLC	✓	✓
101	UNIFIED NATIONAL NETWORKS		✓
102	Verizon Business Global LLC dba Verizon Business	✓	✓
103	VNPT		✓
104	Zayo Group, LLC		✓
Total		**43**	**102**

Table 2
Number of Reports Filed by Submarine Cable Operators (2022)

No.	Entities	Cable Reports
1	American Samoa Hawaii Cable, LLC	1
2	Antilles Crossing-St. Croix, Inc.	1
3	Aqua Comms (Americas) Inc	2
4	ARCOS-1 USA, Inc.	1
5	AT&T Corp.	5
6	Australia-Japan Cable (Guam) Limited	1
7	Cable and Wireless Americas Systems Inc.	1
8	Caribbean Crossings Ltd.	1
9	Cedar Cable Ltd.	1
10	Cirion Technologies Solutions, LLC	2
11	City of Ketchikan	1
12	Columbus Networks USA, Inc.	1
13	Crosslake Fiber USA LP	1
14	CWC New Cayman Ltd.	1
15	Edge Cable Holdings USA, LLC	2
16	FLAG Telecom Limited	1
17	Global Caribbean Network	1
18	GlobeNet Cabos Submarinos America, Inc.	1
19	GU Holdings Inc.	9
20	Hawaiian Telcom Services Company, Inc.	1
21	Hawaiki Submarine Cable USA LLC	1
22	HUB Advanced Networks, LLC	1
23	Interoute US LLC	1
24	Latam Telecommunications, L.L.C.	1
25	Ledcor Industries (USA) Inc.	1
26	Level 3 Communications, LLC	2
27	Microsoft Operations Pte Ltd	1
28	Neutral Networks USA LLC	1
29	NTT Ltd Japan Corporation	1
30	ONATI Honotua Division (U.S.)	1
31	Pacific Carriage Limited Inc.	2
32	PC Landing Corp.	1
33	PPC 1 Limited	1
34	RTI Connectivity Pte. Ltd.	1
35	Seabras 1 USA, LLC	1
36	SMITCOMS, Inc.	1
37	Sprint Communications Company L.P.	1
38	Tata Communications (America) Inc.	2
39	Telstra Incorporated	1
40	Telxius Cable USA, Inc.	4
41	The Bahamas Telecommunications Company Limited	1
42	Truestone, LLC	1
43	Verizon Business Global LLC dba Verizon Business	1
Total		**64**

Table 3
Submarine Cable Operator Reports (in Gbps) (2022/2024)

No.	Cable System	Available Capacity as of 12/31/2022	Planned Capacity as of 12/31/2024
	Americas Region		
1	América Móvil Submarine Cable System (AMX1)	90,000.0	90,000.0
2	AmeriCan-1	*	*
3	Americas II	*	*
4	Antillas 1	*	*
5	Antilles Crossing	520.0	600.0
6	ARCOS-1	*	*
7	BAHAMAS II	*	*
8	Bahamas Internet Cable System (BICS)	748.0	848.0
9	BRUSA	*	*
10	CFX-1 Cable System (CFX-1)	*	*
11	Challenger Bermuda (CB-1)	*	*
12	Crosslake Fibre	*	*
13	Curie	*	*
14	Firmina	*	*
15	Gemini Bermuda System	*	*
16	Global Caribbean Network (GCN)	140.0	300.0
17	GlobeNet	*	*
18	KetchCan1 Submarine Fiber Cable System	*	*
19	Maya-1	*	*
20	Monet Cable System	*	*
21	Neutral Networks Laredo Cable	300.0	600.0
22	Pacific Caribbean Cable System (PCCS)	*	*
23	Pan American Crossing (PAC)	*	*
24	Seabras-1	*	*
25	SMPR-1	0.0	40.0
26	South America-1 (SAm-1)	*	*
27	South American Crossing (SAC)	*	*
28	Taino-Carib Cable System	*	*
	Total Americas Region:	**3,296,110.0**	**4,329,673.0**
	Atlantic Region		
1	AEConnect-1 Cable System	*	*
2	Amitié	*	*
3	Apollo Cable	*	*
4	Atlantic Crossing 1 (AC-1)	*	*
5	Dunant	*	*
6	FLAG Atlantic-1	*	*
7	Grace Hopper	*	*
8	GTT Atlantic Cable System	*	*
9	Havfrue	*	*
10	MAREA	*	*
11	TGN Atlantic	*	*
12	Yellow	*	*
	Total Atlantic Region:	**1,270,760.0**	**1,571,020.0**

No.	Cable System	Available Capacity as of 12/31/2022	Planned Capacity as of 12/31/2024
	Pacific Region		
1	Asia America Gateway (AAG)	*	*
2	Australia-Japan Cable	*	*
3	Echo	*	*
4	FASTER Cable System	*	*
5	GOKI Cable Network	*	*
6	HANTRU1	*	*
7	Hawaiki Cable System	*	*
8	Honotua Cable System	*	*
9	Japan-Guam-Australia (JGA) North System (JGA North)	*	*
10	Japan-Guam-Australia (JGA) South System (JGA South)	*	*
11	Japan-U.S. Cable Network	*	*
12	JUPITER	*	*
13	New Cross-Pacific (NCP)	*	*
14	Pacific Crossing-1 (PC-1)	*	*
15	Pacific Light Cable Network (PLCN)	*	*
16	PPC-1	*	*
17	Samoa American Samoa Cable System **	*	*
18	Southeast Asia-US (SEA-US)	*	*
19	Southern Cross Cable Network	*	*
20	Southern Cross NEXT	*	*
21	Telstra Endeavour	*	*
22	TGN Pacific	*	*
23	Trans-Pacific Express (TPE) Cable Network	6,710.0	6,810.0
24	Unity Cable System	*	*
	Total Pacific Region:	**707,550.0**	**902,760.0**
	All Regions		
	Americas	**3,296,110.0 (62.5%)**	**4,329,673.0 (63.6%)**
	Atlantic	**1,270,760.0 (24.1%)**	**1,571,020.0 (23.1%)**
	Pacific	**707,550.0 (13.4%)**	**902,760.0 (13.3%)**
	Total	**5,274,420.0 (100%)**	**6,803,453.0 (100%)**

* Filer requested confidential treatment of its Submarine Cable Operator Report data. Regional totals include both public and confidential data.

** The name changed from American Samoa-Hawaii Cable to Samoa American Samoa Cable.

Table 4
Submarine Cable Operator Capacity Trend Data (in Gbps)

CABLES	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Planned 2024
AMERICAS REGION																	
América Móvil Submarine Cable System (AMX1)								1,640	2,800	4,660	4,890	*	*	90,000.0	90,000.0	90,000.0	90,000.0
AmeriCan-1	159.3	159.3	159.3	159.3	159.3	159.3	159.3	1,163	1,167.5	1,467.5	*	*	*	*	*	*	*
Americas II	80	80	80	520	780	820	850	850	920	960	1,070	5,070.0	6,140.0	*	*	*	*
Antillas 1	5	5	10	20	20	60	60	90	90	90	90	302.5	302.5	*	*	*	*
Antilles Crossing	30	20	20	20	30	30	40	80	*	320	320	*	*	320.0	*	520.0	600.0
ARCOS-1	80	120	210	240	290	350	450	1,468	*	*	*	*	*	*	*	*	*
BAHAMAS II	2.5	2.5	2.5	2.5	2.5	60	60	60	60	60	60	100.0	100.0	*	*	*	*
Bahamas Internet Cable System (BICS)	12.5	12.5	12.5	22.5	22.5	20	40	60	60	100	278	469.0	466.0	706.0	716.0	748.0	848.0
BRUSA												*	*	*	144,000.0	*	*
CFX-1 Cable System (CFX-1)		100	110	500	560	610	1,040	1,580	*	*	*	*	*	*	*	*	*
Challenger Bermuda (CB-1)		20	20	20	20	20	20	20	*	*	*	*	*	*	*	*	*
Crosslake Fibre													*	*	*	*	*
Curie													*	*	*	*	*
Firmina																*	*
Gemini Bermuda System		40	40	70	80	80	140	160	*	*	*	*	*	*	*	*	*
Global Caribbean Network (GCN)	20	20	20	20	40	40	40	60	70	*	140	140.0	140.0	*	140.0	140.0	300.0
GlobeNet	80	140	720	720	2,080	2,080	2,400	2,400	*	*	*	*	*	*	*	*	*
KetchCan1 Submarine Fiber Cable System													*	*	*	*	*
Maya-1	65	145	145	145	145	145	145	980	*	*	*	*	*	*	*	*	*
Monet Cable System											*	*	*	*	*	*	*
Neutral Networks Laredo Cable																300.0	600.0
Pacific Caribbean Cable System (PCCS)									950	*	5,470	*	*	*	144,000.0	*	*
Pan American Cable System***	5	5	5.0	140	140	140	140	140	140	140	140	140.0	140.0	*			
Pan American Crossing (PAC)	50	65	95	150	310	460	790	800	*	*	*	*	*	5,310.0	*	*	*
Seabras-1											*	*	*	72,000.0	*	*	*
SMPR-1	2.5	2.5	2.5	2.5	2.6	3	3	10	10	*	10	*	*	*	*	0.0	40.0
South America-1 (SAm-1)	160	440	960	1,300	1,700	2,100	2,700	4,400	5,100	*	12,250	*	*	*	48,000.0	*	*
South American Crossing (SAC)	200	200	320	530	620	935	1,600	4,260	*	*	*	*	*	15,370.0	*	*	*
Taino-Carib Cable System	1.9	1.9	1.9	70	70	70	110	110	110	120	120	40,400.0	40,400.0	*	*	*	*
Total	**953.6**	**1,578.6**	**2,933.6**	**4,651.8**	**7,071.9**	**8,181.9**	**10,787.4**	**20,331**	**28,057.5**	**42,347.5**	**168,525.5**	**580,827.0**	**2,435,174.0**	**3,150,216.5**	**3,268,535.5**	**3,296,110.0**	**4,329,673.0**
ATLANTIC REGION																	
AEConnect-1 Cable System									*	*	*	*	*	*	*	*	*
Amitié															0.0	*	*
Apollo Cable	1,280	2,280	2,860	3,100	3,150	3,420	3,510	6,100	*	*	*	*	*	*	*	*	*
Atlantic Crossing (AC-1)	635	815	1,165	1,455	1,500	1,760	2,100	2,350	*	*	*	*	*	4,860.0	*	*	*
Columbus III ***	40	40	160	160	160	160	160	160	160	160	160	600.0	600.0				
Dunant														*	*	*	*
FLAG Atlantic-1	1,240	1,480	1,640	2,200	2,280	2,830	3,560	4,430	6,130	*	*	10,260.0	*	*	*	*	*
Grace Hopper																*	*
GTT Atlantic Cable System	360	360	360	360	2,000	2,750	3,750	14,400	*	*	*	13,800.0	*	*	*	*	*
Havfrue													*	*	*	*	*
MAREA												*	*	*	178,000.0	*	*
TAT-14 ***	1,280	1,280	1,870	1,870	1,870	2,250	2,990	3,150	*	*	*	*	*				
TGN Atlantic	460	1,040	1,460	1,560	1,770	2,810	3,010	3,420	6,310	*	*	*	*	*	*	*	*
Yellow	320	500	900	1,780	1,780	1,860	1,750	4,420	*	*	*	*	*	8,640.0	*	*	*
Total	**5,615**	**7,795**	**10,415**	**12,485**	**14,510**	**17,840**	**20,830**	**38,430**	**47,920**	**137,160**	**149,780**	**332,440.0**	**362,140.0**	**546,970.0**	**869,060.0**	**1,270,760.0**	**1,571,020.0**
PACIFIC REGION																	
Asia America Gateway (AAG)			540	540	580	1,540	1,540	2,180	4,210	6,610	8,100	15,000.0	15,450.0	*	*	*	*
Australia-Japan Cable	160	520	520	520	640	1,200	1,480	1,760	*	*	*	*	*	10,360.0	*	*	*
Echo																*	*
FASTER Cable System										*	*	*	*	*	*	*	*
GOKI Cable Network											80	100.0	100.0	*	*	*	*
HANTRU1				40	40	40	40	20	*	*	*	*	*	*	*	*	*
Hawaiki Cable System												*	*	*	*	*	*
Honotua Cable System				20	20	20	20	20	40	*	40	40.0	40.0	40.0	*	*	*
Japan-Guam-Australia (JGA) North System (JGA North)														*	*	*	*
Japan-Guam-Australia (JGA) South System (JGA South)														*	*	*	*
Japan-U.S. Cable Network	800	1,900	2,180	2,300	2,500	2,530	4,630	5,380	6,850	7,240	8,000	20,800.0	20,800.0	*	*	*	*
JUPITER														*	*	*	*
New Cross-Pacific (NCP)												*	*	*	*	*	*
Pacific Crossing-1 (PC-1)	360	960	1,030	1,430	1,800	1,800	2,900	2,780	*	*	*	*	*	*	*	*	*
Pacific Light Cable Network (PLCN)															*	*	*
PPC-1			140	140	140	140	140	700	*	*	5,000	*	*	5,000.0	*	*	*
Samoa American Samoa Cable **			1	1	1	1	1	1	1.2	*	*	*	*	*	*	*	*
Southeast Asia-US (SEA-US)											*	*	*	*	*	*	*
Southern Cross Cable Network	480	860	860	1,240	1,240	1,640	2,700	3,500	*	*	*	*	*	*	13,100.0	*	*
Southern Cross NEXT														0.0	0.0	*	*
Telstra Endeavour		80	80	160	300	300	600	580	*	*	*	*	*	*	*	*	*
TGN Pacific	1,880	2,760	3,140	3,140	3,140	3,660	4,350	5,520	6,430	*	*	*	*	*	*	*	*
Trans-Pacific Express (TPE) Cable Network		1,280	1,280	1,870	1,870	2,040	2,200	2,200	2,200	3,230	5,680	6,610.0	*	6,610.0	6,710.0	6,710.0	6,810.0
Unity Cable System				2,380	2,380	2,700	4,020	7,220	*	*	*	*	*	*	*	*	*
Total	**3,840**	**8,520**	**9,931**	**13,941**	**14,811**	**17,771**	**24,781**	**32,021**	**43,783**	**75,394**	**93,374**	**248,461.2**	**260,881.2**	**464,560.0**	**612,510.0**	**707,550.0**	**902,760.0**
REGIONAL CAPACITY																	
Americas	953.6	1,578.6	2,933.6	4,651.8	7,071.9	8,181.9	10,787.4	20,331	28,057.5	42,347.5	168,525.5	580,827.0	2,435,174.0	3,150,216.5	3,268,535.5	3,296,110.0	4,329,673.0
Atlantic	6,015	8,195	10,815	12,885	15,640	19,090	22,580	38,430	47,920	137,160	149,780	332,440.0	362,140.0	546,970.0	869,060.0	1,270,760.0	1,571,020.0
Pacific	3,840	8,520	9,931	13,941	14,811	17,771	24,781	32,021	43,783	75,394	93,374	248,461.2	260,881.2	464,560.0	612,510.0	707,550.0	902,760.0
Total	**10,809**	**18,294**	**23,680**	**31,478**	**37,523**	**45,043**	**58,148**	**90,782**	**119,761**	**254,901.5**	**411,680**	**1,161,728.2**	**3,058,195.2**	**4,161,746.5**	**4,750,105.5**	**5,274,420.0**	**6,803,453.0**
NUMBER OF CABLES IN SERVICE																	
Americas	16	19	19	19	19	19	19	20	21	21	22	24	25	27	26	27	
Atlantic	8	8	8	8	8	8	8	8	8	9	9	10	10	9	10	11	
Pacific	6	8	11	14	14	14	14	14	14	14	16	18	18	21	22	23	
Total	**30**	**35**	**38**	**41**	**41**	**41**	**41**	**42**	**43**	**44**	**47**	**52**	**53**	**57**	**58**	**61**	

CABLES	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Planned 2024
GROWTH RATE RELATIVE TO PREVIOUS YEAR																	
Americas		65.5%	85.8%	58.6%	52.0%	15.7%	31.8%	88.5%	38.0%	50.9%	298.0%	244.7%	319.3%	29.4%	3.8%	0.8%	
Atlantic		36.2%	32.0%	19.1%	21.4%	22.1%	18.3%	70.2%	24.7%	186.2%	9.2%	122.0%	8.9%	51.0%	58.9%	46.2%	
Pacific		121.9%	16.6%	40.4%	6.2%	20.0%	39.4%	29.2%	36.7%	72.2%	23.8%	166.1%	5.0%	78.1%	31.8%	15.5%	
Total		**69.3%**	**29.4%**	**32.9%**	**19.2%**	**20.0%**	**29.1%**	**56.1%**	**31.9%**	**112.8%**	**61.5%**	**182.2%**	**163.2%**	**36.1%**	**14.1%**	**11.0%**	
COMPOUND ANNUAL GROWTH RATE FOR 2007-2022																	
Americas	72.2%																
Atlantic	42.9%																
Pacific	41.6%																
Total	**51.1%**																
FORECAST COMPOUND ANNUAL GROWTH RATE (2022-2024)																	
Americas	14.6%																
Atlantic	11.2%																
Pacific	13.0%																
Total	**13.6%**																

* The filer requested confidential treatment of its Submarine Cable Operator Report data. The regional totals include both public and confidential data.

** On July 16, 2020, the American Samoa-Hawaii segment of the American Samoa Hawaii Cable System was retired and taken out of commercial service. The Samoa-American Samoa segment remains in service and is now known as the Samoa American Samoa Cable.

*** TAT-14, Columbus III, and the Pan American Cable System were retired from service on December 15, 2020, December 18, 2020, and December 5, 2021, respectively.
We note that: (1) data as of 2007 to 2013 were extracted from the 2013 Section 43.82 Circuit Status Data Report; (2) the "number of cables in service" reflects the number of U.S.-international cables that were in service as of the end of the reporting period; (3) on December 28, 2018, the International Bureau released a revised Filing Manual and clarified the definition of "[a]vailable capacity, also known as design capacity, is all of the capacity (both lit and unlit capacity) on the cable as of the reporting date (December 31 of the reporting period)." International Bureau Releases Revised Filing Manual for Section 43.82 Circuit Capacity Reports, Public Notice, 33 FCC Rcd 12517 (2018); Filing Manual at 6, para. 28.

Table 5
Submarine Cable Capacity Holder Reports by Region (2022)

Capacity Holders in Gbps Units								
Region	**Owned Capacity** (a)	**Net IRUs** (b)	**Net Inter-Carrier Leaseholds** (c)	**Net Capacity Held** (d)=(a)+(b)+(c)=(e)+(f)	**Activated Capacity** (e)	**Non-Activated Capacity** (f)	**Activated %** (g)	**Non-Activated %** (h)
Americas	3,165,426.6	-92,977.3	-45,232.2	3,027,217.1	159,592.6	2,867,624.5	5.3%	94.7%
Atlantic	1,271,008.0	-192,593.3	-63,050.1	1,015,364.6	338,202.9	677,161.7	33.3%	66.7%
Pacific	676,385.5	-29,996.1	-12,705.8	633,683.6	283,489.0	350,194.6	44.7%	55.3%
Total	**5,112,820.1**	**-315,566.7**	**-120,988.1**	**4,676,265.3**	**781,284.5**	**3,894,980.8**	**16.7%**	**83.3%**

The aggregate capacity holder data represent data for U.S.-international submarine cables that were in service as of the end of the reporting period.

Table 6
Comparison of Capacities Reported from Cable Operator Reports and Capacity Holder Reports (2022)

Region	Submarine Cable Operator Reports (Gbps) (Available Capacity)	Submarine Cable Capacity Holder Reports (Gbps) (Owned Capacity)	Discrepancy	Percent Captured by Holder Reports	Percent Not Captured by Holder Reports
Americas	3,296,110.0	3,165,426.6	130,683.4	96.0%	4.0%
Atlantic	1,270,760.0	1,271,008.0	-248.0	100.0%	0.0%
Pacific	707,550.0	676,385.5	31,164.5	95.6%	4.4%
Total	**5,274,420.0**	**5,112,820.1**	**161,599.9**	**96.9%**	**3.1%**

Attachment A
U.S.-International Submarine Cables – Landing Points
by Region, Cable, and Foreign Landing Point as of December 31, 2022

No.	Region	Cable Name	Foreign Landing Point
1	Americas	América Móvil Submarine Cable System (AMX1)	Brazil
2	Americas	América Móvil Submarine Cable System (AMX1)	Colombia
3	Americas	América Móvil Submarine Cable System (AMX1)	Dominican Republic
4	Americas	América Móvil Submarine Cable System (AMX1)	Guatemala
5	Americas	América Móvil Submarine Cable System (AMX1)	Mexico
6	Americas	AmeriCan-1	Canada
7	Americas	Americas II	Brazil
8	Americas	Americas II	Curaçao
9	Americas	Americas II	French Guiana
10	Americas	Americas II	Martinique
11	Americas	Americas II	Trinidad and Tobago
12	Americas	Americas II	Venezuela
13	Americas	Antillas 1	Dominican Republic
14	Americas	Antilles Crossing	Barbados
15	Americas	Antilles Crossing	Saint Lucia
16	Americas	ARCOS-1	Bahamas
17	Americas	ARCOS-1	Belize
18	Americas	ARCOS-1	Colombia
19	Americas	ARCOS-1	Costa Rica
20	Americas	ARCOS-1	Curaçao
21	Americas	ARCOS-1	Dominican Republic
22	Americas	ARCOS-1	Guatemala
23	Americas	ARCOS-1	Honduras
24	Americas	ARCOS-1	Mexico
25	Americas	ARCOS-1	Nicaragua
26	Americas	ARCOS-1	Panama
27	Americas	ARCOS-1	Turks and Caicos Islands
28	Americas	ARCOS-1	Venezuela
29	Americas	BAHAMAS II	Bahamas
30	Americas	Bahamas Internet Cable System (BICS)	Bahamas
31	Americas	BRUSA	Brazil
32	Americas	Challenger Bermuda (CB-1)	Bermuda
33	Americas	CFX-1 Cable System (CFX-1)	Colombia
34	Americas	CFX-1 Cable System (CFX-1)	Jamaica
35	Americas	Crosslake Fibre	Canada
36	Americas	Curie	Chile
37	Americas	Firmina	Argentina
38	Americas	Firmina	Brazil
39	Americas	Firmina	Uruguay
40	Americas	Gemini Bermuda System	Bermuda
41	Americas	Global Caribbean Network (GCN)	Guadeloupe
42	Americas	Global Caribbean Network (GCN)	Saint Barthelemy
43	Americas	Global Caribbean Network (GCN)	Saint Martin
44	Americas	GlobeNet	Bermuda
45	Americas	GlobeNet	Brazil
46	Americas	GlobeNet	Colombia
47	Americas	GlobeNet	Venezuela
48	Americas	KetchCan1 Submarine Fiber Cable System	Canada
49	Americas	Maya-1	Cayman Islands
50	Americas	Maya-1	Colombia
51	Americas	Maya-1	Costa Rica
52	Americas	Maya-1	Honduras

Attachment A
U.S.-International Submarine Cables – Landing Points
by Region, Cable, and Foreign Landing Point as of December 31, 2022

No.	Region	Cable Name	Foreign Landing Point
53	Americas	Maya-1	Mexico
54	Americas	Maya-1	Panama
55	Americas	Monet Cable System	Brazil
56	Americas	Neutral Networks Laredo Cable	Mexico
57	Americas	Pacific Caribbean Cable System (PCCS)	Aruba
58	Americas	Pacific Caribbean Cable System (PCCS)	British Virgin Islands
59	Americas	Pacific Caribbean Cable System (PCCS)	Colombia
60	Americas	Pacific Caribbean Cable System (PCCS)	Ecuador
61	Americas	Pacific Caribbean Cable System (PCCS)	Panama
62	Americas	Pan American Crossing (PAC)	Costa Rica
63	Americas	Pan American Crossing (PAC)	Mexico
64	Americas	Pan American Crossing (PAC)	Panama
65	Americas	Pan American Crossing (PAC)	Venezuela
66	Americas	Seabras-1	Brazil
67	Americas	SMPR-1	Sint Maarten
68	Americas	South America-1 (SAm-1)	Argentina
69	Americas	South America-1 (SAm-1)	Brazil
70	Americas	South America-1 (SAm-1)	Chile
71	Americas	South America-1 (SAm-1)	Colombia
72	Americas	South America-1 (SAm-1)	Ecuador
73	Americas	South America-1 (SAm-1)	Guatemala
74	Americas	South America-1 (SAm-1)	Peru
75	Americas	South American Crossing (SAC)	Argentina
76	Americas	South American Crossing (SAC)	Brazil
77	Americas	South American Crossing (SAC)	Chile
78	Americas	South American Crossing (SAC)	Colombia
79	Americas	South American Crossing (SAC)	Panama
80	Americas	South American Crossing (SAC)	Peru
81	Americas	Taino-Carib Cable System	British Virgin Islands

No.	Region	Cable Name	Foreign Landing Point
1	Atlantic	AEConnect Cable Network	Iceland
2	Atlantic	AEConnect Cable Network	Ireland
3	Atlantic	Amitié	France
4	Atlantic	Amitié	United Kingdom
5	Atlantic	Apollo Cable	France
6	Atlantic	Apollo Cable	United Kingdom
7	Atlantic	Atlantic Crossing (AC-1)	Germany
8	Atlantic	Atlantic Crossing (AC-1)	Netherlands
9	Atlantic	Atlantic Crossing (AC-1)	United Kingdom
10	Atlantic	Dunant	France
11	Atlantic	FLAG Atlantic-1	France
12	Atlantic	FLAG Atlantic-1	United Kingdom
13	Atlantic	Grace Hopper	Spain
14	Atlantic	Grace Hopper	United Kingdom
15	Atlantic	GTT Atlantic	Canada
16	Atlantic	GTT Atlantic	Ireland
17	Atlantic	GTT Atlantic	United Kingdom
18	Atlantic	Havfrue	Denmark
19	Atlantic	Havfrue	Ireland
20	Atlantic	Havfrue	Norway

Attachment A
U.S.-International Submarine Cables – Landing Points
by Region, Cable, and Foreign Landing Point as of December 31, 2022

No.	Region	Cable Name	Foreign Landing Point
21	Atlantic	MAREA	Spain
22	Atlantic	TGN Atlantic	United Kingdom
23	Atlantic	Yellow	United Kingdom

No.	Region	Cable Name	Foreign Landing Point
1	Pacific	Asia America Gateway (AAG)	Brunei
2	Pacific	Asia America Gateway (AAG)	Hong Kong
3	Pacific	Asia America Gateway (AAG)	Malaysia
4	Pacific	Asia America Gateway (AAG)	Philippines
5	Pacific	Asia America Gateway (AAG)	Singapore
6	Pacific	Asia America Gateway (AAG)	Thailand
7	Pacific	Asia America Gateway (AAG)	Vietnam
8	Pacific	Australia-Japan Cable	Australia
9	Pacific	Australia-Japan Cable	Japan
10	Pacific	Echo	Indonesia
11	Pacific	Echo	Singapore
12	Pacific	FASTER Cable System	Japan
13	Pacific	FASTER Cable System	Taiwan
14	Pacific	GOKI Cable Network	Japan
15	Pacific	HANTRU1	Federated States of Micronesia
16	Pacific	HANTRU1	Republic of the Marshall Islands
17	Pacific	Hawaiki Cable System	Australia
18	Pacific	Hawaiki Cable System	New Zealand
19	Pacific	Honotua Cable System	French Polynesia
20	Pacific	Japan-Guam-Australia (JGA) North System (JGA North)	Japan
21	Pacific	Japan-Guam-Australia (JGA) South System (JGA South)	Australia
22	Pacific	Japan-U.S. Cable Network	Japan
23	Pacific	JUPITER	Japan
24	Pacific	JUPITER	Philippines
25	Pacific	New Cross-Pacific (NCP)	China
26	Pacific	New Cross-Pacific (NCP)	Japan
27	Pacific	New Cross-Pacific (NCP)	South Korea
28	Pacific	New Cross-Pacific (NCP)	Taiwan
29	Pacific	Pacific Crossing-1 (PC-1)	Japan
30	Pacific	Pacific Light Cable Network (PLCN)	Philippines
31	Pacific	Pacific Light Cable Network (PLCN)	Taiwan
32	Pacific	PPC-1	Australia
33	Pacific	PPC-1	Papua New Guinea
34	Pacific	Samoa American Samoa Cable System	Samoa
35	Pacific	Southeast Asia-US (SEA-US)	Indonesia
36	Pacific	Southeast Asia-US (SEA-US)	Philippines
37	Pacific	Southern Cross Cable Network	Australia
38	Pacific	Southern Cross Cable Network	Fiji
39	Pacific	Southern Cross Cable Network	New Zealand
40	Pacific	Southern Cross NEXT	Australia
41	Pacific	Southern Cross NEXT	Fiji
42	Pacific	Southern Cross NEXT	Kiribati
43	Pacific	Southern Cross NEXT	New Zealand
44	Pacific	Southern Cross NEXT	Samoa
45	Pacific	Southern Cross NEXT	Tokelau
46	Pacific	Telstra Endeavour	Australia
47	Pacific	TGN Pacific	Japan

Attachment A
U.S.-International Submarine Cables – Landing Points
by Region, Cable, and Foreign Landing Point as of December 31, 2022

No.	Region	Cable Name	Foreign Landing Point
48	Pacific	Trans-Pacific Express (TPE) Cable Network	China
49	Pacific	Trans-Pacific Express (TPE) Cable Network	Japan
50	Pacific	Trans-Pacific Express (TPE) Cable Network	South Korea
51	Pacific	Trans-Pacific Express (TPE) Cable Network	Taiwan
52	Pacific	Unity Cable System	Japan
156	**Total Landing Points**		

Source: FCC records

Attachment B
U.S.-International Submarine Cables – Landing Points
by Region, Foreign Landing Point, and Cable as of December 31, 2022

No.	Region	Foreign Landing Point	Cable Name
1	Americas	Argentina	Firmina
2	Americas	Argentina	South America-1 (SAm-1)
3	Americas	Argentina	South American Crossing (SAC)
4	Americas	Aruba	Pacific Caribbean Cable System (PCCS)
5	Americas	Bahamas	ARCOS-1
6	Americas	Bahamas	BAHAMAS II
7	Americas	Bahamas	Bahamas Internet Cable System (BICS)
8	Americas	Barbados	Antilles Crossing
9	Americas	Belize	ARCOS-1
10	Americas	Bermuda	Challenger Bermuda (CB-1)
11	Americas	Bermuda	Gemini Bermuda System
12	Americas	Bermuda	GlobeNet
13	Americas	Brazil	América Móvil Submarine Cable System (AMX1)
14	Americas	Brazil	Americas II
15	Americas	Brazil	BRUSA
16	Americas	Brazil	Firmina
17	Americas	Brazil	GlobeNet
18	Americas	Brazil	Monet Cable System
19	Americas	Brazil	Seabras-1
20	Americas	Brazil	South America-1 (SAm-1)
21	Americas	Brazil	South American Crossing (SAC)
22	Americas	British Virgin Islands	Pacific Caribbean Cable System (PCCS)
23	Americas	British Virgin Islands	Taino-Carib Cable System
24	Americas	Canada	AmeriCan-1
25	Americas	Canada	Crosslake Fibre
26	Americas	Canada	KetchCan1 Submarine Fiber Cable System
27	Americas	Cayman Islands	Maya-1
28	Americas	Chile	Curie
29	Americas	Chile	South America-1 (SAm-1)
30	Americas	Chile	South American Crossing (SAC)
31	Americas	Colombia	América Móvil Submarine Cable System (AMX1)
32	Americas	Colombia	ARCOS-1
33	Americas	Colombia	CFX-1 Cable System (CFX-1)
34	Americas	Colombia	GlobeNet
35	Americas	Colombia	Maya-1
36	Americas	Colombia	Pacific Caribbean Cable System (PCCS)
37	Americas	Colombia	South America-1 (SAm-1)
38	Americas	Colombia	South American Crossing (SAC)
39	Americas	Costa Rica	ARCOS-1
40	Americas	Costa Rica	Maya-1
41	Americas	Costa Rica	Pan American Crossing (PAC)
42	Americas	Curaçao	Americas II
43	Americas	Curaçao	ARCOS-1
44	Americas	Dominican Republic	América Móvil Submarine Cable System (AMX1)
45	Americas	Dominican Republic	Antillas 1
46	Americas	Dominican Republic	ARCOS-1
47	Americas	Ecuador	Pacific Caribbean Cable System (PCCS)
48	Americas	Ecuador	South America-1 (SAm-1)
49	Americas	French Guiana	Americas II
50	Americas	Guadeloupe	Global Caribbean Network (GCN)
51	Americas	Guatemala	América Móvil Submarine Cable System (AMX1)
52	Americas	Guatemala	ARCOS-1

Attachment B
U.S.-International Submarine Cables – Landing Points
by Region, Foreign Landing Point, and Cable as of December 31, 2022

No.	Region	Foreign Landing Point	Cable Name
53	Americas	Guatemala	South America-1 (SAm-1)
54	Americas	Honduras	ARCOS-1
55	Americas	Honduras	Maya-1
56	Americas	Jamaica	CFX-1 Cable System (CFX-1)
57	Americas	Martinique	Americas II
58	Americas	Mexico	América Móvil Submarine Cable System (AMX1)
59	Americas	Mexico	ARCOS-1
60	Americas	Mexico	Maya-1
61	Americas	Mexico	Neutral Networks Laredo Cable
62	Americas	Mexico	Pan American Crossing (PAC)
63	Americas	Nicaragua	ARCOS-1
64	Americas	Panama	ARCOS-1
65	Americas	Panama	Maya-1
66	Americas	Panama	Pacific Caribbean Cable System (PCCS)
67	Americas	Panama	Pan American Crossing (PAC)
68	Americas	Panama	South American Crossing (SAC)
69	Americas	Peru	South America-1 (SAm-1)
70	Americas	Peru	South American Crossing (SAC)
71	Americas	Saint Barthelemy	Global Caribbean Network (GCN)
72	Americas	Saint Lucia	Antilles Crossing
73	Americas	Saint Martin	Global Caribbean Network (GCN)
74	Americas	Sint Maarten	SMPR-1
75	Americas	Trinidad and Tobago	Americas II
76	Americas	Turks and Caicos Islands	ARCOS-1
77	Americas	Uruguay	Firmina
78	Americas	Venezuela	Americas II
79	Americas	Venezuela	ARCOS-1
80	Americas	Venezuela	GlobeNet
81	Americas	Venezuela	Pan American Crossing (PAC)

No.	Region	Foreign Landing Point	Cable Name
1	Atlantic	Canada	GTT Atlantic
2	Atlantic	Denmark	Havfrue
3	Atlantic	France	Amitié
4	Atlantic	France	Apollo Cable
5	Atlantic	France	Dunant
6	Atlantic	France	FLAG Atlantic-1
7	Atlantic	Germany	Atlantic Crossing (AC-1)
8	Atlantic	Iceland	AEConnect Cable Network
9	Atlantic	Ireland	AEConnect Cable Network
10	Atlantic	Ireland	GTT Atlantic
11	Atlantic	Ireland	Havfrue
12	Atlantic	Netherlands	Atlantic Crossing (AC-1)
13	Atlantic	Norway	Havfrue
14	Atlantic	Spain	Grace Hopper
15	Atlantic	Spain	MAREA
16	Atlantic	United Kingdom	Amitié
17	Atlantic	United Kingdom	Apollo Cable
18	Atlantic	United Kingdom	Atlantic Crossing (AC-1)
19	Atlantic	United Kingdom	FLAG Atlantic-1
20	Atlantic	United Kingdom	Grace Hopper
21	Atlantic	United Kingdom	GTT Atlantic

Attachment B
U.S.-International Submarine Cables – Landing Points
by Region, Foreign Landing Point, and Cable as of December 31, 2022

No.	Region	Foreign Landing Point	Cable Name
22	Atlantic	United Kingdom	TGN Atlantic
23	Atlantic	United Kingdom	Yellow

No.	Region	Foreign Landing Point	Cable Name
1	Pacific	Australia	Australia-Japan Cable
2	Pacific	Australia	Hawaiki Cable System
3	Pacific	Australia	Japan-Guam-Australia (JGA) South System
4	Pacific	Australia	PPC-1
5	Pacific	Australia	Southern Cross Cable Network
6	Pacific	Australia	Southern Cross NEXT
7	Pacific	Australia	Telstra Endeavour
8	Pacific	Brunei	Asia America Gateway (AAG)
9	Pacific	China	New Cross-Pacific (NCP)
10	Pacific	China	Trans-Pacific Express (TPE) Cable Network
11	Pacific	Federated States of Micronesia	HANTRU1
12	Pacific	Fiji	Southern Cross Cable Network
13	Pacific	Fiji	Southern Cross NEXT
14	Pacific	French Polynesia	Honotua Cable System
15	Pacific	Hong Kong	Asia America Gateway (AAG)
16	Pacific	Indonesia	Echo
17	Pacific	Indonesia	Southeast Asia-US (SEA-US)
18	Pacific	Japan	Australia-Japan Cable
19	Pacific	Japan	FASTER Cable System
20	Pacific	Japan	GOKI Cable Network
21	Pacific	Japan	Japan-Guam-Australia (JGA) North System
22	Pacific	Japan	Japan-U.S. Cable Network
23	Pacific	Japan	JUPITER
24	Pacific	Japan	New Cross-Pacific (NCP)
25	Pacific	Japan	Pacific Crossing-1 (PC-1)
26	Pacific	Japan	TGN Pacific
27	Pacific	Japan	Trans-Pacific Express (TPE) Cable Network
28	Pacific	Japan	Unity Cable System
29	Pacific	Kiribati	Southern Cross NEXT
30	Pacific	Malaysia	Asia America Gateway (AAG)
31	Pacific	New Zealand	Hawaiki Cable System
32	Pacific	New Zealand	Southern Cross Cable Network
33	Pacific	New Zealand	Southern Cross NEXT
34	Pacific	Papua New Guinea	PPC-1
35	Pacific	Philippines	Asia America Gateway (AAG)
36	Pacific	Philippines	JUPITER
37	Pacific	Philippines	Pacific Light Cable Network (PLCN)
38	Pacific	Philippines	Southeast Asia-US System (SEA-US)
39	Pacific	Republic of the Marshall Islands	HANTRU1
40	Pacific	Samoa	Samoa American Samoa Cable System
41	Pacific	Samoa	Southern Cross NEXT
42	Pacific	Singapore	Asia America Gateway (AAG)
43	Pacific	Singapore	Echo
44	Pacific	South Korea	New Cross-Pacific (NCP)
45	Pacific	South Korea	Trans-Pacific Express (TPE) Cable Network
46	Pacific	Taiwan	FASTER Cable System
47	Pacific	Taiwan	New Cross-Pacific (NCP)
48	Pacific	Taiwan	Pacific Light Cable Network (PLCN)
49	Pacific	Taiwan	Trans-Pacific Express (TPE) Cable Network

Attachment B
U.S.-International Submarine Cables – Landing Points
by Region, Foreign Landing Point, and Cable as of December 31, 2022

No.	Region	Foreign Landing Point	Cable Name
50	Pacific	Thailand	Asia America Gateway (AAG)
51	Pacific	Tokelau	Southern Cross NEXT
52	Pacific	Vietnam	Asia America Gateway (AAG)
156	**Total Landing Points**		

Source: FCC records

Attachment C
U.S.-International Submarine Cables – Landing Points
by Number of Landing Points Per Country and Region
as of December 31, 2022

No. of Landing Points Per Country	Country	Region
11	Japan	Pacific
9	Brazil	Americas
8	Colombia	Americas
8	United Kingdom	Atlantic
7	Australia	Pacific
5	Mexico	Americas
5	Panama	Americas
4	France	Atlantic
4	Philippines	Pacific
4	Taiwan	Pacific
4	Venezuela	Americas
3	Argentina	Americas
3	Bahamas	Americas
3	Bermuda	Americas
3	Canada	Americas
3	Chile	Americas
3	Costa Rica	Americas
3	Dominican Republic	Americas
3	Guatemala	Americas
3	Ireland	Atlantic
3	New Zealand	Pacific
2	British Virgin Islands	Americas
2	China	Pacific
2	Curaçao	Americas
2	Ecuador	Americas
2	Fiji	Pacific
2	Honduras	Americas
2	Indonesia	Pacific
2	Peru	Americas
2	Samoa	Pacific
2	Singapore	Pacific
2	South Korea	Pacific
2	Spain	Atlantic
1	Aruba	Americas
1	Barbados	Americas
1	Belize	Americas
1	Brunei	Pacific
1	Canada	Atlantic
1	Cayman Islands	Americas
1	Denmark	Atlantic

No. of Landing Points Per Country	Country	Region
1	Federated States of Micronesia	Pacific
1	French Guiana	Americas
1	French Polynesia	Pacific
1	Germany	Atlantic
1	Guadeloupe	Americas
1	Hong Kong	Pacific
1	Iceland	Atlantic
1	Jamaica	Americas
1	Kiribati	Pacific
1	Malaysia	Pacific
1	Martinique	Americas
1	Netherlands	Atlantic
1	Nicaragua	Americas
1	Norway	Atlantic
1	Papua New Guinea	Pacific
1	Republic of the Marshall Islands	Pacific
1	Saint Barthelemy	Americas
1	Saint Lucia	Americas
1	Saint Martin	Americas
1	Sint Maarten	Americas
1	Thailand	Pacific
1	Tokelau	Pacific
1	Trinidad and Tobago	Americas
1	Turks and Caicos Islands	Americas
1	Uruguay	Americas
1	Vietnam	Pacific

Source: FCC Records

Frequency Table
Summarizing Foreign Landing Points Per Country

	Number of Countries Per Region		
No. of Landing Points Per Country	Americas	Atlantic	Pacific
1	16	6	11
2	5	1	6
3	8	1	1
4	1	1	2
5	2		
6			
7			1
8	1	1	
9	1		
10			
11			1

Source: FCC Records

PUBLIC NOTICE

Federal Communications Commission
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Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-1086
Released: November 16, 2023

MEDIA BUREAU ANNOUNCES THAT ALL NEXT GEN TV "MULTICAST LICENSING" RULES ARE NOW IN EFFECT AND NEXT GEN TV LICENSE APPLICATIONS FOR MULTICAST STREAMS WILL NOW BE ACCEPTED

MB Docket No. 16-142

By this Public Notice, the Media Bureau (Bureau) announces that all Next Generation Television ("Next Gen TV" or "ATSC 3.0") "multicast licensing" rules adopted in the *Third Next Gen TV Report and Order* are now in effect.[1] We also announce that the Bureau is ready to accept Next Gen TV license applications (FCC Form 2100) that involve simulcast multicast streams and/or non-simulcast 1.0 multicast streams, in accordance with the rules adopted in the *Third Next Gen TV Report and Order*.[2] Finally, the Bureau will apply a "grace period" by which Next Gen TV stations that were previously authorized by the Bureau to air a multicast stream(s) over a ATSC 1.0 multicast host station may file a license application.

On June 23, 2023, the Commission released the *Third Next Gen TV Report and Order* that, among other things, established a process for a Next Gen TV station to seek modification of its license to include, on a temporary basis, non-primary video programming streams (multicast streams) that are aired as "guest" streams on "host" station(s) as part of the voluntary ATSC 3.0 transition.[3] The rules adopted in the *Third Next Gen TV Report and Order* took effect on August 16, 2023, except for parts of 47 CFR §§ 73.3801, 73.6029, and 74.782 which required approval by the Office of Management and Budget (OMB) because they contained information collection requirements.[4] The Commission submitted these information collection requirements to OMB for review under 47 U.S.C. § 3507(d), and OMB has

[1] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 23-53 (rel. Jun. 23, 2023) (*Third Next Gen TV Report and Order and Fourth Further Notice*). The following terms are used interchangeably: 'ATSC 1.0' is the same as '1.0' and 'ATSC 3.0' is the same as '3.0.'

[2] *Id*. Applications that do not contain the information required by the rules and the *Third Next Gen TV Report and Order* will be dismissed (without prejudice).

[3] The *Third Next Gen TV Report and Order* concludes that (1) Next Gen TV stations may seek modification of their licenses to include one or more simulcast multicast streams on a host station or stations, whether that guest stream is a 1.0 or 3.0 simulcast ("simulcast" multicast streams) and also that (2) Next Gen TV stations that are broadcasting in 3.0 on their own channels may seek modification of their licenses to include one or more multicast streams aired only in 1.0 format on a host station or stations even if they are not simulcasting that stream in 3.0 ("non-simulcast" 1.0 multicast streams). *Id*. at para. 14. The *Third Next Gen TV Report and Order* also establishes a process, subject to certain requirements, to allow a Next Gen TV station to simulcast its primary stream programming both on a primary stream host and on a multicast stream carried by a different partner station in order to minimize the impact of 1.0 primary service loss. *Id*. at paras. 23-25.

[4] *Third Next Gen TV Report and Order*, Final Rule, 88 FR 45347 (Jul. 17, 2023); *Effective Date and Comment Dates Set for ATSC 3.0 Third Report and Order Fourth FNPRM*, Public Notice, DA 23-612 (MB rel. July 17, 2023).

approved these collections.[5] In the *Third Next Gen TV Report and Order*, the Commission stated that these rules will become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective date.[6] The Commission has published this notice in the Federal Register announcing today, November 16, 2023, as the effective date of these rules.[7]

Filing instructions for simulcast multicast streams and/or non-simulcast 1.0 multicast streams. Next Gen TV broadcasters applying to license their 1.0 or 3.0 multicast stream(s) must use the Commission's Licensing and Management System (LMS) to file FCC Form 2100 and the relevant schedule based on its class of service ("Form 2100" or "3.0 license application").[8] Next Gen TV broadcasters will file a single, unified 3.0 license application that covers both their primary and any multicast stream(s).

Stations that choose to transition their facility to ATSC 3.0 operations after the date of this Public Notice must utilize either Purpose 1 of FCC Form 2100 if the station wants to license a simulcast or non-simulcast 1.0 multicast stream on a host station; or Purpose 3 of FCC Form 2100 if the station wants to license a simulcast 3.0 multicast stream. Licensed Next Gen TV broadcasters that have an existing multicast arrangement (*i.e.*, those with special temporary authority (Multicast STAs) or that are airing a 1.0 or 3.0 multicast stream on the same host as their primary stream), that want to initiate a 1.0 or 3.0 multicast stream arrangement, or in the future want to modify their multicast stream arrangement, must utilize Purpose 2 of FCC Form 2100 for 1.0 simulcast or non-simulcast multicast streams; or Purpose 3 of FCC Form 2100 for simulcast 3.0 multicast streams.[9]

A Next Gen TV broadcaster seeking to license its 1.0 multicast stream(s) must attach an exhibit (Host Exhibit) to its Next Gen TV license application that contains the information required by the rules established in the *Third Next Gen TV Report and Order*,[10] which includes (but may not be limited to) the following information:[11]

- call sign and facility identification number of each host station;
- the channel number (RF and virtual) of each hosted stream;
- the network affiliation (or type of programming if unaffiliated) of each hosted stream;

[5] *See* Notice of Office of Management and Budget Action for OMB Control No. 3060-1254 (approved Nov. 7, 2023).

[6] *Third Next Gen TV Report and Order* at para. 66.

[7] *See* 88 FR 78655 (Nov. 16, 2023).

[8] These FCC Form 2100 schedules are Schedule B for full service television stations; Schedule D for low power and television translator stations; or Schedule F for Class A television stations.

[9] Any modifications to the authorized multicast or primary stream hosting arrangement requires the filing and approval of a new Next Gen TV license application. However, changes to the affiliation or content of a stream, or the elimination of a stream do not require a new Next Gen TV license application or prior Commission approval. Such changes need only to be reflected in a timely update to the 3.0 Exhibit on its public website or in the applicant's online public inspection file. The licensee must also send an email notice to the Chief of the Media Bureau's Video Division. *Third Next Gen TV Report and Order* at para. 37. Accordingly, notifications may be sent to Barbara Kreisman, Chief of the Video Division at NextGenMulticast@fcc.gov.

[10] *See* 47 CFR §§ 73.3801, 73.6029, and 74.782; *Third Next Gen TV Report and Order* at paras. 35-38.

[11] The information should be provided as a "General Purpose" exhibit to the license application. If a Next Gen TV station's primary stream host will remain the same as the one listed in its current Next Gen TV license, the applicant would list the same primary stream host in its application and answer all other required questions. An applicant may list the date of filing as the day that the station is planning to commence 1.0 or 3.0 multicast services if such programming is already being aired. The applicant may incorporate by reference all documents included with its most recent license application so long as the attachments contained therein are still accurate. However, if the applicant's primary stream host will also be airing multicast streams, a contour overlap map must be provided as part the Host Exhibit.

- the resolution (*e.g.*, 1080i, 720p, 480p, or 480i) of each hosted stream;
- the predicted percentage of population within the noise limited service contour served by the Next Gen TV station's original ATSC 1.0 signal that will be served by the host station, including a contour overlay map identifying areas of service loss and the originating station's community of license;
- whether the stream will be simulcast, and if so, the "paired" stream in the other service;
- show that the applicant station is not seeking to license more capacity on a partner host station(s), in the aggregate, than the applicant station could use if it were still operating its own facility in 1.0.[12] The applicant station must demonstrate compliance with this rule in its Next Gen TV license application by either: (1) showing that it is seeking hosting only for streams it was broadcasting on its own 1.0 facility prior to its transition to 3.0; or (2) by providing an example of another 1.0 station that is carrying or has carried the same or a similar programming lineup to that which it seeks to provide on host stations and at the same resolutions;[13]
- for applicant stations providing children's programming on a multicast stream in order to demonstrate compliance with the Commission's Core Programming requirement, the applicant must show that the multicast stream is either being carried on the same host as the station's primary stream or on a host that serves at least 95 percent of the predicted population served by the applicant station's 1.0 signal;[14] and
- confirm the applicant station has provided the required notifications to viewers and multichannel video programing distributors (MVPDs).[15]

A copy of the Host Exhibit must be made available on the applicant station's public website or placed in its online public inspection file if it does not have a dedicated website.[16] A Next Gen TV broadcaster seeking to license its simulcast 3.0 multicast stream(s) does not need to provide any additional information or exhibit beyond that currently required under Purpose 3 of FCC Form 2100.

No New Multicast STAs. Effective immediately, the Bureau will no longer process new requests or extensions of requests for Multicast STAs authorizing a Next Gen TV broadcaster's 1.0 multicast stream(s) to be treated as if it is being originated from its facility, as opposed to the host station's facility. All such requests must now be filed using a 3.0 license application and demonstrate compliance with the rules adopted in the *Third Next Gen TV Report and Order*.[17] Any Multicast STA or request for extension received after the date of this Public Notice will be promptly dismissed by Bureau staff.[18]

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[12] *See Third Next Gen TV Report and Order* at paras. 18 and 37; 47 CFR §§ 73.3801(i), 73.6029(i), and 74.782(i).

[13] *See id*.

[14] *See* 47 CFR §§ 73.3801(i)(3) (full power stations); 73.6029(i)(3) (Class A stations); *Third Next Gen TV Report and Order* at para. 34. *See also* 47 CFR § 73.671. This showing is only needed if the programming being aired on the station's multicast stream is being counted in order to demonstrate compliance with the Commission's Core Programming requirement. We also note that 47 CFR § 73.671 is only applicable to full power commercial, full power noncommercial educational, and Class A TV stations.

[15] *Third Next Gen TV Report and Order* at para. 31 & n.140 (applying the same rules to simulcast and non-simulcast licensed multicast streams as applied to primary simulcast streams).

[16] *Id*. To the extent the Station is a low power television or TV translator station and does not have a website or on-line public file, the Station should contact Kevin Harding Deputy Chief, Video Division, Media Bureau at Kevin.Harding@fcc.gov or (202) 418-2324 to request the creation of an online public file for the station.

[17] *See id.* at paras. 15-28.

[18] To date, the Bureau has not granted or received any requests for Multicast STAs that would apply to any simulcast 3.0 multicast streams. Any such request would also be dismissed and the Next Gen TV broadcaster would need to file a Next Gen TV application in accordance with the Commission's new multicast licensing rules.

Treatment of Existing Multicast Arrangements. A Next Gen TV broadcaster with a Multicast STA must file a 3.0 license application no later than the expiration date of its current Multicast STA. The Bureau will apply a "grace period" for a Next Gen TV station with a pending request to extend a Multicast STA as of the date of this Public Notice or that is airing a 1.0 or 3.0 multicast stream on the same host as its primary stream until December 18, 2023 to file a 3.0 license application that complies with the Commission's multicast licensing rules.[19] During this "grace period" the Bureau will consider all Next Gen TV stations with an unexpired Multicast STA, a pending Multicast STA extension, or multicast streams being aired by the same host as its primary stream to be originating those multicast streams for purposes of the Commission's rules and the Act so long as all operations are in compliance with the rules adopted in the *Third Next Gen TV Report and Order*.[20] We find good cause exists to waive all applicable rules and provide this "grace period" in order to ensure that viewers do not lose access to existing 1.0 multicast streams and to establish an orderly process by which the aforementioned Next Gen TV broadcasters can obtain an authorization under the Commission's new multicast licensing rules.[21]

"Same-Service" Hosting STAs. The Bureau will consider, on a case-by-case basis, requests for special temporary authority to permit 1.0 "same-service" hosting (also known as "lateral" hosting).[22] Such requests should be filed in LMS utilizing a request for legal special temporary authority (Legal STA). Given the unique nature and potential complexity of these requests, we encourage applicants to file their Legal STA proposing "same-service" hosting, as well as any related 3.0 license application, at least 60 business days prior to its proposed ATSC 3.0 transition date to ensure timely processing.

For additional information, contact Kevin Harding, Deputy Chief, Video Division, Media Bureau at Kevin.Harding@fcc.gov or (202) 418-2324 (technical issues) or Evan Morris, Associate Bureau Chief, Media Bureau at Evan.Morris@fcc.gov or (202) 418-1656 (legal).

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.[23]

-- FCC --

[19] This filing deadline applies to all pending extension requests on file as of the date of this Public Notice, regardless of whether the Multicast STA has expired or will expire prior to December 18, 2023. All pending Multicast STA extensions will be dismissed as moot by Bureau staff following action on a Next Gen TV broadcaster's Next Gen TV license application. As previously noted, the Bureau has not granted or received any requests for Multicast STAs that would apply to any simulcast 3.0 multicast streams. As such this type of arrangement is applicable with regards to the grace period.

[20] Next Gen TV stations to which this situation applies must include with their Host Exhibit a certification stating that through the date of filing it has and during the pendency of its 3.0 license application it will continue to comply with all of the Commission's ATSC 3.0 rules, including those that apply to multicast streams.

[21] A waiver of the Commission's rules is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *See 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); 47 CFR § 1.3 (waiver for good cause shown). Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Network IP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

[22] *Third Next Gen TV Report and Order* at paras. 27-30

[23] 47 CFR §§ 0.61 and 0.283.

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

In the Matter of	)	
	)	
SNAKE RIVER, LLC	)	MB Docket No. 22-53
	)	
Application for Renewal of License	)	File No. 0000151021
Station KPCQ(AM), Chubbuck, ID	)	Facility ID No. 24627

MEMORANDUM OPINION AND ORDER

Adopted: November 16, 2023 **Released: November 16, 2023**

By the Assistant General Counsel:

1. By this Memorandum Opinion and Order, we vacate as moot the initial decision in the above-captioned proceeding,[1] dismiss as moot exceptions filed by the Enforcement Bureau,[2] and terminate this proceeding. We take this action because the subject licensee has withdrawn its license renewal application and surrendered its license for cancellation.

I. BACKGROUND

2. On February 8, 2022, the Media Bureau designated this proceeding for hearing to determine: (a) whether Station KPCQ(AM) has been operated in the public interest during the preceding license term and whether there have been violations of the Communications Act or Commission rules, (b) whether the station's license expired automatically because it failed to operate from its authorized facilities for more than 12 months, and (c) whether, in view of the foregoing, the station's license should be renewed, either for a full term or less, or denied.[3] Administrative Law Judge (ALJ) Jane Hinckley Halprin concluded that the station's authorization had not expired but that the licensee had not justified renewal for a full term. Judge Halprin consequently renewed KPCQ(AM)'s license for a period of one year.

3. The Enforcement Bureau filed exceptions to the initial decision, asserting that the ALJ had no evidentiary basis for finding that the station had avoided automatic expiration of its license. Snake River, LLC (Snake River), the licensee, replied to the Enforcement Bureau's exceptions and urged the Commission to affirm the initial decision.[4]

II. DISCUSSION

4. While these pleadings were pending before the Commission, Snake River informed the Media Bureau that it was permanently discontinuing operation of Station KPCQ(AM).[5] Accordingly,

[1] *Snake River, LLC Application for Renewal of License Station KPCQ(AM), Chubbuck, ID ,* MB Docket No. 22-53, Initial Decision, FCC 23D-01, 2023 WL 2833341 (ALJ Apr. 5, 2023).

[2] Enforcement Bureau's Exceptions to the Initial Decision, MB Docket No. 22-53 (filed May 5, 2023).

[3] *Snake River, LLC Application for Renewal of License Station KPCQ(AM), Chubbuck, ID,* MB Docket No. 22-53, Hearing Designation Order and Opportunity for Hearing, 37 FCC Rcd 1099 (MB 2022).

[4] Reply to Exceptions by Snake River, LLC, MB Docket No. 22-53, Reply to Exceptions (filed May 15, 2023).

[5] Letter from Jeffrey L. Timmons, Esq. to Marlene H. Dortch, Secretary, FCC (July 31, 2023).

Snake River asked the Commission to dismiss its renewal application and cancel its license. The Enforcement Bureau has filed no objection to Snake River's request.

5. In view of this development, we find that the matters pending before us are moot, and we exercise our delegated authority under 47 CFR § 0.251(c)[6] to terminate this proceeding. The Media Bureau may take the appropriate steps to cancel Station KPCQ(AM)'s license and call sign.

III. ORDERING CLAUSE

6. Accordingly, it is ordered pursuant to 47 CFR § 0.251(c) that the Initial Decision, FCC 23D-01, IS VACATED; the Enforcement Bureau's Exceptions to the Initial Decision, filed May 5, 2023, and responsive pleadings ARE DISMISSED as moot; Snake River, LLC's application for renewal of Station KPCQ(AM) (File No. 0000151021) IS DISMISSED as moot; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey S. Steinberg
Assistant General Counsel
Office of General Counsel

[6] 47 CFR § 0.251(c) ("The General Counsel is delegated authority in adjudicatory hearing proceedings which are pending before the Commission en banc to act on all requests for relief, and to issue all appropriate orders, except those which involve final disposition on the merits of a previously specified issue concerning an applicant's basic qualifications or two or more applicants' comparative qualifications.").

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. 23-1088

Report No. SAT-01776 **Friday November 17, 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-20230126-00010 E S2844 EchoStar BSS Corporation
Modification 02/14/2023 - 02/14/2028
Grant of Authority Effective Date: 11/14/2023

Nature of Service: Other

On November 14, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of EchoStar BSS Corporation to extend the license term of the EchoStar 16 space station from February 14, 2023, until February 14, 2028. EchoStar 16 operates from the 61.5° W.L. orbital location using the 17.3-17.8 GHz (Earth-to-space) and 12.2-12.7 GHz (space-to-Earth) frequencies. Telemetry, tracking, and command is conducted using the following center frequencies: 17.307 GHz and 17.7995 GHz (Earth-to-space), and 12.694 GHz, 12.695 GHz, 12.696.5, and 12.6975.5 (space-to-Earth).

SAT-MOD-20230208-00026 E S3100 Capella Space Corp.
Modification
Withdrawn Effective Date: 11/15/2023

Nature of Service: Earth Exploration Satellite Service

SAT-MOD-20230208-00027 E S3080 Capella Space Corp.
Modification
Withdrawn Effective Date: 11/15/2023

Nature of Service: Earth Exploration Satellite Service

SAT-MOD-20230407-00077 E S3144 Momentus Space LLC
Modification 11/12/2023 - 12/12/2023
Granted in Part/ Deferred in Part Effective Date: 09/08/2023

Nature of Service: Other

On November 10, 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-20230925-00233 E S3066 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 11/15/2023

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-20231013-00252 E S2386 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 11/14/2023

On November 14, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for a period of 60 days, to operate Galaxy 13/Horizons-1 at the 150.0° W.L. orbital location. Galaxy 13/Horizons-1 will operate in the 3700-4200 MHz, 11.7-12.2 GHz (space-to-Earth), 5925-6425 MHz and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat will conduct telemetry, tracking, and command operations with Galaxy 13/Horizons-1 using the following center frequencies: 4198.5 MHz, 4199.5 MHz (space-to-Earth), 5926.75 MHz and 6420.75 MHz (Earth-to-space).

SAT-STA-20231025-00262 E S3066 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 11/15/2023

On November 15, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, for special temporary authority for a period of up to 60 days for the Intelsat 40e space station to provide fixed-satellite service in the 18.8-19.3 GHz (space-to-Earth) and 28.6-29.1 GHz (Earth-to-space) frequency bands from the 91.0° W.L. orbital location.

SAT-STA-20231107-00276 E S2386 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 11/14/2023

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-20231107-00277 E S2912 Planet Labs PBC
Special Temporary Authority
Grant of Authority Effective Date: 11/09/2023

On November 9, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Planet Labs PBC for a period of up to 30 days to operate its Pelican-1 satellite in the 2020-2025 MHz band (Earth-to-space) using different duty cycles than specified in its license.

INFORMATIVE

SAT-STA-20231002-00240 Space Exploration Holdings, LLC

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective November 17, 2023. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

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

PUBLIC NOTICE

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

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

DA 23-1089
Released: November 16, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF CABLESOUTH MEDIA III, LLC TO MIP VI OUTLIER, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-372

Comments Due: November 30, 2023
Reply Comment Due: December 7, 2023

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by Hunt Group Holdings, LLC (Hunt Group), ITC Holdings, LLC (ITC Holdings), CableSouth Media III, LLC d/b/a Swyft Fiber (CableSouth), and MIP VI Outlier, LLC (MIP VI Outlier, collectively with Hunt Group, ITC, and CableSouth, Applicants), pursuant to section 214 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 CableSouth to MIP VI Outlier.[2]

CableSouth, a Tennessee limited liability company, provides Internet service, video programming, and other communications services to residential customers throughout the Southeastern United States and, under the brand names "SwyftConnect" and "Swyft Fiber," CableSouth offers broadband Internet access, video, and digital voice services to residential, enterprise, and government customers in Arkansas, Louisiana, and Mississippi.[3] CableSouth is an Eligible Telecommunications Carrier (ETC) in Arkansas, Louisiana, and Mississippi and, on March 15, 2022, the Bureau authorized CableSouth to receive $152.9 million in Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to 57,387 locations be distributed over ten years in Arkansas, Louisiana, and Mississippi.[4] CableSouth is wholly owned by CableSouth Media, LLC, a Tennessee limited liability

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

[2] Application of Hunt Group Holdings, LLC, ITC Broadband Holdings, LLC, CableSouth Media III, LLC, and MIP VI Outlier, LLC for Consent to Transfer of Control Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-372 (filed Oct. 27, 2023) (Application). Any action on this domestic section 214 application is without prejudice to Commission action on other pending applications.

[3] Application at 3.

[4] *See Rural Digital Opportunity Fund Support Authorized for 5,657 Winning Bids*, AU Docket 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 3570 (WCB/OEA 2022); *see also* Application at 3. Applicants state that CableSouth was a member of the Segnem Eger Consortium (the Consortium), which was an auction winner for RDOF Phase I support in Arkansas, Louisiana, and Mississippi, and that the Consortium assigned its winning RDOF bids to CableSouth. Application at 3 n.5. Applicants further state that CableSouth participates in

company, which, in turn, is wholly owned by Hunt Land Holdings, LLC (Hunt Land Holdings), a Louisiana limited liability company.[5] Hunt Land Holdings, a Louisiana holding company, is wholly owned by CSM Intermediate, LLC, which, in turn, is wholly owned by CSM Holding Company, LLC (CSM Holding), both Delaware limited liability companies.[6] Hunt Group, a Louisiana limited liability company, currently owns 65% of the equity in CSM Holding. ITC Holdings, a Delaware limited liability company, owns the remaining 35 percent.[7] Following the consummation of the proposed transaction, Hunt Group will hold 50% indirect equity and voting of CSM Holding and, therefore, a 50% indirect interest in CableSouth.[8]

MIP VI Outlier, a Delaware limited liability company, has been established to acquire an ownership interest in CSM Holding and is indirectly owned by investment vehicles managed by and/or affiliated with Macquarie Infrastructure Partners Inc. (MIP Inc.), a Delaware corporation, which is a wholly-owned subsidiary of Macquarie Infrastructure and Real Assets Inc. (MIRA Inc.).[9] MIRA Inc. is a wholly-owned subsidiary of Macquarie Holdings (U.S.A.) Inc., a Delaware corporation, which, in turn, is held by various intermediate Australian entities ultimately held by Macquarie Group Limited (MGL), a publicly traded company incorporated in Australia.[10] Applicants state that MIP VI Outlier is affiliated with various providers of domestic communications and telecommunications services including Bluebird Network, LLC (Bluebird)[11] and Cincinnati Bell Inc. d/b/a altafiber (Cincinnati Bell).[12] Applicants state that two of Cincinnati Bell's subsidiaries receive RDOF Auction 904 support:

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the Lifeline program and the Affordable Connectivity Program as well as receives federal support through the E-Rate and Emergency Connectivity Fund programs. *Id.* at 3.

[5] *Id.* at 2. Applicants provide information on individuals and entities holding a pre- and post-transaction 10% or greater interest in CableSouth. *See id.* at Exh. A (Pre-Transaction Organizational Chart), Exh. B (Post-Closing Indirect Interests in CableSouth by Hunt Group), and Exh. C (Post-Closing Indirect Interest in CableSouth by MIP VI Outlier, LLC).

[6] *Id.* at 2-3.

[7] *Id.* at 2.

[8] *Id.* at 13, Exh. A at 2. The 10% or greater owners of Hunt Group is currently held by Troy Borque (15%), Jason Hunt (15%), and Wilton K. Hunt(13.5%), each U.S. citizens, each of which will continue to hold an interest in CableSouth post-transaction. *See, e.g.*, *id.* at Exh. A at 1 and 2, Exh. B at 1-2.

[9] Application at 4, Exh. A at 2, Exh. C at 2.

[10] *Id.* at Exh. A at 2, Exh. C at 2-3. Applicants state that MIP Inc. and MIRA Inc. are part of the Real Assets division of Macquarie Asset Management (MAM), an operating group within MGL. Application at 4. Applicants stat that MIP VI Outlier is affiliated with Accelecom Holdings LLC through an interest held by a division of Macquarie Capital, which is ultimately owned by MGL. *Id.* at n.10. Accelecom, through its affiliates, provides enterprise and wholesale services in Alabama, Florida, Georgia, Kentucky, Ohio, South Carolina, and Tennessee. *Id.*

[11] *Id.* at 15-16. Bluebird, which is owned by a fund managed by MIP Inc., provides domestic telecommunications through: a) Missouri Network Alliance, LLC d/b/a Bluebird Network (MNA), a provider of transport and Internet services to wholesale and enterprise customers in Missouri, Illinois, Iowa, Oklahoma, Kansas, Kentucky, Tennessee, Nebraska, and Wisconsin, as well as a provider tandem switching and transport services for interexchange carriers in Missouri pursuant to interstate and intrastate tariffs; b) Illinois Network Alliance, LLC, a provider of transport and Internet access services to wholesale customers in Illinois, Kentucky, and Tennessee; and c) PEG Bandwidth IL, LLC, a provider of competitive interexchange services in Illinois, Indiana, Iowa, and Missouri. *Id.*

[12] *Id.* at 16-17. MIP VI Outlier is affiliated with Red Fiber Parent, LLC, which is majority-owned by an investment vehicle managed by MIP Inc. *Id.* at 16. Red Fiber Parent, LLC owns Cincinnati Bell, which, through its subsidiaries, provides telecommunications services to residential and business customers through the following

CBT receives RDOF Auction 904 support in Indiana, Kentucky, and Ohio, and HTI receives RDOF Auction 904 support in Hawaii.[13]

According the Applicants, following the consummation of the transaction, Hunt Group and MIP VI Outlier will each hold a 50% interest in CSM Holding, with MIP VI Outlier holding *de jure* and *de facto* control, according to the following terms of the proposed transaction:

> On September 1, 2023, CSM Holding, Hunt Group, and MIP VI Outlier entered into a Membership Interest Purchase Agreement (MIPA), pursuant to which MIP VI Outlier will acquire 50 percent of the voting and certain approval rights at the closing of the proposed transaction (the Closing), and units representing at least 50 percent of the equity value of CSM Holding, which MIP VI Outlier will purchase directly from CSM Holding (Baseline Investment). In addition to the Baseline Investment, under certain conditions set forth in the MIPA, MIP VI Outlier may be required to make an additional investment to repay certain related-party indebtedness of CSM Holding, in exchange for additional equity interests in CSM Holding.
>
> In connection with the Baseline Investment, CSM Holding and ITC Holdings have entered into a redemption agreement pursuant to which a portion of MIP VI Outlier's Baseline Investment will be paid to ITC Holdings, and CSM Holding will redeem in full ITC Holdings' current interests in CSM Holding (and thereby its indirect interest in CableSouth). After the close of the Proposed Transaction, ITC Holdings will no longer have any interest in either CSM Holding or CableSouth.
>
> Therefore, subject to the potential adjustment to the Baseline Investment and redemption of the ITC Holdings interest described above, at the Closing, MIP VI Outlier will acquire an ownership stake of up to 70 percent of the equity value of CSM Holding, with the balance of the equity interest in CSM Holding owned by Hunt Group. In addition, at the Closing, MIP VI Outlier will have the right to appoint four of the eight managers to the board of managers of CSM Holding. The other four board managers will be appointed by Hunt Group. Thus, at Closing, MIP VI Outlier will have a 50 percent voting interest in CSM Holding.
>
> Further, after the Closing, the consent of MIP VI Outlier will be required for CSM Holding to take or effect certain actions, including, among others: hiring, removing, or setting the compensation of certain senior management persons; fundamentally changing the nature of the business; and annual budget approvals. MIP VI Outlier may under certain circumstances have the right to appoint an additional manager to the board (and thus, five out of nine managers) and, in such event, would have approximately 56 percent of the voting power on the board. All of these interests and rights to be granted to MIP VI Outlier in connection with

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entities: a) Cincinnati Bell Telephone Company LLC (CBT), an incumbent local exchange carrier (LEC) providing service in portions of Ohio, Kentucky, and Indiana; b) Cincinnati Bell Extended Territories LLC, a competitive LEC providing service in Ohio in areas outside CBT's territory, which also holds authorization but does not currently provide competitive LEC and interexchange service throughout Ohio, Kentucky, and Indiana; c) CBTS Technology Solutions LLC, a nationwide long distance competitive LEC which also provides other communications services in all states except Alaska and Hawaii; d) Hawaiian Telcom, Inc. (HTI), an incumbent LEC in Hawaii; e) Hawaiian Telcom Services Company, Inc., a provider of interstate and intrastate long distance, wireless, and other communications services in Hawaii; and f) Wavecom Solutions Corporation, a competitive LEC providing service in Hawaii. *Id.* at 16-17.

[13] *Id.* at 19.

the Proposed Transaction taken together would result in a de jure and de facto transfer of control . . . .[14]

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.[15] They state that the proposed transaction will provide CableSouth access to capital from new funding sources from new equity investors to continue the network construction and deployment of fiber-to-the-home (FTTH) and other communications services that CableSouth has described in its long-form RDOF application, and also to accelerate deployment of the company's fiber network and services beyond the RDOF locations in Arkansas, Louisiana, and Mississippi.[16] Applicants state that neither MIP VI Outlier nor its owners provide or hold any other attributable interest in any entity that provides any telecommunications services in the markets where CableSouth operates.[17] Applicants further state that CableSouth will remain financially, managerially, and technically capable of meeting its public interest and performance obligations under the RDOF program and that the proposed transaction involves a structured equity investment, and it does not entail any increase to the debt load of CSM Holding or CableSouth or their affiliates.[18] Applicants also state that the proposed transaction will result in neither a new authorization holder nor the assignment of any support or assets, and Applicants confirm that all support received through RDOF, and the network assets built in connection with the RDOF program, will remain with CableSouth.[19]

Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[20]

No Referral to Executive Branch Agencies: The Commission determined in the *Executive Branch Review Process Order* that it would not routinely refer to the Executive Branch "standalone applications to transfer control of domestic section 214 authority."[21] The Commission, however, retains the discretion to refer a domestic-only section 214 transaction should it find that a particular application may raise national security, law enforcement, foreign policy, or trade policy concerns for which it would benefit from the advice of the Executive Branch.[22] Applicants state that the Application involves the transfer of control of carriers that hold only domestic section 214 authority and that, consistent with the decision in the *Executive Branch Review Process Order*, the Application does not require a referral to the Executive Branch.[23] We do not find any special circumstances that warrant

[14] *Id.* at 4-6.

[15] *Id*. at 6-9.

[16] *Id.* at 7.

[17] *Id.* at 8.

[18] *Id.* at 9.

[19] *Id*.

[20] *See* 47 CFR § 63.03(c)(1)(v).

[21] *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, 10936, para. 25 (2020) (*Executive Branch Review Process Order*).

[22] *Id*.

[23] Application at 14-15.

referral of this Application to the Executive Branch agencies. While we are not referring the Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.[24]

Domestic Section 214 Application Filed for the Transfer of Control of CableSouth Media III, LLC to MIP VI Outlier, LLC, WC Docket No. 23-372 (filed Oct. 27, 2023).

GENERAL INFORMATION

The applications identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any applications if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments **on or before November 30, 2023**, and reply comments **on or before December 7, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at http://apps.fcc.gov/ecfs/ .
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
    - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[25] 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.

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) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov; and
2) Jim Bird, Office of General Counsel, jim.bird@fcc.gov

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two

[24] *See Executive Branch Review Process Order*, 35 FCC Rcd at 10941, para. 36 n.99; *see also id*. at 10939, para 30 n.81.

[25] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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 applications 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.[26] 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, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1191.

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[26] *See* 47 CFR § 1.45(c).

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. 23-1090

Report No. SCL-00442 **Friday November 17, 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-LIC-20221208-00037 E Seren Juno Network America, Inc.

Submarine Cable Landing License

Grant of Authority Date of Action: 11/15/2023

Seren Juno Network Co., Ltd. (Seren Juno) and Seren Juno Network America, Inc. (Seren Juno America) (together, Applicants) filed an application for a license to land and operate within United States territory a non-common carrier private fiber-optic submarine cable network connecting Grover Beach, California; Harbour Pointe, Washington; and Shima and Minamiboso, Japan. The system will be known as the JUNO submarine cable system (JUNO cable). The Applicants filed supplements on January 24, 2023 and February 15, 2023. See Non-Streamlined Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00405NS, Public Notice (IB Feb 10, 2023). No comments or oppositions were filed in response to the Public Notice.

The Application has been coordinated with the Department of State as required by Executive Order 10530, pursuant to section 1.767(b) of the Commission's rules, and consistent with the established Department of State procedures. Executive Order 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301; 47 CFR §1.767(b); 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); 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). The U.S. Department of Justice, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter to defer action on February 15, 2023. The National Telecommunications and Information Administration (NTIA), on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License on October 27, 2023. The Committee has no objection to the Commission granting the Application, provided that the Commission conditions its approval on the assurances of Seren Juno and Seren Juno America to abide by the commitments and undertakings set forth in the October 19, 2023, National Security Agreement (NSA), entered into between the Applicants and the Committee (represented by the U.S. Department of Homeland Security, the U.S. Department of Justice, and the U.S. Department of Defense).

Actions Taken: (1) Grant of Cable Landing License to Seren Juno Network Co., Ltd. and Seren Juno Network America, Inc. for the purpose of landing and operating a non-common carrier fiber optic submarine cable, the JUNO cable, that connects Grover Beach, California; Harbour Pointe, Washington; and Shima and Minamiboso, Japan; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767(h)(1), in connection with the license; and (3) grant of the Petition to Adopt Conditions to Authorization and License filed by the National Telecommunications and Information Administration on October 27, 2023.

Licensee Information: Seren Juno America, a Delaware entity, is a direct, wholly-owned subsidiary of Seren Juno, a Japanese entity. The Applicants state that no single entity controls Seren Juno.

The direct owners of Seren Juno are: (1) Mitsui & Co., Ltd. (Mitsui), a Japanese entity (37.5% equity and 47.5% voting); (2) NTT Ltd. Japan Corporation (NTT LJ), a Japanese entity (33.5% equity and 42.4% voting); (3) PC Landing Corp. (PC Landing), a Delaware entity (4% equity and 5.1% voting); and, (4) JAML Capital One, L.P. (JAML CO), a Cayman Islands entity (25% equity and 5% voting).

JAML CO is a wholly owned subsidiary of JA Mitsui Leasing, Ltd. (JAML), a Japanese entity. Mitsui holds 41.7% equity 31.4% voting interests in JAML. The Applicants state that Mitsui's shares are traded publicly on several Japanese stock exchanges and are widely held, and that Mitsui has no controlling shareholder. The Applicants state that no one holds a 10% or greater indirect interest in Seren Juno or Seren Juno America through Mitsui or JAML.

PC Landing is a wholly owned subsidiary of NTT America, Inc., a Delaware entity. NTT America and NTT LJ are both wholly owned subsidiaries of NTT Ltd., a United Kingdom entity, which in turn is a wholly owned subsidiary of NTT DATA Inc., a Japanese entity. NTT DATA Corporation, a Japanese entity, holds 55% equity and voting interests in NTT DATA, Inc. Nippon Telegraph and Telephone Corporation (NTT Parent), a Japanese entity, holds 54.2% equity and voting interests in NTT DATA Corporation and 45% equity and voting interests in NTT DATA Inc. Applicants say that NTT Data Corporation is publicly traded on the Tokyo stock exchange and other than NTT Parent, no NTT Data Corporation shareholder holds a 10% or greater indirect interest in Seren Juno or Seren Juno America. The Japanese government's Ministry of Finance holds 35.59% equity and voting interests in NTT Parent. The Applicants state that NTT Parent is publicly traded on the Tokyo stock exchange and has no controlling shareholder, and other than the Ministry of Finance, no NTT Parent shareholder holds a 10% or greater indirect interest in Seren Juno or Seren Juno America.

Landing Points and Ownership: The Applicants state that Seren Juno America will own 100% of JUNO's segments in U.S. territory and that Seren Juno will own 100% of JUNO's segments in international waters and 100% of JUNO's segments in Japanese territory. The Applicants state that the JUNO cable will land at existing cable landing stations in Grover Beach, CA and Harbour Pointe, Washington, both of which are owned by PC Landing Corp. The Applicants also state that Seren Juno America will have control of the JUNO facilities in Grover Beach and Harbour Pointe. The Applicants state the JUNO cable will land at existing cable landing stations in Shima and Minamiboso, Japan. PC1J K.K. owns the Shima cable landing station, where the JUNO facilities will be controlled by Seren Juno. NTT Ltd Japan Corporation owns the Minamiboso cable station, where the JUNO facilities will also be controlled by Seren Juno.

The Applicants request a waiver of section 1.767(h)(1) of the Commission's rules so that PC Landing Corp. (owner of the Grover Beach and Harbour Pointe cable landing stations) need not be a joint applicant for the JUNO cable landing license. Section 1.767(h)(1) requires that "applicants for, and licensees on, a cable landing license" must include "[a]ny entity that owns or controls a cable landing station in the United States." 47 CFR § 1.767(h)(1). According to the Applicants, PC Landing Corp. will not have any ability to significantly affect the JUNO cable system's operation. Specifically, the Applicants say that Seren Juno America will contract with PC Landing Corp. for the Grover Beach and Harbour Pointe landings for the provision of certain limited services that would not provide PC Landing Corp. with any ability to affect significantly the JUNO system's operation. The Applicants say that Seren Juno America will enter into long-term leases with PC Landing Corp. for colocation space for power feed equipment, will retain operational authority over the JUNO system landing facilities, and provide direction to PC Landing Corp. in all matters relating to the JUNO system. The Applicants also state that they will ensure that the landing station lease agreements have initial terms, with extension options at the sole discretion of the Applicants, for a total of 25 years each, coextensive with the term of the cable landing license.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. Although PC Landing Corp. is the owner of the Grover Beach and Harbour Pointe cable landing stations, we find that, based on the planned agreements between Seren Juno America and the cable station owner described above, PC Landing Corp. will not have the ability to affect significantly the operation of the cable system. Accordingly, we grant Applicants a waiver of 1.767(h)(1) and do not require PC Landing Corp. to be an applicant/licensee for the JUNO cable.

Cable Design and Capacity: The JUNO cable will be a high-fiber-count system deploying space division multiplexing technology across a main trunk and two branching segments. The Applicants state that the main trunk, which will connect Minamiboso, Japan with Grover Beach, California, will have 20 fiber pairs, each having a design capacity of approximately 18 terrabits per second (Tb/s) using current technology, and a length of approximately 9,356 kilometers. The Applicants state that the Shima Branch will connect Shima, Japan with a branching unit on the main trunk. The Shima Branch will have 14 fiber pairs, each having a design capacity of approximately 18 Tb/s using current technology, and a length of approximately 904 kilometers. The Applicants state that the Washington Branch will connect Harbour Pointe, Washington with a branching unit on the main trunk. The Washington Branch will have 14 fiber pairs, each having a design capacity of approximately 18 Tb/s using current technology, and a length of approximately 1,450 kilometers. The Applicants state that they have not yet decided on the initial lit capacity of the system.

Regulatory Status of the Cable: The Applicants propose to operate the JUNO cable on a non-common carrier basis. The Applicants state that they and their affiliates will make capacity available to third parties pursuant to individually-negotiated IRUs and capacity leases, the terms of which they say will vary depending on the characteristics and needs of the particular capacity purchaser. The Applicants say that the existence of competing facilities providing U.S.-Japan connectivity ensures that the JUNO cable would not function as a bottleneck facility on those routes. The Applicants contend that the JUNO cable would instead enhance competition and serve the public interest by competing with other submarine cable systems on the U.S.-Japan route, such as the FASTER, Japan-U.S. Cable Network, JUPITER, PC-1, New Cross Pacific, TGN Pacific, Trans-Pacific Express, and Unity systems and the planned Echo system.

Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70; Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67.

Conditions and Requirements: Seren Juno and Seren Juno America shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g), and with the requirements of section 1.768 of the Commission's rules, 47 CFR § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

We grant the Petition to Adopt Conditions to Authorization and License (Petition) filed in this proceeding by the National Telecommunications and Information Administration, on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), on October 27, 2023. Accordingly, we condition grant of this Application on Seren Juno Network Co., Ltd. and Seren Juno Network America, Inc. abiding by the commitments and undertakings contained in its National Security Agreement (NSA) with the Committee (represented by the U.S. Department of Homeland Security, the U.S. Department of Justice, and the U.S. Department of Defense), dated October 19, 2023. The Petition and the NSA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching SCL-LIC-20221208-00037 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring the license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission.

License Term: Under the Commission's rules, a cable landing license shall expire 25 years after the in-service date for the cable. The licensee(s) must notify the Commission within thirty (30) days of the date the cable is placed into service. See 47 CFR § 1.767(g)(15). The in-service notification must be filed in ICFS through the "Other filings related to this application" module for file number SCL-LIC-20221208-00037.

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
	)	
Internet Protocol Captioned Telephone Service Compensation	)	CG Docket No. 22-408

ORDER

Adopted: November 17, 2023 **Released: November 17, 2023**

By the Chief, Consumer and Governmental Affairs Bureau:

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (FCC or Commission), on its own motion, extends a previously granted waiver of the expiration of the Telecommunications Relay Service (TRS) Fund compensation formula for Internet Protocol Captioned Telephone Service (IP CTS). The current compensation formula will continue to apply through the earlier of December 31, 2023, or the effective date of Commission action establishing a revised compensation formula for that service.[1]

1. *Background.* On June 30, 2022, the Bureau released an Order in which, among other things, it waived the expiration of the $1.30 per-minute IP CTS compensation formula, extending it through June 30, 2023, or the effective date of action by the Commission to establish compensation levels for IP CTS, whichever is earlier.[2] In a notice of proposed rulemaking adopted in December 2022, the Commission sought comment on setting IP CTS compensation for the next period.[3] Then, in a June 2023 Order, the Bureau extended the waiver of the expiration date of the IP CTS compensation formula until either November 30, 2023, or the effective date of Commission action establishing a new compensation formula, whichever is earlier.[4]

2. *Waiver Standard.* A Commission rule may be waived for "good cause shown."[5] In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the

[1] *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, Order, DA 23-577 at 6-7, paras. 14-17 (CGB June 30, 2023) (*2023 Waiver Order*).

[2] *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, 37 FCC Rcd 7667, 7670-71, paras. 11-14 (CGB 2022).

[3] *Internet Protocol Captioned Telephone Service Compensation; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97 (Dec. 22, 2022) (*2022 IP CTS Compensation Notice*).

[4] *2023 Waiver Order* at 6-7, paras. 14-17.

[5] 47 CFR § 1.3.

public interest.[6] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[7] 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.[8]

3. *Discussion.* We find good cause to waive the IP CTS compensation formula expiration date. As we acknowledged in the *2023 Waiver Order*, establishing an equitable methodology and compensation levels for IP CTS is inherently complex.[9] While the Commission has made significant progress toward completion of a revised IP CTS compensation plan, the revised plan may not be finalized by the current November 30, 2023, expiration date. Accordingly, it is appropriate to extend the existing compensation formula to provide certainty and stability to IP CTS providers pending final Commission action. To do otherwise could deprive consumers with disabilities of the services they need to enjoy functionally equivalent telecommunications.

4. Regarding the duration of this extension, we anticipate that the Commission will be able to adopt a decision in the near future, but it is difficult to predict a specific date by which that will occur. We therefore direct the TRS Fund administrator to continue compensating eligible IP CTS providers under the current compensation formula through the earlier of December 31, 2023, or the effective date of Commission action revising the applicable compensation formula. In other words, IP CTS providers shall continue to be paid $1.30 per minute for all compensable minutes. This action does not preclude a true-up of compensation for IP CTS, should the Commission deem that necessary after determining the applicable compensation formula. Accordingly, until the expiration of this waiver, the current compensation formula for IP CTS remains effective.

5. *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.

6. *Additional Information*. For further information regarding this item, please contact Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, 202-418-1264, or Michael.Scott@fcc.gov.

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 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, 1.3, this Order IS ADOPTED.

8. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP CTS in accordance with the formulas applicable on November 30, 2023, for the period through the earlier of December 31, 2023, or the effective date of Commission action establishing a revised compensation formula for that service.

[6] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[7] *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.

[8] *Northeast Cellular*, 897 F.2d at 1166.

[9] *2023 Waiver Order* at para. 16.

9. 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

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

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

In the Matter of BlueWind Medical Ltd. Request for Waiver of Section 15.223(a) of the Commission's Rules	)))))	ET Docket No. 23-27

ORDER

Adopted: November 17, 2023 **Released: November 17, 2023**

By the Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. By this order, we grant a request by BlueWind Medical Ltd. (BlueWind) to waive Section 15.223(a) of our rules governing operations in the 1.705-10 MHz band.[1] This rule restricts the field strength of any emission in that band to not exceed 100 microvolts per meter at a distance of 30 meters, and 15 microvolts per meter for 30 meters for devices whose bandwidth of the emission is less than 10% of its center frequency.[2] BlueWind's device would operate in the 6.78 MHz band,[3] with a field strength limit that does not exceed 108.8 microvolts per meter at 30m.[4] We find there is good cause to grant BlueWind's request for the reasons discussed below.

II. BACKGROUND

2. BlueWind's product known as RENOVA iStim System (BlueWind System) is designed to treat overactive bladder (OAB) and related neurological disorders as an implantable medical device system.[5] Their system consists of four components: an implant; a rechargeable external control unit (ECU); a clinician programmer app; and an optional hub.[6] The implant is a miniature wireless transmitter

[1] *BlueWind Medical Ltd. Request for Waiver of Section 15.223(a) of the Commission's Rules* (filed Dec 23, 2022) (BlueWind Waiver Request). *See also* 47 CFR §§ 15.223(a).

[2] *See* 47 CFR §§ 15.223(a).

[3] The 6.78-MHz band – designated for ISM use – is part of the 6.765-7000 MHz band, which is allocated to fixed and mobile, except aeronautical mobile route, services on a primary basis for Federal and non-Federal users, and is authorized for Private Land Mobile radio services. In addition, under United States Footnote 340 (US340), the 2-30 MHz band is available on a non-interference basis to Federal and non-Federal maritime and aeronautical stations for the purpose of measuring the quality of reception on radio channels. *See* 47 C.F.R. § 2.106, International Footnote 5.138, US340, and § 18.301. Under Part 18 of the Commission's Rules, there is no power limit for in-band ISM operations in the 6.78-MHz ISM band. *See* 47 C.F.R. § 18.305. Under Part 15 of the Commission's Rules, unlicensed intentional radiators may also be operated in the 6.78-MHz band. *See* 47 C.F.R. § 15.209

[4] BlueWind Waiver Request at 1, 14-16. (The applicable emission limit for BlueWind is 15 microvolts/meter at 30 meters).

[5] *Id*. at 1-2.

[6] *Id*. at 3-5.

that is around an inch long and 3 mm in diameter.[7] It is implanted in the lower leg in the vicinity of the tibial neurovascular bundle.[8] The implant does not have an internal power source and is controlled by an external ECU.[9] The ECU wraps around the leg via a band at the implant site and controls the implant's operation.[10] When power is transferred to the Implant from the ECU (the ECU transmits both power and data to the Implant), the Implant injects a current pulse into the surrounding tissue, stimulating the tibial nerve to address the OAB.[11] During a "Treatment Session,"[12] these pulses modulate the fundamental 6.78 MHz carrier frequency at a rate of up to 30 Hz.[13] A treatment session is typically performed twice per day.[14] The programmer app is used by the clinician to set the parameters of treatment in the ECU.[15] The hub is used for acquiring data from ECU and transmitting it to the cloud.[16] Both the programmer app and the Hub utilize Bluetooth low energy for their operations.[17] Thus, the requested waiver is for the operations of the ECU only.[18]

3. To allow for certification and marketing for its current and future generation systems system,[19] BlueWind requests a waiver of Section 15.223(a) of the Commission's rule for its rechargeable ECU's emission to not exceed 108.8 microvolts per meter at a distance of 30 meters.[20] Section 15.223(a) restricts the field strength of the system within the 1.705-10 MHz band to not exceed 100 microvolts per meter at a distance of 30 meters.[21] The rule further stipulates that if the bandwidth of the emission is less than 10% of the center frequency, then the field strength measured at 30 meters shall not exceed 15

[7] *Id* at 3.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 4.

[11] *Id.* at 3.

[12] *Id.* at 4-5. *(*A treatment session lasts for a duration of 33 minutes, which includes a Positioning Stage and the Stimulation Stage. The stimulation Stage consists of a ramp up phase and a treatment phase. The maximum duration of the positioning stage is three minutes and for the stimulation stage is thirty minutes. The ramp up phase lasts about 10 seconds).

[13] *Id.* at 4. (The ECU controls the Implant's operation via RF pulses modulating the fundamental 6.78 MHz carrier at a rate determined according to the required nerve stimulation frequency (up to 30 Hz). Both power and data are transferred using the same coupling mechanism between the ECU and the Implant at 6.78MHz. The 6.78 MHz is the RF carrier for all stages and phases).

[14] *Id.* at 5.

[15] *Id.* (The clinician programmer is only used in clinics during patient implantation, initial program setting, and follow-up visits).

[16] *Id.* (The Hub initiates a session with the ECU and then data is transferred over the BLE link to the Hub. The Hub then transfers the data to the cloud server using a cellular link).

[17] *Id.*

[18] *Id.* at 6, n.4.

[19] BlueWind Medical Ltd. Reply at 12 (BlueWind Reply). ("The "current and future generations" language is intended to encompass – for the current version and future models – certain equipment and other changes to the system as well as possible changes to the marketing name of the system (currently "RENOVA iStim™ System") which will have no material impact on the operation of the system as described in the Waiver Request.").

[20] BlueWind Waiver Request at 1, 6; BlueWind Reply at 1.

[21] 47 CFR §§ 15.223(a).

microvolts per meter.[22] As per that part of the rule, the applicable limit for BlueWinds's system would be 15 microvolts per meter at 30 meters because the device's bandwidth is less than 10% of the center frequency.[23]

4. BlueWind system will operate under the Commission's Part 15 rules governing the operation of unlicensed devices.[24] Part 15 permits low-power radio frequency devices to operate without an individual license from the Commission.[25] These devices share frequency bands with authorized radio services and, like all unlicensed devices, may not cause harmful interference to authorized radio services and must accept interference that may be caused by the operation of other stations and devices.[26]

5. The Office of Engineering and Technology (OET) issued a Public Notice on January 19, 2023, seeking comment on BlueWinds's waiver request.[27] In response, the Commission received two comments in favor of the waiver, one in opposition, one party requesting more information before the waiver is granted, one technical report, and four *ex-parte* submissions.

III. DISCUSSION

6. We are authorized to grant a waiver under Section 1.3 of the Commission's rules if the petitioner demonstrates good cause for such action.[28] Good cause, in turn, may be found and a waiver granted "where particular facts would make strict compliance inconsistent with the public interest."[29] To make this public interest determination, the waiver cannot undermine the purpose of the rule and there must be a stronger public interest benefit in granting the waiver than in applying the rule.[30]

7. The technical and operational standards in Part 15 rules in general, and the field strength limits specified in Section 15.223(a) in particular, are intended to ensure the flexible and efficient operation of unlicensed devices without causing interference to other systems.[31] As discussed below, grant of this waiver would not undermine the purpose of the rule and, would not cause an increased risk

[22] In that case, the rule also allows for the emission limit to be calculated such that: the bandwidth of the device in kHz is divided by the center frequency of the device in MHz microvolts per meter at a distance of 30 meters, whichever value is higher. *See* 47 CFR §§ 15.223(a).

[23] BlueWind Waiver Request at 14; *see also* Letter from Jeffrey E. Rummel, Partner, ArentFox Schiff LLP, to Office of Engineering and Technology, FCC, ET Docket No. 23-27 (rec. Jan. 19, 2023). (BlueWind Statement Regarding Calculation of Field Strength Limit). The bandwidth of the emission of their device is less than 10% of the center frequency.

[24] BlueWind Waiver Request at 3.

[25] 47 CFR §§ 15.1 *et seq.*

[26] 47 CFR § 15.5(b).

[27] *Office of Engineering and Technology Seeks Comment on BlueWind Medical Ltd. Request for Waiver of Section 15.5223(a) of the Commission's Rule for Operation on 6.78 MHz,* Public Notice, ET Docket 23-27, (Public Notice).

[28] 47 CFR § 1.3. *See also ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (D.C. Cir. 2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

[29] *Northeast Cellular*, 897 F.2d at 1166; *see also ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); *WAIT Radio*, 418 F.2d at 1157-59.

[30] *See, e.g.*, *WAIT Radio*, 418 F.2d at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule); *Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

[31] *See UWB First R&O*, 17 FCC Rcd 7435 *passim* (2002); *see also* 47 CFR. §§ 15.215-15.258.

of harmful interference to authorized radio services. This waiver grant is applicable to both current and future generations of the BlueWind system.

8. BlueWind states that the maximum average field strength emission level of 108.8 microvolts per meter at 30 meters results from the BlueWind system being tested under a worst-case scenario while operating at the maximum allowable pulse frequency of 30 Hz.[32] BlueWind argues that emissions from the ECU exceed the Section 15.223(a) limit only for a small portion of pulses transmitted by the ECU.[33] BlueWind notes that the ECU emits two kinds of pulses, a Control Pulse and a Stimulation Pulse.[34] Both types of pulses use the On-Off Keying (OOK) mechanism to transfer data from the ECU to the Implant.[35] Each pulse in turn comprises three different phases: a first-phase pulse, a second-phase pulse, and a third-phase pulse.[36] Only the first-phase pulses are subject to Part 15 requirements and are above the Section 15.223(a) limit.[37] As a result, BlueWind comments that emission from the ECU at 108.8 microvolts per meter at 30 meters is only at this level for a cumulative duration of up to six minutes during the positioning and stimulation stage.[38] In addition, the actual highest measured peak field strength during the device's operations, when adjusted by its duty factor, is 77 microvolts per meter at 30 meters during positioning and ramp-up phases only.[39] According to BlueWind, for a large majority of the ECU's operation, around thirty minutes, the maximum average field strength of the system is 17.2 microvolts per meter at 30 meters, which is only approximately 1.2 dB over the 15.223 limits.[40]

9. BlueWind states that a higher field strength level of 108.8 microvolts per meter at 30 meters is requested to account for production tolerance, standard measurement uncertainty, and potential adjustments for future designs, and presents a negligible interference potential.[41] BlueWind further states the additional margin in field strength is consistent with waivers previously approved by OET.[42] In the

[32] *Id.* at 11-12 (i.e., for operations at 30 Hz, which is the maximum allowable pulse frequency).

[33] *Id.* at 11.

[34] *Id.* at 4 n.5. (Control pulse typically lasts around 200 milliseconds and Stimulation pulse around 14 milliseconds. Control Pulses are used for implant initialization, for sending relevant treatment parameters to the implant, and for the final discharging of the tissue after the conclusion of the treatment. Stimulation Pulses facilitate power delivery and data transmission from the ECU to the Implant, which includes instructions to the Implant as to whether or not to perform tissue stimulation and to confirm that the source of power is an ECU. The pulses are also used in the Positioning Stage as part of the booting process, and to optimize the positioning of the ECU over the Implant).

[35] *Id.* (The data is transferred from the ECU to the Implant by stopping the power transmission for a short duration of time (On Off Keying - OOK). Such power disruptions are translated by the Implant to bits of data).

[36] *Id.* at 11 n.30. (A First Phase Pulse (transmission of power and data from the ECU): to "wake up" the implant circuitry, and to transmit data from the ECU to the implant (OOK); A Second Phase Pulse (transmission of power only from the ECU): to transmit enough power to the implant during the current pulse injection into the tissue; and a Third Phase Pulse (transmission of power only from the ECU): to power the implant following the current injection and during the "load modulation" transfer of data from the implant to the ECU.)

[37] *Id.*

[38] *Id.* at 11. (The maximum combined 33-minute period of the Positioning Stage and the Stimulation Stage, the ECU's emissions are likely above the Section 15.223(a) limit for a small cumulative duration of up to only 6 minutes).

[39] *Id.*at 11, 13. (The field strength level for the ECU reaches its highest point (77 uV/m at 30m) only during the Positioning Stage (maximum 3 minutes) and the ramp-up phase (approximately 10 seconds). *Id.* at 4. (Ramp up phase helps avoid sudden strong patient sensation).

[40] *Id.*

[41] *Id.* at 12.

[42] *Id.* at 13-14.

record, some filers raised concerns about the emission limits, its impact on other devices already in the market, and the lack of technical information in the record.[43]

10. The National Telecommunications and Information Administration (NTIA), filing comments on behalf of the United States Food and Drug Administration (FDA), raised concerns about exceeding the current emission limit.[44] NTIA suggests the limit requested by BlueWind could cause interference with implantable pacemakers and cardiovascular defibrillators (ICD) currently on the market.[45] NTIA comments that while pacemakers and ICDs are designed to reject noise, the feedthrough filters are not highly efficient at low carrier frequency, and a repetition rate of 30 Hz is in the sensing range of these devices.[46] Because of these concerns, NTIA recommended we gather information on the potential impact on pacemakers and ICDs.[47] We have; additional technical data was submitted in the record.[48]

11. In response to NTIA's concerns, BlueWind states that its system has been tested to be in full compliance with FDA-recognized EMC standards, which limits the emissions from their device and require immunity to various sources of interference and does not cause harmful interference to the operations of the cardiac devices.[49] BlueWind adds that all implantable cardiac pacemakers and ICDs are subject to similar immunity testing consistent with FDA standards to ensure that the devices do not malfunction when exposed to electromagnetic radiation by other devices.[50]

12. BlueWind states that emissions from the ECU do not pose a risk of harmful interference to the operation of the cardiac devices, because the magnetic field induced by the ECU antenna at the distance of 1 m will not exceed 0.025 A/m.[51] This value is two orders lower in magnitude compared to the magnetic field levels corresponding to the test conditions for the cardiac devices.[52] Similarly, they state that the induced voltages will also be two orders of magnitude below testing levels in the worst-case conditions.[53] In most cases, induced voltages will be much smaller, particularly for modern bipolar cardiac devices.[54]

13. We agree with the assessment that the operation of the ECU does not pose a risk of harmful interference to the operations of the cardiac device.[55] We are also persuaded by the data that shows the resulting magnetic field, and induced voltages, are two orders of magnitude smaller than the

[43] *See generally* Cesium Communications, LP and David Gates Comments (Cesium Comments), and National Telecommunications and Information Administration Comments (NTIA Comments).

[44] NTIA Comments at 1-2.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *See, e.g.*, *Assessment of Potential Influence of ECU Electromagnetic Fields on Cardiac Devices*, Amiel Greenberg (Apr. 2023) (filed Jun. 14, 2023) (BlueWind Technical Report).

[49] BlueWind Reply at 6; *see also* BlueWind Technical Report at 13.

[50] BlueWind Reply at 6-7.

[51] BlueWind Technical Report at 13 (This value is lower by more than two orders of magnitude from the field levels corresponding to the test conditions for cardiac devices); *see also* BlueWind Reply at 7 n.21 (Using a distance of 1 m for chest and ankle distance is typical for such scenarios.), BlueWind Technical Report at 4 (The magnetic field test level is 3 A/m at 6.78 MHz, and operation below this limit is considered to not affect the cardiac devices).

[52] BlueWind Technical Report at 13.

[53] *Id.*

[54] *Id.*

[55] *Id.*

specified test voltages at worst case scenario of the cardiac device.[56] Even without factoring in the filtering circuitry employed by the cardiac equipment, the size of the ECU antenna, and the distance between the antenna wrapped around the ankle and the chest, the BlueWind device employs near-field inductive power transfer which decays rapidly.[57] Consequently, we are confident that the system does not present any material concern, notwithstanding the repetition rate of 30 Hz, even under the worst-case scenarios.[58]

14. In opposition to the waiver, Cesium Communications argues the lack of technical information on the record about the full effect of radiation levels on the human body should preclude the grant of BlueWind's request.[59] Cesium claims that the grant of any waiver should be delayed until such time that both the patients and physicians understand the totality of the effects of radiation on the human body and that both ionizing and non-ionizing radiation levels are evaluated on a cumulative basis.[60] Cesium also raises issues relating to devices not part of this proceeding.[61]

15. BlueWind responds to Cesium's claims by noting that its device complies with all applicable Commission rules on RF exposure, and specific absorption rate (SAR) limits for portable devices.[62] Further, the test reports demonstrating compliance will be included as part of the equipment authorization documentation process,[63] which is the normal procedure.[64] We also note that Maximum Permissible Exposure (MPE) levels in the 6.8 MHz band are applicable based on the provision in Sections 1.1310(e)(1) of the Commission rules that sets MPE limits for electromagnetic fields, and that requirement is not being waived by this grant.[65] We therefore find Cesium's arguments insufficient to withhold our approval of BlueWind's waiver request.

16. BlueWind also comments that some issues raised by Cesium Communication are outside the scope of this waiver request and should not be addressed in this forum.[66] We agree and, therefore, do not address them herein. Concerns raised by Cesium not directly related to BlueWind's system are better pursued through the Commission's well-established rules and procedures to address issues relating to radio frequency, and spectrum use, and we suggest Cesium utilize appropriate venues to address its concerns.

17. We also note that this waiver is only limited to Section 15.223(a) of our rules pertaining to BlueWind's device, and the device will comply with all other Commission rules, including those related to SAR absorption. Further, BlueWind is required to acquire equipment authorization from an

[56] *Id*. at n.21. (Citing ISO 14117 and measurement procedures that show that under the worst operation condition, the magnetic field at the chest will be lower than 0.025 A/m, more than 2 orders of magnitude below the test levels. Similarly, the induced voltages will be two orders of magnitude smaller than the test voltage levels.)

[57] *Id.* at 10.

[58] *Id.* at 8.

[59] Cesium Comments at 10.

[60] *Id.*

[61] *See* Cesium Comments Attach 1 and 2.

[62] BlueWind Reply at 9-11.

[63] *Id.*

[64] *See* 47 CFR §§ 1.1310(d)(1). (Evaluation with respect to the SAR limits in this section must demonstrate compliance with both the whole-body and peak spatial-average limits using technically supported measurement or computational methods and exposure conditions in advance of authorization (licensing or equipment certification) and in a manner that facilitates independent assessment and, if appropriate, enforcement).

[65] *See* 47 CFR §§ 1.1310(e)(1). MPE for this band is calculated as 1842/f.

[66] BlueWind Reply at 8-10.

authorized telecommunication certification body after the waiver is granted.[67] BlueWind will also follow all relevant guidance and receive authorization to operate from other regulatory bodies as required by law, and this waiver does not change that.

18. We find there to be a low risk of harmful interference stemming from the operations of the BlueWind device based on the reasoning and discussion above, the device's mode of operations, and its narrow medical use.[68] In addition to the technical conditions imposed in this waiver,[69] BlueWind employs near-field inductive power transfer that decays rapidly and has a short range of only a few centimeters from the body.[70] The emissions from the ECU are directed into a user's body, and the device does not radiate into space or the outside environment.[71] In addition to these factors, we highlight the fact that BlueWind has been conducting clinical trials on its device on an experimental basis without any reported interference.[72] Notwithstanding the data transfer that occurs as a result of the operation of the ECU, we note that there are many ISM devices already operating in the 6.78 MHz band. Even when approved under waiver at the slightly higher field strength level, the BlueWind System emissions will be unlikely to interfere with licensed Private Land Mobile services in the 6.78-MHz band because most of that band's licensees are using transmitters that operate at, or well above, 100 Watts.[73]

19. We determine that granting the waiver request is in the public interest and does not undermine the purpose of the Commission's rule. Specifically, we recognize the BlueWind device offers substantial benefits to millions of people suffering from OAB.[74] We also note that more than one commenter cites the positive impact of the device from the perspective of care providers and the patient, which reaffirms our assessment that this device is in the public interest.[75] In addition, by utilizing the same 6.78 MHz signal for power delivery and data transfer, BlueWind's device avoids the need for additional antennas and circuitry in its system.[76] This design feature addresses the size constraint, which generally is a major clinical concern in such devices, and it also avoids substantial additional design costs and production delays.[77] Together, these features offer further confirmation a waiver is in the public interest. Therefore, based on the operational characteristics of this device and its potential to improve the lives of millions of Americans dealing with OAB and increase treatment options, along with the operating conditions we impose, we find there is a stronger public interest benefit in granting the waiver than in applying the rule, and that granting this waiver will not negatively impact the radio frequency environment. Finally, we note the U.S. Food and Drug Administration (FDA) recently authorized marketing of the BlueWind device.[78]

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[67] *See infra* para 20 (Condition 1).

[68] *See supra* para 12-13.

[69] *See infra* para 20.

[70] BlueWind Reply at 3-4.

[71] *Id.*

[72] *Id.* at 3. (In the U.S., BlueWind Medical has been conducting clinical trials for several years of the current version of the BlueWind System under an Experimental License Call Sign: WK2XRF).

[73] BlueWind Waiver Request at 10.

[74] BlueWind Waiver Request at 6-9; BlueWind Reply at 2-4, 12-13.

[75] *See* Donna Vasko Comments; Kimberly Ferrante, MD Comments.

[76] BlueWind Waiver Request at 13.

[77] *Id*.

[78] U.S. Food and Drug Administration, *FDA Roundup: August 18, 2023* (Aug. 18, 2023), https://www.fda.gov/news-events/press-announcements/fda-roundup-august-18-2023 (last visited Sep. 9, 2023). Though we note the name of the BlueWind system noticed in the FDA press release differs from the named system we approve, those names reflect marketing changes, not technical differences. *See supra* note 19.

20. For these reasons, we conclude that there is good cause to waive Sections 15.223(a) of the Commission's rules to permit the certification, marketing, and operation of the BlueWind system. In granting this waiver, we also impose the following conditions:

1) The BlueWind system shall be certified by the Commission via an accredited Telecommunication Certification Body, and the certification application shall include a copy of this waiver order;
2) The emission from ECU shall not exceed 108.8 microvolts per meter at 30 meters during a treatment session;
3) The ECU carrier frequency shall be restricted to the 6.78 MHz band;

21. Accordingly, pursuant to authority in Sections 0.31, 0.241, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.21, 0.241, and 1.3, and Sections 4(i), 302, 303(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(e), and 303(r), IT IS ORDERED that the Request for Waiver filed by BlueWind Ltd. IS GRANTED consistent with the terms of this Order. This action is effective upon release of this Order**.**

22. IT IS FURTHER ORDERED that if no petitions for reconsiderations or applications for review are timely filed, this preceding SHALL BE TERMINATED, and ET Docket No. 23-27 IS CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Ronald T. Repasi
Chief, Office of Engineering and Technology

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 23-1093
Released: November 17, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATIONS GRANTED

WC Docket No. 23-169
WC Docket No. 23-170

The Wireline Competition Bureau has granted the applications listed in this notice pursuant to the Commission's streamlined procedures for interconnected VoIP numbering authorization applications.[1]

Interconnected VoIP Numbering Authorization Application filed by Charter IP Enabled Services, LLC Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 23-169 (Apr. 27, 2023), Public Notice, DA 23-1045 (WCB Nov. 2, 2023).

Interconnected VoIP Numbering Authorization Application filed by TWC IP Enabled Services, LLC Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 23-170 (Apr. 27, 2023), Public Notice, DA 23-1046 (WCB Nov. 2, 2023).

Effective Grant Date: December 3, 2023

Please contact DAA@fcc.gov, Margoux Newman at Margoux.Newman@fcc.gov, or Michelle Sclater at Michelle.Sclater@fcc.gov for further information.

-FCC-

[1] *See* 47 CFR § 52.15(g)(3).

PUBLIC NOTICE

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

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DA 23-1094
Released: November 17, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF ROYAL TELEPHONE COMPANY TO MUTUAL TELEPHONE COMPANY OF SIOUX CENTER, IOWA D/B/A PREMIER COMMUNICATIONS

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-364

Comments Due: December 1, 2023
Reply Comment Due: December 8, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Royal Telephone Company (Royal) and Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications (Mutual) (collectively, 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 approval for the transfer of control of Royal to Mutual through a merger transaction by which Noble Acquisition, Inc. (Merger Sub) will be merged with and into Royal, with Royal surviving that merger. Royal and Mutual hold blanket domestic 214 authorizations.[2]

Royal, an Iowa corporation, is a rural incumbent local exchange carrier (LEC) that provides local and long-distance telecommunications, high-speed Internet access, and access services to roughly 300 residential and business customers in the Royal, Iowa exchange. Royal, an eligible telecommunications carrier (ETC) in Iowa, currently receives Connect America Fund (CAF) Broadband Loop support and high-cost loop support.[3] Royal has elected to receive Enhanced Alternative Connect America Cost Model (A-CAM) support beginning January 1, 2024.[4] There are no persons with a 10% or greater ownership in Royal.[5]

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

[2] Application for the Transfer of Control of Royal Telephone Company to Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications, WC Docket No. 23-364 (filed Nov. 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] Application at 10, 12, Exh. B. Royal participates in the Lifeline program and Affordable Connectivity Program and will continue to do so post-consummation of the transaction. *Id*. at 11.

[4] Application at 10, 12, Exh. B. After January 1, 2024, Royal will no longer receive CAF BLS and HCL support. *Id*. at 12.

Mutual, an Iowa corporation, is a rural incumbent LEC that currently provides local exchange telecommunications service, access service, Internet, and advanced communications services to approximately 3,500 customers in the Sioux Center, Iowa exchange. Mutual wholly owns several incumbent LEC and competitive LEC affiliate providers of local exchange service in the state of Iowa.[6] Mutual and Hospers receive A-CAM II support.[7] Premier and Heartland receive Rural Digital Opportunity Fund Phase I Auction (Auction 904) support.[8] Heartland also receives CAF II (Auction 903) support.[9] There are no persons with a 10% or greater ownership in Mutual.[10] No board member or officer holds a 10% or greater direct or indirect interest in any other domestic telecommunications provider.[11]

Pursuant to the terms of an Agreement and Plan of Merger, Mutual will acquire all or substantially all telecommunications operations and assets, property, rights, and interest (including all customer contracts and customer relationships) from Royal to provide Internet, telephone, video, and other communications services to customers in and around the Royal, Iowa area. The Applicants state, upon completion of the proposed transaction, such services will be provided by Royal as a wholly-owned subsidiary of Mutual. Royal and Mutual will continue to hold domestic section 214 authority in their respective serving areas.[12] Applicants assert that the proposed transaction will promote the public interest by enabling roughly 300 Internet access customers in the area to benefit from Mututal's resources. Applicants further assert that Royal's relinquishment of the assets to Mutual will be seamless for consumers for the services offered as Mutual will continue to provide and enhance the telecommunications and high-speed Internet access currently offered. Applicants also state the transfer is not expected to result in any discontinuance or impairment of the Internet access services provided to these customers. Finally, Applicants assert that the proposed transaction will also have limited adverse effects on competition in the area because there is no overlap between the Applicants' service areas or fiber facilities.[13]

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

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[5] *Id*. at 4.

[6] Northern Iowa Telephone Company (incumbent LEC) serves the Iowa exchanges of Hinton, Matlock, Maurice, Sanborn, Little Rock, and Granville; Premier Communications, Inc. (Premier) (competitive LEC) serves the Iowa exchanges of Akron, Ashton, Boyden, Doon, Hull, Ireton, Rock Valley, Rock Rapids, LeMars, Ocheyedan, Orange City, George, Merrill, Arnolds Park, Lake Park, Milford, Sheldon, and Spirit Lake; Webb-Dickens Telephone Corporation (incumbent LEC) serves the Iowa exchanges of Dickens and Webb; and Heartland Telecommunications Company of Iowa (Heartland) (incumbent LEC) serves the Iowa exchanges of Akron, Boyden, Doon, Hawarden, Hull, Ireton, Rock Rapids, Rock Valley, and Sibley local exchange areas in the State of Iowa, the North Rock Rapids exchange area in the State of Minnesota and the West Akron and West Hawarden local exchange areas in the State of South Dakota; and Hospers Telephone Exchange, Inc. (Hospers) (incumbent LEC) serves the Iowa exchange of Hospers. *Id*. at 7-8.

[7] *Id*. at Exh. B.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 4.

[11] *Id*. at 5.

[12] *Id*. at 7.

[13] *Id*. at 2, 8-9, 12, Exh. C.

necessity.[14] Because the proposed transaction is more complex than those accepted for streamlined treatment, and in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[15]

Domestic Section 214 Application Filed for the Transfer of Control of
Royal Telephone Company to Mutual Telephone Company of
Sioux Center, Iowa d/b/a Premier Communications
WC Docket No. 23-364 (filed Oct. 24, 2023).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. 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.

Interested parties may file comments **on or before December 1, 2023**, and reply comments **on or before December 8, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at http://apps.fcc.gov/ecfs/ .
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
    - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[16] 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.

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) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2) Megan (Capasso) Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov;

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[14] *Id*. at 8.

[15] 47 CFR § 63.03(c)(1)(v).

[16] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

3) David Krech, Office of International Affairs, david.krech@fcc.gov; and

4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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.

For further information, please contact Megan (Capasso) Danner at megan.danner@fcc.gov.

-FCC-

[17] *See* 47 CFR § 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 23-1095
Released: November 20, 2023

FILING WINDOW FOR 2023 BIENNIAL BROADCAST OWNERSHIP REPORTS CLOSES ON DECEMBER 1, 2023

By this Public Notice, the Media Bureau reminds licensees that the window for the submission of 2023 broadcast biennial ownership reports will close on **Friday, December 1, 2023**.

All 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.[1] During the window, commercial and noncommercial broadcasters must submit their reports on FCC Form 323 or 323-E, respectively, via the Commission's Licensing and Management System (LMS).[2] Paper copies will not be accepted. The 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).[3] Information contained in the reports must be current as of October 1, 2023.[4]

As the Commission has emphasized previously, it is critical that broadcast licensees comply with this fundamental and longstanding reporting obligation.[5] Information contained in biennial ownership reports helps the Commission and the public know who owns, operates, and controls broadcast stations. In addition, this information is crucial to understanding the broadcast industry as a whole, including an understanding of the diversity and multiplicity of owners.

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.

For additional information, please send an email to form323@fcc.gov.

– FCC –

[1] 47 CFR §§ 73.3615(a), (d); 73.6026; 74.797.

[2] Filers can access LMS at https://enterpriseefiling.fcc.gov/dataentry/login.html.

[3] 47 CFR §§ 73.3615(a), (d); 74.797.

[4] *Id*.

[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).

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

In re Application of	)	
	)	
Boulder Creek Recreation & Park District	)	FRN: 0023745730
	)	Facility ID No. 14897
For Renewal of License for	)	File No. 0000153823
Station KBCZ(FM)	)	
Boulder Creek, California	)	

ORDER

Adopted: November 20, 2023 **Released: November 20, 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 Boulder Creek Recreation & Park District (Licensee), the licensee for Station KBCZ(FM), Boulder Creek, California (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station. In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Online Public Inspection File Rule contained in section 73.3527 of the Commission's rules (Rules).[1] The Bureau's Audio Division suspended processing of the Application because Licensee did not comply with its public file obligations in section 73.3527.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3527 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, 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.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of potential violations of the Rules.

4. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Licensee 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,[2] and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,[3] 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**.

[1] 47 CFR § 73.3527.

[2] 47 U.S.C. § 154(i)6 154(j), and 503(b).

[3] 47 CFR §§ 0.61, 0.283.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Boulder Creek Recreation & Park District, c/o Hallie Greene, P.O. Box 325, Boulder Creek, CA 95006, and to its counsel, Alan Korn, Esq. 1442-A Walnut Street, PMB 387, Berkeley, CA 94709.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of Online Public Inspection Files of	)	File No.: 0000153823
	)	
Boulder Creek Recreation & Park District	)	FRN: 0023745730
	)	
Licensee of Station KBCZ(FM) Boulder Creek, California	)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Boulder Creek Recreation & Park District (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 73.3527 of the Commission's rules,[1] relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3527.

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

(e) "Covered Employees" means 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.

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

(g) "Investigation" means the Bureau's decision to hold and not process the Licensee's license renewal application identified in Appendix A due to the noncompliance with its public file obligations.

(h) "Licensee" means Boulder Creek Recreation & Park District, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(i) "Online Public Inspection File Rule" means 47 CFR § 73.3527.

(j) "Parties" means the 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.

[1] 47 CFR § 73.3527.

II. BACKGROUND

3. Section 73.3527 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 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.

4. The Licensee owns and operates one or more radio stations licensed by the Commission. The Licensee recently filed an application for renewal of radio station licenses. Further, we have determined that the Licensee did not comply with the Online Public Inspection File Rule. That application is identified in **Appendix A**. Based on the Licensee's noncompliance with the Online Public Inspection File Rule, the Bureau commenced the Investigation and suspended processing that license renewal application.

5. The radio industry is recovering from a recent dramatic reduction in sponsorship revenues which, in turn, placed the industry, including the Licensee, under significant, ongoing financial stress. The Bureau believes that the exceptional circumstances brought about by the industry's economic situation present a unique situation which, on balance, warrant resolution of the Bureau's investigation under the terms and conditions described below.

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**. 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.

8. **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.

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 addition, the Bureau agrees to process the Licensee's pending radio license renewal application identified in Appendix A in the ordinary course. In consideration for such, the 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 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.[2]

11. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it failed to timely place records in its online public inspection file, in repeated violation of section 73.3527 of the Rules.

[2] *See* 47 CFR § 1.93(b).

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 the licensee.[3] 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 online public inspection file and record keeping or otherwise.

13. **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 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.

14. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 15(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 the Online Public Inspection File Rule;

ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's 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) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that

[3] *See* 47 U.S.C. § 503(b)(2)(E).

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 the Online Public Inspection File Rule 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 the Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 16 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,[4] 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 (alexander.sanjenis@fcc.gov).

15. **Reporting Noncompliance**. The Licensee shall, for each station it owns, report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

16. **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 14(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.

17. **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

[4] 47 CFR § 1.16.

liability for forfeitures, for any apparent willful and/or repeated violation by the Licensee of the Online Public Inspection File Rule that occurs during the term of this Consent Decree.

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[5] 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.

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.

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

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

11/20/2023
Date

Hallie Green
Boulder Creek Recreation & Park District

Date

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

Date

Hallie Green
Boulder Creek Recreation & Park District

11/15/23
Date

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
KBCZ(FM)	Boulder Creek, California	0000153823

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 23-1097
November 20, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 21 (MICHIGAN) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

PS Docket No. 23-237 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, January 18, 2024 (inclement weather alternate date: January 25, 2024). Beginning at 10:00 a.m., the Region 21 800 MHz RPC meeting will convene at the Oakland County Information Technology, Room 126, 1200 N. Telegraph Rd, Building 49W, Pontiac, MI 48341.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – October 26, 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
  - Website
  - 4.9 GHz
  - Mid-band Non-NPSPAC 800 channels
- New Business
  - Election of Officers
- Next meeting: March 14, 2024 – MPSCS – Dimondale, MI
- 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 – October 26, 2023 meeting
- Correspondence
- Review of Applications
  - Old Applications
    - State of MI – Berrien Simulcast (adjacent region notification)
  - New Applications
- 700 MHz Subcommittee Reports
  - Interoperable Communications Subcommittee
  - Engineering/Technical Subcommittee
  - Ongoing Plan Revision Standing Subcommittee
- Old Business
- New Business
- Next meeting: March 14, 2024 – MPSCS, Dimondale, MI
- 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

- FCC -

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 23-1098
Released: November 20, 2023

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS SERVICES

WC Docket No(s). 23-331

Comments Due: December 5, 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 **December 21, 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 Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission

[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.").

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 **December 5, 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, memoranda or other filings in the proceeding, the presenter may provide citations to such data or

[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*.

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): Level 3 Telecom of Ohio, LLC and Level 3 Telecom of Kentucky, LLC**
WC Docket No. 23-331, Comp. Pol. File No. 1865
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-331*%22))
Affected Service(s) – Basic Business Line Service, Managed IP Trunks, VersiPak Lines and Trunks Service, VersiPakFlex T Service and VersiPak Power T Service, VersiPak Flex T-12, VersiPak Flex T-24, VersiPak Power T-12, VersiPak IPRI Service, VersiPak Mach 2 Service and VersiPak Mach 3 Service
Service Area(s) – Beavercreek, Blue Ash, Centerville, Cincinnati, Dayton, Fairborn, Huber Heights, Kettering, Miamisburg, Middletown, Moraine, Singboro, Springfield, and Wright Patterson Airforce Base, Ohio; and Louisville, KY
Authorized Date(s) – on or after December 21, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Bravo Broadcasting Company, Inc.,	)	Facility ID 56474
Licensee of KIRT(AM), Mission, Texas	)	FRN: 0008720591
	)	File Nos. BL-6450, BRH-
	)	20130325ALU, 0000154164

REVOCATION ORDER

Adopted: November 21, 2023 **Released: November 21, 2023**

By the Chief, Media Bureau, and the Managing Director, Office of Managing Director:

I. INTRODUCTION

1. By this *Revocation Order*, we revoke the license held by Bravo Broadcasting Company, Inc. (Licensee), for KIRT(AM), Mission, Texas (Station), for failure to pay delinquent regulatory fees owed to the Commission.[1] We also dismiss pending applications for renewal of the Station's license.[2]

II. DISCUSSION

2. Under section 9 of the Communications Act of 1934, as amended (Act), and the Commission's implementing rules, the Commission is required to "assess and collect regulatory fees" to recover the costs of certain regulatory activities.[3] When the required payment is received late or is incomplete, the Commission must assess a penalty equal to "25 percent of the amount of the fee that was not paid in a timely manner."[4] In addition to financial penalties, section 9A(c)(4)(A) of the Act, and section 1.1164(f) of the Commission's rules (Rules) grant the Commission the authority to revoke authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion.[5]

3. For fiscal year (FY) 2012, the deadline for paying regulatory fees was September 13, 2012;[6] for FY 2015, it was September 24, 2015;[7] for FY 2016, it was September 27, 2016;[8] for FY 2017,

[1] Although this *Revocation Order* addresses Licensee's failure to pay the Station's regulatory fees for a number of fiscal years, we note that failure to pay any regulatory fee, related interest or penalties, or any portion thereof is grounds for revocation. *See* 47 U.S.C. § 159A(c)(4)(A) ("[T]he Commission may revoke any instrument of authorization held by any licensee that has not paid in a timely manner a regulatory fee assessed under section 9 or any related interest or penalty.").

[2] Application File Nos. BRH-20130325ALU, 0000154164 (2021 Renewal Application) .

[3] 47 U.S.C. § 159(a)(1); 47 CFR §§ 1.1151-1.1167.

[4] 47 U.S.C. § 159A(c)(1); 47 CFR §§ 1.1157(c)(1), 1.1164.

[5] 47 U.S.C. § 159A(c)(4)(A); 47 CFR § 1.1164(f).

[6] *Payment Methods and Procedures For Fiscal Year 2012 Regulatory Fees*, Public Notice, DA 12-1294, 27 FCC Rcd 9204 (OMD Aug. 13, 2012).

[7] *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees,* Public Notice, DA 15-103, 30 FCC Rcd 9941 (OMD September 11, 2015).

[8] *Payment Methods and Procedures for Fiscal Year 2016 Regulatory Fees*, Public Notice, 2016 WL 4625515 (OMD Sep. 6, 2016).

it was September 26, 2017;[9] for FY 2018, it was September 25, 2018;[10] for FY 2019, it was September 27, 2019;[11] for FY 2020, it was September 28, 2020;[12] for FY 2021, it was September 24, 2021;[13] and for FY 2022, it was September 30, 2022.[14]

4. Licensee failed to timely pay or only partially paid the Station's regulatory fees for FYs 2012, 2015, 2016, 2017, 2018, 2019, 2020, and 2021. Thus, for each delinquent regulatory fee, the Commission assessed the statutory late payment penalty required by the Act,[15] and sections 1.1157(c)(1), and 1.1164 of the Rules,[16] and interest, penalties, and administrative costs required by law.[17] The Commission sent demand letters to Licensee demanding payment of the delinquent regulatory fee debts.[18]

5. On March 15, 2023, the Media Bureau (Bureau) and the Office of Managing Director jointly issued an *Order to Pay or to Show Cause* (*Order*) requiring Licensee to file with the Bureau within sixty (60) calendar days[19] evidence of full payment of the debt, or show cause why the fees were inapplicable

[9] *Payment Methods and Procedures for Fiscal Year 2017 Regulatory Fees*, Public Notice, 2017 WL 3953380 (OMD Sep. 6, 2017).

[10] *Payment Methods and Procedures for Fiscal Year 2018 Regulatory Fees*, Public Notice (OMD Aug. 30, 2018), *available at* https://docs.fcc.gov/public/attachments/DOC-353883A1.pdf.

[11] *Regulatory Fee Filing Window Is Extended to Friday, September 27, 2019*, Public Notice, DA 19-881, 34 FCC Rcd 7945 (OMD Sep. 5, 2019).

[12] *Regulatory Fee Filing Window is Extended to Monday, September 28, 2020,* Public Notice, DA 20-1131, 35 FCC Rcd 10466 (OMD Sep. 24, 2020).

[13] *Payment Methods and Procedures for Fiscal Year 2021 Regulatory Fees*, Public Notice, DA 21-1112, 36 FCC Rcd 13423 (OMD Sep. 7, 2021).

[14] *Fiscal Year 2022 Regulatory Fee Filing Deadline is Extended to Friday, September 30, 2022, for All Regulatory Fee Payors*, Public Notice, DA 22-1023, 2022 WL 4597483 (OMD Sep. 28, 2022).

[15] 47 U.S.C. § 159A(c)(1); 47 U.S.C. § 159(c)(1) (2017). The RAY BAUM's Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM's Act became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, section 9A(c)(1) now sets forth those penalties.

[16] 47 CFR §§ 1.1157(c)(1), 1.1164.

[17] Prior to October 1, 2018, the Commission was required to and did assess administrative charges on delinquent regulatory fee debt pursuant to section 3717 of the Debt Collection Improvement Act. 37 U.S.C. § 3717(e)(1); *see also* 47 CFR § 1.1940. Effective October 1, 2018, and as a result of the changes wrought by section 9A of the RAY BAUM'S Act, the Commission may no longer assess the administrative cost of collecting delinquent regulatory fee debt, though the mandate that it charge a 25 percent late payment penalty and interest remains. 47 U.S.C. § 159A(c)(1) and (2).

[18] In addition to the demand letters, the Media Bureau notified Licensee of its failure to pay the Station's regulatory fees for FY 2012 and FY 2015. Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Francisco R. Montero, Esq. (MB June 18, 2015).

[19] While not required by the statute, the Commission adopted the 60-day response period for regulatees "to assure that the subject regulatee will have a full opportunity to obtain the funds needed to make payment and to prepare its case." *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, MD Docket No. 94-19, Report and Order, 9 FCC Rcd. 5333, 5354 para. 62 (1994) (*1994 Report and Order*); *see also Shelly Broadcasting Company, Inc.*, Revocation Order, 34 FCC Rcd 7983 (MB/OMD 2019) (revoking license of station with unpaid regulatory fees after licensee failed to pay fees or respond to order to pay or show cause within 60 days); *Dean Brothers Broadcasting Corp.*, Revocation Order, 34 FCC Rcd 2151 (MB/OMD 2019).

or should be waived or deferred.[20] The *Order* further stated that failure to provide such evidence of payment or to show cause within the time specified could result in revocation of the Station's license.[21] To date, Licensee has not paid any of the debts, and Licensee has not filed a written response to the *Order*.

III. DISCUSSION

6. We revoke the Station's license. The Bureau and OMD issued the *Order* on March 15, 2023, and it required Licensee to respond within 60 days.[22] The *Order* specified that failure to provide evidence of payment or show cause within the time specified could result in revocation of the Station's license.[23] Licensee did not file a written response to the *Order*.[24] In these circumstances, where Licensee has failed to pay its regulatory fee debts for multiple years and does not dispute that it is obligated to pay them, we conclude revocation is appropriate.[25]

7. We note that this *Revocation Order* does not relieve Licensee of its obligation to pay any debt, including any regulatory fee, or any other financial obligation that is owed or may in the future be owed to the Commission. We further note that Licensee may have been or may continue to be a respondent in other administrative proceedings. Action in this proceeding is without prejudice to action in those proceedings, and the existence of those proceedings and matters raised therein are not considered by the Commission in this proceeding.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283, and 1.1164(f) of the Rules,[26] the license of Bravo Broadcasting Company, Inc., for Station KIRT(AM), Mission, Texas, **IS HEREBY REVOKED**.

9. **IT IS FURTHER ORDERED** that all authority to operate this facility **IS TERMINATED** and any operation of the facility **is now unauthorized and must cease immediately**.[27]

10. **IT IS FURTHER ORDERED** that the Commission's public and internal database will be modified to reflect the revocation, and the Station's call sign **IS HEREBY DELETED**.

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[20] *Bravo Broadcasting Company, Inc.*, Order to Pay or to Show Cause, DA 23-218 (MB/OMD 2023) (*Order*). At that time, the Commission's records showed that Licensee had unpaid regulatory fees of $895.94 for FY 2012; $1,772.42 for FY 2015; $5,046.91 for FY 2016; $6,059.15 for FY 2017; $4,112.90 for FY 2018; $4,424.28 for FY 2019; $4,536.37 for FY 2020; $4,542.26 for FY 2021; and $4,775.00 for FY 2022. *Id*. at para. 4.

[21] *Id*. at para. 5. *See also* 47 U.S.C. §159A(c)(4).

[22] *Order* at para. 5.

[23] *Id*.

[24] A copy of the *Order* was sent by registered mail, return receipt requested, to the address provided by Licensee in the 2021 Renewal Application. *See* 47 CFR § 1.5(a) (unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission). This copy of the *Order* was returned to the Commission as undeliverable. It is Licensee's responsibility to make arrangements to ensure it receives correspondence from the Commission. *See* 47 CFR § 1.5(b). Additionally, a courtesy copy was sent to the email addresses on file for Licensee. Email from Keith Coburn, Audio Division, FCC Media Bureau, to Bravo Broadcasting Company, Inc. (Mar. 15, 2023, 10:18 AM EDT).

[25] *See, e.g., Shelley Broad. Co., Inc*., Revocation Order, 34 FCC Rcd 7983 (MB/OMD 2019); *Deane Bros. Broad. Corp*., Revocation Order, 34 FCC Rcd 2151 (MB/OMD 2019) (both revoking station licenses for failure to pay delinquent regulatory fees). *See also LDC Telecomm., Inc*., Revocation Order, 31 FCC 11662 (2016) (revoking authorizations held by LDC for failure to pay delinquent regulatory fees).

[26] 47 U.S.C. § 159A(c)(5); 47 CFR §§ 0.11, 0.61, 0.231, 0.283, 1.1164(f).

[27] **It is imperative to the safety of air navigation that any prescribed painting and illumination of the Station's tower be maintained**. *See* 47 CFR §§ 17.6 and 73.1213.

11. **IT IS FURTHER ORDERED** that the renewal applications filed on March 26, 2013 (File No. BR-20130325ALU), and July 27, 2021 (File No. 0000154164), **ARE DISMISSED**.

12. **IT IS FURTHER ORDERED** that a copy of this *Revocation Order* shall be sent by first class mail and registered mail, return receipt requested, to Bravo Broadcasting Company, Inc., 608 S. 10th Street, McAllen, TX 78501, and its counsel, Francisco R. Montero, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th St., 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens, Managing Director
Office of Managing Director

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

In the Matter of	)	
	)	
ContiTech USA, Inc. Request for Waiver of	)	WT Docket 22-260
Section 90.103(b) of the Commission's Rules	)	

ORDER

Adopted: November 21, 2023 **Released: November 21, 2023**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On February 24, 2022, ContiTech USA Inc. (ContiTech) requested a waiver of section 90.103(b) to allow for the certification and marketing of a Conveyor Radar Device (Device) in a portion of the 76-81 GHz band. The Device will monitor the content carried on conveyor belts for a variety of applications including mining.[1] The 76-81 GHz band is normally limited to vehicular radars and airport runway debris detection radars.[2] Under Part 90 of our rules, radars are subject to site-based licensing for fixed radiolocation operations.[3] As outlined below, we grant the waiver request subject to the conditions contained herein.

II. BACKGROUND

2. *ContiTech Waiver Request.* ContiTech would like to use radar technology, which was originally developed for use in automobiles for collision avoidance and adaptive cruise control operating in the 76-81 GHz band, to support mining, milling, and tunneling operations in the 76-77 GHz frequency range.[4] The 76-81 GHz band currently is used for radars that detect foreign objects on airports runways and monitor air traffic.[5] The 76-81 GHz band is allocated for radiolocation use, but is not available to the Part 90 Radiolocation Service.[6] ContiTech's Device would be placed above a conveyor belt to monitor weight changes and energy consumption and provide safety information. ContiTech therefore requests a waiver of the Radiolocation Service frequency table in section 90.103(b) to permit equipment authorization and site-based licensing of the Device for use in various environments.

3. In order to avoid interference to incumbent vehicular radars and airport runway debris detection radars, ContiTech states that all Device deployments will be within controlled property boundaries of the Device operators, which are restricted from use by the general public.[7] ContiTech also

[1] ContiTech USA, Inc. Request for Waiver of Section 90.103 (b) of the Commission's Rules, WT Docket No. 22-260, at 1 (filed Feb. 24, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1022459833895 (Request).

[2] 47 CFR § 95.3331.

[3] 47 CFR § 90.103(b).

[4] Request at 1.

[5] *See Amendment of Parts 1, 2, 15, 90, and 95 of the Commission's Rules to Permit Radar Services in the 76-81 GHz Band*, 32 FCC Rcd 8822, Report and Order (Jul. 14, 2017).

[6] *See* 47 CFR §§ 2.106, 90.103(b).

[7] Request at 5.

states that it will mitigate harmful interference in the band by the use of pseudo-noise coding[8] of the emissions, restrictions on the positioning and installation of the Device, and controls on power levels emitted by the Device.[9] ContiTech claims that the pseudo-noise coding avoids interference to co-channel devices by identifying each transmission with a unique code.[10]

4. The Wireless Telecommunications Bureau (Bureau) sought comment on this request.[11] One comment was submitted by the National Telecommunications and Information Administration (NTIA) on behalf of the National Science Foundation (NSF), requesting that as a condition of approval, no operations be permitted within certain exclusion zones detailed in the comment.[12] ContiTech agreed with the proposed condition and we list the locations attached as an Appendix.[13]

III. DISCUSSION

5. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or that, 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.[14]

6. When the Commission designated the 76-81 GHz band for vehicular radar and radar in airport air operations areas, it declined to permit additional types of fixed radar in the band so as to "mitigate any risk that fixed radar operations could cause harmful interference to and impair the reliability of vehicular radar operations in the band."[15] It noted that there is adequate geographic separation between public roads and airport air operations areas to avoid harmful interference to vehicular radars.[16] The Commission also stated,

> We acknowledge that, under careful coordination, it might nevertheless be possible for fixed radars to operate in the band at carefully selected locations without causing harmful interference to vehicular radars. Presently, there is insufficient information in the record to develop the specific criteria for a successful coordination process. Interested parties may provide future filings that might provide such detail. We are open to the possibility that specific, limited fixed uses of 76-81 GHz radars outside of airport locations may be possible, provided we can be convinced that such use would not cause harmful interference

[8] A pseudo noise or pseudo-random noise radar generates a deterministic signal that appears random or noise-like. Pseudo noise signals often present a lower potential for interference because the signal is spread over a wider bandwidth at a lower power level minimally raising the noise floor.

[9] *See* Request at 7-11.

[10] *See* Request at 7.

[11] *The Wireless Telecommunications Bureau Seeks Comment On ContiTech USA Inc.'s Request For Waiver Of 76 GHz Radiolocation Rules*, 22-260, Public Notice, DA 22-732 (WTB 2022).

[12] National Telecommunications and Intelligence Association (Filed on behalf of the National Science Foundation), Comments, at 1, https://www.fcc.gov/ecfs/document/108081380801952/2.

[13] ContiTech USA Inc., Reply, at 4-5, https://www.fcc.gov/ecfs/document/10819233447976/1.

[14] *See* 47 CFR § 1.925(b)(3).

[15] *See* Amendment of Parts 1, 2, 15, 90 and 95 of the Commission's Rules to Permit Radar Services in the 76-81 GHz Band, Report and Order, 32 FCC Rcd 8822, 8845, para. 40 (2017) (76-81 GHz Report and Order).

[16] *See id.* at 8845, para. 42. The air operations area is that part of an airport where aircraft operate, including runways, taxiways, and apron areas (areas where aircraft park and are serviced) within the airport's perimeter fence. 47 CFR § 87.5.

to vehicular radar operations in the band.[17]

7. ContiTech asserts that the radiation of material on conveyor belts in mining and tunneling operations, and at processing plants and loading terminals, is precisely the type of "specific, limited fixed use[]" that would not undermine the Commission's rules and would greatly serve the public interest in multiple ways.[18] It intends to mitigate the risk of harmful interference with the following efforts: pseudo-noise coding to avoid harmful interference to co-channel vehicular radar operations, and placing the Device on controlled property in a downward position towards the conveyor belt away from other receivers to avoid additional interference.[19] The Device will also be limited to an EIRP not exceeding 30 dBm for the long-range device and not exceeding 24 dBm for the short-range device.[20] This is consistent with other operations in this band.

8. ContiTech asserts that this grant would be in the public interest as it would minimize dangerous conditions and related environmental damage by preventing spillage of materials and the associated risk of clean-up.[21] It also asserts that this grant would maximize energy efficiency in addition to the improved tracking of the material on the conveyor belt[22]

9. We find that ContiTech has met the waiver standard under Section 1.925(b)(3)(i) of our rules and grant this request to waive section 90.103(b), subject to the conditions listed below. We find that ContiTech has demonstrated that the Device can serve an important public interest function by monitoring material in various milling, mining, and other processes to improve the safety and efficiency of such mining operations and the other uses detailed in this request. Further, its operations will be conducted under Part 90 site-based radiolocation rules, meaning that each installation will require a separate application and authorization by the Bureau, which allows additional conditions for operation to be added if needed.

10. In addition to the Part 90 licensing process, ContiTech has offered sufficient conditions on the grant and agreed to avoid areas of concern expressed by the NTIA and NSF.

11. Based on the public interest benefits presented, we find this waiver would serve the public interest by increasing the safety and efficiency of the applications presented by ContiTech and would not undermine the purpose of the rules by allowing these operations without interfering with other users of the band.

A. Conditions

12. We grant the waiver subject to the following conditions:

a. Use is limited to: Underground and above-ground (i.e., open pit) mining operations, and milling and tunneling operations; bulk material processing operations; and loading terminal operations.

b. A good faith effort shall be made to place the device on portions of the conveyer that are away from places that vehicles could be expected to operate and/or place appropriate conditions and restrictions on vehicle use near the belts.

[17] *76-81 GHz Report and Order*, 32 FCC Rcd at 8845, para. 40 (footnote omitted).

[18] Request at 6.

[19] *Id*. at 7-8.

[20] *Id.* at 10.

[21] *Id.* at 12.

[22] *Id.* at 14.

c. EIRP may not exceed 30 dBm.[23]

d. Devices may not cause harmful interference to and must tolerate interference from Government Radiolocation, 76-81 GHz Band Radar, Radio Astronomy, Amateur, and Space Research operations.

e. Devices must employ pseudo-noise coding to minimize harmful interference to co-channel vehicular radar operation, regardless of positioning or directionality of the radars.

f. Installation of the Devices must be so that the direction of the transmission is downward on private property, at least 100 meters from any public roadway, and no more than 90 meters above ground level.

g. In order to install and operate any Devices within any exclusion zone noted in Table 1 (see Appendix) ContiTech must complete prior coordination with the impacted radio astronomy site(s). Any application for Devices in these zones must have the consent of NSF attached, such coordination may be initiated by contacting esm@nsf.gov.

h. ContiTech must obtain equipment authorization for the Device. A copy of the Bureau's Order granting this waiver shall be submitted with the equipment authorization application. The Bureau's waiver will apply to the Devices as currently designed, as well as to any future generation versions of the radar system per our rules.[24]

i. All operation of these Devices will require a separate Bureau authorization and license from the Bureau, using Part 90 radio service code RS (radiolocation service) for each location. Any application seeking such license must contain an exhibit referencing the Bureau's Order by the appropriate DA number, and demonstrate that the Device(s) will comply with conditions A-H of this grant.

13. No operation is authorized prior to license grant, and no applications will be granted until ContiTech obtains equipment authorization.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's Rules, 47 CFR § 1.925, the Request for Waiver of section 90.103(b) is GRANTED SUBJECT TO THE CONDITIONS described herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

APPENDIX

[23] This condition applies to both the long- and short-range Devices that ContiTech is reviewing under the experimental license granted to ContiTech with the call sign WL2XFY.

[24] *See* 47 CFR 2.1043.

Table 1: Requested prohibition of usage of these frequency bands, unless coordinated.

(a) Within 25 km of the National Radio Astronomy Observatory's (NRAO's) Very Long Baseline Array (VLBA) Stations:

State	VLBA Station	Lat. (N)	Long. (W)
AZ	Kitt Peak	31° 57' 23"	111° 36' 45"
CA	Owens Valley	37° 13' 54"	118° 16' 37"
HI	Mauna Kea	19° 48' 05"	155° 27' 20"
IA	North Liberty	41° 46' 17"	91° 34' 27"
NH	Hancock	42° 56' 01"	71° 59' 12"
NM	Los Alamos	35° 46' 30"	106° 14' 44"
NM	Pie Town	34° 18' 04"	108° 07' 09"
TX	Fort Davis	30° 38' 06"	103° 56' 41"
VI	Saint Croix	17° 45' 24"	64° 35' 01"
WA	Brewster	48° 07' 52"	119° 41' 00"

(b) Within 150 km of the following observatories:

State	Telescope and Site	Lat. (N)	Long. (W)
AZ	The Submillimeter Telescope, Mt. Graham	32° 42' 06"	109° 53' 28"
CA	Caltech Telescope, Owens Valley	37° 13' 54"	118° 17' 36"
HI	James Clerk Maxwell Telescope, Mauna Kea	19° 49' 33"	155° 28' 47"
MA	Haystack Observatory, Westford	42° 37' 24"	071° 29' 18"
NM	NRAO's Very Large Array, Socorro	34° 04' 44"	107° 37' 06"
WV	Green Bank Telescope, Green Bank	38° 25' 59"	079° 50' 23"

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 23-1101
Released: November 22, 2023

WIRELESS TELECOMUNICATIONS BUREAU ESTABLISHES WT DOCKET NO. 23-388

WT Docket No. 23-388

By this Public Notice the Wireless Telecommunications Bureau establishes WT Docket No. 23-388, which is captioned "Achieving 100% Wireless Handset Model Hearing Aid Compatibility."

Presentations are subject to "permit-but-disclose" *ex parte* rules. *See* 47 CFR §§ 1.206, 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, including the general prohibition on presentations (written and oral) on matters listed in the Sunshine Agenda, which typically is released a week prior to the Commission's meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

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.

Action by Chief, Wireless Telecommunications Bureau.

-FCC-

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. 23-1102

Report No. TEL-02317 **Wednesday November 22, 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-214-20231017-00124 E FRESH MOBILE LLC
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority **Date of Action:** 11/17/2023

Fresh Mobile LLC (Fresh Mobile) filed an application for authority to provide facilities-based service in accordance with section 63.18(e)(1) of the Commission's rules and resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(1), (2).

Fresh Mobile, a Florida limited liability company, is wholly owned by Richard Jumper, a U.S. citizen.

ITC-214-20231017-00126 E Liberty Wireless, LLC
International Telecommunications Certificate
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service
Grant of Authority **Date of Action:** 11/17/2023

Liberty Wireless, LLC (Liberty Wireless) filed an application for authority to provide facilities-based service in accordance with section 63.18(e)(1) of the Commission's rules and resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(1), (2).

Liberty Wireless, a Wyoming limited liability company, is wholly owned by Zachary Greene, a U.S. citizen.

ITC-214-20231023-00131 E Weincentivize

International Telecommunications Certificate

Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service

Grant of Authority Date of Action: 11/17/2023

Weincentivize filed an application for authority to provide facilities-based service in accordance with section 63.18(e)(1) of the Commission's rules and resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(1), (2).

Weincentivize, a California limited liability company, is owned by Katie Le (90%) and Thomas Nguyen (10%), both U.S. citizens.

ITC-214-20231025-00134 E STREAM WIRELESS, LLC

International Telecommunications Certificate

Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service

Grant of Authority Date of Action: 11/17/2023

Stream Wireless, LLC (Stream Wireless) filed an application for authority to provide facilities-based service in accordance with section 63.18(e)(1) of the Commission's rules and resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(1), (2).

Stream Wireless, a Florida limited liability company, is wholly owned by Phillip Reichman, a U.S. citizen.

ITC-214-20231101-00137 E Join LifeLine, LLC

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 11/17/2023

Join LifeLine, LLC (LifeLine) 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).

LifeLine, a California limited liability company, is wholly owned by R Indran C Nelson, a U.S. citizen.

ITC-ASG-20231108-00143 E Chariton Valley Telephone Corporation

Assignment

Grant of Authority Date of Action: 11/20/2023

Current Licensee: Chariton Valley Communications Corporation

FROM: Chariton Valley Communications Corporation

TO: Chariton Valley Telephone Corporation

On November 8, 2023, Chariton Valley Telephone Corporation (CVTC) filed a notification of the pro forma assignment of international section 214 authorization ITC-214-19960409-00146, held by Chariton Valley Communications Corporation (CVCC), to CVTC, effective October 26, 2023. CVCC is a direct wholly owned subsidiary of CVTC, both Missouri corporations. In a corporate reorganization, CVCC assigned its international section 214 authorization to CVTC. CVCC now provides international telecommunications services to its customers under the authority of CVTC's international section 214 authorization, ITC-214-19960409-00146, pursuant to section 63.21(h) of the Commission's rules, 47 CFR § 63.21(h). According to the Applicants, CVTC is a cooperative that is wholly owned by its member-subscribers and no member-subscriber owns a 10% or greater direct or indirect interest in CVTC.

ITC-T/C-20230920-00112 E OpticTel LONG DISTANCE, L.L.C.

Transfer of Control

Grant of Authority Date of Action: 11/21/2023

Current Licensee: OpticTel LONG DISTANCE, L.L.C.

FROM: NBVDS Investment, L.L.C.

TO: NBVDS Investment, L.L.C.

On September 20, 2023, OpticTel Long Distance, L.L.C. (OpticTel), an Oklahoma limited liability company that holds an international section 214 authorization (ITC-214-19941219-00398), filed a notification of the pro forma transfer of control of OpticTel, effective August 31, 2023. OpticTel is owned by six U.S. entities each holding a 16.67% interest - Canadian Valley Telephone, L.L.C., Central Oklahoma Telephone Co., Cherokee Telephone Company, Cimarron Telephone Company, L.L.C. (Cimarron), Cross Telephone Company, L.L.C. (CTC) and The Pottawatomie Telephone Co., L.L.C. (TPTC). Members of the Miller Family hold ownership interests in CTC, Cimarron and TPTC through NBVDS Investments, L.L.C. (NBVDS), an Oklahoma limited liability company. Prior to the transaction, Nancy E. Overland, Susan K. Baldwin and V. David Miller, II, siblings and all U.S. citizens, each held a one-third interest in NBVDS. On August 31, 2023, Nancy E. Overland sold her interest in NBVDS to Susan K. Baldwin and V. David Miller, II, who each now hold a 50% interest in NBVDS. NBVDS holds a 95.45% interest in CTC and is the 100% indirect parent of Cimarron and TPTC. This transaction did not affect the ownership of Canadian Valley Telephone, L.L.C., Central Oklahoma Telephone Co. or Cherokee Telephone Company.

ITC-T/C-20231003-00122 E FiberLight LLC

Transfer of Control

Grant of Authority Date of Action: 11/21/2023

Current Licensee: FiberLight LLC

FROM: Fiber BidCo LLC

TO: Fiber BidCo LLC

On October 3, 2023, FiberLight, LLC (FiberLight), a Delaware limited liability company that holds an international section 214 authorization (ITC-214-20051011-00437), filed a notification of the pro forma transfer of control of FiberLight, effective September 4, 2023. FiberLight is an indirect wholly owned subsidiary of Fiber Bidco, LLC, which in turn is an indirect wholly owned subsidiary of Fiber Holdco, L.P. (Fiber LP), both Delaware entities. Fiber GP LLC (Fiber GP), a Delaware limited liability company, is the general partner of Fiber LP. Fiber MCO L.P. (Fiber MCO), a Delaware limited partnership, holds a 50% ownership interest in Fiber GP and 49.5% ownership interest in Fiber LP. Fiber MCO is indirectly wholly owned by The Morrison & Co. Infrastructure Partnership Master Fund, SCSp (MCO IP), a Luxembourg entity. Morrison & Co. Infrastructure Partnership (US) LLC (MCO US), a Delaware entity, has a 90.29% equity interest in MCO IP. MCO US is wholly owned by The Morrison & Co. Infrastructure Partnership Australian Feeder Fund (Australian Feeder), an Australian entity. The Morrison & Co. Infrastructure Partnership Australian Feeder Fund Pty Ltd (MCO Trustee), an Australian entity, is the trustee for Australian Feeder. The Morrison & Co. Infrastructure Partnership Management Pty Ltd (MCO Manager), an Australian entity, was appointed the portfolio manager for Australian Feeder by MCO Trustee.

Prior to the pro forma transaction, MCO Trustee and MCO Manager were directly held by H.R.L. Morrison & Co Australia Holdings Limited (HRL Australia), a New Zealand entity. In a corporate restructuring, H.R.L. Morrison & Co (Australia) Pty Ltd (MCO AUS Op Co), an Australian entity, was inserted between HRL Australia and MCO Trustee and MCO Manager. MCO AUS Op Co also owns Morrison & Co Infrastructure Partnership Australia Hedged Fund Feeder Fund Pty Ltd (Australia Hedged Feeder Trustee) which serves as the trustee for Morrison & Co Infrastructure Partnership Australia Hedged Fund Feeder Fund (Australia Hedged Feeder) which has a 2.29% equity interest in Australia Feeder, all Australian entities. MCO Manager is the portfolio manager for Australian Hedged Feeder.

INFORMATIVE

ITC-214-19960409-00146 Chariton Valley Communications Corporation

By letter filed November 9, 2023, Applicant notified the Commission that the following wholly-owned subsidiaries 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): Chariton Valley Communications Corporation and Chariton Valley Broadband, LLC.

SURRENDER

ITC-214-19980804-00538 BearCom Operating LP

By letter dated November 6, 2023, BearCom Operating, L.P. notified the Commission that it surrendered its international section 214 authorization effective November 6, 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
45 L Street NE
Washington, DC 20554

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

DA 23-1103
Released: November 22, 2023

MEDIA BUREAU OPENS NEW MB DOCKET NO. 23-405

MB Docket 23-405

By this Public Notice, the Media Bureau opens MB Docket No. 23-405, which is captioned "*Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices.*"

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, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

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Action by Chief, Media Bureau.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1104
Released: December 1, 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. 06-122
WC Docket No. 10-90
AU Docket No. 17-182
AU Docket No. 20-34

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

Dismissed as Moot[3]

[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 of Decisions of the Universal Service Administrator by Diversified Computer Solutions, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5250, 5251, para. 3 (WCB 2012) (dismissing appeals as moot where issue presented has been resolved). This waiver request is nearly identical to a filing we previously granted for Leech Lake Band Of Ojibwe Early Childhood Programs. *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative*

(continued….)

Leech Lake Band Of Ojibwe Early Childhood Programs, MN, Application No. 221006448, Request for Waiver, CC Docket No. 02-6 (filed Oct. 5, 2022)

Dismissed on Reconsideration[4]

Crown Pointe Academy, CO, Application No. 231039686, Petition for Reconsideration, CC Docket No. 02-6 (filed Sept. 29, 2023)

Eastport/South Manor Central School District, NY, Application No. 760734, Petition for Reconsideration, CC Docket No. 02-6 (filed Nov. 1, 2023)

Dismiss to Allow Appeal to be Filed with USAC[5]

Dayton Business Technology High School, OH, Application No. 211004653, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Granted[6]

(Continued from previous page)
Company, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 18-213, 06-122, Public Notice, DA 22-1008 (WCB Sept. 30, 2022).

[4] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers 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).

On reconsideration, Eastport/South Manor Central School District continues to assert that its FY 2010 services were a continuation of a FY 2009 multi-year agreement and they inadvertently put down the wrong FCC Form 470 number (the one from FY 2009) on its FCC Form 471. We find, however, that the two contracts from FY 2009 and FY 2010 are different in several respects, including different contract numbers, different pricing and, on the FY 2010 contract, additional terms. Further, the contracts do not indicate that the duration of the contracts were for five years. We therefore affirm our decision that, because Eastport/South Manor Central School District entered into a new agreement for these services before the allowable contract date, the school district was in violation of the Commission's competitive bidding rules. *See, e.g., Requests for Review &/or Waiver of Decisions of the Universal Service Administrator by Al-Ihsan Academy et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16415, 16418, para. 9 (WCB 2011) (denying appeals where the applicant violated the 28-day rule by missing the deadline by more than three days, thereby preventing their requests for services to be competitively bid for a meaningful period of time).

[5] *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 at USAC and have it considered on the merits).

Parties seeking review of USAC decisions must first file an appeal with USAC. *See* 47 CFR § 54.719(a). Because the petitioner filed its appeal with the Commission first, we now provide Dayton Business Technology High School 60 days from the release date of this Public Notice to refile its 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.

[6] 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
(continued….)

Contract Agreement in Place[7]

Biblioteca Pública Yabucoa, PR, Application No. 221015146, Request for Review, CC Docket No. 02-6 (filed Feb. 17, 2023, USAC referral of appeal filed Dec. 20, 2022)

Cost-Effectiveness[8]

Alhambra Elementary School District 68, AZ, Application No. 900314, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 1, 2013)

Discount Calculation[9]

Pyramid Lake Jr./Sr. High School, NV, Application No. 231004984, Request for Review, CC Docket No. 02-6 (filed July 17, 2023)

Discount Calculation—Information Submitted Outside Permitted Time Period[10]

Flagstaff Arts and Leadership Academy, AZ, Application No. 231018426, Request for Waiver, CC Docket No. 02-6 (filed Oct. 30, 2023)

Granting Additional time to Respond to USAC with Information During Invoicing[11]

(Continued from previous page)
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).

[7] *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, 15532, para. 10 (WCB 2008) (*Barberton City School District Order*) (granting on the merits when petitioners submitted evidence to the Commission demonstrating that they had a valid, signed contract in place at the time it submitted its FCC Forms 471 to USAC).

[8] *Requests for Review of the Decisions of the Universal Service Administrator by Allendale County School District*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109, 6116-17, para.11 and n.50 (WCB 2011) (*Allendale County School District Order*) (granting waiver to correct bid evaluation matrix where bid evaluation should have included a multi-tier process to screen out vendors who could not meet the functional requirements of the proposal).

[9] *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, 10708, para. 12 (WCB 2006) (*Academia Claret Order*) (remanding applications for further processing when, upon de novo review, the Commission disagreed with USAC's discount calculation determination).

On appeal with the Commission, Pyramid Lake Jr./Sr. High School submits its application to participate in the Community Eligibility Provision (CEP). On remand, USAC should review this additional document to determine the school's correct discount rate. *See supra* note 6.

[10] *See, e.g., Academia Claret Order,* 21 FCC Rcd at 10708, para. 12 (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] After having its initial invoice waiver granted and remanded to USAC by the Bureau, Cincinnati Technology Academy either did not receive or failed to respond to communications from USAC on the process of refiling its invoice. We grant this waiver to give the applicant another opportunity to resubmit its invoice for payment. *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. 14 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting requests for review of applicants
(continued….)

Cincinnati Technology Academy, OH, Application No. 191023794, Request for Review, CC Docket No. 02-6 (filed Nov. 22, 2022)

Grant on Reconsideration – USAC Decision Issued After Invoice Deadline[12]

Ascent Classical Academy DougCo Consortium, CO, Application No. 211039802, Petition for Reconsideration, CC Docket No. 02-6 (filed Nov. 10, 2023)

Ministerial and/or Clerical Errors – Invoicing[13]

Mannheim School District 83, IL, Application No. 221020066, Request for Waiver, CC Docket No. 02-6 (filed Nov. 6, 2023)

Morrison Community Unit District 6, IL, Application Nos. 221031075, 221021273, Request for Waiver, CC Docket No. 02-6 (filed Nov. 10, 2023)

Ministerial and/or Clerical Errors – Multi-Year Agreement[14]

Lakota Local School District, OH, Application No. 191025255, Request for Review, CC Docket No. 02-6 (filed Jan. 20, 2022)

Ministerial and/or Clerical Errors – FRN Omitted from FCC Form 471 Application[15]

(Continued from previous page)
that had been denied funding during invoicing because they failed to respond to USAC's request for information within the USAC-specified time frame).

[12] *See, e.g., Petitions for Reconsideration by Callisburg Independent School District; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 28 FCC Rcd 9459, 9461, para. 5 (WCB 2013) (*Callisburg Independent School District Order*) (granting petition for reconsideration where, upon reconsideration of the record, we do not find that the evidence supports our previous determination); *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 14426, 14431, para. 15 (2020) (authorizing the Bureau to grant a waiver in instances where an E-Rate participant was unable to timely submit an invoice because they were awaiting a post-commitment decision from USAC, or received a decision approving a post-commitment request or granting an appeal of a previously denied or reduced funding request after the invoice filing deadline had passed).

[13] *See Accomack County Public School Order*, DA 23-48, para. 7-9 (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 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.

[14] Funding was denied because the school district sought funding for the entire purchase price of the three-year license in the first year of service. On remand, we instruct USAC to work with the applicant to determine how this service should have been structured on the FCC Form(s) 471 to allow reimbursement at the invoicing stage. *See*, *e.g.*, *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521 n.19 (WCB 2008) (*Archer Public Library Order*) (permitting applicant to correct a mischaracterization of the nature of a recipient of service on FCC Form 471). We make no finding on the underlying issues in this appeal and remand this application back to USAC to make a determination on the merits. *See supra* note 6.

[15] *See, e.g., Archer Public Library* Order, 23 FCC Rcd at 15521 n.19 (permitting applicant to correct its FCC Form 471 to conform to the source document). The petitioner did not realize this funding request was omitted until the FY 2023 application filing window had closed. The petitioner then filed FCC Form 471 Application No. 231039780 out-of-window for this funding request. We direct USAC to add this funding request to one of the petitioner's

(continued….)

Mendon Upton Regional School District, MA, Application No. 231039780, Request for Waiver, CC Docket No. 02-6 (filed Oct. 3, 2023)

Permissible Service Implementation Delay[16]

El Monte Union High School District, CA, Application No. 221005889, Request for Waiver, CC Docket No. 02-6 (filed Nov. 6, 2023)

USAC Decision Issued After Invoice Deadline[17]

Rehmann Technology Solutions (Almont Community Schools), MI, Application No. 191020169, Request for Waiver, CC Docket No. 02-6 (filed Dec. 1, 2021)

Waiver of Appeal Filing Deadline[18]

Carteret County School District, NC, Application No. 211031782, Request for Waiver, CC Docket No. 02-6 (filed July 19, 2023)

Scholarship Prep – Oceanside, CA, Application Nos. 211038936, 211036079, Request for Waiver, CC Docket No. 02-6 (filed Dec. 3, 2021)

Denied

Late-Filed FCC Form 471 Applications[19]

Coastal Christian School, ME, Application No. 231026586, Request for Waiver, CC Docket No. 02-6 (filed Nov. 9, 2023)

(Continued from previous page)
timely-filed FY 2023 FCC Form 471 applications or treat FCC Form 471 Application No. 231039780 as timely filed.

[16] *See, e.g.*, *Request for Review/Waiver of the Decision of the Universal Service Administrator by Accelerated Charter et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, 29 FCC Rcd 13652, 13652-3, para. 2 (WCB 2014) (*Accelerated Charter Order*) (granting late-filed extensions of the service implementation deadline when applicants demonstrated they were unable to complete implementation on time for reasons beyond the service providers' control and made significant efforts to secure the necessary extensions in a timely manner).

[17] *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 14426, 14431, para. 15 (2020) (authorizing the Bureau to grant a waiver in instances where a program participant was unable to timely submit an invoice because they were awaiting a post-commitment decision from USAC, or received a decision approving a post-commitment request or granting an appeal of a previously denied or reduced funding request after the invoice filing deadline had passed).

[18] *See, e.g.*, *Requests for Review of Decisions of the Universal Service Administrator by ABC Unified School District*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (*ABC Unified School District Order*) (granting waivers of 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 6.

[19] *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 waivers of our rules).

Henderson Independent School District, TX, Application No. 231039914, Request for Waiver, CC Docket No. 02-6 (filed Oct. 30, 2023)

New Richmond Exempted Village School District, OH, Application No. 231019140, Request for Waiver, CC Docket No. 02-6 (filed Oct. 20, 2023)

Late-Filed Invoice or Invoice Deadline Extension[20]

Comcast Cable Communications, LLC (Catholic Bishop of Chicago), IL, Application No. 211035206, Request for Waiver, CC Docket No. 02-6 (filed Oct. 27, 2023)

Vaughn Municipal Schools, NM, Application No. 221014472, Request for Waiver, CC Docket No. 02-6 (filed Nov. 23, 2022)

Relying on FCC Form 470 That Did Not Seek Bids on Types of E-rate Services Later Requested[21]

Effingham School District 40, IL, Application No. 211035505, Request for Waiver, CC Docket No. 02-6 (filed Dec. 22, 2022)

Untimely Filed Appeals or Waiver Requests[22]

City of Fort Worth Public Library, TX, Application No. 221005079, Request for Waiver, CC Docket No. 02-6 (filed Dec. 12, 2022)

Evansville Vanderburgh School Corporation, IN, Application No. 231035248, Request for Waiver, CC Docket No. 02-6 (filed Oct. 17, 2023)

Pecos Independent School District, NM, Application No. 231017928, Request for Waiver, CC Docket No. 02-6 (filed Oct. 30, 2023)

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[20] 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 First 2014 E-Rate Modernization Order,* 29 FCC Rcd at 8966, para. 240 (establishing that it is generally not in the public interest to waive the Commission's invoicing rules absent extraordinary circumstances).

[21] *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) (*Albert Lea Schools Order*) (denying appeals of applicants that filed FCC Forms 470 that did not include the types of services for which the applicants later requested E-rate funding).

[22] *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, 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).

Sierra Communications, Inc. (New Mexico State Library), NM, Application No. 211011566, Request for Waiver, CC Docket No. 02-6 (filed Nov. 23, 2022)

Emergency Connectivity Fund Program
WC Docket No. 21-93

Dismissed as Insufficient[23]

Orange County Academy of Sciences and Arts, CA, Application No. ECF222116669, Request for Waiver, WC Docket No. 21-93 (filed Oct. 31, 2023)

Dismiss as Moot – USAC Took Action Requested[24]

Clarion-Goldfield-Dows Community Schools, IA, Application No. ECF202203485, Request for Waiver, WC Docket No. 21-93 (filed Aug. 31, 2023)

Hebrew Academy of the Five Towns and Rockaway, NY, Application No. ECF202105059, Request for Waiver, WC Docket No. 21-93 (filed Oct. 16, 2023)

North Tampa Christian Academy, FL, Application No. ECF202105119, Request for Waiver, WC Docket No. 21-93 (filed Oct. 16, 2023)

Shearim Torah High School, Inc., AZ, Application No. ECF202105618, Request for Waiver, WC Docket No. 21-93 (Oct. 10, 2023)

St. Demetrios Greek American School, NY, Application No. ECF202107399, Request for Waiver, WC Docket No. 21-93 (filed Oct. 16, 2023)

Dismissed on Reconsideration[25]

[23] *See* 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). 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 this petition for waiver of the Emergency Connectivity Fund program rules. *See* 47 CFR § 54.1718(c).

[24] *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) (dismissing as moot requests for review where USAC had taken the action the petitioner requested).

Heartland Library Cooperative, FL, Application No. ECF202209938, Petition for Reconsideration, WC Docket No. 21-93 (filed Sept. 28, 2023)

Dismissed on Reconsideration – Untimely[26]

Hebrew Academy of Long Beach, NY, Application No. ECF222121274, Petition for Reconsideration, WC Docket No. 21-93 (filed Sept. 27, 2023)

Granted[27]

Eligible Services[28]

Ducor Union Elementary School District, CA, Application No. ECF202108518, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Jul. 20, 2023)

Ministerial and/or Clerical Errors[29]

Rochester City School District, NY, Application No. ECF202100294, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Sept. 14, 2023)

Payment Verification[30]

(Continued from previous page)

[25] *See, e.g., Allan Shivers Library Order*, 29 FCC Rcd at 10357, para. 2 (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). 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 this petition for reconsideration.

[26] *See, e.g.*, *Petitions for Reconsideration by Rockwood School District and Yakutat School District*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 26 FCC Rcd 13004 (WCB 2011) (dismissing two petitions for reconsideration because they were filed more than 30 days after the Bureau's decisions). 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 this petition for reconsideration.

[27] *See supra* note 6.

[28] *See, e.g., Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8735, 8737-38, para. 6 (2007) (granting appeals where USAC incorrectly determined the funding requests were for ineligible services). 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.

[29] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17320-21, para. 2, n.23 (WCB 2010) (granting a waiver when applicant mistakenly provided the wrong documentation concerning a purchase). 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 this petition for waiver of the Emergency Connectivity Fund program rules.

[30] *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

(continued….)

Asher Public Schools, OK, Application No. ECF202108651, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Aug. 14, 2023)

Colegio Rubi, PR, Application No. ECF222120288, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Nov. 3, 2023)

Monroe Independent School District 11, OK, Application No. ECF202112870, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Nov. 10, 2023)

Waiver of the Appeal Filing Deadline[31]

South Jamaica Center for Children and Parents, Inc., NY, Application No. ECF202107170, Request for Review and/or Waiver, CC Docket No. 02-6, WC Docket No. 21-93 (filed October 6, 2023, supplemented October 9, 2023)

Denied

Untimely Filed Appeals or Waiver Requests[32]

(Continued from previous page)
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.

[31] *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. *See* 47 CFR § 54.1718. We note that the Commission adopted a shortened appeal timeframe of 30 days in the Emergency Connectivity Fund Program due to the short-term, emergent nature of the program. *See id*.; *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8740, 8746, paras. 90, 107 (2021) (*Emergency Connectivity Fund Report and Order*). We make no finding on the underlying issues in the appeal and remand the application back to USAC to make a determination on the merits. *See supra* note 6.

[32] *See, e.g., Agra Public Schools Order*, 25 FCC Rcd at 5688, para. 6 (WCB 2010); *Bound Brook School District Order*, 29 FCC Rcd 5823, para. 1 (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 show special circumstances necessary for the Commission to waive the deadline). 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. We note that the Commission adopted a shortened waiver and appeal timeframe of 30 days in the Emergency Connectivity Fund Program due to the short-term, emergent nature of the program. *See* 47 CFR 54.1718; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8746, para. 107. As such,
(continued….)

Bronzeville Academy Charter School, IL, Application No. ECF202207591, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Aug. 1, 2023)

Dr. Lena Edwards Academic Charter School, NJ, Application No. ECF202209457, Request for Waiver, WC Docket No. 21-93 (filed Oct. 24, 2023)

Rural Health Care Program
WC Docket No. 02-60

Granted

Waiver of the Invoice Filing Deadline[33]

Gunderson Lutheran Consortium, WI, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220011272, RHC20220010898 (filed Nov. 2, 2023)

Lewis County Community Health Services d/b/a Valley View Health Center, WA, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220009029, RHC20220009037, RHC20220009038 (filed Oct. 30, 2023)

Mid-Columbia Medical Consortium, OR, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220009798 (filed Nov. 6, 2023)

Contribution Methodology
WC Docket No. 06-122

Granted

Petition for Waiver of the Limited International Revenue Exemption for Revenue Reporting Year 2024[34]

Miron Enterprises, LLC and Tello, LLC, Letter of Appeal, WC Docket No. 06-122 (filed Sept. 26, 2023)

Telxius Cable USA, Inc., Telefónica Global Solutions USA, Inc., and Telefónica Larga Distancia de Puerto Rico, Inc., Petition for Waiver of the Limited International Revenue Exemption, WC Docket No. 06-122 (filed Oct. 12, 2023)

Request for Waiver of Form 499-A Late Filing Fees[35]

(Continued from previous page)
requests for waiver of ECF Program rules that are filed more than 30 days after a deadline or decision will be denied.

[33] *In the Matter of Abbottsford School District, et al.*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (waiving invoice filing deadline due to delays beyond the control of the entities requesting a waiver). We waive the invoice filing deadline and allow 120 days from the release date of this Public Notice to file the invoices with USAC.

[34] 47 CFR § 54.706(a)-(c). *Tata Communications (America), Inc., and Tata Communications (Guam), L.L.C. Request for Waiver of Section 54.706(a) of the Commission's Rules*, WC Docket No. 06-122, Order, 36 FCC Rcd 5759 (WCB 2021) (finding good cause for a limited waiver of the limited international revenue exemption (LIRE) allowing filers to continue contributing solely on their interstate revenue). To the extent petitioners seek a waiver for revenue reporting year 2025, they must file a request to renew or extend this waiver, accompanied by the requisite showings supporting their request, consistent with the Commission's waiver rule and precedent.

Island IT Pros, LLC, Letter of Appeal, WC Docket No. 06-122 (filed Sept. 5, 2023)

Denied

Request for Waiver of Form 499-A Revision Deadline and Late Filing Fees[36]

Pinger, Inc., Letter of Appeal, WC Docket No. 06-122 (filed May 12, 2023)

High-Cost Program (Rural Digital Opportunity Fund)
WC Docket Nos. 10-90, AU Docket Nos. 17-182, 20-34

Granted

HUBB Milestone Certification Reporting[37]

Tri-Co Connection, LLC's Petition for Waiver Regarding Broadband Milestone Certification for 2022, WC Docket No. 10-90 (filed Oct. 25, 2023)

NTCA- The Rural Broadband Association, Petition for Waiver Request, WC Docket No. 10-90 (filed Oct. 27, 2023)

Late Annual State Filing Certification Waiver Request[38]

(Continued from previous page)

[35] *See Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6 et al., Order, 37 FCC Rcd 11310, 11326, para. 41 (WCB 2022) (stating that any provider that is unable to comply with the Commission's contributions rules and requirements after January 2, 2023 may request additional, narrowly-tailored relief from the Bureau due to the effects of Hurricane Ian).

[36] *See, e.g.*, *Universal Service Contribution Methodology; Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd 13358 (WCB 2013) (finding that alleged mistakes by Outfitter's accounting firm and internal accounting staff were not adequate grounds for waiver); *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator by IP Telecom Group, Inc.*, WC Docket No. 06-122, Order, 26 FCC Rcd 11213 (WCB 2011); *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc., et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (WCB 2010) (denying requests for deadline waivers where claims of good cause amounted to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control). To the extent filers' financial situation makes it difficult to pay the invoice in full, they may set up a payment plan with USAC to satisfy the obligation. *See* https://www.usac.org/service-providers/making-payments/how-to-pay/payment-plans/.

[37] Tri-Co Connections and NTCA, on behalf of its members and similarly situated carriers, timely reported and certified enough locations by the March 1, 2023 deadline to meet the interim milestone obligation, but did not timely make the separate certification that they met the milestones. *See Connect America Fund, et al*., WC Docket Nos. 10-90 et al., Order, 36 FCC Rcd 13976, paras. 9-10 (*NNTC Certification Waiver Order*) (granting waiver to allow the carrier to report locations after the deadline for the reporting year when locations were timely uploaded to the High Cost Universal Broadband (HUBB) portal but due to an inadvertent administrative oversight were not timely certified); *see also Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 10-90, 02-60 and 06-122, Public Notice, DA 23-333, n.38 (WCB Apr. 28, 2023) (granting waiver to allow the carrier to certify meeting its milestone obligation after the deadline for the reporting year when locations were timely uploaded and certified to the HUBB portal but due to an inadvertent administrative oversight, the milestone obligation was not timely certified).

[38] *See, e.g.*, *Streamline Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6 et al., Public Notice, 36 FCC Rcd 13157 (WCB 2021) (granting a petition for waiver of 47 CFR § 54.314(d) when the carrier took steps to request the certification well in advance of the deadline, consulted with state commission staff regarding the requirements, and acted in accordance with staff guidance); *Streamlined*

(continued….)

Petition of Windstream Services, LLC for Temporary Waiver of 47 CFR § 54.314(d), WC Docket No. 10-90, AU Docket Nos. 17-182, 20-34 (filed Oct. 3, 2023)

Letter of Credit[39]

Pioneer Wireless, Inc.'s Petition for Temporary Waiver of Section 54.804(c)(2)(i)(B), WC Docket No. 20-34 (filed Nov. 2, 2023).

TurboNet Technologies, Inc.'s Petition for Temporary Waiver of Section 54.804(c)(2)(i)(B), WC Docket Nos. 10-90, 19-126, 20-34 (filed Nov. 16, 2023)

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.

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Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket No. 02-6 et al., Public Notice, 33 FCC Rcd 7401 (WCB 2018) (granting a petition for waiver when a missed filing deadline was due to the state commission omitting the petitioner from its certification); *Petition for Waiver of Universal Serv. High-Cost Filing Deadline, Fed.-State Joint Bd. on Universal Serv., CTC Telecom, Inc. d/b/a Snake River PCS Petition for Waiver of Deadline in 47 C.F.R. § 54.314(d)(6)*, WC Docket No. 08-71, 25 FCC Rcd 7242, 7244, para. 5 (WCB 2010) (granting a petition for waiver when a missed filing deadline was due to state commission action, as opposed to actions of the carrier).

[39] Pioneer Wireless, Inc. (Pioneer) seeks a temporary waiver of the Rural Digital Opportunity Fund Auction (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. We grant this waiver until March 2, 2024. TurboNet Technologies, Inc., (TurboNet) seeks a temporary waiver of the same rule, for the same reason, for 180 days. We grant this waiver until May 14, 2024. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 37 FCC Rcd 10271 (WCB 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 the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 21-93, Public Notice, DA 23-756, at 22 & n. 52 (WCB Aug. 31, 2023).

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. 23-1105

Report No. SAT-01778 **Friday November 24, 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-20231114-00283 E S3032 BlackSky Global LLC
Special Temporary Authority
Grant of Authority Effective Date: 11/22/2023

On November 22, 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 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.

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

Federal Communications Commission
Washington, D.C. 20554

November 24, 2023

DA 23-1106
In Reply Refer to:
1800B3-ATS/RDM
Released: November 24, 2023

Brush School District RE-2J
c/o John Jason Bennett
7107 South Yale #444
Tulsa, OK 74136
(sent by electronic mail to: jason@fmexpansion.com)

Turbo Tech Services
c/o Mr. Jim Turvaville
360 Patton Street
PO Box 144
Mobeetie, TX 79061
(sent by electronic mail to: jimturbo61@gmail.com)

In re: **Brush School District RE-2J**
New NCE FM, Brush, Colorado
Facility ID No. 768440
Application File No. 0000166836

Informal Objection

Dear Applicant and Objector:

We have before us the application filed by Brush School District RE-2J (Brush) for a construction permit for a new noncommercial educational (NCE) FM station at Brush, Colorado.[1] We also have before us the Informal Objection to the Application (Objection), filed by Turbo Tech Services (Turbo),[2] and related responsive pleadings.[3] For the reasons set forth below, we deny the Objection and grant the Application.

Background. Brush filed its Application during the 2021 NCE FM filing window.[4] The Media Bureau (Bureau) identified the Application as part of NCE MX Group 43,[5] but as a result of technical

[1] Application File No. 0000166836 (Application).

[2] Pleading File No. 0000186267 (filed Mar. 10, 2022).

[3] Brush filed an Opposition. Pleading File No. 0000211455 (filed Feb. 27, 2023). Turbo filed a Reply. Pleading File No. 0000211837 (filed Mar. 3, 2023).

[4] *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window; Limited Application Filing Freeze to Commence on October 5, 2021*, Public Notice, 36 FCC Rcd 11458 (MB 2021) (*Procedures Public Notice*).

[5] *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Education Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021) (*MX Groups Public Notice*).

amendments, the Application is now a singleton.

The Bureau dismissed the Application on January 6, 2022, because it failed to comply with section 73.509 of the Commission's rules (Rules).[6] On February 4, 2022, Brush filed a corrective technical amendment to the Application, which changed the channel of the proposed facility, and a Petition for Reconsideration seeking *nunc pro tunc* reinstatement of the Application.[7] The February Amendment provided the same coordinates in the Antenna Location Data as the coordinates specified in the original Application. The Bureau granted the Petition for Reconsideration, accepted the February Amendment, and reinstated the Application.

In the Objection, Turbo argues that the Application, as amended by the February Amendment, remains defective for several reasons, and should therefore be "dismissed with prejudice for failure to provide proper curative amendments at the single opportunity provided by the Commission staff."[8] Specifically, Turbo asserts that the Application fails to meet the spacing requirements with regard to Station KWNB-TV, Hayes Center, Nebraska, which operates on Channel 6, and Brush does not include the showing required by section 73.525 of the Rules.[9] The Objection also argues that the Application and the February Amendment either contain a site error or misrepresent the location of the proposed transmitter.[10] Turbo notes that although an exhibit attached to the Application and the February Amendment state that the land where the tower and antenna will be located are owned by Brush, the antenna coordinates correspond to a residential and business area that is not owned by Brush.[11] Finally, Turbo contends that the Application and the February Amendment state that the proposed facility uses an existing tower, even though there is no tower at the site identified in the relevant attachment.[12]

Brush filed another amendment on March 15, 2022, which changed the antenna coordinates in the Antenna Location Data field of the Application and provided a Channel 6 showing.[13] In the Opposition, Brush argues that the Application, as originally filed, was dismissed due to a "typographical error in the proposed channel."[14] Brush further states that, under the *Nunc Pro Tunc Public Notice*, the March Amendment is acceptable because the Application was never dismissed a second time.[15]

In the Reply, Turbo argues that notwithstanding Brush's characterization of its dismissal as due to

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[6] *Actions*, Public Notice, Report No. PN-2-220110-01 (MB Jan. 10, 2022) ("Section 73.509 violation - 92 sq km of overlap received from the co-channel license (BLED-20160212ABE) of WCBE(FM), Columbus, Ohio"); *see also* 47 CFR § 73.509.

[7] Application, Amendment (filed Feb 4, 2022) (February Amendment); *see also* Petition for Reconsideration, Pleading File No. 0000184388 (filed Feb 4, 2022).

[8] Objection at 2.

[9] *Id.* at 1; *see also* 47 CFR § 73.525.

[10] Objection at 2.

[11] *Id.*; *see also* Application and February Amendment at Attach. "Brush All Purpose.pdf".

[12] *Id.*; *see also* Application and February Amendment at Attach. "Brush Environmental 2020204.pdf".

[13] Application, Amendment (filed Mar. 15, 2022) (March Amendment) at Antenna and Attach. "Brush TV6 20220315b.pdf".

[14] Opposition at 1.

[15] *Id.* at 2; *see also Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984), recon. denied, 57 RR 2d 1603 (1985) (as subsequently published in the Federal Register, 49 Fed. Reg. 47331 (Dec. 3, 1984)) (*Nunc Pro Tunc Public Notice*).

a typographical error, it was nonetheless dismissed, and the February Amendment failed to correct all the defects in the Application.[16] Turbo further asserts that the March Amendment should be rejected because it was not filed within 30 days of the dismissal of the Application.[17]

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),[18] 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.[19]

Upon the dismissal of its Application, Brush, as directed, timely filed its corrective February Amendment and a petition for reconsideration, requesting reinstatement of the Application *nunc pro tunc*. The Bureau reviewed the February Amendment, determined it rendered the Application acceptable, and reinstated the Application. Subsequent to the reinstatement, Brush filed its March Amendment to provide the required Channel 6 showing and adjust the coordinates specified in the Antenna Location Data section of the Application.[20] We find that the March Amendment, which made additional minor revisions to the Application, was permissible and does not contravene the *Nunc Pro Tunc Public Notice.*

Specifically, we reject Turbo's argument that the *Nunc Pro Tunc Public Notice* does not allow an applicant to file additional amendments after reinstatement.[21] In prior cases applying the *Nunc Pro Tunc Public Notice*, the Bureau accepted subsequent amendments to applications following reinstatement, provided the application was not dismissed a second time.[22] The *Procedures Public Notice*, the *Dismissed Singletons Public Notice*, and the *MX Groups Public Notice* all state that a dismissed NCE FM applicant is entitled to one curative amendment *to request reinstatement* of an application *nunc pro tunc.*[23]

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[16] Reply at 1-2.

[17] *Id*. at 2.

[18] 47 U.S.C. § 309(d).

[19] *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).

[20] The site identified by the coordinates in the February Amendment, while incorrect, was otherwise rule-compliant and complied with the spacing requirements.

[21] *See Nunc Pro Tunc Public Notice* ("[W]e have . . . granted reconsideration of an action dismissing or returning an application as unacceptable for filing when an applicant submits a relatively minor curative amendment within 30 days. In contested proceedings, the result of this procedure is that applications are accepted nunc pro tunc. . . . Thereafter, if the same application is returned or dismissed a second time, it will not be afforded nunc pro tunc reconsideration rights.")

[22] *See Lehigh Valley Community Broadcasters Board of Directors*, Hearing Designation Order, 8 FCC Rcd 1643, 1645, para. 15 (ASD 1993) (*Lehigh); A.G.A., Inc.,* Hearing Designation Order, 1986 WL 292736, para. 3 (ASD 1986) (*A.G.A.*).

[23] *Procedures Public Notice*, 36 FCC Rcd at 11467-68 ("A dismissed applicant will have *one* opportunity to file a minor curative amendment to its application and a petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*" (emphasis in original)); *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 Dec. 8, 2021) (*Dismissed Singletons Public Notice*); *MX Groups Public Notice*, 36 FCC Rcd at 16453 ("Each applicant has one opportunity to file a minor curative amendment and petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*"). Accordingly, if the Bureau deemed the

These Notices, consistent with the *Nunc Pro Tunc Public Notice*,[24] do not, however, preclude subsequent minor amendments after reinstatement.[25]

Moreover, the corrections addressed by Brush in its March Amendment—lack of Channel 6 showing and mistaken Antenna Location Data—are not defects for which the Bureau would dismiss an application.[26] This is particularly true in light of the Commission's continuing efforts to expand opportunities for FM applicants by simplifying compliance with TV6 interference rules.[27] Further, in similar instances, we have allowed additional amendments after an initial *nunc pro tunc* reinstatement amendment where the defects in the amended application do not render the application patently defective.[28]

While some minor deficiencies remained in the Application after the February Amendment, they did not render the Application patently defective, and therefore, were not defects for which the Bureau would dismiss an application. When Brush corrected the deficiencies in its March Amendment, the Application had been reinstated and remained in an accepted for filing status. The Application was never dismissed a second time. Accordingly, we deny the Objection and grant the Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed by Turbo Tech Services on March 10, 2022 (Pleading File No. 0000186267), **IS DENIED**.

February Amendment unacceptable, and did not reinstate the Application, Brush would not be permitted a second attempt to amend and reinstate its Application.

[24] Each Notice cites to the *Nunc Pro Tunc Public Notice. See Procedures Public Notice*, 36 FCC Rcd at 11468, n. 66; *Dismissed Singletons Public Notice*, 36 FCC Rcd at 16718, n. 3; *MX Groups Public Notice*, 36 FCC Rcd at 16452, n. 4.

[25] In the past, we have found that, in certain circumstances, the *Nunc Pro Tunc Public Notice* permits multiple corrective amendments to an application post-reinstatement. *See, e.g., Clear Communications, Inc.*, Letter Order, 36 FCC Rcd 12500 (MB 2021) (second curative amendment permitted where translator application was dismissed due to predicted interference complaint, application was amended to address complaint and reinstated *nunc pro tunc*, and complainant submitted new predicted interference complaints based on the initial amendment).

[26] The coordinates corrected by the March Amendment, while mistaken, were otherwise rule-compliant. Had the mistaken location data resulted in a rule violation, such as prohibited overlap with another station in violation of 47 CFR § 73.509, failure to reach 50 percent of the community of license in violation of 47 CFR § 73.515, or a violation of applicable processing policies for noncommercial educational stations, the Application would have been dismissed. *Compare NCE MX Group 82*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (rejecting amendment to dismissed application that created new mutual exclusivity in violation of the *MX Groups Public Notice*).

[27] *See Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules*, Report and Order, 35 FCC Rcd 4115, 4126-4129, paras. 34-35 (MB 2020) ("the staff will consider waiver requests to use FM spectrum that is short-spaced to TV6, and grant such requests if it determines that the FM applicant demonstrates no interference."); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Report and Order, FCC 23-58, 2023 WL 4700523 at *23, para. 65 (July 20, 2023).

[28] *See Lehigh*, 8 FCC Rcd at 1645, para. 15 (second corrective amendment acceptable where the defects in the amended application do not cause the application to violate Commission policy on the processing of patently defective applications); *A.G.A.* at para. 2 (dismissal of an amended application is unwarranted where errors in the application "are not of a nature rendering the proposal patently defective"). In *A.G.A.,* the Audio Services Division found that "Dismissal is unwarranted . . . as these errors are not of a nature rendering the proposal patently defective under our rules. Rather, we were able to process the amended application without undue delay and determine that the proposal conformed to all relevant acceptance criteria. The application is therefore acceptable for filing." *Id.* at para. 3.

IT IS FURTHER ORDERED that the application of Brush School District RE-2J (Application File No. 0000166836), **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):

Mr. Scott Trautwein
(sent by electronic mail s.trautwein@brushschools.org)

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j), Table of	)	MB Docket No. 23-406
Allotments, Television Broadcast Stations	)	RM-11969
(Greenville, South Carolina)	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: November 27, 2023 **Released: November 27, 2023**

By the Chief, Video Division, Media Bureau:

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]

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed September 27, 2023, by Carolina Christian Broadcasting, Inc. (Petitioner), the licensee of WGGS-TV, channel 2, Greenville, South Carolina (Station or WGGS).[1] The Petitioner requests the substitution of channel 29 for channel 2 at Greenville, South Carolina (Greenville) in the Table of TV Allotments.[2]

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that its proposed channel substitution would serve the public interest by resolving reception challenges currently experienced by viewers in the WGGS service area, and substantially improving access to the Station's programming.[3] According to the Petition, the Station regularly receives phone calls and email from viewers no longer able to receive the Station's signal.[4] The Petitioner notes that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including a large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on VHF channels.[5]

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[1] Petition of Carolina Christian Broadcasting, Inc. for Rulemaking (filed Sept. 27, 2023) on file at LMS File No. 0000221497 (Petition).

[2] 47 CFR § 73.622(j).

[3] Petition at 1.

[4] *Id*. at 3 and Exhibit A (Viewer Complaints).

[5] *Id*. at 2, citing *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16511, paras. 42, 44 (2010) (finding that the reception capability of most antennas with respect to high-VHF channels was inferior to that of UHF channels and determining that "it is likely that the reception capabilities of an indoor antenna at low-VHF will generally be less than at high-VHF."). Petitioner also notes that it will greatly improve the Station's ability to provide ATSC 3.0 service to homes, vehicles, and portable devices. Petition at 1, 3. We do not, however, give any weight to the Petitioner's arguments concerning ATSC 3.0 reception. The Bureau has consistently refused to consider this as a factor in channel substitution rulemaking proceedings since ATSC 3.0 is still in the early stages of

(continued….)

3. The Petitioner proposes to operate the Station on channel 29 with a 3-node Distributed Transmission System (DTS) facility.[6] While an analysis using the Commission's *TVStudy* software indicates that the Station's move to channel 29 would create a predicted population loss area of 946,964 persons, mostly located around the edge of the channel 2 noise limited contour,[7] almost all of the population would remain "well-served" by five or more full power or Class A television signals.[8] According to the Petitioner, only 417 persons predicted to live in the loss area would no longer be considered "well-served," and none of those persons would receive over-the-air television service from fewer than four stations.[9] All viewers within the Station's community of license will continue to be served by the Station.[10]

III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal for WGGS warrants consideration. Channel 29 can be substituted for channel 2 at Greenville, South Carolina, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's Rules (rules),[11] at coordinates 34-56'-26.4" N. and 82-24'-40.4" W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.[12] Although the proposal would result in a loss of service to 946,964 persons, all but 417 persons would remain "well-served" by continuing to receive at least five full power or Class A stations. The 417 persons that would no longer be considered to be "well-served" would continue to receive service from at

deployment and the availability of consumer devices remains limited. *See e.g., Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Las Vegas, Nevada)*, MB Docket No. 21-221, Report and Order, DA 23-990 (MB rel. Oct. 18, 2023); *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Kalispell, Montana)*, MB Docket No. 23-79, Report and Order, DA 23-583 (MB rel. July 5, 2023).

[6] Petition, Engineering Exh. at 1. The proposed DTS-1 transmitter site is the Station's presently authorized site, *id*. at 2, and the other two proposed sites are located near Hartwell and Hollingsworth, Georgia, *id*. at 3-5. According to the Petitioner, its proposed channel 29 facility meets all of the requirements of section 73.626(f) of the Commission's rules, 47 CFR § 73.626(f). *Id*. at 5-6.

[7] *Id.*, Engineering Exh. at 7-8 and Exh. Q.

[8] *Id.* at 5, citing *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 38 (2007) (concluding that the Commission is generally most concerned where the loss results in an area becoming less than well served, i.e., served by fewer than five full-power or Class A over-the-air signals).

[9] *Id.*, Engineering Exh. at Exh. Q.

[10] *Id.* at 5 and Engineering Exh. at Exh. B.

[11] 47 CFR § 73.625(a). The Commission recently 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 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 effective as of the date of release of this Notice of Proposed Rulemaking, and, as such, we continue to make reference to 47 CFR § 73.625(a).

[12] 47 CFR §§ 73.616, 73.623. The Commission also recently amended its rules, including combining parts of sections 73.616(a) (Post-transition DTV station interference protection), 73.622(a), and 73.623(a) into one rule that includes all requirements for modifying a television allotment, modified section 73.622(a) (Table of TV allotments). *Part 73 Amendment R&O* at para. 38. The adopted order also relocated section 73.616(c), specifying the protected facilities of TV allotments, to new section 73.619(d). *Part 73 Amendment R&O* at para. 37. As these rule changes are not yet effective, we continue to make reference to 47 CFR §§ 73.616 and 73.623.

least four such stations. This is also a number of persons that the Commission has found to be *de minimis*.[13]

5. We propose to substitute channel 29 for channel 2 for WGGS at Greenville with the following specifications:

City and State	DTV Channel	DTV Power (kW)	Antenna HAAT (m)
Greenville, South Carolina	29	125	354

6. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,[14] for the community listed below, to read as follows:

	Channel No.	
City and State	Present	Proposed
Greenville, South Carolina	2, *8, 17, 30	*8, 17, 29, 30

IV. PROCEDURAL MATTERS

7. *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.[15] 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.[16]

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

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.[17]

(b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.[18]

9. *Comments and Reply Comments*. Pursuant to sections 1.415, 1.419, and 1.420 of the rules,[19] 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).[20]

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[13] *See WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*).

[14] 47 CFR § 73.622(j).

[15] *See, e.g., Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

[16] 47 CFR § 1.420(j).

[17] 47 CFR § 1.420(d).

[18] 47 CFR § 1.420(g)(2).

[19] 47 CFR §§ 1.415, 1.419, and 1.420.

[20] *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/. 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.[21]
    - 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.

10. *Service.* Pursuant to section 1.420 of the rules,[22] all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.[23] Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Joseph C. Chautin, III, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, Louisiana 70471

11. *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.[24] 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.[25] An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or

[21] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

[22] 47 CFR § 1.420.

[23] *See* 47 CFR §1.420(a), (b) and (c).

[24] 47 CFR §§ 1.1200 *et seq.*

[25] 47 CFR § 1.1208.

resolution of issues in the proceeding.[26] 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.[27] 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.

12. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[28] Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on https://www.fcc.gov/proposed-rulemakings.

13. *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.

14. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[29] do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.[30] This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.[31] 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.[32]

15. *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).

16. *Additional Information*. For further information concerning the proceeding listed above, contact Joyce Bernstein, Video Division, Media Bureau, Joyce.Bernstein@fcc.gov.

V. ORDERING CLAUSES

17. **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

[26] 47 CFR § 1.1204(a)(10).

[27] 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).

[28] 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

[29] *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).

[30] 47 CFR § 73.622(j).

[31] *See* 44 U.S.C. §§ 3501-3520.

[32] *See* 44 U.S.C. § 3506(c)(4).

the rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM* **IS ADOPTED.**

18. **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. 23-406 and RM-11969 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	)
	)
AMERICAN RADIO RELAY LEAGUE	)
	)
Request for a Waiver of Section 97.111(a) of the Commission's Rules to Permit Demonstration of Amateur-Military Cross-Band Capabilities During Amateur-Military Commemoration of Pearl Harbor Day	)

ORDER

Adopted: November 27, 2023 **Released: November 27, 2023**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* By this order, we grant the request filed by the American Radio Relay League (ARRL) for a limited waiver of section 97.111(a) of the Commission's rules to permit licensed amateur stations to communicate with Federal stations over a four-day period.[1] The Waiver Request is for the limited purpose of a short-term event relating to National Pearl Harbor Remembrance Day, commemorating the 82nd anniversary of the Pearl Harbor attack, and to allow amateur licensees to practice communication techniques with the United States military from December 6–9, 2023.[2]

2. *Background.* Section 97.111(a) of the Commission's rules authorizes amateur stations to transmit specific types of two-way communications and limits communications with Federal stations.[3] Section 97.111(a)(5) of the rule grants specific authority to communicate with Federal stations for such communications for one armed forces special event day, the Armed Forces Day Communications Test.[4] No other commemoration day is authorized in this rule section.

3. ARRL seeks this waiver for the period from December 6–9, 2023, in conjunction with observation of National Pearl Harbor Remembrance Day.[5] ARRL states that tests such as those proposed provide opportunities to train operators and test two-way communications capabilities between military communicators and radio stations in the Amateur Radio Service, which allows operators to demonstrate technical skills in a controlled scenario.[6] ARRL also represents that the frequencies and time periods selected have already been "authorized on the Federal side" and operations will not impact any public, private, or government communications.[7] ARRL also states that Amateur Radio operators will follow

[1] E-mail from David Siddall, Counsel to ARRL, to Roger Noel, Chief, Mobility Division, FCC Wireless Telecommunications Bureau (November 17, 2023) (Waiver Request); *see* 47 CFR § 97.111(a).

[2] Waiver Request at 1.

[3] 47 CFR § 97.111(a).

[4] 47 CFR § 97.111(a)(5).

[5] Waiver Request at 1.

[6] *Id.* at 1–2.

[7] *Id*. at 2.

related FCC regulations, such as mode, maximum power, and license class.[8]

4. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest; or that, in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[9] For the following reasons and with the following limitations, we conclude that granting the requested waiver is in the public interest.

5. We find grant of the waiver meets the second prong of the waiver standard in section 1.925(b)(3)(ii) in that this event presents a unique opportunity for the Amateur and military communities to practice communication skills under the guidance of military officials, which may be useful in the future and serves the public interest.[10] In addition to the skills gained by amateur operators that participate in the test, this day has a historic significance and emphasizes the importance of reliable communications and the need to be vigilant in our national defense. We also find that the limitations proposed by ARRL are appropriate to prevent harmful interference and to serve the purpose of the commemorative event.[11]

6. Specifically, this waiver is conditioned on participating amateur stations: 1) monitoring the three identified federal frequencies—14.375 MHz, 18.1625 MHz, and 21.856 MHz; 2) responding on spectrum allocated to the amateur service and only at the request of event organizers; 3) operating consistent with the privileges of their amateur licenses; and 4) limiting communications to the period December 6–9, 2023. Additionally, all other related Commission regulations that are applicable to amateur operators will continue to apply (e.g., mode, maximum power, and license class).

7. Accordingly, IT IS ORDERED that 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, the Request for a Waiver of Section 97.111(a) of the Commission's Rules IS GRANTED as set forth and conditioned above.

8. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

[8] *Id.* ARRL also attaches to its Waiver Request email correspondence that states the relevant military authorities support the proposed cross-band operations specific to this event. *Id.* at 3–5.

[9] 47 CFR § 1.925(b)(3).

[10] *See* 47 CFR § 1.925(b)(3).

[11] Waiver Request at 1–2.

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

In the Matter of	)	
	)	
Modification of November 2, 2023 GPR, Inc.	)	ET Docket No. 19-241
Order for Waiver of the Commission's Part 15	)	
Rules Applicable to Ultra-Wideband Devices	)	

ORDER

Adopted: November 27, 2023 **Released: November 27, 2023**

By the Chief, Office of Engineering and Technology:

1. By this Order, we find that there is good cause to modify our November 2, 2023 Order (Waiver Order) that granted GPR, Inc. (GPR) a limited waiver of our part 15 rules to remove a single waiver condition that requires GPR's device to cease operation when the vehicle on which it is mounted comes to a stop.

2. The Waiver Order waived Sections 15.509(b) and 15.525 of the Commission's rules to permit the marketing and operation of GPR's driver-assistance safety technology that is designed to use ultra-wideband (UWB) ground penetrating radar to "read" subterranean information that is used to help keep vehicles in lane under different driving conditions.[1] The Waiver Order included multiple conditions to help limit the potential for harmful interference from GPR's devices to authorized services while still allowing for its deployment in vehicular applications.[2]

3. In a November 13, 2023 filing in the docket, GPR requested that we modify the Waiver Order to remove condition 6, which requires the GPR device to cease operation when the vehicle on which it is mounted comes to a stop.[3] GPR states that updates to the system's design to improve its functionality and safety now require it to begin transmitting continuously when the vehicle's electrical power system begins operating, including when the vehicle is stopped.[4] It further states that continuously providing UWB outputs while stopped allows for the system to make constant vehicle position corrections, which substantially increases the positioning accuracy and timeliness of vehicle position data when moving from a situation when the vehicle has come to a complete stop (e.g., stopping at a stoplight).[5] GPR states that this change will not result in any significant increase in the interference potential of the device.[6]

[1] *GPR, Inc. Request for Waiver of the Commission's Part 15 Rules Applicable to Ultra-Wideband Devices*, Order, DA 23-1041 (OET Nov. 2, 2023).

[2] Waiver Order at 6. The conditions included limitations to the device's operating frequency range and emissions in bands adjacent to its operating frequencies, as well as operational conditions such as permitting the device to operate only when pointed at the ground and not when a vehicle is stopped or the ignition is turned off. *Id.*

[3] Letter from Michele C. Farquhar, Counsel to GPR, Inc., Hogan Lovells US LLP, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 19-241, at 1 (filed Nov. 13, 2023) (GPR Nov. 13, 2023 *Ex Parte*).

[4] *Id.*

[5] *Id.*

[6] *Id.* at 2.

4. We are authorized to grant a waiver under Section 1.3 of the Commission's rules if the petitioner demonstrates good cause for such action.[7] Good cause, in turn, may be found and a waiver granted "where particular facts would make strict compliance inconsistent with the public interest."[8] To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.[9]

5. We find that removing condition 6 of the Waiver Order will not undermine the purpose of the UWB rules, i.e., to prevent harmful interference to authorized services. As discussed in the Waiver Order, the likelihood of harmful interference from the GPR device is extremely low due to a number of factors, including operating in frequency bands that were selected to reduce the likelihood of harmful interference to authorized services, at low power levels with emissions in adjacent bands attenuated to protect services in those bands, only when pointed at the ground, and under conditions that limit how the units may be deployed.[10] We agree with GPR that any increased device transmission time resulting from deletion of condition 6 would be minimal and would not significantly alter the harmful interference environment.[11] Taking into consideration the ample protections afforded by the conditions we are retaining and recognizing that removal of condition 6 will not fundamentally alter the way GPR's devices are deployed (i.e., they will continue to be used in vehicles while pointed downwards to "read" subsurface information for lanekeeping purposes), we conclude that the condition is not critical for interference protection.

6. We also find that removing this condition is in the public interest. The Waiver Order noted the significant new public interest benefit in the developing field of subterranean driver-assistance technologies, and that because the GPR system relies on locating underground features that are not obscured by weather conditions and that do not change significantly with time, it can increase the reliability and safety of driver-assistance technologies and autonomous vehicle navigation.[12] Allowing the GPR device to continue to operate while stopped will substantially increase the accuracy and timeliness of vehicle position data when a vehicle moves from a complete stop, which will increase the public benefits of the device.[13] It will also enable GPR to deploy its equipment more promptly, thus bringing the benefits of this technology to the public sooner.[14] We therefore modify the Waiver Order by removing condition 6. Consistent with this action, we also make a minor revision to condition 9 by removing the reference to condition 6 so that condition 9 now reads, "GPR shall include conditions 5, 7 and 8 above in its sale contracts with its customers."

7. Accordingly, pursuant to authority delegated in Sections 0.31 and 0.241 of the Commission's rules, 47 CFR §§ 0.31, 0.241, and Section 1.3 of the Commission's rules, 47 CFR § 1.3, IT

[7] 47 CFR § 1.3. *See also ICO Global Communications (Holdings) Limited v. FCC*, 428 F.3d 264 (D.C. Cir. 2005); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

[8] *Northeast Cellular*, 897 F.2d at 1166; *see also ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); *WAIT Radio*, 418 F.2d at 1157-59.

[9] *See, e.g.*, *WAIT Radio*, 418 F.2d at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule); *Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

[10] Waiver Order.

[11] GPR Nov. 13, 2023 *Ex Parte* at 2.

[12] Waiver Order at 5.

[13] GPR Nov. 13, 2023 *Ex Parte* at 1.

[14] *Id.* at 2.

IS ORDERED that GPR's November 13, 2023 request to remove condition 6 from OET's November 2, 2023 Waiver Order IS GRANTED consistent with the terms of this Order. This action is taken pursuant to Sections 4(i), 302, 303(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), and 303(r). This action is effective upon release of this Order.

8. IT IS FURTHER ORDERED that, if no applications for review are timely filed, this proceeding SHALL BE TERMINATED, and the docket CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Ronald T. Repasi
Chief
Office of Engineering and Technology

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: November 28, 2023 **Released: November 28, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petitions filed by Triangle Telephone Cooperative Association Inc. (Triangle Telephone) and Triangle Communication System, Inc. (Triangle Communication) (collectively, Petitioners) requesting an extension of their respective removal, replacement, and disposal terms under the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program).[1] For the reasons stated below, the Bureau grants Petitioners' extension requests pursuant to Commission rule 1.50004(h)(2).[2] The Bureau thus extends the removal, replacement, and disposal term for Triangle Telephone from November 29, 2023 to May 29, 2024 and Triangle Communication from January 13, 2024 to July 13, 2024.

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]

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[1] *See* Request of Triangle Telephone for Extension of Time, WC Docket No. 18-89 (filed Oct. 18, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/10182721122050 (Triangle Telephone Request); Request of Triangle Telephone for Extension of Time, WC Docket No. 18-89 (filed Nov. 10, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/111082127753 (Triangle Telephone Supplemental Request); Request of Triangle Communication for Extension of Time, WC Docket No. 18-89 (filed Oct. 18, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1018845205051 (Triangle Communication Request); Request of Triangle Communication for Extension of Time, WC Docket No. 18-89 (filed Nov. 16, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1116296204850 (Triangle Communication Supplemental Request).

[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. §§ 1601-1609) (for purposes of the Secure Networks Act, defining "advanced communications services," by reference to 47 U.S.C. § 1302(d)(1), as "high-speed, switched, broadband

(continued….)

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.[4] 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.[5] The Commission delegated authority to the Bureau to grant or deny individual petitions for an extension.[6] 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."[7] 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 of the Commission's rules,"[8] which requires licensees of wireless spectrum to meet certain construction and coverage requirements within specified time periods.[9]

4. *The Petitions*. Triangle Telephone filed its Petition and supporting documentation in the Commission's Electronic Comment Filing System (ECFS) on October 18, 2023 and November 10,

(Continued from previous page)
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 (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 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); *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).

[4] *2020 Supply Chain Order*, 35 FCC Rcd at 14331, para. 169 (establishing a one-year timeline for removal, replacement, and disposal).

[5] *See* 47 U.S.C. § 1603(d)(6)(C).

[6] 47 CFR § 1.50004(h)(2).

[7] *Id.*; *see also 2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173.

[8] *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")).

[9] 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.

2023.[10] In its Petition, Triangle Telephone requests an extension of its removal, replacement, and disposal term from November 29, 2023 to May 29, 2024.[11] Triangle Communication filed its Petition and supporting documentation in the Commission's ECFS on October 18, 2023 and November 16, 2023.[12] In its Petition, Triangle Communication requests an extension of its removal, replacement, and disposal term from January 13, 2024 to July 13, 2024.[13] Petitioners each contend their progress has been delayed due to (1) supply chain issues, including shortcomings in available labor, and (2) weather conditions.[14]

5. Petitioners claim that supply chain disruptions, attributable in part to the COVID-19 pandemic, have increased lead times for equipment delivery well beyond what would otherwise be normal.[15] For example, Petitioners note that obtaining "electrical breakers and jumper cabling took many months more than it would have before [the pandemic]" and that it was not able to provide power to its sites without this equipment.[16] Similarly, Petitioners state that the lead time for rectifiers increased "from a few months . . . to almost a year" after they placed their orders and that they could not obtain similar equipment in a more timely manner despite inquiring with other sources.[17] Petitioners note that they waited up to approximately 18 months for generators to be delivered.[18]

6. Petitioners explain that these issues have been exacerbated by a lack of available employees and qualified contractors due, in part, to the effects of the pandemic.[19] According to Petitioners, their projects fell behind schedule as employees and contractors could not work, sometimes for a "couple weeks" at a time, due to health and safety precautions.[20] Petitioners note that employees and contractors were sometimes unable to make progress when dealing with pandemic effects, particularly as some project tasks require personnel to work "in proximity" of each other.[21] Petitioners describe experiencing further delays as some of their "employees had to be pulled from the scheduled work and re-do the work of the contractors that were hired to complete the work correctly the first time" but that had failed to do so.[22]

7. Petitioners also contend that their progress has been and will continue to be delayed due to weather conditions in Montana, where they operate.[23] As a result of all these claimed issues, Triangle

[10] *Supra* note 1.

[11] *See generally* Triangle Telephone Request; Triangle Telephone Supplemental Request.

[12] *Supra* note 1.

[13] *See generally* Triangle Communication Request; Triangle Communication Supplemental Request.

[14] *See generally* Triangle Telephone Request; Triangle Telephone Supplemental Request; Triangle Communication Request; Triangle Communication Supplemental Request.

[15] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[16] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[17] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[18] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1. Triangle Communication also explains that the delivery of "CBRS" equipment was delayed by approximately four months due to "manufacturing and development" issues. Triangle Communication Supplemental Request at 1.

[19] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[20] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[21] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[22] Triangle Telephone Supplemental Request at 2; Triangle Communication Supplemental Request at 2.

[23] Triangle Telephone Supplemental Request at 2; Triangle Communication Supplemental Request at 2.

Telephone requests a six-month extension of its term, to May 29, 2024, and Triangle Communication requests a six-month extension of its term, to July 13, 2024.[24]

III. DISCUSSION

8. For the reasons described below, and consistent with our prior findings as to similar extension requests,[25] we find that Petitioners have each established that supply chain issues have impacted them 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 required by Commission rule 1.50004(h)(2).[26] We therefore grant each Petitioner's extension request. To the extent Petitioners raise additional, independent bases in support of their requests, we find it unnecessary to address their merits in this Order.

9. We find that each Petitioner has made a sufficient showing that it has been unable to complete its removal, replacement, and disposal obligations by the end of its current term due to supply chain issues.[27] We agree that the delays that Petitioners encountered, including lead times of up to approximately 18 months to obtain key equipment, including electrical breakers, cabling, rectifiers and generators, arose from broader supply chain issues due to no fault of their own.[28] We acknowledge Petitioners' representations that these lead times were well in excess of what they would have been "before COVID" and that, in one case, lead times were increased "from a few months . . . to almost a year" after having placed an equipment order.[29] We also agree that these delays were further exacerbated by labor shortages that Petitioners faced as their employees were unable to work due to the pandemic and that these delays were amplified in view of the need for employees to work in proximity to each other to complete required activities.[30] Accordingly, we conclude that, due to supply chain issues, each Petitioner was unable to complete removal, replacement, and disposal by the end of its current removal, replacement, and disposal term.[31]

10. We also find that, based on the facts presented, each Petitioner bears no fault for being unable to comply with its removal, replacement, and disposal obligations by the end of its current term. The delays described by Petitioners are rooted in broader supply chain issues over which they have no control. Moreover, we find that Petitioners acted diligently in attempting to mitigate such delays by seeking to procure backordered equipment from other sources.[32] We find that Petitioners have each demonstrated that the delays are due to factors beyond their control.[33]

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[24] *See* Triangle Telephone Request at 1; Triangle Communication Request at 1.

[25] *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-875 (WCB Sept. 22, 2023) (granting an extension to Stealth Communications Services, LLC); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-938 (WCB Oct. 10, 2023) (granting extensions to WorldCell Solutions, LLC, Mediacom Communications Corporation, Virginia Everywhere, LLC, James Valley Cooperative Telephone Company, and NE Colorado Cellular, Inc. d/b/a Viaero Wireless); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1016 (WCB Oct. 27, 2023) (granting extensions to Point Broadband Fiber Holding, LLC and SI Wireless, LLC).

[26] 47 CFR § 1.50004(h)(2).

[27] *Id.*

[28] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[29] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[30] Triangle Telephone Supplemental Request at 1; Triangle Communication Supplemental Request at 1.

[31] 47 CFR § 1.50004(h)(2).

[32] Triangle Telephone Supplemental Request at 2; Triangle Communication Supplemental Request at 2.

11. Accordingly, for these reasons, we conclude that each Petitioner 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 each Petitioner'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 Triangle Telephone and Triangle Communication are each GRANTED.

13. IT IS FURTHER ORDERED that the removal, replacement, and disposal term for Triangle Telephone under 47 CFR § 1.50004(h)(2) IS EXTENDED to May 29, 2024.

14. IT IS FURTHER ORDERED that the removal, replacement, and disposal term for Triangle Communication under 47 CFR § 1.50004(h)(2) IS EXTENDED to July 13, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page)

[33] We note that granting each Petitioner its 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 each Petitioner 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).

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

In the Matter of	)	
	)	
Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System	)	PS Docket No. 15-94
	)	

ORDER

Adopted: November 28, 2023 Released: November 28, 2023

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Order*, the Public Safety and Homeland Security Bureau (Bureau) addresses the joint request filed by REC Networks (REC) and the National Association of Broadcasters (NAB) on November 14, 2023,[1] requesting an extension of time to comply with the requirement that Emergency Alert System (EAS) Participants prioritize the Common Alerting Protocol (CAP)-formatted version of an EAS message when it receives both a legacy version and a CAP-formatted version of the same alert.[2] EAS Participants must comply with this requirement by December 12, 2023.[3] REC and NAB explain that additional time is necessary to account for an unexpected delay in the delivery of a firmware update by an EAS equipment vendor. For the reasons discussed below, the Bureau grants the request to extend the compliance deadline by 90 days, i.e., until March 11, 2024, but only for those EAS Participants that are customers of this equipment vendor.

II. BACKGROUND

2. *Overview of the EAS.* The EAS is a national system used to disseminate public warnings of impeding emergencies over broadcast, cable, and satellite networks to consumers' radios, televisions, and other audio and video devices.[4] Both the Federal Communications Commission (Commission) and the Federal Emergency Management Agency (FEMA) jointly oversee the EAS. Authorized alert originators[5] may transmit EAS messages to EAS Participants (for distribution to the public) either over FEMA's Internet-based platform known as the Integrated Public Alert and Warning System (IPAWS) using the CAP format, or over the so-called "legacy" EAS distribution system, a broadcast-based process in which messages are transmitted via audio channels and relayed from one EAS Participant to another

[1] REC Networks (REC) and the National Association of Broadcasters (NAB) Request for Extension of Compliance Deadline, PS Docket No. 15-94 (filed Nov. 14, 2023) (Extension Request).

[2] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, FCC 22-75 (2022) (*2022 Part 11 Report and Order*).

[3] 47 CFR § 11.55(c)(2).

[4] *Id. See* 47 CFR § 11.2(b) (defining "EAS Participants").

[5] *See* 47 CFR § 11.31 (describing "EAS Protocol"); *see also* FEMA, *Alerting Originators*, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public-safety-officials/alerting-authorities#:~:text=An%20Alert%20Originator%20is%20an,composing%20and%20issuing%20the%20alert (last updated June 26, 2023).

throughout a geographic area.[6] EAS Participants typically receive legacy EAS messages by monitoring audio transmissions from other EAS Participants or other sources. EAS Participants receive IP-based messages transmitted over IPAWS by periodically checking an Internet-connected server (a process known as "polling") for messages from alert originators in CAP format.[7] Alert messages transmitted over the legacy EAS are encoded in the Specific Area Message Encoding (SAME) protocol format (developed by the National Weather Service for weather alerts) and consist of audible tones that convey header codes, a two-tone attention signal, an audio stream (typically no longer than two minutes of a person's voice), and an end-of-message signal.[8] The header codes identify the type of event covered by the alert, the originator of the message, and the relevant times, locations, and geographic areas. CAP-formatted alerts disseminated over the IPAWS platform can convey considerably more information than legacy EAS-based alerts in the SAME format. For example, CAP alert messages may include detailed directions on how the public should respond to the specific emergency, information in languages other than English, picture and video files, and URLs. This information cannot be relayed when CAP alerts are converted into legacy alerts for distribution over the legacy EAS;[9] all data other than the header codes are lost in this conversion process.

3. On September 30, 2022, the Commission took measures to promote clarity and accessibility of alerts and to maintain public confidence in the EAS as a reliable source of emergency information.[10] Among other actions, the Commission adopted new rules to increase the proportion of alerts distributed to the public that include enhanced information.[11] With a few enumerated exceptions, the Commission requires EAS Participants, upon receiving a legacy EAS alert message, to check whether a CAP version of the same alert is available by polling the IPAWS feed for CAP-formatted EAS messages.[12] If a CAP version is available, the EAS Participants must transmit the CAP version rather than the legacy version. EAS Participants may not transmit an alert in legacy format until at least 10 seconds after receiving its header codes unless they confirm by polling the IPAWS feed that no matching

[6] In the legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant's local audience, but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert the sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives and, if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in turn, is received not only by that entity's audience, but also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and have delivered it to the public.

[7] *See* 47 CFR 11.52(e)(2); Federal Emergency Management Agency (FEMA), *EAS Participants*, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/broadcasters-wireless/emergency-alert-system-participants (last updated July 28, 2021).

[8] *See* 47 CFR § 11.31.

[9] For example, if enhanced text is included in a CAP alert, a video service EAS Participant (such as a TV broadcaster or cable system) that receives it will generate a visual message that includes not only the header code data (as is the case with legacy EAS alerts) but also that enhanced text, which might include remedial actions to avoid hazards potentially posed by the emergency event.

[10] *2022 Part 11 Report and Order* at 1-2, paras. 1-3 and at 4-5, para. 10.

[11] *2022 Part 11 Report and Order* at 6, para. 14.

[12] This requirement applies only to valid alert messages relating to event categories and locations for which the EAS Participant normally transmits such alerts pursuant to the State EAS Plan. The requirement does not apply to national emergency messages (i.e., alerts with the EAN event code), messages associated with national tests of the EAS (bearing the NPT code), or required weekly test messages (bearing the RWT code).

CAP version of the message is available.[13] EAS Participants must comply with this requirement, codified at Section 11.55(c)(2) of the Commission's rules, by December 12, 2023.[14]

4. *REC and NAB Joint Extension Request.* REC Networks (REC)[15] and the National Association of Broadcasters (NAB)[16] submitted a joint request for a 90-day extension of the deadline to comply with the CAP polling requirement. REC and NAB point out that one of the major EAS encoder-decoder manufacturers, Sage Alerting Systems (Sage), will not be able to release the firmware update necessary to make the Commission's promulgated changes until shortly before the December compliance deadline.[17] REC and NAB conclude that "a considerable number of EAS Participants will be unable to implement the firmware update by December 12th due to the delayed release of this manufacturer's firmware update" and state "it is already too late for many EAS Participants to meet the current deadline."[18] They further argue this issue is "exacerbated" since multiple EAS Participants must update their firmware by the same deadline which is "further complicated by the upcoming holidays."[19] Referencing Section 1.3 of the Commission's rules, the Extension Request argues that the circumstances present good cause for a waiver and request an additional 90 days to comply with the CAP prioritization requirement.[20] REC and NAB conclude that this extension is justified due to "the unexpected delay of the necessary firmware update—beyond the control of EAS Participants" and state that this extension will "serve the public interest" to ensure the "proper update of EAS equipment by qualified personnel."[21] Finally, the Petition concludes that this extension "will not reduce EAS functionality because EAS participants will continue to be able to process EAS messages as they do today, without any disruption or impairment."[22]

III. DISCUSSION

5. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."[23] The Commission may find good cause to extend a waiver "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[24] Based on the unique circumstances presented here, we conclude there is good

[13] *2022 Part 11 Report and Order* at 5, para. 11.

[14] *See* 47 CFR § 11.55(c)(2).

[15] REC Networks describes itself as an unincorporated entity that provides regulatory advocacy before the Federal Communications Commission focusing on small radio stations, especially the Low Power FM (LPFM) radio service as well as on initiatives that will help radio remain relevant through diverse access to the airwaves and fostering innovation in the medium. REC is also a FEMA approved developer of products that interact with the IPAWS-OPEN system. Extension Request at note 1.

[16] The National Association of Broadcasters (NAB) describes itself as a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts. Extension Request at n. 2.

[17] The Extension Request identifies the equipment vendor at issue as Sage Alerting Systems (Sage) in a footnote. *See* Extension Request at 2, note 9.

[18] Extension Request at 2; *see also* 2, note 9.

[19] Extension Request at 2-3.

[20] Extension Request at 1 and 3.

[21] Extension Request at 3.

[22] *Id*.

[23] 47 CFR § 1.3.

[24] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

cause to grant the Extension Request to the extent that we afford EAS Participants that are customers of Sage Alerting Systems an additional 90 days to comply with the requirement to prioritize CAP messages.

6. We are persuaded that Sage's delay in delivering the necessary update is beyond the control of EAS Participants and will impede its customers' ability to meet the December 12, 2023 deadline.[25] As of November 14, 2023 (the date on which REC and NAB filed this Extension Request), Sage had not yet released the necessary update.[26] The Extension Request observes that Sage serves "a significant market share of both low power and full-power FM stations" as well as "numerous television and multiple video programming distributor EAS Participants."[27] The Extension Request observes that "[m]any radio and television stations, especially low power and small full-power stations" rely on contract engineers, but that "in many areas, there are few such engineers qualified to ensure the proper implementation of this firmware update," such that "it would be difficult for stations to obtain the necessary service by the current deadline," particularly considering that "hundreds, if not thousands, of EAS Participants must update their firmware by the same deadline."[28] The Bureau recognizes that multiple parties requesting simultaneous updates to their systems – particularly where "some radio and television groups have dozens or even hundreds of EAS boxes that must be updated, including boxes that are located at remote locations" – will account for a high volume of urgent requests, making it impracticable for all EAS Participants to comply by the original timeline.[29] We also agree that difficulty in scheduling these services may be compounded by the upcoming holiday season.[30] Our decision also takes into consideration that the public will continue to receive EAS messages throughout this extension period; this additional time only affects EAS Participants' ability to prioritize the delivery of CAP-based messages.

7. We deny, however, the Extension Request to the extent it requests a waiver on behalf of all EAS Participants. We provide an additional 90 days for compliance with Section 11.55(c)(2) only to those EAS Participants that are customers of Sage and thus affected by the delay in delivery of the firmware update. The Extension Request does not provide a basis for granting a blanket waiver to all EAS Participants, nor do we believe it would serve the public interest to extend the deadline where circumstances do not warrant it. Accordingly, we expect all other EAS Participants to comply with the December 12, 2023 deadline.[31]

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and section 1.3 of the Commission's rules, 47 CFR § 1.3, section 11.55(c)(2) of the Commission's rules, 47 CFR § 11.55(c)(2), IS WAIVED, to allow those EAS Participants that are Sage Alert Systems customers an additional 90 days from the Order's original deadline of December 12, 2023, to comply with the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED IN PART to afford those EAS Participants that are customers of Sage Alerting Systems an

[25] *See* Extension Request at 1-2; *see also* Extension Request at 2, note 9.

[26] *See* Extension Request at 2, note 9; *see also* McLane, Paul, *Sage EAS Firmware Update Is Still Pending,* Radio World (Nov. 7, 2023), https://www.radioworld.com/news-and-business/headlines/sage-eas-firmware-update-is-still-pending.

[27] Extension Request at 2.

[28] *Id.*

[29] *Id*.

[30] *Id.*

[31] EAS Participants who are not covered by the scope of this decision and who may need additional time should file individual requests for waiver, which will be considered on a case-by-case basis.

additional 90 days to comply (or until March 11, 2024).

9. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.[32]

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

[32] *See* 47 CFR §§ 0.191 and 0.392.

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

In the Matter of	)	
	)	
Peace Communications, LLC	)	File No.: EB-IHD-20-00031697
	)	NAL/Account No.: 202132080030
	)	FRN: 0019189331

FORFEITURE ORDER

Adopted: November 29, 2023 **Released: November 29, 2023**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Communications Commission (Commission or FCC) requires telecommunications service providers and certain telecommunications providers (collectively, service providers) to file accurate Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC) by each filing deadline. Timely and accurate Worksheet filings are necessary so that administrators of the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), the North American Numbering Plan (NANP), and federal regulatory fees can assess fair and accurate payment requirements owed by each service provider for these cost recovery obligations, which the Commission has implemented under the Communications Act of 1934, as amended (Act). The failure of service providers to file timely, complete, and accurate Worksheets with USAC undermines the effectiveness of the Commission's efforts to maintain these important federal cost recovery requirements. In this case, the Enforcement Bureau (Bureau) issued a *Notice of Apparent Liability for Forfeiture* (*NAL*) for $50,000 against Peace Communications, LLC (Peace Communications or Company) for apparently failing to file a required Worksheet with USAC by August 1, 2020.[1] Peace Communications filed a response to the *NAL* on August 27, 2021, and requested cancellation or reduction of the proposed forfeiture.[2] After reviewing the record in this matter, and for the reasons discussed below, the Bureau finds that it is not appropriate to cancel or reduce the forfeiture proposed in the *NAL* and affirms the $50,000 forfeiture.

II. BACKGROUND

2. *Legal Framework.* Service providers are required to file annually an FCC Form 499-A, also known as the Annual Worksheet,[3] and with certain exceptions, to file quarterly an FCC Form 499-Q,

[1] *Peace Communications, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 11388 (EB 2021) (*NAL* or *Peace Commc'ns NAL*). The Bureau found that Peace Communications apparently failed repeatedly to file a total of 14 Worksheets between February 1, 2018 and August 1, 2020. Only the August 1, 2020 filing violation was within the one-year statute of limitations under 47 U.S.C. § 503(b)(6)(B). *Id*. at 11388, 11394, paras. 2, 16.

[2] Response to Notice of Apparent Liability for Forfeiture from Kristopher E. Twomey, Counsel to Peace Communications, LLC (Aug. 27, 2021) (on file in EB-IHD-20-00031697) (NAL Response).

[3] *See, e.g.*, 47 CFR § 54.711; *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1373 (WCB 2020) (*2020 Annual Worksheet Instructions*); *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6638-39, para. 6 (2012) (*Telseven NAL*), *forfeiture issued*, Forfeiture Order, 31 FCC Rcd 1629 (2016).

also known as the Quarterly Worksheet.[4] USAC uses revenue projections submitted in the Quarterly Worksheets to determine each service provider's monthly universal service contribution obligation.[5] A service provider must timely file Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year, and Annual Worksheets by April 1 of each year.[6] The Commission's rules explicitly warn service providers that failure to file timely Worksheets or submit timely USF payments potentially subjects them to enforcement action.[7]

3. *Factual Background.* The underlying facts and circumstances for this *Forfeiture Order* are set forth in the *NAL* and need not be repeated at length here.[8] Peace Communications is a competitive local exchange carrier based in Chattanooga, Tennessee.[9] The Bureau released the *NAL* on July 29, 2021, proposing the $50,000 forfeiture against Peace Communications for the Company's violation of section 54.711(a) of the Commission's rules by willfully failing to file a Quarterly Worksheet by August 1, 2020.[10] On August 27, 2021, Peace Communications filed its response to the *NAL*, seeking to cancel or reduce the proposed forfeiture.[11] Peace Communications did not dispute the facts underlying the violations identified in the *NAL*. Rather, the Company contends its violations were not intentional, the Company has a history of regulatory compliance, the Company took action to correct the violations prior to the Commission's investigation, the Company is now fully compliant, and the proposed forfeiture is excessive and contrary to the public interest.[12] As discussed below, we find that these arguments do not support the Company's request to cancel or reduce the proposed forfeiture.

III. DISCUSSION

4. The Bureau proposed a forfeiture in this case pursuant to section 503(b) of the Act, section 1.80 of the Commission's rules, and the Commission's *1997 Forfeiture Policy Statement*.[13] Under section 503(b)(2)(E) of the Act, the Bureau considered 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] As discussed below, we have fully considered the Company's response to the *NAL* and find the Company's arguments unpersuasive. We therefore affirm the $50,000 forfeiture proposed in the *NAL*.

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[4] *See, e.g.*, 47 CFR § 54.711; *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1373; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6.

[5] Individual universal service contribution amounts that are based upon Quarterly Worksheet filings are subject to annual true-ups based on Annual Worksheet filings. *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).

[6] *See, e.g.*, *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1373.

[7] *See* 47 CFR § 54.713(c).

[8] *See Peace Commc'ns NAL*, *supra* note 1, at 11391-92, paras. 6-9.

[9] Response to Letter of Inquiry from Steve Blankenship, Chief Financial Officer, Peace Communications, LLC, to Conor P. O'Donovan, Attorney Advisor, FCC Enforcement Bureau, at 2-3 (Mar. 17, 2021) (on file in EB-IHD-20-00031697) (LOI Response).

[10] *See* 47 CFR § 54.711(a); *Peace Commc'ns NAL*, *supra* note 1, at 11388.

[11] *See* NAL Response, *supra* note 2.

[12] *See id*. at 2-5.

[13] 47 U.S.C. § 503(b); 47 CFR § 1.80; *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) (*1997 Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[14] 47 U.S.C. § 503(b)(2)(E).

A. Peace Communications' Violation Was Willful

5. Peace Communications seeks to cancel or reduce the proposed forfeiture because it "did not intentionally intend to skirt its [Quarterly Worksheet] filing obligations."[15] The Commission need not find an enforcement target intended to commit a rule violation in order to impose a forfeiture under section 503 of the Act.[16] Under section 503(b)(1) of the Act, any person who is determined by the Commission to have "willfully or repeatedly failed to comply with any provisions of [the Act] or any rule, regulation, or order issued by the Commission . . . shall be liable to the United States for a forfeiture penalty."[17] 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.[18] The legislative history of section 312(f)(1) of the Act clarifies that this definition applies to both sections 312 and 503(b) of the Act,[19] and the Commission has applied this interpretation of the term "willful" to section 503(b).[20]

6. The Company has an affirmative obligation to know the regulatory requirements of providing federally regulated services, including its obligation to file Quarterly and Annual Worksheets.[21] In this case, the record demonstrates that the Company was aware of its Worksheet filing obligations prior to its failure to file the Quarterly Worksheet due by August 1, 2020.[22] Peace Communications filed Annual Worksheets due between 2009 and 2017, and Quarterly Worksheets due between May 2012 and May 2017.[23] Moreover, USAC repeatedly contacted Peace Communications concerning the Company's missing Annual and Quarterly Worksheet filings that were due between February 1, 2018 and August 1, 2020.[24] Nonetheless, Peace Communications willfully and repeatedly failed to file any of the 14 required Worksheets due during the February 2018 to August 2020 period.

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[15] NAL Response, *supra* note 2, at 4.

[16] *See, e.g.*, *Unipoint Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751 (2012), Forfeiture Order, 29 FCC Rcd 1633, 1643, para. 21 (2014) (*Unipoint Forfeiture Order*).

[17] *See* 47 U.S.C. § 503(b)(1); *see also* 47 CFR § 1.80(a)(1).

[18] 47 U.S.C. § 312(f)(1).

[19] H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[20] *See, e.g.*, *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting Co.*). The Commission can also assess forfeitures for violations that are merely repeated, and not willful. *See id.* "Repeated" means that the act was committed or omitted more than once, or lasts more than one day. 47 U.S.C. § 312(f)(2); *see also Southern California Broadcasting Co.,* 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.,* Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001), Forfeiture Order, 17 FCC Rcd 22626 (2002).

[21] *See, e.g.*, *Air-Tel, LLC*, Forfeiture Order, 36 FCC Rcd 8867, 8871, para. 12 & n.37 (2021) (*Air-Tel Forfeiture Order*); *Simple Network, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 4525, 4526, para. 5 & n.13 (EB 2015) (*Simple Network NAL*), Forfeiture Order, 31 FCC Rcd 11704 (EB 2016) (*Simple Network Forfeiture Order*); *1997 Forfeiture Policy Statement*, *supra* note 13, at 17099, para. 22.

[22] The Company "acknowledges the importance of carriers reporting their estimated USF revenues [as] demonstrated by Peace's routine filing of all required USAC reports due from 2009-2017." NAL Response *supra* note 2, at 2.

[23] *See* Universal Service Administrative Company, *E-file,* https://efile.universalservice.org/EFileContributor/Admin/Search (last visited Nov. 28, 2023).

[24] For example, USAC contacted Peace Communications' identified point of contact by e-mail on February 8, June 14, November 4, December 12, 2019, March 1, April 9, May 7, and August 5, 2020, and by telephone on May 19 and August 17, 2020. Letter from Tracey Pilsch, Manager of Contributor Operations, 499 Team, Finance, Universal Services Administrative Company to Conor O'Donovan, Attorney-Advisor, Investigations & Hearings Division, FCC Enforcement Bureau at 1 (July 26, 2021) (on file in EB-IHD-20-00031697) (USAC July 26, 2021 Letter).

7. The Company claims it was unable to file its Worksheets because it had difficulties with its billing system involving third-party vendors.[25] If this was the case, the proper course of action would have been to seek a waiver of the filing deadlines to obtain extensions and not to ignore major regulatory requirements repeatedly.[26] Moreover, when USAC contacted Peace Communications on multiple occasions to remind the Company of the Worksheet filing requirements, Peace Communications did not raise with USAC a need for filing extensions due to billing system issues.[27] Instead, the Company simply did not file the required Worksheets for two and a half years.

8. The Company also claims that based on USAC's invoices, Peace Communications assumed it was *de minimis* and was exempt from filing Quarterly Worksheets.[28] The Company's assumption based on USAC invoices was misplaced. In order for USAC to be able to determine whether a service provider is *de minimis*, the service provider must file revenue information in the Annual Worksheet.[29] Because the Company did not file its Annual Worksheets for 2018 through 2020, Peace Communications was aware that USAC did not have the revenue information needed to determine whether Peace was *de minimis*, and thus USAC could not invoice the Company for USF contributions. Peace Communications, moreover, has an affirmative obligation to ensure it complies with its federal regulatory obligations, and to keep abreast of whether it meets the *de minimis* threshold.[30] USAC; the administrators of the TRS Fund, LNP, and NANP; and the Commission rely on the Worksheets service providers file to determine liability for, and subsequent billing and collection of, payments for important federal regulatory cost recovery mechanisms implemented under the Act.[31] Service providers that fail to file Worksheets, and thus fail to contribute fully and on time to the USF, TRS, LNP, NANP, and federal

[25] *See* NAL Response, *supra* note 2, at 2-4.

[26] *See* 47 CFR § 1.3 (permitting waiver of FCC rules for "good cause shown"). The Commission does not routinely grant waivers, including a waiver of a filing deadline. *See NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (in order to waive a strict filing deadline, a service provider "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 v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("An applicant for waiver faces a high hurdle even at the starting gate."). Accordingly, Peace Communications should have requested a waiver sufficiently far in advance of the relevant deadlines to permit alternative arrangements in case the requested relief was denied. *See NetworkIP*, 548 F.3d at 127 ("procrastination plus the universal tendency for things to go wrong (Murphy's Law)—at the worst possible moment (Finagle's Corollary)—is not a 'special circumstance'" that justifies a waiver).

[27] *See* USAC July 26, 2021 Letter, at 1.

[28] *See* NAL Response, *supra* note 2, at 2. Under the Commission's rules, *de minimis* service providers are not required to file Quarterly Worksheets, but they are required to file Annual Worksheets. *See* 47 CFR § 54.708. Peace asserts that missing the deadline for Annual Worksheets would cause it "simply [to] face $100/month fines from USAC." NAL Response, *supra* note 2, at 3. This assertion is incorrect. As the Commission's rules make clear, in addition to fees imposed by USAC, delinquent contributors can face enforcement action—including the assessment of forfeiture penalties. *See* 47 CFR § 54.713(c) (stating that late filers of Worksheets could not only be assessed remedial charges by USAC and additional administrative charges, but that "[t]he Commission may also pursue enforcement action against delinquent contributors and late filers[.]").

[29] *See* 47 CFR § 54.708 ("If a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a contribution . . . ."). By not filing revenue information in the 2018 through 2020 Annual Worksheets on time, Peace prevented USAC from determining whether Peace owed more than $10,000 for each of these years.

[30] *See, e.g.*, *Air-Tel Forfeiture Order*, *supra* note 21, at 8871, para. 12; *Simple Network NAL, supra* note 21, at 4526, para. 5 & n.13; *1997 Forfeiture Policy Statement*, *supra* note 13, at 17099, para. 22.

[31] *See Peace Commc'ns NAL*, *supra* note 1, at 11388-90, paras. 3-5. The effective administration of the USF, *see* 47 CFR § 54.711, TRS, *see id.* § 64.604, LNP, *see id.* § 52.32, NANP, *see id.* § 52.17, and federal regulatory fees, *see id.* §§ 1.1154, 1.1157, requires full compliance by service providers with the Worksheet filing requirements.

regulatory fees, obtain an unfair competitive advantage over companies that comply with the filing and payment requirements of the Act and the Commission's rules.[32] A lack of awareness as to its affirmative regulatory obligations or its evolving status under the *de minimis* exception does not obviate the Company's federal filing and payment requirements.[33] Moreover, the Company's assertion that it assumed it did not need to file Quarterly Worksheets strains credulity as USAC repeatedly contacted the Company seeking the missing Worksheets.[34] Peace Communications' claim that it assumed the Company did not need to file Quarterly Worksheets is therefore unpersuasive.

9. Peace Communications indicates that the Company was aware of its non-compliance with the Commission's rules in 2020 but chose to address other state regulatory compliance issues.[35] Peace Communications is obligated to comply with the Commission's Worksheet filing rules, whether or not the Company is complying with other regulatory obligations. We find that Peace Communications willfully failed to file the August 1, 2020 Quarterly Worksheet, and under section 503(b)(1) of the Act, is liable for a forfeiture penalty. The Company's excuses for failing to file the Worksheet do not warrant a cancellation or downward adjustment of the $50,000 forfeiture proposed in the NAL.[36]

B. Peace Communications' History of Compliance with the Worksheet Filing Obligations Does Not Justify Canceling or Reducing the Forfeiture

10. Peace Communications argues that the forfeiture should be canceled or reduced because the Company "has a long history of complete federal and state regulatory compliance beginning in 2008."[37] While Peace Communications timely filed most of its Annual Worksheets prior to 2017, the record also shows substantial non-compliance with the Worksheet filing requirements. The Company filed its 2011 Annual Worksheet approximately one month late, its 2017 Annual Worksheet over two months late, its 2018 Annual Worksheet nearly three years late, its 2019 Annual Worksheet nearly two years late, and its 2020 Annual Worksheet over 10 months late.[38] The Company failed to file 11 Quarterly Worksheets due between 2018 and 2020, or nearly all of its Quarterly Worksheets due in this three-year period.[39] Given this more recent history of missing filing deadlines for Annual Worksheets and

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[32] *See, e.g.*, *Telseven NAL*, *supra* note 3, at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), *consent decree adopted,* Order, 29 FCC Rcd 2593 (2014); *Local Phone Services, Inc*., Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006) (*LPSI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008).

[33] *See, e.g.*, *Air-Tel Forfeiture Order*, *supra* note 21, at 8871, para. 12; *Simple Network NAL, supra* note 21, at 4526, para. 5 & n.13; *1997 Forfeiture Policy Statement*, *supra* note 13, at 17099, para. 22.

[34] *See* USAC July 26, 2021 Letter, *supra* note 24, at 1.

[35] *See* NAL Response, *supra* note 2, at 3 ("Peace knew it had some compliance issues but felt the pressing ones were more state tax-related").

[36] *See, e.g.*, *PTT Phone Cards, Inc*., Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11531 (2014) (*PTT NAL*), Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 & n.23 (2015) (*PTT Forfeiture Order*) (citing *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999) ("'inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.'") (quoting *Southern California Broadcasting Co.*, 6 FCC Rcd at 4387, para. 3)); *Cascade Access, LLC*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (EB 2013), *recon. denied*, 30 FCC Rcd 14018 (EB 2015) (rejecting argument that forfeiture should be reduced because the violation was unintentional); *PJB Commc'ns of Virg., Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088, para. 5 (1992) (inadvertent violations are "willful" as "[a]ll that is necessary is that the licensee knew it was doing the act in question").

[37] *See* NAL Response, *supra* note 2, at 1-2.

[38] *See* Universal Service Administrative Company, *E-file,* https://efile.universalservice.org/EFileContributor/Admin/Search (last visited Nov. 28, 2023).

[39] *See id.* On February 8, 2021, the Company attempted to file six Quarterly Worksheets, which were due in May, August and November of 2019 and February, May and August of 2020, and USAC rejected these filings. *See id*.

failing to file Quarterly worksheets entirely, we find there is no basis to cancel or reduce the forfeiture based on Peace Communications' compliance history.

C. The Company's Actions to Come into Compliance with the Filing Requirements Do Not Justify Canceling or Reducing the Forfeiture

11. Peace Communications argues that the forfeiture should be canceled or reduced because the Company had "proactively taken steps to solve the problems prior to the issuance of the Letter of Inquiry" and the Company "is now compliant with all reporting obligations for all state and federal agencies."[40] However, the Commission requires regulated entities "to promptly take corrective action when violations are brought to their attention."[41] Although the Company failed to file required Annual and Quarterly Worksheets beginning on February 1, 2018, and USAC repeatedly contacted the Company requesting the filings,[42] Peace Communications did not begin complying with the filing requirements again until February 4, 2021.[43] Peace Communications claimed that the Company needed approximately three years beginning in 2018 to convert the Company's billing system, and the conversion prevented Peace Communications from complying with the Worksheet filing requirements.[44] We find this explanation unpersuasive, particularly when the Company did not respond to repeated inquiries from USAC concerning the missing Worksheet filings during this time period, and when the Company did not seek a temporary waiver of the Worksheet filing requirements under the Commission's rules.[45] Under these circumstances, we find that the Company's actions before the Bureau issued the Letter of Inquiry do not constitute a "good faith" attempt to comply, and thus do not warrant cancellation or a reduction of the forfeiture amount under section 1.80(b)(1) of the Commission's rules.[46]

D. The Amount of the Assessed Forfeiture is Appropriate

12. The $50,000 forfeiture proposed in the *NAL* is based on the factors enumerated in section 503(b)(2)(E) of the Act, section 1.80 of the Commission's rules, and the *1997 Forfeiture Policy Statement*.[47] The forfeiture is also consistent with established Commission precedent concerning forfeitures for violations of filing requirements under section 54.711 of the Commission's rules.[48] The timely filing of accurate Worksheets is crucial to implementing the Congressional directive to ensure the

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Quarterly Worksheets are used to report projected revenue and thus there is a 45-day deadline to submit revised or late Quarterly Worksheet filings. *See, e.g.*, Universal Service Administrative Company, *When to File,* https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/ (last visited Nov. 28, 2023).

[40] *See* NAL Response, *supra* note 2, at 1-2, 4.

[41] *PTT Forfeiture Order*, 30 FCC Rcd at 14705, para. 13 (quoting *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875, para. 26 (2002)).

[42] *See* USAC July 26, 2021 Letter, *supra* note 24, at 1.

[43] *See* Universal Service Administrative Company, *E-file*, https://efile.universalservice.org/EFileContributor/Admin/Search (last visited Nov. 28, 2023).

[44] *See* NAL Response, *supra* note 2, at 2-4.

[45] *See* 47 CFR § 1.3; USAC July 26, 2021 Letter, *supra* note 24, at 1.

[46] *See* 47 CFR § 1.80(b)(11), Tbl. 3.

[47] *See* 47 U.S.C. § 503(b)(2)(E) (in assessing a forfeiture the Commission considers 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."); 47 CFR § 1.80; *1997 Forfeiture Policy Statement*, *supra* note 13.

[48] *See, e.g.*, *PTT NAL*, *supra* note 36, at 11543, para. 30; *Unipoint Forfeiture Order*, *supra* note 16, at 1643, para. 32; *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19905, para. 32 (2003) (*Globcom NAL*), Order of Forfeiture, 21 FCC Rcd 4710 (2006).

equitable and non-discriminatory distribution of universal service costs among all service providers.[49] The effects on the administration of TRS, LNP, NANP, and on the Commission's assessment of federal regulatory fees are similar. A service provider that fails to file timely and accurate Worksheets can evade its federal obligations to contribute fully toward the vital programs linked to the reporting obligations.[50] As a consequence of these filing failures, other service providers carry an unfair burden of funding the USF and the other federal regulatory programs arising under the Act.[51] Delinquent service providers obtain an unfair competitive advantage over service providers that comply with the reporting provisions of the Commission's rules, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments on time.[52] The Commission has therefore proposed a forfeiture of $50,000 for each failure of a service provider to file an accurate Annual or Quarterly Worksheet by each filing deadline.[53]

13. Peace Communications argues that the fine is "egregious . . . excessive and arbitrary" and "does not serve the public interest."[54] The Company claims that its failure to file Worksheets has had a minimal impact of the USF.[55] The Bureau rejects this position and warns Peace Communications and all service providers against adopting such a dismissive approach to their federal regulatory filing and contribution obligations. The Commission's rules provide that *de minimis* service providers, which would have annual USF contributions of less than $10,000, need not contribute to the USF or file Quarterly Worksheets.[56] Peace Communications was not a *de minimis* service provider when the Company failed to file Worksheets between February 1, 2018 and August 1, 2020.[57] By failing to file the Company's Worksheets during this period, Peace Communications prevented USAC from invoicing the Company for USF contributions.[58] During the period the Company was not filing its Worksheets and not paying its share of contributions for the USF, Peace Communications' competitors were submitting their Worksheet filings and paying their USF contributions on time, and this gave Peace Communications an unfair advantage over its competitors.[59] We reject the claim that Peace Communications' Worksheet filing failures had a minimal impact on the adminstration of the USF.

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[49] *See* 47 U.S.C. § 254(d).

[50] *See, e.g.*, *Telseven NAL*, *supra* note 3, at 6638-39, para. 6; *Globalcom NAL*, *supra* note 32, at 3484, para. 12; *LPSI NAL*, *supra* note 32, at 9977-78, para. 9.

[51] *See, e.g.*, *Telseven NAL*, *supra* note 3, at 6638-39, para. 6; *Globalcom NAL*, *supra* note 32, at 3484, para. 12; *LPSI NAL*, *supra* note 32, at 9977-78, para. 9.

[52] *See, e.g.*, *Telseven NAL*, *supra* note 3, at 6638-39, 6646-47 paras. 6, 23; *Globalcom NAL*, *supra* note 32, at 3484, 3485, paras. 12, 15; *LPSI NAL*, *supra* note 32, at 9977-78, 9979 paras. 9, 15.

[53] *See, e.g.*, *PTT NAL*, *supra* note 36, at 11543, para. 30; *Unipoint Forfeiture Order*, *supra* note 16, at 1643, para. 32; *Globcom NAL*, 18 FCC Rcd at 19905, para. 32. After the NAL was released, the Commission provided the industry with notice of *higher* forfeitures for violations of section 54.711 of the Commission's rules when the violations are repeated. *See, e.g.*, *PayG, LLC*, Notice of Apparent Liability for Forfeiture, FCC 22-69, paras. 38, 41 (Sept. 14, 2022) ("Future enforcement items for the failure to file timely or accurate Worksheets could include upward adjustments up to the statutory maximum forfeiture authorized under section 503(b)(2) of the Act.") (forfeiture paid); *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-303, para. 26 (EB Apr. 1, 2022) (providing notice of future upward adjustments of 100 percent or more of the $50,000 forfeiture for repeated or continuous violations of section 54.711(a) of the Commission's rules) (forfeiture paid).

[54] NAL Response, *supra* note 2, at 4-5.

[55] *Id*.

[56] *See* 47 CFR § 54.708.

[57] *See* USAC July 26, 2021 Letter, *supra* note 24, at 1.

[58] *See id.*

[59] *See, e.g.*, *UnityComm, Inc.*, Forfeiture Order, 32 FCC Rcd 10391, 10393, para. 6 (EB 2017); *Simple Network Forfeiture Order*, *supra* note 21, at 11705, para. 3; *ADMA Telecom, Inc*., Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 846-47, para. 17 (2009), Forfeiture Order, 26 FCC Rcd 4152 (2011).

14. In support of its claim that the $50,000 forfeiture is excessive, Peace Communications compares the forfeiture to citations issued in June and July of 2021 to internet service providers that failed to submit FCC Form 477 filings.[60] Under section 503(b)(5) of the Act, prior to proposing forfeitures for entities that violate the Act or the Commission's rules, the Commission must issue a citation if the entities do not hold an FCC license, permit, certificate, or other authorization.[61] As a competitive local exchange carrier, Peace Communication holds a Commission authorization, and the Commission did not need to issue a citation under section 503(b)(5) in order to propose a forfeiture.[62]

15. Peace Communications argues that the forfeiture does not serve the public interest because it would limit the Company's ability to provide discounts to non-profit customers and donate resources to schools and victims of tornadoes.[63] The Company's discounts and charitable contributions are commendable; however, they are irrelevant to the amount of the forfeiture assessed in this case. An entity's service to its community is not one of the criteria the Commission considers when determining whether a downward forfeiture adjustment is appropriate.[64]

16. In conclusion, the Company's arguments to cancel or reduce the forfeiture are unpersuasive. The Bureau affirms the $50,000 forfeiture proposed in the *NAL*.

IV. ORDERING CLAUSES

17. 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, Peace Communications, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fifty-thousand dollars ($50,000) for willfully violating section 54.711(a) of the Commission's rules, 47 CFR § 54.711(a).

18. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order. 47 CFR § 1.80. Peace Communications shall send electronic notification of payment to Patrick McGrath at Patrick.McGrath@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and David Janas at David.Janas@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 section 504(a) of the Act. 47 U.S.C. § 504(a).

19. In order for Peace Communications LLC to pay the proposed forfeiture, Peace Communications LLC shall notify Patrick McGrath at Patrick.McGrath@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and David Janas at David.Janas@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. 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

[60] NAL Response, *supra* note 2, at 4-5 (citing *New Visions Commc'ns, Inc.*, Citation and Order, 36 FCC Rcd 10873 (EB 2021); *Taneynet Broadband, Inc.*, Citation and Order, 36 FCC Rcd 10868 (EB, IHD 2021); *CNS Internet Servs.*, Citation and Order, 36 FCC Rcd 9857 (EB 2021)).

[61] *See* 47 U.S.C. § 503(b)(5). The Commission must also provide the violator a reasonable opportunity to respond to the citation, and can only impose a forfeiture if the violator subsequently engages in conduct described in the citation. *See id.*

[62] *See* 47 CFR § 63.01(a) ("Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line . . . .").

[63] *See* NAL Response, *supra* note 2, at 5.

[64] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *1997 Forfeiture Policy Statement*, *supra* note 13.

forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[65]

- 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[66] or printed CORES form[67] 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).[68] 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 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" 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 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 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 the authorization to accept ACH transactions.

20. 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, DC 20554. 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.

[65] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[66] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fee-remittance-advice-form-159.

[67] 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.

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

21. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class and certified mail, return receipt requested, to Kristopher E. Twomey, Esq., Counsel to Peace Communications, LLC, 1725 I Street, NW, Suite 300, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Request for Waiver by Lower Yukon (Alaska) School District Mountain Village, AK	)))	Application Nos. ECF202115135 and ECF202207603
	)	
Request for Waiver by Northwest Arctic Borough School District and OTZ Remote Villages Home Internet Support Kotzebue, AK	))))	Application Nos. ECF202103608 and ECF202200110
	)	
Establishing Emergency Connectivity Fund to Close the Homework Gap	))	WC Docket No. 21-93

ORDER

Adopted: November 29, 2023 **Released: November 29, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the two Requests for Waiver filed by Lower Yukon School District and Northwest Arctic Borough School District and OTZ Remote Villages Home Internet Support (collectively, the Petitioners).[1] Located in remote, rural Alaska, accessible only by plane or boat, these two school districts requested funding from the Emergency Connectivity Fund (ECF) program in accordance with program rules. Due in part to delays in the approval of their first window funding requests, which resulted in delays in installation and the start of services, both school districts have been left with unspent ECF commitments and seek a waiver of the rules in order to use those funding commitments to extend the recurring services provided to students and school staff in their school districts. Accordingly, and due to the unique circumstances described in the petitions and below, we grant the Petitioners' requests and waive section 54.1710(b) of the Commission's rules. We direct the Universal Service Administrative Company (USAC) to implement the requested service substitutions and extend any necessary deadlines for all the relevant funding requests, as discussed further below.

II. BACKGROUND

2. As part of the American Rescue Plan Act of 2021 (Act), Congress appropriated $7.171 billion and directed the Commission to promulgate rules for distributing funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and/or advanced telecommunications and information services for use by students, school staff, and library patrons at

[1] Request for Waiver by Lower Yukon School District, WC Docket No. 21-93 (filed June 1, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/106012267114108 (Lower Yukon Request for Waiver); Request for Waiver by Northwest Arctic Borough School District and OTZ Remote Villages Home Internet Support, WC Docket No. 21-93 (filed July 5, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1070544415737 (Northwest Arctic Request for Waiver).

locations that include locations other than a school or library.[2] On May 10, 2021, the Commission adopted the *Emergency Connectivity Fund Report and Order* establishing rules for the ECF program to distribute the funding to eligible schools and libraries.[3]

3. The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,[4] and a second 15-day application filing window from September 28, 2021 to October 13, 2021, in which applicants requested a combined $6.4 billion in support.[5] During these two application filing windows, applicants could request funding for eligible equipment and services received or delivered between July 1, 2021 and June 30, 2022.[6] Subsequently, the Bureau acted on a petition for waiver and extended the service delivery date for all ECF equipment, recurring, and non-recurring funding requests submitted during the first and second filing windows to June 30, 2023, but leaving the service delivery date for new construction services requests without change.[7] The Bureau then opened a third 15-day application filing window from April 28, 2022 to May 13, 2022 to allow applicants to request eligible equipment and services purchased and delivered between July 1, 2022 and December 31, 2023. During the third filing window, the Commission received timely filed requests for over $2.8 billion for purchases of eligible equipment and services.[8]

4. For purposes of the Emergency Connectivity Fund, section 7402 of the Act defines the COVID-19 emergency period as beginning on the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to section 319 of the Public Health Service Act,[9] and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists.[10] The COVID-19 public health emergency expired at the end of the day on May 11, 2023,[11] and therefore

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[2] American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402(a)(1)-(2) (2021) (enacted), available at https://www.congress.gov/bill/117th-congress/house-bill/1319/text (American Rescue Plan Act) (enrolled bill).

[3] *See generally Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696 (2021) (*Emergency Connectivity Fund Report and Order*).

[4] News Release, FCC, FCC Announces Emergency Connectivity Fund Application Window Will Open on June 29 (June 15, 2021), https://www.fcc.gov/document/emergency-connectivity-fund-application-window-opens-june-29 (*First ECF Application Window News Release*).

[5] News Release, FCC, FCC Announces Over $5 Billion in Funding Requests Received in Emergency Connectivity Fund Program (Aug. 25, 2021), https://www.fcc.gov/document/fcc-announces-over-5-billion-emergency-connectivity-fund-requests (*Second Application Window News Release*).

[6] *See* 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

[7] *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, 37 FCC Rcd 1915 (WCB 2022).

[8] *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, 37 FCC Rcd 3985 (WCB 2022) (*Third ECF Application Window PN*).

[9] *See* H.R. 1319, tit. VII, § 7402(d)(5)(A). The Secretary of Health and Human Services determined that a public health emergency has been in existence since January 27, 2020 as a result of COVID-19 pursuant to section 319 of the Public Health Service Act. 47 U.S.C. § 247d.

[10] H.R. 1319, tit. VII, § 7402(d)(5)(B); *see also* 47 U.S.C. § 247d.

[11] News Release, Department of Health and Human Services (HHS), HHS Secretary Xavier Becerra Statement on End of the COVID-19 Public Health Emergency (May 11, 2023), https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html; Department of Health and Human Services (HHS), COVID-19 Public Health Emergency (PHE), https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html (last visited Nov. 21, 2023).

ECF funding will only be available for purchases of eligible equipment and services made on or before June 30, 2024. In May 2023, the Bureau extended the service delivery deadlines for funding requests submitted in the third application filing window to align with the sunset of the ECF program on June 30, 2024, and to ensure applicants could make full use of their ECF funding commitments.[12] As such, the ECF service delivery deadline for the third window funding requests was extended from December 31, 2023 to June 30, 2024.[13]

5. Pursuant to the Commission's rules, applicants must file the ECF FCC Form 471 application requesting eligible equipment or services.[14] After a commitment is received, an applicant may request to substitute equipment or services requested on its approved ECF FCC Form 471 application.[15] The ECF program rules only permit such substitutions when the equipment or service has the same functionality and the change does not increase the amount of support originally approved.[16]

6. On June 1, 2023, Lower Yukon School District requested a waiver of the ECF program rules to allow the District to use its remaining committed ECF funding for recurring services and distribute it among its 10 villages and use leftover funding for nonrecurring services from its first window ECF application to fund recurring services for additional time.[17] Lower Yukon School District serves 10 remote villages spread across 22,000 square miles, accessible only by plane.[18] The District filed an ECF application during the first application window to provide satellite service connectivity to its students and teachers with unmet need, requesting funding for non-recurring installation and equipment costs, as well as seven months of recurring service.[19] USAC issued a funding commitment decision letter on April 19, 2022.[20] During the third application filing window, which initially permitted requests for up to twelve months of services delivered between July 1, 2022 and December 31, 2023, Lower Yukon School District requested and received a commitment for an additional nine months of service to cover recurring charges through the end of December 2023.[21] Lower Yukon School District requests a waiver to allow its committed funding to not be limited to the specific months of funding requested in its funding applications; to shift funding requested for one village to provide service to students in other villages; and the ability to bill USAC for partial months of service.[22] Through this request, Lower Yukon School District states that it can extend service to its off-campus students and teachers for a longer period of time.[23]

7. On July 5, 2023, Northwest Arctic Borough School District (Northwest Arctic) and OTZ Remote Villages Home Internet Support (OTZ) filed a request for waiver seeking to use the ECF funding

[12] *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405, 2023 WL 3579192 (WCB May 12, 2023).

[13] *Id.*

[14] 47 CFR § 54.1710(a).

[15] *Id*. § 54.1710(b).

[16] *Id*.

[17] Lower Yukon Request for Waiver at 6-10.

[18] *Id.* at 4.

[19] *Id.* at 4.

[20] Letter from USAC, to Lower Yukon School District, concerning ECF Application No. 202115135 (April 19, 2022) (Lower Yukon First Window Funding Commitment Decision Letter).

[21] Lower Yukon Request for Waiver at 5.

[22] *Id.* at 6.

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

commitments to extend its services to students and teachers for an additional two months.[24] Northwest Arctic serves 11 remote communities spread across more than 35,000 square miles of tundra and scrub.[25] During the first application filing window, Northwest Arctic requested funding for non-recurring installation, equipment, and 10 months of service, broken into separate funding requests.[26] USAC issued a funding commitment on March 23, 2022.[27] Northwest Arctic now requests that the funding period be extended to twelve months and some of the funding be shifted from one recurring service funding request to another.[28] During the third application filing window, like Lower Yukon, Northwest Arctic requested and received commitments for an additional ten months of recurring service to cover recurring service for its students and school staff through the end of December 2023.[29] Northwest Arctic requests that some of the funding be shifted from one funding request to another in order to extend the service for an additional partial month of service.[30]

8. The Petitioners both explain that the requests for waiver would not extend service beyond June 30, 2024, nor would they exceed 12 months of service in each application window.[31] In both cases, the requests do not increase the overall amount of funding originally committed to the school district, but the Petitioners seek a waiver to allow substitutions of different types of service and different funding requests.[32] The Petitioners further explain that these waivers allow them to provide recurring service to two of the most remote and economically disadvantaged school districts, both serving high percentages of Alaska Native students.[33]

III. DISCUSSION

9. Generally, the Commission's rules may be waived for good cause shown.[34] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[35] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[36]

10. Here, we find that there are unique circumstances that merit a waiver of ECF program rules in order to extend the recurring services to students and teachers in these remote portions of Alaska. Both school districts took steps to connect their students and teachers during the COVID-19 emergency period in an area of the country that it extremely rural, remote, and lacking commercially available home Internet services. The Petitioners each requested and received ECF funding commitments based on the information they had available to them at the time, and then worked to connect students' and teachers'

[24] Northwest Arctic Request for Waiver at 8-12.

[25] *Id.* at 4.

[26] *Id.* at 5.

[27] Letter from USAC, to Northwest Arctic Borough School District, concerning ECF Application No. ECF202103608 (Mar. 23, 2022) (Northwest Arctic Funding Commitment Decision Letter).

[28] Northwest Arctic Request for Waiver at 9-10.

[29] *Id.* at 7.

[30] *Id.* at 11-12.

[31] Letter from Gina Spade, Broadband Legal Strategies, LLC, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed Nov. 16, 2023).

[32] *Id.* at 2-3.

[33] *Id.* at 1-2.

[34] 47 CFR § 1.3.

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

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

homes with unmet need for the approved amount of time. Their third window applications did not request twelve months of recurring service because of the timing of their first window funding commitments, but subsequently, the Bureau extended the funding period for the third application filing window, allowing applicants that had been able to submit funding requests for 12 months of service a longer period of time for which to receive services. Due to these special circumstances, these Petitioners are unable to fully use the ECF funding commitments that they requested, in part because funding commitments were issued close to the service delivery date for these recurring service funding requests.

11. Allowing these changes for the Petitioners will not lead to any additional funding being made available, but rather will allow these rural, remote school districts to use their approved and committed ECF funding to extend the service they have offered to students and teachers. In addition, we find that the public interest would not be served if these two remote Alaska school districts are not able to fully use the approved and committed ECF support for the eligible broadband services needed for these students and school staff with unmet needs who otherwise are not able to fully engage in remote learning. We conclude that waiving section 54.1710(b) of the Commission's rules to provide this relief for these two remote school districts furthers the mission of the ECF program by extending connectivity to these students and teachers with unmet need.[37]

12. We therefore waive section 54.1710(b) of the Commission's rules to allow the Petitioners to receive the requested substituted service. We also direct USAC to reallocate the funding requests as requested by the Petitioners and to make changes to allow for partial months of service, provided that the revised funding requests do not exceed the overall funding commitment from the original commitments for each petitioner.[38] While it is rare that the Commission would waive the service substitution rules in the E-Rate program,[39] we emphasize that this relief is limited to this factual scenario in the ECF program, a program designed by Congress to provide emergency connectivity to students and teachers in light of the COVID-19 emergency.

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.1710(b) of the Commission's rules, 47 CFR § 54.1710(b), IS WAIVED as provided herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

[37] *See Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8703, para. 16.

[38] Northwest Arctic also states that it has a pending post-commitment request to extend the number of months on its first window application, which we direct USAC to grant consistent with this order. Northwest Arctic Request for Waiver at 11.

[39] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order 32 FCC Rcd 9538 (2017) (providing increased flexibility for service substitutions after a series of hurricanes).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: https://www.fcc.gov
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DA 23-1115
Released: November 29, 2023

WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE TO HIGH-COST SUPPORT RECIPIENTS REGARDING ENGAGEMENT WITH STATES AND TRIBAL GOVERNMENTS TO DETERMINE ELIGIBILITY OF LOCATIONS FOR THE BEAD PROGRAM AND TO AVOID DUPLICATIVE FUNDING

WC Docket No. 10-90
WC Docket No. 18-143
WC Docket No. 19-126
WC Docket No. 20-54
AU Docket No. 17-182

By this Public Notice, the Wireline Competition Bureau (Bureau) provides guidance to Enhanced Alternative Connect America Cost Model (Enhanced A-CAM), Rural Digital Opportunity Fund (RDOF), Connect America Fund (CAF) Phase II auction, Bringing Puerto Rico Together Fund, and Connect USVI Fund support recipients (collectively, high-cost support recipients or service providers) regarding their coordination with state broadband offices and Tribal entities to determine the eligibility of locations for the Broadband Equity, Access, and Deployment Program (BEAD Program), and to avoid duplicative broadband network funding.[1] Differing timelines, deployment commitments, and technologies across federal funding programs require a collaborative effort not just between federal agencies,[2] but also among

[1] Enhanced A-CAM support recipients are required "to participate, in good faith, in any relevant BEAD Program challenge processes or other processes conducted by states or other BEAD Program eligible entities to determine eligibility of locations for the BEAD Program, to otherwise coordinate with states, Tribes, and other eligible entities to help avoid duplicative federal broadband funding, and to certify their compliance with this obligation annually." *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, *et al.*, FCC 23-60, at 24-25, para. 52 (July 24, 2023) (*Enhanced A-CAM Order*); *see also* 47 CFR § 54.313(f)(6)(i). For the purposes of this Public Notice, and consistent with section 60102(a)(2)(H) of the Infrastructure Investment and Jobs Act, the term "location" is synonymous with the term "broadband-serviceable location" as defined by the Commission. 47 U.S.C. § 1702(a)(2)(H); *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 et al., Third Report and Order, 36 FCC Rcd 1126, 1175-77, paras. 126-32 (2021). When we refer to "state," we use this term generally to include states, territories, and the District of Columbia.

[2] As required by the Broadband Interagency Coordination Act, the Federal Communications Commission, U.S. Department of Agriculture (USDA), and the U.S. Department of Commerce's National Telecommunication and Information Administration (NTIA) announced in January 2021 they had entered into an agreement to provide for sharing information about existing or planned projects that have received, or will receive, funding through the Commission's high-cost programs and programs administered by NTIA and the USDA. Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, § 904, 134 Stat. 1182, 3214 (codified at 47 U.S.C. § 1308 *et seq.*); Press Release, FCC, FCC, NTIA and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), https://www.fcc.gov/document/fcc-ntia-usda-interagency-agreement-broadband-funding-deployment. In an effort to further facilitate broadband deployment funding coordination, in May 2022, the FCC, USDA, and NTIA entered into an interagency agreement with the Department of Treasury. *See* Press Release, FCC, FCC, NTIA, USDA and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband

(continued….)

states, Tribal governments, and service providers to avoid unnecessary duplication and to maximize the deployment of high-quality broadband service across the United States.

High-Cost Support Recipients Should Engage Directly with State Broadband Offices and Provide Detailed Information on the Technologies That Will Be Used for Deployment. Section 60102 of the Infrastructure Investment and Jobs Act directed the National Telecommunications and Information Agency (NTIA) to establish the BEAD Program, through which NTIA has allocated $42.45 billion to states, territories, and the District of Columbia (collectively, Eligible Entities) for grants "to bridge the digital divide."[3] Eligible Entities will allocate the BEAD Program funds they receive from NTIA to subgrantees, with the "principal focus" on deploying broadband to unserved and underserved locations.[4] Eligible Entities are required to conduct a BEAD Program-specific challenge process – separate and apart from the challenge processes administered by the Commission in connection with the National Broadband Map – to determine which locations are eligible for BEAD Program funding.[5] Locations that are served by "reliable broadband service" at certain speeds, or that are subject to an enforceable commitment for the deployment of qualifying broadband, as defined by the BEAD Program Notice of Funding Opportunity (NOFO), are ineligible for BEAD funding.[6]

Full participation of high-cost support recipients in BEAD Program challenge processes is critical to ensuring that the FCC's high-cost funding is not duplicated by the BEAD Program. Participation in the BEAD Program challenge process also ensures state broadband offices receive information about high-cost program supported deployments beyond the valuable information provided on the Broadband Funding Map.[7] Specifically, high-cost support recipients are expected to engage directly with state

(Continued from previous page)
Funding (May 12, 2022), https://www.fcc.gov/document/fcc-ntia-usda-treasury-announce-broadband-info-sharing-agreement.

[3] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021); 47 U.S.C. § 1702(b)(1).

[4] *See* Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity at 7 (May 13, 2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (BEAD Program NOFO).

[5] BEAD Program NOFO at 34-35; Department of Commerce, National Telecommunications and Information Administration, BEAD Program Challenge Process Policy Notice (June 28, 2023), https://ntia.gov/sites/default/files/publications/bead_challenge_process_policy_notice_final.pdf (BEAD Program Challenge Process Policy Notice).

[6] BEAD Program NOFO at 16-17, 36-37 & n.52 (explaining that any location that is already subject to an enforceable commitment for the deployment of qualifying broadband cannot be treated as unserved or underserved, and defining unserved locations to mean those locations having no access to broadband service or lacking access to low latency "reliable broadband service" at speeds of 25/3 Mbps, and underserved locations as those locations lacking access to low latency "reliable broadband service" at speeds of 100/20 Mbps). The BEAD Program NOFO defines qualifying broadband to locations that are not community anchor institutions as "reliable broadband service with (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds". *Id.* at 37. "Reliable broadband service" is defined to include "(i) fiber-optic technology; (ii) Cable Modem/ Hybrid fiber-coaxial technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum." *Id.* at 15.

[7] For example, while the Broadband Funding Map depicts a high-cost support recipient's funded service area, required broadband speeds, and intended technologies, it does not provide specifics regarding when locations within the service area will be served. Federal Communications Commission, Broadband Funding Map, https://fundingmap.fcc.gov/home (last visited Nov. 29, 2023). High-cost support recipients must meet set service milestones, but have the flexibility to determine when they will serve individual locations within their funded service areas by those service milestones. *See, e.g.*, 47 CFR §§ 54.310(c), 54.802(c), *Enhanced A-CAM Order* at 23, para. 48. Moreover, because high-cost support programs are technology neutral, a service provider may subsequently decide to use a different technology than currently indicated on the Broadband Funding Map to meet its obligations, but will still be in compliance with high-cost program rules as long as it otherwise meets the relevant

(continued….)

broadband offices by participating in BEAD Program challenge processes and otherwise provide information requested by the states in furtherance of the BEAD Program. This may include providing specific information regarding high-cost recipients' supported locations, service areas, and the timing of planned deployments. It may also include providing information regarding the technologies high-cost support recipients are using or intend to use to offer service meeting the relevant program requirements as well as the maximum broadband speeds they intend to offer. Contact information for each state broadband office is available here: https://internetforall.gov/funding-recipients.[8]

High-cost support recipients should ensure that the states know which locations the support recipient is serving with "reliable broadband service," including which of the locations covered under an enforceable high-cost commitment will be served with qualifying broadband, as defined by the BEAD Program NOFO.[9] In addition, because the BEAD Program permits states to fund deployment using technologies that do *not* meet the definition of "reliable broadband service" (but otherwise satisfy the BEAD Program's technical requirements) to locations that exceed the state's extremely high cost per location threshold,[10] high-cost support recipients should ensure that the states know which locations the support recipient is serving with service that is *not* "reliable broadband service," and provide details regarding the technologies to be deployed. High-cost support recipients should be prepared to submit documentation as needed to provide evidence of their currently-served locations and deployment plans, and discuss with states any confidentiality concerns.

Finally, some recipients of high-cost support are not required to offer broadband at speeds of 100/20 Mbps across their funded service areas, and thus do not have an enforceable commitment for the deployment of qualifying broadband, as defined by the BEAD Program NOFO.[11] Such recipients should ensure that the National Broadband Map accurately reflects the locations they serve, the speeds they provide to the locations, and the technologies they use to serve those locations.[12] They should also engage with the states if any information is needed regarding their reported deployments.

High-Cost Support Recipients Should Engage With Each Relevant Tribal Government Every Year Even if the High-Cost Support Recipient Has Not Begun Deployment. If a high-cost support recipient's supported service areas include Tribal lands, the service provider must demonstrate on an annual basis that it has engaged Tribal governments that have Tribal lands in the service provider's high-cost

(Continued from previous page)
performance requirements. *See, e.g., Enhanced A-CAM Order* at 19, para. 39; *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 702, para. 31 (2020); *Connect America et al*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 5949, 5956, para. 14 (2016). We note that any location in a FCC high-cost supported area shown on the Broadband Funding Map is subject to the BEAD challenge process as described in the BEAD Challenge Process Policy Notice.

[8] Each individual state's progress in implementing its process for allocating BEAD Program funding is available here: https://internetforall.gov/bead-initial-proposal-progress-dashboard. Once NTIA approves Volume 1 of a state's initial plan and the state submits Volume 2, the state may begin its challenge process.

[9] High-cost support recipients may consider whether to seek BEAD Program funding for eligible locations that are adjacent to their high-cost supported networks, but are outside their funded high-cost service areas. While high-cost support recipients cannot use their high-cost support to serve locations outside of their funded service areas, they may be able to take advantage of any cost efficiencies due to the proximity of such locations to their high-cost supported networks to apply for other state and federal funding.

[10] BEAD Program NOFO at 13 & n.6, 31, 38-39.

[11] *Id.* at 36-37 & n.52. This includes CAF Phase II auction and RDOF recipients that did not commit to deploy broadband at speeds of at least 100/20 Mbps, and recipients of the Alaska Plan, Connect America Fund Broadband Loop Support (CAF BLS), A-CAM I, and A-CAM II high-cost support programs.

[12] Federal Communications Commission, National Broadband Map, https://broadbandmap.fcc.gov/home (last visited Nov. 29, 2023).

supported service area,[13] and the Commission strongly encourages high-cost support recipients to engage with each Tribal government regarding the support recipients' deployment plans at least annually.[14] The Commission takes the Tribal engagement requirement seriously. For locations on Tribal lands, the BEAD Program will not recognize a high-cost supported location as an enforceable commitment for the deployment of qualifying broadband that would make the location ineligible for BEAD Program funding "unless [the enforceable commitment] includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location."[15] Accordingly, a high-cost support recipient that has not entered into such agreement may encounter a situation where another service provider receives BEAD Program funding for the Tribal locations, or may find that it is obligated to serve Tribal locations already served by BEAD Program recipients.[16] If a high-cost support recipient has obtained consent from a Tribal government meeting the BEAD Program requirements, it should be prepared to provide documentation to the relevant state broadband office during the state's challenge process window.

While the high-cost programs did not require service providers to obtain a Tribal government resolution prior to receiving support, all high-cost support recipients that serve Tribal lands are required to demonstrate that they have engaged annually with Tribal governments on a range of issues, including compliance with local rights of way, land use permitting facilities siting, and environmental and cultural preservation review processes, as well as Tribal business and licensing requirements, that are necessary for a service provider to obtain before fulfilling its deployment and service obligations.[17] The Commission's Tribal engagement obligation represents an opportunity for Tribal governments and high-cost support recipients to coordinate on many issues critical to the deployment and adoption of

[13] 47 CFR § 54.313(a)(5); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17868-69, paras. 636-37 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). High-cost support recipients must submit documents or information demonstrating they have met this requirement in their FCC Form 481 filing due July 1st each year. 47 CFR § 54.313(a)(5), (j).

[14] The requirement to engage with Tribal governments applies to all high-cost support programs. 47 CFR § 54.313(a)(5).

[15] BEAD Program NOFO at 37 n.52. Other federal funding programs also include Tribal consent and engagement requirements. *See, e.g.*, Department of Commerce, National Telecommunications and Information Administration, Tribal Broadband Connectivity Program Round 2 Notice of Funding Opportunity (NOFO) at 10-11 (July 27, 2023), https://www.ntia.gov/sites/default/files/2023-07/ntia-tbcp-round2-nofo.pdf (defining an "Enforceable Buildout Commitment" to mean "a legally binding agreement in which the Tribe provides a limited waiver of sovereign immunity in a Tribal Government Resolution and in the contract vehicle, between the Tribal Government of the Tribal Lands in the proposed service area, or its authorized agent, and a service provider committing to deliver 'Qualifying Broadband Service' to Unserved households on those Tribal Lands"); 7 CFR § 1738.202(d)(16) (requiring an applicant of the United States Department of Agriculture's broadband loan and loan/grant programs to include in its application "[i]f service is being proposed on [T]ribal land, a certification from the proper [T]ribal official that they are in support of the project and will allow construction to take place on [T]ribal land").

[16] For Enhanced A-CAM, if a state awards BEAD Program funds to another service provider to serve locations subject to an Enhanced A-CAM authorization, the Enhanced A-CAM support recipient and Tribal government can notify the Bureau that they mutually agree to forego the A-CAM deployment obligation, and the Bureau will adjust the Enhanced A-CAM support recipient's support and deployment obligations accordingly. *Enhanced A-CAM Order* at 45, para. 105. Such notifications must be made to the Bureau before July 1, 2025. *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, at 7 (WCB Aug. 30, 2023) (*Enhanced A-CAM Offer Public Notice*).

[17] *See* 47 CFR § 54.313(a)(5); *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, paras. 636-37..

communications technologies on Tribal lands.[18] Annual Tribal engagements also provide Tribal leaders with an opportunity to communicate their needs and priorities to high-cost support recipients whose supported service areas include their Tribal lands. If contact information for a Tribal government is needed, the U.S. Department of the Interior, Bureau of Indian Affairs maintains the official list of contact information for Tribal leaders at https://www.bia.gov/service/tribal-leaders-directory. Service providers can also email the FCC's Office of Native Affairs and Policy at native@fcc.gov to request contact information.

On at least an annual basis, a high-cost support recipient should engage with each Tribal government that has Tribal lands within the high-cost support recipient's supported service area. Thus, a high-cost support recipient should work with the relevant Tribal governments to obtain the necessary consent, permits, and other approvals as soon as practicable and not wait to engage with a Tribal government even if the high-cost support recipient plans to offer service to locations on the relevant Tribal lands later on in its support term, *i.e.*, the support recipient should engage with the Tribal government annually even if planned deployment is several years in the future.[19] As explained above, the Commission takes high-cost support recipients' Tribal engagement requirements seriously and monitors compliance. Failure to satisfy the Tribal engagement obligations may result in the withholding, recovery, or reduction of high-cost support and/or other non-compliance measures or enforcement consequences, if appropriate.[20] We encourage Tribes to raise with the Commission any issues or concerns regarding their engagement with high-cost support recipients.

For additional information, please contact Heidi Lankau (Heidi.Lankau@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-2876.

- FCC -

[18] *See Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket No. 10-90 et al., Public Notice, 27 FCC Rcd 8176 (ONAP/WTB/WCB 2012).

[19] Enhanced A-CAM support recipients are required to initiate engagement with any relevant Tribal governments within 90 days of the Bureau extending an Enhanced A-CAM offer. *Enhanced A-CAM Order* at 44-45, para. 104. The Bureau extended Enhanced A-CAM offers on August 30, 2023. *Enhanced A-CAM Offer Public Notice*.

[20] *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, para. 637; *see also* 47 CFR § 54.320(c) ("Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.").

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

In the Matter of	)	
	)	
Clear Rate Communications, Inc.	)	Complaint No. 6589518
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: November 28, 2023 **Released: November 29, 2023**

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

1. In this Order, we consider a complaint alleging that Clear Rate Communications, Inc. (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We find that Clear Rate has responded to Complainant's complaint and has taken action to resolve the complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[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. We received Complainant's complaint alleging that Clear Rate had changed Complainant's telecommunications service provider without Complainant's authorization. Pursuant to

[1] *See* Informal Complaint No. 6589518 (filed Nov. 17, 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.

our rules, we notified Clear Rate of the complaint.[6] Based on the information provided by Clear Rate, it appears that Clear Rate has fully absolved Complainant of all charges assessed by Clear Rate in a manner consistent with the Commission's liability rules.[7] We therefore find that the complaint referenced herein has been resolved.[8]

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

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

FEDERAL COMMUNICATIONS COMMISSION

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

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

[7] *See* Clear Rate's Response to Informal Complaint No. 6589518 (filed Nov. 22, 2023) (stating that Complainant paid no charges to Clear Rate, and that when Complainant returns Clear Rate's equipment, all charges will be removed from the account); *see also* 47 CFR § 64.1160.

[8] 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 such Complainant. *See id.* § 1.719.

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

In the Matter of	)	File No.: EB-IHD-21-00032308
	)	Acct. No.: 202132080028
Broadband VI, LLC.	)	FRN: 0016966806

ORDER

Adopted: December 1, 2023 **Released: December 1, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has agreed to amend the terms of its 2021 Consent Decree (Consent Decree)[1] with Broadband VI, LLC (Broadband VI or the Company) to resolve issues arising from certain requirements of the Consent Decree. To settle this matter, the Company will file an additional compliance report and accordingly, the duration of the Consent Decree will be extended.

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.[2]

3. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications 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.

4. **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 Stephen E. Coran, Esq., Lerman Center PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[1] *Broadband VI, LLC*, Order and Consent Decree, DA 21-610, 36 FCC Rcd 8988 (EB 2021).

[2] 47 CFR §§ 54.405(e)(3), 54.407(a), 54.410(a), 54.410(b), 54.410(c).

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

In the Matter of	)	File No.: EB-IHD-21-00032308
	)	Acct. No.: 202132080028
Broadband VI, LLC	)	FRN: 0016966806

CONSENT DECREE AMENDMENT

1. This amendment (Amendment) is made by Broadband VI, LLC (Broadband VI) and the Enforcement Bureau, parties to the Consent Decree adopted and released on June 2, 2021 (Consent Decree), in case number, EB-IHD-21-00032308. 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 this Consent Decree, and subsequent Amendments to the Consent Decree that are agreed upon by the Parties.

Paragraph 2(j) of the Consent Decree is deleted and replaced with the following:

> "Effective Date" means June 2, 2021.

Paragraph 9 of the Consent Decree is deleted and replaced with the following:

> **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 the Adopting Order, this Consent Decree, and any subsequent Amendments to the Consent Decree shall have the same force and effect as any other order of the Commission.

Paragraph 14 of the Consent Decree is deleted and replaced with the following:

> **Reporting Noncompliance**. Broadband VI shall report any noncompliance with the Unauthorized Transfer Rules, the terms and conditions of this Consent Decree, and any subsequent Amendments to 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 Broadband VI 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 Broadband VI has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina

Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at Tram.Pham@fcc.gov.

The introductory paragraph of Paragraph 15 of the Consent Decree is deleted and replaced with the following:

> Broadband VI shall file compliance reports 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,[1] thirty-six (36) months after the Effective Date, and forty-eight (48) months after the Effective Date.

Paragraph 15(d) of the Consent Decree is deleted and replaced with the following:

> All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at Tram.Pham@fcc.gov.

Paragraph 16 of the Consent Decree is deleted and replaced with the following:

> **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire forty-eight (48) months after the Effective Date.

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.

[1] Broadband VI submitted its report to the Enforcement Bureau on October 17, 2023.

6. This Amendment may be signed in counterparts (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: _____
Carla Framil Ferran
Director of Legal Affairs
Broadband VI, LLC

Dated: _____

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 23-1119
Released: November 30, 2023

MEDIA BUREAU ANNOUNCES NATIONAL NONBROADCAST NETWORK RANKINGS FOR PURPOSES OF JULY 1, 2024 UPDATE TO AUDIO DESCRIPTION REQUIREMENTS

MB Docket No. 11-43

The Commission's audio description rules require multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers to provide 87.5 hours of audio description[1] per calendar quarter on channels carrying each of the top five national nonbroadcast networks.[2] The top five national nonbroadcast networks are defined by an average of the national audience share during prime time among nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under the audio description rules.[3]

In accordance with the Commission's rules, the list of top five nonbroadcast networks is updated at three year intervals to account for changes in ratings, and the fourth triennial update will occur on July 1, 2024, based on the 2022 to 2023 ratings year.[4] According to data provided by the Nielsen Company, for the purposes of our requirements, the top ten nonbroadcast networks for the 2022 to 2023 ratings year are: Fox News Channel, ESPN, MSNBC, HGTV, Hallmark, TLC, TNT, TBS, Discovery, and History.[5]

[1] Audio description makes video programming accessible to individuals who are blind or visually impaired through "[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue." 47 CFR § 79.3(a)(3).

[2] *Id*. § 79.3(b)(4). The rule requires that 50 hours per calendar quarter be provided in prime time or during children's programming, while the additional 37.5 hours may be provided at any time between 6 a.m. and 11:59 p.m. local time.

[3] *Id*. "Live or near-live programming" is defined as programming performed either simultaneously with, or recorded no more than 24 hours prior to, its first transmission by a video programming distributor. *Id*. § 79.3(a)(7).

[4] 47 CFR § 79.3(b)(4); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847, 11857, para. 18 (2011) (*2011 Order*). The nonbroadcast networks currently subject to the audio description requirements are TLC, HGTV, Hallmark, History, and TBS. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Order and Public Notice, 36 FCC Rcd 4849, para. 1 (MB 2021). We note that the Media Bureau granted TBS a limited waiver of section 79.3(b)(4) of the audio description rules for the triennial period beginning on July 1, 2021 and ending on June 30, 2024. *See Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Memorandum of Opinion and Order, 36 FCC Rcd 12646, 12649, para. 8 (MB 2021).

[5] Consistent with the approach previously adopted by the Bureau, in determining the top five nonbroadcast networks subject to the rules we rely on Nielsen's "live + 7 day" ratings, which include incremental viewing that takes place (continued….)

If a program network believes it should be excluded from the list of top five networks covered by the audio description requirements because it does not air at least 50 hours per quarter of prime time programming that is not live or near-live or is otherwise exempt, it must seek an exemption no later than 30 days after publication of this Public Notice.[6] Filings should be submitted electronically in MB Docket No. 11-43 by accessing the Commission's Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs/. Filers should follow the instructions provided on the website for submitting filings. The Media Bureau will promptly evaluate requests for exemption and will provide notice of any resulting revisions to the list.

For further information, contact Diana Sokolow (202-418-0588; Diana.Sokolow@fcc.gov).

- FCC -

during the seven days following a telecast. The data covers the 2022 to 2023 cable ratings year (September 19, 2022 to September 24, 2023).

[6] *See 2011 Order*, 26 FCC Rcd at 11857, para. 18; *see also* 47 CFR § 79.3(b)(4). In the *2011 Order*, the Commission stated that "[t]o the extent a program network that otherwise would appear in the list of top five nonbroadcast networks does not air at least 50 hours of prime time programming that is not exempt, it must seek an exemption from the [audio] description requirement no later than 30 days after publication" of ratings information by The Nielsen Company, noting that "[t]his requirement will ensure that the nonbroadcast network replacing it in the top five has ample time to come into compliance." *Id*. Although the *2011 Order* indicates that networks must file for exemption 30 days after publication of the ratings information, consistent with past practice, we will allow parties to file for exemption 30 days after publication of this Public Notice to ensure that all parties are evaluating the same ratings data and have the full time period to evaluate this data and submit a request for exemption, if necessary.

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 23-1120
Released: November 30, 2023

Media Bureau Reminds Television Broadcasters that Audio Description Rules apply to DMAs 91 Through 100 as of January 1, 2024

MB Docket No. 11-43

On October 27, 2020, the Commission adopted the *2020 Audio Description Order*, which expanded the Commission's audio description rules.[1] Audio description makes video programming more accessible to individuals who are blind or visually impaired through "[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue."[2] The Commission's audio description rules require certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming they televise to consumers.[3] The *2020 Audio Description Order* expanded the availability of audio description by phasing the requirements in for an additional 10 designated market areas (DMAs) each year for four years.[4] As a result, the Commission's audio description rules extended to DMAs 61 through 70 as of January 1, 2021, to DMAs 71 through 80 on January 1, 2022 and to DMAs 81 through 90 on January 1, 2023.[5] We remind television broadcasters that the audio description rules next will extend to DMAs 91 through 100 on January 1, 2024.[6]

In addition, on October 17, 2023, the Commission adopted the *2023 Audio Description Order*, which continues the expansion of the audio description requirements to an additional 10 DMAs per year until all DMAs are included.[7] As set forth in the *2023 Audio Description Order*, compliance deadlines going forward will apply to the relevant DMAs as determined by The Nielsen Company as of January 1, 2023.[8] Accordingly, the audio description rules will extend to the following DMAs on January 1, 2024[9]:

---

[1] *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, MB Docket No. 11-43, 35 FCC Rcd 12577 (2020) (*2020 Audio Description Order*).

[2] *See* 47 CFR § 79.3(a)(3).

[3] *See id.* § 79.3(b).

[4] *See 2020 Audio Description Order*, 35 FCC Rcd at 12577, para. 1.

[5] 47 CFR § 79.3(b)(1).

[6] *Id.*

[7] *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Second Report and Order, MB Docket No. 11-43, FCC 23-82 (2023) (*2023 Audio Description Order*).

[8] *2023 Audio Description Order* at para. 10.

[9] We note that the Paducah-Cape Girardeau-Harrisburg DMA moved from DMA 84 utilizing Nielsen figures as of January 1, 2020 to DMA 92 utilizing Nielsen figures as of January 1, 2023, and the Cedar Rapids-Waterloo-Iowa City & Dubuque DMA moved from DMA 90 to DMA 93. Accordingly, these two DMAs were previously subject

1. El Paso (Las Cruces)
2. Paducah-Cape Girardeau-Harrisburg
3. Cedar Rapids-Waterloo-Iowa City & Dubuque
4. Burlington-Plattsburgh
5. Baton Rouge
6. Jackson, MS
7. Fort Smith-Fayetteville-Springdale-Rogers
8. Boise
9. South Bend-Elkhart
10. Myrtle Beach-Florence

The January 1, 2024 deadline also applies to the following two DMAs that would have been within the later deadline for DMAs 91 through 100 based on the Nielsen figures as of January 1, 2020, but that now fall within the earlier deadline for DMAs 81 through 90 based on the Nielsen figures as of January 1, 2023[10]:

1. Chattanooga
2. Charleston, SC

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

For general information about audio description, visit www.fcc.gov/audio-description. For further information regarding this proceeding, contact Diana Sokolow, Policy Division, Media Bureau, 202-418-2120.

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to the January 1, 2023 compliance deadline based on their DMA rankings utilizing the Nielsen figures as of January 1, 2020. Although these DMAs now would fall within the January 1, 2024 compliance deadline due to the updated Nielsen figures, the *2023 Audio Description Order* provided that stations in these DMAs must continue complying with the audio description requirements during any gap between the effective date of the new rules, November 27, 2023, and the January 1, 2024 application of the rules to DMAs 91 through 100. *Id*. *See also Media Bureau Announces Effective Date of Rules Expanding Availability of Audio Description*, Public Notice, MB Docket No. 11-43, DA 23-1020 (2023).

[10] *2023 Audio Description Order* at para. 10. Chattanooga moved from DMA 92 to DMA 84 and Charleston, SC moved from DMA 91 to DMA 88.

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 23-1121
Released: November 30, 2023

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

WC Docket No(s). 23-332, 23-391 & 23-392

Comments Due: December 15, 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 **December 31, 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 **December 15, 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): MCImetro Access Transmission Services LLC**
WC Docket No. 23-332, Comp. Pol. File No. 1866
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-332*%22))
Affected Service(s) – Small Business and Residential Local Phone service[8]
Service Area(s) – Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming
Authorized Date(s) – on or after December 31, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): MCI Communications Services LLC; MCImetro Access Transmission Services LLC; and MCImetro Access Transmission Services of Virginia, Inc.**
WC Docket No. 23-391, Comp. Pol. File No. 1874
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-391*%22))
Affected Service(s) – U.S. Private Line Service at off-net locations and three versions of Metro Private Line Access Service: (1)Digital Metro Private Line Access Service; (2) Metro Private Line Optical SONET Service; and (3) Metro Storage Transport Service at off-net locations[9]
Service Area(s) – in the contiguous 48 U.S. states and the District of Columbia
Authorized(s) – on or after December 31, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

3) **Applicant(s): ACN Communication Services, LLC (ACN)**
WC Docket No. 23-392, Comp. Pol. File No. 1875
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-392%22))
Affected Service(s) – interconnected VoIP service known as ACN DigitalTalk and DigitalTalk *Express*
Service Area(s) – in all U.S. states and the District of Columbia, with the exception of Alaska and Hawaii
Authorized(s) – on or after December 31, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On November 30, 2023, ACN filed a supplemental letter attesting to its compliance with the Commission's customer notice requirements.

[8] Only services offered in whole or in part as interstate telecommunications services are currently subject to the section 214 discontinuance process.

[9] Only services offered in whole or in part as interstate telecommunications services are currently subject to the section 214 discontinuance process.

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. 23-1122

Report No. SAT-01780 **Friday December 1, 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-20220812-00081 E S2641 DIRECTV Enterprises, LLC
Modification 09/13/2022 - 02/28/2027
Grant of Authority Effective Date: 11/28/2023

Nature of Service: Fixed Satellite Service

On November 28, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of DIRECTV Enterprises LLC for extension of the license term for its T10 space station from September 14, 2022, until February 28, 2027. The T10 space station operates at the 102.8° W.L. orbital location using the 18.3-18.8 GHz (space-to-Earth), and 28.35-28.6GHz and 29.25-29.5 GHz (Earth-to-space) frequency bands. Telemetry, tracking, and command operations are conducted using the following center frequencies: 18.30025 and 18.30075 GHz (space-to-Earth); and 29.251 MHz and 29.493 GHz (Earth-to-space).

SAT-MOD-20230407-00077 E S3144 Momentus Space LLC
Modification 12/13/2023 - 01/09/2024
Grant of Authority Effective Date: 11/30/2023

Nature of Service: Other

On November 30, 2023, the Satellite Programs and Policy Division granted, 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 extend operations through January 9, 2024. 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-20231012-00245 E S2811 EchoStar BSS Corporation
Special Temporary Authority
Grant of Authority Effective Date: 11/29/2023

On November 29, 2023, the Satellite Programs and Policy Division granted special temporary authority, for an additional period of 180 days, for EchoStar BSS Corporation to operate the EchoStar 15 satellite to provide Direct Broadcast Satellite Service over channels 1 and 2. EchoStar 15 is located at the 61.65° W.L. orbital location and will use the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands.

SAT-STA-20231012-00246 E EchoStar BSS Corporation

Special Temporary Authority

Grant of Authority Effective Date: 11/29/2023

On November 29, 2023, the Satellite Programs and Policy Division granted special temporary authority, for an additional period of 180 days, for EchoStar BSS Corporation to operate the EchoStar 16 satellite to provide Direct Broadcast Satellite Service over channels 1 and 2. EchoStar 16 is located at the 61.5° W.L. orbital location and will use the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands.

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	)	
	)	
Establishing the Digital Opportunity Data Collection	)	WC Docket No. 19-195
	)	
	)	
Competitive Carriers Association and USTelecom – The Broadband Association Petition for Extension of Waiver Regarding the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Maps	)	

ORDER

Adopted: November 30, 2023 **Released: November 30, 2023**

By the Chiefs, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics:

I. INTRODUCTION

1. In this *Order*, the Broadband Data Task Force, the Wireless Telecommunications Bureau, the Wireline Competition Bureau, and the Office of Economics and Analytics (Bureaus) respond to a Petition for Extension of Waiver filed by the Competitive Carriers Association (CCA) and USTelecom – The Broadband Association (USTelecom) (collectively Petitioners).[1] The Petitioners request that the Commission renew for an additional three filing periods the *2022 Waiver* that temporarily waived the Commission's requirement that the accuracy of a provider's biannual Broadband Data Collection (BDC) filings be certified by a Professional Engineer (PE), subject to the condition that such filings be certified by an otherwise-qualified engineer who does not have the PE credential.[2] In this *Order*, we grant the Petition to extend the limited waiver of the Commission's rule for three filing periods (data as of December 31, 2023, June 30, 2024, and December 31, 2024), subject to certain conditions. As set forth in greater detail below, any provider availing itself of this waiver must: (1) have its BDC submission certified by an engineering professional with the qualifications specified in the *2022 Waiver*; (2) preserve, for the applicable "as-of" filing date(s), certain categories of underlying network information for each submission filed under the waiver; and (3) upon request, expeditiously provide this network information to the Commission.

[1] Petition for Extension of Waiver of Competitive Carriers Association and USTelecom – The Broadband Association, WC Docket No. 19-195 (filed Aug. 4, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/10804811316251 (Petition).

[2] Petition at 7-8. The Petitioners ask that the *2022 Waiver* be renewed or extended for an additional three filing periods (i.e., data as of December 31, 2023, June 30, 2024, and December 31, 2024). *Id.* *See also Establishing the Digital Opportunity Data Collection; Competitive Carriers Association Petition for Declaratory Ruling or Limited Waiver Regarding the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Maps*, WC Docket No. 19-195, Declaratory Ruling and Limited Waiver, 37 FCC Rcd 7836, 7842-47, paras. 12-20 (WCB/OEA/WTB 2022) (*2022 Waiver*).

II. BACKGROUND

2. In March 2020, Congress passed the Broadband DATA Act requiring the Commission to adopt new rules for "the biannual collection and dissemination of granular data . . . relating to the availability and quality of service with respect to terrestrial fixed, fixed wireless, satellite, and mobile broadband internet access service."[3] In the July 2020 *Second Order and Third Further Notice,*[4] the Commission established the requirements for the biannual submission of fixed broadband Internet access service availability and quality of service data and the submission of mobile broadband Internet access service data.[5] As required by the Broadband DATA Act, the Commission required providers to submit a certification from a corporate officer that the statements of fact contained in their biannual BDC submissions are true and correct.[6] The Commission also proposed to require a certified PE or corporate engineering officer to certify the accuracy of mobile service provider submissions and to require public filing of those certifications.[7] Similarly, the Commission sought comment on whether to require an engineering certification for biannual filings for fixed broadband service providers and on whether to establish penalties for violating the certification requirement.[8] Some commenters expressed support for these proposals, while others argued that requiring providers to submit an engineering certification would be overly burdensome.[9]

3. In January 2021, the Commission released the *Third Report and Order*, providing that, in addition to the corporate officer certification required by the *Second Order and Third Further Notice*, each mobile and fixed service provider also must submit a certification of the accuracy of its broadband submissions by a qualified engineer.[10] The Commission noted that while such a certification is in addition to the corporate officer certification required by the *Second Order and Third Further Notice*, a provider may submit a single certification that fulfills both requirements if the certifying corporate officer is also an engineer and has the requisite knowledge required under the Broadband DATA Act.[11] The Commission indicated that an engineering certification "must state that the certified professional engineer or corporate engineering officer is employed by the service provider and has direct knowledge of, or responsibility for, the generation of the service provider's [Broadband Data Collection] coverage maps."[12] The Commission determined that it was important to have a qualified engineer review and certify to the accuracy of a provider's BDC submission and that such a requirement is consistent with Congress's

[3] 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 or Act); 47 U.S.C. § 642(a)(1)(A).

[4] *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460 (2020) (*Second Order and Third Further Notice*). The BDC was formerly known as the Digital Opportunity Data Collection, or DODC.

[5] *Second Order and Third Further Notice*, 35 FCC Rcd at 7462, para. 3.

[6] *Second Order and Third Further Notice,* 35 FCC Rcd at 7486, para. 61 (citing 47 U.S.C. § 642(b)(4)).

[7] *Id.* at 7506, para. 111.

[8] *Id.* at 7506, para. 112.

[9] *Compare* AT&T Sept. 8, 2020 Comments at 10-11, *and* WTA Sept. 8, 2020 Comments at 5-6, *with* ACA Connects Sept. 17, 2020 Reply at 9, NTCA Sept. 8, 2020 Comments at 14; Verizon Sept. 8, 2020 Comments at 15, *and* USTelecom/WISPA Sept. 8, 2020 Comments at 8.

[10] *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, 1144-45, paras. 42-45 (2021) (*Third Report and Order*).

[11] *Third Report and Order*, 36 FCC Rcd at 1144, para. 43.

[12] *Id.* at 1144-45, para. 43. In March 2022, the Bureau and Offices released an Order which provided further details regarding mobile components of the BDC. *See Establishing the Digital Opportunity Data Collection*, Order, 37 FCC Rcd 3007 (WTB/OEA/OET 2022) (*Mobile Technical Requirements Order)*.

objective of assuring that it collects accurate data.[13] The Commission required that "[t]he certified professional engineer or corporate engineering officer shall certify that he or she has examined the information contained in the submission and that, to the best of the engineer's knowledge, information, and belief, all statements of fact contained in the submission are true and correct, and in accordance with the service provider's ordinary course of network design and engineering."[14]

4. On May 13, 2022, CCA filed a petition asking the Commission to grant a limited waiver of the requirement for broadband data to be certified by a certified PE and "instead allow wireless carriers that do not have access to a licensed PE to certify data with an [Radio Frequency (RF)] engineering professional with specified qualifications."[15] CCA asserted that the "experience and expertise developed by [RF] engineers through their work provides comprehensive skills relevant to broadband deployment [and] . . . provides skills comparable to, and perhaps more relevant than, general licensure through the PE . . . exam process."[16] The Bureaus released a Public Notice on May 17, 2022, seeking comment on CCA's 2022 Petition.[17]

5. On July 8, 2022, in response to the 2022 Petition, we issued the *2022 Waiver,* which waived the requirement that BDC certification be completed by a certified PE for three BDC filing periods (i.e., data collected as of June 30, 2022, December 31, 2022, and June 30, 2023), and the limited waiver instead allowed broadband providers to satisfy the engineering certification requirement using an RF engineering professional meeting certain specified qualifications.[18] Absent this *Order*, the waiver would not apply to data submitted as of December 31, 2023, and subsequent filing periods.[19]

6. On August 4, 2023, CCA and USTelecom filed the pending Petition requesting that the Commission renew the *2022 Waiver* for an additional three filing periods.[20] The Petitioners claimed "there have not been any significant workforce changes . . . since CCA filed its original [2022 Petition] that eliminate the need for relief" and that providers continue to "face significant challenges in meeting the requirement to use a licensed PE to certify broadband deployment data."[21] CCA and USTelecom assert the BDC filing periods under which the PE waiver applied have been effective and have not impacted the quality or accuracy of filings.[22] Additionally, the Petitioners reiterate that certain qualified engineers other than PEs are equally–or perhaps better–qualified to certify the data in furtherance of the Commission's goal to publish the most accurate maps possible and that these engineers should be allowed

[13] *Third Report and Order*, 36 FCC Rcd at 1145, para. 45.

[14] *Id.* at 1145, para. 43. A certified PE, or a PE, is "an engineer possessing a professional license by virtue of completing multiple educational and testing requirements so as to earn a license from a state licensure board." *2022 Waiver*, 37 FCC Rcd at 7838, para. 4.

[15] Petition of Competitive Carriers Association (CCA) for Declaratory Ruling or Limited Waiver, WC Docket No. 19-195, at 9 (filed May 13, 2022) (2022 Petition), https://www.fcc.gov/ecfs/search/search-filings/filing/1051393345823.

[16] *2022 Waiver*, 37 FCC Rcd at 7838, para. 5 (citing 2022 Petition at 6-7).

[17] *See Broadband Data Task Force, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics Seek Comment on Competitive Carriers Association Petition for Declaratory Ruling or Limited Waiver Regarding the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Maps*, WC Docket No. 19-195, Public Notice, 37 FCC Rcd 6219 (WTB/OEA/OET 2022).

[18] *2022 Waiver*, 37 FCC Rcd at 7842-47, paras. 12-20. The *2022 Waiver* also applied to government entities and third parties to the extent they choose to file verified broadband availability data. *Id.* at 7842, para. 13 n.45. No parties have chosen to submit such data to date.

[19] *Id.* at 7842, para. 13.

[20] Petition at 2, 7.

[21] *Id.* at 4.

[22] *Id.* at 2.

to certify BDC filings rather than requiring a PE.[23] On August 11, 2023, the Bureaus released the *Petition Public Notice* seeking comment on the Petition.[24]

III. DISCUSSION

7. We grant the Petition to extend the *2022 Waiver* for an additional three filing periods for fixed wireline, terrestrial fixed wireless, satellite, and mobile providers, subject to the condition that any filer electing to use this waiver must certify the filing in accordance with the requirements set forth in the *2022 Waiver*[25] and, in addition, preserve (for the applicable BDC "as-of" filing date) additional network information for expeditious submission to the Commission upon request.[26] The additional information required depends on the type of service the filer provides. The Broadband Data Task Force is releasing, contemporaneous with this *Order*, new data specifications that detail the supporting data that fixed wireline and terrestrial fixed wireless service providers availing themselves of the waiver will need to provide expeditiously to Commission staff upon request.[27] Details about the information satellite providers will need to preserve will be added to the newly released BDC Infrastructure Data Specifications prior to the opening of the December 2023 filing window. All filers electing to use this waiver must maintain, and provide on request, the specified data for the relevant service type.

8. We find that a conditional waiver for an additional three filing periods strikes an appropriate balance by giving providers limited relief from the PE requirement, on the condition that they are able to expeditiously provide to the Commission, when requested, underlying network information that supports their availability data. If a provider chooses not to certify its BDC filings pursuant to the Commission's engineering certification rules (i.e., certification by a PE or by corporate engineering officer possessing at least a B.S. in engineering who has direct knowledge of, or responsibility for, the carrier's network design and construction), and instead chooses to take advantage of the waiver, we believe it is necessary for the Commission to have available to it the additional network information upon staff request so that the Commission can, where warranted, readily investigate a filer's availability data. Accordingly, to ensure that providers availing themselves of the waiver retain the appropriate documentation underlying their BDC filings for production to the Commission upon request, this *Order* specifies the types of documentation these providers must retain for each service type. By conditioning the waiver on having ready access to providers' supporting data, the Commission will be able to assess the accuracy of the data where circumstances warrant substantiation. The infrastructure and other

[23] *Id.* at 5–7.

[24] *Comments Sought on Petition for Extension of Waiver of the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Availability Data*, WC Docket No. 19-195, Public Notice, DA 23-688 (WTB/WCB/OEA Aug. 11, 2023) (*Petition Public Notice*), 88 Fed. Reg. 57030 (Aug. 22, 2023).

[25] *2022 Waiver*, 37 FCC Rcd at 7842-47, paras. 12-20. Engineers certifying BDC submissions using the *2022 Waiver* must possess either: (i) a bachelor's or postgraduate degree in electrical engineering, electronic technology, or another similar technical discipline, and at least seven years of relevant experience in broadband network design and/or performance; or (ii) specialized training relevant to broadband network engineering and design, deployment, and/or performance, and at least ten years of relevant experience in broadband network engineering, design, and/or performance. *Id*. at 7846-47, para. 19.

[26] The *2022 Waiver* is conditionally extended as discussed herein for the additional three filing periods for data as of December 31, 2023, June 30, 2024, and December 31, 2024.

[27] *See* Broadband Data Collection, Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes, November 30, 2023, https://us-fcc.app.box.com/v/bdc-infrastructure-spec (last visited Nov. 30, 2023) (BDC Infrastructure Data Specifications). The BDC Infrastructure Data Specifications also contain clarifications of the supporting data specifications for mobile service providers that were previously published. *See infra* para. 17.

network data submitted by providers in response to staff requests pursuant to this waiver process will be deemed to be presumptively confidential.[28]

9. 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."[29] 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."[30] A rule waiver may serve the public interest when the relief would not undermine the policy objectives of the rule.[31] In this case, granting a limited waiver extension, with conditions, of section 1.7004(d) of the Commission's rule requiring broadband availability data to be certified by a certified PE meets both of these tests.[32] We therefore conditionally waive this requirement for providers for purposes of certifying to the broadband availability data to be collected during an additional three filing periods of the BDC (i.e., data as of December 31, 2023, June 30, 2024, and December 31, 2024), provided that the filer electing the waiver: (1) meets the certification requirement set forth in the *2022 Waiver* by certifying data with an engineering professional with specified qualifications;[33] (2) preserve, for the applicable "as-of" filing date(s), certain categories of underlying network information; and (3) upon request, expeditiously provide this network information to the Commission. We find that extending the limited waiver with additional conditions gives providers that may be burdened by the PE requirement relief from that requirement, while also ensuring that the Commission has access to the data underlying the providers' BDC filings upon request.

10. Based on commenters' claims, we find that the ongoing lack of certified PEs who specialize in RF engineering and broadband network design constitutes "special circumstances" that warrant a deviation from the general rule that certified professional engineers must certify the accuracy of providers' biannual BDC broadband data submissions.[34] We also find that the waiver extension will serve the public interest. The continuing lack of PEs to certify BDC filings threatens to undermine the goal of collecting and developing accurate broadband availability data.[35] We find that extending the waiver continues to promote our goal of collecting data to publish an accurate national broadband map, while

[28] The Commission has recognized that the collection of mobile network infrastructure information could raise commercial sensitivity and national security concerns and, in the *Third Report and Order*, determined that it would treat as presumptively confidential all mobile infrastructure information submitted by providers at the request of the Commission staff. *See Third Report and Order*, 36 FCC Rcd at 1148-49, para. 55. The Commission made a similar determination in the *Second Order and Third Further Notice* with regard to infrastructure data fixed wireless broadband service providers disclose in support of their availability filings. *Second Order and Third Further Notice,* 35 FCC Rcd at 7473-74, para. 31 (discussing categories of fixed wireless propagation modeling information the Commission will treat as presumptively public versus presumptively non-public). For these same reasons, the infrastructure and other network data submitted by fixed wireline providers in response to staff requests pursuant to this waiver process will also be deemed to be presumptively confidential.

[29] 47 CFR § 1.3. The Bureaus and Office issue this *Order* pursuant to their delegated authority. 47 CFR §§ 0.271, 0.291, 0.331.

[30] *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*).

[31] *See WAIT Radio*, 418 F.2d at 1155, 1157.

[32] *See* 47 CFR § 1.7004(d).

[33] *See supra* n.25.

[34] *See* Petition at 4 (stating, "[m]any broadband providers, including smaller CCA and USTelecom members, continue to face significant challenges in meeting the requirement to use a licensed PE to certify broadband deployment data. Such challenges include lack of existing inhouse experts or outside consultant resources with PE licensure in the states where the operators provide service and issues with the general availability of licensed PE resources in a cost-effective and timely manner given market demand for other infrastructure projects.").

[35] *See generally* 47 U.S.C. § 642.

also taking into account the burden that the PE certification places on certain providers. While we extend the waiver of the PE requirement, we conclude that it is appropriate to impose conditions on this waiver to ensure Commission staff can obtain supporting network information to enable further and expeditious investigation into a provider's claims of coverage.[36]

11. In the Petition, CCA and USTelecom claim that there is an ongoing need for the *2022 Waiver* and that many providers continue to face significant challenges in meeting the requirement to certify using a PE.[37] Numerous commenters echo their assertions that nothing has changed in the industry since the initial waiver and that there is a continued scarcity of certified PEs.[38] WISPA notes that "[t]here continues to be a lack of certified professional engineers specializing in RF engineering and broadband network design" and asserts that this continuing shortage could post a risk of delays in reporting BDC data on a timely basis.[39] JackRabbit Wireless states that "[f]or the last year, we have been searching for a PE with any relevant RF experience who could certify our BDC data for the eventual expiration of the waiver, but have been unsuccessful."[40] CTIA maintains that "PE licensure is uncommon among the RF engineering workforce, and the lack of licensed PEs with expertise in RF engineering and broadband network design makes it impractical for providers to retain licensed PEs to perform RF engineering work and to rely on certifications by licensed PEs."[41] Rural Electric Cooperatives Providing Broadband similarly states that "the requirements necessary to become a licensed PE are exhaustive; however, most broadband professionals have degrees in computer science, communications, IT, or electronics, which do not align with the accredited PE path."[42] USTelecom proposes additional information that BDC filers could provide that would better ensure map accuracy than a PE certification.[43]

12. Although numerous commenters assert that there is a PE shortage, a few assert the opposite. RWA claims that the *2022 Waiver* has allowed filers an extra 18 months to plan and retain PEs for their BDC filings and has provided enough time for engineers to become certified PEs.[44] Vantage Point Solutions calls the shortage claim "unsubstantiated."[45] NTCA also notes that the Petition "contains no specific evidence as to the inability to procure assistance from professional engineers."[46] In any case,

[36] *See 2022 Waiver*, 37 FCC Rcd at 7843, para. 14.

[37] Petition at 4-5.

[38] *See, e.g.*, JackRabbit Wireless, LLC Comments at 1; NCTA Comments at 2-3; BDC Carrier Coalition Comments at 5; Rural Electric Cooperatives Comments at 4-5; WISPA Comments at 5-6; CTIA Comments at 4-5; Lee Wireless, LLC Comments; ACA Connects Comments at 3; CTIA Reply at 2, 6.

[39] WISPA Comments at 4 and 6-7. WISPA references a recent survey it conducted where "only two percent of respondents indicated that they employed a state-licensed engineer and about 14 percent reported that they employed a corporate engineering officer meeting the Commission's requirements" and "more than half of the respondents took advantage of the waiver." WISPA Comments at 5-6.

[40] JackRabbit Wireless, LLC Comments at 1.

[41] CTIA Comments at 4.

[42] Rural Electric Cooperatives Comments at 4-5.

[43] Letter from B. Lynn Follansbee, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-195, (filed Oct. 13, 2023) (USTelecom Oct. 13, 2023 *Ex Parte*). For fixed wireless filers using shapefiles, the sorts of methodology narratives used to develop their broadband coverage could be maintained to be reviewed by the Commission should there be questions about their ability to service a specific location. *Id*. Fixed wireless filers submitting polygon coverage could be required to retain detailed backup data such as link budgets used to generate the polygon. *Id*.

[44] RWA Comments at 5-6.

[45] Vantage Point Solutions Reply at 7.

[46] NTCA Comments at 3.

the record does not contain any evidence that the number of PEs increased since the initial waivers or that broadband engineers undertook the additional PE licensing requirement.

13. As with the *2022 Waiver*, this waiver extension is also consistent with the policy objectives of the PE certification rule because providers will still be required, under the terms of the limited waiver we adopt, to have an engineer meeting the qualifications outlined in the *2022 Waiver* review and certify the provider's BDC submissions to help ensure the accuracy of the broadband data the provider submits.[47] The requirement that PEs certify the accuracy of providers' BDC submissions was adopted to ensure that filers have engaged in the analysis necessary to meet Congress's objective of developing more accurate broadband coverage data.[48] The Commission's rules already allow providers to submit their biannual BDC filings based on the engineering certification from a corporate engineering officer meeting the criteria outlined in section 1.7004(d), who is not required to be a PE.[49] Engineers certifying BDC submissions using the *2022 Waiver* must possess "either: (i) a bachelor's or postgraduate degree in electrical engineering, electronic technology, or another similar technical discipline, and at least seven years of relevant experience in broadband network design and/or performance; or (ii) specialized training relevant to broadband network engineering and design, deployment, and/or performance, and at least ten years of relevant experience in broadband network engineering, design, and/or performance."[50] As the record notes and as discussed above, many of the RF engineers that providers employ do not hold PE licenses but do have the specialized RF engineering expertise that qualifies them to certify the accuracy of providers' broadband data submissions, per the *2022 Waiver*.[51] The certifying engineer is still responsible for ensuring the accuracy of BDC filings and the Commission has the authority to apply sanctions where appropriate; moreover, it is unlawful for an entity or individual to willfully and knowingly, or recklessly, submit materially inaccurate or incomplete information about the availability or the quality of broadband internet access service.[52] Thus, even when the certifier is not a PE, the certification requirements set forth in the *2022 Waiver* provide sufficient assurances of the accuracy of provider BDC submissions and providers are accountable for and face appropriate consequences in the event of an erroneous filing. The document retention and production conditions we apply to BDC submissions under the waiver provide an additional safeguard by ensuring the Commission has access to network information underlying a BDC submission made under the waiver in the event further review is warranted.

14. Moreover, the PE certification requirement does not exist in a vacuum, and other processes inherent in the BDC improve the accuracy of the broadband availability data shown on the National Broadband Map. As the record notes, the availability challenge process is one such process.[53]

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[47] *2022 Waiver*, 37 FCC Rcd at 7844, para. 16 (noting "[t]he limited waiver we adopt only modifies the engineering certification requirement to allow providers to use otherwise-qualified engineers who are not certified PEs to make the required certifications.").

[48] *Third Report and Order*, 36 FCC Rcd at 1145, para. 45.

[49] *2022 Waiver*, 37 FCC Rcd at 7838, para. 6 ("[U]nder the Commission's rules, where a mobile or fixed service provider submits a certification of the accuracy of its broadband submissions from a 'corporate engineering officer,' the corporate engineering officer does not need to be a certified PE.").

[50] *2022 Waiver,* 37 FCC Rcd at 7846-47, para. 19.

[51] *See, e.g.*, NCTA Comments at 2 (noting, "[t]he engineers developing the BDC submissions for the various providers are highly trained, qualified and competent, but typically do not hold a PE license."); CTIA Comments at 4 (noting "[t]rained and experienced RF engineers are fully qualified to evaluate the accuracy of a provider's broadband maps and to certify their accuracy, regardless of whether those RF engineers are also licensed PEs").

[52] 47 U.S.C. § 643; 47 CFR § 1.7009(a); *Second Order and Third Further Notice*, 35 FCC Rcd at 7493, para. 77; *Third Report and Order*, 36 FCC Rcd 1126, 1178-84, paras. 133-47.

[53] *See, e.g.*, Rural Electric Cooperatives Providing Broadband Comments at 6 (noting that entered BDC data "allows anyone . . . to challenge the service provider's broadband availability reporting"); NRECA Reply at 7 (noting that

(continued….)

In addition, where a basis for an availability data inquiry exists, the Commission employs various tools to verify such data.[54] Audits are another process the Commission uses to verify the accuracy of provider reported coverage data.[55] These challenge, verification, and audit processes all aim to improve map accuracy and are ongoing.[56] These processes provide a suite of complementary tools used in conjunction with one another (among other things) to ensure the greatest degree of map accuracy possible. We find these tools, together with the additional information that providers that avail themselves of the waiver must preserve and make available upon request are sufficient to allow staff to perform technical reviews to ensure map accuracy and mitigate the concerns raised by a few commenters opposed to the waiver extension.[57] The requirement calls for production of the types of supporting data that providers in each of the covered categories must use to compile their biannual BDC submissions and to assure that their submission is accurate and complete. They are also the types of data necessary for the Commission to verify the provider's BDC submission.

15. A few commenters assert that a PE certification is an important check on potentially inaccurate BDC filings and that waiving it removes professional engineering standards from filings[58] and criticize the Petition for "dismissing the value of expert engineering certification" and ignoring meaningful review.[59] These commenters also assert that waiving the PE requirement (and its extension) removes or reduces accountability or the threat of sanction or adverse consequences for erroneous filings, and suggest that the professional liability exposure of the PE is more pertinent than "the capabilities of the engineer."[60] We are not persuaded by these commenters' arguments. As explained above, the requirement that PEs certify the accuracy of providers' BDC submissions was adopted as one of several measures for ensuring that filers have engaged in the analysis necessary to meet Congress's objective of developing more accurate broadband coverage data.[61] However, as discussed above, the PE certification is not the only safeguard against inaccurate BDC filings or for holding providers accountable for erroneous filings.

16. Finally, we find that extending the limited waiver for three filing periods will serve the public interest because it will help ensure timely submissions of BDC filings by eliminating the potential delays that could be associated with providers' attempting to hire or retain certified PEs to review their broadband data. Timely submission of broadband data is particularly important because the data serves as

"BDC data can be challenged."); USTelecom and CCA Reply at 4 (stating that "[w]hat ensures accuracy and accountability are the multiple verification and validation processes inherent in the system"); *see* 47 U.S.C. § 642(b)(5).

[54] *Third Report and Order*, 36 FCC Rcd at 1146, para. 47; *see* 47 U.S.C. § 642(b)(4)(B).

[55] 47 U.S.C. § 644(a); *see Second Order and Third Further Notice*, 35 FCC Rcd at 7485-86, paras. 58-60.

[56] 47 U.S.C. § 642(b)(4)(B); *Third Report and Order*, 36 FCC Rcd 1126, 1145-54, paras. 47-69; 47 CFR § 1.7006(a); *Second Order and Third Further Notice*, 35 FCC Rcd 7460, 7485-86, paras. 58-60.

[57] Filers should be advised that, as a condition of this waiver, Commission staff may request this additional information as warranted at the Commission staff's discretion; a request for these data may not necessarily be based upon criteria applicable to other processes, such as random selection or "patterns of filing incorrect information" in the case of audits. *See* 47 CFR § 1.7006(a). Moreover, the additional data discussed below apply to a provider's entire network. This does not necessarily mean staff will request data involving the provider's entire network, but these data must be available for any part of the network for which staff requests data.

[58] RWA Comments at 2-4.

[59] NTCA Comments at 4-5.

[60] RWA Comments at 3-4; *see also* Vantage Point Solutions Reply at 5 (stating that the rule requiring PE certification creates a significant level of accountability).

[61] *Third Report and Order*, 36 FCC Rcd at 1145, para. 45.

the basis for the distribution of many broadband deployment funds.[62] As noted above, the ongoing scarcity of PEs with expertise in communications network engineering threatens to frustrate the timeliness of BDC filings for certain providers which, in turn, threatens to undermine the timeliness and accuracy of coverage data. We find that granting a conditioned limited waiver of the requirement that providers use certified PEs will help ensure that providers submit their BDC filings on time because it will allow them to use their current broadband network design and RF engineering staff to review and certify their submissions. This, in turn, serves the public interest by ensuring that providers are not delayed in filing their BDC data due to the lack of a PE.

17. *Additional Network Information Required of Mobile Providers*. All mobile providers are required to submit certain supporting data as part of their biannual BDC submissions.[63] In addition to this information, mobile providers that avail themselves of this *Order* must also retain and be prepared to submit to the Commission (upon request) the mobile infrastructure data enumerated in Sections 1.1, 1.2, and 1.3 of the Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes.[64] These data pertain to the availability data submitted in the BDC and include base station attributes such as location and height above-mean-sea-level, sector azimuths, base station carriers, and base station loading so that staff can methodically verify the provider's claimed coverage.[65] Mobile providers will submit these data through the BDC system as instructed by the staff. In response to a Commission request, mobile providers who submit biannual BDC data pursuant to this waiver extension must provide such data with respect to the service area(s) specified in the request.

18. *Additional Network Information Required of Terrestrial Fixed Wireless Providers*. Terrestrial fixed wireless providers are required to submit certain supporting data as part of their biannual BDC submissions.[66] In addition to the information submitted as part of their BDC filing, terrestrial fixed wireless providers availing themselves of the waiver extension must retain and submit to the Commission (upon request) propagation modeling and fixed wireless infrastructure data, including link budget information, outlined in Section 2.2 of the Data Specifications for Provider Infrastructure Data in the

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[62] *See, e.g.,* NTIA, Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program at 31, 34 https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (last visited Nov. 30, 2023) (directing that an "Eligible Entity" for funding must "[i]dentify [in its Initial Proposal] each unserved location and underserved location … using the most recently published Broadband DATA Maps … and identify the date of publication of the Broadband DATA Maps used…" as well as update its proposal at the time it initiates a challenge process "to reflect the most recently published version of the Broadband DATA Maps available …").

[63] For example, in addition to information describing the methodology used to develop the availability coverage data, mobile providers must submit propagation model details and link budget information including propagation modeling information, mobile link budget parameters, clutter category data, link budget parameters rationale, and others. *See* Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data, March 30, 2023, Section 9, at 54-72, https://us-fcc.box.com/v/bdc-availability-spec (last visited Nov. 30, 2023) (BDC Biannual Submission Data Specifications).

[64] BDC Infrastructure Data Specifications at 4-12; *see supra* n.27.

[65] *Id*. The loading data we ask for in Section 1.3 is the actual loading of the serving cell over a one-week period before and/or after the "as of" BDC filing date, in 15-minute intervals. *See Mobile Technical Requirements Order*, 37 FCC Rcd at 3051-52, para. 78.

[66] The additional information that will need to be provided in response to a request differs somewhat depending upon whether the provider submits coverage data in the form of polygon shapefiles or location lists. Terrestrial fixed wireless providers who submit their BDC availability data in the form of polygon shapefiles must already provide, for example, a unique combination of the following fields: providerid, brandname, technology, maxdown, maxup, low latency, bizrescode, model details, base station location and height, base station carriers, link budget parameters, clutter category. *See* BDC Biannual Submission Data Specifications, Sections 6.2, 7.3-7.7, at 27-31, 35-48. Terrestrial fixed wireless providers who submit their BDC data as location lists must already provide, for example, location ID, technology code, max advertised download and upload speed. *See id.*, Section 6.1, at 23-27.

Challenge, Verification, and Audit Processes.[67] These specifications are applicable both to terrestrial fixed wireless filers who submit location lists in their BDC filing and to filers who submit GIS data. Terrestrial fixed wireless providers who submit biannual BDC data pursuant to this waiver extension must provide such data with respect to the service area(s) specified in the request.

19. *Additional Network Information Required of Fixed Wireline Providers*. Fixed wireline providers intending to avail themselves of the *Order* must generate and retain, and submit to the Commission (upon request), infrastructure data on the locations of their network distribution hubs and splitters, outlined in Section 2.1 of the Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes.[68] Fixed wireline filers who submit biannual BDC data pursuant to this waiver extension must provide such data with respect to the service area(s) specified in the request.

20. *Additional Network Information Required of Satellite Providers*. Satellite providers intending to avail themselves of this waiver extension will be required to generate and retain, and submit to the Commission (upon request), structured data reflecting the status of their system deployment as of the relevant filing period.[69] Additional details about the information satellite providers will need to preserve will be added to the newly released BDC Infrastructure Data Specifications prior to the opening of the December 2023 filing window. Satellite providers who submit biannual BDC data pursuant to this waiver extension must provide such data with respect to the service area(s) specified in the request.

21. To the extent that a provider wishes to avail itself of the waiver extension we issue today, it should indicate its request via the appropriate checkbox selection under the Certifying Engineer section of the Certification form for its submission in the BDC system.[70] Information about BDC certification requirements can be found in this help center article: https://help.bdc.fcc.gov/hc/en-us/articles/7332045373595-BDC-Certification-Requirements-. The article has links to the newly released BDC Infrastructure Data Specifications that detail the types of information filers availing themselves of the waiver must retain.

22. Finally, we note that while the conditions established herein pertain to filers who elect to submit data certified pursuant to the waiver extension, they are in addition to the Commission's ongoing efforts to verify and audit data and to seek supporting infrastructure and/or on-the-ground test data from all filers as part of those efforts, which may include (but is not limited to) requests for the data specified herein. We therefore remind all filers that they should be retaining such data to support their submissions in each of our biannual data collections and additionally be prepared to produce it upon request as part of the Commission's efforts to validate availability data.[71]

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[67] *See* BDC Infrastructure Data Specifications, Section 2.2, at 39-54; *see supra* n.27.

[68] *Id.*, Section 2.1, at 36-38; *see supra* n.27. We note that the infrastructure data outlined in Section 2.1 is applicable to the creation of polygon shapefiles; however, we would expect that filers of fixed wireline availability data using location lists would have either used similar information to identify BSLs where they can make service available or have "network diagrams or comparable items depicting the location of their network equipment" to share with the FCC. *See* USTelecom Oct. 13 *Ex Parte* at 1. Accordingly, we will require location list filers to provide similar data and documentation upon request.

[69] The categories of data satellite providers will be required to maintain will be based upon information collected from satellite operators under the Commission's Part 25 rules, but we emphasize that the data must reflect actual deployments as of the relevant filing period (as opposed to authorized service parameters).

[70] *See* Federal Communications Commission, Federal Communications Commission Broadband Data Collection BDC System User Guide 142 (2023), https://us-fcc.app.box.com/v/bdc-filer-user-guide.

[71] *See, e.g., Second Order and Third Further Notice,* 35 FCC Rcd at 7485-86, paras. 58-60 (discussing the Commission's mandate to conduct audits and the tools available to the Commission); *see also Third Report and Order*, 36 FCC Rcd at 1145-51, paras. 47-60 (discussing the Commission's mandate to verify provider data).

IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, and section 1.3 of the Commission's rules, 47 CFR § 1.3, that section 1.7004(d), 47 CFR § 1.7004(d), is WAIVED to the extent indicated herein.

24. This action is taken by the Chiefs of the Wireless Telecommunications Bureau, Office and Economics and Analytics, and Wireline Competition Bureau under delegated authority, pursuant to sections 0.21, 0.91, 0.131, 0.271, 0.291, and 0.331 of the Commission's rules, 47 CFR §§ 0.21, 0.91, 0.131, 0.271, 0.291, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt

Chief, Wireless Telecommunications Bureau

Giulia McHenry,

Chief, Office of Economics and Analytics

Trent Harkrader,

Chief, Wireline Competition 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 23-1124
Released: November 30, 2023

FCC EXTENDS DEADLINE TO DECEMBER 29, 2023, TO SUBMIT NOMINATIONS AND RECOMMITMENT LETTERS FOR MEMBERSHIP ON THE NATIVE NATIONS COMMUNICATIONS TASK FORCE

On October 16, 2023, the Federal Communications Commission ("Commission" or "FCC") released a Public Notice ("NNCTF Public Notice") seeking applications for membership to serve on the Native Nations Communications Task Force (Task Force) for the upcoming term to commence in 2024.[1] Incumbent Task Force members were also invited to recommit to serving the Task Force. The NNCTF Public Notice established that there would be a renewed Task Force with an expected start date in January 2024 for a term of three years.

The original deadline for new nominations and letters of recommitment was November 30, 2023. By this Public Notice, the Commission extends deadline for nominations and letters to **December 29, 2023**.

The Commission recognizes its unique trust relationship with Tribal Nations.[2] It is this unique government-to-government relationship that guides us in our work with Tribal Nations. The Task Force was created in 2011 to help ensure that the concerns of Tribal governments are considered in all relevant Commission proceedings, and is a critical source of information and expertise to the Commission by providing recommendations on communications-related issues that affect Tribal stakeholders. The Task Force is composed of elected Tribal leaders from federally-recognized Tribes or their designated employees with authority to act on their behalf as well as senior FCC staff.[3] Members of the renewed Task Force will serve at the discretion of the Chairwoman of the Commission who will select Task Force members.

Procedures for submitting nominations and letters of recommitment are set forth in the NNCTF Public Notice released on October 16th: https://docs.fcc.gov/public/attachments/DA-23-982A1.pdf and are again provided below for ease of reference. As indicated in the NNCTF Public Notice, all applications for nominations and letters for recommitment should be submitted by email to Native@fcc.gov. If it is not possible to submit the required information through email, please contact Lloyd Collier at (202) 418-2712 to determine another method of delivery.

APPLICATIONS AND SELECTION

Nominations procedures for new Task Force members and procedures for current Task Force members to submit letters of recommitment remain unchanged. Nominees and current Task Force members must submit their applications via email to Native@fcc.gov on or before December 29, 2023. Persons who submitted applications prior to the original November 30, 2023 deadline *do*

[1] *FCC Extends Current Native Nations Communications Task Force and Seeks Nominations for Tribal Government Representatives to Serve on Renewed Task Force Beginning in 2024*, Public Notice, DA 23-982 (Oct. 16, 2023).
[2] *Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000).
[3] *Chairman Genachowski Names Members to the FCC-Native Nations Broadband Task Force*, Public Notice, 26 FCC Rcd 2467 (2011).

***not* need to re-apply or re-submit their materials.**

Who May Apply for Membership

Applicants must be elected leaders from federally-recognized Tribal governments or governmental entities (e.g., Tribal utility commissions), or their designated employees. Pursuant to the "intergovernmental communications" exemption in Section 204 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), 2 U.S.C. § 1534, the Task Force is not subject to the requirements and procedures set forth in the Federal Advisory Committee Act ("FACA"), 5 U.S.C. § 1001 *et seq*.[4] Section 204 of UMRA provides an exemption from FACA for intergovernmental communications involving meetings between "Federal officials and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities."[5]

In filling the vacancies, the Commission seeks to balance the representation of different geographic regions, Task Force members' subject-matter expertise, and the diversity among Tribal Nations in terms of culture, priorities and economic development. The Commission is particularly interested in applicants with diverse professional experience and backgrounds in broadband, telecommunications, broadcast and licensing, information technology, and infrastructure deployment and broadband adoption.[6]

Application Procedures For New Nominations

No specific application form is required for nominations; however, at a minimum, applications should be in writing (e.g., a letter) and must include the following information:

- Resume, which includes the position of the applicant with respect to a Tribal government.
- Telephone number.
- Mailing address and/or e-mail address.
- A brief description of the nominee's area(s) of expertise and qualifications to serve on the Task Force.
- A letter from an elected Tribal leader, if the applicant is a *designated employee*.

Designated Employees

In the case of a person seeking to serve as a "designated employee," including incumbent Task Force members, the application must also identify by name and position the elected Tribal leader on whose behalf the employee would be acting *and must include a letter from that elected leader designating the applicant to represent them on the Task Force*. A designated employee must be on the staff of a Tribal government, and part of the governmental process.[7] Following these procedures will ensure that the Task Force may operate with adequate flexibility and within its FACA-exempt status. The designated employee's experience and qualifications should be commensurate with the functions of the Task Force, and not ministerial.

Application Procedures for Incumbent Task Force Members

Incumbent Task Force members who wish to recommit themselves to the Task Force must submit a letter stating their intent to continue to serve on the Task Force and their position as either an elected leader of a federally-recognized Tribe or as a *designated employee* of an elected leader with authority to act on behalf of that leader.

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4 2 U.S.C. § 1534.

5 *Id*.

6 *FCC Seeks Nominations for Tribal Government Representatives to Serve on Renewed FCC Native Nations Communications Task Force*, Public Notice, 33 FCC Rcd 1264 (2018) ("2018 NNCTF Renewal PN").

7 *Id*.

Alternates

The nomination for a new appointment to the Task Force may also include the nomination of an alternate representative who can participate in the event the primary member (whether an elected official or a designated employee) is unavailable for a meeting. An alternate's participation will not count towards the participation of the primary member and should the primary member cease to serve or be removed from the Task Force, the alternate does not become a replacement.[8] The alternate's experience and qualifications should be commensurate with the functions of the Task Force, and not ministerial.

Obligations of Task Force Members

Members of the renewed Task Force will serve at the discretion of the Chairwoman of the Commission who will select Task Force members to serve for a term of three years. The Task Force generally meets in-person twice a year.[9] The Task Force supplements these meetings with virtual meetings throughout the year. Task Force members are required to attend fifty percent (50%) of the annual meetings, including at least one in-person meeting, and at least two virtual meetings.[10] Attendance at in-person meetings will be at the Task Force member's own expense.

Members also have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities who are or will be regulated by, or who have interests before the Commission. Members who fail to disclose such interests will be removed from the Task Force.[11]

Expiration of Task Force Membership or Removal

In the case of an elected Tribal representative no longer holding office in a Tribal government, or a designated employee no longer being employed by the Tribal government or designated by an elected Tribal officer no longer holding office, that person must give prompt notice to the Commission Co-Chair of the Task Force as that Task Force member's seat will be deemed expired.[12] Appointments to the Task Force are specific to the individual selected. A Tribal government may not automatically appoint a replacement for a Tribal representative whose term expires or is removed from the Task Force but may, using the same nomination procedures described above, request such a replacement appointment.[13]

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).

Additional Information

For additional information, please contact Lloyd Collier, Office of Native Affairs and Policy, Lloyd.Collier@fcc.gov, (202) 418-2712.

– FCC –

[8] *Id*.

[9] Pursuant to the 2018 NNCTF Renewal PN, the Task Force is to meet in-person twice a year, with one meeting held at the Commission headquarters in Washington, D.C. and the other meeting to be held in the field, with supplemental virtual meetings throughout the year. *2018 NNCTF Renewal PN*.

[10] *Id.*

[11] *Id*.

[12] *Id*.

[13] *Acting Chairwoman Rosenworcel Announces Term Extension of the Commission's Native Nations Communications Task Force and Seeks Nominations for Vacancies*, Public Notice, 36 FCC Rcd 10096 (2021).

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 23-1125
December 1, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 17 (KENTUCKY) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

PS Docket 23-237 and WT Docket 02-378

The Region 17 (Kentucky) 700 and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Thursday, December 21, 2023. Beginning at 1:30 p.m., the 700 MHz RPC will convene at the Kentucky Transportation Cabinet, 200 Mero Street, Room C117, Frankfort, Kentucky 40622. Immediately following the 700 MHz RPC meeting, the 800 MHz RPC meeting will convene at the same location.

The agenda for both meetings (700 MHz and 800 MHz) include:

- Call to Order - Chair
- Roll Call - Chair
- Approve Meeting Minutes
- Election of Chair, Vice Chair, and Secretary for FY24
- Open Discussion
- Adjourn

Both Region 17 RPC meetings are open to the public. All eligible public safety providers in Region 17 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 band within Region 17 should plan to attend. For further information, please contact:

Michael B. Marshall
Chair
APCO/Special Projects Coordinator KSP Communications and Computer Technologies
94 Airport Rd, Frankfort, KY 40601
PH: 502-782-2063
Email: Brandon.Marshall@ky.gov

Andrew Barrett
Vice-Chair
Louisville Metro Emergency Services, Radio Systems Electronics Supervisor II
410 South 5th Street, Louisville, KY 40202
PH: (502) 572-3471
Email: Andrew.barrett@louisvilleky.gov

– FCC –

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 23-1126
Released: December 1, 2023

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS SERVICES

WC Docket No(s). 23-340

Comments Due: December 18, 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 **January 1, 2024**, 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 Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

[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.").

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 **December 18, 2023**.[5] 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.[6] 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.[7] 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.[8] 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

[5] Comments are normally due 15 days after the Commission releases public notice of the proposed discontinuance. 47 CFR § 63.71(a). For purposes of computation of time, if the comment deadline falls on a weekend or officially recognized Federal legal holiday, however, comments will be due on the next business day. *See* 47 CFR § 1.4(e) and (j).

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

[7] 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.

[8] 47 CFR § 1.1200 *et seq*.

otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an e-mail to fcc504@fcc.gov 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): CBTS Technology Solutions LLC**
WC Docket No. 23-340, Comp. Pol. File No. 1868
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-340*%22))
Affected Service(s) –Prosource service offering that provides resold analog telephone access lines and Primary Rate Interface services
Service Area(s) –Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, New Hampshire, New Jersey, Nevada, New York, Ohio, Pennsylvania, Tennessee, and West Virginia
Authorized Date(s) – on or after January 1, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, 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

DA 23-1127
Released: December 1, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF VELOCITY TELEPHONE INCORPORATED BY METRO FIBERNET, LLC D/B/A METRONET

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-361

Comments Due: December 15, 2023
Reply Comment Due: December 22, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Velocity Telephone Incorporated (Velocity) and Metro Fibernet, LLC d/b/a Metronet (MFN) (collectively, 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 approval for MFN to acquire substantially all of the telecommunications assets, including network facilities and associated customer contracts, of Velocity (Transaction).[2]

Velocity is a Minnesota corporation and a direct, wholly-owned subsidiary of Xpandable Technology, Inc. (Xpandable). Velocity provides domestic telecommunications services, voice over Internet protocol (VoIP) services, and broadband services in certain areas of Minnesota. Applicants state that Velocity's customers that are affected by the proposed transaction are currently served on a resold basis.

MFN, a Nevada limited liability company, is an indirect, wholly-owned subsidiary of Metronet Holdings, LLC (Metronet Holdings). Metronet Holdings, a Delaware limited liability company, is a holding company that, through its direct and indirect, wholly-owned subsidiaries (collectively, Metronet), including MFN, provides domestic telecommunications services and other services in certain portions of Arizona, Colorado, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Texas, Virginia, and Wisconsin. Metronet Holdings' subsidiaries provide service as follows: CMN-RUS, LLC, an Indiana eligible

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

[2] Application for the Acquisition of Certain Assets of Velocity Telephone Incorporated to Metro Fibernet, LLC d/b/a Metronet, WC Docket No. 23-361 (filed October 20, 2023) (Application). Applicants also filed an application, ITC-ASG-20231019-00130, 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.

telecommunications carrier (ETC), provides competitive telecommunications services and other services in multiple states; Jaguar, a Minnesota corporation, provides competitive telecommunications services in certain areas of Minnesota; Climax operates as an incumbent local exchange carrier (LEC) in Climax, Michigan and as a competitive LEC in multiple states; Vexus Fiber, LLC provides telecommunications services as a competitive LEC in Arizona, Louisiana, New Mexico, and Texas. Applicants state that while Metronet Holdings does not have a majority common interest holder, the "Oak Hill Investors and the Cinelli Investors each have negative *de facto* control or actual control of Metronet Holdings."[3] Applicants further state that Metronet Holdings is currently held, either directly or indirectly, primarily by (a) the Oak Hill Investors,[4] (b) the Cinelli Investors, and (c) funds advised and/or managed by indirect subsidiaries of KKR & Co. Inc. (KKR).[5] OHCP MGP V. Ltd. (OHCP MGP V) is the ultimate controlling general partner of certain other Oak Hill Investors. Through Oak Hill Investors, OHCP MGP V holds a ten percent or greater interest in the following carriers: Otelco, Inc. and its subsidiaries, which holds incumbent LECs and competitive LECs in multiple states; Ontario Telephone Company, Inc. and Trumansburg Telephone Company, Inc., rural LECs in New York; and Finger Lakes Communications Group Inc., a reseller of telecommunications services.

Pursuant to the terms of the Asset Purchase Agreement by and among MFN, Velocity, Xpandable, and James Lundberg, MFN will acquire certain assets of Velocity and Xpandable, including substantially all the assets of Velocity used to provide telecommunications services. As a result, Velocity's customers will become customers of MFN.

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)(ii) of the Commission's rules.[6]

Executive Branch Review. The Commission determined in the *Executive Branch Review Process Order* that it would not routinely refer to the Executive Branch applications "where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities."[7] The Commission, however, retains the discretion to refer such applications should it find that a particular application may raise national

[3] Application at 2. The Oak Hill Investors are affiliated with Oak Hill Capital Management and include OHCP MGP V, Ltd., OHCP MGP IV, Ltd., and OHCP GenPar Super Holdco GP, Ltd., and certain funds and entities that they each control. The Cinelli Investors include multiple funds that are U.S. citizens, trusts, or entities. John Cinelli and Janet Cinelli, both U.S. citizens, are the Co-Trustees of the Grantor Retained Annuity Trusts. Application at 2 nn.1 & 2.

[4] Oak Hill Capital Management is a private equity fund based in the United States, with certain funds organized in the Cayman Islands. The equity in the Oak Hill Capital Management funds is held through limited partnership interests which are, in turn, held by numerous, primarily U.S.-based investors. Applicants state that control of these investors and funds ultimately rests in U.S. entities or citizens. *Id*. at 3, Exh. B (Ownership Structure Chart of Metronet Holdings and Its Subsidiaries).

[5] Applicants state that KKR is a publicly traded company with no 10% or greater interest holders. *Id*. at 2, Exh. A (Description of Ownership of Metronet Holdings)- p.13.

[6] 47 CFR § 63.03(b)(2)(ii).

[7] *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927, 10936, 10939, paras. 25, 30 (2020) (*Executive Branch Review Process Order*).

security, law enforcement, foreign policy, and trade policy concerns for which it would benefit from the advice of the Executive Branch.[8] The parties assert that the Application falls under this exclusion and that the Commission should not refer it to the Executive Branch agencies.[9] We find that the parties have made a showing that the Application comes within the exclusion from referral to the Executive Branch for national security, law enforcement, foreign policy, and trade policy review. While we are not referring the Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.[10]

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Velocity Telephone Incorporated to Metro Fibernet, LLC d/b/a MetroNet
WC Docket No. 23-361 (filed October 20, 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 December 15, 2023**, and reply comments **on or before December 22, 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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@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.

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[8] *Id*.

[9] Application at 18-20. Applicants note that the Commission previously determined in 2022 and 2021 that Metronet Holdings, the Oak Hill Investors, and KKR ownership did not require referral to the Executive Branch, as the only reportable ownership in MFN is through passive, offshore intermediary holding companies and 100 percent of the ultimate control is held by U.S. citizens or entities. *Id*. at 19-20 (citing *Application to Transfer of Control of NTS Communications, LLC d/b/a Vexus Fiber to Q-Com Python Corporation,* WC Docket No. 22-58, ITC-T/C-20220209-00028 (Feb. 9, 2022); *Applications to Transfer Control of Climax Telephone Company to MetroNet Systems Holdings, LLC*, WC Docket No. 21-237, IB File Nos. ITC-T/C-20210603-00093, ITC-T/C-20210603-00094 (June 3, 2021).

[10] *See Executive Branch Review Process Order* at 10941, para. 36, n. 99; *see also id*. at 10939, para 30, n. 81.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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.[11] 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 Dennis Johnson at dennis.johnson@fcc.gov.

FCC

[11] *See* 47 CFR § 1.45(c).

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 23-1128
Released: December 1, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ASSIGNMENT OF CERTAIN ASSETS OF NOVA CABLEVISION, INC. TO CABLE ONE, INC. AND CABLE VOIP LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-353

Comments Due: December 15, 2023
Reply Comment Due: December 22, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Nova Cablevision, Inc. (Nova) (Assignor), Cable One, Inc. (Cable One) and Cable VoIP LLC (VoIP LLC) (collectively, Assignees) (Assignor and Assignees collectively, the 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 assign certain Nova assets to Assignees.[2]

Nova, an Illinois corporation, is registered with the Commission as an interconnected VoIP service provider and provides video/cable, broadband Internet access, and interconnected VoIP services in the state of Illinois.[3] Nova is a designated eligible telecommunications carrier (ETC) in Illinois and receives high-cost universal service support through the RDOF Auction 904 support mechanism in the state of Illinois.[4] Nova does not have any subsidiaries or affiliates[5] and is currently owned by Robert Fischer and John Beck, both U.S. citizens.[6]

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

[2] Application for Consent to Assign Certain Assets of Nova Cablevision, Inc., to Cable One, Inc., and Cable VoIP LLC, pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-353 (filed Oct. 18, 2023) (Application). Applicants filed a supplement to the Application on November 16, 2023. Supplement to the Application for Consent to Assign Certain Assets of Nova Cablevision, Inc., to Cable One, Inc., and Cable VoIP LLC, pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-353 (filed Nov. 16, 2023) (Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 3.

[4] *Id*. Nova also participates in the Lifeline program in Illinois. *Id*.

[5] Supplement at 3.

Cable One, a publicly traded Delaware corporation, is a cable operator that is registered with the Commission as an interconnected VoIP service provider.[7] Cable One and its subsidiaries[8] provide cable/video, broadband Internet access, telecommunications, and/or interconnected Voice over Internet Protocol (VoIP) services in 23 states.[9] Fidelity Cablevision, a designated ETC, receives RDOF Auction 904 support in Missouri.[10] Fidelity Telephone and ComSouth, both designated ETCs, receive Alternative Connect America Cost Model (A-CAM) support in Missouri and Georgia, respectively.[11] Fidelity Telephone has elected to receive Enhanced A-CAM support as of January 1, 2024.[12] While Bluffton and Hargray Telephone, both designated ETCs, currently receive cost-based universal service support in South Carolina,[13] they have elected to receive Enhanced A-CAM support beginning January 1, 2024.[14]

VoIP LLC, a wholly-owned subsidiary of Cable One and a Delaware limited liability corporation, is registered with the Commission as an interconnected VoIP service provider[15] and currently provides interconnected VoIP services in Arizona and Kansas.[16] VoIP LLC is designated as an ETC in Idaho and Louisiana and has been authorized by the Commission to receive RDOF Auction 904 support in those states.[17] In connection with this proposed transaction, VoIP LLC has filed an application for ETC designation in Illinois.[18]

Cable One has a 10% or greater direct or indirect interest in three companies: Clearwave Fiber (Clearwave), a Delaware limited liability company that acts as a holding company (58%); AMG Technology Investment Group, LLC d/b/a Nextlink Internet (Nextlink), a Texas limited liability company and competitive LEC that offers voice and/or Internet access services in Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Texas, Wisconsin, and

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[6] Application at 9.

[7] *Id*. at 2.

[8] In addition to VoIP LLC, the other wholly-owned subsidiaries of Cable One are: Fidelity Telephone, LLC (Fidelity Telephone) (incumbent local exchange carrier (LEC)); Fidelity Cablevision, LLC (Fidelity Cablevision) (competitive LEC); CoBridge Communications LLC; CoBridge Broadband, LLC; Hargray Telephone Company, LLC (Hargray Telephone) (incumbent LEC); Bluffton Telephone Company, LLC (Bluffton) (incumbent LEC); Hargray, LLC; Hargray of Alabama, LLC; ComSouth Telecommunications, LLC (ComSouth) (incumbent LEC); and ComSouth Telenet, LLC. Application at 2; Supplement at 1-2.

[9] Application at 2. These states are: Alabama, Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, and Washington. *Id*.

[10] Supplement at 1. Fidelity Cablevision also participates in the Lifeline program in Missouri and Oklahoma. *Id*.

[11] *Id*. at 2. Fidelity Telephone and ComSouth also participate in the Lifeline program in the states in which they receive A-CAM support. *Id*.

[12] *Id*.

[13] *Id*. Bluffton and Hargray Telephone also participate in the Lifeline program in the South Carolina.

[14] *Id*.

[15] Application at 2.

[16] *Id*.

[17] *Id*. VoIP LLC also participates in the Lifeline program in Idaho and Louisiana. *Id*.

[18] *Id*. at 2-3.

Wyoming (17%); and Mega Broadband Investment Holdings, LLC (MBI), a Delaware limited liability company that provides cable/video, broadband Internet access, telecommunications, and/or interconnected VoIP services in 16 states[19] through its subsidiaries operating under the Vyve Broadband name (45%).[20] Clearwave wholly owns Delta Communications, LLC d/b/a/ Clearwave Communications (Delta), an Illinois limited liability company and competitive LEC that offers voice and/or Internet services in Illinois, Kansas, and Missouri.[21] Delta, a designated ETC in Illinois, receives Rural Broadband Experiment support.[22] Delta also wholly owns Hargray of Georgia LLC, a South Carolina limited liability company and competitive LEC that offers cable/video, voice, and/or broadband Internet access in Georgia, and Hargray of Florida LLC, a Georgia limited liability company and competitive LEC that offers cable/video, voice, and/or broadband Internet services in Florida.[23] Nextlink, a designated ETC, receives Connect America Fund II support in Illinois, Iowa, Kansas, Nebraska, Oklahoma, and Texas.[24] Nextlink also receives RDOF Auction 904 support in Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Texas, Wisconsin, and Wyoming.[25] There are no persons or entities with a 10% or greater direct or indirect ownership in Cable One.[26] Other than what is set forth in the Application, neither Cable One nor any of its affiliates or subsidiaries owns or controls 10% or greater direct or indirect interest in any other domestic telecommunications provider.[27]

Pursuant to the terms of the asset purchase agreement, Cable One will purchase substantially all of Nova's assets and customers, including customer accounts and receivables, and customer agreements and contracts, vendor agreements and contract, equipment, and intellectual property.[28] The Applicants state that Cable One will not assume any of Nova's pre-closing liabilities or obligations.[29] Applicants also state that Cable One will acquire and assume all of Nova's benefits and obligations under the Commission's RDOF program, including any RDOF Auction 904 support funds currently held by Nova and all assets and facilities that have been acquired, maintained, or upgraded by Nova using RDOF Auction 904 support.[30] Moreover, Applicants assert that post transaction, all of the obligations associated with the RDOF Auction 904 support originally awarded to Nova will be fulfilled by VoIP LLC, an existing RDOF-approved provider.[31] Applicants explain that consummation of the transaction is contingent upon, among

[19] *Id.* at 11. The states in which MBI operates are: Alabama; Arkansas; California; Colorado; Georgia; Idaho; Kansas; Louisiana; Nebraska; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; Washington; and Wyoming. *Id.*

[20] *Id*. at 10-11.

[21] *Id.* at 10.

[22] Supplement at 2. Delta also participates in the Lifeline program in Illinois. *Id*.

[23] Application at 10.

[24] *Id*.

[25] *Id.*

[26] *Id*.

[27] *Id*. at 11.

[28] Application at 3.

[29] *Id*.

[30] *Id*.

other things, receipt of all necessary regulatory approvals.[32] Finally, Applicants note that VoIP LLC currently holds irrevocable standby letters of credit and bankruptcy opinion letters for the RDOF Auction 904 support it receives in the states of Idaho and Louisiana.[33] Applicants assert that VoIP LLC acknowledges and understands that, as a condition to grant of this proposed transaction, it will be required to submit and have approved by the Universal Service Administrative Company (USAC) an irrevocable standby letter of credit and bankruptcy opinion letter for the assumption of Nova's RDOF Auction 904 support in the state of Illinois consistent with the Commission's RDOF requirement for such letters.[34]

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.[35] Applicants explain that the transaction does not present any anticompetitive issues for numerous reasons, including that it will not reduce the number of service providers in the applicable geographic areas and there is no overlap between the Applicants' fiber facilities in the markets where they operate.[36]

Applicants request streamlined treatment of the proposed transaction under the Commission's rules.[37] Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[38]

Domestic Section 214 Application Filed for the Assignment of Certain Assets of Nova Cablevision, Inc., to Cable One, Inc. and Cable VoIP LLC,
WC Docket No. 23-353 (filed October 18, 2023).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. 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.

Interested parties may file comments **on or before December 15, 2023**, and reply comments **on or before December 22, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at http://apps.fcc.gov/ecfs/ .
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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[31] *Id*. at 4. Applicants explain that upon consummation of the proposed transaction, Nova will relinquish its ETC designation and will no longer receive any RDOF Auction 904 support. *Id*.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id*. at 7-8.

[36] *Id*. at 8.

[37] *Id*. at 12-13.

[38] *See* 47 CFR § 63.03(c)(1)(v).

- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[39] 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.

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) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2) Megan Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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.[40] 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.

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[39] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

[40] *See* 47 CFR § 1.45(c).

For further information, please contact Megan Danner at (202) 418-1151.

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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 23-1129
Released: December 4, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES EFFECTIVE AND COMPLIANCE DATES FOR CERTAIN ACCESS ARBITRAGE RULES

WC Docket No. 18-155

On April 21, 2023, the Federal Communications Commission (Commission) released the *Access Arbitrage Second Report and Order* adopting new rules to close perceived loopholes in our Access Stimulation Rules.[1] On June 1, 2023, a summary of the *Access Arbitrage Second Report and Order* was published in the Federal Register, and on July 3, 2023, the rules adopted became effective,[2] except sections 51.914(d) and 51.914(g), which contain information collections and required approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.[3] The Commission directed the Wireline Competition Bureau (WCB) to announce the effective and compliance dates for sections 51.914(d) and 51.914(g) by Public Notice following OMB approval.[4]

On November 7, 2023, OMB approved the information collection requirements associated with the revised Access Stimulation Rules.[5] By this Public Notice, WCB announces that the notice of OMB approval was published in the Federal Register on December 1, 2023.[6] The Federal Register notice also added reference to section 51.914(d) in sections 51.914(e) and 51.914(f).[7] The Federal Register notice announced that the effective date for the changes to section 51.914(d)-(g) is January 2, 2024.[8] Compliance is required by February 16, 2024.[9]

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[1] *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*).

[2] FCC, Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, 88 Fed. Reg. 35743, 35743 (June 1, 2023).

[3] *Access Arbitrage Second Report and Order* at 54, para. 104.

[4] *Id.*

[5] Office of Information and Regulatory Affairs, Reginfo.gov, Notice of Office of Management and Budget Action, OMB Control No. 3060-0298 (Nov. 7, 2023) (referenced in Office of Information and Regulatory Affairs, Reginfo.gov, OMB Control Number History, OMB Control No. 3060-0298, https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3060-0298# (last visited Nov. 30, 2023) (approved without change)).

[6] FCC, Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, 88 Fed. Reg. 83828 (Dec. 1, 2023).

[7] *Id.* at 83829.

[8] *Id.* at 83828.

[9] *Id.*; *see Access Arbitrage Second Report and Order* at 54, para. 104 (stating that the compliance date will be 45 days after the effective date).

For additional information regarding this matter, please contact Susan Bahr, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-0573 or Susan.Bahr@fcc.gov.

- FCC -

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 23-1130
December 4, 2023

PSHSB ANNOUNCES NEW DISASTER INFORMATION REPORTING SYSTEM (DIRS) PLATFORM

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communications Commission (Commission) announces the launch of a new version of the Disaster Information Reporting System (DIRS) on December 4, 2023. DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable, interconnected VoIP, and broadband service providers, may use to report the status of their communications systems, as well as to request assistance during times of crisis. In times of disasters and emergencies, the Commission may activate DIRS to report communications infrastructure status and collect situational awareness information.

As of December 4, 2023, the legacy DIRS system will be decommissioned in favor of the new platform, accessible directly at https://dirs.fcc.gov. The new DIRS system has been modernized to enhance security and network features to better ensure the integrity of the system.

Current DIRS users without an existing account in the FCC's Commission Registration System (CORES) will need to create a CORES account prior to accessing DIRS. **Current DIRS users** with an existing CORES account will not need to create a new DIRS account. **New DIRS users** will first need to register in CORES, and then create new DIRS account. The username and password you establish in CORES is also used for DIRS. Detailed information on creating DIRS accounts, as well as using the system, can be found in the user's guide, available at www.fcc.gov/sites/default/files/DIRS-UserGuide-122023.docx.

We encourage those who have used DIRS in the past, or anticipate using it in the future, to complete a new DIRS registration as soon as possible rather than waiting until an activation. In order to facilitate a smooth transition for users ahead of the 2024 disaster season, the Commission will also conduct a DIRS exercise on January 16 to 18, 2024. The focus of the exercise will include the operation of DIRS and the mechanics of navigating the application.

The new DIRS platform will also feature an Application Programming Interface (API). User interested in using the API feature should contact a member of the DIRS team listed below for additional information after December 4, 2023.

Any questions regarding the enhanced DIRS system can be directed to staff of the Bureau's Cybersecurity and Communications Reliability Division: Michael Caiafa, at (202) 418-1311, michael.caiafa@fcc.gov, Ryan Hedgpeth at 202-664-9952, ryan.hedgpeth@fcc.gov or David Ahn at (202) 418-0853 david.ahn@fcc.gov.

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PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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DA 23-1131
Released: December 4, 2023

WIRELINE COMPETITION BUREAU PROVIDES ADDITIONAL GUIDANCE ON PERFORMANCE MEASURES REQUIREMENTS FOR CARRIERS TRANSITIONING TO ENHANCED A-CAM AND THOSE REMAINING ON CAF BLS SUPPORT

WC Docket No. 10-90

With this Public Notice, the Wireline Competition Bureau (Bureau) provides additional guidance regarding the performance measures requirements for Alternative Connect America Cost Model (A-CAM) I, A-CAM II, and Connect America Fund Broadband Loop Support (CAF BLS) carriers authorized to begin receiving Enhanced A-CAM support on January 1, 2024.[1] In addition, the Commission sunsets the mixed support (*Hargray*) condition applicable to some carriers taking Enhanced A-CAM support.

In the *Implementation Order*, the Bureau "establish[ed] January 1, 2026 as the start date for Enhanced A-CAM carriers' 'pre-testing' period, in which carriers must test the speed and latency of their networks quarterly for a week-long period and submit the results within one week of the end of each quarter of pre-testing, and January 1, 2027 as the start date for Enhanced A-CAM performance testing, after which carriers may be subject to the performance measures non-compliance rules."[2]

In the interim, carriers authorized for Enhanced A-CAM support that do not meet their existing A-CAM I, A-CAM II, or CAF BLS deployment milestones due by December 31, 2023 will be subject to support withholding or recovery and "any support withholding or recovery will be based on support at the time the carrier is notified of non-compliance."[3] In the *Authorization Public Notice*, the Bureau stated that "Enhanced A-CAM carriers shall continue to conduct performance testing in their existing support programs until the Bureau has confirmed that the carrier is in compliance with its obligations under that

[1] *See Wireline Competition Bureau Authorizes 368 Companies in 44 States to Receive Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-1025 (WCB Oct. 30, 2023) (*Authorization Public Notice*).

[2] *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*, WC Docket No. 10-90 et al., Order, DA 23-778, at 7, para. 17 (WCB Aug. 30, 2023) (*Implementation Order*) (internal citations omitted). The Bureau also "clarif[ied] that Enhanced A-CAM carriers' test locations will include all locations to which they have deployed or will deploy 100/20 Mbps or faster broadband service within their Enhanced A-CAM service areas—not just the locations to which they must newly deploy 100/20 Mbps or faster broadband service, i.e., Enhanced A-CAM required locations." *See id.*

[3] *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 23-24, para. 49 (July 24, 2023) (*Enhanced A-CAM Order*); 47 CFR § 54.320(d)(1). *See also Enhanced A-CAM Order* at 40-41, paras. 92-95 (explaining how Enhanced A-CAM support may be reduced because of a carrier's non-compliance with a prior program's service milestone).

program because results for performance testing conducted in 2023 are not due until July 1, 2024."[4] We provide more specific guidance below.

A-CAM I and A-CAM II Carriers Moving to Enhanced A-CAM. A-CAM I and A-CAM II carriers authorized for Enhanced A-CAM are still required to comply with performance testing requirements for 2023, and by July 1, 2024 must certify the testing results.[5] After July 1, 2024, the Universal Service Administrative Company (USAC) and the Bureau will process the certified testing data and implement any support withholding, as required, against monthly Enhanced A-CAM disbursements.[6] Once a carrier shows that it has come back into compliance with its A-CAM I or A-CAM II performance requirements, it will receive its full monthly Enhanced A-CAM disbursement and have its withheld support restored. Continuing to conduct performance testing in 2024 may, therefore, be in a carrier's interest because compliance with A-CAM I or A-CAM II performance requirements certified for any quarter of 2024 and even prior to processing 2023 testing data means such carrier will not have Enhanced A-CAM support withheld.[7]

CAF BLS Carriers. Carriers that are currently on CAF BLS *regardless of whether they have elected Enhanced A-CAM* must show that they were in compliance with their CAF BLS performance requirements in 2023, the final year of their five-year deployment term. For carriers that transition from CAF BLS to Enhanced A-CAM, if they are in compliance with performance measures standards for the year 2023, then no further testing is needed until 2026. However, any CAF BLS carrier that is not in compliance with performance measures for 2023 will be subject to support recovery under section 54.320(d) of the Commission's rules or may attempt to return to compliance within a one-year cure period by conducting another year of performance testing using a statistically valid sample of locations.[8] A carrier must request such a sample from USAC no later than August 1, 2024 and begin the one year of testing in the fourth quarter of 2024. For those carriers choosing to do an additional year of testing with a statistically valid sample, any support recovery for failing to meet end of term performance obligations will be calculated after the one-year cure period. Moreover, carriers that did not elect Enhanced A-CAM and thus remain on CAF BLS support must continue performance testing even after they have shown they are in compliance for the five-year obligation.

Mixed Support Condition. We also announce the sunsetting of the mixed support (i.e., *Hargray*) condition on the mixed support transactions of 22 CAF BLS/High Cost Loop Support (HCLS) companies that will be receiving Enhanced A-CAM support as of January 1, 2024, as detailed in the Appendix. In the *Hargray/ComSouth Order*, the Commission approved a mixed support transaction, i.e., a transaction involving the combination of one or more entities receiving fixed high-cost support and one or more

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[4] *Authorization Public Notice* at 2. Although the Commission recently adopted changes requiring all high-cost support recipients serving fixed locations to report and certify performance testing results on a quarterly basis, rather than annually, testing conducted through the end of 2023 must still be reported by July 1, 2024. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Report and Order, FCC 23-87, at 62, para. 136 (2023) (adopting quarterly deadlines for reporting performance testing results).

[5] 47 CFR § 54.313(a)(6).

[6] *See Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018).

[7] Once current A-CAM I or II carriers are in compliance with their existing obligations, as Enhanced A-CAM carriers they will no longer be subject to prior A-CAM I or A-CAM II deployment obligations and associated performance measures requirements after they begin receiving Enhanced A-CAM support. *See Enhanced A-CAM Order* at 23, para. 49 ("Enhanced A-CAM carriers' interim and final deployment milestones will supersede the existing deployment milestones required by the A-CAM I and A-CAM II programs."). No further performance measures testing is necessary for such carriers until the Enhanced A-CAM pre-testing period begins in 2026.

[8] *See id.* at 23-24, para. 49; 47 CFR § 54.320(d)(1). *See also Enhanced A-CAM Order* at 40-41, paras. 92-95 (citing *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11927, para. 112 (2018)).

entities receiving cost-based support, subject to a condition to prevent cost shifting and to protect the finite resources of the high-cost universal service fund.[9] This condition (the *Hargray* condition) capped the high-cost cost-based universal service support received based on the operating expenses of the rate-of-return carriers receiving cost-based support for a term of seven years (and any other rate-of-return affiliates acquired during the time in which the condition is in effect (together, covered entities)) or until all covered entities were converted to fixed support.[10] The Commission directed the Bureau to apply this condition to future mixed-support transactions.[11] The 22 companies listed in the Appendix were part of such transactions and were made subject to the *Hargray* condition as per Commission and Bureau releases, as indicated therein.

The conversion of the support received by each of these 22 companies from cost-based support to fixed Enhanced A-CAM (including fixed transitional support) will render the *Hargray* condition on the company's associated transaction obsolete. The *Hargray* condition and related obligations will continue to apply to all cost and revenue data that is applicable to the 2023 calendar year, and these companies must file their compliance certification and financial report for 2023 by January 1, 2024.[12]

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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[9] *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for* Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4788-90, paras. 26-31 (2018) (*Hargray/ComSouth Order*).

[10] *Id*. More specifically, the Commission capped the combined operating expenses of the post-consummation company's rate-of-return affiliates at the averaged combined operating expenses of the three calendar years preceding the transaction's closing date for which the operating expense data are available. During the applicable time frame, the cap would be applied to cost recovery under both HCLS and CAF BLS and proportionate to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS. *Id*. at 4788-90, paras. 27-31.

[11] *Id*. at 4789, para. 27 n.72.

[12] *Id*. at 4790, para. 31.

APPENDIX

Holding Company Accepting Enhanced A-CAM Support	Study Area Converting to Enhanced A-CAM	Study Area Code	Related Orders
Cable One, Inc.	Bluffton Tel. Co.	240512	DA 21-502; FCC 18-62
Cable One, Inc.	Hargray Tel Co	240523	DA 21-502; FCC 18-62
Communications 1 Network, Inc.	Goldfield Tel Co	351188	DA 20-1509
Court Square Capital Partners	Warwick Valley-Nj	160135	DA 18-1169
Direct Management Company	Direct Communications Cedar Valley, LLC	500758	DA 22-61
Dobson Technologies, Inc.	Lavaca Tel Co-Ar	401704	FCC 23-800, FCC 21-63; DA 23-657, DA 22-1092, DA 21-68
Dobson Technologies, Inc.	Lavaca Tel Co-Ok	431704	FCC 23-800, FCC 21-63; DA 23-657, DA 22-1092, DA 21-68
Future Fiber FinCo, LLC	Ontario Tel Co, Inc.	150112	DA 22-390, DA 21-346
Future Fiber FinCo, LLC	Trumansburg Tel Co.	150131	DA 22-390, DA 21-346
Germantown Tel. Company, Inc.	Germantown Tel Co	150097	DA 23-657
Great Plains Communications, Inc.	Sunman Telecomm Corp	320825	DA 20-981
Hilliary Communications, LLC	Medicine Park Tel Co	432008	DA 19-184, DA 18-1265
Moundville Communications, Inc.	Moundville Tel Co	250307	DA 22-1262
Mecklenburg Electric Cooperative	Buggs Island Coop	190219	DA 20-257
New Lisbon Tel. Company, Inc.	New Lisbon Tel Co	320796	DA 22-531
Sacred Wind Enterprises, Inc.	Sacred Wind	493403	DA 22-1066
Wilkes Tel. Membership Corp.	Barnardsville Tel Co	230469	DA 18-742
Wilkes Tel. Membership Corp.	Ellerbe Tel Co	230478	DA 18-742
Wilkes Tel. Membership Corp.	Tri County Tel Membr	230505	DA 18-742
Wilkes Tel. Membership Corp.	Service Tel Co	230500	DA 18-742
Wilkes Tel. Membership Corp.	Wilkes Membership	230510	DA 18-742
Wilkes Tel. Membership Corp.	Saluda Mountain Tel	230498	DA 18-742

PUBLIC NOTICE

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Internet: www.fcc.gov
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DA 23-1132
Released: December 5, 2023

WIRELESS TELECOMMUNICATIONS BUREAU ADOPTS FINAL DEADLINES FOR SUBMISSION OF C-BAND REIMBURSEMENT CLAIMS

GN Docket No. 18-122

I. INTRODUCTION

With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) adopts two final reimbursement claims submission deadlines by which eligible incumbents and other eligible stakeholders are required to submit any outstanding transition-related claims to the C-band Relocation Payment Clearinghouse (RPC) for processing as part of the ongoing transition of the 3.7-4.2 GHz band (C-band).[1] On October 13, 2023, the Bureau issued a Public Notice seeking comment on certain proposals advanced by the RPC, AT&T, Verizon, and SES relating to the conclusion of the C-band transition reimbursement program and wind down of the RPC's operations.[2] After review of the record, we adopt: (1) **February 5, 2024**, as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants as of December 31, 2023, including all lump sum election claims by incumbent earth station operators; and (2) **July 1, 2024**, as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023.[3] We defer action on other proposals as detailed below.

[1] *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Report and Order*). In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band. *Id*. The Commission required new 3.7 GHz Service licensees to reimburse the reasonable relocation costs of eligible Fixed Satellite Service (FSS) space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band. *Id*. at 2391, 2465-66, paras. 111, 326.

[2] *Wireless Telecommunications Bureau Seeks Comment on the C-band Relocation Payment Clearinghouse's Proposal to Set Final Deadlines for Submission of Reimbursement Claims*, GN Docket No. 18-122, Public Notice, DA 23-958 (WTB 2023) (*RPC Proposed Deadline Comment PN*); *see also* Relocation Payment Clearinghouse LLC's Program Status Update and Request for Establishment of Claims Deadlines, GN Docket No. 18-122 (filed Oct. 6, 2023) (RPC Request); Letter from Raquel Noriega, AVP-Federal Regulatory, AT&T Services, Inc., and Rachael Bender, Vice President and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Sept. 14, 2023) (AT&T/Verizon Joint *Ex Parte*); Letter from Brian D. Weimer, Counsel for SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Sept. 27, 2023) (SES *Ex Parte*).

[3] We also direct relevant claimants to file all anticipated claims that may be incurred and/or paid after July 1, 2024, utilizing the methodology established herein, by the July 1, 2024 deadline. *See infra* at 6-7.

II. BACKGROUND

On October 6, 2023, the RPC[4] submitted a report on the status of its C-band transition cost reimbursement program as of the close of Fiscal Year 2023, which outlined the successful completion of both the Phase I and II Accelerated Relocation Deadlines, the status of the RPC's reimbursement program and claims processed to date, and the number of, and anticipated accrual timeframe for, outstanding claims related to the C-band transition.[5] In its report, the RPC requested that the Bureau establish final claims submission deadlines for all transition-related reimbursement claims.[6] Specifically, the RPC requested that the Commission adopt the following claims submission deadlines as final and binding on all eligible incumbents or other eligible stakeholders:[7]

- February 5, 2024, for all reimbursement claims for costs incurred and paid by claimants as of December 31, 2023, including all lump sum election claims by incumbent earth station operators;[8] and
- September 30, 2024, for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023, with the exhortation that claims be submitted to the RPC on a rolling basis within 30 days of being incurred.[9]

Prior to the filing of the RPC Request, AT&T and Verizon, jointly, and SES, individually, filed *ex partes* requesting that the Commission set various deadlines to facilitate the conclusion of the C-band

[4] The *3.7 GHz Report and Order* provided for the creation of an independent clearinghouse to administer, subject to the Commission's rules and oversight, the cost-related aspects of the transition in a fair and transparent manner, "to mitigate financial disputes among stakeholders, and to collect and distribute payments in a timely manner." *3.7 GHz Report and Order*, 35 FCC Rcd at 2446, para. 255; 47 CFR § 27.1414. A search committee appointed by the Commission selected CohnReznick LLP and subcontractors Squire Patton Boggs (US) LLP, and Intellicom Technologies, Inc., to serve as the clearinghouse; the Bureau subsequently determined that the search committee's selection satisfied the criteria set forth in section 27.1414 of the Commission's rules and described in the *3.7 GHz Report and Order*. *3.7 GHz Report and Order*, 35 FCC Rcd at 2450-52, paras. 273-80; *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Order, 35 FCC Rcd 11859 (WTB 2020).

[5] RPC Request.

[6] *RPC Proposed Deadline Comment PN*; *see also* RPC Request at 8-9.

[7] *See* RPC Request at 9-10.

[8] *See RPC Proposed Deadline Comment PN* at 1-2; *see also* RPC Request at 6-8. As part of its claims processing procedures, the RPC deems actual costs that have been paid by the eligible incumbent, or other eligible stakeholder, as incurred. *See* C-band RPC, *RPC C-band Handbook (version 1.6)* at Section 3, available at https://cbandrpc.com/resources/ (RPC C-band Handbook). Incumbent FSS earth station operators opting to receive a lump sum amount were required to make an irrevocable election and accompanying certification with the Commission by September 14, 2020. *Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Elections*, GN Docket No. 18-122, IB Docket No. 20-205, Public Notice, 35 FCC Rcd 7967 (WTB 2020). The original lump sum election filing deadline of August 31, 2020 was later extended to September 14, 2020. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, IB Docket No. 20-205, Order, 35 FCC Rcd 8856 (WTB 2020). The RPC C-band Handbook also specifies claims processing procedures for lump sum elections. RPC C-band Handbook at Section 5. The RPC began accepting reimbursement claims, including from lump sum electees, in August 2021. *See* Press Release, C-band RPC, The Relocation Payment Clearinghouse to Accept Claims for Reimbursement and Lump Sum Payments Related to the C-band Relocation Program, Press Release (Aug. 16, 2021), https://cbandrpc.com/guidance/Communications/RPC_Press_Release_8.16.2021.pdf (C-band Press Release).

[9] *See RPC Proposed Deadline Comment PN* at 1-2; *see also* RPC Request at 8-9 (stating that for "any reimbursable costs paid after December 31, 2023, the RPC encourages claimants to submit such claims within 30 days of payment and to not wait until the recommended September 30, 2024 deadline").

transition reimbursement process and wind down of the RPC's operations.[10] Specifically, AT&T and Verizon asked the Commission to: (1) set a deadline for submittal of reimbursement claims affording claimants with sufficient time to submit expenses to the RPC "but not otherwise protracting the reimbursement process;" (2) specify when the RPC should issue a final funding request to 3.7 GHz Service Licensees after reimbursement claims are submitted; (3) set a deadline for the RPC to process all claims; and (4) set a deadline for the RPC to finish its program audit.[11] In response, SES asserted that some of the proposals in the AT&T/Verizon Joint *Ex Parte* may be premature for the Commission to act on at this time, although SES broadly supported steps by the Commission that would expedite the RPC's reimbursement process and bring a timely close to the C-band transition.[12] SES also specifically asked the Commission to: (1) establish a 90-day clock by which the RPC must process each claim submitted after January 1, 2024; and (2) require the RPC to process by December 31, 2023 all claims that "already exceed or will exceed the 90-day processing deadline" as of January 1, 2024.[13]

On October 13, 2023, the Bureau issued a Public Notice seeking comment on the proposals advanced by the RPC, AT&T, Verizon, and SES.[14] The Bureau also sought comment on any other steps the Bureau should take pursuant to its delegated authority to facilitate the completion of the C-band transition reimbursement program and wind down of the RPC's operations in an efficient and timely manner in keeping with its remit to prevent fraud, waste, and abuse.[15]

In response, the Bureau received comments from Intelsat, SES, AT&T, Verizon, and CTIA.[16] All commenters largely supported the adoption of two final reimbursement claims submission deadlines, and most of the commenters agreed with the initial February 5, 2024 claims submission deadline proposed by the RPC for all reimbursement claims incurred and paid for as of December 31, 2023, including lump sum election claims.[17] As to the second proposed claims submission deadline, Verizon, AT&T, and

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[10] AT&T/Verizon Joint *Ex Parte*; *see also* SES *Ex Parte* at 2-3 (agreeing with AT&T and Verizon "that the Commission should do all that it can to expedite the RPC's reimbursement process and bring a timely close to the C-band transition").

[11] AT&T/Verizon Joint *Ex Parte* at 1. In their comments, AT&T, Verizon, and CTIA expressed support for the adoption of these various deadlines, and asked the Commission to direct the RPC to finish its program audit and close out the RPC program by December 31, 2024. *See* Comments of Verizon at 2, 7-9 (Verizon Comments); Comments of AT&T Services, Inc. at 7-8 (AT&T Comments); Comments of CTIA at 8-9 (CTIA Comments).

[12] SES *Ex Parte* at 2.

[13] SES *Ex Parte*. In support of its proposals, SES stated that it has submitted 1,311 claims for reimbursement to the RPC, and only 103 out of the 1,311 claims have been processed by the RPC, some of which were only processed in part. SES acknowledged, however, that the RPC, consistent with discussions it had with SES, prioritized high value claims first and that $927 million of the $1.322 billion in claims that SES had submitted has already been reimbursed. *See id.* at 1-2. SES also noted the length in pendency for certain claims, and that it expected to file another 1,000 future claims. *Id.*; *see also* Comments of SES Americom, Inc. at 2-3 (SES Comments) (explaining that "[b]arring extenuating circumstances, including incidents outside the control of the RPC—e.g., a non-responsive claimant, or a particularly complex issue—the RPC should be able to reach a determination on any claim within 90 days"). In their comments, Verizon, SES, and CTIA supported the adoption of a 90-day processing deadline. *See* Verizon Comments at 2-3, 6-7; AT&T Comments at 6-7; CTIA Comments at 6-8.

[14] *RPC Proposed Deadline Comment PN* at 1-3; *see also* AT&T/Verizon Joint *Ex Parte*; SES *Ex Parte*.

[15] *See RPC Proposed Deadline Comment PN* at 1-3; 47 CFR §§ 0.131, 27.1412(h), 27.1414(b)(3)(iv); *3.7 GHz Report and Order*, 35 FCC Rcd at 2447-48, 2451, paras. 259, 262, 276.

[16] Comments of Intelsat License LLC (Intelsat Comments); SES Comments; Verizon Comments; AT&T Comments; CTIA Comments.

[17] *See* Verizon Comments at 2, 4-6; AT&T Comments at 2-6; CTIA Comments at 3-5; SES Comments at 1-2, 4 ("generally supporting the RPC's request for the Bureau to establish final claims submission deadlines"); Intelsat Comments at 2 ("agree[ing] with the RPC that the Commission should establish a final deadline by which all claims (continued….)

CTIA asked the Commission to set July 1, 2024, rather than September 30, 2024, as the deadline for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023.[18] In support of this deadline, commenters argued that because all physical transition-related costs would have been incurred by the end of 2023, it was unnecessary to give claimants until September 30, 2024 to submit other types of expenses that should already be known.[19] In advocating for these deadlines, commenters also asked, *inter alia*, that the Commission develop a process by which claimants can submit any foreseeable claims that may be incurred after both final claims submission deadlines have passed.[20] In addition, commenters asked the Commission to adopt deadlines, processes, and methodologies that they believe will enhance and expedite the RPC's claims review process.[21]

III. DISCUSSION

Final Claims Submission Deadlines. As discussed further below, we find that establishment of two final claims submission deadlines will aid in facilitating a timely conclusion of the C-band reimbursement program and, as such, will further the Commission's goal of expediting the transition of this spectrum. We therefore adopt the following final claims submission deadlines: (1) **February 5, 2024**, for all reimbursement claims for costs incurred and paid by claimants as of December 31, 2023, including all lump sum election claims by incumbent earth station operators; and (2) **July 1, 2024**, for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023.[22]

We find that adopting these two claims submission deadlines as final and binding on eligible claimants and other eligible stakeholders will aid in facilitating a timely conclusion of the C-band reimbursement program.[23] We believe that all C-band transition stakeholders, including eligible claimants, other eligible stakeholders, and the 3.7 GHz Service Licensees, will benefit from a concrete timeframe within which to discharge their remaining transition responsibilities and that the Commission's

must be submitted"). Intelsat did not comment on the specific deadlines proposed in the *RPC Proposed Deadline Comment PN*. *See* Intelsat Comments.

[18] *See* Verizon Comments at 2, 4-6; AT&T Comments at 2-6; CTIA Comments at 3-5.

[19] *See* Verizon Comments at 5; *see also* AT&T Comments at 3 (arguing that all costs incurred after December 31, 2023 should be "soft costs" associated with processing claims submitted by February 5, 2024 that could be submitted by July 1, 2024); CTIA Comments at 5-6 ("There is no reason to prolong the final claims submission deadline when this work has already been completed, the figures are known, and the costs incurred in 2024 are likely to be few.").

[20] Verizon Comments at 2, 4-6 ("the Commission should, as proposed, encourage all claimants to submit claims for costs incurred in 2024 within 30 days of such costs being incurred"); AT&T Comments at 2-6 ("the Commission and the RPC should anticipate and proactively address categories of post-December 31, 2023, claims"); CTIA Comments at 3-5; SES Comments at 4-7 (asking the Commission to adopt a "limited exception from the Final Claims Submission Deadlines for claims that cannot be timely submitted due to some unsatisfied procedural trigger in the RPC's control"); Intelsat Comments at 2-5 (stating that it will continue to incur transition related costs for telemetry, tracking, and command transmissions through December 2030, and milestone payments on insurance procured for its replacement satellites through 2025).

[21] Verizon Comments at 4-5 (asking the Commission to encourage claimants to submit claims for costs incurred in 2024 within 30 days of such costs being incurred); AT&T Comments at 7-8 (stating that the RPC should develop a phased shutdown plan, including establishing a benchmark for when emailing documents is more efficient and cost-effective than maintaining Coupa, its claims submission system, and reducing staff); Intelsat Comments at 5-6 (asking the Commission, among other things, to establish a net present value calculation for reimbursement of monthly recurring charges and a sampling methodology for processing of ground clearing costs and claims under $5,000 per antenna).

[22] We also direct relevant claimants to file all anticipated claims utilizing the methodology established herein by the July 1, 2024 deadline. *See infra* at 6-7.

[23] *RPC Proposed Deadline Comment PN* at 1-2; *see also* RPC Request at 8-9; Verizon Comments at 4-6; AT&T Comments at 2-6; SES Comments at 1-2; CTIA Comments at 3-6.

goal for an expedited transition will be served by the establishment of specific claims submission deadlines as proposed by the RPC and relevant stakeholders.[24] We also agree with the RPC that establishment of such deadlines will promote administrative and regulatory efficiency, enabling the processing of claims as soon as possible, and ultimately facilitating the wind down of the C-band reimbursement program,[25] broad goals which are shared by all of the stakeholders that commented in this matter.[26]

We further find that the public interest will be served by balancing our goals of providing clarity to stakeholders and completing an expedited transition with the need to afford claimants sufficient time to submit their expenses to the RPC.[27] As indicated in the RPC Request, most of the reimbursement claims relating to the C-band transition have already accrued.[28] Further, the RPC has been accepting claims for processing since August 2021, such that all lump sum electees and many other eligible claimants and eligible stakeholders have had ample time within which to submit their claims to the RPC.[29] For any recently incurred claims, and to the extent that any additional claims will accrue by December 31, 2023,[30] we believe that a claims submission deadline of February 5, 2024 affords sufficient notice and time for such claimants to submit their claims to the RPC through its Coupa portal.[31] Our expectation is that all lump sum election claims and most other remaining reimbursement claims will be subject to this first

[24] *See* RPC Request at 9, n.12; Verizon Comments at 4-6; AT&T Comments at 2-6; SES Comments at 1-2; CTIA Comments at 3-6.

[25] RPC Request at 8.

[26] *See* AT&T/Verizon Joint *Ex Parte* at 1; SES *Ex Parte* at 2; Verizon Comments at 3-5, 8-9; AT&T Comments at 1-2, 7-8; SES Comments at 1-2, 7; CTIA Comments at 3-6; Intelsat Comments at 7.

[27] In their joint *Ex Parte*, AT&T and Verizon asked the Commission to "set a deadline for the submittal of cost claims, giving claimants sufficient time to submit their expenses to the RPC." *See* AT&T/Verizon Joint *Ex Parte* at 1; SES *Ex Parte* at 2 (stating the "Commission should do all that it can to expedite the RPC's reimbursement process"); Verizon Comments at 3-6; AT&T Comments at 2-6; Intelsat Comments at 1-2; SES Comments at 1-2; CTIA Comments at 3-6.

[28] *See* RPC Request at 3-8 (stating that "95 percent of anticipated Lump Sum Claims have been submitted"). As detailed *supra*, incumbent FSS earth station operators opting to receive a lump sum amount were required to make an irrevocable election and accompanying certification with the Commission by September 14, 2020, and the RPC has specific claims submission procedures relating to such elections. *See supra* note 8; RPC C-band Handbook at Section 5. The RPC also specifically noted that all five eligible space station operators have certified that they have completed their transition work associated with the Phase I and II Accelerated Relocation Deadlines, which means that all costs associated with their physical relocation work (including that of non-lump sum earth station operators, surrogates, and programmers) should have already been incurred and paid. *See* RPC Request at 6-9; RPC C-band Handbook at Section 3.

[29] *See* C-band RPC Press Release; RPC Request at 6-7.

[30] For example, the RPC Request observed that Fixed Service licensees must complete their relocation by December 5, 2023 and would thus have sufficient time to prepare and submit claims by the RPC's proposed initial February 5, 2024 deadline. *See* RPC Request at 7 (indicating that only one Fixed Service licensee has submitted a reimbursement claim and the remaining Fixed Service licensees indicated that they will not submit any claims for reimbursement); *see also 3.7 GHz Report and Order*, 35 FCC Rcd at 2465-66, para. 326.

[31] Verizon, AT&T, and CTIA agree that February 5, 2024 is a reasonable submission deadline for costs incurred and paid as of December 31, 2023. *See* Verizon Comments at 4-5; AT&T Comments at 2-3; CTIA Comments at 4. SES and Intelsat did not specifically comment on the proposed deadline dates. *See generally* SES Comments; Intelsat Comments.

February 5, 2024 deadline by virtue of when they accrued, and thus we need not further specify the type or categories of claims subject to this or the second deadline discussed below as suggested by AT&T.[32]

For reimbursement claims incurred and paid after December 31, 2023, including certain types of costs anticipated by eligible space station operators,[33] we ultimately agree with AT&T, Verizon, and CTIA that a final claims submission deadline of July 1, 2024 is both feasible and appropriate.[34] In order to facilitate the RPC's processing of such claims on a rolling basis, and to expedite the completion of the C-band reimbursement program, we strongly encourage any impacted claimants to submit any claims incurred after December 31, 2023, within 30 days of payment, and not wait until the July 1, 2024 deadline to do so.[35] For costs that may be incurred and/or paid after the deadline, claimants must submit their anticipated claims on or before July 1, 2024, using the process described below.[36] While the RPC's original proposal of September 30, 2024 was designed to accommodate as many expected non-recurring satellite operator costs as possible based upon advance information provided to the RPC by certain eligible space station operators, given the number and scope of such costs are expected to significantly diminish as 2024 progresses,[37] we believe that a final claims submission deadline of July 1, 2024 is achievable and will further our goal of bringing a timely closure to the C-band transition reimbursement program.

For the small number of anticipated claims that may be incurred and/or paid after July 1, 2024, whether a one-time or recurring cost, to be considered for reimbursement, the claimant must submit the claim(s) for RPC review through its Coupa portal and pursuant to its procedures before the July 1, 2024 deadline with the best supporting documentation and information available at that time.[38] We direct the RPC and relevant claimants to coordinate in advance of the submission of such claims and, as appropriate, on a process and timeline for submitting any additional documentation that the RPC may

[32] *See* AT&T Comments at 2-6 (agreeing that the "overwhelming volume of claims should fall within the first category—'claims for costs incurred and paid by claimants as of December 31, 2023'"); Verizon Comments at 5 (stating "all physical transition-related costs would have been incurred in 2023 given the relocation transition has been completed").

[33] Eligible space station operators have indicated to the RPC that they expect to incur costs relating to, *inter alia*, internal labor, project management, software licenses, financing costs, monthly recurring charges for teleports, and launch insurance brokerage costs after December 31, 2023. RPC Request at 8-9.

[34] Verizon Comments at 4-6; AT&T Comments at 2-6; CTIA Comments at 3-6.

[35] RPC Request at 9; Verizon Comments at 2; CTIA Comments at 5, 8 (suggesting that claimants should submit claims incurred in 2024 on a rolling basis within 30 days of being incurred).

[36] *See* Intelsat Comments at 2-5 (asking the Commission to establish a process for eligible, foreseeable claims to be submitted that will be incurred after the final submission deadline).

[37] RPC Request at 5-6.

[38] *See* RPC C-band Handbook. To clarify, so long as a claimant files an anticipated claim in Coupa with the best information and documentation available at the time of the July 1, 2024 final claims submission deadline, even if it does not yet fully meet the RPC's submission requirements for claims that are already incurred and paid, the RPC should accept the claim for review purposes and work with the claimant on a process and timeline for submitting any additional documentation that the RPC deems necessary to evaluate the eligibility of such claims for reimbursement and safeguard against fraud, waste, or abuse. The RPC fully retains its decision making ability in reviewing any such anticipated claims for conformity with the reimbursement standards established by the Commission in the *3.7 GHz Report and Order*. *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-28, 2446-52, paras. 193-204, 255-283. We stress that this flexibility **only** applies to the small number of anticipated claims not yet incurred and/or that could not have been paid by the July 1, 2024 final claims submission deadline. For the vast majority of claims—any lump sum election or other claims incurred and paid prior to either the February 5, 2024 or the July 1, 2024 final claims submission deadlines—the RPC's normal claims submission procedures will apply.

deem necessary to evaluate the eligibility of such claims and safeguard against fraud, waste, or abuse.[39] We strongly caution claimants that all reimbursement claims, including the submission of any anticipated claims that have not been incurred and paid prior to July 1, 2024, remain subject to the RPC's review and approval, consistent with its delineated responsibilities and the standards articulated in the *3.7 GHz Report and Order*,[40] and that no inferences are intended nor should be taken about the eligibility of any claims for reimbursement as part of the C-band transition reimbursement program by virtue of their submission for RPC review. We also caution claimants that the submission of anticipated claims in this manner should not be viewed or used as a means to circumvent the finality of the final claims submission deadlines. Anticipated claims submitted through these means should be as specific in nature as possible and not open-ended, and claimants must still demonstrate that such claims meet the eligibility criteria established by the Commission in the *3.7 GHz Report and Order* in order to be reimbursed.[41] That said, we believe that there is sufficient latitude as part of the normal discourse between the RPC and claimants in the claims review process, and as part of our appeals process, to allow for subsequently amended claims in appropriate circumstances where an initial claim was timely filed.[42]

In addition, given that the RPC must complete its review of any such claims in the first instance, we believe that a waiver of sections 27.1415 or 27.1418(b)(2) of the Commission's rules,[43] as suggested by Intelsat, is not necessary for any anticipated claims to be submitted to the RPC for review, nor would it be appropriate at this time as we decline to prejudge the merits of any individual future claims, particularly in the absence of any specific factual record on such claims before us at this juncture.[44] To

[39] SES proposed in its comments that the Commission adopt a limited exception to the final claims submission deadlines for claims that SES suggests cannot be submitted due to a procedural issue within the RPC's control. SES Comments at 4-7. As part of the pre-coordination obligation we establish in this context, we direct the RPC and relevant claimants to also discuss any anticipated claims that are dependent on the disposition of other claims pending with the RPC and, to the extent needed, relevant claimants should submit such anticipated claims with the best supporting documentation and information available by July 1, 2024. Claimants should work with the RPC to expeditiously submit any additional documentation that the RPC deems necessary to evaluate the eligibility of such claims for reimbursement and safeguard against fraud, waste, or abuse. We reiterate that the RPC fully retains its decision making ability in reviewing any such anticipated claims for conformity with the reimbursement standards established by the Commission in the *3.7 GHz Report and Order*. *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-28, 2446-52, paras. 193-204, 255-283.

[40] *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-28, 2446-52, paras. 193-204, 255-283.

[41] *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-28, paras. 193-204.

[42] *See generally* SES Comments at 5 (explaining that it is feasible that the RPC could request that the claimant answer questions and/or submit an amended claim during the claim review or dispute process); *see also* AT&T/Verizon Joint *Ex Parte* at 1 (stating that the "RPC has been diligent in reaching out to all potential claimants for C-band reimbursement costs"); Intelsat Comments at 1 (describing that Intelsat has worked closely with the RPC to ensure that Intelsat's claims are timely submitted and to respond to any of the RPC's questions or requests).

[43] 47 CFR § 27.1415 (documentation of expenses); *id.* § 27.1418(b)(2) (requiring 3.7 GHz Service Licensees to pay their *pro rata* share of: "[t]he actual relocation costs, provided that they are not unreasonable, for eligible space station operators and incumbent fixed service licensees; [and] the actual transition costs, provided they are not unreasonable, associated with the necessary migration and filtering of incumbent earth stations").

[44] Intelsat Comments at 4. As noted above, the RPC should not deem the small number of anticipated claims not yet incurred and/or that could not have been paid by the July 1, 2024 final claims submission deadline as ineligible for submission for RPC review solely because they have not yet been incurred and/or paid. *See supra* note 38. All submitted claims remain subject to the RPC's review and approval, consistent with its delineated responsibilities and the standards articulated in the *3.7 GHz Report and Order*. *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-28, 2446-52, paras. 193-204, 255-283. In a similar vein, we decline to adopt Intelsat's proposal that we establish in advance a net present value calculation with a discount rate mirroring the rate used to calculate each satellite operator's financing expenses for recurring claims. Intelsat Comments at 5. Claimants seeking reimbursement for financing or other soft costs are directed to incorporate these issues and all other relevant factors into their claims as submitted to the RPC for its consideration prior to the relevant final claims submission deadline.

the extent that the relevant claimant and/or any 3.7 GHz Service Licensee(s) disagree with the RPC's initial determination on whether such claims are reimbursable, they may seek recourse from the RPC and the Bureau pursuant to our existing appeals procedures.[45]

To reiterate, all C-band transition claimants and other eligible stakeholders **must** submit all reimbursement claims to the RPC, including for lump sum elections, by the relevant deadline as set forth above. So long as a reimbursement claim is submitted to the RPC through its Coupa portal and pursuant to its procedures and our above guidance by the relevant deadline,[46] even if the RPC later finds upon review that additional information is needed from the claimant in order to process the claim, a claimant's submission of a claim through Coupa and pursuant to the RPC's procedures and our above guidance is sufficient to meet our deadline requirement. We direct the RPC that it should consider any claims which are not submitted in this manner by the relevant deadline as untimely, and the RPC need not process or reimburse such claims. To the extent there is any question about which claims submission deadline is the relevant one for any given reimbursement claim, the RPC will make the initial determination, subject to Bureau review on appeal pursuant to our established procedures.[47] We reiterate, however, our expectation that all lump sum election claims and most other remaining reimbursement claims will be subject to the February 5, 2024 deadline by virtue of when they accrued.

Other Proposals. In their *ex parte*, AT&T and Verizon requested that the Commission adopt certain deadlines to facilitate the conclusion of the C-band transition reimbursement process.[48] In particular, AT&T and Verizon requested that the Commission: (1) specify when the RPC should issue a final funding request to C-band licensees after the cost claims are submitted; (2) set a deadline for the RPC to process all claims; and (3) set a deadline for the RPC to finish its program audit, to ensure all RPC operations come to a close in a timely manner.[49] SES, however, argued that some of the proposals in the AT&T/Verizon Joint *Ex Parte* may be premature at this time, while also urging the Commission to set a 90-day deadline by which all claims submitted on or after January 1, 2024, must be processed by the RPC.[50] Intelsat further recommended certain procedural improvements that it believes would simplify the RPC's review process.[51]

We agree that AT&T's and Verizon's proposals that the Commission specify when the RPC should issue a final funding request, set a deadline for the RPC to process all claims, and set a deadline for the RPC to finish its program audit are premature and, accordingly, we decline to make a

[45] To the extent a claimant or one or more responsible 3.7 GHz Service Licensees wish to dispute the RPC's determination with respect to a submitted claim, they must file a notice of objection as required by section 27.1421(a) of the Commission's rules. 47 CFR § 27.1421(a)-(c). The RPC may in the first instance mediate any disputes or refer the disputant parties to alternative dispute resolution fora. 47 CFR § 27.1421(b). Subsequent appeals to the Bureau may be submitted pursuant to the procedures set forth in the *RPC Appeals Procedures Public Notice*, which established the procedures for the filing and processing of challenges to decisions made by the RPC. 47 CFR § 27.1421(c); *see also Wireless Telecommunications Bureau Announces Procedures for Appeals of Relocation Payment Clearinghouse Decisions*, WT Docket No. 21-333, Public Notice, 37 FCC Rcd 3956 (WTB 2022) (*RPC Appeals Procedures Public Notice*).

[46] *See* RPC C-band Handbook.

[47] *See RPC Appeals Procedures Public Notice*.

[48] *See* AT&T/Verizon Joint *Ex Parte*.

[49] AT&T/Verizon Joint *Ex Parte* at 1; *see also* AT&T Comments at 7-8; Verizon Comments at 2-3, 6-9; CTIA Comments at 6-9.

[50] SES *Ex Parte* at 2-3; SES Comments at 2-3.

[51] Intelsat Comments at 2-6.

determination on these proposals at this time.[52] As previously noted, the RPC anticipates that it will receive additional reimbursement claims over the coming months.[53] The review and disposition of those reimbursement claims will depend on a variety of factors, such as the timing and volume of when claims are submitted, whether claimants include all of the necessary information for review of the claim, and the timely resolution by claimants of supplemental information requests from the RPC.[54] Other issues, including the potential sale or disposition of any spare satellites, may likewise affect the overall timeline for completion of the C-band transition reimbursement program.[55] As such, we agree that it is premature to set a final funding request date, or establish a deadline for the RPC's final program audit, because there are too many variables that could potentially alter those dates if we were to adopt them at this time. Therefore, we will defer action on these proposals and continue to monitor the reimbursement program's progress, while reserving the option to revisit these issues in the future. We also note that the *3.7 GHz Report and Order* anticipates that the RPC will file a request to wind down and suspend its operations at the appropriate time, and we instruct the RPC to consult with the Bureau well in advance of any such request.[56]

We likewise defer action on either a general or specific deadline by which the RPC must process individual reimbursement claims.[57] As discussed above, we find that there are multiple variables outside of the RPC's control that could impact its ability to review and make a determination on a claim within a 90-day period, including the specific timing and volume of submitted claims, whether claimants include all of the necessary information for review of the claim, and the timeliness by which claimants respond to supplemental information requests from the RPC. Further, while we do not wish to protract the reimbursement process, we note that each claim is different and may necessitate different levels of review to prevent fraud, waste, or abuse. In this regard, we recognize that, pursuant to discussions with SES and other eligible space station operator claimants, the RPC initially prioritized review of their more complex and high value claims, which has resulted in a large number of smaller value claims which remain pending review.[58]

While we do not believe that adoption of either a general or specific deadline for RPC processing is appropriate at this time, and could inadvertently delay the review process to the extent the Bureau was called to resolve any timing disputes, we direct the RPC to continue expeditiously processing both pending and future reimbursement claims upon receipt of all required information from claimants, while maintaining all necessary safeguards to prevent fraud, waste, and abuse. The RPC should prioritize the processing of any residual pending claims submitted prior to the release of this Public Notice with the goal of resolution by March 30, 2024, and strive to resolve any later submitted claims within 90 days

[52] AT&T/Verizon Joint *Ex Parte* at 1; *see also* AT&T Comments at 7-8; Verizon Comments at 2-3, 6-9; CTIA Comments at 6-9.

[53] RPC Request at 5-6 (showing a forecast of remaining claims through December 31, 2024); *see also* SES *Ex Parte* at 2-3 (stating that "the RPC will receive many more claims in the coming months" and that "SES will submit over 1,000 additional claims for reimbursement"); AT&T/Verizon Joint *Ex Parte* at 1 (noting that "many projected claims remain outstanding"); SES Comments at 2.

[54] RPC Request at 9-10.

[55] RPC Request at 9-10.

[56] *3.7 GHz Report and Order,* 35 FCC Rcd at 2452, para. 283.

[57] AT&T/Verizon Joint *Ex Parte* at 1 ("The FCC should also set a deadline for the RPC to process all claims."); SES *Ex Parte* at 2-3 (proposing a 90-day clock, with the option to request more time for review, from submission of a reimbursement claim to complete RPC review and processing, with a specific deadline of December 31, 2023 for all claims pending with the RPC for 90 days or more by January 1, 2024); AT&T Comments at 6-7; Verizon Comments at 2, 6-7; SES Comments at 2-3; CTIA Comments at 7-8.

[58] SES *Ex Parte* at 1-3 (noting that many of the remaining claims "represent less complicated, more uniform C-band expenditures"); SES Comments at 2-3.

from submission. By the same token, claimants are instructed to ensure that their claims are timely submitted to the RPC with all required documentation, and to promptly respond to the RPC's requests for supplemental information, which in most cases should be no later than 30 days from any such request.[59] To the extent that the claimant is not responsive to the RPC's requests for supplemental information in a timely manner, the RPC may process related claims on the basis of the information previously submitted by such claimant.

Finally, we decline to require any specific process measures that may unnecessarily limit the RPC in its ability to initially review claims or its duty to prevent fraud, waste, or abuse. While we strongly encourage the RPC to voluntarily adopt streamlined processing procedures where it believes they may appropriately expedite claims processing without sacrificing the integrity of the C-band transition reimbursement program—including but not limited to those proposed by Intelsat[60]—we defer to the RPC's discretion as to the appropriate measures to implement for any given category of claims. We also clarify that nothing in this Public Notice is intended to limit the RPC's ability to perform any necessary tasks to either: (1) recoup appropriate costs for the benefit of the C-band transition reimbursement program and the 3.7 GHz Service Licensees, such as through the sale of unused satellites; (2) as appropriate, perform true-ups, offsets, or other accounting practices relating to previously reimbursed claims based upon subsequent developments; and (3) evaluate and reconcile the 2% cap on soft costs as the reimbursement program winds down.[61] We will continue to oversee the RPC's progress with a view towards facilitating the timely conclusion of the C-band transition reimbursement program and wind down of the RPC's operations, and encourage the RPC to tailor its operations over time as it continues to make progress in bringing this program to a successful resolution.[62]

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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 Public Notice to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

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 concerning this Public Notice, please contact Susan Mort, Wireless Telecommunications Bureau, (202) 418-2429, Susan.Mort@fcc.gov.

-FCC-

[59] We recognize that in a limited number of anticipated claims, more than 30 days may be necessary for claimants to respond to an RPC request for supplemental information. We direct claimants in such cases to respond to the RPC as soon as possible given the specific facts and circumstances applicable to those claims.

[60] *See* Intelsat Comments at 6 (proposing the issuance of decisional memoranda once for each category of claim, and utilizing a sampling method for ground clearing costs and claims under $5,000 per antenna).

[61] *3.7 GHz Report and Order*, 35 FCC Rcd at 2424-25, paras. 197-98.

[62] *See* AT&T/Verizon Joint *Ex Parte* at 1; SES *Ex Parte* at 2; AT&T Comments at 7-8; Verizon Comments at 3-4; CTIA Comments at 9-13; SES Comments at 7; Intelsat Comments at 7.

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

In re Application of	)	Facility ID No.72474
Willamette Broadcasting Company, Inc.	)	NAL/Account No. MB-202341410026
	)	
for Consent to Transfer of Control	)	
	)	
from the Estate of Michael O. Frith (Transferor) to	)	FRN: 0004362430
Jeffrey Morgan and Patricia Taylor (Transferees)	)	Application File No. 0000211571

ORDER

Adopted: December 7, 2023 **Released: December 7, 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 Willamette Broadcasting Company, Inc. (WBC or Licensee), licensee of station KYKN(AM), Keizer, Oregon (KYKN or Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned application, as amended, for Commission consent to transfer control of WBC.[1]

2. The Consent Decree concludes the Bureau's investigation of WBC's compliance with section 310 of the Communications Act of 1934, as amended (the Act), and section 73.3540 of the Commission's rules (Rules).[2] The Bureau staff finds that WBC transferred a controlling interest in the company to Jeffrey Morgan (Mr. Morgan) prior to obtaining Commission consent.[3]

3. Pursuant to the terms of the Consent Decree, WBC stipulates that it violated section 310(d) of the Act and section 73.3540 of the Rules when WBC transferred a controlling interest in the company to Mr. Morgan prior to obtaining Commission consent. Accordingly, WBC agrees to make a five thousand dollar ($5,000.00) civil penalty payment to the United States Treasury and the Bureau agrees to terminate its investigation into the above violations. 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 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 WBC possesses the basic qualifications to continue to be a Commission licensee.

[1] *See* Application File No. 0000211571 (filed Feb. 28, 2023) (Application). WBC amended the Application on May 3, 2023. *See Broadcast Applications*, Public Notice, Report No. PN-1-230302-01 (MB May 3, 2023).

[2] *See* 47 U.S.C. § 310(d); 47 CFR § 73.3540.

[3] 47 CFR § 73.3540.

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 Sara L. Hinkle, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209, counsel for Willamette 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

[4] 47 U.S.C. § 4(i).

[5] 47 CFR §§ 0.61, 0.283.

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

In re Application of	)	Facility ID No. 72474
Willamette Broadcasting Company, Inc.	)	NAL/Account No. MB-202341410026
	)	
for Consent to Transfer of Control	)	
	)	
from the Estate of Michael O. Frith (Transferor) to	)	FRN: 0004362430
Jeffrey Morgan and Patricia Taylor (Transferees)	)	Application File No. 0000211571

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and Willamette Broadcasting Company, Inc. (WBC or Licensee), licensee of station KYKN(AM), Keizer, Oregon (KYKN or Station). The Consent Decree terminates the Bureau's investigations concerning WBC's 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 FCC'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) "WBC" means Willamette Broadcasting Company, Inc.;

(d) "Application" means the FCC Form 2100, Schedule 315 application filed on February 28, 2023, as amended, for consent to transfer of control, Application File No. 0000211571;

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

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

(i) "Estate" means the Estate of Michael O. Frith;

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

(k) "Licensee" means Willamette Broadcasting Company, Inc.;

(l) "License" refers to the license authorization for station KYKN(AM), Keizer, Oregon (Facility ID No. 72474);

(m) "Parties" means WBC and the Bureau;

(n) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations;

(o) "Station" means KYKN(AM), Keizer, Oregon (Facility ID No. 72474);

(p) "Violations" means the violations of section 310(d) of the Act, 47 U.S.C. § 310(d), and section 73.3540 of the FCC's rules, 47 CFR § 73.3540; and

(q) "Voluntary Transfer of Control Rule" means section 73.3540 of the FCC's rules, 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 Voluntary Transfer of Control Rule states that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control."[2] 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.[3]

5. For decades, Michael O. Frith (Mr. Frith) (deceased) served as owner and general manager of the Station and president of WBC. On May 14, 2021, Mr. Frith passed away, and following his death, his controlling (84% voting) interest in WBC passed to his Estate. On July 11, 2021, WBC filed an involuntary transfer of control application reflecting the transfer of Mr. Frith's controlling interest.[4] The Application included a copy of the letters testamentary appointing Erin B. Frith as personal representative of the Estate.[5] Pursuant to the Last Will of Michael O. Frith (the Will), the common stock of WBC, consisting of 120 shares, was to be distributed to the Will's beneficiaries as follows: Jeffrey Morgan (Mr. Morgan) (51%), Timothy M. Frith (26.5%), Sean P. Frith (6.5%), Joshua W. Frith (6.5%), Erin B. Frith

[1] 47 U.S.C. § 310(d).

[2] 47 CFR § 73.3540(a).

[3] 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.

[4] *See* Application File No. 0000152448 (filed July 13, 2021) (Involuntary Transfer Application). At that time, the minority interests of James Young and Janet Young, Joint (11% voting) and Timothy M. Frith (5% voting) remained the same. On December 16, 2021, the Commission granted the Involuntary Transfer Application and WBC filed a notification of consummation the following day. *See* Application File No. 0000177422 (filed Dec. 17, 2021).

[5] Involuntary Transfer Application.

(6.5%), and Patricia Taylor (Ms. Taylor) (3%).[6] In May 2022, the Will's beneficiaries sought to change the distribution of WBC's stock, increasing Mr. Morgan's total voting and equity interest from 51% to 94.4%, and Ms. Taylor's voting and equity interest from 3% to 5.6%.[7] On November 10, 2022, the Oregon Circuit Court, Marion County, approved the Estate Distribution Agreement and distributed the stock the following month.[8] WBC then filed the instant Application on February 28, 2023, acknowledging that the stock distribution occurred prior to obtaining Commission approval for the non pro forma transfer of control.[9]

6. The Parties acknowledge that any proceedings that might result from the Violations involving the Application 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

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

8. **Jurisdiction**. WBC 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.

9. **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. WBC 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.

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 the termination of the Investigation, WBC 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 WBC, provided that it satisfies all of its obligations under this Consent Decree. In the event that WBC 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

[6] *See* Application, Attach., Exhibit Regarding Distribution Agreement and Timeline. The Will was admitted to probate in the Oregon Circuit Court, Marion County on June 2, 2021. On August 26, 2021, Erin B. Frith, the Estate's Personal Representative, filed an inventory of all of the property of the Estate, including the common stock of WBC, consisting of 120 shares. *Id*.

[7] *See* Application, Attach., Exhibit Regarding Distribution Agreement and Timeline. Mr. Frith's four children, Timothy M. Frith, Sean P. Frith, Joshua W. Frith, and Erin B. Frith, did not retain any stock in WBC per the terms of the Estate Distribution Agreement. *Id.* Mr. Morgan and Ms. Taylor have no familial ties to the Frith family.

[8] *See* Application, Attach., Exhibit Regarding Application Timing.

[9] *See* 47 CFR § 73.3540; Application. 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).

violation of this Consent Decree.

11. **Admission of Liability**. WBC stipulates that the actions described in Paragraph 5 violated section 310(d) of the Act and section 73.3540 of the Rules.

12. **Civil Penalty**. WBC agrees to make the Civil Penalty payment to the United States Treasury in the amount of five thousand dollars ($5,000), within thirty (30) calendar days of the Effective Date. WBC 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.[10]

13. **Payment**. WBC 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 by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[11] 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:[12]

- 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).[13] 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

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

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

[12] 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.

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

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 WBC 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 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 Application.

15. **Waivers**. WBC 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 WBC will waive any statutory right to a *trial de novo*. WBC 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.

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 WBC does not expressly consent), such provision will be superseded by such Rule or Order.

19. **Successors and Assigns**. WBC 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.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By:
Albert Shuldiner
Chief, Audio Division

Date: 12/7/2023

WILLAMETTE BROADCASTING COMPANY, INC.

By: _____
Jeffrey Morgan
President

Date: _____

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.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner
Chief, Audio Division

Date: _____

WILLAMETTE BROADCASTING COMPANY, INC.

By: _____
Jeffrey Morgan
President

Date: 12/6/23

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 23-285
Table of TV Allotments, Television Broadcast	)	RM-11959
Stations (Jacksonville, Oregon)	)	

REPORT AND ORDER
(PROCEEDING TERMINATED)

Adopted: December 5, 2023 **Released: December 5, 2023**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking[1] issued in response to a Petition for Rulemaking (Petition) filed by theDove Media, Inc. (Petitioner). The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *4 to Jacksonville, Oregon (Jacksonville), in the Table of TV Allotments as the community's first local television service and its first NCE television service.[2] The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),[3] reaffirming its commitment to apply for channel *4 and if authorized, to construct the facility.[4] No other comments were received.

2. We find the public interest would be served by allotting channel *4 at Jacksonville, which, as of the 2020 Census, has a population of 3,020 and clearly qualifies for community of license status for allotment purposes.[5] Jacksonville has a mayor and six council members, as well as its own police, fire, public works, planning, and other government departments.[6] Jacksonville also has an elementary school, historic district, and a chamber of commerce.[7] The proposal would also result in a first local service to Jacksonville under the Commission's second allotment priority.[8]

[1] *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Jacksonville, Oregon)*, MB Docket No. 23-285, Notice of Proposed Rulemaking, DA 23-904 (MB Sept. 28, 2023) (*NPRM*); theDove Media, Inc.'s Petition for Rulemaking, LMS File No. 0000219881 (filed Aug. 25, 2023) (Petition).

[2] NCE television stations are identified in the Table of TV Allotments by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR §73.622(a).

[3] 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

[4] Comments of theDove Media, Inc. at pp. 1 and 4 (filed Oct. 18, 2023). The Petitioner has also asserted 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 licenses of noncommercial educational FM radio stations to the Petitioner. Petition at 4. We note that the licensing and service requirements for noncommercial educational FM radio stations and noncommercial educational television stations differ. *Compare* 47 CFR §§ 73.503 and 73.621.

[5] *See NPRM* at para. 2.

[6] *Id*.

[7] *Id*.

[8] 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*
(continued….)

3. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *4 can be allotted to Jacksonville consistent with the minimum geographic spacing requirements for new DTV allotments in section 73.623(d) of the rules,[9] 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 35 dBμ contour.[10]

4. Accordingly, pursuant to the authority contained in 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 Commission's rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, that effective thirty (30) days from the date of publication in the Federal Register, the Table of TV Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

City and State	Channel No.
Jacksonville, Oregon	*4

5. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office.

6. **IT IS FURTHER ORDERED,** That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-285, RM-11959, **SHALL BE TERMINATED** and its docket closed.

7. **IT IS FURTHER ORDERED**, That the newly allotted channel *4 at Jacksonville, Oregon, **SHALL BE AUTHORIZED** pursuant to the Commission's application and selection procedures for reserved noncommercial educational television channels, 47 CFR §§ 73.7000 *et seq*.

8. For further information concerning the proceeding listed above, contact Emily Harrison, Video Division, Media Bureau, Emily.Harrison@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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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, 167-73 (1952) (emphasis added).

[9] 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. 38 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not yet effective as of the date of the release of this Report and Order, and, as such, we continue to make reference to 47 CFR § 73.623(d).

[10] *See* 47 CFR § 73.625(a)(1). 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 Amendment R&O* at para. 37. As such, we continue to make reference to 47 CFR § 73.625(a)(1).

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

In re Application of	)	
	)	
Jesus Is Lord Ministries International	)	NAL/Acct. No. MB-202341410027
	)	FRN: 0006920318
For Renewal of License for	)	Facility ID No. 31102
Station WFKJ(AM)	)	Application File No. 0000195046
Cashtown, Pennsylvania	)	

ORDER

Adopted: December 8, 2023 **Released: December 8, 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 Jesus Is Lord Ministries International (Licensee), licensee of Station WFKJ(AM), Cashtown, Pennsylvania (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station. In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Filing Deadline Rule and the Online Public Inspection File Rule contained in sections 73.3539(a) and 73.3526 respectively of the Commission's rules (Rules).[1] The Media Bureau suspended processing of the Application because Licensee did not comply with its renewal application filing deadline and public file obligations.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.3539(a) and 73.3526 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to make a civil penalty payment to the United States Treasury in the amount of three thousand dollars ($3,000), implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and timely filing of renewal applications, and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of potential violations of the Rules.

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

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,[2] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[3] the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

[1] *See* 47 CFR §§ 73.3539(a), 73.3526.

[2] 47 U.S.C. §§ 154(i), 154(j), 503(b).

[3] 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**.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Jesus Is Lord Ministries International, c/o Dr. Michael H. Yeager, 3425 Chambersburg Rd., Biglerville, Pennsylvania 17310.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In re Application of	)	
	)	
Jesus Is Lord Ministries International	)	NAL/Acct. No. MB-202341410027
	)	FRN: 0006920318
For Renewal of License for	)	Facility ID No. 31102
Station WFKJ(AM)	)	Application File No. 0000195046
Cashtown, Pennsylvania	)	

CONSENT DECREE

Adopted: December 8, 2023 **Released: December 8, 2023**

1. The Media Bureau of the Federal Communications Commission and Jesus Is Lord Ministries International (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with sections 73.3539(a) and 73.3526 of the Commission's rules[1] relating to the timely filing of renewal applications and the maintenance of an online public inspection file. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with sections 73.3539(a) and 73.3526.

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 Jesus Is Lord Ministries International, for renewal of the radio broadcast license for station WFKJ(AM), Application File No. 0000195046.

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

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

(f) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with 47 CFR §§ 73.3526 and 73.3539(a) of the Rules.

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

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

[1] 47 CFR §§ 73.3526, 73.3539(a).

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

(j) "Investigation" means the Bureau's decision to hold and not process the Licensee's Application due to noncompliance sections 73.3526 and 73.3539(a) of the Rules.

(k) "Licensee" means Jesus Is Lord Ministries International, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

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

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

(o) "Station" means station WFKJ(AM), Cashtown, Pennsylvania.

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 April 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 August 1, 2022. The Station's Application was not filed until July 14, 2022.

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.[3] This includes among other requirements, the requirement that quarterly issues and programs lists be uploaded to the station's online public inspection file no later than the tenth day after each quarter. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations.

5. We have determined that the Licensee did not comply with either the Filing Deadline Rule or the Online Public Inspection File Rule. Specifically, as noted in paragraph 3 above, the Licensee failed to file the Application by April 1, 2022, and the Licensee failed to timely place any issues and programs lists in its online public file as required by the Online Public Inspection File Rule. Based on the Licensee's failure to comply with the Filing Deadline Rule and the Online Public Inspection File Rule, the Bureau commenced the Investigation and suspended processing the Application.

6. The Bureau and Licensee have negotiated the terms of the Consent Decree that terminates the Investigation into the matters discussed above. As part of the Consent Decree, the Licensee has agreed to make a civil payment of Three Thousand Dollars ($3,000) 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

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

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

[2] 47 CFR § 73.3539(a).

[3] 47 CFR § 73.3526.

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

10. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to process the Application in the ordinary course. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

11. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[4]

12. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it failed to timely file its application for renewal of license, in violation of section 73.3539(a) of the Rules. Licensee also admits that it failed to maintain an online public inspection file, specifically, that it did not upload any issues and programs lists, in violation of section 73.3526 of the Rules during the Station's prior license term.

13. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.[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.

14. **Civil Penalty.** Licensee agrees to pay the 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.[6]

15. **Payment**. Licensee will also send electronic notification of payment to Ryan McClafferty at Ryan.McClafferty@fcc.gov and Olivia Hill at Olivia.Hill@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[7] or by wire

[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.

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:[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 FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

16. **Compliance Officer**. Within 30 calendar days after the Effective Date, the Licensee shall designate a responsible party to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Licensee's 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 Deadline Rule and the Online Public Inspection File Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chancellor, and/or Board Member may be the same individual.

[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.

17. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 17(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 the Online Public Inspection File Rule;

ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's 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) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Licensee shall provide training under the compliance training plan on at least an annual basis, and it shall periodically review and revise the compliance training program as necessary to ensure that it remains current, complete, and effective.

(c) **Compliance Report**. One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for each station listed in Appendix A. The compliance report shall contain a certification of the Licensee's compliance with the Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 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,[10] 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: Ryan McClafferty at Ryan.McClafferty@fcc.gov and Olivia Hill at Olivia.Hill@fcc.gov.

18. **Reporting Noncompliance**. The Licensee shall report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Ryan McClafferty at Ryan.McClafferty@fcc.gov and Olivia Hill at Olivia.Hill@fcc.gov**.**

19. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 17(c), provided the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

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

21. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[11] 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

[10] 47 CFR § 1.16.

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

unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

24. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

28. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

29. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

30. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Albert Shuldiner
Chief, Audio Division
Media Bureau

12/8/2023
Date

Dr. Michael H. Yeager
Jesus Is Lord Ministries International

Date

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

24. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

28. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

29. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

30. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

_____
Albert Shuldiner
Chief, Audio Division
Media Bureau

_____
Date

Dr Michael H Yeager
Dr. Michael H. Yeager
Jesus Is Lord Ministries International

12/5/2023
Date

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

In the Matter of	)	
	)	
Telplex Communications d/b/a RingPlanet	)	Complaint No. 6532570
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: December 5, 2023 **Released: December 5, 2023**

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

1. In this Order, we consider the complaint alleging that Telplex Communications d/b/a/ RingPlanet (RingPlanet) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We conclude that RingPlanet's actions did not result in an unauthorized change in Complainant's telecommunications service provider as defined in the rules, and we deny 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]

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[1] *See* Informal Complaint No. 6532570 (filed Oct. 20, 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

(continued…)

3. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization. Complainant states that "Ringplanet contacted us and said our phone and internet service w[ere] being discontinued and they were taking it over, which was not true."[6] Pursuant to our rules, we notified RingPlanet of the complaint.[7] In its response, RingPlanet states that Complainant signed up for internet and Voice over Internet Protocol (VoIP) service, but that Complainant cancelled the service prior to activation and therefore, the service was never ported to RingPlanet.[8]

4. The Commission's carrier change rules have not been extended to VoIP service.[9] Thus, based on the evidence in the record, we conclude that RingPlanet's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.[10]

5. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Telplex Communications d/b/a RingPlanet IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

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

to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. *See id.* §§ 64.1140, 64.1170.

[6] *See* Informal Complaint No. 6532570.

[7] 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).

[8] *See* RingPlanet Response to Informal Complaint No. 6532570 (filed Nov. 22, 2023).

[9] We note that the Commission has sought comment on whether it is necessary to extend slamming regulations to VoIP or other IP-enabled service providers. *See Enabled Services,* WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910-11 paras. 71-72 (2004).

[10] *See id.* § 64.1100(e). If Complainant is unsatisfied with the resolution of its complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id*. § 1.721. Such filing will be deemed to relate back to the filing date of such 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 such Complainant. *See id.* § 1.719.

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 23-1137
Released: December 06, 2023

APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF DISH NETWORK CORP. AND ITS SUBSIDIARIES TO ECHOSTAR CORP.

By this Public Notice, the Office of Engineering and Technology, the Space Bureau, and the Wireless Telecommunications Bureau announce the grant of applications filed by DISH Network Corp. and its subsidiaries[1] (collectively, DISH) and EchoStar Corp. (EchoStar), pursuant to section 310(d) of the Communications Act of 1934, as amended, and sections 1.948, 5.79, and 25.119 of the Commission's regulations,[2] requesting approval of the *pro forma* transfer of control to EchoStar of the licenses, authorizations, and special temporary authorities (STAs) held by DISH and its subsidiaries (Applications).[3]

DISH provides direct broadcast satellite (DBS) services throughout the United States, provides video services over the Internet through its Sling brand, and offers post-paid and pre-paid wireless telecommunications services through its Boost Mobile brand. EchoStar provides worldwide global satellite communications services under its own name and through Hughes Network Systems. DISH and EchoStar were previously part of the same company, EchoStar Communications Corp., but split apart in 2008.

DISH Network Corp. is a publicly traded Nevada corporation controlled by Charles W. Ergen (Ergen). Specifically, Ergen beneficially owns over 90% of the voting stock of DISH and over 51% of the equity. EchoStar Corp. is also a publicly traded Nevada corporation controlled by Ergen, who beneficially owns approximately 93.5% of the voting stock and approximately 60% of the equity.[4]

[1] The DISH subsidiaries holding FCC licenses and authorizations are: Aevergreen L.L.C.; Alta Wireless, Inc.; American AWS-3 Wireless I L.L.C.; American H Block Wireless L.L.C.; Crestone Wireless L.L.C.; DBSD Corporation; dishNET Wireline L.L.C.; DISH Broadcasting Corporation; DISH Network L.L.C.; DISH Operating L.L.C.; DISH Wireless L.L.C.; DISH Wireless Puerto Rico L.L.C.; EchoStar 77 Corp.; EchoStar Broadcasting Holding Corporation; EchoStar BSS Corporation; Gamma Acquisition L.L.C.; Little Bear Wireless L.L.C.; Manifest Wireless L.L.C.; New DBSD Satellite Services G.P.; Northstar Wireless L.L.C.; ParkerB.com Wireless L.L.C.; SNR Wireless LicenseCo, LLC; South.com LLC; Weminuche L.L.C.; Wetterhorn Wireless L.L.C.; and Window Wireless L.L.C.

[2] *See* 47 U.S.C. § 310; 47 CFR §§ 1.948, 5.79, and 25.119.

[3] The applications, licenses, authorizations, and STA at issue are listed in the Appendix. DISH also controls additional licenses and authorizations for which post-consummation notification is required when control is transferred pursuant to a *pro forma* transaction. *See* 47 CFR §§ 1.948, 1.9020, 25.137, 63.24.

[4] *See* Press Release, DISH Network Corp. and EchoStar Corp., DISH Network Corporation and EchoStar Corporation to Combine (Aug. 8, 2023), https://ir.dish.com/news-releases/news-release-details/dish-network-corporation-and-echostar-corporation-combine (EchoStar-DISH Press Release).

DISH and EchoStar entered into a merger agreement to recombine on August 8, 2023, and amended the agreement on October 2, 2023.[5] The transaction was negotiated and recommended by Special Committees of Independent Directors of both companies and unanimously approved by the Boards of Directors of both companies. The majority shareholder group of both companies, which includes Ergen, Cantey M. Ergen, and trusts controlled by them, approved adoption of the merger agreement and the issuance of the DISH Network common stock required for the transaction via written consent. No further action by DISH Network or EchoStar Corporation stockholders was required to approve the transaction.[6]

Pursuant to the terms of the proposed transaction, DISH Network Corporation will be merged into Merger Sub, a newly incorporated direct and wholly owned subsidiary of EchoStar, with DISH Network Corp. surviving the merger as a wholly owned subsidiary of EchoStar.[7] Ergen would beneficially own more than 90% of the voting stock and approximately 54% of the equity of the re-combined company and would continue to control the licenses and authorizations at issue.[8] There is therefore no substantial change of ownership or control.

We find that under the unusual circumstances presented here, granting the Applications will serve the public interest, convenience, and necessity and, accordingly, pursuant to section 310(d) of the Act, 47 U.S.C. § 310(d) and sections 1.948 and 5.79, of the Commission's rules, 47 CFR §§ 1.948 and 5.79, grant the Applications.[9] 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 Anthony Serafini, Anthony.Serafini@fcc.gov (Office of Engineering and Technology); Stephen Duall, Stephen.Duall@fcc.gov (Space Bureau); Susannah Larson, Susannah.Larson@fcc.gov (Wireless Telecommunications Bureau).

- FCC –

[5] *See* ULS File No. 0010798151 (Lead Application), Exhibit 1, Public Interest Statement at 3; EchoStar-DISH Press Release.

[6] *See* EchoStar-DISH Press Release.

[7] *See* Lead Application, Exhibit 1, Public Interest Statement at 1.

[8] *See* Lead Application, Exhibit 3. BlackRock, Inc., will own approximately 11.4% of the equity of the combined company and no other shareholder will own more than 5% of the equity. *Id.* at n.9.

[9] As the transaction before us involves a *pro forma* transfer of control, pursuant to section 25.119(i) of the Commission's rules, 47 CFR § 25.119(i), the applications for the transfer of control of the earth stations and space stations set forth in Appendix are deemed granted one day after the applications were filed.

APPENDIX

Wireless Radio Services

File No.	Licensee	Lead Call Sign
0010798151[10]	DISH Network L.L.C.	WQAR665
0010798154	SOUTH.COM, LLC	WQAW335
0010800097	DISH Broadcasting Corporation	WQOJ802
0010801864	DISH Network	WRDU586
0010802152	EchoStar Broadcasting Holding Company	WPNQ443
0010804246	DISH Network	WQXU921

Experimental Radio Station STAs

File No.	Licensee	Lead Call Sign
0119-EX-TU-2023	DISH Wireless, L.L.C.	Parent Application
0072-EX-TC-2023	DISH Wireless, L.L.C.	WW9XMG
0071-EX-TC-2023	DISH Wireless, L.L.C.	WW9XMH
0073-EX-TC-2023	DISH Wireless, L.L.C.	WW9XMI
0070-EX-TC-2023	DISH Wireless, L.L.C.	WW9XKZ
0069-EX-TC-2023	DISH Wireless, L.L.C.	WV9XAM

Earth Station Licenses

File No.	Licensee	Lead Call Sign
SES-T/C-INTR2023-06800	DBSD Corp.	E070291
SES-T/C-INTR2023-06821	DISH Broadcasting Corp.	E990139
SES-T/C-INTR2023-06765	DISH Operating L.L.C.	E140100
SES-T/C-INTR2023-06764	EchoStar 77 Corp.	E050196
SES-T/C-INTR2023-06768	EchoStar BSS Corp.	E150098
SES-T/C-INTR2023-06769	Gamma Acquisition L.L.C.	E070098

Space Station Licenses

File No.	Licensee	Lead Call Sign
SAT−T/C−20231201−00294	DISH Operating L.L.C.	S2931
SAT−T/C−20231201−00295	EchoStar BSS Corporation	S3093

[10] This application is the lead application.

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

In the Matter of	)	
	)	
Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System	)	PS Docket No. 15-94
	)	

ORDER

Adopted: December 6, 2023 Released: December 6, 2023

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) addresses the request filed by Mississippi Authority for Educational Television (MAET), dba Mississippi Public Broadcasting, on behalf of eight noncommercial educational TV stations and eight noncommercial educational radio stations for a temporary waiver of the Commission's requirement that Emergency Alert System (EAS) Participants prioritize the Common Alerting Protocol (CAP)-formatted version of an EAS message when it receives both a legacy version and a CAP-formatted version of the same alert.[1] For the reasons discussed below, the Bureau partially grants the request.

II. BACKGROUND

2. *Overview of the EAS.* The EAS is a national system used to disseminate public warnings of impeding emergencies over broadcast, cable, and satellite networks to consumers' radios, televisions, and other audio and video devices.[2] Both the Federal Communications Commission (Commission) and the Federal Emergency Management Agency (FEMA) jointly oversee the EAS. Authorized alert originators[3] may transmit EAS messages to EAS Participants (for distribution to the public) either over FEMA's Internet-based platform known as the Integrated Public Alert and Warning System (IPAWS) using the CAP format, or over the so-called "legacy" EAS distribution system, a broadcast-based process in which messages are transmitted via audio channels and relayed from one EAS Participant to another throughout a geographic area.[4] EAS Participants typically receive legacy EAS messages by monitoring

[1] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, FCC 22-75 (2022) (*2022 Part 11 Report and Order*).

[2] *Id. See* 47 CFR § 11.2(b) (defining "EAS Participants").

[3] *See* 47 CFR § 11.31 (describing "EAS Protocol"); *see also* FEMA, *Alerting Originators*, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public-safety-officials/alerting-authorities#:~:text=An%20Alert%20Originator%20is%20an,composing%20and%20issuing%20the%20alert (last updated June 26, 2023).

[4] In the legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant's local audience, but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert the sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives and, if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in (continued….)

audio transmissions from other EAS Participants or other sources. EAS Participants receive IP-based messages transmitted over IPAWS by periodically checking an Internet-connected server (a process known as "polling") for messages from alert originators in CAP format.[5] Alert messages transmitted over the legacy EAS are encoded in the Specific Area Message Encoding (SAME) protocol format (developed by the National Weather Service for weather alerts) and consist of audible tones that convey header codes, a two-tone attention signal, an audio stream (typically no longer than two minutes of a person's voice), and an end-of-message signal.[6] The header codes identify the type of event covered by the alert, the originator of the message, and the relevant times, locations, and geographic areas. CAP-formatted alerts disseminated over the IPAWS platform can convey considerably more information than legacy EAS-based alerts in the SAME format. For example, CAP alert messages may include detailed directions on how the public should respond to the specific emergency, information in languages other than English, picture and video files, and URLs. This information cannot be relayed when CAP alerts are converted into legacy alerts for distribution over the legacy EAS;[7] all data other than the header codes are lost in this conversion process.

3. On September 30, 2022, the Commission took measures to promote clarity and accessibility of alerts and to maintain public confidence in the EAS as a reliable source of emergency information.[8] Among other actions, the Commission adopted new rules to increase the proportion of alerts distributed to the public that include enhanced information.[9] With a few enumerated exceptions, the Commission requires EAS Participants, upon receiving a legacy EAS alert message, to check whether a CAP version of the same alert is available by polling the IPAWS feed for CAP-formatted EAS messages.[10] If a CAP version is available, the EAS Participants must transmit the CAP version rather than the legacy version. EAS Participants may not transmit an alert in legacy format until at least 10 seconds after receiving its header codes unless they confirm by polling the IPAWS feed that no matching CAP version of the message is available.[11] EAS Participants must comply with this requirement, codified at Section 11.55(c)(2) of the Commission's rules, by December 12, 2023.[12]

4. *MAET Request.* On November 15, 2023, the MAET filed a request for a temporary

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turn, is received not only by that entity's audience, but also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and have delivered it to the public.

[5] *See* 47 CFR 11.52(e)(2); Federal Emergency Management Agency (FEMA), *EAS Participants*, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/broadcasters-wireless/emergency-alert-system-participants (last updated July 28, 2021).

[6] *See* 47 CFR § 11.31.

[7] For example, if enhanced text is included in a CAP alert, a video service EAS Participant (such as a TV broadcaster or cable system) that receives it will generate a visual message that includes not only the header code data (as is the case with legacy EAS alerts) but also that enhanced text, which might include remedial actions to avoid hazards potentially posed by the emergency event.

[8] *2022 Part 11 Report and Order* at 1-2, paras. 1-3 and at 4-5, para. 10.

[9] *2022 Part 11 Report and Order* at 6, para. 14.

[10] This requirement applies only to valid alert messages relating to event categories and locations for which the EAS Participant normally transmits such alerts pursuant to the State EAS Plan. The requirement does not apply to national emergency messages (i.e., alerts with the EAN event code), messages associated with national tests of the EAS (bearing the NPT code), or required weekly test messages (bearing the RWT code).

[11] *2022 Part 11 Report and Order* at 5, para. 11.

[12] *See* 47 CFR § 11.55(c)(2).

waiver (i.e., extension) of the December 12, 2023, compliance date for EAS CAP prioritization.[13] MAET requested a temporary waiver for one year for its entire statewide public broadcasting network, which consists of eight noncommercial educational TV stations and eight noncommercial educational radio stations that blanket the entire State of Mississippi. In so requesting, MAET states that its current EAS encoders were acquired and installed in 2011 and are not compatible with the software that has been released by the EAS equipment manufacturer to "update" more recent-version encoders. Thus, contrary to the cost expectations in the FCC rulemaking record when the new EAS rules were established that the costs would be minimal, MAET states that it must invest in brand new encoders in order to meet the new EAS rules.[14] MAET estimated the cost of these new encoders to be $31,787.84. To meet this cost, MAET applied for, and on October 13, 2023, was awarded federal funds through the Next Generation Warning System (NGWS) grant program, as administered by the Corporation for Public Broadcasting (CPB),[15] sufficient to purchase and install nine (9) new EAS encoders to meet the EAS requirements and improve emergency alerting throughout the entire State of Mississippi.

5. MAET states that, with the NGWS grant award documents now in place, it expects to place the order for the necessary equipment by December 15, 2023, and, based on information provided by the manufacturer and vendor, MAET expects that the earliest that the equipment could be manufactured and delivered would be March 2024 with installation and testing scheduled immediately afterward.[16] Out of an abundance of caution, however, and given that NGWS is a brand new federal grant program and that there may be unexpected delays, MAET seeks a one-year waiver of the December 12, 2023 compliance deadline.[17]

6. MAET argues that there is good cause to grant the waiver, in that "it will allow federal grant funds to be used to permit MAET to comply with the terms and timing of a FEMA federal grant program funding the purchase and installation of the equipment necessary to comply with the new EAS rules." In particular, they argue that, as a state entity providing public broadcasting service to a rural state and to underserved communities, "MAET must be a careful steward of its finances and seek out appropriate federal grant funding opportunities. Thus, MAET reasonably relied on the NGWS grant program for the funds necessary to procure and install the required new EAS equipment."[18] Additionally, Petitioner stated

[13] MAET Request for Temporary Waiver of December 12, 2023 Compliance Deadline, PS Docket No. 15-94 (filed Nov. 15, 2023), https://www.fcc.gov/ecfs/document/11151273722245/1 (Extension Request).

[14] *NDAA Order*, 36 FCC Rcd at 10701-02, para. 14; *Review of the Emergency Alert System*, Fifth Report and Order, 27 FCC Rcd 642, 726, para. 265 (2012) (adoption of CAP will help ensure accessibility and encourage alert originators to provide hearing-disabled accessible alerts); *Review of the Emergency Alert System*, Sixth Report and Order, 30 FCC Rcd 6520, 6542, para. 47 (2015); *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket No. 15-94, Report and Order, 33 FCC Rcd 7086, 7100, para. 34 (2018) (*Alerting Reliability Order*) ("[L]ack of confidence [in the EAS] can lead the public to require additional information before taking action in response to future alerts, potentially slowing evacuations and other public safety efforts.").

[15] In March 2022, as part of the Department of Homeland Security Appropriations Act, 2022 (Pub. L. No. 117-103), Congress appropriated $40 million to the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) for a new grant program targeted at improving emergency alerting, the NGWS Grant. DHS issued a Notice of Funding Opportunity for the NGWS grant in 2022, that stated that Congress intended that FEMA work with the Corporation for Public Broadcasting (CPB) to implement the NGWSP for public broadcast entities. CPB proceeded with the grant process specified in the NOFO and was awarded the grant by FEMA in September 2022. CPB then stood-up the NGWS grant program and issued a Request for Applications in beginning in August 2023. MAET submitted its NGWS grant application on September 5, 2023, and was notified of the award of the grant on October 13, 2023. Extension Request at 3.

[16] Extension Request at 3.

[17] *Id.*

[18] *Id.* at 4.

that "[T]he public will not be harmed by the temporary waiver because MAET will continue to use its current (legacy) EAS equipment for emergency alerting until the new equipment is operational." On November 21, 2023, America's Public Television Stations and the Corporation for Public Broadcasting filed comments in support of MAET's request.[19]

III. DISCUSSION

7. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."[20] The Commission may find good cause to extend a waiver "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[21] The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[22] Based on the circumstances described herein, we conclude there is good cause to provide an extension of time until April 30, 2024, to accommodate the anticipated purchasing, installation and testing timeframe estimated by MAET.

8. First, through discussion by the Commission's Public Safety and Homeland Security Bureau staff (PSHSB) with MAET's legal representative and engineering team, it became apparent that that several of MAET's stations are already utilizing EAS equipment capable of complying with the Commission's rules and, in fact, only eight of MAET's stations require an extension of the compliance deadline: stations WMAO-FM, WMAO-TV, WMAU-FM, WMAU-TV, WMAW-FM, WMAW-TV, WMPN-FM, and WMPN-TV.[23] Specifically, according to MAET engineers, these eight stations utilize older DASDEC-II hardware from Digital Alert Systems, which include only 32-bit CPUs running software version 4.3 or 4.4 and are incapable of receiving the necessary software update to accommodate the December 12, 2023 deadline. The remaining eight stations included in MAET's waiver are using newer DASDEC-II hardware with 64-bit CPUs which can accommodate the necessary software update. As such, there is no basis to provide relief for these latter eight stations.

9. As to the eight stations with equipment that require replacement in order to become compliant, we find it in the public interest to accommodate a reasonable and narrowly-tailored extension of time to support the intended use of the procured DHS grant, particularly in light of the challenges MAET would face as a state government body and public broadcasting entity to otherwise identify funds for equipment replacement outside of the grant process. In particular, MAET also argues that, the Commission should also consider hardship, equity, and more effective implementation of the FCC's underlying policy rationale in its waiver analysis, in that the NGWS grant program prioritizes funding that improves emergency alerting for underserved communities, including tribal, minority and rural communities. We agree with MAET that the particular use and intent, in part, of the Federal grant program would be furthered by MAET's use of the funds to support the equipment upgrade for compliance with the Commission's CAP prioritization rules and justify waiver of our rules in this instance.[24]

10. MAET also represents that during the pendency of the upgrades, that the EAS equipment now in place will continue to operate in all respects except for the CAP prioritization aspect until the new

[19] America's Public Television Stations and Corporation for Public Broadcasting Comments (APTS and CPB Comments), PS Docket No. 15-94 (filed Nov. 21, 2023).

[20] 47 CFR § 1.3.

[21] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

[22] WAIT Radio v. FCC, 418 F.2d at 1157.

[23] MAET notes that its public TV and public radio stations "share" transmission sites and EAS encoders, which means that these eight stations are served by four sets of EAS equipment.

[24] Extension Request at 5; APTS and CPB Comments at 1, 7.

equipment is installed, so there will be no interruption to alerting. We condition our grant on the continued operation of the older equipment as so stated.

11. While MAET requests an extension until December 12, 2024, we find that in light of the reduced number of stations in actual need of upgrade as described above, a more limited duration for relief is appropriate. Moreover, in light of this reduced scope and based on its deployment estimates for equipment delivery in March 2024 with deployment and testing immediate thereafter that a date of April 30, 2024, for compliance more appropriately balances the ability of MAET to take advantage of the Federal grant funding offered while still ensuring reasonably timely delivery of these alerting functionalities to the underserved communities MAET cites as its constituents.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and section 1.3 of the Commission's rules, 47 CFR § 1.3, section 11.55(c)(2) of the Commission's rules, 47 CFR § 11.55(c), IS WAIVED, as to stations WMAO-FM, WMAO-TV, WMAU-FM, WMAU-TV, WMAW-FM, WMAW-TV, WMPN-FM, and WMPN-TV, to comply with the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED IN PART to afford these MAET stations until April 30, 2024.

13. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.[25]

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

[25] *See* 47 CFR §§ 0.191 and 0.392.

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

In the Matter of	)	
	)	
ENTRAVISION HOLDINGS, LLC	)	Facility ID No. 28280
	)	NAL/Acct. No. 202341420044
Application for License to Cover for	)	FRN: 0001529627
Class A Television Station	)	LMS File No. 0000221640
KTFV-CD, McAllen, Texas	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 6, 2023 **Released: December 6, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the above-referenced application (Application) of Entravision Holdings, LLC (Entravision) for license to cover for Class A television station KTFV-CD, McAllen, Texas (KTFV-CD or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[1] we find that Entravision apparently willfully violated section 74.788[2] of the Commission's rules (Rules) by failing to timely file a license to cover application, and willfully and repeatedly violated section 73.1745 of the Rules[3] and section 301 of the Act,[4] by engaging in unauthorized operation of the Station after its construction permit had expired. Based upon our review of the facts and circumstances before us, we conclude that Entravision is apparently liable for a monetary forfeiture in the amount of thirteen thousand dollars ($13,000).

II. BACKGROUND

2. KTFV-CD is a Class A television station whose channel 48 facilities were repacked as part of the Incentive Auction and repacking process. KTFV-CD was assigned a construction permit for post-auction channel 32 (Repack CP) and assigned to post-auction transition phase 8, with a phase completion date of March 13, 2020.[5] Entravision claims that it terminated operating on channel 44 and

[1] This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Commission's rules (Rules). *See* 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. *See* 47 CFR § 0.283.

[2] *See* 47 CFR § 74.788 (2022). Effective October 24, 2022, 47 CFR § 74.788 of the Commission's rules was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598 of the Rules. *See* 87 FR 58200, Oct. 24, 2022; *In the Matter of Amend. of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, FCC 22-58 (July 13, 2022); 47 CFR § 74.780(bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the violation at issue occurred, 47 CFR § 74.788 was in effect; however, to the extent necessary, we also find that the Licensee violated 47 CFR § 73.3598.

[3] 47 CFR § 73.1745.

[4] *See* 47 U.S.C. § 301.

[5] *See* LMS File No. 0000034457.

began operating on channel 32 on March 13, 2020, but the Station failed to timely submit an application for license to cover and the Repack CP expired.

3. On September 29, 2023, just over three and half years after construction of its post-auction channel 32 facilities were completed and the Repack CP expired, Entravision late-filed the Application and sought reinstatement of the Station's expired Repack CP and grant of the Station's licenses to cover.[6] According to Entravision, the Station completed its post-auction channel 32 facilities and began operating on March 13, 2020.[7] Entravision goes on to explain that the Application was late-filed due to an administrative oversight.[8] Entravision included the declaration of its engineer attesting that the facilities were constructed and operating by March 13, 2020, as well as other supporting documentation demonstrating that KTFV-CD was timely constructed.[9]

4. Entravision requests that Commission waive any time limits that prevent it from addressing its administrative error and filing an application for license to cover.[10] Entravision states that it takes seriously its duties under the Commission's rules and attempted to fulfill its obligations in this case.[11] Immediately after discovering that it inadvertently failed to file the license, Entravision notes that it acted swiftly to notify the Commission and file the Application.[12] Entravision argues that "declining to grant the relief requested [] would create a substantial hardship for Entravision and KTFV-CD, which offers crucial Spanish-language programming to communities in McAllen, Texas."[13] Therefore, Entravision concludes, good cause exists for granting its request for waiver, as failure to do so would significantly burden KTFV-CD viewers as a result of Entravision's oversight.[14]

III. DISCUSSION

5. Pursuant to section 503(b)(1)(B) of the Act,[15] 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.[16] 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.[17] The legislative history to section 312(f)(1) of the Act clarifies that this

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[6] We note that because the Repack CP had not yet been canceled in the Commission's Licensing and Management System (LMS), the Station was able to file a license to cover application against the expired permit. Cancellation of a station's forfeited construction permit by Bureau staff in LMS is an administerial function and does not constitute an official Commission action nor require any affirmative cancellation by the Commission. *See Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Oher Important Deadlines are One Week Away*, Public Notice, 36 FCC Rcd 10364 (MB 2021); 47 CFR §74.788(b). As a result, failure by Bureau staff to cancel a forfeited construction permit in LMS does not result in an expired construction permit remaining valid.

[7] Application, Amended Request for Construction Permit Reinstatement and Waiver of Filing Deadline at 1.

[8] *Id.* at 1.

[9] *See id*. at 3-138 (providing invoices, photographs, correspondence and other documents demonstrating the Station was constructed as authorized and began operations on March 13, 2020).

[10] *Id.* at 1 and 2.

[11] *Id.* at 2.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] 47 U.S.C. § 503(b)(1)(B).

[16] *Id. See also* 47 CFR § 1.80(a)(1).

[17] 47 U.S.C. § 312(f)(1).

definition of willful applies to both sections 312 and 503(b) of the Act,[18] and the Commission has so interpreted the term in the section 503(b) context.[19] 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."[20]

6. *Apparent Violation*. Entravision admits that it failed to timely file a licenses to cover as required by section 74.788 of the Rules after construction was completed on March 13, 2020,[21] and continued operating the Station for just over three and a half years before filing the Application. Entravision explains that it completed construction of the Station's post-auction channel 32 facilities in accordance with the Repack CP and commenced operation of those facilities before its expiration date. Entravision goes on to admit that it overlooked submitting the license to cover due to an administrative oversight. It is well settled that administrative oversight is not an excuse for failure to comply with the Commission's rules.[22] Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.[23] As a result, for more than three and a half years, Entravision also engaged in unauthorized operation of the Station in violation of section 301 of the Act and section 73.145 of the Rules.[24] Stations are only permitted to commence operation pursuant to a valid instrument of authorization.[25] We therefore find that Entravision has apparently violated the Rules and Act by failing to timely file a license to cover application and subsequently engaging in unauthorized operation and is apparently liable for forfeiture.

7. *Proposed Forfeiture Amount.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for the failure to file a required form.[26] The guidelines also specify a base forfeiture amount of $10,000 for construction and operation without an instrument of authorization for the service.[27] 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,

[18] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[19] *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

[20] 47 U.S.C. § 312(f)(2).

[21] *See* 47 CFR § 74.788.

[22] *See, e.g.*, *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); *see also Townsquare Media of El Paso, Inc.,* Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal cites omitted).

[23] *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).

[24] 47 U.S.C. § 301; 47 CFR § 73.1745.

[25] *Id.*

[26] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I.

[27] *Id.* A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

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."[28]

8. In this case, BCT late-filed the Station license application and engaged in unauthorized operation of the Stations for more than three and a half years. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will impose the base amount forfeiture of $13,000. While the Licensee did notify the Commission upon recognizing its error, we believe the base forfeiture amount is reasonable given the lengthy period of time the Station engaged in unauthorized operation and the fact that Entravision, as the licensee of over 100 television and radio stations, should be well versed in the Commission's rules and filing requirements. We will also grant Entravision's request for waiver of section 74.788 of the Rules,[29] and reinstate the Repack CP.

9. In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for Entravision's apparent violations, we will act upon the Application upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant.[30] We will also grant under separate staff action Entravision's request for special temporary authority to operate the Station while the matter of its late-filed Application is resolved.[31]

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,[32] Entravision Holdings, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of thirteen thousand dollars ($13,000) for its apparent willful violation of section 74.788 of the Commission's rules and apparent willful and repeated violations of section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.[33]

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[34] that, within thirty (30) days of the release date of this *NAL*, Entravision Holdings, LLC **SHALL PAY** the

[28] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

[29] A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown). Providing relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its authorized facility prior to the construction expiration date is consistent with Commission precedent. *See, e.g.*, *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para. 11 (2011) (upholding as proper the Bureau's practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process); *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing a petition for reconsideration of an expired construction permit as procedurally improper and treating it instead as a request for waiver). We find that based on the specific facts and circumstances presented here waiver is warranted.

[30] Also pending before the Commission is an application for renewal of the Station's license. LMS File No. 0000188058. We will act on the pending license renewal application by separate staff action, following conclusion of this forfeiture proceeding and in accordance with the Commission renewal standard set forth under section 309(k) of the Act. *See* 47 U.S.C. § 309(k).

[31] LMS File No. 0000221641.

[32] 47 U.S.C. § 503(b); 47 CFR § 1.80.

[33] 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301. *See supra* note 2.

[34] 47 CFR § 1.80.

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),[35] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that payment has been made must be sent on the day of payment to VideoNAL@fcc.gov and Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[36]

- 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).[37] 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. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.[38] Questions regarding payment procedures should be directed to the

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

[36] 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.

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

[38] *See* 47 CFR § 1.1914.

Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

14. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.[39] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.[40] A copy must also be emailed to VideoNAL@fcc.gov and Shaun.Maher@fcc.gov to assist in processing the response.

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

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.[41]

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Entravision Holdings, LLC, Mark Boelke, Suite 6000, 2425 Olympic Boulevard, Santa Monica, CA 90404 as well as e-mailed to: mboelke@entravision.com and that a copy be mailed to Ari Meltzer, Esq., Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036 as well as e-mailed to: ameltzer@wiley.law.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[39] 47 CFR §§ 1.16 and 1.80(g)(3).

[40] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

[41] *See* 47 U.S.C. 503(b)(2)(E); *supra* para. 8.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182
	)	

ORDER

Adopted: December 6, 2023 **Released: December 6, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) extends the limited waiver of the letter of credit (LOC) rules for the Connect America Fund Phase II Auction (CAF II Auction or Auction 903) funding recipients that have met their deployment and reporting obligations until December 31, 2024. We find good cause exists to grant these waivers due to some of the remaining economic and financial hardships that recipients face as a result of the coronavirus (COVID-19) pandemic.

II. BACKGROUND

2. In 2018, the CAF II Auction made available up to $1.98 billion over 10 years to service providers that committed to offer voice and broadband services meeting certain requirements to fixed locations in unserved high-cost areas.[1] In order to receive funding, CAF II Auction support recipients must maintain a LOC each year valued "at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year."[2]

3. In June 2020, in response to the COVID-19 pandemic, the Bureau granted two petitions for waiver of the LOC rules for Rural Broadband Experiments (RBE) and CAF II participants.[3] The Bureau waived section 54.315(c) of the Commission's rules and instead directed petitioners and all CAF II funding recipients to comply with the section 54.804(c) LOC rules for the Rural Digital Opportunity Fund (RDOF) auction LOC obligations.[4] The RDOF LOC rules generally require less support and permit recipients to reduce their letter of credit burden sooner in their buildout term than the CAF II rules.[5] The

[1] *See Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428 (2018) (*Auction 903 Procedures Public Notice*).

[2] *See Connect America Fund; ETC Annual Reports and Certification, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-58, 14-259, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5997, para. 135 (2016).

[3] *Connect America Fund*; *ETC Annual Reports and Certification; Rural Broadband Experiments; Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Order, 35 FCC Rcd 6556 (2020) (*LOC Waiver Order*).

[4] *Id.* at 6558, para. 6.

Bureau found that special circumstances warranted deviation from the Commission's rules due to the disruptive impacts of the pandemic on businesses, including funding recipients.[6] Further, the Bureau held that a waiver was in the public interest because it would result in more rapid deployment of broadband services.[7] In doing so, the Bureau forecasted that "current market conditions will continue for the foreseeable future," and it stated that it would reevaluate at the end of the two-year period to determine whether the relief should be extended.[8] As part of its waiver, the Bureau, consistent with RDOF's LOC rules, also allowed CAF II recipients that had deployed service to at least 20% of their eligible locations by the end of their second year of support to reduce their LOC's value to one year of support.[9] On December 2, 2021, the Bureau extended the waiver until December 31, 2022 for all CAF II support recipients.[10]

4. On August 22, 2022, the Bureau released the *2022 Letter of Credit Public Notice* seeking comment on issues related to the letter of credit requirements, including extending the limited waiver of the LOC rules for all CAF II recipients.[11] The Bureau received three comments, all supporting extending the waiver. On December 12, 2022, the Bureau issued an Order extending the waiver through 2023, though the Bureau declined, as commenters had requested, to extend the waiver to CAF II support recipients that had not met their 40% deployment obligation, even if they had previously met their 20% deployment obligation, and also declined to extend the waiver to CAF II support recipients that missed a reporting deadline.[12] However, the Bureau agreed with one commenter that recipients requiring new LOCs should be allowed to wait until their current LOCs expired before obtaining new LOCs.[13]

5. On August 11, 2023, the Bureau released the *2023 Letter of Credit Public Notice* seeking comment again on issues related to the letter of credit requirements, including extending the limited waiver of the LOC rules for CAF II participants who have met each of their previous deployment and certification deadlines.[14] We received two comments, both of which support extending the waiver. As in 2022, the Connect America Fund Phase II Coalition again supports extending the waiver.[15] The Coalition notes that supply chain issues and a tight labor market still impact CAF II providers.[16] It also states that the tightening of credit markets is an "additional dynamic" that further supports extending the waiver,[17] as

(Continued from previous page)

[5] 47 CFR § 54.804(c)(1)(v).

[6] *LOC Waiver Order*, 35 FCC Rcd at 6558, para. 7.

[7] *Id*. at 6560, para. 10.

[8] *Id*. at 6560, para. 12.

[9] *Id*. at 6560, para. 11 (citing 47 CFR § 54.804(c)(1)(v)).

[10] *See Connect America Fund, et al.,* Order, 36 FCC Rcd 16633 (WCB 2021) (*2021 LOC Credit Waiver Extension*).

[11] *Wireline Competition Bureau Seeks Comment on Extending Waiver of Letter of Credit Rules for Connect America Fund Phase II Auction (Auction 903)*, WC Docket Nos. 10-90, 14-58; AU Docket No. 17-182, Public Notice, 37 FCC Rcd 9580 (2022) (*2022 LOC Public Notice*).

[12] *See Connect America Fund, et al.,* Order, 37 FCC Rcd 14592 (WCB 2022) (*2022 Letter of Credit Waiver Extension Order*) (extending the limited waiver of the Commission's CAF II letter of credit rules until December 31, 2023 for CAF II support recipients that have met their deployment and reporting obligations).

[13] *Id*. at 14595-96, para. 13.

[14] *Wireline Competition Bureau Seeks Comment on Extending Waiver of Letter of Credit Rules for Connect America Fund Phase II Auction (Auction 903)*, WC Docket Nos. 10-90, 14-58; AU Docket No. 17-182, Public Notice, DA 23-681 (Aug. 11, 2023) (*2023 LOC Public Notice*).

[15] Comments of the Connect America Fund Phase II Coalition (filed Sept. 11, 2023) (Coalition Comments).

[16] *Id*. at 8-11.

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

do the ratings downgrades that some banks have experienced that make them no longer eligible to issue LOCs for the CAF II program.[18] However, the Coalition also argues that the waiver should extend for two years until the end of the CAF II deployment term so that the providers and the Bureau would not have to re-visit the waiver issue.[19]

6. The Coalition supports several modifications to the proposal that CAF II recipients must have met all deployment and certification deadlines in order to be allowed the benefit of the waiver.[20] It suggests that "the letter of credit waiver benefit be relinquished if an Auction 903 recipient fails to timely file *two* annual location reports unless the Commission has granted a waiver for the late filing," with the additional caveat that the Bureau should also implement a five-day grace period for filers that have not previously missed a deadline.[21] Lastly, the Coalition advocated that CAF II recipients that have completed 95% of the 60% deployment milestone be allowed to benefit from the waiver.[22] RiverStreet Communications of Virginia, Inc. (RiverStreet) also filed comments supporting the extension of the waiver, including making the waiver permanent.[23] RiverStreet advocates for extending the waiver to all CAF II support recipients that "anticipate coming into compliance by December 31, 2024."[24]

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.[25] Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.[26] As discussed in more detail below, we extend the limited waiver granted in 2022, but we decline to extend the waiver to CAF II support recipients that do not meet their 60% deployment obligation, even if they had previously met their deployment obligations. We also reject calls to extend the waiver to CAF II support recipients that miss a reporting deadline. Further, we decline to make the waiver permanent or to extend it now through 2025. We will retain the modification adopted last year that recipients requiring new LOCs in accordance with the CAF II rules be allowed to wait until their current LOCs expire before obtaining new LOCs.

8. Based on the record, we conclude that carriers are still facing difficulties with financial markets and operational capacity due to the pandemic and tightening of credit markets and therefore find that extending the limited waiver of the LOC rules for CAF II Auction participants that have met each of their previous deployment and certification deadlines is warranted.[27] Extending the waiver of LOC requirements to recipients that have met their deployment and reporting obligations would allow recipients to better allocate resources to operate successfully and continue to fulfill their obligations. Further, extending the waiver will provide certainty for CAF II Auction carriers to plan their future investments as they continue their deployments.

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[18] *Id*. at 7.

[19] *Id*. at 2, 13.

[20] *Id.* at 14-15.

[21] *Id.* at 14.

[22] *Id.* at 14-15.

[23] Comments of RiverStreet Communications of Virginia, Inc. (filed Sept. 11, 2023) (RiverStreet Comments).

[24] *Id.* at 3.

[25] 47 CFR § 1.3.

[26] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

[27] Coalition Comments at 8-12 (noting supply chain issues and labor shortages, which have led to increased costs and extended deployment timelines, and the continuing cost to maintain letters of credit).

9. However, we are not persuaded that conditions warrant extending the waiver to a broader pool of CAF II Auction support recipients than proposed, so we reject the Coalition's argument that support recipients that have failed to fully meet their current 60% deployment obligation should be allowed to continue to follow RDOF's LOC rules.[28] We also reject the RiverStreet proposal to extend the waiver to support recipients that anticipate coming into compliance by December 31, 2024, as that standard is not sufficiently definite and would place unnecessary and uncertain risk on the rate payers.[29] While we are mindful of the difficulties CAF II Auction support recipients may be facing, we believe that extending a waiver of the LOC rules to support recipients that are already failing to comply with CAF II Auction rules and deadlines would be counter to the public interest. The Commission is most likely to need to draw on the LOCs of the CAF II support recipients that have failed to comply with the program's rules and deadlines, and the LOCs exist to protect the Universal Service Fund and allow for more efficient recovery of funds, when necessary. Reducing the LOCs of CAF II Auction support recipients that are not complying with our rules and deadlines would make it more difficult to efficiently recover funds and would undermine the purposes of the LOC requirement.

10. For the same reasons, we disagree both with the Coalition's suggestion that CAF II Auction support recipients should be permitted to miss two reporting deadlines before they are obligated to follow CAF II Auction LOC rules, as well as with the suggestion that we allow a five-day grace period for recipients that miss a reporting deadline but that have not previously missed a reporting deadline.[30] This limited waiver should only extend to those CAF II Auction support recipients that are in compliance with program rules and obligations and are less likely to be subject to support recovery. Extending this waiver to support recipients that are not in compliance with our rules is not in the public interest. We further disagree with the Coalition's suggestion to extend the waiver until 2025 and/or to make the waiver permanent,[31] because waivers are only appropriate in special circumstances in which a deviation from the rules will serve the public interest, and we cannot know at this point if the current special circumstances would continue to exist into 2025.

11. Thus, we will continue to extend the RDOF letter of credit rules to CAF II Auction support recipients that have met their deployment obligations (i.e., met the 40% milestone and will meet and certify the 60% milestone) and allow them to maintain a LOC for one year of support upon verification by USAC that the recipients have met their buildout milestones.[32] We conclude that it will serve the public interest to continue allowing these providers to comply with the RDOF letter of credit rules until the end of 2024, permitting them to more efficiently deploy broadband across the country and balancing that against the risk the public faces from carriers that fail or failed to meet interim deployment obligations.[33]

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[28] Coalition Comments at 14-15.

[29] RiverStreet Comments at 3.

[30] Coalition Comments at 14.

[31] Coalition Comments at 2 and 13; RiverStreet Comments at 3.

[32] 47 CFR § 54.804(c)(1)(v). *See LOC Waiver Order*, 35 FCC Rcd at 6558-59, paras. 8-11. *See also Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 98-99. A CAF II Auction support recipient that has already been approved to maintain a LOC for one year of support pursuant to our LOC waivers may continue to do so if the support recipient timely certifies (or has already certified) to meeting the 60% CAF II Auction deployment milestone. If the support recipient fails to timely certify compliance or is determined to have not met the milestone based on a verification, the support recipient shall increase the value of its LOC in accordance with the CAF II Auction LOC rules. Furthermore, a CAF II Auction support recipient that meets the 60% milestone but failed to meet the 40% milestone must maintain the value of its LOC in accordance with the CAF II Auction LOC rules.

[33] We note that, unlike in the *2022 Letter of Credit Waiver Extension Order*, we do not extend the LOC Waiver to support recipients in the Rural Broadband Experiments (RBE). Any RBE support recipient that has not completed

(continued….)

12. Accordingly, for the reasons discussed above, we find that special circumstances exist to extend the limited waiver for an additional year, until December 31, 2024, as described herein.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page)
its project at this point is in a default cure period, such that it currently is required to have an LOC that covers all of its support, so a waiver would not be applicable to those support recipients.

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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News media information 202-418-0500
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DA No. 23-1141

Report No. TEL-02320 **Thursday December 7, 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-214-20230925-00115 E Xeebi Mobile Inc

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 12/01/2023

Xeebi Mobile Inc. (Xeebi) 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).

Xeebi, a Wyoming corporation, is wholly owned by Bruce Tran, a U.S. citizen.

ITC-ASG-20231031-00136 E Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications

Assignment

Grant of Authority Date of Action: 12/01/2023

Current Licensee: Great Lakes Communication Corp.

FROM: Great Lakes Communication Corp.

TO: Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications

Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications (Mutual) filed an application seeking consent for the assignment of assets from Great Lakes Communication Corp. (GLCC) to Mutual. Pursuant to an Asset Purchase Agreement, Mutual will purchase certain assets from GLCC, including its customer base, to provide internet, telephone, video, and other communications services to customers in and around the Iowa Great Lakes area. Mutual will provide international services to its newly acquired customers pursuant to international 214 section authorization ITC-214-20231031-00141. GLCC will continue to provide international services to its remaining customers pursuant to its existing international section 214 authorization, ITC-214-20160112-00014. Mutual is an Iowa corporation in which no individual or entity holds a 10% or greater direct or indirect ownership interest.

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

ITC-T/C-20230526-00068 E Alteva of Warwick LLC

Transfer of Control

Grant of Authority Date of Action: 12/05/2023

Current Licensee: Alteva of Warwick LLC

FROM: MBS Intermediate Holdings LLC

TO: Archtop Fiber LLC

Alteva of Warwick LLC (Warwick), a New York limited liability company that holds an international section 214 authorization (ITC-214-19931022-00192), filed an application for the transfer of control of Warwick from MBS Intermediate Holdings, LLC (MBS) to Archtop Fiber LLC. Warwick is a wholly owned subsidiary of Alteva Inc. (Alteva), a New York corporation, which, in turn, is wholly owned by MBS, a Delaware limited liability company. Pursuant to a May 12, 2023 stock purchase agreement, Archtop will acquire 100% of the equity and voting interests in Alteva. Upon consummation, Alteva will be a direct wholly owned subsidiary and Warwick an indirect wholly owned subsidiary of Archtop.

Archtop is wholly owned by Archtop Fiber Intermediate LLC, which, in turn, is wholly owned by Archtop Fiber Holdings LLC (Archtop Holdings), all Delaware entities. Archtop Holdings is controlled by Post Road Digital Infrastructure Fund I LLC (98.7% voting and equity), which, in turn, is wholly owned by Post Road Digital Infrastructure Fund I, LP (Post Road), both Delaware entities.

The voting interests in Post Road are held by Post Road DIF I GP LLC (Post Road DIF GP) (50.5%), a Delaware entity, and OP Trust Infrastructure Direct N.A. VII Inc. (OP Trust Infrastructure) (49.5%), a Canadian entity. The OPSEU Pension Plan Trust Fund (OPSEU Pension Plan), a Canadian entity, wholly owns OP Trust Infrastructure. Post Road DIF GP is wholly owned by PRG Investment Holdings LP (Investment Holdings), a Delaware entity. Post Road Group Holdings LP (PRG Holdings) a Delaware entity, holds 100% voting and 80% equity interests in Investment Holdings. Post Road Group GP LLC (Post Road GP), a Delaware entity, holds all the voting general partner interest in PRG Holdings. Michael Bogdan, a U.S. citizen, wholly owns Birch Hill Capital LLC, a Delaware entity, which, in turn, holds 50% voting and equity in Post Road GP and 45% of the equity of PRG Holdings. Kevin Davis, a U.S. citizen, wholly owns Seventh Avenue Capital Group LLC (Seventh Avenue) and Seventh Avenue Capital Group II LLC (Seventh Avenue II, together with Seventh Avenue, Seventh Avenue Capital Group), both Delaware entities. Seventh Avenue holds 50% of the voting and equity interests in Post Road GP while Seventh Avenue II holds 45% of the equity interests of PRG Holdings.

The 10% or greater interests in Post Road are held by: (1) OP Trust Infrastructure (direct 49.5% equity and voting interests) and (2) Post Road SOF GP II, a Delaware entity (General Partner of Post Road Special Opportunity Fund II, a Delaware entity, which holds a direct 7.81% equity interest in Post Road and Post Road Special Opportunity Fund II Offshore LP, a Cayman Island entity, which holds a direct 4.92% equity interest in Post Road). Michael Bogdan and Kevin Davis, both U.S. citizens, control Post Road SOF GP II through Birch Hill Capital LLC and Seventh Avenue Capital Group, respectively.

According to the Applicants, no other individual or entity will hold a 10% or greater direct equity or voting interest in Archtop or Hancock LD.

On December 4, 2023, the National Telecommunications and Information Administration informed the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

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

ITC-T/C-20230928-00117 E Alpha Enterprises Limited, Inc.

Transfer of Control

Grant of Authority Date of Action: 12/06/2023

Current Licensee: Alpha Enterprises Limited, Inc.

FROM: LICT Corporation

TO: MachTen, Inc.

On September 28, 2023, Alpha Enterprises Limited, Inc. (Alpha), a Michigan corporation that holds an international section 214 authorization (ITC-214-20051118-00473), filed a notification of the pro forma transfer of control of Alpha from LICT Corporation (LICT) to MachTen, Inc. (MachTen) effective August 31, 2023. The Applicants filed a supplement on November 27, 2023.

Prior to the transaction, Alpha was an indirect wholly owned subsidiary of LMT Holding Corp. (LMT Holding), a Michigan corporation, which, in turn, was a wholly owned subsidiary of LICT, a Delaware corporation in which the only 10% or greater shareholder is Mario Gabelli, a U.S. citizen (37.6 % equity and voting). MachTen, a Delaware corporation, was a direct wholly owned subsidiary of LICT.

Pursuant to a corporate reorganization, LMT Holding was converted to a single-member Michigan limited liability company with MachTen being the sole owner of LMT Holding. Consequently, Alpha became an indirect wholly owned subsidiary of MachTen. In addition, LICT distributed 81% of the stock of MachTen to the shareholders of LICT. As a result, LICT now holds a 19% equity and voting interest in MachTen, and Mario Gabelli holds a direct 31.19% equity and voting interest in MachTen and a 7.14% indirect equity and voting interest in MachTen through his direct 37.6 % equity and voting interest in LICT. According to the Applicants, no other individual or entity holds a 10% or greater interest in LICT, MachTen or Alpha.

ITC-T/C-20231120-00145 E FiberLight LLC

Transfer of Control

Grant of Authority Date of Action: 12/06/2023

Current Licensee: FiberLight LLC

FROM: Fiber BidCo LLC

TO: Fiber BidCo LLC

On November 20, 2023, FiberLight, LLC (FiberLight), a Delaware limited liability company that holds an international section 214 authorization (ITC-214-20051011-00437), filed a notification of the pro forma transfer of control of FiberLight, effective October 24, 2023.

FiberLight is an indirect wholly owned subsidiary of Fiber Bidco, LLC, which, in turn, is an indirect wholly owned subsidiary of Fiber Holdco, L.P. (Fiber LP), both Delaware entities. Fiber GP LLC (Fiber GP), a Delaware limited liability company, is the general partner of Fiber LP. Fiber MCO L.P. (Fiber MCO), a Delaware limited partnership, holds a 50% ownership interest in Fiber GP and 49.5% ownership interest in Fiber LP. Fiber MCO is indirectly wholly owned by The Morrison & Co. Infrastructure Partnership Master Fund, SCSp (MCO IP), a Luxembourg entity. Morrison & Co. Infrastructure Partnership (US) LLC (MCO US), a Delaware entity, has a 90.29% equity interest in MCO IP. MCO US is wholly owned by The Morrison & Co. Infrastructure Partnership Australian Feeder Fund (Australian Feeder), an Australian entity. The Morrison & Co. Infrastructure Partnership Australian Feeder Fund Pty Ltd (MCO Trustee), an Australian entity, is the trustee for Australian Feeder. The Morrison & Co. Infrastructure Partnership Management Pty Ltd (MCO Manager), an Australian entity, was appointed the portfolio manager for Australian Feeder by MCO Trustee. MCO Manager and MCO Trustee are controlled by H.R.L. Morrison & Co (Australia) Pty Ltd (MCO AUS Op Co), an Australian entity.

In a corporate reorganization, Morrison & Co Investments Limited Partnership (MCO Invs LP) replaced H.R.L. Morrison & Co Australia Holdings Limited (HRL Australia) as the direct, sole owner of MCO AUS Op Co. HRL Australia was and MCO Invs LP is owned and controlled by H.R.L. Morrison & Co Group Limited Partnership (MCOG LP), all New Zealand entities.

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. 23-1142

Report No. SCL-00444 **Thursday December 7, 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-MOD-20230803-00022 E GCI Communication Corp.

Modification

Grant of Authority Date of Action: 12/06/2023

GCI Communication Corp. (GCICC) filed an application for authority to modify the cable landing license for the AU-Aleutian Submarine Cable System (AU-Aleutian), SCL-LIC-20171031-00024, to include two new cable segments with new cable landings in Port Lions and Ouzinkie, Alaska. On September 15, 2023, GCICC filed a supplement that describes the new cable segments and capacity held, by segment, on the AU-Aleutian system. See Submarine Cable Landing License Applications, Accepted for Filing, Report No. SCL-00434S, Public Notice (OIA Oct 6, 2023). No comments or oppositions were filed in response to the Public Notice.

The Application has been coordinated with the Department of State as required by Executive Order 10530, pursuant to section 1.767(b) of the Commission's rules, and consistent with the established Department of State procedures. Executive Order 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301; 47 CFR §1.767(b); 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); 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)

In the Executive Branch Review Process Order, the Commission set out types of applications that would generally be referred to the Executive Branch for review for national security, law enforcement, foreign policy, and trade policy issues. See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket 16-155, Report and Order, 35 FCC 10927, 10935-36, para. 24 (2020); see also 47 CFR § 1.40001(a)(1). Those applications do not include cable landing license applications where there is no reportable foreign ownership as is the case here. Therefore, we did not refer this application to the Executive Branch agencies. Although we did not formally refer this application, we provided a courtesy copy of the Accepted for Filing Public Notice to the Executive Branch agencies due to the request from GCICC to condition grant of the application on compliance with its June 3, 2019 Letter of Assurances (see below).

The AU-Aleutian system is a non-common carrier cable system that consists entirely of U.S. domestic landing points. The Commission granted a cable landing license, as amended, to GCICC for the AU-Aleutian cable in 2019. See Actions Taken Under Cable Landing License Act, SCL-LIC-20171031-00024, SCL-AMD-20180801-00028, Report No. SCL-00243 Public Notice, DA 19-567 (IB June 17, 2019). The two new segments (Segment 13 and Segment 14) will connect the new landing points, both located on Kodiak Island, to branching units located on Segment 1. AU-Aleutian currently provides commercial service for 7 of the 12 authorized landing points and GCICC expects to commence commercial service at the remaining landing points, including the new landing points, between 2024 and 2026.

The AU-Aleutian system is approximately 1,491 kilometers in length with 16 segments and 14 landing points. Segment 1, Kodiak to Larson Bay, will include the 2 new segments, and consist of the following 3 segments: (a) Segment 1A, Kodiak to Ouzinkie Branch Unit (BU), 16.5 Kilometers, 12 fiber pairs; (b) Segment 1B, Ouzinkie BU to Port Lions BU, 18.7 kilometers, 12 fiber pairs, and (c) Segment 1C, Port Lions BU to Larson Bay, 121.8 Kilometers, 12 fiber pairs; Segment 2, Larson Bay to Chignik Bay, 367.2 Kilometers, 6 fiber pairs; Segment 3, Chignik Bay to Perryville BU, 135.5 kilometers, 6 fiber pairs; Segment 4, Perryville BU to Sand Point, 120.3 kilometers, 6 fiber pairs; Segment 5, Sand Point to King Cove, 175.9 kilometers, 6 fiber pairs; Segment 6, King Cove to False Pass BU, 60.7 kilometers, 6 fiber pairs; Segment 7, False Pass BU to Akutan BU, 212 kilometers, 6 fiber pairs; Segment 8, Akutan BU to Dutch Harbor, 58.5 kilometers, 6 fiber pairs; Segment 9, Akutan to Akutan BU, 27.3 kilometers, 6 fiber pairs; Segment 10, False Pass to False Pass BU, 44.2 kilometers, 6 fiber pairs; Segment 11, King Cove to Cold Bay, 43.1 kilometers, 6 fiber pairs; Segment 12, Perryville to Perryville BU, 45.9 kilometers, 6 fiber pairs; Segment 13 (Port Lions to Port Lions BU, 7.9 kilometers, 6 fiber pairs; Segment 14, Ouzinkie to Ouzinkie BU, 1.2 Kilometers, 6 fiber pairs; Segment 15, Chignik Bay to Chignik Lagoon, 16.5 kilometers, 12 fiber pairs; and Segment 16, Chignik Lagoon to Chignik Lake, 18.2 kilometers, 12 fiber pairs.

AU-Aleutian has the following landing points: (1) Akutan, (2) Dutch Harbor, (3) False Pass, (4) King Cove, (5) Cold Bay, (6) Sand Point, (7) Perryville, (8) Chignik Bay, (9) Chignik Lagoon, (10) Chignik Lake, (11) Larsen Bay, (12) Kodiak, (13) Port Lions, and (14) Ouzinkie.

According to the Applicant, the new landing points at Port Lions and Ouzinkie, both located on Kodiak Island, are cable landings in connection with a larger fiber buildout designed to bring 2 Gbps of fiber service to more than half a dozen remote communities in Alaska. The fiber build will be funded through the Tribal Broadband Connectivity Program of the National Telecommunications and Information Administration (NTIA), of which Port Lions is a grantee, with GCICC as the subgrantee.

GCICC will own and operate the entire AU-Aleutian system, including the wet links for all 16 segments and cable landing facilities (cable landing stations/equipment huts and beach manholes) for all 14 landing points in Alaska.

GCICC is a direct, wholly-owned subsidiary of GCI Holdings, Inc. (GCI Holdings), which, in turn, is wholly owned by Ventures Holdco, LLC (Ventures Holdco), both Delaware entities. Ventures Holdco is wholly owned by GCI, LLC (GCI) which is wholly owned Grizzly Merger Sub 1 LLC (Grizzly), which, in turn, is wholly-owned by Liberty Broadband Corporation (Liberty Broadband), all Delaware entities. Dr. John C. Malone, a U.S. citizen, holds an approximate 48.9% voting interest and an approximate 6.074% equity interest in Liberty Broadband. Liberty Broadband's shares trade publicly on the NASDAQ exchange. GCICC states that it has no other 10% or greater direct or indirect voting or equity interest holders.

GCICC shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g), and with the requirements of section 1.768 of the Commission's rules, 47 CFR § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

GCI Communication Corp. made commitments regarding potential national security, law enforcement and public safety issues related to the AU-Aleutian cable in a June 3, 2019 Letter of Assurances from Dan Boyette, V.P. and General Manager, AU-Aleutian Program, GCI Communications Corp. to the Assistant Secretary for Border, Immigration, and Trade, Office of Policy, U.S. Department of Homeland Security (2019 LOA). GCICC requests that the Commission condition grant of this modification request on compliance with the 2019 LOA. Accordingly, grant of this application is conditioned on the continued compliance by GCICC with the continued commitments made in the 2019 LOA. A copy of the 2019 LOA is publicly available and may be viewed on the FCC's website through the International Communications Filing System (ICFS) by searching for SCL-MOD-20230803-00022 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 cable landing license and thus grounds for declaring the license terminated without further action on the part of the Commission. Failure to meet a condition of this authorization may also result in monetary sanctions or other enforcement action by the Commission.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1143
Released: December 7, 2023

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR JANUARY 8, 2024 STATUS UPDATE FILING OBLIGATION

WC Docket No. 18-89

The Wireline Competition Bureau (Bureau) reminds Recipients[1] in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file status updates with the Federal Communications Commission every 90 days, beginning on the date on which the Bureau approved Recipients' applications, until the obligation to file expires.[2] All Recipients were required to file the last status update on October 9, 2023.[3] Accordingly, all Recipients must file their next status update on January 8, 2024.[4] For additional information about Reimbursement Program filing requirements, please refer to the *Initial Status Update PN*.[5]

Recipients will submit status updates through the online portal, https://fccprod.servicenowservices.com/scrp (Supply Chain Reimbursement Program Online Portal) by

[1] The Secure and Trusted Communications Networks Act of 2019, as amended, defines "recipient" as "any provider of advanced communications service the application of which for a reimbursement under the [Reimbursement] Program has been approved by the Commission, regardless of whether the provider has received reimbursement funds." Secure and Trusted Communications Act of 2019, Pub. L. No. 116-124, 134 Stat. 158, § 9(11) (2019) (codified as amended at 47 U.S.C. § 1608(11)), as amended by Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2021); *see also* 47 CFR § 1.50001(h) ("The term 'Reimbursement Program recipient' or 'recipient' means an eligible advanced communications service provider that has requested via application and been approved for funding in the Reimbursement Program, regardless of whether the provider has received reimbursement funds.").

[2] 47 CFR § 1.50004(k) (requiring Reimbursement Program recipients to "file a status update with the Commission 90 days after the date on which the Wireline Competition Bureau approves the recipient's application for reimbursement and every 90 days thereafter, until the recipient has filed the final certification").

[3] *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their October 9, 2023 Status Update Filing Obligation,* WC Docket No. 18-89, Public Notice, DA 23-821 (WCB Sept. 8, 2023) (*September 2023 Status Update PN*). The *September 2023 Status Update PN* and other Reimbursement Program releases are available on the Commission's website via https://www.fcc.gov/supplychain/reimbursement.

[4] Because 90 days after October 9, 2023—January 6, 2024 —falls on a Saturday, the deadline to file the next status update is January 8, 2024. *See* 47 CFR § 1.4(e)(1), (j) (describing the computation of Commission deadlines that would fall on a holiday, and defining "holiday" to include weekend days).

[5] *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their Status Update Filing Obligation,* WC Docket No. 18-89, Public Notice, DA 22-967 (WCB Sept. 16, 2022) (*Initial Status Update PN*).

completing FCC Form 5640 Part K: Status Updates. Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18-89 in the Commission's Electronic Comment Filing System (ECFS), https://www.fcc.gov/ecfs.

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

-FCC-

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. 23-1144

Report No. SAT-01782 **Friday December 8, 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-AMD-20220107-00004 E S3088 Astrobotic Technology, Inc
Amendment
Grant of Authority Effective Date: 12/06/2023

Nature of Service: Other

See ICFS File No. SAT-LOA-20210512-00065 for a description of the action taken.

SAT-AMD-20231009-00242 E S3088 Astrobotic Technology, Inc
Amendment
Grant of Authority Effective Date: 12/06/2023

Nature of Service: Other

See ICFS File No. SAT-LOA-20210512-00065 for a description of the action taken.

SAT-LOA-20210512-00065 E S3088 Astrobotic Technology, Inc
Launch and Operating Authority
Grant of Authority Effective Date: 12/06/2023

Nature of Service: Other

On December 6, 2023, the Satellite Programs and Policy Division granted, with conditions, authority to Astrobotic Technology, Inc. to construct, deploy, and operate a lunar lander, the Peregrine Mission 1 (PM1) for a period of up to 60 days. Astrobotic is authorized to operate in the 8491.11494-8493.51494 MHz (space-to-Earth) and 7227.118-7229.118 MHz (Earth-to-space) frequency bands during transit to the moon and on the lunar surface. This application is granted pursuant to the small spacecraft licensing process, 47 CFR § 25.123.

SAT-MOD-20230202-00016 E S3097 SES Americom, Inc.
Modification
Grant of Authority Effective Date: 12/06/2023

Nature of Service: Fixed Satellite Service

On December 6, 2023, the Satellite Programs and Policy Division granted SES Americom, Inc.'s modification request for the SES-19 space station. SES is authorized to use the 6415-6425 MHz (Earth-to-space) and 4190-4200 MHz (space-to-Earth) frequency bands for telemetry, tracking, and command. SES-19 operates from the 134.9° W.L. orbital location using the 3.7-4.2 GHz (space-to-Earth) and 5.925-6.425 (Earth-to-space) frequencies.

SAT-MOD-20230202-00017 E S3096 SES Americom, Inc.
Modification
Grant of Authority Effective Date: 12/06/2023

Nature of Service: Fixed Satellite Service

On December 6, 2023, the Satellite Programs and Policy Division granted SES Americom, Inc.'s modification request for the SES-18 space station. SES is authorized to use the 6415-6425 MHz (Earth-to-space) and 4190-4200 MHz (space-to-Earth) frequency bands for telemetry, tracking, and command. SES-18 operates from the 103.05° W.L. orbital location using the 3.7-4.2 GHz (space-to-Earth) and 5.925-6.425 (Earth-to-space) frequencies.

SAT-MOD-20230207-00021 E S3069 Space Exploration Holdings, LLC
Modification 12/01/2023 -
Granted in Part/ Deferred in Part Effective Date: 12/01/2023

Nature of Service: Mobile Satellite Service

On December 1, 2023, the Satellite Programs and Policy Division granted-in-part and deferred-in-part, with conditions, the request of Space Exploration Holdings, LLC for modification of its authorization for its second-generation (Gen2) Starlink satellites. Specifically, the Division authorized SpaceX to deploy a modified version of the previously authorized Gen2 Starlink satellites with the capability to operate in certain frequencies in the 1429 MHz to 2690 MHz range. SpaceX was also authorized to operate these satellites on frequencies within the 1910-1915 MHz and 1990-1995 MHz bands for limited on-orbit check out of the antennas immediately following deployment of each satellite for a period of 10 days or less, to ensure initial functionality of the satellite antenna.

SAT-STA-20231023-00256 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/07/2023

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-20231025-00261 E S2381 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/07/2023

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-20231106-00275 E S2382 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/07/2023

On December 7, 2023, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for an additional period of 60 days, to operate the Intelsat 10 space station at the 177.8° E.L. orbital location.

SAT-STA-20231115-00284 E S3143 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/07/2023

On December 7, 2023, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for an additional period of 60 days, to operate the Galaxy 35 space station at the 93.1° W.L. orbital location.

SAT-STA-20231121-00287 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/07/2023

On December 7, 2023, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for an additional period of 30 days, to operate the Intelsat 902 space station over new C-band coverage areas at the 50.1° W.L. orbital location.

SAT-STA-20231122-00288 E S2381 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/07/2023

On December 7, 2023, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for an additional period of 30 days, to operate the Galaxy 3C space station with a new Ku-band coverage area at the 94.85° W.L. orbital location.

INFORMATIVE

SAT-MOD-20231113-00281 S3084 Intuitive Machines

The Satellite Licensing Division and Satellite Programs and Policy Division Information, Space Station Applications Accepted for Filing, Public Notice SAT-01741 (Dec. 1, 2023) regarding the above-captioned file number is corrected to reflect that the call sign associated with the IM-1 NOVA-C spacecraft is S3084 rather than the call sign S3065 as previously indicated.

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
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DA 23-1147
Released: December 8, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF ALTEVA OF WARWICK LLC TO ARCHTOP FIBER LLC

WC Docket No. 23-178

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by MBS Intermediate Holdings, LLC (MBS) and Archtop Fiber L.L.C. (Archtop) (together, Applicants), pursuant to section 214 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 MBS' indirect subsidiary, Alteva of Warwick LLC (f/k/a Warwick Valley Telephone Company) (Warwick), from MBS to Archtop.[2]

On July 14, 2023, the Bureau released a public notice seeking comment on the Application.[3] The Bureau did not receive any comments or petitions in opposition to the Application.

Warwick is a wholly-owned subsidiary of Alteva, Inc. (Alteva), both New York cooperations.[4] Alteva, in turn, is directly owned and controlled by MBS, a Delaware limited liability company.[5] Warwick provides service as an incumbent local exchange carrier (LEC) in the Townships of Warwick, Goshen, and Wallkill in Orange County, New York, and in West Milford, Vernon, and Franklin Borough,

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

[2] Application of Warwick LLC, MBS Intermediate Holdings, LLC, and Archtop Fiber LLC for Consent to Transfer Control of Alteva of Warwick LLC Pursuant to Section 214 of the Communications Act of 1934, as amended, WC Docket No. 23-178 (filed May 26, 2023) (Application). Applicants also filed an application for the transfer of authorizations associated with international services. *See* IB File No. ITC-T/C-20230526-00068. Archtop recently acquired incumbent local exchange carriers (LECs) and long distance service providers that provide service in various towns of New York and Pennsylvania. *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC and Hancock Telephone, Inc. and Hancock Long Distance, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, Public Notice, DA 23-657 (WCB 2023) (*GTel and Hancock Grant Public Notice*); *see also Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC and Hancock Telephone, Inc. and Hancock Long Distance, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, Order on Reconsideration, DA 23-800 (WCB 2023) (*Archtop Reconsideration Order*) (the Bureau, on its own motion, modified a portion of the *GTel and Hancock Grant Public Notice*). 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 Alteva of Warwick LLC to Archtop Fiber LLC*, WC Docket Nos. 23-178, Public Notice, DA 23-603 (WCB 2023) (*Alteva Public Notice*).

[4] Application at 2; Exh. B (Pre-Close Ownership Structure) at 1.

[5] *Id.* at 3; Exh. B at 1.

New Jersey.[6] Warwick also provides competitive LEC services in Middleton and Scotchtown, New York and areas in New Jersey that are outside its incumbent LEC service territory.[7]

Archtop, a Delaware limited liability company, provides, through its subsidiaries, incumbent local exchange carrier (LEC) and long distance services in various towns of New York and Pennsylvania.[8] Archtop is indirectly owned (98.7% voting and equity) by Post Road Digital Infrastructure Fund I LLC, which, in turn, is wholly-owned by Post Road Digital Infrastructure Fund I, LP (Post Road), both Delaware entities.[9] The voting interest in Post Road is held by Post Road DIF I GP LLC (Post Road DIF GP) (50.5%), a Delaware entity, and OPTrust Infrastructure Direct N.A. VII Inc. (OP Trust Infrastructure) (49.5%), a Canadian entity.[10] Post Road DIF GP is indirectly owned (100% voting and 80% equity) by Post Road Group Holdings LP (PRG Holdings), a Delaware entity that is ultimately owned and controlled by Michael Bogdan and Kevin Davis, both U.S. citizens.[11]

Pursuant to the terms of the proposed transaction, Archtop will acquire all of the equity and voting interest in Alteva and, therefore, indirectly acquire all of the equity and voting rights in Warwick.[12]

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[6] *Id.* at 2.

[7] *Id.*

[8] *Id.* at 11. Archtop recently acquired two incumbent LECs and their long distance affiliates. *See GTel and Hancock Grant Public Notice* at 1-3. Specifically, Archtop acquired Germantown Telephone Company, Inc. (GTel), a New York corporation, providing service as an incumbent LEC in the towns of Germantown, Livingston, Clermont, Taghkanic, and Gallatin, New York, and Valstar, Inc. a New York corporation, providing long distance services in GTel's service area. *Id.* Archtop also recently acquired Hancock Telephone Company, Inc. (Hancock), a New York corporation, providing service as an incumbent LEC in the towns of Hancock, Fish's Eddy, East Branch, Kelsey, and French Woods, New York, and Starlight, Lake Como, Preston Park, Lakewood, and Shehawken, Pennsylvania, and Hancock LD, also a New York corporation, providing long distance service in Hancock's service area. *Id.* Applicants in the instant application state that "[t]o the best of Applicants' knowledge, none of the entities [covered in the *GTel and Hancock Grant Public Notice*] provide local exchange or interexchange services in the same geographic market as Warwick." Application at 21.

[9] *Id.* at 12: Exh. C (Post-Closing Ownership Chart) at 2.

[10] *Id.* at 12-13 and Exh. C at 2. The OPSEU Pension Plan Trust Fund (OPSEU Pension Plan), a Canadian entity, wholly owns OP Trust Infrastructure. Application at 13 and Exh. C at 2. The OPSEU Pension Plan holds an approximately 10.5% indirect interest in Dobson Technologies, Inc. d/b/a Dobson Fiber (Dobson Fiber), an interstate telecommunications carrier offering services in Arkansas, Oklahoma, and Texas. Application at 20. Dobson Fiber wholly owns the following subsidiaries: Dobson Telephone Company, Inc., (DTC), Dobson Technologies – Transport and Telecom Solutions, LLC, Lavaca Telephone Company, Inc. (Lavaca), Pinnacle Telecom L.L.C., and Vantage Telecom, LLC. *Id.* DTC provides service as an incumbent LEC and eligible telecommunications carrier (ETC) to approximately 5,200 access lines in western and eastern Oklahoma. *Id.* at n.21. Lavaca provides service as an incumbent LEC and ETC to about 1,800 access lines in rural western Arkansas and rural eastern Oklahoma. *Id.*

[11] Application at 14-15 and Exh. C at 1. The general partner for PRG Holdings is Post Road Group GP LLC (Post Road GP), a Delaware entity. Application at 14 and Exh. C at 1. Post Road GP holds all the voting general partner interest in PRG Holdings. *Id.* Michael Bogdan holds all the voting and equity interest in Birch Hill Capital LLC, a Delaware entity, which, in turn, holds 50% voting and equity in Post Road GP and 45% of the equity of PRG Holdings. Application at 14-15. Kevin Davis holds all the interest in Seventh Avenue Capital Group LLC (Seventh Avenue) and Seventh Avenue Capital Group II LLC (Seventh Avenue II), both Delaware entities. *Id*. at 14. Seventh Avenue holds 50% of the voting and equity interest in Post Road GP, while Seventh Avenue II holds 45% of the equity in PRG Holdings. *Id.*

[12] Application at 4-5.

Discussion

The Applicants request approval to consummate a transaction involving companies that receive high-cost universal service support under the different support mechanisms of fixed model-based support and cost-based support (a mixed support transaction).[13] In the *Hargray/ComSouth Order*, the Commission found that these types of transactions could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively by allowing for cost shifting among the cost-based and fixed model-based support recipients that are party to the transaction.[14] Accordingly, it imposed a condition on these transactions, i.e., a cap on the combined operating expenses of all cost-based affiliates of the post-transaction transferee[15] and any future cost-based affiliates (with limited exception) for the duration of the condition (mixed support condition).[16]

The proposed transaction presents several layers of mixed support, for each of which the Commission in previous transactions has already applied the mixed support condition, consistent with the *Hargray/ComSouth Order*.[17] Accordingly, and to mitigate the potential for cost shifting, we grant the Application subject to the continued application of the mixed support conditions previously applied to each party through and until December 31, 2023.

The mixed support conditions will only apply through and until December 31, 2023, because all the cost-based affiliates to this transaction have elected Enhanced Alternative Connect America Model

[13] Applicants have identified the fixed and model-based support entities in the record and acknowledge that "this application presents certain common questions [of mixed support] for the Commission arising from pending applications filed by Archtop in separate dockets." Application at 21.

[14] *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780 (2018) (*Hargray/ComSouth Order*). The Commission also directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support. *Id*. at 4789, para. 27 n.72.

[15] *See Hargray/ComSouth Order*, 33 FCC Rcd at 4790, para. 27 (stating that the combined operating expenses shall be capped at the averaged combined operating expenses of the three calendar years preceding the transaction closing date for which the operating expense data are available).

[16] *Id*. at 4788-90, paras. 26-31. The Commission directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support. *Id*. at 4789, para. 27 n.72.

[17] *See Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 18-268, Public Notice, 33 FCC Rcd 11211 (WCB 2018) (capping the operating expense of the post-transaction transferee's cost-based affiliate, Alteva of Warwick (Alteva NJ))); *GTel and Hancock Grant Public Notice* at 5 (capping the combined operating expenses of the post-transaction transferee's cost-based affiliates, GTel, Lavaca Telephone Company of Arkansas, and Lavaca Telephone Company of Oklahoma (Lavaca carriers)), reconsidered and partially modified, *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC and Hancock Telephone, Inc. and Hancock Long Distance, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, Order on Reconsideration, DA 23-800 (WCB 2023) (excluding the Lavaca carriers from the cap because these carriers were not within the ownership and control of the post-transaction transferee (*see infra* Dobson exception) and therefore, presented limited risk of cost-shifting; reverting the Lavaca carriers to the mixed support condition imposed in a 2021 transaction); *see also Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 20-388 and 20-389, Public Notice, 36 FCC Rcd 320, 323-24 (WCB 2021) (capping the combined operating expense of the post-transaction transferee's affiliates, including the Lavaca carriers), reconsidered and partially modified, *Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc*., WC Docket No. 20-389, Order on Reconsideration, 36 FCC Rcd 8859 (2021) (excluding a cost-based affiliate, Fort Mojave Telecommunications, Inc., from the mixed-support condition where the 1) transferee only held a minority, non-controlling interest in the affiliate, 2) the affiliate engaged in no cost sharing with any transferee affiliates; and 3) the affiliate maintained separate financial accounting from all other transferee affiliates (Dobson exception)).

(A-CAM), a form of fixed support, effective January 1, 2024.[18] As announced in the Bureau's public notice released on December 4, 2023,[19] the existing mixed support conditions imposed on each layer of this transaction will sunset on January 1, 2024, with the conversion of all the post-transaction, cost-based affiliates at each layer to fixed Enhanced A-CAM.[20] As stated in the *Hargray Sunset Public Notice*, the mixed support condition and related obligations we imposed under the *Hargray/ComSouth Order* will continue to apply to all cost and revenue data that is applicable to the 2023 calendar year, and these companies must file their compliance certification for 2023 by January 2, 2024,[21] and financial reports as required by the *Hargray/ComSouth Order*.[22]

National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.[23] As part of the public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.[24] The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.[25] The Commission, however, ultimately makes an independent decision on such applications based on the record in the proceedings.[26]

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[18] *See Wireline Competition Bureau Authorizes 368 Companies in 44 States to Receive Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband,* WC Docket No. 10-90, Public Notice, DA 23-1025 (WCB Oct. 30, 2023).

[19] *Wireline Competition Bureau Provides Additional Guidance on Performance Measures Requirements for Carriers Transitioning to Enhanced A-CAM and those Remaining on CAF BLS Support*, WC Docket 10-90, Public Notice, DA 23-1131 (WCB Dec. 4, 2023) (*Hargray Sunset Public Notice*).

[20] *See id*. at 4, Appx. (for each transaction identified, all cost-based affiliates have elected Enhanced A-CAM, thus warranting the sunset of the condition as applied to the transaction).

[21] 47 CFR § 1.4(j) (providing that unless otherwise provided, if the filing date falls on a holiday, the filing will be due the next business day).

[22] *Hargray/ComSouth Order,* 33 FCC Rcd at 4790, para. 31 & n.82.

[23] *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *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 & 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *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 application 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); *see also Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

[24] *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

[25] *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *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; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179,

(continued….)

Pursuant to Commission practice, the Application and its corresponding international transfer of control application, IB File No. ITC-T/C-20230526-00068, were referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.[27] On July 20, 2023, the U.S. Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a notification with the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application.[28] We deferred action in response to these requests from the Committee. On August 31, 2023, DOJ notified the Commission that the Committee was "conducting [a 120-day] initial review to assess whether granting the Application will pose a risk to national security or law enforcement interests of the United States."[29]

On December 4, 2023, the National Telecommunications and Information Administration (NTIA) informed the Commission that "the Committee has reviewed the [Application] and has no recommendation at this time to the Commission approving the [Application] and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."[30]

Grant of Application

We find, upon consideration of the record, that grant of the Application, listed above will serve the public interest, convenience, and necessity.[31] Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice.[32]

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or application for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau,

(Continued from previous page)

182 (1997)); *see also T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *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 11271, 11277, para. 6 (2016), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

[26] 47 CFR § 1.40001(b) ("The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.").

[27] *See Alteva Public Notice* at 3.

[28] Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-178; ITC-T/C-20230526-00068, and Attach. (filed July 20, 2023).

[29] Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-178; ITC-T/C-20230526-00068, and Attach. (filed Aug. 31, 2023).

[30] Letter from Stephanie Weiner, National Telecommunications and Information Administration, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, WC Docket No 23-178; ITC-T/C-20230526-00068 (filed Dec. 4, 2023).

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

[32] We further direct Applicants to submit in the domestic section 214 docket a notice that the proposed transaction has closed with the consummation date and also provide a courtesy copy of the notice to hcinfo@usac.org.

Competition Policy Division, (202) 418-1191.

-FCC-

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

In the Matter of	)	
	)	
Protecting Consumers from SIM Swap and Port-Out Fraud	)	WC Docket No. 21-341
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 15, 2023 **Released: November 16, 2023**

Comment Date: (30 days after Federal Register Publication)
Reply Comment Date: (60 days after Federal Register Publication)

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements.

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I. INTRODUCTION

1. Today, we adopt measures designed to address two fraudulent practices bad actors use to take control of consumers' cell phone accounts and wreak havoc on people's financial and digital lives without ever gaining physical control of a consumer's phone. In the first type of scam, a bad actor

convinces a victim's wireless provider[1] to transfer the victim's mobile service and number from the victim's cell phone to a cell phone in the bad actor's possession. This scam is also known as "SIM swapping" because it involves an account being fraudulently transferred (or "swapped") from a device associated with one subscriber identity module (SIM) to a device associated with a different SIM. In the second type of scam, the bad actor, posing as the victim, opens an account with a wireless provider other than the victim's current provider. The bad actor then arranges for the victim's phone number to be transferred (or "ported out") to the account with the new wireless provider controlled by the bad actor.

2. In this *Report and Order*, we take aim at these scams, with the goal of foreclosing the opportunistic ways in which bad actors take over customers' cell phone accounts. In doing so, we balance the important objectives of protecting consumers from harmful fraudulent conduct while at the same time not impinging on customers' ability to upgrade and replace their devices or choose their preferred wireless provider. Specifically, we revise our Customer Proprietary Network Information (CPNI) and Local Number Portability (LNP) rules to require wireless providers to adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device or provider. We also require wireless providers to immediately notify customers whenever a SIM change or port-out request is made on customers' accounts, and take additional steps to protect customers from SIM swap and port-out fraud. Our approach sets baseline requirements that establish a uniform framework across the mobile wireless industry while giving wireless providers the flexibility to deliver the most advanced and appropriate fraud protection measures available.

3. In the accompanying *Further Notice of Proposed Rulemaking* (*Further Notice*), we seek comment on whether to harmonize the existing requirements governing customer access to CPNI[2] with the SIM change authentication and protection measures we adopt today. We also seek comment on what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud.

II. BACKGROUND

4. *SIM Swap and Port-Out Fraud.* Cell phone numbers are frequently used as a means of authenticating the identity of users for various types of accounts, including accounts with wireless providers, e-mail and social media providers, financial institutions, healthcare providers, and retail websites.[3] Because so many consumers have their cell phones with them at all times, authentication using text messages and phone calls can be incredibly convenient, but these authentication methods also have incentivized bad actors to find ways to intercept authentication texts and calls. Two techniques they use to accomplish this involve misuse of mechanisms that enhance competition in the telecommunications marketplace and ensure that customers can access telecommunications services using the devices and providers of their choosing: SIM changes and number porting.

5. SIM changes allow customers to keep their wireless services and phone numbers when they upgrade their cell phone or replace a cell phone that is lost or broken. A SIM facilitates the proper routing of texts and calls to a customer's cell phone so long as the SIM associated with the customer's phone number is assigned to that customer's phone.[4] While SIM changes historically occurred by

[1] In this item, when we use the term "wireless provider" we intend to encompass providers of commercial mobile radio service (CMRS) as defined in section 20.3 of the Commission's rules. 47 CFR § 20.3 (defining commercial mobile radio service as a mobile service that is "(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public," or the "functional equivalent of such a mobile service").

[2] *See id.* § 64.2010.

[3] For example, a consumer logging in to a bank account might be asked not only to provide the correct username and password, but also to input a one-time passcode sent via text message to the consumer's cell phone. Similarly, a consumer who has forgotten the password for a social media account may be prompted to enter a one-time passcode sent via text message to the consumer's cell phone before being allowed to reset the password.

removing a physical SIM card from an old phone and placing it in a new phone, now wireless providers virtually reassign embedded, electronic SIMs in modern phones from an old phone to a new one.[5] Bad actors have successfully taken advantage of this legitimate practice by impersonating a customer of a wireless provider and convincing the provider to reassign the virtual SIM card from the real customer's device to a device controlled by the bad actor, a practice known as "SIM swap fraud."[6] This allows the bad actor to gain access to information associated with the customer's account, including CPNI, and gives the bad actor control of the customer's phone number so that the bad actor receives the text messages and phone calls intended for the victim.[7]

6. Number porting allows customers to retain their phone numbers when they switch from one service provider to another, which enables customers to choose a service provider that best suits their needs.[8] To initiate a port between two wireless providers, a customer must provide certain identifying information (i.e., telephone number, current account number, five-digit ZIP code, and any customer-assigned passcode) to the new wireless provider. The new wireless provider then sends a request to port the customer's number with this identifying information through the numbering administrator to the current wireless provider.[9] Once the current wireless provider verifies this information (thus "validating the port"), the two wireless providers coordinate through the numbering administrator to port the customer's number to the new wireless provider.[10] As with SIM swap fraud, bad actors have successfully taken advantage of this legitimate practice by impersonating a customer of a wireless provider and convincing the provider to port the real customer's telephone number to a new wireless provider and a device that the bad actor controls.[11] This "port-out fraud" likewise gives the bad actor control over the customer's phone number, thereby allowing the bad actor to receive text messages and phone calls intended for the victim.

7. Once a fraudulent SIM swap or port-out request has been completed, the bad actor has acquired the means to take control of many more of the victim's accounts, which can result in substantial harm to the customer. For instance, because the bad actor can now intercept text messages and phone

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[4] Each mobile device has its own unique SIM. A SIM can be a physical card or a digital, virtual card embedded into the phone itself (eSIM card). FCC, *eSIM Cards FAQ*, https://www.fcc.gov/consumers/guides/esim-cards-faq. In either form, the SIM "contains unique information that identifies it to a specific mobile network" and "allows subscribers to use their mobile devices to receive calls, send SMS messages, or connect to mobile internet services." Russell Ware, *What is a SIM Card?*, Lifewire, https://www.lifewire.com/what-are-sim-cards-577532 (updated May 21, 2021).

[5] *See* FCC, *eSIM Cards FAQ*, https://www.fcc.gov/consumers/guides/esim-cards-faq (last updated July 10, 2023).

[6] CTIA, *Protecting Your Wireless Account Against SIM Swap Fraud*, https://www.ctia.org/protecting-against-sim-swap-fraud (last visited Oct. 18, 2023).

[7] *See Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341, Notice of Proposed Rulemaking, 36 FCC Rcd 14120, 14122, para. 5 (2021) (*SIM Swap and Port-Out Fraud Notice*).

[8] *See generally* 47 U.S.C. § 153(37) (defining "number portability"); *Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, WC Docket No. 07-244, CC Docket No. 95-116, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6084, 6087, para. 6 (2009) (*Porting Interval Order and FNPRM)*.

[9] *See Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket No. 07-243 et al., Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19555, para. 44 (2007) (*2007 VoIP LNP Order* or *2007 LNP Four Fields Declaratory Ruling*).

[10] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14122, para. 6.

[11] FCC, *Port-Out Fraud Targets Your Private Accounts*, https://www.fcc.gov/port-out-fraud-targets-your-private-accounts (last updated July 10, 2023).

calls used to authenticate a customer's financial, social media, and other accounts, the bad actor may have the means to gain access to these accounts and then change login credentials, obtain sensitive information, drain bank accounts, and sell or try to ransom social media accounts.[12] Victims can also be harmed by the loss of service on their devices—the phone going dark or only allowing 911 calls—which is typically the first sign that SIM swap or port-out fraud has occurred.

8. The Commission and the Federal Trade Commission (FTC) have received hundreds of customer complaints about SIM swap and port-out fraud.[13] Some of the complaints describe wireless provider customer service representatives and store employees who do not know how to address instances of fraudulent SIM swaps or port-outs, resulting in customers spending many hours on the phone and at retail stores trying to get resolution. Other customers complain that their wireless providers have refused to provide them with documentation related to a fraudulent SIM change, making it difficult for them to pursue claims with their financial institutions or law enforcement. Several customer complaints filed with the Commission allege that a wireless provider's store employees are involved in the fraud or that providers completed SIM changes despite the customer having previously set a PIN or password on the account.

9. A study published in 2020 by a group of Princeton University researchers found that some wireless providers are using insecure mechanisms to authenticate the identities of individuals making SIM change requests.[14] The researchers opened ten pre-paid accounts each with five major

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[12] *See, e.g.*, Department of Justice, U.S. Attorney's Office, Western District of Texas, *San Antonio Pair Plead Guilty to SIM Swap Scheme* (Oct. 12, 2022), https://www.justice.gov/usao-wdtx/pr/san-antonio-pair-plead-guilty-sim-swap-scheme; Department of Justice, U.S. Attorney's Office, Eastern District of Louisiana, *California Resident Pleads Guilty for His Role in Sim Swap Scam Targeting at Least 40 People, Including New Orleans Resident* (May 18, 2022), https://www.justice.gov/usao-edla/pr/california-resident-pleads-guilty-his-role-sim-swap-scam-targeting-least-40-people; Alina Machado, *Woman Loses Life Savings in SIM Swap Scam* (Aug. 26, 2022), https://www.nbcmiami.com/responds/woman-loses-life-savings-in-sim-swap-scam/2845044/; U.S. Department of Justice, Office of the U.S. Attorneys, District of Maryland, *Two Men Facing Federal Indictment in Maryland for Scheme to Steal Digital Currency and Social Media Accounts Through Phishing and "Sim-Swapping"* (Oct. 28, 2020), https://www.justice.gov/usao-md/pr/two-men-facing-federal-indictment-maryland-scheme-steal-digital-currency-and-social-media; U.S. Department of Justice, Office of the U.S. Attorneys, Eastern District of Michigan, *Nine Individuals Connected to a Hacking Group Charged With Online Identity Theft and Other Related Charges* (May 9, 2019), https://www.justice.gov/usao-edmi/pr/nine-individuals-connected-hacking-group-charged-online-identity-theft-and-other (reporting the indictment of nine individuals alleged to have participated in thefts of victims' identities to steal cryptocurrency via "SIM Hijacking"); Lorenzo Franceschi-Bicchierai, *Hacker Who Stole $5 Million By SIM Swapping Gets 10 Years in Prison* (Feb. 1, 2019), https://www.vice.com/en/article/gyaqnb/hacker-joel-ortiz-sim-swapping-10-years-in-prison (reporting that a 20-year old student who stole more than $5 million in cryptocurrency by hijacking the phone numbers of around 40 victims pleaded guilty and accepted a plea deal of 10 years in prison, believed to be the first person convicted of a crime for SIM swapping); Gertrude Chavez-Dreyfuss, *U.S. Investor Sues AT&T for $224 million over loss of cryptocurrency* (Aug. 15, 2018), https://www.reuters.com/article/us-cryptocurrency-at-t-lawsuit/u-s-investor-sues-att-for-224-million-over-loss-of-cryptocurrency-idUSKBN1L01AA.

[13] According to staff review of informal complaints submitted through the Commission's Consumer Complaint Center, https://consumercomplaints.fcc.gov/hc/en-us, the Commission received approximately 300 complaints in 2020 concerning SIM swap or port-out-fraud, 400 in 2021, and 500 in 2022. The FTC identified 966 consumer reports of "Phone Carrier Switching" in 2020, 157 in 2021, and 188 in 2022. *See* Federal Trade Commission, Consumer Sentinel Network Data Book 2022 (Feb. 2023), at Appx. B, p. 88, https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf. The FTC published a consumer alert regarding SIM swap scams in 2019. Alvaro Puig, FTC, *SIM Swap Scams: How to Protect Yourself* (Oct. 23, 2019), https://consumer.ftc.gov/consumer-alerts/2019/10/sim-swap-scams-how-protect-yourself.

[14] *See* Kevin Lee, Ben Kaiser, Jonathan Mayer, Arvind Narayanan, Center for Information Technology Policy, Princeton University, *An Empirical Study of Wireless Carrier Authentication for SIM Swaps*, August 2020, at Appx., available at https://www.usenix.org/system/files/soups2020-lee.pdf.

wireless providers— AT&T Mobility, LLC (AT&T), T-Mobile US, Inc. (T-Mobile), Tracfone, US Mobile, and Verizon Wireless (Verizon)—and called to request a SIM change on each account. The researchers found that all five wireless providers "used insecure authentication challenges that could easily be subverted by attackers."[15] Specifically, the research team identified six types of information used by the wireless providers to authenticate their customers that were or could be vulnerable to abuse.[16] For example, authentication based on recent payment information was exploitable because some wireless providers do not have systems that prevent a bad actor from purchasing a refill card and submitting it on a victim's account, then requesting a SIM change using the known refill as authentication.[17] Call history information was exploitable because a bad actor could bait a victim into placing calls to specific phone numbers and provide those phone numbers as authentication, and in some cases it appeared that customer service representatives had the discretion to allow authentication with incoming call information.[18] The researchers also found that certain authentication information, such as device information, was vulnerable because it is readily available to bad actors.[19] Additionally, they noted that recent research has shown that preset answers to "security" questions are an insecure means of authentication, because answers that are memorable are also frequently guessable by an attacker.[20] The research team also found that "in general, callers only needed to successfully respond to one challenge in order to authenticate, even if they had failed numerous prior challenges in the call."[21] And in some instances, wireless providers disclosed personal customer information without any authentication at all, including information that could be used to authenticate a customer.[22]

10. The researchers also examined the potential downstream consequences of fraudulent SIM swaps. They "evaluated the authentication policies of over 140 online services that offer phone-based authentication to determine how they stand up to an attacker who has compromised a user's phone number via a SIM swap."[23] The researchers found that 17 websites across different industries have implemented authentication policies with logic flaws that would allow an attacker to fully compromise an account with just a SIM swap.[24]

11. *Privacy of Telecommunications Customer Information.* Section 222 of the Communications Act of 1934, as amended (the Act) obligates telecommunications carriers to protect the privacy and security of information about their customers to which they have access as a result of their unique position as network operators.[25] Section 222(a) requires carriers to protect the confidentiality of

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[15] Lee et al. at 1.

[16] These types of information were: (1) Personal Information: including street address, e-mail address, date of birth; (2) Account Information: last 4 digits of payment card number, activation date, last payment date and amount; (3) Device Information: IMEI (device serial number), ICCID (SIM serial number); (4) Usage Information: recent phone numbers called; (5) Knowledge: PIN or password, answers to security questions; and (6) Possession: one-time passcode sent via text message or e-mail. *Id.* at 2.

[17] *Id*. at 2-3.

[18] *Id.*

[19] *Id.* at 3.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 1.

[24] *Id.*

[25] 47 U.S.C. § 222. *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket Nos. 96-115, et al., Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14419-20, paras. 12-14 (1999) (*CPNI Reconsideration Order*) (denying petitions for reconsideration and forbearance seeking

(continued….)

proprietary information of and relating to their customers, among others.[26] Section 222(c)(1) provides that a carrier may only use, disclose, or permit access to individually identifiable CPNI that it has received or obtained by virtue of its provision of a telecommunications service: (1) as required by law; (2) with the customer's approval; or (3) in its provision of the telecommunications service from which such information is derived or its provision of services necessary to, or used in, the provision of such telecommunications service.[27] CPNI is defined as "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information."[28] The Commission has not provided an exhaustive list of what constitutes CPNI, but it has explained that CPNI includes (but is not limited to): the phone numbers called by a consumer; the frequency, duration, and timing of such calls; and any services purchased by the consumer, such as call waiting.[29]

12. The Commission first promulgated rules implementing the express statutory obligations of section 222 in 1998.[30] In addition to imposing restrictions on the use and disclosure of CPNI, the Commission adopted a set of rules designed to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of CPNI.[31] Among other things, the Commission required telecommunications carriers to train their personnel as to when they are and are not authorized to use CPNI and required carriers to have an express disciplinary process in place for when personnel improperly use CPNI.[32] In addition, the Commission required each carrier to annually certify its compliance with the CPNI requirements and to make this certification publicly available.[33]

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different treatment for wireless providers under the Commission's CPNI rules, concluding that "there is nothing in the statute or its legislative history to indicate that Congress intended the CPNI requirements in section 222 should not apply to wireless carriers").

[26] 47 U.S.C. § 222(a).

[27] 47 U.S.C. § 222(c)(1). Subsequent to the adoption of section 222(c)(1), Congress added section 222(f). Section 222(f) provides that for purposes of section 222(c)(1), without the "express prior authorization" of the customer, a customer shall not be considered to have approved the use or disclosure of or access to (1) call location information concerning the user of a commercial mobile service or (2) automatic crash notification information of any person other than for use in the operation of an automatic crash notification system. *Id.* § 222(f). Section 222(d) delineates certain exceptions to the general principle of confidentiality, including permitting a carrier to use, disclose, or permit access to CPNI obtained from its customers to protect telecommunications services users "from fraudulent, abusive, or unlawful use of, or subscription to" telecommunications services.

[28] 47 U.S.C. § 222(h)(1).

[29] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, 22 FCC Rcd 6927, 6931, para. 5 (2007) (*2007 CPNI Order*).

[30] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket Nos. 96-115, et al., Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (*CPNI Order*).

[31] *See id.* at 8195, paras. 193-202; 47 CFR §§ 64.2001-2009 (1998).

[32] *See* 47 CFR § 64.2009(b) (1998); *see also CPNI Order*, 13 FCC Rcd at 8198, para. 198.

[33] 47 CFR § 64.2009(e) (1998); *see also CPNI Order*, 13 FCC Rcd at 8199, para. 201; *CPNI Reconsideration Order*, 14 FCC Rcd at 14468-69, n.331 (clarifying that carriers must "make these certifications available for public inspection, copying and/or printing at any time during regular business hours at a centrally located business office of the carrier").

13. In 2007, the Commission amended its CPNI rules to address "pretexting," a scheme in which a bad actor pretends to be a particular customer or other authorized person to obtain access to that customer's call detail or other private communications records.[34] The Commission concluded that "pretexters have been successful at gaining unauthorized access to CPNI"[35] and that "carriers' record on protecting CPNI demonstrate[d] that the Commission must take additional steps to protect customers from carriers that have failed to adequately protect CPNI."[36] The new amendments to the rules restricted the release of call detail information[37] based on customer-initiated telephone contact, imposed password requirements for customer account access, and required carriers to appropriately authenticate both new and existing customers seeking access to CPNI online.[38] The Commission also required carriers to take reasonable measures to both discover and protect against attempts to gain unauthorized access to CPNI[39] and to notify customers immediately of certain account changes, including whenever a password, customer response to a carrier-designed back-up means of authentication, online account, or address of record is created or changed.[40] To protect customers from malicious account changes, these carrier notifications cannot reveal the changed account information, nor can they be sent to any updated account information associated with the change.[41] In addition, the Commission modified its CPNI rules to require carriers to notify law enforcement and customers of security breaches involving CPNI.[42] The Commission has made clear that carriers are free to implement more rigorous security measures to meet their section 222 obligations to protect the privacy of CPNI and that carriers have a fundamental duty to remain vigilant in their protection of CPNI.[43] Finally, the Commission also extended the application of its CPNI rules to providers of interconnected Voice over Internet Protocol (VoIP) service, finding that it is "reasonable for American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, given that these services, from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable."[44] Additionally, in 2007 Congress adopted criminal

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[34] *2007 CPNI Order*, 22 FCC Rcd at 6928, para. 1 & n.1.

[35] *Id.* at 6934, para. 12.

[36] *Id.* at 6933.

[37] The Commission defined "call detail" information to include "any information that pertains to the transmission of specific telephone calls including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call." *2007 CPNI Order*, 22 FCC Rcd at 6936, n.45.

[38] *See id.* at 6936-41, 6945-46, paras. 13-22, 33-36; 47 CFR § 64.2010(b)-(e).

[39] *See 2007 CPNI Order*, 22 FCC Rcd at 6945-46, paras. 33-36; 47 CFR § 64.2010(a).

[40] *See 2007 CPNI Order*, 22 FCC Rcd at 6942, para. 24; 47 CFR § 64.2010(f).

[41] 47 CFR § 64.2010(f).

[42] *2007 CPNI Order*, 22 FCC Rcd at 6943-45, paras. 26-32; 47 CFR § 64.2011.

[43] *See 2007 CPNI Order*, 22 FCC Rcd at 6945-46, paras. 33-35. In addition, the Commission required affirmative customer consent ("opt-in consent") before a carrier could disclose a customer's CPNI to a carrier's joint venture partners or independent contractors for the purposes of marketing communications-related services to that customer. *See id.* at 6947-53, paras. 37-50.

[44] *Id.* at 6956, para. 56; *see also id*. at 6954-57, paras. 54-59. We note that, in 2008, Congress ratified the Commission's decision to apply section 222's requirements to interconnected VoIP by adding language to section 222 that expressly covers "IP-enabled voice service," defined by reference to the Commission's definition of "interconnected VoIP service." *See* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (2008); 47 U.S.C. § 222(d)(4), (f)(1), (g) (applying provisions of section 222 to "IP-enabled voice service"); *id.* § 615b(8) (defining "IP-enabled voice service" as having "the meaning given the term 'interconnected VoIP service' by section 9.3 of the Federal Communications Commission's regulations (47 CFR 9.3)").

prohibitions both on obtaining CPNI from a telecommunications carrier and on the sale, transfer, purchase, or receipt of fraudulently obtained CPNI.[45]

14. *Local Number Portability.* Section 251(b)(2) of the Act requires local exchange carriers (LECs) to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[46] The Act and the Commission's rules define number portability as "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."[47] Section 251(e)(1) of the Act gives the Commission exclusive jurisdiction over the North American Numbering Plan and related telephone numbering matters in the United States.[48] Although the Act excludes Commercial Mobile Radio Service (CMRS) providers from the statutory definition of "local exchange carrier,"[49] the Commission extended the LNP obligations to CMRS providers pursuant to its independent authority in sections 1, 2, 4(i) and 332 of the Act.[50] Wireless providers have been required to provide wireless number portability since 2003.[51]

15. In 2003, the Commission clarified that for wireless ports, absent an agreement setting additional terms, wireless providers need only share basic contact and technical information with each other sufficient to validate and execute the port.[52] In 2007, the Commission clarified that a porting-out provider may not require more than a "minimal but reasonable" amount of information from the porting-in provider to validate a port request and accomplish the port.[53] The Commission concluded that for

[45] Telephone Records and Privacy Protection Act of 2006, Pub. L. 109-476, 120 Stat. 3568 (2007) (codified at 18 U.S.C. § 1039).

[46] 47 U.S.C. § 251(b)(2).

[47] 47 U.S.C. § 153(37); 47 CFR § 52.21(m). The Commission has interpreted this language to mean that consumers must be able to change providers while keeping their telephone number as easily as they may change providers without taking their telephone number with them. *See Telephone Number Portability; Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order, 18 FCC Rcd 20971, 20975, para. 11 (2003) (*Wireless Number Portability Order*), *aff'd*, *Central Tex. Tel. Coop., Inc. v. FCC*, 402 F.3d 205 (D.C. Cir. 2005).

[48] 47 U.S.C. § 251(e)(1).

[49] 47 U.S.C. § 153(32).

[50] *See Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431, para. 153 (1996) (*First Number Portability Order*); *Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7315-17, paras. 140-42 (1997) (*First Number Portability Order on Reconsideration*) (affirming the Commission's decision to impose number portability obligations on CMRS providers).

[51] *See* 47 CFR § 52.31(a); *see also First Number Portability Order*, 11 FCC Rcd at 8439-41, paras. 164-68 (discussing implementation schedule for CMRS providers); *see also Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations; Telephone Number Portability*, WT Docket No. 98-229, CC Docket No. 95-116, Memorandum Opinion and Order, 14 FCC Rcd 3092, 3111-12, paras. 37-39 (1999) (extending the implementation deadline for CMRS providers in the top 100 Metropolitan Statistical Areas where another carrier has made a specific request for the provision of LNP until November 24, 2002); *Verizon Wireless's Petition for Partial Forbearance from Commercial Mobile Radio Services Number Portability Obligations; Telephone Number Portability*, WT Docket No. 01-184, CC Docket No. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14981-86, paras. 23-31 (2002) (extending the implementation deadline for CMRS providers in the top 100 MSAs until November 24, 2003).

[52] *See Wireless Number Portability Order*, 18 FCC Rcd at 20978, para. 24.

[53] *See 2007 LNP Four Fields Declaratory Ruling*, 22 FCC Rcd at 19553, para. 42.

simple[54] wireline-to-wireline, wireless-to-wireless, and intermodal ports, LNP validation should be based on no more than four fields: (1) 10-digit telephone number; (2) customer account number; (3) five-digit ZIP code; and (4) passcode (if applicable).[55] This information is provided by the customer to the new carrier, who then provides it to the old carrier in order to validate the request.[56] In 2010, the Commission expanded and standardized the information exchanged between carriers when they execute a simple wireline or intermodal port, which it concluded was necessary to ensure carriers could accomplish ports within a one-business day porting interval the Commission established in 2009.[57] The Commission mandated that telecommunications carriers use 14 "Required Standard Data Fields"—and may require only those fields to accomplish such ports.[58] The Commission maintained the three customer-provided information fields from the *2007 LNP Four Fields Declaratory Ruling*—ported telephone number, customer account number, and customer ZIP code.[59] The rules also permit customers to request that a user-created passcode be put on their account, which the customer must then provide before a port can be accomplished.[60] The Commission at the time found that the exchange of these fields struck the appropriate balance between streamlining the porting process and ensuring accurate ports, and also

[54] A simple port is a port that (1) does not involve unbundled network elements; (2) involves an account only for a single line; (3) does not include complex switch translations (e.g., Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop); and (4) does not include a reseller. *See, e.g.*, *id*. at 19556, n.153.

[55] *See id.* at 19557, para. 48; *see also id*. at 19558, para. 49 ("We are persuaded that the approach we adopt here reasonably balances consumer concerns about slamming with competitors' interest in ensuring that LNP may not be used in an anticompetitive manner to inhibit consumer choice.").

[56] *See, e.g.*, FCC, *Porting: Keeping Your Phone Number When You Change Providers*, https://www.fcc.gov/consumers/guides/porting-keeping-your-phone-number-when-you-change-providers.

[57] *See Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, Report and Order, 25 FCC Rcd 6953, 6959-62, paras. 9-17 (2010) (*LNP Standard Fields Order*); *id*. at 6954, para. 1 ("This Order completes the task of facilitating prompt transfers by standardizing the data to be exchanged when transferring a customer's telephone number between two wireline providers; a wireline and wireless provider; or an interconnected Voice over Internet Protocol (VoIP) provider and any other service provider."); 47 CFR § 52.36(a) ("A telecommunications carrier may require only the data described in paragraphs (b) and (c) of this section to accomplish a simple port order request from an end user customer's new telecommunications carrier."); *id*. § 52.36(d) ("For purposes of this section, the term 'telecommunications carrier' includes an interconnected VolP provider as that term is defined in § 52.21(h).").

[58] The Commission required that service providers use the following 14 fields to accomplish a wireline or intermodal simple port: (1) "Ported Telephone Number" – the customer's telephone number; (2) "Account Number" – the customer's account number with the current service provider; (3) "Zip Code" – the zip code for the customer's address associated with the account; (4) "Company Code" – the operating company number, or OCN, of the new service provider; (5) "New Network Service Provider" – the name of the new service provider; (6) "Desired Due Date" – the date by which the customer wants the port completed; (7) "Purchase Order Number" – the customer's unique purchase order or requisition number that authorizes issuance of the port request; (8) "Version" – the version number of the order submitted by the new service provider; (9) "Number Portability Direction Indicator" – information to let the new service provider direct the correct administration of E-911 records; (10) "Customer Carrier Name Abbreviation" – the three-letter code for the name of the new service provider; (11) "Requisition Type and Status" – the type of order to be processed, such as number portability, loop with number portability, retail/bundled, resale, directory listings, etc.; (12) "Activity" – the activity involved in the service request, such as porting, new account installation, disconnection, suspension, restoration, etc.; (13) "Telephone Number of Initiator" – the telephone number for the new service provider initiating the port request; and (14) "Agency Authority Status" – which indicates that the new service provider initiating the port request has an authorization to initiate a port on file. 47 CFR § 52.36(b); *see also LNP Standard Fields Order*, 25 FCC Rcd at 6959-62, paras. 9-17. We note that when requesting a port, some of the information described above is supplied by the customer to the new or gaining carrier and some of the information is provided by the new carrier to the current carrier.

[59] *See* 47 CFR § 52.36(b)(1)-(3).

[60] *See id.* § 52.36(c).

reasonably balanced customer concerns about unauthorized ports with competitors' interest in ensuring that porting obligations may not be used in an anticompetitive manner to inhibit customer choice.[61]

16. The members of the non-governmental, multi-stakeholder Number Portability Industry Forum (NPIF) have created "Best Practices" for porting between and within telephony carriers.[62] These Best Practices are voluntary and not mandated by the Commission, but reflect the consensus of the NPIF or its predecessor organization regarding the preferred processes for porting.[63] Best Practice 73 (Unauthorized Port Flow) specifically addresses unauthorized ports, including fraudulent ports.[64] Among other things, it encourages carriers to review "incident and/or police report details if provided" and places priority on resolving unauthorized ports that have a heightened severity of impact.[65]

17. *Notice of Proposed Rulemaking.* In September 2021, the Commission adopted the *SIM Swap and Port-Out Fraud Notice*, in which it proposed to amend the Commission's CPNI and LNP rules to require wireless providers to adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device or provider.[66] The *SIM Swap and Port-Out Fraud Notice* also proposed to require wireless providers to immediately notify customers whenever a SIM change or port request is made on customers' accounts and sought comment on other ways to protect customers from SIM swap and port-out fraud.[67]

III. DISCUSSION

18. Today we revise our CPNI and LNP rules to provide greater protection to customers from SIM swap and port-out fraud. The cornerstone of our action is a requirement that wireless providers use secure methods of authenticating customers prior to performing SIM changes and number ports. Other rules we adopt reinforce that requirement, including that wireless providers adopt processes for responding to failed authentication attempts, institute employee training for handling SIM swap and port-out fraud, and establish safeguards to prevent employees who interact with customers from accessing CPNI until after customers have been authenticated. We also adopt rules that will enable customers to act to prevent and address fraudulent SIM changes and number ports, including requiring that wireless providers notify customers regarding SIM change and port-out requests, offer customers the option to lock their accounts to block processing of SIM changes and number ports, and give advanced notice of available account protection mechanisms. We further establish requirements to minimize the harms of SIM swap and port-out fraud when it occurs, including requiring wireless providers to maintain a clear

[61] *See generally LNP Standard Fields Order*, 25 FCC Rcd at 6956-62, paras. 6-10.

[62] NPAC, Number Portability Best Practices, https://workinggroup.numberportability.com/number-portability-best-practices (last visited Oct. 18, 2023).

[63] *See id.*

[64] Best Practice 73 addresses three types of unauthorized ports: disputed ports (usually a result of two or more parties each claiming to be the authorized end user, including business partner disputes, personal relationship disputes, dissolution of franchises); inadvertent ports (which occur as a result of an error, including incorrect number provided by End User and typographical errors in local service requests); and fraudulent ports (which occur as a result of an intentional act of fraud, theft, and/or misrepresentation). *See* Best Practice 73, NPAC, *Number Portability Best Practices*, at 1-2, https://workinggroup.numberportability.com/number-portability-best-practices (last visited Oct. 18, 2023).

[65] These include ports involving an "FCC/PUC/Attorney General complaint; court order; military institution; medical facility; business lines (i.e. national organization, main published line); emergency services; medical support services; or otherwise documented as properly reported to law enforcement." *See* Best Practice 73, NPAC, *Number Portability Best Practices*, at 4, https://workinggroup.numberportability.com/number-portability-best-practices (last visited Oct. 18, 2023).

[66] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14121, para. 3.

[67] *Id.*

process for customers to report fraud, promptly investigate and remediate fraud, and promptly provide customers with documentation of fraud involving their accounts. Finally, to ensure wireless providers track the effectiveness of authentication measures used for SIM change requests, we require that they keep records of SIM change requests and the authentication measures they use.

19. In adopting these rules, we balance the need to protect customers from the harms of SIM swap and port-out fraud with the goal of preserving the relative ease with which customers can obtain legitimate SIM changes and number ports. The record reflects that the vast majority of SIM change and port-out requests are legitimate.[68] It also shows that the efficient and effective processing of SIM changes and port-out requests promotes customer choice and competition[69] and prevents interruptions in access to wireless services that are vital to customers' everyday lives.[70] Service interruptions can be particularly problematic when they hamper the ability of customers to access emergency services.[71] We agree with the Competitive Carriers Association (CCA) that "enhanced requirements for SIM swap and port-out requests can implicate the customer experience and can intentionally or unintentionally serve as impediments to legitimate requests to change devices or change providers."[72] We are wary of setting rigid requirements that would impose significant burdens on customers without substantially protecting against SIM swap and port-out fraud.[73] We also recognize that prescribing particular security methods can place greater burdens on some customers because of their technical and financial means, digital literacy, accessibility needs, and other particularized circumstances.[74] We anticipate that the approach we

[68] *See, e.g.*, T-Mobile Comments at 2 (asserting that "the vast majority of subscriber SIM swap and port-out requests are legitimate"); CTIA Reply at 1 ("[T]he overwhelming majority—well over 99%—of SIM swap and port-out requests are legitimate."); AT&T Comments at 7-8 ("By AT&T's calculation, more than 99 percent of the total SIM changes and port-outs it processes are legitimate.").

[69] *See, e.g.*, CTIA Reply at 3 ("Given the importance of [SIM changes and number porting] for enabling provision of service, competition, and consumer choice, it is critical for customers seeking to replace or upgrade their device or to change their provider to be able to do so *both* securely and without undue friction in the customer experience.") (emphasis in original); CTIA Comments at 10 ("It is critical that the LNP rules continue to protect against anti-competitive behaviors, and that any updates to address port-out fraud should be clearly tied to consumer fraud protection."); T-Mobile Comments at 2-3 ("[T]he Commission should ensure that any rule changes do not limit consumer choice between wireless providers or stifle competition by introducing undue delay or complexity to fulfilling port-out and SIM swap requests."); AT&T Comments at 1-2 ("SIM swaps and port-outs are, in short, integral features of the competitive wireless marketplace."); Verizon Comments at 1 (explaining that SIM changes and number porting "benefits competition and customer choice by enabling consumers to efficiently switch providers and take advantage of new devices and service plans").

[70] *See, e.g.*, T-Mobile Comments at 7 ("Wireless services are vital to most Americans and, therefore they must have the ability to make account changes."); *id.* at 6-7 ("T-Mobile's wireless services are a lifeline for its over 100 million postpaid and prepaid subscribers across America, who rely on wireless services for connections to family, work, public safety, and school as well as key apps and services."); AT&T Comments at 17-18 (noting that cell phones "have become an essential part of everyday life").

[71] *See, e.g.*, CTIA Comments at 9 (asserting that "[s]ervice disruptions due to strict authentication requirements could be particularly impactful for customers who are in emergency situations").

[72] CCA Comments at 7; *see also* NCTA Comments at 7 (arguing that certain prescriptive requirements "would create unnecessary obstacles for consumers that desire to switch providers").

[73] *See, e.g.*, AT&T Comments at 2-3 ("Across-the-board prescriptive rules would increase consumer frustration in nearly all SIM- or port-related transactions without a concomitant reduction in the risk."); *id.* at 12-13 (explaining that specific mandates could "restrict[] consumer choice and impos[e] delays and other burdens upon the overwhelming majority (more than 99 percent) of transactions that are perfectly legitimate"); CTIA Reply at 5 ("An approach that is unnecessarily rigid will adversely affect legitimate customers' ability to swap SIM cards and port numbers, which are both critical to ensuring provision of service, customer choice, and competition.").

[74] *See, e.g.*, CCA Comments at 7 (noting that when security measures cause frustration, "customers, especially those who are older or less familiar with technology, may be deterred from selecting a provider who may offer a better

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take today will provide meaningful protection to customers while preserving the competition and customer choice that SIM changes and number porting are meant to facilitate and avoiding undue burdens that hinder access to wireless services.

20. To that end, we set baseline rules, rather than prescriptive requirements, that establish a uniform framework across the mobile wireless industry for the types of policies and procedures providers must employ to combat SIM swap and port-out fraud. The record indicates that several wireless providers already rely, at least partly, on some of these policies and procedures.[75] We are concerned, however, that a lack of consistency in how wireless providers apply these measures and a lack of uniformity in the use of these measures industry-wide leaves some customers vulnerable to SIM swap and port-out fraud. The rules we adopt ensure that all wireless providers are taking consistent and comprehensive steps to address this fraud. For wireless providers that already employ the measures we require, in many cases our rules simply raise the bar by requiring them to adapt, refine, or consistently apply those existing practices. For wireless providers that do not, our new rules require them to implement new practices to meet the baseline standards. We anticipate that our approach will ensure that customers receive effective protection from SIM swap and port-out fraud regardless of the wireless telecommunications services they purchase or the wireless provider from whom they purchase them.

21. In setting baseline requirements, rather than prescriptive rules, our approach also gives wireless providers the flexibility to establish the specific fraud protection measures they use so that they can deliver the most advanced protections available. The record provides substantial evidence that to best combat SIM swap and port-out fraud, wireless providers need flexibility.[76] In particular, we are persuaded that wireless providers need such flexibility so that they can adapt their security methods to keep pace with the evolving threat landscape. Verizon notes that "fraudsters are sophisticated and constantly look to circumvent any protections, no matter how robust."[77] We also recognize that "[r]apid technological changes introduce new vulnerabilities that existing rules may be unequipped to address."[78]

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service" and therefore that the Commission "should be attentive to ensuring that heightened authentication procedures are customer friendly"); T-Mobile Comments at 6-7 (asserting that the Commission should strive for SIM swap and port-out fraud rules that "promote diversity, inclusion, and accessibility of wireless services"); Verizon Comments at 6 ("As the NPRM notes, in-store customers in need of a SIM change may not be tech savvy, so flexibility to allow some form of physical documentation will be needed.").

[75] *See, e.g.*, CTIA Comments at 3-4 (highlighting "the variety of tactics used to combat SIM swapping and port-out fraud"); CTIA Reply at 5-9 (further detailing the tactics providers use); NCTA Comments at 4-5 (explaining that wireless providers already use many of the practices proposed in the *SIM Swap and Port-Out Fraud Notice* to prevent SIM swap and port-out fraud today); CCA Comments at 6 (noting that many CCA members already have implemented the measures proposed in the *SIM Swap and Port-Out Fraud Notice* to combat SIM swap and port-out fraud); AT&T Comments at 13 ("Carriers are already authenticating customers using one or more of the methods identified in the Commission's existing and/or proposed rules."); T-Mobile Comments at 1 ("T-Mobile has robust protections in place to help prevent fraudulent SIM swapping and port-outs from occurring.").

[76] *See, e.g.*, AT&T Comments at 11 ("Effective mitigation requires an agile approach to managing these risks that can only be achieved within a flexible framework."); NCTA Comments at 2 ("[I]f the Commission moves forward with new rules to address fraud, the best approach would be to establish a flexible standard requiring heightened authentication measures for SIM swap requests. The Commission should adopt a similarly flexible requirement to take reasonable measures to prevent port-out fraud."); CTIA Comments at 16 ("[T]echnical, rigid, and narrow requirements will not move the needle for consumer protection in the same way that a smart, flexible, future-proof, and risk-based framework will."); CCA Comments at 6 ("The Commission should resist, however, from requiring a defined set of measures that all carriers should uniformly adopt."); Verizon Comments at 5 ("[P]roviders must have flexibility both to develop and implement new methods beyond those enumerated in the draft rule.").

[77] Verizon Comments at 1; *see also* AT&T Comments at 11 ("Bad actors perpetually look for creative ways to gain access to consumers' financial or social media accounts."); CCA Comments at 4-5 ("[S]ophisticated hackers and other bad actors are resourceful and often find ways to skirt safeguards to sensitive information.").

[78] CCA Comments at 4-5.

We are therefore concerned by record evidence that a static set of prescriptive requirements may incentivize some wireless providers to rely exclusively on those security methods and discourage them from innovating and adopting new and improved practices to address evolving fraud techniques used by bad actors.[79] We also share concerns that setting specific requirements could either provide a roadmap for bad actors seeking to commit fraud[80] or lock in measures that quickly prove to be ineffective or obsolete.[81] The aim of our action today is to better protect telecommunications customers from fraudulent schemes; in doing so, it is important that our rules, while functioning as baseline safeguards, do not serve as obstacles to adoption of better security practices. Indeed, the record asserts that establishing rules that provide flexibility will incentivize wireless providers to develop and adopt new and improved methods to protect against SIM swap and port-out fraud[82] and enable them to quickly adapt their security measures to respond to evolving techniques and technologies used by bad actors.[83] Accordingly, we agree with

[79] *See, e.g.*, AT&T Comments at 14 ("[L]ocking in a particular list of authentication methods would play into bad actors' hands by discouraging carriers from adopting new methods not expressly blessed by the Commission's rule, while inhibiting the ability of carriers and other stakeholders to innovate, as necessary and appropriate, to address evolving threats."); Better Identity Coalition at 6 (asserting that if the Commission enshrined guidelines or standards into regulation, "it might inadvertently preclude carriers from deploying new innovations that emerge after [those guidelines and standards were developed] that might address new threats or more efficiently identify or authenticate consumers."); FIDO Alliance Comments at 3 (arguing that reliance on the four specified authentication methods may disincentive providers from adopting stronger authentication measures); CCA Comments at 4-5 (cautioning against adopting rules that "might inhibit a provider's ability to respond to new threats as they emerge" and noting that if "a future technology, proves to be more effective or secure than today's technologies, the Commission should ensure that its rules do not end up serving as an obstacle to adoption of better practices"); CTIA Reply at 14 ("The Commission should thus ensure that its regulatory approach does not impede providers' ability to protect their customers.").

[80] *See, e.g.*, AT&T Comments at 12-13 ("[S]pecific mandates in this context could provide a roadmap for bad actors who would quickly tailor their tactics to circumvent them."); Verizon Comments at 5 (arguing that enumerating particular methods to prevent unauthorized SIM changes "will give bad actors a roadmap and that may prove less effective over time"); CTIA Comments at 10-11 ("[R]igid and prescriptive requirements hurt security more than they may help. . . . [I]f every provider authenticates requests in the same way, fraudsters and scammers will find a way around such uniform 'safeguards.'"); Better Identity Coalition at 2-3 (suggesting that if the Commission prescribes specific authentication requirements, "attackers would simply adapt their attack methods to target these new authenticators, with the net effect being no significant slowdown in the pace of SIM Swap attacks").

[81] *See, e.g.*, CCA Comments at 5 (asserting that specific methods "could become obsolete quickly"); CTIA Comments at 11 ("[A]voiding rigid rules that are tied to specific technologies or tools will also help to future-proof FCC guidance when it comes to authentication."); T-Mobile Comments at 2 ("[W]hat constitutes a 'secure method of authentication' is likely to change over time."); Better Identity Coalition at 4 ("One constant in cybersecurity is that threats are constantly evolving, as are the tools used to stop threats. But regulations are permanent, or in a best-case scenario, infrequently updated. Any regulatory approach that seeks to tie MNOs to using specific authentication technologies is certain to fail to keep up as threat and security both evolve.").

[82] *See, e.g.*, CTIA Reply at 15 (arguing that "a more flexible approach that allows for innovation and iteration is best"); CCA Comments at 4 (asserting that any rules the Commission adopts should be "sufficiently flexible to account for evolving technologies"); Princeton Comments at 4 ("Authentication methods and security practices continue to evolve, and carriers should be welcome—and encouraged—to adopt innovative safeguards."); T-Mobile Comments at 12-13 ("Flexibility will promote innovation and improved security for customers."); NCTA Comments at 7 ("An adaptable standard as discussed above will best incentivize carriers to adopt solutions that provide effective security for their customers and services while not handcuffing carriers to specific technology or processes as new solutions emerge.").

[83] *See, e.g.*, CTIA Comments at 10-11 (asserting that "[f]lexibility is a cornerstone of effective risk management, as it allows providers to develop and deploy innovative tools that can meet evolving threats and stay ahead of the fraudsters, as opposed to 'checking the box' on stagnant compliance requirements"); CTIA Reply at 15-16 (explaining that flexibility will help prevent security practices from lagging behind bad actor tactics); Verizon Comments at 5 ("[P]roviders must have flexibility both to develop and implement new methods beyond those enumerated in the draft rule to keep ahead of bad actors and to abandon measures that no longer work."); CCA

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AT&T that "[t]he best way to combat ever-evolving fraud tactics is to allow industry players the ability to adapt and respond to these changing threats in real-time,"[84] and we afford wireless providers this flexibility with the rules we adopt in this *Report and Order*.

22. Flexibility will also permit wireless providers to use the specific security practices that are effective and appropriate under the circumstances. We are persuaded that any given measure will rarely prove foolproof, necessary, or suitable in all instances,[85] and therefore that wireless providers should have the ability to tailor the security mechanisms they use. AT&T, for instance, asserts that it has had success in deploying measures strategically to reduce the incidents of SIM swap and port-out fraud,[86] and with our rules, we seek to foster such outcomes. Our flexible approach enables wireless providers to implement security measures that are designed to address a customer's particular circumstances and preferences, and also allows wireless providers to implement measures that are best suited for their business models, technologies, and the services they offer.[87] We also recognize that some wireless providers may seek to use a risk-based model, whereby they apply different mechanisms to protect customers based on the likelihood of fraud for a particular SIM change or port-out request, and we do not want to hinder these targeted efforts.[88] For these reasons, we conclude that wireless providers should have the flexibility to determine which specific measure will be most effective at protecting customers against SIM swap and port-out fraud in a given circumstance in accordance with our baseline rules.

23. We further anticipate that our flexible approach will enhance protections for customers without placing undue costs and burdens on wireless providers. We are cognizant that in some instances, strict prescriptive requirements to prevent SIM swap and port-out fraud could be technically and

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Comments at 5 (asserting that "the Commission should allow for flexibility for carriers to respond quickly and nimbly to new threats and to encourage adopting innovative solutions to threats"); Somos Comments at 2 ("As with most fraud the telecom industry suffers, the bad actors are constantly evolving. Solutions should evolve, as well.").

[84] AT&T Comments at 2.

[85] *See, e.g.*, AT&T Comments at 5 & 12-13 (explaining that "no method of authentication is foolproof or effective in every instance" and that "[e]ven proposals that have merit in certain circumstances should not be foisted onto all carriers in all circumstances"); T-Mobile Comments at 12 (noting that failed authentication attempts occur with regularity for legitimate users and therefore may not necessarily signal nefarious activity that requires heightened security measures); FIDO Alliance Comments at 3-4 (explaining, for example, that one-time use passcodes sent by SMS as a method of authentication are "useless" if a customer's phone is lost or stolen).

[86] AT&T Comments at 2-3 ("Wireless carriers have developed substantial expertise in detecting and combating new forms of fraud. Significantly, AT&T has limited the incidences of fraudulent SIM swaps and port-outs by remaining flexible and varied in the tools it employs, allowing us to be at least as agile as the fraudsters.").

[87] *See, e.g.*, CTIA Comments at 3 & 18 (explaining that flexibility for notifications is needed so that providers can "account for the complexities of notifications in various contexts"); CTIA Reply at 15-16 (noting that the record illustrates "that flexibility is important to continue to allow providers to meet the diverse needs of their customers"); Princeton Comments at 11-12 (declining to take a position on how investigations of fraud should be conducted, "since the details will vary by account compromise"); AT&T Comments at 5 (explaining that the tools it uses to combat SIM swap and port-out fraud "are tailored to different customers, services, and technologies because they must be"); *id.* at 11 (explaining that because customer needs vary, the "diverse characteristics of these customers and the products and services they utilize lend themselves to different risk-management approaches"); CCA Comments at 5 (explaining that "[c]arriers often adopt policies that serve the specific needs of their consumers"); T-Mobile Comments at 9 (asserting that notification methods "should be flexible and reflect customers' preferences").

[88] *See, e.g.*, AT&T Comments at 13-14 ("AT&T employs data-driven analytics to make an initial risk assessment for specific postpaid transactions, which drives confidence in the authenticity of the transactions and allows them to be completed without delay or burden to the customer."); CTIA Reply at 11-12 ("One key step in protecting consumers and businesses against account takeovers is for organizations to deploy risk-appropriate authentication practices."); T-Mobile Comments at 2 ("Organizations should use authentication measures that correspond to the value and sensitivity of the accounts involved.").

economically infeasible for wireless providers to implement, particularly for smaller providers.[89] Even in the instances when wireless providers do have the means to implement prescriptive requirements, those requirements could prove burdensome on providers if they become obsolete or ineffective and providers are compelled to maintain them alongside new and better practices they adopt to address the evolving threat landscape.[90] By setting baseline requirements and giving wireless providers flexibility on how to meet them, we allow providers to adopt the most cost-effective and least burdensome solutions to achieve the level of security needed to protect customers against SIM swap and port-out fraud in a given circumstance. Additionally, because many of our rules build on existing mechanisms that many wireless providers already use, we expect that our new rules will further minimize the costs and burdens for those providers.

A. Strengthening the Commission's CPNI Rules to Protect Consumers

24. In this section, we adopt baseline measures designed to reduce the incidence of SIM swap fraud without impinging on customers' ability to upgrade and replace their devices. As proposed in the *SIM Swap and Port-Out Fraud Notice*,[91] we require wireless providers to use secure methods to authenticate customers that are reasonably designed to confirm a customer's identity prior to effectuating SIM changes, but we depart from our proposal specifying particular methods of authentication, to allow providers the flexibility they need to implement the most modern and effective authentication methods on an ongoing basis. We also adopt rules to require wireless providers to implement procedures to address failed authentication attempts and to notify customers of SIM change requests prior to effectuating a SIM change. Additionally, we adopt rules that allow customers to lock their accounts to prevent SIM changes, require wireless providers to track the effectiveness of the authentication measures they have implemented, and safeguard against employee access to CPNI prior to authentication. In each instance, we afford wireless providers needed flexibility while enhancing protections for customers.

25. The record makes clear that because SIMs are only used to facilitate service for mobile wireless devices, SIM swap fraud is a practice that is exclusive to mobile wireless services.[92] Thus, we

[89] *See, e.g.*, CCA Comments at 6 ("The Commission should also keep in mind the constraints with which many small carriers operate against in adopting security measures. Smaller carriers may have more limited app or e-commerce platforms, and may not currently have the capability, for example, to generate a one-time port out PIN via an app on a 24/7/365 basis."); T-Mobile Comments at 12 (asserting that it would be technically difficulty to track multiple failed authentication attempts because users attempt to access their accounts across various platforms, such as over the phone, online, or in retail stores run by the carrier or a third party); CTIA Comments at 16 (same).

[90] *See, e.g.*, AT&T Comments at 13 (asserting that the methods of authentication proposed by the Commission "would introduce new and often unwanted complexities in the SIM swap process for carriers and their customers. Fundamentally, requiring the use of particular authentication methods for every SIM swap would impose tremendous burdens on carriers and customers without clear additional benefit").

[91] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14130, para. 23.

[92] *See, e.g.*, AT&T Comments at 1 (noting that "SIM swaps allow customers to replace a defective SIM or, more commonly, to upgrade or replace an outdated, lost, stolen, or damaged phone, tablet, or other mobile device, without disruption to their wireless service"); CCA Comments at 1 (explaining that SIM swap fraud is a method malicious actors use to steal mobile accounts); CTIA Comments at 1-2 (discussing SIM swap fraud exclusively in the context of wireless services); National Consumer Law Center (NCLC) and Electronic Privacy Information Center (EPIC) Comments at 2 (NCLC/EPIC Comments) (noting that "American cell phone users . . . are extremely vulnerable to having their telephone numbers hijacked by fraudsters through the process of SIM swapping and port-out fraud"); NCTA Comments at 1 (explaining that with SIM swap fraud, "the bad actor convinces the wireless provider to transfer the customer's service from the subscriber identity module (SIM) in the customer's phone to a new SIM in the bad actor's phone"); T-Mobile Comments at 1 (expressing support for "the Commission's efforts to make it harder for bad actors to take control of consumers' cell phone accounts through fraudulent subscriber identity module ('SIM') swapping"); Verizon Comments at 2 (explaining that "SIM changes help customers by enabling them to easily move a mobile phone number to a new SIM card"); *see also* Lee et al. at 61 (explaining that a SIM

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apply these new requirements to providers of commercial mobile radio service (CMRS), as defined in section 20.3 of Title 47 of the Code of Federal Regulations,[93] including resellers of CMRS. We apply these new requirements to all SIM changes that wireless providers perform.[94] Further, we require wireless providers to implement these rules with respect to customers of both pre-paid and post-paid services, consistent with the protections afforded by section 222. We see no reason why the protections should not apply to all customers of CMRS, including customers of resellers, particularly considering indications in the record that pre-paid customers are disproportionately impacted by fraud and that many customers impacted by such fraud are low-income customers who can ill afford such losses.[95] We make clear, however, that the rules we adopt today do not require providers to collect more information about pre-paid customers than they otherwise do in the normal course of business, nor should they be interpreted to impose disparate burdens on pre-paid customers related to information collection or authentication.[96]

1. Customer Authentication Requirements

26. We update our CPNI rules to protect customers from the risk of fraudulent SIM swaps by requiring wireless providers, prior to conducting a SIM change, to use secure methods to authenticate a customer that are reasonably designed to confirm a customer's identity,[97] except to the extent otherwise required by the Safe Connections Act or the Commission's rules implementing that statute.[98] We define

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swap attack involves "unauthorized change to the victim's mobile carrier account" whereby "the attacker diverts service, including calls and messages, to a new SIM card and device that they control").

[93] 47 CFR § 20.3. Under this definition, our new rules apply to both facilities-based wireless providers as well as resellers of wireless services. Additionally, given that section 332(c)(1)(A) of the Act requires that providers of commercial mobile service be treated as common carriers, 47 U.S.C. § 332(c)(1)(A), our rules cover "any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment." 47 U.S.C. § 217.

[94] Verizon suggests that requirements we adopt may not be necessary for all SIM changes, asserting that "[t]he vast majority of SIM changes do not raise security concerns," Verizon Comments at 6, but Verizon did not explain how carriers may know that certain SIM changes are lower risk than others and its assertion did not receive support in the record, so we decline to limit the applicability of our requirements to only certain SIM changes.

[95] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14137, para. 45 (seeking comment on whether the rule should apply only to certain services or accounts); *see also, e.g.*, Princeton Comments at 13 (recommending that "any new rules apply to both prepaid and postpaid wireless carriers"); NCLC/EPIC Comments at 2 (noting that "American cell phone users, particularly those who rely on prepaid phones, are extremely vulnerable to having their telephone numbers hijacked by fraudsters" and that prepaid phone customers are "generally low-income consumers").

[96] *See* Letter from Avonne Bell, Director, Connected Life, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-341, at 10 (filed Nov. 8, 2023) (CTIA Nov. 8, 2023 *Ex Parte* Letter).

[97] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14130, para. 23. We encourage wireless providers to use secure authentication methods that accommodate the needs of the broad spectrum of customers they may serve. *See infra* para. 56.

[98] The Safe Connections Act of 2022, Pub. L. No. 117-223, 136 Stat. 2280 (Safe Connections Act), which is codified at 47 U.S.C. § 345, requires wireless providers to separate lines from a multi-line account upon request of a survivor of domestic violence and other related crimes and abuses. 47 U.S.C. § 345(b)(1). The Commission proposed rules implementing this requirement and sought comment both on authentication of survivors seeking line separations and how to prevent fraud related to line separation requests. *See Supporting Survivors of Domestic and Sexual Violence; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-450, Notice of Proposed Rulemaking, FCC 23-9, paras. 44-45, 103 (rel. Feb. 17, 2023) (*Safe Connections Notice*). In an Order adopted today implementing the Safe Connections Act, the Commission adopted rules to require covered providers to attempt to authenticate, using multiple authentication methods if necessary, that a survivor requesting a line separation is a user of a specific line or lines. *See Supporting Survivors of Domestic and*
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"SIM," for purposes of these rules, as "a physical or virtual card associated with a device that stores unique information that can be identified to a specific mobile network."[99] The record reflects significant support for strengthening authentication requirements for SIM change requests,[100] and we find that the requirement we adopt today most appropriately balances the need to increase protection for customers from these types of fraudulent schemes while providing wireless providers the flexibility the record shows they need to respond to new and emerging threats.[101] We are persuaded by commenters that a general security authentication standard will afford customers the highest level of protection by allowing wireless providers to implement the authentication methods raised in the record,[102] or develop new authentication

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Sexual Violence, WC Docket No. 22-238, Report and Order, FCC 23-96, para. 52 (rel. Nov. 16, 2023) (*Safe Connections Order*). Covered providers must use methods that are reasonably designed to confirm the survivor is actually a user of the specified line(s) on the account when the survivor is not the primary account holder or a designated user, and this authentication shall be sufficient for requesting a SIM change when made in connection with a line separation request. *See id.* To the extent this requirement differs from other authentication requirements, including those in 47 CFR § 64.2010, the line separation authentication requirements the Commission adopts to implement 47 U.S.C. § 345 serve as an exception to those other requirements. *See id.* We also make clear that the Safe Connections Act-related exceptions to our new SIM change and LNP rules for any SIM change or port-out requests made in connection with a legitimate line separation request apply regardless of whether a line separation request is technically or operationally infeasible.

[99] *See* Appx. A (new 47 CFR § 64.2010(h)). We slightly revise this definition from that proposed in the *SIM Swap and Port-Out Fraud Notice* to provide greater clarity that a SIM is not necessarily a physical card. *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14130, para. 23 (proposing a similar definition but with "contained within " in place of "associated with"); NCLC/EPIC Comments at 3 (writing that they are "encouraged" by the Commission's proposal and definition of "SIM").

[100] *See, e.g.*, Bank Policy Institute/BITS (BPI/BITS) Comments at 1 ("BPI/BITS supports reasonable measures to require additional authentication factors to reduce these risks."); CCA Comments at 3 (agreeing that "some degree of heightened authentication procedure is appropriate in the context of SIM swaps or port outs to prevent the increasing risk of fraud"); Princeton Comments at 2 ("We support the Commission's proposal to require that carriers complete strong customer authentication before effectuating a SIM swap."); Somos Comments at 2 ("It should be required that trusted identity verification and validation, as qualification of a SIM swap transaction must be implemented."); ATL Comments at 1 (supporting "additional fraud prevention methods and requiring all carriers to adopt secure methods of authenticating a customer before SIM changes"); Prove Comments at 2-3 ("Prove believes that carriers should securely authenticate customers prior to effectuating any SIM swap or port-out request.").

[101] *See* AT&T Comments at 11; Verizon Comments at 5; CCA Comments at 5; CTIA Comments at 16-17; T-Mobile Comments at 12-13; NCTA Comments at 2-6; Somos Comments at 2; CTIA Reply at 15.

[102] *See, e.g.*, FIDO Alliance Comments at 4 (citing the benefits of the FIDO standards public key cryptography approach); Better Identity Coalition Comments at 3-4 (explaining that "industry and government are moving away from knowledge-based approaches to authentication (i.e. passwords) to those that are possession-based, such as authentication based on the FIDO2 standards"); OPUS Research Reply at 1 (promoting the use of "voice biometrics as part of a multi-factor approach to strong customer authentication"); Prove Comments at 2-6 (suggesting development and use of a "neutral, cross-industry, consumer-managed tool" based on the authentication factors of possession, reputation, and ownership); Princeton Comments at 5-6, 12 (supporting the use of multi-factor authentication and implementation of a system for carriers to check whether a SIM was recently swapped); NCTA Comments at 5 (asserting that "multi-factor authentication that considers biometrics, devices, app-based tokens, and other unique identifiers . . . also provide security and offer benefits to consumers, including ease of use"); Robert Ross Comments at 5-8 (recommending the Commission require authentication solutions based on the principles of layered security, non-profit solutions, a combination of customer-facing and non-customer facing methods, and a combination of technology and human solutions, with examples provided); BPI/BITS Comments at 2-3 (expressing support for "app-based push notification to a trusted mobile device, biometrics identifiers, or cryptographic keys," for certain types of data); ID.me Comments at 4 ("The FCC should require carriers to comply with NIST SP 800-63-3 IAL2, AAL2, and FAL2 before authorizing SIM Swap and Port-Out transactions."); iProov Comments at 5-7 (recommending the Commission require "at least two independent authentication factors" be used and that the list of secure methods include a strong multi-factor authentication factor, such as cloud biometrics, "that does not rely on
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methods, in ways that both account for advances in the technology and tactics used by bad actors and that work best for their customers and the particular services they offer.[103] Additionally, we believe this flexibility alleviates record concerns about the limited information wireless providers may have to authenticate customers of pre-paid accounts.[104]

27. While the approach we take today gives wireless providers the *flexibility* to adapt to evolving threats, it also creates an *obligation* that they adapt to those threats. Specifically, our rule establishes a requirement that wireless providers regularly, but not less than annually, review and, as necessary, update their customer authentication methods to ensure those methods continue to be secure.[105] The record reflects that while many authentication measures may be effective today, evolving tactics may mean those methods will not work tomorrow or in all circumstances.[106] If wireless providers fail to evolve their authentication methods over time, we expect their methods eventually will become ineffective. Therefore, we require wireless providers to regularly, but not less than annually, review their authentication methods, and update them as necessary to ensure that the authentication methods remain effective.

28. Because we impose a general requirement for secure and reasonably designed customer authentication, both permitting and obligating wireless providers to design effective methods to authenticate customers, we decline to enumerate the four specific authentication methods the Commission specified in the *SIM Swap and Port-Out Fraud Notice* as those that would meet the standard of secure authentication methods.[107] We are convinced by the record that specifying approved authentication methods may incentivize wireless providers to rely exclusively on those methods or discourage them from

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possession of the device or number"); T-Mobile Comments at 3 (explaining that customers are permitted to set up multi-factor authentication "using methods including security questions, SMS, or device-based biometrics such as Face ID or fingerprint recognition on devices that support such features").

[103] *See, e.g.*, CTIA Reply at 11-12 ("One key step in protecting consumers and businesses against account takeovers is for organizations to deploy risk-appropriate authentication practices."); T-Mobile Comments at 2 ("Organizations should use authentication measures that correspond to the value and sensitivity of the accounts involved.").

[104] *See* CTIA Comments at 14-15 (noting that "fighting fraud in the pre-paid context is different than in the post-paid context" and that "providers ordinarily do not collect or have detailed identity information for pre-paid customers"); T-Mobile Comments at 8 (stating that "[p]repaid service generally does not require identity validation for account set-up"); CCA Comments at 6 (noting that pre-paid customers "often do not provide an accurate address or other identifying information, making it difficult for carriers to authenticate an account request"); CTIA Comments at 19-20 (noting that a flexible approach will better serve customers, including pre-paid customers).

[105] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14132, para. 27 (seeking comment on how we can account for changes in technology, recognizing that some methods may become hackable over time while additional secure methods of authentication will likely be developed).

[106] *See* AT&T Comments at 11 ("While passwords remain a useful and typically effective authentication tool, especially when used in combination with other security mechanisms, that may not be the case in the future. New forms of network-based authentication offer promise for preventing unauthorized access incidents in ways that may be more user-friendly as well."); Better Identity Coalition Comments at 5-6 (explaining that some forms of multi-factor authentication can be subject to phishing, but other forms are phishing resistant); iProov Comments at 5-7 (explaining that some biometrics can be vulnerable to social engineering and that device-based biometrics are not as secure as cloud-based biometrics).

[107] Those four methods were: (i) the use of a pre-established password; (ii) a one-time passcode sent via text message to the account phone number or a pre-registered backup number; (iii) a one-time passcode sent via e-mail to the e-mail address associated with the account; or (iv) a passcode sent using a voice call to the account phone number or a preregistered back-up telephone number. *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14130, para. 23. No commenters supported our imposing these as the exclusive forms of authentication.

adopting new methods to address evolving techniques used by bad actors.[108] Further, some commenters assert that requiring specific authentication methods would be burdensome for wireless providers.[109] Additionally, the record reflects that setting specific authentication methods could provide a roadmap for bad actors seeking to commit fraud.[110] The record also highlights potential vulnerabilities of the four authentication methods we proposed,[111] which counsels against us codifying these as secure methods of authentication in perpetuity. For these reasons, we conclude it is most appropriate to allow wireless providers to analyze and implement the most effective and secure methods of authenticating customers requesting a SIM change.[112]

29. We nevertheless place boundaries on the use of certain information for customer authentication for SIM change requests in light of evidence in the record of their particular vulnerability. Namely, we conclude, consistent with our proposal, that methods of authentication that use readily available biographical information, account information, recent payment information, and call detail information do not constitute secure methods of authentication.[113]

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[108] *See* AT&T Comments at 14 ("The practical effect of the list is that carriers will feel constrained in using non-listed methods for fear that anything else would be unauthorized."); Better Identity Coalition at 4 ("[W]e have some concerns that if the four authentication methodologies are the only ones listed in the regulation, that it may discourage the use of stronger, more innovative approaches to authentication."); FIDO Alliance Comments at 3 (arguing that reliance on the four specified authentication methods may disincentive carriers to adopt stronger authentication measures).

[109] *See* AT&T Comments at 13 (explaining that "requiring the use of particular authentication methods for every SIM swap would impose tremendous burdens on carriers and customers without clear additional benefit"); Prove Comments at 2 ("The authentication protocols proposed in the NPRM are, however, overly prescriptive, out-of-date (or soon will be), ineffective, easy to compromise, and overly burdensome for both carriers and consumers.").

[110] AT&T Comments at 14-15 ("[F]ixed authentication methods for SIM changes and port-outs will provide a roadmap to bad actors"); CTIA Comments at 10-11 ("[I]f every provider authenticates requests in the same way, fraudsters and scammers will find a way around such uniform 'safeguards.'").

[111] *See* Better Identity Coalition Comments at 2-3 (asserting that the four methods we proposed "are all based on authentication methods that are known to be easily compromised" and describing the weaknesses with each); FIDO Alliance Comments at 3-4 (same); Prove Comments at 2-3 (same).

[112] For similar reasons, we also decline to require carriers to comply with the National Institute of Standards and Technology (NIST) Digital Identity Guidelines or other standards proposed in the record. *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14132, para. 28. *See* CTIA Reply at 18-19 (arguing that while the NIST Digital Identity Guidelines or FIDO Standards might be useful tools, they should not be mandated); Better Identity Coalition Comments at 5 (asserting that while the NIST guidelines are a helpful reference point, they should not be the basis of the Commission's regulation because they are only updated every 5-7 years and reliance on them "could inadvertently preclude innovation that might better guard against attacks"); iProov Comments at 8; T-Mobile Comments at 13 (asserting that the NIST guidelines are a good reference point for best practices but are not a suitable compliance tool). *But see* ID.me Comments at 4 ("The FCC should require carriers to comply with NIST SP 800-63-3 IAL2, AAL2, and FAL2 before authorizing SIM Swap and Port-Out transactions.").

[113] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14132, para. 30; *see also* Princeton Comments at 11 (affirming the finding in its 2020 report that biographical information, account information, recent payment information, and call detail information have significant security shortcomings and therefore should not be used as the exclusive means of authentication, individually or in combination with each other). We decline to establish an exigent circumstances exception on the use of this information for authentication for when customers are traveling and may not have access to or remember a PIN, as CTIA asked us to consider. CTIA Nov. 8, 2023 *Ex Parte* Letter at 8. We believe that such an exception would establish a significant loophole for fraudulent activity and note that in these circumstances, customers can use alternative methods of authentication, such as email. We strongly encourage providers to work with customers to develop backup authentication practices for use in these types of scenarios. We seek comment in the *Further Notice* on whether we should harmonize our CPNI rules with the SIM change rules we adopt today, and we therefore take no action, at this time, to amend our existing rules to prohibit providers from

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30. We decline to restrict the use of SMS-based customer authentication for SIM change requests, but we strongly encourage wireless providers to use this mechanism only when paired with other secure methods of authentication, i.e., as part of multi-factor authentication (MFA).[114] In the *SIM Swap and Port-Out Fraud Notice*, we sought comment on the potential security vulnerabilities of SMS-based authentication.[115] The record clearly expresses concern about the security risks of SMS-based authentication when used by third parties, such as financial institutions, largely because this authentication method becomes vulnerable following fraudulent SIM swaps.[116] The record evidence is less clear that SMS-based authentication is an insecure mechanism in every instance it is used, such as to authenticate the identity of individuals requesting a SIM change, particularly when sent over a provider's own network, rather than the Public Switched Telephone Network (PSTN).[117] We also acknowledge that,

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relying on recent payment and call detail information to authenticate customers for online, telephone, or in-person access to CPNI. *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14132-33, para. 30.

[114] We reject CTIA's request to remove the language encouraging wireless providers to pair SMS-based authentication with secure methods of authentication and replace it with language encouraging wireless providers to "consider the context in which SMS is deployed, consistent with the discussion in the record" based on the assertion that wireless providers are "are best suited to determine when and how SMS authentication can be securely deployed with their own customers on their own networks." CTIA Nov. 8, 2023 *Ex Parte* Letter at 11. The existing language permits providers to make determinations about the best use of SMS-based authentication and simply encourages that it be paired with more secure authentication measures.

[115] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14130-31, para. 24.

[116] *See, e.g.*, BPI/BITS Comments at 2-3 (explaining that a one-time passcode (OTP) sent via SMS can be vulnerable following a fraudulent SIM swap and that "for applications with higher-stakes consumer data such as financial applications, OTP factors remain a target for bad actors"); iProov Comments at 7 (noting SMS-based authentication is vulnerable in part because of SIM swaps, which allow bad actors to intercept calls and messages); CTIA Comments at 5 ("While SMS-based two-factor authentication may be perfectly suitable to some settings, it may not uniformly be appropriate for all types of transactions."); CTIA Reply at 12 ("SIM cards and the telecommunications accounts associated with them are not always an appropriate method of authentication for third-party apps and services, including organizations like financial and crypto service providers, to rely on to authenticate their end users."); T-Mobile Comments at 14 ("Entities with sensitive consumer information or assets (e.g., financial services, cryptocurrency wallets, healthcare, insurance, etc.) should be encouraged to use appropriate authentication methods that correspond to the sensitivity of accounts or transactions. SMS as the second factor should not necessarily be the sole authentication method."); Yubico Comments at 1 ("[A]uthentication based on a person's phone number that can be SIM Swapped is not a sustainable model due to the fact that the phone number is not fully controlled by the end user."); FIDO Alliance Comments at 2 (explaining how fraudulent SIM swaps allow criminals and foreign adversaries "to undermine some weaker forms of multi-factor authentication (MFA) such as one-time passcodes (OTPs) transmitted via SMS"); Better Identity Coalition Comments at 2 (noting that attackers trick customers into handing over OTPs sent via SMS when used in other sectors). Several commenters assert that the use of SMS-based authentication by third parties creates significant incentive for bad actors to carry out SIM swap fraud. *See, e.g.*, Better Identity Coalition Comments at 2 (asserting that the fact that SMS "is widely used as an authentication method [by many companies and organizations] has created incentives for criminals to launch SIM Swap attacks"); FIDO Alliance Comments at 3 ("To truly eliminate SIM Swap attacks, the best way to do so is to get companies and organizations to shift from SMS-based authentication to more secure forms of MFA."); T-Mobile Comments at 14 ("[T]he reliance of financial and cryptocurrency firms on SMS for authentication is driving fraudsters to constantly pursue new avenues of SIM and porting fraud.").

[117] *See, e.g.*, Verizon Comments at 5 & n.12 (noting that in some cases, SMS "can be an effective authenticator" and that the FTC has found that "in some cases 'use of SMS text messages as a factor may be the best solution because of its low cost and easy use'" (quoting the FTC's Safeguards Rule)); AT&T Comments at 6 (noting that "[a]t a higher risk threshold, AT&T uses SMS confirmations two-way, no charge communications sent to postpaid customers asking them to approve or reject a pending SIM swap or port-out transaction"); Princeton Comments at 3 ("We support allowing SMS and voice call authentication methods when the carrier can deliver the passcode exclusively over its own network and to a specific known device (e.g., smartphone) or point of service (e.g., landline phone) connected to the network and controlled by the customer."); CTIA Comments at 5 ("SMS text messaging
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in some instances, it may be the most practical means a provider can authenticate a customer, particularly when considering the needs of a particular customer.[118] We anticipate that the approach we take here strikes the right balance between protecting customers against SIM swap fraud while preserving the relative ease with which customers can obtain legitimate SIM changes. We emphasize, however, that our rules create an ongoing obligation that wireless providers ensure the authentication methods they use are secure. Accordingly, permitting wireless providers to use SMS-based authentication does not create a safe harbor for use of this authentication method. We will continue to monitor the use of SMS-based authentication and may later revisit our decision to permit its continued use.[119]

2. Response to Failed Authentication Attempts

31. We require wireless providers to develop, maintain, and implement procedures for responding to failed authentication attempts in connection with a SIM change request that are reasonably designed to prevent unauthorized access to a customer's account, which, among other things, take into consideration the needs of survivors pursuant to the Safe Connections Act and our implementing rules.[120] We are bolstered by the Princeton University researchers who found evidence that wireless providers' procedures to respond to suspicious authentication attempts may be inadequate or nonexistent.[121] Specifically, they determined that some wireless providers only required callers to successfully respond to one authentication challenge to obtain a SIM change even if the caller had failed numerous previous

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may be an appropriate authentication factor, depending on the nature and the sensitivity of the information being accessed and whether the consumer maintains control over the device and the number associated with it."); CTIA Reply at 16 (acknowledging that a OTP sent via SMS may not be useful in the case of a lost or stolen phone, but that it "may be perfectly appropriate [for SIM change authentications] when the customer is in possession of the device"). In the *SIM Swap and Port-Out Fraud Notice*, we highlighted an investigation which found that SMS-based text messages could be easily intercepted and re-routed using a low-cost, online marketing service, but we also explained that wireless providers had reportedly mitigated that vulnerability and no commenters raised this as a concern in the record. *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14130-31, para. 24.

[118] *See, e.g.*, CCA Comments at 6 ("[C]ustomers often do not update their carrier with their most recent email addresses or do not regularly check email, whereas a phone number is current and texts are easily accessible. Other carriers have noted that for customers with prepaid accounts, customers often do not provide an accurate address or other identifying information, making it difficult for carriers to authenticate an account request with this kind of information."); CTIA Reply at 16 ("[T]he record makes clear that customer needs vary, for example as between consumer and business customers, and that those variable customer needs inform authentication practices."). We recognize that SMS-based authentication also is a common authentication method used by wireless providers. *See, e.g.*, AT&T Comments at 6 ("AT&T routinely uses a one-time PIN delivered via SMS message or an outbound voice call to a postpaid customer's device for enhanced customer validation, including with SIM swaps."); CCA Comments at 3 (noting that two-factor authentication with a OTP sent to a phone number is "among the procedures that already are gaining prevalence" by wireless providers and noting that several of CCA's members prefer text messages for authentication purposes); CTIA Comments at 3-4 (noting that some wireless providers combat SIM swap and port-out fraud by "[e]mploying multi-factor authentication when account changes are requested, including one-time passcodes sent via text message").

[119] Princeton Comments at 3 ("Commission staff should periodically revisit the security of these authentication methods and reevaluate whether to retain them.").

[120] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14133, para. 33; Princeton Comments at 7. *See also* 47 U.S.C. § 345; 47 CFR § 64.6402(b) (a covered provider shall attempt to authenticate, using multiple methods if necessary, that a survivor requesting a line separation is the user of a specific line); 47 CFR § 64.6402(i) (a covered provider shall not notify a primary account holder of a survivor's request for a SIM change when made in connection with a line separation request pursuant to 47 U.S.C. § 345 and this subpart).

[121] *See* Princeton Comments at 7 ("We saw no evident response from carriers to our suspicious customer authentication attempts.").

authentication attempts.[122] While the *SIM Swap and Port-Out Fraud Notice* raised these issues, no commenters offered evidence to counter the researchers' findings. Without procedures in place to respond to failed authentication attempts, bad actors can seek to circumvent wireless provider authentication mechanisms to fraudulently obtain a SIM change. We anticipate that requiring wireless providers to establish procedures to respond to failed authentication attempts that are reasonably designed to prevent unauthorized access to a customer's account will impede these fraud attempts. We conclude that whatever burdens may be associated with this requirement are outweighed by the Commission's interest in protecting customers against fraudulent activity.

32. At the same time, we are persuaded by T-Mobile's argument that wireless providers need flexibility with respect to failed authentication attempts because it is common for customers to lose or forget their authentication data, leading to multiple failed attempts.[123] As such, we decline at this time to adopt prescriptive requirements for how wireless providers must respond to failed authentication attempts in connection with a SIM change request. We find that anchoring this rule in a reasonableness standard will give wireless providers flexibility to design procedures to handle failed authentication attempts that protect against fraudulent activity while preventing unnecessary burdens on legitimate customer activity.[124] We decline, however, to adopt CTIA's suggestion to require the development and implementation of such procedures only where a wireless provider has reason to believe multiple authentication attempts are fraudulent; CTIA does not address how such determinations would be made absent the very procedures we require.

33. We decline, at this time, to adopt a requirement that wireless providers immediately notify customers in the event of multiple failed authentication attempts in connection with SIM change requests.[125] Industry commenters assert that "in many cases, providers will not be able to discern whether a failed authentication attempt is 'in connection with a SIM change request' or some other type of transaction involving account access for which authentication is needed and fails," and that "a carrier does not typically know why a customer authenticates until after the customer has successfully authenticated."[126] Further, commenters raise concerns that tracking such attempts across platforms could be technically challenging,[127] though we are not persuaded that doing so is technically infeasible.[128] Given these concerns, we find that requiring wireless providers to notify customers immediately of

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[122] Lee et al. at 62; *see also* Princeton Comments at 6 ("[W]e found that carriers did not implement adequate safeguards for preventing an attacker from repeatedly calling customer service and attempting a SIM swap.").

[123] T-Mobile Comments at 7.

[124] *See* CTIA Reply at 23 (calling for any adopted rules related to failed authentication attempts to be "based on a reasonableness standard, as it would promote robust authentication practices through a flexible, risk-based lens"); Princeton Comments at 6-7 (recommending that the Commission "require that the procedures be reasonably designed to prevent unauthorized access to a customer's account").

[125] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14133, para. 33 (seeking comment on potential delay and notification requirements in the case of multiple failed authentication attempts).

[126] CTIA Nov. 8, 2023 *Ex Parte* Letter at 6-7; AT&T Nov. 8, 2023 *Ex Parte* Letter at 3.

[127] *See* T-Mobile Comments at 12 (asserting that it would be technically difficult to track multiple failed authentication attempts because users attempt to access their accounts across various platforms, such as over the phone, online, or in retail stores run by the carrier or a third party); CTIA Comments at 16 ("[D]eveloping procedures to track multiple failed authentication attempts as contemplated in the NPRM would be challenging for providers, as authentication attempts may occur across different settings (e.g., in person, online, or over the phone) and they may occur at disparate times.").

[128] For example, CTIA's proposal that carriers should only be required to develop and implement procedures for responding to multiple failed authentication attempts "where a carrier has reason to believe such attempts are fraudulent" implies that wireless carriers can and do track multiple authentication attempts, or, at a minimum, are technically capable of doing so.

multiple failed authentication attempts associated with a SIM change request is not appropriate at this time. However, we seek comment in the *Further Notice* below whether we should require wireless providers, or all telecommunications carriers, to notify customers immediately of all failed authentication attempts to help protect customers from account fraud, as well as how wireless providers could implement a customer notice requirement for multiple failed authentication attempts.

34. We also decline to require that wireless providers delay SIM changes for 24 hours in the event of failed authentication attempts while notifying customers via text message and/or email regarding the failed authentication attempts.[129] The record reflects that strict requirements involving 24-hour delays or account locks could be overly burdensome for customers that are engaged in legitimate SIM changes.[130] We also anticipate that the requirement to develop, maintain, and implement procedures for responding to failed authentication attempts in connection with a SIM change request that are reasonably designed to prevent unauthorized access to a customer's account, coupled with the requirement we adopt below that wireless providers immediately notify customers upon receiving a SIM change request, will be sufficient to empower customers to quickly address unauthorized SIM change attempts.

3. Customer Notification of SIM Change Requests

35. To provide customers with an early warning that their account may be subject to fraudulent activity, we adopt our proposal to require wireless providers to provide immediate notification to customers of any requests for a SIM change associated with the customer's account[131] and specify that the notification must be sent before a wireless provider effectuates a SIM change, except to the extent otherwise required by the Safe Connections Act of 2022 (47 U.S.C. § 345) the Commission's rules implementing that statute.[132] The record evinces firm support for this requirement[133] and provides good reason—time is often of the essence with SIM swap fraud, and notifying customers of a SIM change request before effectuating the request will enable customers to act promptly to mitigate damages and inconvenience resulting from fraudulent or inadvertent SIM changes.[134] We also expect that requiring

[129] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14133, para. 33 (seeking comment on potential delay and notification requirements in the case of multiple failed authentication attempts).

[130] *See* NCTA Comments at 6 ("[F]orcing providers to lock a customer out of their own account for a certain amount of time can arbitrarily punish customers who are less adept at navigating the authentication process and proving their identity in a secure way."); AT&T Comments at 2-3; CTIA Comments at 16; T-Mobile Comments at 7.

[131] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14133, para. 34.

[132] *See Safe Connections Order*, FCC 23-96, at para. 77 and Appx. A (new 47 CFR § 64.6402(i)) (prohibiting a covered provider from notifying a primary account holder of a survivor's request for a SIM change when made in connection with a line separation request pursuant to 47 U.S.C. § 345 and the implementing rules).

[133] *See, e.g.*, Princeton Comments at 7 ("We support the Commission's proposal requiring customer notification for SIM swap attempts."); T-Mobile Comments at 2 ("The Commission should adopt its proposal to require reasonable efforts to notify users of port-out requests and SIM changes."); DC Stone Comments (Express) ("At the consumers[']' option, no SIM porting should be permitted without first sending a notifying email (or SMS message) to a prearranged contact email address (or phone number)."); *see also* Verizon Comments at 6 ("[N]otifying the customer of attempted and/or executed SIM changes, can be useful tools in some cases.").

[134] *See* Princeton Comments at 7 (asserting that notice of a SIM swap attempt is "essential, so that a customer can take prompt action to protect their telecommunications account (e.g., updating a compromised password), their other accounts (e.g., stopping a fraudulent payment), and their devices (e.g., removing malware from a compromised device)"); Prove Comments at 2, 6 (asserting that "consumers should receive timely notice of high risk events such as SIM swaps and port-out requests, and be afforded the opportunity to prevent account takeovers before they are completed"); Andreas Carlos Freund Comments (Express) ("Strengthening these rules will . . . ensure customers are apprised of an attempted attack, so that they can take additional measures to protect their privacy."); *see also 2007 CPNI Order*, 22 FCC Rcd at 6942, para. 24 (explaining that, with respect to other types of account changes, the

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notification before the request is processed will prevent the notification from being sent to the bad actor after a SIM swap has occurred. For these reasons, we agree with Princeton University that "[t]here is an unambiguous and material security upside," to immediate customer notification of SIM change requests, and "the only downside is a very infrequent notification that the customer can easily discard" for legitimate requests.[135]

36. We therefore disagree with AT&T's contention that notification of all SIM change requests is unnecessary because "AT&T employs various tools to assess the risk level of a particular postpaid SIM change or port-out request and very often can determine at the outset that a request is legitimate."[136] The notification requirement we adopt today will provide a uniform safety measure for all requests across the mobile wireless industry, which we anticipate will reduce the instances and mitigate the harms of SIM swap fraud. We also disagree with AT&T's assertion that customers will become so inundated with SIM change notifications that they will "eventually become numb or immune to them or tire of and consciously choose to ignore them, thus undermining all value they might otherwise have when the threat of fraud is real."[137] Nothing in the record, or our understanding of the SIM change process, supports the notion that customers request SIM changes at such a rate that, upon the adoption of this rule, wireless providers will be forced to inundate their customers with the required notifications.[138]

37. Also contrary to AT&T's assertions,[139] we do not anticipate that the notification requirement we adopt today will be overly burdensome for wireless providers to implement. As an initial matter, wireless providers should already have processes in place to immediately notify customers of certain account changes involving CPNI in accordance with our existing rules,[140] so they should be able to build on these processes to provide immediate notification regarding SIM change requests. The record also demonstrates that some wireless providers already notify customers of SIM change requests in most instances and therefore will only need to update their processes to notify customers in all cases.[141]

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Commission has found that notification is an important tool for customers to monitor their account's security and enables them to take appropriate action in the event of fraudulent activity).

[135] Princeton Comments at 7.

[136] AT&T Comments at 15.

[137] AT&T Comments at 15; *see also* CTIA Comments at 18 (asserting that notifications can be appropriate in "many instances" but that notifications "must be weighed against other goals, and in general, avoid unnecessary friction in the user experience or other unintended consequences, such as notice fatigue").

[138] *See* Princeton Comments at 7. For the same reasons, we decline AT&T's request that we modify the mandatory SIM change request notification requirement "either to 1) standalone SIM transactions—i.e., SIM swaps that do not include a device change or upgrade—based on the lower propensity for fraud in transactions involving new devices, or 2) SIM transactions that a carrier identifies as having a high propensity for fraud," on the basis such notifications could cause customer confusion, concern, and fatigue, and could increase costs for carriers because such notifications increase customer calls. Letter from Caroline Van Wie, Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 21-341, at 3 (filed Nov. 8, 2023) (AT&T Nov. 8, 2023 *Ex Parte* Letter); *see also* CTIA Nov. 8, 2023 *Ex Parte* Letter at 8 (requesting similar SIM transaction notification limitations as AT&T).

[139] *See* AT&T Comments at 15 (asserting that a notice requirement would impose burdens on wireless providers).

[140] 47 CFR § 64.2010(f); *2007 CPNI Order*, 22 FCC Rcd at 6942, para. 24 (requiring carriers to "notify customer immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed").

[141] *See* AT&T Comments at 6 (explaining that for transactions meeting a certain threshold of AT&T's "risk model," it will send one-way SMS notifications of a SIM change request, and for transactions meeting a higher risk threshold, it will require customers confirm the SIM change request via an SMS notification); T-Mobile Comments at 4 (noting that as part of its efforts to "help customers secure their accounts, T-Mobile notifies customers of account changes and requests"); Verizon Comments at 6 ("Verizon already employs (or is on track to employ) many
(continued….)

Additionally, as discussed below, we give wireless providers flexibility on how to provide the required notifications, which we expect further minimizes any potential burdens associated with our new rule.[142] In any event, we find that the benefits of our notification requirement outweigh the potential burdens.

38. We permit wireless providers to determine the method of providing notifications regarding SIM change requests involving a customer's account, but specify that the notifications must be reasonably designed to reach the customer associated with the account,[143] and sent in accordance with customer preferences, if indicated.[144] Although some commenters suggest that we should specify the means by which a wireless provider should deliver SIM change request notifications,[145] we agree with industry commenters that providers need flexibility to determine the most appropriate method to notify their customers of a pending SIM change request,[146] so that providers can account for "the complexities of notifications in various contexts,"[147] as well as the technical capabilities, accessibility needs, or broadband access of individual customers. For example, when a customer is requesting a SIM change because the customer's phone is lost or stolen, our flexible approach enables wireless providers to use methods of notification that are most likely to reach the customer under those circumstances, such as an email or a text or call to a pre-determined back-up phone number.[148] We also aim to enable wireless providers to send notifications in accordance with customer preferences, needs, and established expectations.[149] As

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of the methods identified in the NPRM, such as notifying customers of high-risk SIM change authentication attempts, failed or otherwise, and of other account changes."); CTIA Comments at 18 (explaining that "there are many instances where notifications to consumers are appropriate and providers can and do make reasonable efforts to provide them").

[142] For the same reasons, we decline CTIA's request "to let providers determine whether a notice is warranted or effective in the first instance" on the basis that such flexibility is needed to deal with instances, for example, when a phone is lost or stolen and expedient forms of notification may not be available. CTIA Nov. 8, 2023 *Ex Parte* Letter at 8. We do not prohibit wireless providers from processing SIM change requests after the notification is sent, and because bad actors may attempt to commit SIM swap fraud by claiming that a device is lost or stolen, that is precisely the type of situation when we want to ensure customers are provided a notification of a SIM change request.

[143] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14134, para. 36. Our rule does not impose a duty on carriers to confirm that the notification has been received and read by the actual customer and therefore it does not impose strict liability on carriers if the notification fails to reach the customer or require carriers to wait to complete a SIM change after delivering a notification. *See* AT&T Comments at 16.

[144] For example, this would include delivering a notification in the language of the customer's choosing, if the wireless provider permits communications preferences in other languages and the customer has previously indicated such choice.

[145] *See, e.g.*, Princeton Comments at 7; Prove Comments at 6; DC Stone Comments (Express).

[146] *See, e.g.*, AT&T Comments at 16; T-Mobile Comments at 2; CTIA Reply at 23.

[147] CTIA Comments at 18. *See also* AT&T Comments at 16 ("[C]arriers should be permitted to communicate with their customers via the means they deem to be most effective in a particular context."). Our rule also gives carriers the flexibility to design a notification process that accommodates scenarios beyond individual customers, such as a business customer seeking bulk SIM changes to upgrade their equipment. We note that nothing in the customer safeguard rules we adopt today is inconsistent with or intended to supersede the Commission's existing business customer exemption, which permits telecommunications carriers to "bind themselves contractually to authentications regimes other than those described in this section for services they provide to their business customers that have both a dedicated account representative and a contract that specifically addresses the carriers' protection of CPNI." 47 CFR § 64.2010(g); *see also* CTIA Nov. 8, 2023 *Ex Parte* Letter at 10-11.

[148] *See* CTIA Comments at 18 (noting that "where a phone is lost or stolen, certain notifications will not reach consumers").

[149] *See* T-Mobile Comments at 6-7 (encouraging the Commission to consider rule changes that meet "legitimate customer needs" and "promote diversity, inclusion, and accessibility of wireless services"); *id.* at 9 (asserting that
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such, we permit wireless providers to use existing methods of notification that are reasonably designed to reach the customer associated with the account,[150] and we encourage them to adopt new notification methods as they are developed to stay responsive to evolving fraud schemes. We acknowledge that our new rule differs from our existing rule that providers deliver notification of other account changes involving CPNI, which specifies that those notifications may be delivered through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record.[151] We find that departing from the existing rule's approach is appropriate given the depth of harm that can occur from SIM swap fraud, the need for wireless providers to be able to choose the most effective method of quickly alerting customers so that customers can take action to mitigate harm, and the importance of providers adopting new forms of notification.

39. We also decline to prescribe particular content or wording of SIM change notifications, recognizing that wireless providers are in the best position to determine what will most effectively notify customers of SIM change requests and potential fraud and will need to tailor notifications to customers' service plans and circumstances.[152] Nevertheless, consistent with the record and our CPNI rules, we specify that such notifications must use clear and concise language that provides sufficient information to effectively inform a customer that a SIM change request involving the customer's SIM was made.[153] We observe that our rule does not prohibit wireless providers from using different content and wording for notifications depending on a provider's risk assessment of a given SIM change request, so long as the notification uses clear and concise language and is reasonably designed to reach the actual customer.[154]

40. We further decline to require a delay for customer verification or acknowledgement in connection with notifications prior to completing a SIM change request. In the *SIM Swap and Port-Out Fraud Notice*, we sought comment on whether we should require a 24-hour delay (or other period of time) before a wireless provider effectuates a SIM change while notifying the customer via text message, email, the provider's app, or push notification, and requesting verification of the request.[155] This approach received minimal support in the record,[156] and we are convinced by other record evidence that the burdens

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the method of customer notification "should be flexible and reflect customers' preferences"); AT&T Comments at 11 (noting that "[c]ustomer needs also vary. AT&T provides customers a range of products and services to meet different wireless communications needs. The diverse characteristics of these customers and the products and services they utilize lend themselves to different risk-management approaches.").

[150] Such methods include, but are not limited to, live or automated telephone calls, text messages, emails, or push notification through wireless provider software applications. *See, e.g.*, Verizon Comments at 6 ("Providers also should have discretion to use a push notification together with supplemental verification methods to stop a high risk transaction.").

[151] 47 CFR § 64.2010(f). We seek comment in the *Further Notice* on whether we should harmonize our CPNI rules with the SIM change rules we adopt today, including for notifications.

[152] T-Mobile Comments at 10 (asserting that the "the exact language should be customizable by the carrier to account for the type of request, brand, product, and other factors"); *see also* Verizon Comments at 6 ("Prescriptive rules for the content . . . of the notification are unnecessary.").

[153] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14133, para. 34 (seeking comment on a notification requirement); Appx. A (47 CFR § 64.2010(h)(3)). *Cf.* 47 CFR § 64.2008(c) (stating the CPNI notices must be comprehensible); T-Mobile Comments at 10 (asserting that notifications should be "clear and specific").

[154] *See* AT&T Comments at 15 (describing AT&T's existing risk-based approach for providing SIM change notifications).

[155] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14134, para. 37.

[156] *See, e.g.*, Robert Ross Comments at 1; DC Stone Comments (Express); *see also* Prove Comments at 6-7 (suggesting that a short delay may be appropriate to allow customers to terminate a SIM change request but arguing against a long delay because it would "impose unnecessary inconveniences and costs on consumers"); T-Mobile Comments at 10 (explaining that notifications of SIM change requests could seek verification from customers but
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of delay and verification requirements outweigh the benefits, particularly given how regularly customers seek legitimate SIM changes. For instance, CTIA explains that a blanket delay would "make it exceedingly difficult for a consumer to obtain a new phone and continued service when a device breaks or is lost, representing a full day where that consumer could not rely on their wireless service for . . . 'keeping in touch with friends through voice calls and text messages' [and] placing life-saving public safety calls."[157] AT&T and T-Mobile echoed these concerns.[158] We also anticipate that the authentication, notification, and remediation requirements we adopt today will sufficiently mitigate fraudulent SIM change requests without the need for a burdensome delay and verification process. While we do not require wireless providers to implement a delay and verification process, we permit them to do so in instances when they determine these measures are necessary to protect against fraud,[159] but stress that this process should not be used to delay legitimate SIM change requests.

4. Account Locks for SIM Changes

41. We require wireless providers to offer all customers, at no cost, the option to lock or freeze their account to stop SIM changes.[160] We anticipate that this requirement will provide customers with more consistent and meaningful protection against SIM swap fraud, and this expectation is supported by the record, which reflects that account locks can be powerful tools against SIM swap fraud, particularly for customers that are at high-risk of being a target of the practice.[161]

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also arguing that carriers should be permitted to process requests if it does not receive a response within a certain amount of time).

[157] CTIA Comments at 9 (cleaned up).

[158] AT&T Comments at 17-18 ("[F]orcing a customer with a lost, stolen, or damaged phone to wait 24 hours (or just a few hours for that matter) before obtaining an active replacement would at best frustrate the consumer . . ., and, at worst, threaten the customer's safety and impair her ability to engage in commerce, work, and education."); T-Mobile Comments at 9 ("A 24-hour delay could cause hardship for customers with legitimate reasons to request the swap, such as a lost, stolen, or damaged phone.").

[159] CTIA Comments at 9 (asserting that a delay "may be appropriate in some situations and could help to prevent fraud while balancing important service goals" and that "the Commission should clarify that providers have flexibility to implement such delays as appropriate to address the unique circumstances of any given request or consumer"); T-Mobile Comments at 9 (explaining that verification "would help provide increased security for customers" in some circumstances).

[160] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14135, para. 39. We adopt our proposal that account locks must be offered to all customers at no cost because we find that a customer's financial means should not dictate their access to this enhanced security measure, particularly since customers with lesser financial means may suffer the greatest consequences of SIM swap fraud. This requirement is consistent with other Commission rules governing preferred carrier freezes for Local Exchange Carriers, *see* 47 CFR § 64.1190, as well as the requirements adopted for port-out locks, *infra* section III.B.3. To simplify the ability for customers to take advantage of account locks for SIM changes and number ports, we encourage wireless carriers to offer customers the ability to activate both locks in one step.

[161] *See* BPI/BITS Comments at 3-4 (supporting "the FCC's suggestion to place control of the ability to manage SIM changes requested by telephone and/or online access in the hands of the consumer, likely on their very device" and arguing that "this consumer-managed protection is an additional layer of security"); DC Stone Comments (Express) at 1 (arguing that the Commission should "[r]equire that account freezes be made available for any consumer phone account" as "an effective tool for concerned or savvy consumers to prevent unauthorized account activity and especially fraud, just as with credit reporting agencies"); NCLC/EPIC Comments at 11 (explaining that the ability to lock one's own account "may provide meaningful protections" and "is an excellent way for an individual consumer to guard against fraud"); *but see* AT&T Comments at 17 (stating that "[a]ccount locks can be an effective tool to increase the security of customer accounts on occasion," but opposing that carriers be required to offer them in all instances).

42. Like the other rules we adopt today, we give wireless providers flexibility on how to comply with this measure. In particular, the record does not evince a need for us to prescribe a method or methods for customers to unlock their accounts or impose a waiting period before an unlocked account can be transferred, and as such, we decline to do so at this time. We do require, however, that the process to activate and deactivate an account lock must not be unduly burdensome for customers such that it effectively inhibits them from implementing their choice.[162] Additionally, we stress that when activated, wireless providers must not fulfill SIM change requests until the customer deactivates the lock,[163] except to the extent otherwise required by the Safe Connections Act or the Commission's rules implementing that statute.[164] We find that the account lock requirement is technically feasible, particularly given evidence that some wireless providers already offer this feature to customers.[165] Additionally, we are unpersuaded by AT&T's claim that "building a system that is capable of widespread adoption of [account locks] would entail significant carrier costs and time for questionable gain."[166] We anticipate that because of these existing account lock offerings and the flexible approach we take, the rule will not be unduly costly for wireless providers to implement, and that to the extent there are costs associated with the requirement, they are outweighed by the associated benefits of preventing fraudulent activity.

43. Consistent with this flexible approach, we permit wireless providers to proactively initiate a SIM swap lock on a customer's account when a provider believes the customer may be at high risk of fraud. We are persuaded by T-Mobile's assertion that such capability is valuable because wireless providers are sometimes positioned to know when a customer is at high risk of SIM swap fraud and that this tool allows them to help customers secure their accounts.[167] However, we require that wireless providers promptly provide clear notification to the customer that the lock has been activated with instructions on how the customer can deactivate the account lock if the customer chooses, and to promptly comply with the customer's legitimate request to deactivate the account lock.[168] We also

[162] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14135, para. 39.

[163] *Id.*

[164] *See* 47 U.S.C. § 345(b)(2) (prohibiting carriers from making valid line separation requests from survivors of domestic violence contingent on any requirement or limitation); *Safe Connections Order*, FCC 23-96, at para. 76 and Appx. A (new 47 CFR § 64.6402(l)) (requiring a covered provider to effectuate a legitimate line separation request, and any associated number port and SIM change requests, regardless of whether an account lock is activated on the account); *id.* at Appx. A (new 47 CFR § 64.6402(k)) (requiring that as soon as feasible after receiving a legitimate line separation request from a survivor, a covered provider shall lock the account affected by the line separation request to prevent all SIM changes, number ports, and line cancellations other than those requested as part of the line separation request pursuant to 47 U.S.C. § 345 and the Commission's rules until the request is processed or denied).

[165] *See* T-Mobile Comments at 4 ("[F]or most types of customers, T-Mobile can institute a 'SIM change block' that helps protect the customer's SIM from being used in other devices."); NCTA Comments at 4-5 ("Wireless providers already engage in many [measures to prevent to prevent SIM swap and port-out fraud] today, including . . . providing the ability to lock or freeze wireless accounts."); CTIA Reply at 26-27 ("The record demonstrates that absent a requirement, many providers already offer account freeze options to their customers."); CCA Comments at 3-4 (describing T-Mobile's free service called "Account Takeover Protection" which "blocks unauthorized users from porting numbers and allows only the billing responsible party to turn the feature off"); *see also* Verizon, *Additional Support Information*, https://www.verizon.com/support/port-out-faqs/#setup-freeze (last visited Oct. 18, 2023) (offering a "Number Lock" service that is a customer-managed porting freeze option accessible by dialing 611 or through the MyVerizon app); T-Mobile, *Account Takeover Protection by T-Mobile*, https://www.t-mobile.com/support/plans-features/account-takeover-protection (last visited Oct. 18, 2023) (providing information on account its Account Takeover Protection feature, which "adds additional security to your account by blocking unauthorized users from transferring your lines to another wireless carrier").

[166] AT&T Comments at 17.

[167] *See* T-Mobile Comments at 2, 4.

[168] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14135, para. 39.

caution wireless providers that any proactive initiation of a SIM change lock must be limited in duration and extend only so long as the high risk of fraud is evident to the provider. In establishing this limitation, we intend to prohibit wireless provider abuse of SIM change locks to avoid, among other outcomes, preventing the customer from terminating service with the provider or moving to another competing provider.

44. Given the protection that account locks can provide to customers, we conclude that it should be offered to customers of both pre-paid and post-paid services.[169] We are unpersuaded by AT&T's assertion that pre-paid service is not amenable to account locks because "[s]ome prepaid customers provide little personal information when they activate their account," which could make it difficult to authenticate a customer to unlock an account.[170] Because the account lock is an optional security measure for customers, wireless providers can, if necessary, require customers to provide information to use for authentication purposes to activate the account lock.

45. We also disagree with AT&T that an account lock option "should remain a tool that carriers can choose, but are not required, to offer."[171] AT&T acknowledges that "[a]ccount locks can be an effective tool to increase the security of customer accounts on occasion," but it suggests that because "they are not needed to manage the risk of fraud in every case and for every customer," wireless providers should not be required to offer them to all customers.[172] While AT&T's approach would leave the choice of whether an account lock is necessary exclusively in the hands of wireless providers, we conclude this choice should be placed principally in the hands of the customer,[173] the party that is potentially at risk for SIM swap fraud, and therefore we require providers to offer the option to all customers. Likewise, AT&T's concern that "an account lock can be a source of friction" even for a postpaid customer when the "customer forgets having placed the freeze on the account or dislikes the efforts needed to unfreeze the account"[174] is not, we conclude, a valid basis for declining to require that wireless providers offer SIM change locks. The benefits of this account security measure outweigh any potential friction, and we expect that wireless providers can take steps to mitigate any such friction if they choose, such as by providing customers with periodic reminders that they have activated the account lock and on how they can deactivate the lock.[175] We are also unconvinced by comments claiming that SIM change locks may

[169] DC Stone Comments (Express) at 1 (arguing that account locks must be available for any customer account, including pre-paid accounts); *cf.* Verizon Comments at 4 ("A service provider will have limited information about the prepaid customer, and in many cases, about the customer's device. Even so, Verizon only allows authentication using reliable, available methods, and has begun integrating systems used for postpaid customers to further align and improve our methods to prevent . . . fraudulent activity.").

[170] AT&T Comments at 17; *see also* CTIA Comments at 15 (asserting that account locks "may negatively impact pre-paid customers whose devices are lost or stolen, as the pre-paid market offers consumers the option to purchase service with less identifiable information than post-paid, and thus information that may be necessary to deactivate a freeze may not have been provided when an account is initialized. Thus this may limit a consumer's ability to remove a freeze and validate an account where the consumer does not have a working device.").

[171] AT&T Comments at 17; *see also* CTIA Reply at 26-27 (arguing that "the Commission should allow wireless providers the flexibility to facilitate choice and competition for all customers when it comes to account freezes" and not require providers to offer account locks).

[172] AT&T Comments at 17.

[173] *See* BPI/BITS Comments at 3-4 (expressing support for requiring carriers to offer account locks because it "place[s] control of the ability to manage SIM changes requested by telephone and/or online access in the hands of the consumer").

[174] AT&T Comments at 17.

[175] Because of the authentication challenges for pre-paid customers and the potential friction for customers who may not want SIM changes to be more difficult, we decline to require account locks be activated by default, on an opt-out basis, as BPI/BITS suggests. BPI/BITS Comments at 3-4.

be of limited value to customers.[176] This requirement empowers high-risk and security-minded customers to enable additional protections beyond the enhanced authentication requirements and other security measures we adopt today, and it need not be activated by a large percentage of customers for it to be valuable.

5. Tracking Effectiveness of SIM Change Protection Measures

46. We require wireless providers to establish processes to reasonably track and maintain information regarding SIM change requests and their authentication measures, and to retain that information for a minimum of three years.[177] We agree with the Princeton University researchers that a tracking requirement will equip wireless providers "to measure the effectiveness of their customer authentication and account protection measures,"[178] and find that they would not otherwise be able to do so effectively without collecting such information. Consistent with recommendations in the record by the Princeton University researchers, we specifically require wireless providers to collect and maintain the following information regarding SIM change requests and authentication measures: the total number of SIM change requests, the number of successful SIM changes requests, the number of failed SIM change requests, the number of successful fraudulent SIM change requests, the average time to remediate a fraudulent SIM change, the total number of complaints received regarding fraudulent SIM changes, the authentication measures the wireless provider has implemented, and when those authentication measures change.[179] We also strongly encourage them to collect and retain any additional information that will help them measure the effectiveness of their customer authentication and account protection measures. We find that the three-year retention period is appropriate because it allows providers to track the effectiveness of their measures over time and ensures the information is available for a sufficient time should the Commission request it for review.

47. We disagree with CTIA's assertions that a recordkeeping requirement will divert resources from combating incidences of SIM swap fraud.[180] Instead we find that this data tracking requirement is critical to wireless providers' efforts to keep ahead of evolving fraud techniques. And the record reflects that some wireless providers already track and analyze information regarding SIM swap fraud and their account protection measures to improve those measures,[181] indicating that this is a

[176] NCLC/EPIC Comments at 11-12 ("Disclosures and the ability to freeze one's account are valuable only to those consumers who are savvy enough to a) understand the dynamics involved in freezing, b) understand that the benefits of freezing outweigh the extra burdens imposed (such as requiring that the consumer go through a series of steps to unfreeze the account, and c) actually follow through and freeze one's account."); Verizon Comments at 5 ("[A]n account freeze or lock may be superfluous or of limited interest to consumers given the corresponding need for rigorous authentication to remove the freeze or lock.").

[177] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14136, para. 43 (seeking comment on whether to require carriers to track data regarding SIM swap complaints).

[178] *See* Princeton Comments at 12; *see also* CTIA Nov. 8, 2023 *Ex Parte* Letter at 9-10 (requesting that we modify the recordkeeping requirements to incorporate a reasonableness standard on the basis that such a change will still permit the FCC to accomplish its goals while recognizing that providers may not be able to accurately capture all the information required in every instance); CCA Nov. 9. 2023 *Ex Parte* Letter at 2 (same).

[179] *See id.* The requirement that wireless providers collect and maintain information regarding when authentication measures change simply means that providers must track the introduction and removal of such measures, and not updates or refinements to existing measures.

[180] CTIA Reply at 24-25 ("Others call for overly onerous reporting and recordkeeping requirements. These types of rules would require wireless providers to divert resources from protecting customers to looking in the rearview mirror.").

[181] *See* AT&T Comments at 2 & 7-8 (indicating that it has tracked the total instances of SIM swap fraud and that it "continually assesses the effectiveness of its countermeasures and refines them over time as needed"); T-Mobile Comments at 6 ("T-Mobile engages in ongoing, proactive threat evaluation, and information collection on threats

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practical and cost-effective practice. Thus, while we recognize that this recordkeeping requirement may not be without cost, particularly for wireless providers who do not already collect such information, we find that the benefits of this requirement far exceed any potential costs.

48. We agree with CTIA that the data tracking and retention requirements should only be prospective in nature,[182] and as such, we make clear that our rule does not obligate wireless providers to research and collect historic data. We conclude that including historic data in the data tracking requirements we adopt would be burdensome, or even impossible, for small wireless providers and those who do not already track this information.[183]

49. We decline to adopt reporting and audit requirements in conjunction with our data tracking requirement,[184] but we do require wireless providers to make the information they collect available to the Commission upon request.[185] Although regular reporting and audit requirements can improve wireless provider incentives and accountability, we do not find that such measures are necessary at this time in light of the other measures we adopt today and providers' ongoing commitment to be vigilant in combating fraud.[186] We maintain the ability to obtain collected information from wireless providers as needed, not only as a potential tool to evaluate whether providers are implementing sufficient measures to address SIM swap fraud, but also to evaluate whether the specific requirements we adopt today continue to be effective or in need of updates to address the evolution of fraud techniques. Consequently, we find that there are insufficient benefits of a regular reporting requirement to outweigh the potential costs.

6. Safeguards on Employee Access to CPNI

50. We require wireless providers to establish safeguards and processes so that employees who receive inbound customer communications are unable to access CPNI in the course of that customer interaction until after a customer has been properly authenticated.[187] We find, based on the record before

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and fraud for internal purposes."); CTIA Reply at 1 (stating that its members report tracking the number of legitimate SIM swaps).

[182] *Compare* CTIA Reply at 24-25 (explaining that if the Commission adopts recordkeeping requirements, it should be prospective) *with* Princeton Comments at 12 ("We encourage the Commission to also consider collecting a limited amount of historical data on SIM swaps and port-outs, to understand how trends in customer use and fraudulent activity are affected by changes in authentication requirements.").

[183] *See, e.g.*, CTIA Reply at 25.

[184] *See* Princeton Comments at 12 (suggesting that carriers should be required to track and report information on SIM swap and port-out fraud to the Commission); NCLC/EPIC Comments at 6 (arguing that carriers should include information regarding SIM swap and port-out fraud in annual reports to the Commission); Robert Ross Comments at 8 (arguing that "[c]arriers must be required to report all SIM swaps and Port-outs on a monthly basis to the FCC" and undergo annual independent audits).

[185] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14136, para. 43. Because the information we require wireless providers to collect does not include personally identifiable information (PII) or CPNI, wireless providers will not be required to provide PII or CPNI in response to Commission requests for this information, but the Enforcement Bureau may request PII or CPNI in the course of a specific investigation.

[186] AT&T Comments at 1 ("AT&T is committed to protecting its customers and deterring bad actors intent on misusing processes designed for consumer benefit to inflict harm."); T-Mobile Comments at 8 ("T-Mobile remains vigilant in its efforts to evolve its safeguards to prevent fraud."); CTIA Comments at 3 ("The wireless industry and the Commission share the goal of protecting consumers from fraud—full stop.").

[187] *See* Appx. A (revised 47 CFR § 64.2010(h)(1)); *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14134, para. 38 (seeking comment on whether the Commission should "require carriers to modify customer record systems so that customer service representatives are unable to access CPNI until after the customer has been properly authenticated"); *see also* Letter from Glenn S. Richards, Counsel for Voice on the Net Coalition (VON), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-341 (filed Nov. 7, 2023) (VON Nov. 7, 2023 *Ex Parte* Letter)
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us, that requiring wireless providers to limit access to CPNI by employees who receive inbound customer communications until after the customer has been properly authenticated will help to minimize the incidences of SIM swap fraud by preventing customer service representatives from inadvertently or intentionally assisting bad actors in fraudulent schemes.[188] We are persuaded that, even with the customer service representative training requirements we adopt today,[189] allowing employees who receive inbound customer communications to access CPNI prior to proper authentication of the customer is unnecessary and possibly "invites adversaries to exploit sympathetic, inattentive, or malicious customer service representatives for account access."[190] While we anticipate that employees will comply with training requirements in good faith, "[t]here should be no opportunity for a representative to give a hint or a free pass" that will help bad actors commit fraud.[191] We therefore conclude that requiring wireless providers to establish safeguards and processes so that employees who receive inbound customer communications are unable to access CPNI in the course of that customer interaction until after the customer has been properly authenticated—"a straightforward fix"[192] and standard data security best practice[193]—will provide meaningful protection in helping to combat SIM swap fraud.[194] We find that the benefits of this requirement outweigh any potential costs, and that any such costs will be mitigated by allowing telecommunications carriers flexibility to determine the particular safeguards and processes that will prevent employees who receive inbound customer communications from accessing CPNI in the course of that customer interaction until after a customer has been properly authenticated. Below, we seek comment on whether to require all telecommunications carriers to limit access to CPNI by employees

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(recommending that the Commission make clear that its rule regarding employee access to CPNI apply only to inbound customer support requests to ensure that technical support personal, customer success managers, and other support personnel have appropriate access to support the communications service); CTIA Nov. 8, 2023 *Ex Parte* Letter at 5 (encouraging the FCC to make clear that the employee access limitations apply to employees who are interacting directly with a customer in the course of that interaction, raising concerns that a broader application could be read to prevent providers' employees from accessing CPNI outside the context of a direct customer interaction); CCA Nov. 9. 2023 *Ex Parte* Letter at 2 (similar); Letter from Jill Canfield, General Counsel, VP of Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-341, at 1-2 (filed Nov. 8, 2023) (NTCA Nov. 8, 2023 *Ex Parte* Letter) (similar).

[188] *See, e.g.*, Princeton Comments at 8; NCLC/EPIC Comments at 8-9.

[189] *See infra* section III.C (establishing requirements that carriers develop and implement training for customer service representatives to specifically address fraudulent SIM change and port-out attempts, complaints, and remediation).

[190] Princeton Comments at 9.

[191] *Id.*

[192] *Id.*

[193] *See, e.g.*, NCLC/EPIC Comments at 8-9 (explaining that minimizing access to and retention of customer data is a security best practice); Princeton Comments at 7-8 (explaining that access to CPNI prior to authorization "is an unnecessary exposure of customer data and a violation of the information security principle of minimizing system permissions"); *Protecting Personal Information: A Guide for Business*, Federal Trade Commission, https://www.ftc.gov/business-guidance/resources/protecting-personal-information-guide-business (last updated October 2016) ("Scale down access to data. Follow the 'principle of least privilege.' That means each employee should have access only to those resources needed to do their particular job.").

[194] CTIA asserts that applying this rule "represents a sea change in the Commission's historical approach of prohibiting only *disclosure* of CPNI prior to authentication that was not clearly or adequately raised" in the NPRM. CTIA Nov. 8, 2023 *Ex Parte* Letter at 5. We disagree. The Commission specifically sought comment on whether it should "require carriers to modify customer record systems so that customer service representatives are unable to access CPNI until after the customer has been properly authenticated." *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14134, para. 38.

who receive inbound customer communications until after the customer has been properly authenticated to minimize customer account fraud.[195]

51. We decline to adopt other suggested employee safeguards that are overly prescriptive and for which the costs outweigh the benefits. In the *SIM Swap and Port-Out Fraud Notice* we sought comment on other ways to avoid employee malfeasance, such as requiring two employees to sign off on every SIM change.[196] Although we anticipate that two-employee sign off could be an effective account protection mechanism and encourage wireless providers to use this procedure when appropriate,[197] we are persuaded by AT&T's argument that requiring this procedure for every SIM change would be a significant burden on legitimate SIM change requests given the uncertainty regarding whether it would prevent SIM swap fraud in most instances,[198] and therefore decline to adopt it. We also reject several other requirements proposed in the record concerning customer service representatives who perform SIM changes. Specifically, a mandate that employees who perform SIM swaps be subject to enhanced background checks[199] may be financially and practically infeasible for large and small wireless providers alike, and could create an incentive for providers to reduce the number of employees capable of performing SIM changes, which would slow the processing of legitimate changes. Requiring employees to swipe a company badge when entering secure facilities is a good practice that we encourage wireless providers to adopt,[200] but the record does not address how this requirement would serve to prevent SIM swap fraud. The proposal to require employees to sign a restrictive confidentiality agreement is faulty for the same reason.[201] Moreover, a proposed restriction on use of performance incentives[202] is overly broad, could stifle competition, and might prevent customers from accessing special offers. Finally, we decline to adopt a proposal that wireless providers "be required to have heightened SIM swap customer care during [weekends and evenings]."[203] We find that providers are best positioned to implement procedures tailored to the level of risk at any given time and should have the flexibility to adjust their practices to address the evolving nature of fraudulent activity.

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[195] *See infra* para. 202; *see also SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14137, para. 46 ("We seek comment on whether any heightened authentication measures required (or prohibited) should apply for access to all CPNI, or only in cases where SIM change requests are being made."); Letter from Steven F. Morris, Vice President & Deputy General Counsel, NCTA – The Internet & Television Association, and Josh Bercu, Vice President, Policy and Advocacy, USTelecom – The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-341 et al., at 2 (filed Nov. 7, 2023) (requesting that the Commission solicit additional comment on whether to apply the limits on employee access to CPNI to wireline providers).

[196] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14134, para. 38.

[197] Verizon Comments at 3 ("Two-employee sign-off can be appropriate in circumstances when other authentication methods are unavailable, and Verizon trains select employees to assist customers this way.").

[198] AT&T Comments at 18 ("Such a step would be time-intensive, increasing the length of the SIM swap process, and would remain susceptible to social engineering and collusion. Also, it is unclear how the second employee would evaluate the transaction separately from the first employee, or what would happen if, as can occur, a second employee is not available. Last, the frequency (and thus sheer number) of legitimate SIM changes makes this suggestion infeasible in practice.").

[199] Robert Ross Comments at 7.

[200] *Id.*

[201] *Id.*

[202] *Id.*

[203] *Id.* at 8 ("SIM swappers come out on weekends and evenings when they know that customer service at mobile carriers, banks and cryptocurrency exchanges are closed. Carriers must be required to have heightened SIM swap customer care during these times.").

7. Telecommunications Carriers' Duty to Protect CPNI

52. While the record shows that some wireless providers have implemented CPNI security practices beyond those required by current rules,[204] SIM swap fraud persists. We are also concerned that some wireless providers may view the protection measures we adopt today as sufficient, rather than baseline, protections against SIM swap fraud. To ensure that wireless providers adapt their security practices on an ongoing basis to address evolving techniques used by bad actors to commit SIM swap fraud,[205] we take this opportunity to remind all telecommunications carriers of their statutory duty to "protect the confidentiality of proprietary information of, and relating to . . . customers,"[206] and their continuing preexisting legal obligation to "take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI."[207] Consistent with the Commission's approach in the *2007 CPNI Order*,[208] we conclude that these existing legal obligations necessarily obligate telecommunications carriers to proactively and regularly review and monitor their policies and procedures to ensure that they continue to be effective at addressing evolving fraud techniques against customer accounts and services—including SIM swap and port-out fraud[209]—and to conduct analyses of fraud incidents to determine how the fraud occurred and implement measures to prevent such tactics from being successful again in the future.[210]

B. Strengthening the Commission's Number Porting Rules to Protect Consumers

53. Given the potential for consumer harm from port-out fraud, we conclude that the time is ripe to strengthen our number porting rules with baseline measures to increase the protections for customers against fraudulent port-outs. As with our new SIM change rules, the backbone of our new

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[204] *See, e.g.*, AT&T Comments at 4-7 (explaining that "AT&T employs a diverse set of measures to help thwart these bad actors – above and beyond existing regulatory requirements and those proposed in the NPRM," including scanning an in-store customer's ID with technology to verify its authenticity, utilizing data analytics to assess a customer's risk for fraud, and conducting customer education); Better Identity Coalition at 4 ("Notably, two major mobile network operators (MNOs) already support FIDO authentication for their customers, meaning that it is widely used in customer-facing accounts today."); T-Mobile Comments at 6 ("T-Mobile participates in efforts with other stakeholders to address verification issues and stay at the cutting edge of fraud risk management.").

[205] *See* Verizon Comments at 1-2, 5; AT&T Comments at 2 & 11; CCA Comments at 4-5; CTIA Comments at 10-11; CTIA Reply at 15-16; Verizon Comments at 5; Somos Comments at 2.

[206] 47 U.S.C. § 222(a).

[207] 47 CFR § 64.2010(a); *see also* NCLC/EPIC Comments at 9 ("Providers must take affirmative measures to discover and protect against fraudulent activity beyond what is specifically dictated by the Commission's rules.").

[208] *2007 CPNI Order*, 22 FCC Rcd at 6945-46, paras. 33 & 35 (making clear that the adoption of rules designed to protect against pretexting "does not relieve carriers of their fundamental duty to remain vigilant in their protection of CPNI" and expressing the Commission's "expectation that carriers will take affirmative measures to discover and protect against activity that is indicative of pretexting beyond what is required by the Commission's current rules").

[209] *See, e.g.*, AT&T Comments at 7 ("AT&T's suite of tools is not static. AT&T continually assesses the effectiveness of its countermeasures and refines them over time as needed."); T-Mobile Comments at 6 ("T-Mobile engages in ongoing, proactive threat evaluation, and information collection on threats and fraud for internal purposes. For example, T-Mobile gathers and acts on threat intelligence about cybercriminals potentially targeting wireless carriers and customers, conducts penetration tests of our systems, and engages stakeholders to understand emerging attack patterns. Further, as bad actors pivot to new methods and the account takeover fraud landscape changes, T-Mobile implements new strategies to address both known and potential fraud techniques.").

[210] *See* AT&T Comments at 7 ("AT&T conducts routine forensic analysis of unauthorized SIM swaps and port-outs to assess the root cause and evaluate whether new or different countermeasures are appropriate to enhance security. This assessment has resulted in process changes, implementation of new security procedures, and more to guard against threats."); NCLC/EPIC Comments at 6 (arguing that upon being notified of fraud, carriers should establish "[a] detailed explanation of the fraud, along with an analysis of what measures the provider has taken to prevent a repeat of this breach").

number porting rules is a requirement that wireless providers use secure methods to authenticate customers that are reasonably designed to confirm a customer's identity prior to effectuating number ports, and we also require wireless providers to notify customers of port-out requests and allow customers to lock their accounts to prevent port-outs.[211] To future-proof our requirements, we give wireless providers flexibility in how to implement them. We anticipate that these new rules will work together to provide meaningful protection to customers while preserving the efficient and effective processing of port-out requests that promotes customer choice and competition. As with our new SIM change rules, we apply these new requirements exclusively to providers of CMRS, as defined in section 20.3 of Title 47 of the Code of Federal Regulations,[212] including resellers of CMRS, as the record shows that port-out fraud is focused on mobile wireless customers.[213] We likewise require wireless providers to implement these rules with respect to customers of both pre-paid and postpaid services.[214]

1. Customer Authentication Requirements

54. We revise our porting rules to require that wireless providers use secure methods to authenticate customers that are reasonably designed to confirm a customer's identity before completing a port-out request,[215] except to the extent otherwise required by the Safe Connections Act or the Commission's rules implementing that statute.[216] Consistent with our new SIM change authentication rules,[217] we require wireless providers to regularly, but not less than annually, review and, as necessary, update their customer authentication methods to ensure those methods continue to be secure.[218]

55. As in the SIM change context, we are persuaded by commenters that a general security authentication standard will best allow wireless providers the flexibility to respond to advances in the technology and tactics used by bad actors, providing the greatest protection for customers, and enabling providers to implement authentication methods in ways that work best for the particular services they offer.[219] The record reflects that the benefits of allowing wireless providers to determine the best method

[211] *See* Appx. A (adding 47 CFR § 52.37).

[212] *See supra* para. 25.

[213] *See, e.g.*, AT&T Comments at 1 (noting that "SIM swaps and port-outs are, in short, integral features of the competitive wireless marketplace"); CCA Comments at 1 (explaining that port-out fraud is a method malicious actors use to steal mobile accounts); CTIA Comments at 1-2 (discussing port-out fraud exclusively in the context of wireless services); NCLC/EPIC Comments at 2 (noting that "American cell phone users . . . are extremely vulnerable to having their telephone numbers hijacked by fraudsters through the process of SIM swapping and port-out fraud"); NCTA Comments at 1 (explaining that with port-out fraud, a bad actor "ports the customer's mobile phone number to the account with the new carrier controlled by the bad actor").

[214] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14141, para. 55.

[215] *See id.* at 14139-41, paras. 53-56 (seeking comment on whether and how to authenticate customers for port-out requests).

[216] The Safe Connections Act prohibits wireless providers from making a line separation contingent on a prohibition or limitation on number portability, provided such portability is technically feasible. 47 U.S.C. § 345(b)(2)(D). The Commission's rules adopted today implementing the Safe Connections Act require covered providers to attempt to authenticate, using multiple authentication methods if necessary, that a survivor requesting a line separation is a user of a specific line or lines. *See Safe Connections Order*, FCC 23-96, at para. 52. Covered providers must use methods that are reasonably designed to confirm the survivor is actually a user of the specified line(s) on the account when the survivor is not the primary account holder or a designated user. *See id.* To the extent this requirement differs from other authentication requirements, including those in 47 CFR § 64.2010, the line separation authentication requirements the Commission adopts to implement 47 U.S.C. § 345 serve as an exception to those other requirements. *See id.*

[217] *See supra* para. 27.

[218] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14132, para. 27 (seeking comment on whether we should adopt a flexible standard requiring heightened authentication measures for SIM swap requests).

for authenticating customers outweigh speculative concerns that absent standardized authentication methods, nationwide providers could arbitrarily determine which authentication methods or controls are sufficient before effectuating ports.[220] We also agree with CCA that our approach will better serve small wireless providers by permitting them to "use technologies that are reasonably available and have choice in the approach to take in authenticating their customers."[221] Additionally, as we concluded with regard to authentication for SIM changes, this flexible approach should resolve concerns about authenticating customers of pre-paid accounts.[222]

56. We are mindful of the potential effect on competition of our new customer authentication requirements, and thus, we require that the secure authentication methods wireless providers adopt accommodate the needs of the broad spectrum of customers they may serve, including those who do not have data plans or data-enabled devices, have varying degrees of technological literacy, or have disabilities or accommodation needs.[223] To illustrate, we observe that wireless providers may find

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[219] *See supra* para. 29 (finding that in the SIM change context, readily available biographical information, account information, recent payment information, and call detail information do not constitute secure methods of authentication); 47 CFR § 64.2010(b).

[220] *Compare* T-Mobile Comments at 12-13 (stating that "flexibility to offer various secure methods of customer authentication . . . will promote innovation and improved security for customers"); CTIA Reply at 15-16 ("Flexibility is a critical attribute in any authentication standard: it will help prevent authentication practices from lagging behind bad actor tactics, it will facilitate continued improvements in authentication practices, and it will help providers be able to continue to meet customer needs."); CCA Comments at 5 (explaining that flexibility will allow carriers to adopt future authentication technologies that "prove[] to be more effective or secure than today's technologies"); Princeton Comments at 4 ("We strongly agree that the Commission's customer authentication rules should not be technically prescriptive. Authentication methods and security practices continue to evolve, and carriers should be welcome—and encouraged—to adopt innovative safeguards."); Verizon Comments at 10-11 ("[P]roviders should retain the flexibility they enjoy today to nimbly adopt new authentication safeguards to stay ahead of bad actors."); *with* RWA Comments at 12-13 (raising concerns that without a "set of uniform authentication standards" nationwide carriers could "arbitrarily determine which authentication methods or controls are sufficient" thereby potentially increasing costs, creating "barriers for small and rural providers," or allowing nationwide carriers to "refuse ports from smaller providers deemed 'unsecure'"). We note also that under the Act and our existing rules, all carriers are required to complete legitimate ports, *see supra* para. 14, and that our new customer authentication requirements do not give carriers the authority to make determinations about the sufficiency of another carrier's authentication methods—that responsibility will belong to the Commission, and we will address any concerns regarding the adequacy of authentication methods, as well as inappropriate port denials, as needed.

[221] CCA Comments at 5 ("The Commission should also keep in mind the constraints with which many small carriers operate against in adopting security measures. Smaller carriers may have more limited app or e-commerce platforms, and may not currently have the capability, for example, to generate a one-time port out PIN via an app on a 24/7/365 basis."); *but see* ID.me Comments at 6-7 (describing its 530 commercial partners, many of which are "smaller businesses with smaller use cases" and asserting that "[c]omplying with NIST guidelines does not pose any difficulties for smaller providers when the integration is enabled by a turnkey, SaaS, credential service provider operating with open protocols").

[222] *See* CTIA Comments at 14-15 (noting that "fighting fraud in the pre-paid context is different than in the post-paid context" and that "providers ordinarily do not collect or have detailed identity information for pre-paid customers"); T-Mobile Comments at 8 (stating that "[p]repaid service generally does not require identity validation for account set-up"); CCA Comments at 6 (noting that pre-paid customers "often do not provide an accurate address or other identifying information, making it difficult for carriers to authenticate an account request"); CTIA Comments at 19-20 (noting that a flexible approach will better serve customers, including pre-paid customers).

[223] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14139-41, paras. 53-56 (seeking comment on customer authentication requirements); NCLC/EPIC Comments at 8 (recognizing that "online authentication is not a viable option for all consumers, especially senior consumers who may not always be technologically savvy" or "[l]ow-income households and households of color [that] are also likely to have limited bandwidth available to use on their mobile phones, making online authentication more difficult for them"); CCA Comments at 7 ("CCA members report experience with potential incoming customers who are unable to find the port PIN provided by their

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requiring a one-time port-out PIN obtained through a provider app is an effective means for authenticating customers with a data-enabled smart phone, but that authentication measure may not be a feasible option for customers without data plans or smartphones, or for those customers who are unable to navigate the technology. As such, this requirement may necessitate the use of multiple authentication methods, such as in-person authentication using government-issued identification, over-the-phone authentication, or alternative methods for individuals with disabilities.[224]

57. We do not anticipate that using secure methods to authenticate a customer requesting a port-out will be burdensome to wireless providers or unreasonably delay the processing of port-out requests. The record reflects that many wireless providers have already developed and implemented some form of customer authentication for port-out requests.[225] The approach we adopt today will allow wireless providers to continue using or building upon what is already working in the industry, helping to streamline implementation and costs. We expect wireless providers to design and implement customer authentication processes for port-out requests that minimize porting delays and maintain the industry agreed-upon two-and-a-half hour porting interval for wireless ports.[226]

2. Customer Notification of Port-Out Requests

58. We also revise our numbering rules to require wireless providers to provide immediate notification to their customers whenever a port-out request is made, sent in accordance with customer preferences, if indicated,[227] and specify that the notification must be sent before a provider effectuates a port, except to the extent otherwise required by the Safe Connections Act of 2022 (47 U.S.C. § 345) or

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current provider and experience significant frustration" and "especially those who are older or less familiar with technology, may be deterred from selecting a provider who may offer a better service"); Verizon Comments at 6 (noting that in-store customers may be less tech savvy and so flexibility with authentication is necessary).

[224] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14131, 14146, paras. 25-26 & 73. *See* 47 CFR §§ 6.3(a)(1)(i) & 14.21(b)(1)(i) (requiring carriers to "[p]rovide at least one mode that does not require user vision" to operate a phone or use an account); 47 CFR §§ 6.3(a)(1)(iv) & 14.21(b)(1)(iv) (requiring carriers to "[p]rovide at least one mode that does not require user auditory perception" to operate a phone or use an account); 47 CFR §§ 6.3(a)(1)(ix) & 14.21(b)(1)(ix) (requiring carriers to "[p]rovide at least one mode that does not require user speech" to operate a phone or use an account).

[225] *See, e.g.*, AT&T Comments at 6-7 (describing its routine use of "a one-time PIN delivered via SMS message or an outbound voice call to a postpaid customer's device for enhanced customer validation," and its "Number Transfer PIN process to validate postpaid port-out transactions"); CCA Comments at 3-4 (describing U.S. Cellular's assigning of a PIN code to each customer that is used for customer authentication); Better Identity Coalition Comments at 4 (noting that "two major mobile network operators already support FIDO authentication for their customers"); NCTA Comments at 4-5 (describing authentication measures some wireless providers already use, including account PINs); T-Mobile Comments at 4 ("T-Mobile offers various customer authentication options, which may vary based on customer, account, and device characteristics. T-Mobile customers set up an individual 6-to-15 digit PIN that can be used to verify the customer's identity when calling customer service. . . . T-Mobile customers must provide their PIN when requesting a port-out associated with that account. Most customers that choose to create a T-Mobile ID for use on My.T-Mobile.com or with the My T-Mobile app have the option of setting up multi-factor authentication ('MFA') using methods including security questions, SMS, or device-based biometrics such as Face ID or fingerprint recognition on devices that support such features. T-Mobile uses MFA, consistent with the FCC's rules, for validating customer identity and verifying the legitimacy of account changes."); Verizon Comments at 8-9 (describing current authentication measures, including a transaction-specific "Number Transfer PIN" and notifying customers of port requests via text message and email).

[226] *See Wireless Number Portability Order*, 18 FCC Rcd at 20979, para. 26; North American Numbering Council Wireless Number Portability Subcommittee Report on Wireless Number Portability Technical, Operational, and Implementation Requirements Phase II, CC Docket No. 95-116 at 13 (filed Sept. 26, 2000).

[227] For example, this would include delivering a notification in the language of the customer's choosing, if the wireless provider permits communications preferences in other languages and the customer has previously indicated such choice.

the Commission's rules implementing that Act.[228] We require that wireless providers notify their customers "immediately" of a porting request to not only ensure that porting requests are processed efficiently, but also help alert customers quickly to potential fraud to allow them to mitigate damages and inconvenience resulting from fraudulent or inadvertent port-outs.[229] The notification requirement will provide a uniform safety measure for all port-out requests across the mobile wireless industry, which we anticipate will reduce the instances of port-out fraud.[230]

59. As with SIM change notifications, we decline to prescribe particular methods for providing port-out notifications or particular content and wording for these notifications, but do require that the notification methods be reasonably designed to reach the customer associated with the account and that the content and wording use clear and concise language that provides sufficient information to effectively inform a customer that a port-out request involving the customer's number was made.[231] We recognize that wireless providers are in the best position to determine which notification methods and what content and wording will be most effective at notifying customers of port-out requests and potential fraud under the particular circumstances, including the real-world security needs of the transaction, and the technical capabilities, accessibility needs, or broadband access of individual customers. As such, we encourage wireless providers to leverage existing notification methods that are reasonably designed to reach the customer associated with the account,[232] and to adopt new notification methods as they are developed to stay responsive to evolving fraud schemes.

60. On balance, we find that benefits accrued from early warning to customers of potential fraudulent account activity outweigh any potential burdens imposed on wireless providers by this notification requirement. First, we find that customer notification of port-out requests is unlikely to prevent or unreasonably delay customer porting requests, as we require "immediate" notification and do not require a delay or customer verification or acknowledgement of that notification before continuing the porting-out process. Second, because wireless providers are already familiar with notifying customers regarding changes to their accounts,[233] and in many cases likely already notify customers of port-out

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[228] Appx. A (47 CFR § 52.37(c)); *see also Safe Connections Order*, FCC 23-96, at para. 97 ("To the extent that a survivor initiates a port-out request with a new service provider for a line that is the subject of an in-process line separation request, we prohibit the current service provider from notifying the account holder of the request to port-out that number until after the line separation request has been completed."); *id.* at Appx. A (new 47 CFR § 64.6402(i) (a covered provider shall not notify a primary account holder of a request by a survivor to port-out a number that is the subject of a line separation request)).

[229] *See* Princeton Comments at 7 (noting that "notice is essential, so that a customer can take prompt action to protect their telecommunications account, their other accounts, and their devices"); Prove Comments at 6 (supporting timely notice for high risk events such as port-out requests so customers can "be afforded the opportunity to prevent account takeovers before they are completed").

[230] For the same reasons we raised in the SIM change context, we decline to impose a blanket yes/no verification requirement for authentication attempts. *See supra* para. 40; *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14139, para. 51.

[231] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14141-42, paras. 57 (seeking comment on port-out notification requirements).

[232] Such measures may include, but are not limited to, live or automated telephone calls, text messages, emails, or push notification through wireless provider software applications. Verizon Comments at 6 ("Providers also should have discretion to use a push notification together with supplemental verification methods to stop a high risk transaction.").

[233] *See* AT&T Comments at 6 (explaining that for transactions meeting a certain threshold of AT&T's "risk model," it will send one-way SMS notifications of a SIM change request, and for transactions meeting a higher risk threshold, it will require customers confirm the SIM change request via an SMS notification); T-Mobile Comments at 4 (noting that as part of its efforts to "help customers secure their accounts, T-Mobile notifies customers of account changes and requests"); Verizon Comments at 6 ("Verizon already employs (or is on track to employ) many of the methods identified in the NPRM, such as notifying customers of high-risk SIM change authentication

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requests,[234] we anticipate that wireless providers will face low burdens in implementing today's customer notification requirement for port-out requests. We also expect that these existing notification systems can be leveraged to help minimize any potential costs associated with notifying customers of port-out requests. Third, we disagree with AT&T's assertion that customer notification of port-out requests will result in notice fatigue, undermining its efficacy.[235] Nothing in the record supports the notion that customers request port-outs at such a rate that, upon the adoption of this rule, wireless providers will be forced to inundate their customers with the required notifications.[236] As such, we conclude that the significant benefits of alerting customers to potential fraudulent account activity outweighs any speculative negative impacts on wireless providers or customers.

3. Account Locks for Port-Outs

61. For the same reasons explained above with respect to SIM change requests,[237] we require wireless providers to offer their customers, at no cost, the ability to lock or freeze their accounts to stop port-outs.[238] We anticipate that this requirement will provide customers with more consistent and meaningful protection against fraudulent port-outs. The record reflects that account locks can be powerful tools against fraudulent port-outs, particularly for customers that are at high-risk of being a target of the practice.[239] As in the SIM swap context,[240] we conclude that it should be offered to customers of both pre-paid and post-paid services,[241] and that this requirement is feasible for both categories of customers despite assertions to the contrary.[242]

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attempts, failed or otherwise, and of other account changes."); CTIA Comments at 18 (explaining that "there are many instances where notifications to consumers are appropriate and providers can and do make reasonable efforts to provide them"); 47 CFR § 64.2010(f); *2007 CPNI Order*, 22 FCC Rcd at 6942, para. 24.

[234] *See, e.g.*, CCA Comments at 3-4 (describing the current procedures that T-Mobile, U.S. Cellular, and GCI use to notify customers of a change to their account or port-out request, and that other members are "similarly adopting heightened security measures"); *see also Wireless Number Portability Order*, 18 FCC Rcd at 10975-76, paras. 14-16.

[235] AT&T Comments at 15 (noting that mandating notice when it is not necessary would lead to frequent notifications that would leave customers "numb or immune to them or tire of [them] and consciously choose to ignore them, thus undermining all value they might otherwise have when the threat of fraud is real"); *see also* CTIA Comments at 18 (asserting that notifications can be appropriate in "many instances" but that notifications "must be weighed against other goals, and in general, avoid unnecessary friction in the user experience or other unintended consequences, such as notice fatigue").

[236] For the same reasons, we decline CTIA's request that customer notification of port-out requests be "limited to situations where the carrier determines that there is an increased risk of fraud" on the basis that the notification requirements "threaten to cause customer confusion, concern, and fatigue," and could increase costs for carriers because such notifications increase customer calls. CTIA Nov. 8, 2023 *Ex Parte* Letter at 8.

[237] *See supra* section III.A.4.

[238] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14141-42, para. 57.

[239] *See, e.g.*, South Carolina Department of Consumer Affairs Comments at 2 ("Carriers should also offer customers the option to lock port requests, similar to an account freeze, in order to prohibit unauthorized requests."); DC Stone Comments (Express) at 1 (arguing that account locks are "an effective tool for concerned or savvy consumers to prevent unauthorized account activity and especially fraud, just as with credit reporting agencies"); NCLC/EPIC Comments at 11 (explaining that "the ability to freeze one's own account is an excellent way for an individual consumer to guard against fraud").

[240] *See supra* section III.A.4.

[241] *See, e.g.*, DC Stone Comments (Express) at 1 (arguing that account locks must be available for any customer account, including pre-paid accounts); *cf.* Verizon Comments at 4 ("A service provider will have limited information about the prepaid customer, and in many cases, about the customer's device. Even so, Verizon only allows
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62. Like the other rules we adopt today, we give wireless providers flexibility on how to comply with the measure.[243] In particular, the record does not evince a need for us to prescribe a method or methods for customers to unlock or unfreeze their accounts or impose a waiting period before an unlocked account can be transferred, and as such, we decline to do so at this time. Although we do not prescribe the exact form of the account lock mechanism wireless providers must adopt, the process to activate and deactivate an account lock must not be unduly burdensome for customers such that it effectively inhibits them from implementing their choice.[244] We stress that when activated, wireless providers must not fulfill port-out requests until the customer deactivates the lock,[245] except to the extent otherwise required by the Safe Connections Act or the Commission's rules implementing that statute.[246]

63. Consistent with this flexible approach, and as we did with the SIM change rules, we permit wireless providers to proactively initiate a port-out lock on a customers' account when they believe a customer may be at high risk of fraud, so long as providers promptly provide clear notifications to those customers that a lock has been activated with instructions on how the customers can deactivate account locks if they choose and promptly deactivates the account lock upon receipt of the customer's legitimate request to do so.[247] We also caution wireless providers that any proactive initiation of a port-out lock must be limited in duration and extend only so long as the high risk of fraud is evident to the

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authentication using reliable, available methods, and has begun integrating systems used for postpaid customers to further align and improve our methods to prevent . . . fraudulent activity.").

[242] *See, e.g.*, CTIA Comments at 14-15 (asserting that account locks "may negatively impact pre-paid customers whose devices are lost or stolen, as the pre-paid market offers consumers the option to purchase service with less identifiable information than post-paid, and thus information that may be necessary to deactivate a freeze may not have been provided when an account is initialized. Thus this may limit a consumer's ability to remove a freeze and validate an account where the consumer does not have a working device"); AT&T Comments at 17 (noting that "an account lock would likely create more of a burden than a benefit for prepaid customers and their carriers" given the discrepancy in information provided, but supporting an optional account freeze). Because the account lock is an optional security measure for customers, carriers can, if necessary, require customers to provide information to use for authentication purposes to activate and deactivate the account lock.

[243] *See* AT&T Comments at 2-3, 12 (arguing, generally, that the Commission should not "[prescribe] specific methods wireless carriers must employ to combat fraudulent SIM swaps and port-outs"); CTIA Reply at 26-27 ("While the Commission's rules should allow for port freeze options, the rules should also be flexibly designed to recognize that freezes are not always appropriate."). We decline CTIA's request that the Commission find that mandatory port-out PINs satisfy this requirement. CTIA Nov. 8, 2023 *Ex Parte* Letter at 5-6. We discuss the benefits and drawbacks of port-out PINs as a method of *customer authentication*, above. *See supra* Section III.B.1. We disagree that a mandatory port-out PIN has the same effect as an optional account lock; while the two protections serve complementary functions, one is focused on customer authentication for a specific one-time request, and the other functions as a customer directed general account security feature.

[244] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14141-42, para. 57 (seeking comment on port-out lock requirements).

[245] *Id.*

[246] *See* 47 U.S.C. § 345(b)(2)(D) (prohibiting carriers from making valid line separation requests from survivors of domestic violence contingent on any requirement or limitation, including restrictions on number portability); *Safe Connections Order*, FCC 23-96, at para. 76 and Appx. A (new 47 CFR § 64.6402(l)) (requiring a covered provider to effectuate a legitimate line separation request, and any associated number port and SIM change requests, regardless of whether an account lock is activated on the account); *id.* at Appx. A (new 47 CFR § 64.6402(k)) (requiring that as soon as feasible after receiving a legitimate line separation request from a survivor, a covered provider shall lock the account affected by the line separation request to prevent all SIM changes, number ports, and line cancellations other than those requested as part of the line separation request pursuant to 47 U.S.C. § 345 and the Commission's rules until the request is processed or denied); *id.* at Appx. A (new 47 CFR § 64.6404(a)).

[247] *See supra* para. 43; *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14141, para. 57 (seeking comment on port-out lock requirements).

provider. In establishing this limitation, we intend to prohibit wireless provider abuse of port-out locks to avoid, among other outcomes, preventing the customer from terminating service with the provider or moving to another competing provider.

64. As with account locks for SIM changes,[248] given that several wireless providers already voluntarily offer account locks to all their customers,[249] and coupled with the flexible approach we adopt, we are unpersuaded by AT&T's claim that implementing account lock offerings will be unduly costly and time-consuming for wireless providers.[250] To the extent there are costs associated with the requirement, we find that they are outweighed by the benefits.

4. Wireless Port Validation Fields

65. After review of the record, we decline to codify the wireless port validation fields.[251] We also decline to require wireless providers to implement a customer-initiated passcode field for all wireless-to-wireless number porting requests.[252] Currently, the mobile wireless industry uses four data fields of customer-provided information to validate a wireless-to-wireless porting request: telephone number, account number, five-digit ZIP code, and passcode (if applicable).[253] In the *SIM Swap and Port-Out Fraud Notice*, we sought comment on whether we should "codify the types of information carriers must use to validate simple wireless-to-wireless port requests."[254] While some commenters did not oppose codification of some of the customer-provided wireless data fields, they preferred that the Commission continue to give wireless providers the flexibility to adjust to business and customer needs.[255] We are persuaded by the record that separate codification of the customer-provided data fields

[248] *See supra* para. 42.

[249] *See, e.g.*, CCA Comments at 3-4 (describing T-Mobile's free service called "Account Takeover Protection" which "blocks unauthorized users from porting numbers and allows only the billing responsible party to turn the feature off"); CTIA Comments at 3-4 (noting that "examples of the variety of tactics used to combat SIM swapping and port-out fraud include . . . the ability to lock or freeze wireless accounts"); CTIA Reply at 26-27 ("The record demonstrates that absent a requirement, many providers already offer account freeze options to their customers."); T-Mobile Comments at 4 & 11 ("Qualifying customers may wish to enable safeguards such as setting up account takeover protection—a free feature that prohibits unauthorized users from porting the customer's phone line to another wireless carrier."); NCTA Comments at 4-5 ("Wireless providers already engage in many [measures to prevent SIM swap and port-out fraud] today, including . . . providing the ability to lock or freeze wireless accounts."); *see also* Verizon, *Additional Support Information*, https://www.verizon.com/support/port-out-faqs/#setup-freeze (last visited Oct. 18, 2022) (offering a "Number Lock" service that is a customer-managed porting freeze option accessible by dialing 611 or through the MyVerizon app); T-Mobile, *Account Takeover Protection by T-Mobile*, https://www.t-mobile.com/support/plans-features/account-takeover-protection (last visited Oct. 18, 2023) (providing information on its Account Takeover Protection feature, which "adds additional security to your account by blocking unauthorized users from transferring your lines to another wireless carrier").

[250] AT&T Comments at 17; *see also* CTIA Nov. 8, 2023 *Ex Parte* Letter at 5 (asserting that implementing this requirement "is likely to be costly for providers, who will have to offer account lock options to all customers, across all covered systems").

[251] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14142, para. 58.

[252] *Id.* at 14142, para. 60.

[253] *See 2007 LNP Four Fields Declaratory Ruling*, 22 FCC Rcd at 19557, para. 48.

[254] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14142, para. 58.

[255] *Compare* Verizon Comments at 10 (supporting codification of "aspects" of the four data fields, noting that "ZIP code is of limited use for verification given its wide availability" and its use to complete porting requests "has resulted in unnecessary confusion") *with* CCA Comments at 6-7 (noting that data fields should not be mandatory as flexibility allows carriers to respond to "security needs and capabilities"); AT&T Comments at 15 & n.15 ("Proposed rule § 52.37(a) – (c), addressing data fields to validate a port-out request, should retain the flexibility to allow carriers to continue using temporary transaction-specific PINs assigned by the carrier in lieu of account-level passcodes assigned by customers, as the temporary PIN offers superior protection"); CTIA Comments at 19 (stating

(continued….)

for validation of wireless-to-wireless ports is not necessary at this time, as we have been provided no evidence that wireless providers are not complying with the validation obligations imposed in the *Four Fields Declaratory Ruling*.[256] As such, we decline to separately codify the customer-provided wireless-to-wireless port validation fields at this time.

C. Additional Consumer Protection Measures

66. In the *SIM Swap and Port-Out Fraud Notice*, we sought comment on whether we should adopt additional measures to address the problems associated with SIM swap and port-out fraud.[257] As discussed below, we require that wireless providers inform customers of any account protection mechanisms the provider offers, ensure that customer service representatives are trained to recognize bad actors' attempts at these fraudulent schemes, and deliver timely resolution of SIM swap and port-out fraud when it does occur. We decline, however, to establish a working group to further study and develop solutions to address the harms of SIM swap and port-out fraud. We also decline to adopt other proposals in the record regarding wireless provider liability and dispute resolution related to SIM swap and port-out fraud.

67. *Customer Notice of Account Protection Measures.* Many of the account protection measures wireless providers offer and that we require wireless providers to adopt today are designed to empower customers to take steps to protect themselves from SIM swap and port-out fraud if they choose, but this empowerment will be stifled if customers are not effectively made aware of the measures that are available. Accordingly, we require wireless providers to provide notice, using clear and concise language, of any account protection measures the provider offers, including the measures we adopt in this *Report and Order*, and make this notice easily accessible via provider websites and applications.[258] We decline to specify the exact format or content of the required notice, as we agree with CCA that wireless providers are well-positioned to determine exactly how best to communicate information about account protection measures to their customers.[259] The record also demonstrates that some wireless providers have already developed content to educate customers about some account protection measures.[260]

68. We decline to require wireless providers to deliver an annual notice to customers regarding the availability of the account protection mechanisms they offer.[261] The record does not exhibit

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that the Commission should "not require the use of a passcode or foreclose the option for providers to use a porting-specific, one-time passcodes"); T-Mobile Comments at 10-11 (encouraging the Commission to not require one-time PINs for validating porting requests, as "secure methods of authentication and carrier practices may evolve over time").

[256] *2007 LNP Four Fields Declaratory Ruling*, 22 FCC Rcd at 19553-58, paras. 42-49.

[257] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14144-46, paras. 68-73.

[258] *See id.* at 14135, para. 39 (seeking comment on a notice requirement and expressing our belief that such notices should be brief, use easy-to-understand language, and be delivered in a manner that is least burdensome to customers). To provide greater clarity on what we require, the language we adopt slightly deviates from what we sought comment on in the *SIM Swap and Port-Out Fraud Notice*.

[259] *See* CCA Comments at 4 (arguing the Commission should allow "carriers to continue to communicate with their customers in the manner that they have found to be most effective").

[260] AT&T Comments at 7 ("AT&T's website provides information about SIM swap scams and misuse of the porting process and offers guidance about how customers can protect themselves against such fraud."); T-Mobile Comments at 5-6 ("T-Mobile publishes Safety Tips to educate subscribers on how to protect themselves online and directs customers to additional resources on identity theft and online safety from the FTC, CTIA, and others. T-Mobile's online resources also inform the customer of what to do if they believe someone has made unauthorized charges to their account.") (footnote omitted); CTIA Comments at 4 (stating that "[it] provides resources for consumers on steps that they can take to protect their wireless accounts").

[261] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14135, para. 39.

support for this requirement and we have no basis for concluding that it would be meaningfully more beneficial for customers than our requirement that wireless providers make notice about the availability of account protection measures easily accessible through provider websites and applications. We therefore decline to adopt an annual notice requirement.

69. *Employee Training.* We require wireless providers to develop and implement training for employees on how to identify, investigate, prevent, and remediate SIM swap and port-out fraud.[262] We find that adopting this employee training requirement will serve as a "first line of defense" against these damaging and evolving practices by preparing employees to defend against such fraud and preventing them from inadvertently or intentionally assisting bad actors in fraudulent schemes.[263]

70. We agree with Verizon that "customer care and employee training programs are critical for preventing and identifying unauthorized and high-risk SIM changes for postpaid customers,"[264] and we find that all customers will benefit from employee training. The record reflects the industry's recognition of the importance of employee training; the country's three largest wireless providers—Verizon, T-Mobile, and AT&T—have already implemented some training measures for customer service representatives to identify, prevent, and remediate fraud.[265] The record also shows, however, that some wireless providers' current practices for customer service representative training may be lacking, as there are reported instances of wireless provider employees failing to identify, prevent, or quickly remediate SIM swap and port-out fraud.[266] We have previously determined that customer service training

[262] *See id.* at 14134-35 & 14144-45, paras. 38 & 69 (seeking comment on training requirements).

[263] *See, e.g.*, NCLC/EPIC Comments at ii, 8-9 (asserting that the Commission should ensure that "providers prohibit their employees from . . . prompting leading questions or other mechanisms to enable fraudulent swaps"); *id.* at 6 (explaining that employees who assist victims "should be trained to provide responsive assistance in a timely manner"); Robert Ross Comments at 7-8 (arguing that any employee that a provider authorizes to perform a SIM swap should, amongst other precautions, "go through a higher level of training and repeat training in a program that is custom developed for high-risk transactions"); OPUS Research Comments at 1 (explaining that "the measures to secure SIM Swap and Port-Out employed by wireless service providers are . . . reliant on well-trained staff at retail stores and customer contact centers" and observing that "fraudsters employ 'human engineering' techniques to enlist support from sales or customer support personnel through multiple calls into a contact center or visits that too often result in successful identity theft in the form of SIM swaps or porting out of a number"); ATL Comments at 1 (asserting that "implementing additional training for all customer service representatives initiating the port outs would provide consistency in security protocols").

[264] Verizon Comments at 2.

[265] *See* Verizon Comments at 3 ("Verizon also trains all customer care employees to identify and prevent unauthorized SIM change attempts through the use of multiple authentication protocols. . . . Customer care employees identifying potentially fraudulent SIM changes refer those reports to dedicated investigative teams."); T-Mobile Comments at 5 ("T-Mobile trains its employees on how to recognize fraud and account takeover attempts and how to respond if fraud occurs. Customer service representatives complete ongoing interactive training curricula on fraud and response. Moreover, T-Mobile provides resources on combatting fraud to employees. These resources are provided and maintained so that employees are knowledgeable about steps and guidelines for recognizing attack attempts and can properly respond to customer reports of fraud."); CTIA Comments at 3-4 ("While each provider's practices are different and many are not publicly visible so as to shield provider tactics from criminals, examples of the variety of tactics used to combat SIM swapping and port-out fraud include: . . . [t]raining employees to identify signs of a fraudulent SIM swap request and uses."); CTIA Reply at 7-8 ("AT&T reports that its customer service agents complete mandatory training, including on fraud prevention, authentication, social engineering, protection of CPNI, and account verification.").

[266] *See, e.g.*, Erik Faraldo Comments (Express) at 1 (reporting that he attempted to enable a port validation feature offered by his provider to prevent port-out fraud but eventually abandoned the effort due to difficulty reaching customer support, lack of knowledge about the feature by customer support representatives, and long wait times); Robert Ross Comments at 1 (detailing that it only took hackers minutes to complete a fraudulent SIM swap and that remediating the fraud took many months); Lee et al. at 7 (discussing how customer service representatives for some carriers processed SIM swaps without proper authentication under existing mechanisms).

requirements play an important role in safeguarding the proper use of CPNI and have required telecommunications carriers to train their personnel on when they are and are not authorized to use CPNI.[267] We similarly conclude that the employee training requirement we adopt today is necessary to ensure customer service representatives are prepared to identify, prevent, and remediate fraudulent SIM change and port-out activity.

71. In applying this requirement, we give wireless providers flexibility on designing their training programs.[268] But we do require that all employees who may communicate with customers regarding SIM changes and number ports must be trained on how to recognize potentially fraudulent requests, how to recognize when a customer may be the victim of fraud, and how to direct potential victims and individuals making potentially fraudulent requests to employees specifically trained to handle such incidents.[269] Given that (1) some wireless providers already train employees on how to address fraud,[270] (2) our new training requirement builds upon our existing CPNI training rule,[271] and (3) we are providing wireless providers with flexibility on how to design their training programs, we do not anticipate that imposing this training requirement will be overly costly for wireless providers.

72. *Requirements to Remedy SIM Swap and Port-Out Fraud.* We are concerned that in some cases, "consumers who have been the victims of SIM swaps or port-out fraud have had difficulties obtaining assistance from the carriers" when they report it.[272] Accordingly, we require wireless providers to maintain a clearly disclosed, transparent, and easy-to-use process for customers to report SIM swap and port-out fraud, promptly investigate and take reasonable steps within their control to remediate such fraud, and, upon request, promptly provide customers with documentation of SIM swap and port-out fraud involving their accounts.[273] These measures must be provided to victims of SIM swap and port out fraud at no cost. We anticipate that, in combination, these requirements will serve to minimize the harms that victims experience as a result of SIM swap and port-out fraud.

73. Our requirement that wireless providers maintain a clearly disclosed, transparent, and easy-to-use process for customers to report SIM swap and port-out fraud rests on our concern that customers currently struggle to report SIM swap and port-out fraud to their wireless providers.[274] When customers are unable to find information about how to report such fraud or use existing customer service avenues to do so, it not only frustrates these customers, it prevents initiation of steps to investigate and

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[267] *See* 47 CFR § 2009(b); *CPNI Reconsideration Order*, 14 FCC Rcd at 14476-77, para. 130.

[268] *See, e.g.*, CCA Comments at 4 ("Should the Commission determine that additional rules are necessary to prevent SIM swap and port out fraud, it should ensure that such rules are sufficiently flexible to account for evolving technologies."); CTIA Reply at 27 ("[T]here is no one-size-fits-all solution to [protecting customer accounts] and that the measures necessary to protect different customers and different types of services vary greatly.").

[269] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14134-35, 14144-45, paras. 38, 69 (seeking comment on training requirements); Verizon Comments at 3 (explaining that customer care employees identifying potentially fraudulent SIM changes refer those reports to dedicated investigative teams, and observing that there is a toll-free number for customers to contact or obtain assistance from Verizon in the event of an unauthorized SIM change).

[270] *See supra* n.265.

[271] 47 CFR § 64.2009(b) ("Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place."); *see also CPNI Order*, 13 FCC Rcd at 8198, para. 198.

[272] NCLC/EPIC Comments at 5.

[273] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14145, para. 69.

[274] Princeton Comments at 11-12 ("We recommend that the Commission require carriers to have a clearly disclosed process for customers to quickly and easily report account compromise."); NCLC/EPIC Comments at ii (asserting that the Commission should "[r]equire carriers to offer a redress program that . . . is fully accessible and transparent to all customers"); *see also SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14144-45, para. 69.

remediate the fraud, which increases the risk that fraudsters will be able to use a victim's SIM or phone number to accomplish further fraud. We anticipate that clear methods for reporting SIM swap and port-out fraud that are transparent to customers will "ensure that customers have easy access to information they need to report SIM swap, port-out, or other fraud."[275] We decline to specify the exact means wireless providers must put in place for customers to report SIM swap and port-out fraud, but we stress that the process must be a clearly disclosed, transparent, and easy-to-use process for customers to notify providers.

74. We require wireless providers to establish procedures to promptly investigate and take reasonable steps within their control to remediate SIM swap and port-out fraud because the record demonstrates that even when victims of SIM swap and port-out fraud are successful in reporting such fraud to their providers, they have difficulty obtaining assistance from their providers to remediate the fraud.[276] This is consequential because "[i]dentity theft, including SIM swap fraud, can cause intense anxiety for victims and must be addressed in a timely manner to prevent financial losses and exposure of personal information."[277] Thus, we conclude that "it should be easy for a customer to get access to appropriate carrier resources that can help mitigate the significant harms caused by SIM swap or port-out fraud."[278] Although we do not specify the procedures that wireless providers must adopt,[279] we agree with commenters that investigations must be instigated and resolved expeditiously.[280]

75. To ensure victims of SIM swap and port-out fraud have additional means to resolve other consequences that result from SIM swap and port-out fraud, we require wireless providers to give customers documentation regarding such fraud on their accounts, upon request.[281] In the *SIM Swap and Port-Out Fraud Notice*, we recognized that "customers sometimes need documentation of the fraud incident to provide to law enforcement, financial institutions, or others to resolve financial fraud or other harms of the incident" and acknowledged that "[a] SIM swap or port-out fraud victim may have difficulty obtaining such documentation from the carrier because the carrier may not have processes in place to produce such documentation."[282] Requiring wireless providers to give fraud victims supporting documentation will enable those victims to seek remedies from other institutions for additional fraud that bad actors achieve using a victim's SIM or phone number. We do not specify the form that such

[275] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14145, para. 69.

[276] *See* Princeton Comments at 11-12 ("There are countless anecdotes of SIM swap and port-out victims who struggle to regain control of their telephone number."); NCLC/EPIC Comments at 5 ("[M]any consumers who have been the victims of SIM swaps or port-out fraud have had difficulties obtaining assistance from the carriers."); Erik Faraldo Comments (Express) (describing one customer's challenges with seeking remediation of SIM swap fraud).

[277] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14145, para. 69.

[278] *Id. See also* Kyle Ratcliff Comments (Express) (urging that the Commission "mandate carriers adopt an easy-to-use and standardized remediation process for those customers who are affected by this type of identity theft. Given the fact that so much of our day to day lives are currently managed by our smartphones, the last thing a consumer should have to do if they have been victimized is negotiate an increasingly Byzantine system of bureaucracy in order to get their rightful account ownership restored.").

[279] *See* Princeton Comments at 11-12 ("We do not take a position on what the nature of that investigation should be or how quickly the carrier should complete it, since the details will vary by account compromise.").

[280] *See* Princeton Comments at 11-12 ("If a carrier receives a credible report of compromise, it should expeditiously investigate without unreasonable delay and, if the report is accurate, restore access to the customer's account."); NCLC/EPIC Comments at 6 (asserting the reports of SIM swap and port-our fraud "should trigger . . . [i]mmediate assistance to the customer both to stop further losses [and an] internal investigation by the customer's provider to determine how the fraud was effectuated").

[281] *See* NCLC/EPIC Comments at ii (arguing that the Commission should "[r]equire carriers to offer a redress program that . . . includes all information necessary for the customer to cooperate with law enforcement").

[282] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14144, para. 68.

documentation must take or exactly what information it must contain, but it should be reasonably designed to permit customers to demonstrate to other entities that they were victims of SIM swap or port-out fraud and that bad actors may have used access to a victim's telecommunications services to carry out additional fraud.[283] Additionally, because of the potential harms that can flow from SIM swap and port-out fraud, we also require wireless providers to provide this documentation promptly.

76. We anticipate that the benefits of our requirements will outweigh any potential costs. Although commenters did not address the costs of the additional measures we adopt here, we note that at least one wireless provider has already adopted processes for customers to report SIM swap and port-out fraud, to investigate and remediate such fraud, and to provide documentation of such fraud to customers upon request.[284] We also anticipate that allowing wireless providers flexibility in how to abide by these new requirements will enable them to adopt cost-effective procedures that will also allow them to successfully resolve SIM swap and port-out fraud incidents when they occur.

77. To maintain the flexibility we believe will be required for wireless providers to adequately tailor and adapt their practices to address SIM swap and port-out fraud, we decline to impose prescriptive measures raised in the *SIM Swap and Port-Out Fraud Notice* and the record. Specifically, although we encourage wireless providers to establish a dedicated hotline for customers to report SIM swap and port-out fraud[285] and respond within 24 hours of a customer reporting suspected fraud,[286] we decline to require that wireless providers adopt these approaches. While the former requirement received support from the National Consumer Law Center (NCLC) and the Electronic Privacy Information Center (EPIC), we conclude that it may not benefit a wireless provider's customers if it is inconsistent with a provider's established customer service methods. The latter may be infeasible for certain incidents and is not necessary given our requirement that investigation and remediation be prompt. We also decline to require that wireless providers give customers an alternative number on a temporary basis after SIM swap or port-out fraud has occurred,[287] as that may promote number resource exhaust in certain areas or for certain wireless providers. However, we encourage wireless providers to offer customers a temporary alternative number when the efforts to remediate SIM swap or port-out fraud may take a significant amount of time or to assist customers who have critical needs to be accessible via phone at the time.[288] We do not find it necessary at this time to require that wireless providers, upon being notified by a customer of fraud, provide "detailed records of the fraud [to law enforcement]" or "offer to the customer to notify financial institutions and creditors, the three national credit reporting agencies, and others of the fraud, to help the customer recover control over their identity, if appropriate."[289] While we encourage

[283] Such documentation must address the customer's interest in protecting his or her account(s) or identity but may be tailored not to include other proprietary, confidential, or law-enforcement-related information regarding the SIM swap or port-out fraud or the account.

[284] *See* T-Mobile Comments at 5 ("If a customer is a victim of SIM swap or port-out fraud, T-Mobile takes rapid, responsive measures. Customers may report fraud or unauthorized activity by calling T-Mobile's Customer Care hotline, which is available 24/7. When fraud occurs, T-Mobile's Fraud Operations specialists act quickly to ensure all fraudulent changes are corrected and any wrongful T-Mobile account charges are refunded. T-Mobile also assists with phone number recovery and provides victims with documentation of the fraud upon request.").

[285] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14145, para. 69; NCLC/EPIC Comments at 5 ("As suggested, a dedicated and well-publicized hotline should be one component.") (footnote omitted).

[286] NCLC/EPIC Comments at ii (asserting that the Commission should "[r]equire carriers to offer a redress program that . . . provides timely responses within 24 hours after a complaint is made").

[287] *Id.* at 6 (asserting that carriers should "provide a safe alternative mobile telephone" during the mitigation process).

[288] We also recognize that adequate remediation may require providing victims with permanent replacement numbers or SIMs, and carriers should effectively assist customers with that transition should that be necessary.

[289] NCLC/EPIC Comments at 6.

wireless providers to take these steps upon the request of customers as part of their mitigation efforts, we conclude that our new requirement that providers give customers documentation concerning fraudulent SIM swaps and number ports will be sufficient to allow those customers to alert appropriate entities if needed. We note, however, that we will monitor consumer complaints and may evaluate the remediation programs implemented by wireless providers. If we find that such programs are not adequately resolving SIM swap and port-out fraud in a timely manner, we may take steps to implement more specific requirements in the future.

78. *Working Group.* While we recognize that the harmful effects of SIM swap and port-out fraud may extend beyond the control of wireless providers and that the incentives to engage in such fraud implicate the security practices of other industries,[290] we decline at this time to direct or rely on standard-setting bodies, industry organizations, or consumer groups to evaluate SIM swap and port-out fraud "to augment our understanding and present possible solutions."[291] Instead, we find it most appropriate to focus on solutions within the scope of the Commission's authority that we anticipate will mitigate the harmful consequences of this fraud.[292] Additionally, to the extent that commenters advocated that we direct this issue to a working group before taking action,[293] we disagree with that approach and find that doing so would only delay solutions that we expect will benefit customers now. Although we decline to rely on a working group, we also do not foreclose wireless providers from forming or entering into cross-sector, multi-stakeholder efforts, independent of Commission direction, to seek broader solutions to the harms that may ultimately result from SIM swap and port-out fraud.[294]

79. *Provider Liability and Dispute Resolution.* We decline to adopt proposals in the record that prescribe provider liability and dispute resolution requirements for disputes between wireless providers and customers.

80. NCLC and EPIC argue that the Commission should "[r]equire carriers to offer a redress program that . . . provides full coverage of losses to customers who have been the victims of a fraudulent SIM swap or port-out fraud," which they say would "[p]rovide strong financial incentives to providers to stop SIM swapping and port-out fraud."[295] We agree with CTIA, however, that telecommunications carriers are "but one link in the chain of consumer and business protection from account takeover

[290] *See, e.g.*, AT&T Comments at 2 ("SIM swap or port-out [fraud] is only a small part of the scheme to harm the consumer, as these incidents implicate a range of stakeholders not controlled by carriers (e.g., financial institutions, cryptocurrency companies, text message aggregators) that all play a role in the verification of customer identity."); T-Mobile Comments at 1-2 ("[C]ombatting SIM swap and port-out fraud is a team effort that requires action by an entire ecosystem that includes carriers and subscribers as well as financial institutions, email providers, retail websites, social media companies and others who rely on various customer authentication methods."); CTIA Reply at 11 ("[T]he record makes it abundantly clear that others beyond the wireless sector need to engage to address the problem of fraudulent account takeovers.").

[291] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14146, para. 72.

[292] AT&T Comments at 8 (acknowledging that "SIM swap and port-out scams implicate third parties outside the Commission's jurisdiction").

[293] *See, e.g.*, *id.* at 3 (asserting that the Commission should "first leverage existing resources and expertise . . . before deciding on a course of action"); Bandwidth Reply at 6 ("In order to fully explore and understand the full breadth of the issues and their potential solutions, Bandwidth agrees with those opening comments that recommend that the Commission support inclusive and consensus-driven industry efforts as its next step in this proceeding."); *cf.* T-Mobile Comments at 14-15 (suggesting that "the FCC could coordinate with other regulators, such as financial services or healthcare regulators, on strategies" to address SIM swap and port-out fraud and that "[t]he Commission also may want to coordinate with NIST on addressing authentication issues").

[294] *See, e.g.*, CTIA Reply at 11 ("[T]he Commission should convene a cross-sector, multi-stakeholder working group to study the broader questions in the NPRM that go beyond the rule changes proposed.").

[295] NCLC/EPIC Comments at ii.

fraud,"[296] and therefore that the responsibility for financial harms that a bad actor may be able to perpetuate following such fraud is borne by several parties, including, significantly, the bad actor. Imposing such liability on wireless providers would be inequitable and would reduce the incentives for e-mail and social media providers, financial institutions, healthcare providers, retail websites, and other entities that rely on cell phone-based identity authentication to improve their security practices,[297] as well as reduce the incentive for customers to act responsibly.[298] We note, however, that compliance with our rules is not a safe harbor for wireless providers; customers will still be able to pursue any existing remedies available by law.[299]

81. Similarly, we decline to specify, as NCLC and EPIC request, that wireless providers are "fully responsible for any abuse committed by its employees, whether the employees acted either intentionally or negligently,"[300] although we make clear that this statement does not absolve wireless providers of any liability for employee actions that already exists. We anticipate that the requirements we adopt today—including employee training regarding SIM swap and port-out fraud and restrictions on the ability of employees to access CPNI prior to authentication—will ensure that wireless providers implement adequate procedures to prevent employees from perpetuating SIM swap and port-out fraud.

82. Finally, we decline to adopt NCLC and EPIC's proposal that "any arbitration clauses in the providers' agreements with consumers explicitly exclude resolutions" of SIM swap and port-out fraud disputes at this time.[301] They urge this because "[o]therwise, consumers who have not been made whole, or who have difficulties obtaining relief for frauds that are perpetrated on them because of the provider's insufficiently strict authentication protocols, will have no meaningful way of enforcing the protections mandated by the Commission."[302] The Commission has full authority to enforce the protections it has mandated, and we anticipate that the rules we adopt today, coupled with this enforcement authority, will incentivize wireless providers to adopt strong practices to protect customers from SIM swap and port-out fraud. Nonetheless, we seek comment below on whether the Commission should require providers to exclude disputes about SIM swapping or porting fraud from arbitration clauses.[303] We encourage customers and public interest organizations to submit complaints and evidence of wireless providers failing to comply with these new rules in support of our enforcement efforts.

D. Implementation Timeframe

83. We require wireless providers to comply with the requirements we adopt today six months after the effective date of the *Report and Order* or, for those requirements subject to review by the

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[296] CTIA Reply at 13-14.

[297] *See id.* ("[H]olding providers solely or presumptively liable risks undermining the incentives other players involved in SIM swap losses, such as banks and crypto wallets, have to prevent fraud. Such an approach also would be inequitable.").

[298] For example, if customers knew that wireless providers must provide full coverage of losses resulting from SIM swap and port-out fraud, they might not be fully incentivized to place locks on their account or take appropriate action when they receive notice from their wireless providers about unauthorized SIM swap and port-out requests or failed authentication attempts.

[299] *See, e.g.*, *Al Weiss v. AT&T Inc.*, No. 6:23-cv-00120 (M.D. Fla., filed Jan. 23, 2023); *Eman Bayani v. T-Mobile USA, Inc.*, No. 2:23-cv-00271 (W.D. Wash. filed Feb. 27, 2023); *Samuel Whatley, II v. T-Mobile USA, Inc.*, No. 2:23-cv-1339-RMG-MGB (D.S.C. filed Apr. 3, 2023); *Feliks Roitman and Yekaterina Shkolnik v. T-Mobile USA, Inc.*, No. 1:23-cv-06159 (E.D.N.Y., filed Aug. 16, 2023).

[300] NCLC/EPIC Comments at 10.

[301] *Id.* at 6.

[302] *Id.*

[303] *See infra Further Notice*.

Office of Management and Budget (OMB), upon completion of that review, whichever is later. We conclude that providing six months to achieve compliance with rules that are not subject to OMB review accounts for the urgency of safeguarding customers from these fraudulent schemes, and will allow wireless providers to coordinate any updates needed to their systems and processes to comply with the Safe Connections Act and the rules we adopt to implement that statute.[304] SIM swap and port-out fraud can result in substantial harm to the customer, including loss of service on their devices. Fraudulent SIM swaps and port-outs allow bad actors to perpetrate greater fraud by giving them the means to complete text and voice authentications to access the victim's other accounts, and as such, we find that an aggressive implementation timeframe is appropriate to provide these important consumer protections without substantial delay. We agree with some commenters that while many wireless providers can immediately implement the revisions to our CPNI and number porting rules, other providers may require this additional time.[305] Some wireless providers already employ authentication[306] and notification[307] measures to process SIM change and port-out requests, offer account change locks,[308] provide notice to

[304] *See generally Safe Connections Order*. *But see* Letter from Steven F. Morris, Vice President & Deputy General Counsel, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-341 et al., at 2 (filed Nov. 7, 2023) (requesting an 18 month implementation timeframe, asserting that additional time is needed because "there are numerous steps required for providers to implement [changes to their subscription and account management procedures and systems], including, for example, IT grooming, design and development, unified customer communications notification and development, development testing, quality assurance testing, user acceptance testing, and training"); NTCA Nov. 8, 2023 *Ex Parte* Letter at 2 (expressing support for the 18-month implementation timeframe requested by NCTA); CCA Nov. 9, 2023 *Ex Parte* Letter at 1-2; CTIA Nov. 8, 2023 *Ex Parte* Letter at 2 (requesting an implementation timeframe of 24 months, or at a minimum 18 months, for the same reasons, and given that "providers are simultaneously preparing to come into compliance with the Safe Connections Act and its implementing regulations").

[305] *See* T-Mobile Comments at 13-14 ("While some of the changes proposed by the FCC can be implemented immediately, others may require a longer implementation timeframe."); NCTA Comments at 8 ("[I]t is important to provide sufficient time for carriers to implement [new obligations] in a way that is robust, thorough, and clear so that they do not cause customer confusion").

[306] *See, e.g.*, AT&T Comments at 13 ("Carriers are already authenticating customers using one or more of the methods identified in the Commission's existing and/or proposed rules."); *id.* at 6-7 (describing its routine use of "a one-time PIN delivered via SMS message or an outbound voice call to a postpaid customer's device for enhanced customer validation," and its "Number Transfer PIN process to validate postpaid port-out transactions"); CCA Comments at 3-4 (describing U.S. Cellular's assigning of a PIN code to each customer that is used for customer authentication); Better Identity Coalition Comments at 4 (noting that "two major mobile network operators already support FIDO authentication for their customers"); NCTA Comments at 4-5 (describing authentication measures some wireless providers already use, including account PINs); T-Mobile Comments at 4 ("T-Mobile offers various customer authentication options, which may vary based on customer, account, and device characteristics."); Verizon Comments at 8-9 (describing current authentication measures, including a transaction-specific "Number Transfer PIN" and notifying customers of port requests via text message and email); CTIA Comments at 3-4 (noting that some providers already employ multi-factor authentication when account changes are requested).

[307] *See, e.g.*, AT&T Comments at 6 (explaining that for transactions meeting a certain threshold of AT&T's "risk model," it will send one-way SMS notifications of a SIM change request, and for transactions meeting a higher risk threshold, it will require customers confirm the SIM change request via an SMS notification); T-Mobile Comments at 4 (noting that "T-Mobile notifies customers of account changes and requests"); Verizon Comments at 6 ("Verizon already . . . notif[ies] customers of high-risk SIM change authentication attempts, failed or otherwise, and of other account changes."); CCA Comments at 3-4 (describing the current procedures that T-Mobile, U.S. Cellular, and GCI use to notify customers of a change to their account or port-out request, and that other members are "similarly adopting heightened security measures"); CTIA Comments at 3-4 (explaining that some providers notify customers when a SIM swap is initiated).

[308] *See, e.g.*, T-Mobile Comments at 4 ("[F]or most types of customers, T-Mobile can institute a 'SIM change block'. . ."); NCTA Comments at 4-5 ("Wireless providers already . . . provid[e] the ability to lock or freeze wireless accounts."); CTIA Reply at 26-27 ("[M]any providers already offer account freeze options to their customers."); (continued….)

customers about available fraud protection measures,[309] and train employees on how to address SIM swap and port-out fraud,[310] and may simply need to refine those practices to align with our rules. Other providers, particularly smaller providers, may need the additional time to upgrade their systems, implement modifications to their policies and procedures, and conduct new customer service representative training.[311] We conclude that providing six months after the effective date of the *Report and Order* to implement these revisions to our CPNI and number porting rules strikes the right balance between time for wireless providers to implement these changes and accounting for the urgency of safeguarding customers from these fraudulent schemes. We also find that this implementation timeframe is consistent with other proceedings and regulatory frameworks adopted by the Commission where consumer protection and numbering requirements were at issue.[312] While we acknowledge industry's concerns that implementing these new rules will be a multistep process for many providers,[313] providers themselves acknowledge the necessity of implementing today's revisions to our CPNI and LNP rules concurrently with our rules implementing the Safe Connections Act, given how both frameworks address many of the same actions (e.g., account locks, customer notifications, customer authentication).[314] And as we explain in the *Safe Connections Order*, "permitting a more extended compliance timeframe for implementing the line separation provisions, as advocated for by industry commenters, would be inconsistent with the urgency Congress demonstrated with the underlying statutory obligation as well as with the critical wireless communications needs of survivors well-documented in the record."[315] For all of

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CCA Comments at 3-4 (describing T-Mobile's "Account Takeover Protection" service, which "blocks unauthorized users from porting numbers and allows only the billing responsible party to turn the feature off").

[309] AT&T Comments at 7 ("AT&T's website provides information about SIM swap scams and misuse of the porting process and offers guidance about how customers can protect themselves against such fraud."); T-Mobile Comments at 5-6 ("T-Mobile publishes Safety Tips to educate subscribers on how to protect themselves online and directs customers to additional resources on identity theft and online safety from the FTC, CTIA, and others. T-Mobile's online resources also inform the customer of what to do if they believe someone has made unauthorized charges to their account.") (footnote omitted); CTIA Comments at 4 (stating that "[it] provides resources for consumers on steps that they can take to protect their wireless accounts").

[310] *See, e.g.*, Verizon Comments at 3 ("Verizon also trains all customer care employees to identify and prevent unauthorized SIM change attempts through the use of multiple authentication protocols. . . . Customer care employees identifying potentially fraudulent SIM changes refer those reports to dedicated investigative teams."); T-Mobile Comments at 5 ("T-Mobile trains its employees on how to recognize fraud and account takeover attempts and how to respond if fraud occurs."); CTIA Comments at 3-4 (listing employee training as an example of the tactics providers use to combat SIM swap and port-out fraud); CTIA Reply at 7-8 ("AT&T reports that its customer service agents complete mandatory training, including on fraud prevention, authentication, social engineering, protection of CPNI, and account verification.").

[311] *See, e.g.*, NCTA Comments at 8 ("Many of the potential solutions might require modifications to internal systems, as well as significant training of company personnel.").

[312] *See, e.g.*, *2007 CPNI Order*, 22 FCC Rcd at 6958, para. 61 (concluding that six months was sufficient for carriers to implement the revised CPNI rules to address pretext (except for certain small carriers) "in light of the importance of this issue to the public interest"); *2007 LNP Four Fields Declaratory Ruling*, 22 FCC Rcd at 19552, 19557, paras. 40, 48 (concluding that 90 days was sufficient time for carriers to comply with LNP validation requirements and requiring interconnected VoIP providers and their numbering partners to comply with LNP obligations 30 days after Federal Register publication, subject to OMB review and approval).

[313] *See, e.g.*, CTIA Nov. 8, 2023 *Ex Parte* Letter at 2-3.

[314] *See, e.g.*, NCTA Nov. 7, 2023 *Ex Parte* Letter at 2-3 ("[M]any of the requirements that will be imposed in connection with the *Safe Connections* item operate as exceptions to the verification and security requirements that will be imposed in the *SIM Swap and Port-Out Fraud* item.").

[315] *Safe Connections Order*, FCC 23-96, at para. 103.

these reasons, we require wireless providers to implement the rules we adopt today six months after the effective date of this *Report and Order*, subject to review by OMB.

E. Legal Authority

84. The rules we adopt today build on the Commission's existing rules to implement Congress's mandates to ensure that telecommunications carriers (which include, for purposes of our CPNI rules, providers of interconnected VoIP service) protect the confidentiality of proprietary information of, and relating to, customers and to provide number portability in accordance with requirements prescribed by the Commission. As such, the rules we adopt are well-grounded in our authority in sections 222 and 251, as well as other provisions of the Act.

85. *SIM Changes.* Congress, through section 222 of the Act, requires telecommunications carriers to protect the privacy and security of customers' proprietary information that carriers obtain by virtue of providing a telecommunications service.[316] Under section 222(a), every telecommunications carrier has a "duty to protect the confidentiality of proprietary information of, and relating to, . . . customers."[317] Section 222(c)(1) provides that a telecommunications carrier may only use, disclose, or permit access to customers' individually identifiable CPNI that it has received or obtained by virtue of its provision of a telecommunications service in limited circumstances: (1) as required by law; (2) with the customer's approval; or (3) in its provision of the telecommunications service from which such information is derived or its provision of services necessary to, or used in, the provision of such telecommunications service.[318]

86. The Commission has previously stated that to comply with these section 222 requirements, "telecommunications carriers [must] establish effective safeguards to protect against unauthorized use or disclosure of CPNI."[319] The Commission also has established rules pursuant to its section 222 authority to ensure such safeguards are in place. Among other things, the Commission's rules require carriers to take "reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI" and to "properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone contact, online account access, or an in-store visit."[320] Like these safeguards, our action today "strengthen[s] our privacy rules by adopting additional safeguards to protect customers' CPNI against unauthorized access and disclosure."[321]

87. Fraudulent SIM swaps result in unauthorized disclosure of and access to customers' accounts, including individually identifiable CPNI.[322] By successfully obtaining a fraudulent SIM swap, a

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[316] Congress extended this duty and others described herein to wireless providers. *See* 47 U.S.C. § 332(c)(1)(A) ("A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter.").

[317] 47 U.S.C. § 222(a).

[318] 47 U.S.C. § 222(c)(1).

[319] *See 2007 CPNI Order*, 22 FCC Rcd at 6932, para. 9 (citing the *CPNI Order*, 13 FCC Rcd at 8195, para. 193). We note that the Commission's CPNI rules apply not only to telecommunications carriers that are subject to Title II of the Act, but also to interconnected VoIP providers. *See id.* at 6954-57, paras. 54-59 (relying on the Commission's Title I ancillary jurisdiction to apply CPNI rules to interconnected VoIP service providers); *see also* 47 CFR § 64.2003(o) ("For the purposes of this subpart, the term 'telecommunications carrier' or 'carrier' shall include an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules.").

[320] 47 CFR § 64.2010(a); *see also 2007 CPNI Order*, 22 FCC Rcd at 6959-60, paras. 63-66.

[321] *2007 CPNI Order*, 22 FCC Rcd at 6928, para. 1.

[322] The Act defines CPNI as "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received (continued….)

bad actor can access CPNI such as incoming call information (including the date and time of the call and number from which the call is made), and gain access to a victim's account, potentially giving the bad actor access to other CPNI, like outgoing call history (including numbers called and the location, frequency, duration, and timing of such calls)[323] and the victim's bills and the services purchased by the victim. And as described above, fraudulent SIM swaps allow bad actors to perpetrate greater fraud by giving them the means to complete text and voice authentications to access the victim's other accounts.[324]

88. In light of the foregoing, we find that the rules we adopt today to address SIM swap fraud advance the protections against unauthorized disclosure of, and access to, individually identifiable CPNI and other sensitive personal information about customers, and therefore are squarely grounded in the Commission's authority under section 222. Our requirement that wireless providers use secure methods of authenticating their customers that are reasonably designed to confirm a customer's identity prior to effectuating a SIM change request will help prevent unauthorized disclosure of and access to such information. This requirement also sustains customer decisions regarding disclosure of their information—if a wireless provider completes a SIM change requested by someone other than the actual customer, then the wireless provider has not obtained the customer's approval to disclose their CPNI in accordance with section 222(c)(1).[325]

89. The other rules we adopt reinforce the protections afforded by this new rule. For instance, the requirement that wireless providers develop, maintain, and implement procedures to respond to failed authentication attempts will likewise serve to prevent unauthorized disclosure of and access to CPNI. The rule requiring that wireless providers establish safeguards and processes so that employees who receive inbound customer communications are unable to access CPNI until after the customer has been properly authenticated will prevent inadvertent disclosure of CPNI to those making unauthorized requests and inhibit the ability of employees to participate in fraudulent SIM swaps. Employee training requirements will not only improve their ability to recognize and derail fraudulent SIM change requests, such requirements will better prepare customer service representatives to address customer complaints and remediate fraudulent SIM swaps when they do occur. Requiring wireless providers to maintain a clear process for customers to report fraud, investigate and remediate fraud, and provide customers with documentation of fraud involving their accounts will ensure that the harms of SIM swap and port-out fraud are mitigated when it does occur. And the requirement that wireless providers keep records of data regarding SIM change requests and the authentication measures they have in place will help ensure that wireless providers have information they need to measure the effectiveness of their customer authentication and account protection measures and make informed decisions about how they should be updated over time.

90. Our rules also further the goals of section 222 by enabling customers to take action to prevent and address fraudulent SIM changes, and therefore help wireless providers protect against unauthorized disclosure and access to CPNI. The requirement that wireless providers immediately notify customers regarding SIM change requests provides added protection by giving customers information they can use to notify their providers that a fraudulent request has occurred at the time of the request or

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by a customer of a carrier; except that such term does not include subscriber list information." 47 U.S.C. § 222(h)(1).

[323] *See 2007 CPNI Order*, 22 FCC Rcd at 6936, para. 13 & n.45 (defining this information as call detail information and finding it to be CPNI).

[324] *See supra* section II.

[325] Section 222(f) of the Act also provides that for purposes of section 222(c)(1), without the "express prior authorization" of the customer, a customer shall not be considered to have approved the use or disclosure of or access to (1) call location information concerning the user of a commercial mobile service or (2) automatic crash notification information of any person other than for use in the operation of an automatic crash notification system." 47 U.S.C. § 222(f).

shortly thereafter so that the provider can take timely steps to remediate the situation. Requiring wireless providers to offer customers the option to lock their accounts so that their providers are prohibited from processing SIM changes gives security-minded customers or those who are at high risk of fraud a tool to prevent a fraudulent request from being processed in the first instance. Additionally, our new rule that wireless providers make notice of account protection mechanisms easily accessible via their websites and applications ensures that customers are aware of these tools. We also conclude that the requirements we establish to promptly resolve SIM swap and port-out fraud extend from our section 222 authority because they will help to mitigate the unauthorized disclosure of and access to CPNI.

91. Finally, the new customer authentication requirements, with which both facilities-based providers and resellers must comply, apply to both pre-paid and postpaid services, which is consistent with section 222(a)'s mandate that "[*e*]*very* telecommunications carrier . . . protect the confidentiality of [customer] proprietary information" and section 222's instruction that all "customers" of those carriers benefit from such protections.[326]

92. While section 222 provides firm foundation for our rules to address SIM swap fraud, we also find that section 251(e) of the Act provides additional authority for these rules.[327] In section 251(e)(1), Congress expressly assigned to the Commission exclusive jurisdiction over that portion of the North American Number Plan (NANP) that pertains to the United States and related telephone numbering issues.[328] The Commission retained its "authority to set policy with respect to all facets of numbering administration in the United States."[329] Because our new SIM change rules prevent and address misuse of NANP numbers assigned to wireless devices, we conclude that those rules are supported by our exclusive numbering authority within section 251(e).

93. *Number Porting*. We rely on our authority derived from sections 1, 2, 4(i), 251(e), and 332 of the Act to implement the changes to our number porting rules to address port-out fraud. As the Commission has consistently found since 1996, "[w]e possess independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS providers to provide number portability as we deem appropriate."[330] We rely on this well-established authority to adopt number porting rules applicable to wireless providers that address port-out fraud.

94. We also find that the exclusive numbering authority that Congress granted this Commission under section 251(e)(1) provides ample authority to extend the LNP requirements as set out in this *Report and Order*. Specifically, in section 251(e)(1) of the Act, Congress expressly assigned to the Commission exclusive jurisdiction over that portion of the NANP that pertains to the United States and related telephone numbering issues.[331] The Commission retained its "authority to set policy with respect

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[326] 47 U.S.C. § 222(a) (emphasis added); 47 U.S.C. §§ 222(a), (c)(1), (h)(1) (all referring to "customers" of telecommunications carriers without distinguishing between customers who subscribe to pre-paid and postpaid service).

[327] 47 U.S.C. § 251(e).

[328] 47 U.S.C. § 251(e)(1).

[329] *Implementation of the Local Competition Provision of the Telecommunications Act of 1996* et al., CC Docket No. 96-98 et al., Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996) (*Local Competition Second Report and Order*) (explaining that by retaining exclusive jurisdiction over numbering policy the Commission preserves its ability to act flexibly and expeditiously).

[330] *First Number Portability Order*, 11 FCC Rcd at 8431, para. 153; *see also First Number Portability Order on Reconsideration*, 12 FCC Rcd at 7315, para. 141; *LNP Standard Fields Order*, 25 FCC Rcd at 6955 n.10; *Porting Interval Order and FNPRM*, 24 FCC Rcd at 6085 n.8; *2007 VoIP LNP Order*, 22 FCC Rcd at 19534 n.11.

[331] 47 U.S.C. § 251(e)(1).

to all facets of numbering administration in the United States."[332] We find that the revisions to our number porting rules designed to protect the customers from port-out fraud fit comfortably within our exclusive numbering authority because the requirements we establish to prevent and promptly resolve port-out fraud are necessary to address improper use of numbering resources and ensure that customers can recover their numbers when fraudulent ports have occurred.[333]

95. *Other Sources of Authority.* While the provisions discussed above provide sufficient authority for the entirety of the rules we adopt in this *Report and Order*, we find additional support under sections 201 and 303.[334]

96. Section 201(b) authorizes the Commission to prescribe rules to implement carriers' statutory duty not to engage in conduct that is "unjust or unreasonable."[335] We conclude that practices that allow for fraudulent SIM swaps and number ports are unjust and unreasonable because they are contrary to the reasonable expectations of customers, are not reasonably avoidable by customers, and can cause substantial customer harm. We also rely on our section 201(b) authority to find that the inability for customers to effectively seek remedies from their wireless providers when fraudulent SIM swaps and port outs have occurred is "unjust and unreasonable," and therefore warrants these rules.[336] We would also find these practices unjust and unreasonable when a wireless provider says it will implement reasonable measures to prevent fraudulent SIM swaps and number ports but fails to do so. Our findings here are similar to and consistent with how the Federal Trade Commission (FTC) addresses inadequate data security measures under section 5 of the FTC Act.[337]

97. We also rely on our broad authority under Title III, which allows us to protect the public interest through spectrum licensing. Pursuant to section 303(b)'s directive that the Commission must, consistent with the public interest, "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class,"[338] these revisions to our CPNI and number porting

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[332] *Local Competition Second Report and Order*, 11 FCC Rcd at 19512, para. 271 (explaining that by retaining exclusive jurisdiction over numbering policy the Commission preserves its ability to act flexibly and expeditiously).

[333] *See, e.g.*, *2007 VoIP LNP Order*, 22 FCC Rcd at 19543, para. 22 (explaining that to the extent service providers provide services that offer customers NANP telephone numbers, those service providers subject themselves to the Commission's plenary authority under section 251(e)(1) with respect to those numbers, and using that plenary authority to extend local number portability requirements to interconnected VoIP providers and their numbering partners).

[334] Sections 201 and 303 of the Act generally give the Commission authority for prescribing rules, but we also rely on these sources of authority as described herein. *See* 47 U.S.C. § 201(b) ("The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter."); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 (1999) (holding that the last sentence in section 201(b) "means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act,'" including provisions added by the Telecommunications Act of 1996); *2007 CPNI Order*, 22 FCC Rcd at 6943, para. 27 n.94 ("Section 201(b) authorizes the Commission to 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act,' including section 222."); 47 U.S.C. § 303 ("Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall—(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter.").

[335] 47 U.S.C. § 201(b).

[336] *Id.*

[337] *Privacy and Security Enforcement*, Federal Trade Commission, https://www.ftc.gov/news-events/topics/protecting-consumer-privacy-security/privacy-security-enforcement (last visited Oct. 18, 2023) ("The FTC has brought legal actions against organizations that . . . misled [consumers] by failing to maintain security for sensitive consumer information.").

[338] 47 U.S.C. § 303(b); *Cellco P'ship v. FCC*, 700 F.3d 534, 542-43 (D.C. Cir. 2012).

requirements prescribe the conditions under which licensed wireless providers must provide their services. They specifically require licensed wireless providers to provide their services in a way that protects the interests of their customers, including reasonable measures to prevent fraudulent acts against their customers.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

98. *Harmonizing the CPNI Safeguards Rules.* In this *Further Notice*, we first seek comment on whether to harmonize the existing requirements governing customer access to CPNI[339] with the SIM change authentication and protection measures we adopt today. This *Further Notice* expands on questions the Commission asked in the *SIM Swap and Port-Out Fraud Notice* and several comments in the record, but seeks more targeted feedback on a specific approach. In particular, in the *SIM Swap and Port-Out Fraud Notice*, the Commission asked "whether any new or revised customer authentication measures . . . would offer benefits for all purposes."[340] The Commission also asked whether there are "benefits to providing expanded authentication requirements before providing access to CPNI to someone claiming to be a carrier's customer," as well as "whether any heightened authentication measures required (or prohibited) should apply for access to all CPNI, or only in cases where SIM change requests are being made."[341] Additionally, the Commission proposed to add a prohibition on the use of recent payment and call detail information to authenticate customers for online access to CPNI.[342]

99. Several commenters suggested that we harmonize our CPNI authentication rules with the SIM change authentication rules we adopt.[343] These commenters offered several rationales that potentially support harmonization of these rules, including that: (1) the CPNI authentication requirements are outdated and therefore vulnerable to fraud;[344] (2) inconsistent rules are more burdensome on carriers;[345] (3) some carriers default to specified authentication measures and are disincentivized from

[339] *See* 47 CFR § 64.2010.

[340] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14136, para. 44.

[341] *Id.* at 14137, para. 46.

[342] *See id.* at 14132-33, para. 30.

[343] *See, e.g.*, CTIA Reply at 21-22 (advocating for "a *harmonized* approach to the Commission's authentication standards across a variety of settings with respect to CPNI access") (emphasis in original); Princeton Comments at 8 ("The Commission should modernize and harmonize baseline authentication requirements for telephone access to CPNI, online access to CPNI, SIM swaps, and number portability authentication methods."); Verizon Comments at 7-8 ("The Commission should thus align the existing authentication rules to the NPRM's flexible, non-prescriptive approach by requiring providers to use security [sic] authentication methods for CPNI access without dictating the provider's method.").

[344] *See, e.g.*, CTIA Comments at 18 (asserting that the CPNI rules "do not reflect the most up-to-date authentication best practices"); Verizon Comments at 7 (asserting that "[m]any customer authentication and security tools have surpassed the effectiveness of [the current CPNI rules for customer authentication]"); FIDO Alliance Comments at 4 ("In general, industry and government are moving away from knowledge-based approaches to authentication (i.e. passwords)."); Robert Ross Comments at 7 ("[I]n-store authentication is highly susceptible to human error by store personnel."); AT&T Comments at 5 ("But no method of authentication is foolproof or effective in every instance. Customers forget passwords and lose their IDs (often at the same time they lose their wireless device). By the same token, passwords can be socially engineered, hacked or stolen, and driver's licenses and other government-issued ID cards can be faked."); *but see* AT&T Comments at 5 ("Anti-fraud measures developed consistent with the Commission's existing authentication requirements protect consumers in most instances.").

[345] *See, e.g.*, Princeton Comments at 8 ("The Commission's proposed rules would establish five separate customer authentication standards: (1) telephone access to CPNI, (2) online access to CPNI, (3) in-store access to CPNI, (4) SIM swaps, and (5) number portability."); Princeton Comments at 10 ("[A] unified approach will be easier to implement: carriers need only adopt one compliant customer authentication system for all account access and operations.").

adopting more secure measures;[346] (4) a prescribed list provides a road map for bad actors;[347] and (5) the existing CPNI authentication requirements could undermine stronger authentication measures for SIM changes and number ports.[348] Harmonization also would be consistent with commenters' assertions that carriers need flexibility to implement more secure authentication measures.[349] We seek comment on these justifications.

100. We also seek comment on other potential justifications for harmonization. For instance, we tentatively conclude that harmonized authentication and protection requirements will be easier for wireless providers to implement and therefore will reduce costs and burdens on carriers, including small carriers. We further tentatively conclude that multiple authentication standards and protection requirements may be confusing for customers. Are these tentative conclusions correct?

101. We seek comment on any reasons why we should not harmonize our CPNI and SIM change authentication rules. For example, would it be costly and burdensome for carriers, particularly small carriers, to adjust the CPNI authentication and protection practices they have already implemented to comply with the authentication requirements we adopted today? Are there other reasons harmonized rules would increase the costs or burdens on carriers, including small carriers? Is there anything unique about CPNI or SIM changes that warrants different authentication measures? For instance, even if the existing measures for CPNI authentication may be outdated and less secure, are modifications to the rules unwarranted because the risk of harm from unauthorized access to CPNI is lower than from SIM swap fraud?

102. If we do choose to harmonize the rules addressing customer access to CPNI with our new SIM change safeguards, we seek comment on the extent to which the rules should be harmonized. We seek comment whether to remove the prescriptive authentication requirements in our current CPNI rules[350] and replace them with the single requirement that carriers use secure methods of authenticating the identity of a customer prior to disclosing CPNI. We also seek comment on whether to use the same definition of secure methods of authentication, which are those that are reasonably designed to confirm a customer's identity and excluding use of readily available biographical information, account information, recent payment information, call detail information, or any combination of these factors.[351] Additionally,

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[346] *See, e.g.*, AT&T Comments at 14 ("Moreover, locking in a particular list of authentication methods would play into bad actors' hands by discouraging carriers from adopting new methods not expressly blessed by the Commission's rule, while inhibiting the ability of carriers and other stakeholders to innovate, as necessary and appropriate, to address evolving threats.").

[347] *See, e.g.*, AT&T Comments at 14-15 (asserting that "fixed authentication methods for SIM changes and port-outs will provide a roadmap to bad actors"); CTIA Comments at 11 ("[R]igid and prescriptive requirements hurt security more than they may help. . . . To this point, the NPRM asks whether 'requiring specific methods of authentication provides a 'roadmap' to bad actors.' The answer is a resounding yes.") (footnote omitted).

[348] *See, e.g.*, Princeton Comments at 10 (describing how "a unified approach to customer authentication avoids subtle inconsistencies between levels of authentication that could undermine multi-factor authentication" used for SIM swaps and number ports).

[349] *See, e.g.*, CCA Comments at 5 ("[T]he Commission should allow for flexibility for carriers to respond quickly and nimbly to new threats and to encourage adopting innovative solutions to threats."); Princeton Comments at 4 ("Authentication methods and security practices continue to evolve, and carriers should be welcome—and encouraged—to adopt innovative safeguards."); Somos Comments at 2 ("As with most fraud the telecom industry suffers, the bad actors are constantly evolving. Solutions should evolve, as well."); Verizon Comments at 7 ("To keep ahead of bad actors, providers need flexibility to employ other more secure alternatives to passwords and government-issued IDs."); Better Identity Coalition at 4 ("Any regulatory approach that seeks to tie MNOs to using specific authentication technologies is certain to fail to keep up as threat and security both evolve.").

[350] *See* 47 CFR § 64.2010(b)-(e).

[351] *See supra* section III.A.1.

we seek comment on whether the procedures we require carriers to adopt for responding to failed authentication attempts in connection with SIM change requests should apply to all other CPNI authentications as well.[352] We also seek comment on whether the CPNI customer access rules should be harmonized with any of the other SIM change protections we adopt today. Should the limits on access to CPNI by employees who receive inbound customer communications prior to authentication of the customer apply to all telecommunications carriers? Should the CPNI rules only be harmonized to include some of these measures? If so, which measures should and should not be harmonized and why? Should we harmonize the customer notification rules for all account changes? Additionally, are there any other rules that would need to be modified for consistency if we harmonize the CPNI rules, such as the Commission's Telecommunications Relay Service (TRS) CPNI rules?[353] Should the Commission apply any harmonized rules to all customer proprietary information?

103. We tentatively conclude that we should rely on the same legal authority we used to originally implement the CPNI authentication rules in order to harmonize any of the CPNI rules, and seek comment on this tentative approach. In the *2007 CPNI Order*, as with the rules we adopted today, we relied primarily on section 222 to implement the CPNI authentication rules, and we tentatively conclude this provision continues to provide us with sufficient authority to harmonize those rules with the SIM change rules.[354] We seek comment on this tentative conclusion. We also seek comment on whether there are any legal implications for the harmonization approach we propose. For instance, in the *2016 Broadband Privacy Order*, the Commission harmonized the CPNI rules for voice providers with those it had adopted for broadband Internet access service providers,[355] but those rules were nullified by Congress pursuant to the Congressional Review Act,[356] which prohibits the Commission from reissuing a disapproved rule "in substantially the same form" and from issuing a new rule "that is substantially the same as such a rule."[357] We tentatively conclude that the 2017 action by Congress has no effect on the options we may consider here and seek comment on this tentative conclusion.

104. *Harmonizing Government Efforts to Address SIM Swap and Port-Out Fraud*. We seek comment on what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud.[358] As several commenters noted, SIM swap and port-out fraud implicates the authentication practices of other industries.[359] We recognize that there may be other efforts within the

[352] *See supra* section III.A.2.

[353] *See, e.g.*, 47 CFR § 64.5110.

[354] *See 2007 CPNI Order*, 22 FCC Rcd at 6930-31, paras. 4-6; *supra* section **Error! Reference source not found.**.

[355] *See Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Report and Order, 31 FCC Rcd 13911, 13913, para. 3 (2016).

[356] Joint Resolution, Pub. L. No. 155-22 (2017).

[357] 5 U.S.C. § 801(b)(2).

[358] T-Mobile Comments at 14 ("[T]he FCC could coordinate with other regulators, such as financial services or healthcare regulators, on strategies. Other regulators may consider new rules on authentication and steer companies away from relying on methods that are not suitable given the nature and sensitivity of information or functions being accessed.").

[359] *See, e.g.*, Verizon Comments at 7 ("While a wireless provider's practices could prove to be reasonable, effective and thorough, the fraud prevention practices of the customer's financial institution, or the customer's email provider, may not."); AT&T Comments at 2 ("SIM swap or port-out [fraud] is only a small part of the scheme to harm the consumer, as these incidents implicate a range of stakeholders not controlled by carriers (e.g., financial institutions, cryptocurrency companies, text message aggregators) that all play a role in the verification of customer identity."); T-Mobile Comments at 1-2 ("[C]ombatting SIM swap and port-out fraud is a team effort that requires action by an entire ecosystem that includes carriers and subscribers as well as financial institutions, email providers, retail websites, social media companies and others who rely on various customer authentication methods."); CTIA Comments at 2 ("All actors across the mobile and Internet ecosystem—including financial and social media

(continued….)

government to tackle SIM swap and port-out fraud to address the broader implications of these harmful practices. We seek information about those other efforts and the extent to which they seek to address the practices of wireless providers. We also seek comment on how the Commission can work with other government entities to harmonize our approaches to addressing SIM swap and port-out fraud.

105. *Customer Notification of Failed Customer Authentication Attempts*. We seek comment on whether we should require wireless providers to immediately notify customers in the event of a failed authentication attempt,[360] except to the extent otherwise required by the Safe Connections Act of 2022 (47 U.S.C. § 345) or the Commission's rules implementing that statute.[361] We believe that such notifications could empower customers to take action to prevent unauthorized access to their account when failed authentication attempts are fraudulent. Should we require all telecommunications carriers to provide such notifications to customers? In the event the Commission were to require such notifications, we tentatively conclude that the notifications should be reasonably designed to reach the customer associated with the account but otherwise would permit wireless providers to determine the method of providing these notifications, taking into consideration the needs of survivors pursuant to the Safe Connections Act and our implementing rules. We also tentatively conclude that such notifications should use "clear and concise language" but do not propose to prescribe particular content or wording for the notifications.

106. Industry commenters assert that "a carrier does not typically know why a customer authenticates until after the customer has successfully authenticated."[362] Based on these assertions, should we permit carriers to employ "reasonable risk assessment techniques to determine when a failed authentication attempt requires customer notification,"[363] or require notification only in instances of multiple failed attempts, or when there is reasonable suspicion of fraud?[364] What are the benefits and costs of doing so, for both providers and customers? If we were to require customer notification only where there were multiple failed authentication attempts, what standard would we use to determine what constitutes "multiple," and how would providers track multiple authentication attempts across different platforms (i.e., phone, application, and website)?

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companies whose users' accounts are often targeted—must work together to thwart the bad actors that perpetrate these crimes."); CCA Comments at 1 ("[M]obile customers' phones have become the link between an individual's sensitive health records, banking and financial information, email, and social media accounts. SIM swap and port out fraud are two methods that malicious actors increasingly are using not only to steal mobile accounts, but also to engage in broader identity theft."); Princeton Comments at 12 ("SIM swaps are an increasing attack vector for online account compromises, especially in the financial services sector.").

[360] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14133, para. 33 (seeking comment on what processes providers can implement to prevent bad actors from attempting multiple authentication methods, including potentially notifying customers).

[361] *See Safe Connections Order*, FCC 23-96, at para. 52 and Appx. A (new 47 CFR § 64.6402(b)) (requiring that covered providers attempt to authenticate, *using multiple authentication methods if necessary*, that a survivor requesting a line separation is a user of a specific line or lines) (emphasis added); *id.* at para. 100 and Appx. A (revised 47 CFR § 64.2010(f)(2)) (clarifying that the rule requiring carriers to notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed does not apply when such changes are made in connection with a line separation request made pursuant to the Safe Connections Act); *id.* at para. 77 and Appx. A (new 47 CFR § 64.6402(i)) (prohibiting a covered provider from notifying a primary account holder of a survivor's request for a SIM change when made in connection with a line separation request pursuant to 47 U.S.C. § 345 and the implementing rules); *id.* at para. 101 (making clear that compliance with the Safe Connections Act and rules implementing it supersede and preempt any conflicting obligations under state law, Commission's rules, or state rules).

[362] CTIA Nov. 8, 2023 *Ex Parte* Letter at 6-7; AT&T Nov. 8, 2023 *Ex Parte* Letter at 3.

[363] AT&T Nov. 8, 2023 *Ex Parte* Letter at 3

[364] *See* CCA Nov. 9, 2023 *Ex Parte* Letter at 2; CTIA Nov. 8, 2023 *Ex Parte* Letter at 7.

107. *Other Consumer Protection Measures*. We reiterate the Commission's request for comment on whether there are any additional requirements the Commission should consider that would help protect customers from SIM swap or port-out fraud or assist them with resolving problems resulting from such incidents.[365] For example, should we require wireless providers to explicitly exclude resolution of SIM change and port-out fraud disputes from arbitration clauses in providers' agreements with customers or abrogate such clauses?[366] Would this provide meaningful additional protections to customers from SIM swap and port-out fraud? What would be the costs to wireless providers, particularly small providers, from such a requirement?

108. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,[367] 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[368] 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

109. *Paperwork Reduction Act Analysis*. This *Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such requirements will be submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

110. In this *Report and Order*, we have assessed the effects of required customer notifications and notices, and related recordkeeping requirements, to protect customers from SIM swap and port-out fraud, and find that they do not place a significant burden on small businesses. Although no commenters specifically addressed whether such requirements may place burdens on small wireless providers, we note that CCA advised the Commission to "keep in mind the constraints with which many small carriers operate against in adopting security measures," asserting that any rules "should allow carriers to use technologies that are reasonably available and have choice in the approach to take in authenticating their customers."[369] As a general matter, the baseline, flexible rules we adopt reflect our recognition that, in

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[365] *See SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14144, para. 68.

[366] NCLC/EPIC Comments at 6.

[367] 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.

[368] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

[369] CCA Comments at 6. *See also* RWA Comments at 12-13 (advocating for uniform authentication standards to avoid anticompetitive effects and other costs or burdens on small wireless providers).

some cases, strict prescriptive requirements to prevent SIM swap and port-out fraud could be technically and economically infeasible for wireless providers to implement, particularly for smaller providers.[370] We emphasize that the record shows that many wireless providers already have in place some of the policies and procedures we adopt today and that our rules may therefore only require them to adapt, refine, or consistently apply those existing practices.[371] Additionally, by setting baseline requirements and giving wireless providers flexibility on how to meet them, we allow providers to adopt the most cost-effective and least burdensome solutions to achieve the level of security needed to protect customers against SIM swap and port-out fraud in a given circumstance.[372] We have further minimized the potential burdens of customer notifications by declining to prescribe particular content and wording and giving wireless providers flexibility on how to deliver such notifications.[373] Similarly, for customer notices, we declined to require a specific format and content, and we declined to require such notices be delivered to customers annually.[374] Further, we mitigated potential burdens of the recordkeeping requirement by declining to require that wireless providers include historic data in their recordkeeping, which we acknowledged would be particularly burdensome for small providers, and declining to require that providers report this data to the Commission regularly.[375]

111. The *Further Notice of Proposed Rulemaking* may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.[376] All such new or modified information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[377] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[378]

112. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA)[379] 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."[380] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of the rule and policy changes adopted in this *Report and Order* on small entities. The FRFA is set forth in Appendix B.

113. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals in the *Further Notice* on small entities. The IRFA is set forth in Appendix C. 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.

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[370] *See supra* para. 23.

[371] *See supra* paras. 20, 23, 37, 42, 57, 60, 64, 67, 70.

[372] *See supra* para. 23.

[373] *See* sections III.A.3& III.B.2.

[374] *See supra* section III.C..

[375] *See supra* section III.A.5.

[376] Pub. L. No. 104-13.

[377] Pub. L. No. 107-198.

[378] 44 U.S.C. § 3506(c)(4).

[379] 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[380] 5 U.S.C. § 605(b).

114. *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).

115. *Ex Parte Presentations*. The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period 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.

116. *Comment Period and Filing Procedures*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. Commenters should refer to WC Docket No. 21-341 when filing in response to this *Further Notice*.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at https://www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings.[381]
- 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.

117. *Providing Accountability Through Transparency Act*. The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a

[381] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, DA 20-304, Public Notice, 35 FCC Rcd 2788 (2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

brief plain-language summary of the proposed rule.[382] Accordingly, the Commission will publish the required summary of this *Further Notice of Proposed Rulemaking* on https://www.fcc.gov/proposed-rulemakings.

118. *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 FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

119. *Additional Information.* For additional information on this proceeding, contact Melissa Kirkel, Wireline Competition Bureau, Competition Policy Division, at 202-418-7958 or melissa.kirkel@fcc.gov.

VI. ORDERING CLAUSES

120. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4, 201, 222, 251, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 222, 251, 303, and 332, this *Report and Order* in WC Docket No. 21-341 IS ADOPTED and that Parts 52 and 64 of the Commission's Rules, 47 CFR Parts 52, 64, are AMENDED as set forth in Appendix A.

121. IT IS FURTHER ORDERED that this *Report and Order* SHALL BE EFFECTIVE 30 days after publication in the Federal Register, and that compliance with the rules adopted herein shall be required six months after the effective date of the *Report and Order*, except that the amendments to sections 52.37(c), 52.37(d), 52.37(e), 52.37(g), 64.2010(h)(2), 64.2010(h)(3), 64.2010(h)(4), 64.2010(h)(5), 64.2010(h)(6), and 64.2010(h)(8) of the Commission's rules, 47 CFR §§ 52.37(c), 52.37(d), 52.37(e), 52.37(g), 64.2010(h)(2), 64.2010(h)(3), 64.2010(h)(4), 64.2010(h)(5), 64.2010(h)(6), and 64.2010(h)(8), which may contain new or modified information collection requirements, will not become effective until the later of i) six months after the effective date of this *Report and Order*; or ii) after the Office of Management and Budget completes review of any information collection requirements associated with this *Report and Order* that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the compliance date for sections 52.37(c), 52.37(d), 52.37(e), 52.37(g), 64.2010(h)(2), 64.2010(h)(3), 64.2010(h)(4), 64.2010(h)(5), 64.2010(h)(6), and 64.2010(h)(8) by subsequent Public Notice and to cause 47 CFR § 52.37 and § 64.2010 to be revised accordingly.

122. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1, 2, 4, 201, 222, 251, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 222, 251, 303, and 332, this *Further Notice of Proposed Rulemaking* in WC Docket No. 21-341 IS ADOPTED.

123. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this *Report and Order* and *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.

[382] 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

124. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance and 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

The Federal Communications Commission amends Parts 52 and 64 of Title 47 of the Code of Federal Regulations as follows:

PART 52 – NUMBERING

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

   AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 155, 201-205, 207-209, 218, 225-227, 251-252, 271, 303, 332, unless otherwise noted.

2. Add § 52.37 to subpart C to read as follows:

§ 52.37 Number Portability Requirements for Wireless Providers

(a) *Applicability.* This section applies to all providers of commercial mobile radio service (CMRS), as defined in 47 CFR § 20.3, including resellers of wireless service.

(b) *Authentication of port-out requests.* A CMRS provider shall use secure methods to authenticate a customer that are reasonably designed to confirm the customer's identity before effectuating a port-out request, except to the extent otherwise required by 47 U.S.C. § 345 (Safe Connections Act of 2022) or Part 64 Subpart II of this chapter. A CMRS provider shall regularly, but not less than annually, review and, as necessary, update its customer authentication methods to ensure that its authentication methods continue to be secure.

(c) *Customer notification of port-out requests*. Upon receiving a port-out request, and before effectuating the request, a CMRS provider shall provide immediate notification to the customer that a port-out request associated with the customer's account was made, sent in accordance with customer preferences, if indicated, and using means reasonably designed to reach the customer associated with the account and clear and concise language that provides sufficient information to effectively inform a customer that a port-out request involving the customer's number was made, except if the port-out request was made in connection with a legitimate line separation request pursuant to 47 U.S.C. § 345 and Part 64, Subpart II of this chapter, regardless of whether the line separation is technically or operationally feasible.

(d) *Account locks.* A CMRS provider shall offer customers, at no cost, the option to lock their accounts to prohibit the CMRS provider from processing requests to port the customer's number. A CMRS provider shall not fulfill a port-out request until the customer deactivates the lock on the account, except if the port-out request was made in connection with a legitimate line separation request pursuant to 47 U.S.C. § 345 and Part 64, Subpart II of this chapter, regardless of whether the line separation is technically or operationally feasible. The process to activate and deactivate an account lock must not be unduly burdensome for customers such that it effectively inhibits customers from implementing their choice. A CMRS provider may activate a port-out lock on a customer's account when the CMRS provider has a reasonable belief that the customer is at high risk of fraud, but must provide the customer with clear notification that the account lock has been activated with instructions on how the customer can deactivate the account lock, and promptly comply with the customer's legitimate request to deactivate the account lock.

(e) *Notice of Account Protection Measures*. A CMRS provider must provide customers with notice, using clear and concise language, of any account protection measures the CMRS provider offers, including those to prevent port-out fraud. A CMRS provider shall make this notice easily accessible through the CMRS provider's website and application.

(f) *Employee Training.* A CMRS provider shall develop and implement training for employees to specifically address fraudulent port-out attempts, complaints, and remediation. Training shall include, at a minimum, how to identify fraudulent requests, how to recognize when a customer may be the victim of

fraud, and how to direct potential victims and individuals making potentially fraudulent requests to employees specifically trained to handle such incidents.

(g) *Procedures to resolve fraudulent ports.* A CMRS provider shall, at no cost to customers:

(1) maintain a clearly disclosed, transparent, and easy-to-use process for customers to report fraudulent number ports;

(2) promptly investigate and take reasonable steps within its control to remediate fraudulent number ports; and

(3) promptly provide customers, upon request, with documentation of fraudulent number ports involving their accounts.

(h) This section may contain information-collection and/or recordkeeping requirements. Compliance with this section will not be required until this paragraph is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after the Office of Management and Budget completes review of any information collection requirements in this section that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for this section by subsequent Public Notice and to cause this section to be revised accordingly.

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. 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), 262, 276, 303, 332, 403(b)(2)(B), (c), 616, 620, 1004, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

4. Amend § 64.2010 by adding paragraph (h) to read as follows:

§ 64.2010 Safeguards on the disclosure of customer proprietary network information.

* * * * *

(h) *Subscriber Identity Module (SIM) changes.* A provider of commercial mobile radio service (CMRS), as defined in 47 CFR § 20.3, including resellers of wireless service, shall only effectuate SIM change requests in accordance with this section. For purposes of this section, SIM means a physical or virtual card associated with a device that stores unique information that can be identified to a specific mobile network.

(1) *Customer authentication.* A CMRS provider shall use secure methods to authenticate a customer that are reasonably designed to confirm the customer's identity before executing a SIM change request, except to the extent otherwise required by 47 U.S.C. § 345 (Safe Connections Act of 2022) or Part 64, Subpart II of this chapter. Authentication methods shall not rely on readily available biographical information, account information, recent payment information, or call detail information unless otherwise permitted under 47 U.S.C. § 345 or Part 64, Subpart II of this chapter. A CMRS provider shall regularly, but not less than annually, review and, as necessary, update its customer authentication methods to ensure that its authentication methods continue to be secure. A CMRS provider shall establish safeguards and processes so that employees who receive inbound customer communications are unable to access CPNI in the course of that customer interaction until after the customer has been properly authenticated.

(2) *Response to failed authentication attempts.* A CMRS provider shall develop, maintain, and implement procedures for addressing failed authentication attempts in connection with a SIM change request that are reasonably designed to prevent unauthorized access to a customer's account, which, among other things, take into consideration the needs of survivors pursuant to 47 U.S.C. § 345 and Part 64, Subpart II of this chapter.

(3) *Customer notification of SIM change requests*. Upon receiving a SIM change request, and before effectuating the request, a CMRS provider shall provide immediate notification to the customer that a SIM change request associated with the customer's account was made, sent in accordance with customer preferences, if indicated, and using means reasonably designed to reach the customer associated with the account and clear and concise language that provides sufficient information to effectively inform a customer that a SIM change request involving the customer's SIM was made, except if the SIM change request was made in connection with a legitimate line separation request pursuant to 47 U.S.C. § 345 and Part 64, Subpart II of this chapter, regardless of whether the line separation is technically or operationally feasible.

(4) *Account locks.* A CMRS provider shall offer customers, at no cost, the option to lock their accounts to prohibit the CMRS provider from processing requests to change the customer's SIM. A CMRS provider shall not fulfill a SIM change request until the customer deactivates the lock on the account, except if the SIM change request was made in connection with a legitimate line separation request pursuant to 47 U.S.C. § 345 and Part 64, Subpart II of this chapter, regardless of whether the line separation is technically or operationally feasible. The process to activate and deactivate an account lock must not be unduly burdensome for customers such that it effectively inhibits customers from implementing their choice. A CMRS provider may activate a SIM change lock on a customer's account when the CMRS provider has a reasonable belief that the customer is at high risk of fraud, but must provide the customer with clear notification that the account lock has been activated with instructions on how the customer can deactivate the account lock, and promptly comply with the customer's legitimate request to deactivate the account lock.

(5) *Notice of account protection measures.* A CMRS provider must provide customers with notice, using clear and concise language, of any account protection measures the CMRS provider offers, including those to prevent SIM swap fraud. A CMRS provider shall make this notice easily-accessible through the CMRS provider's website and application.

(6) *Procedures to resolve fraudulent SIM changes.* A CMRS provider shall, at no cost to customers:

(i) maintain a clearly disclosed, transparent, and easy-to-use process for customers to report fraudulent SIM changes;

(ii) promptly investigate and take reasonable steps within its control to remediate fraudulent SIM changes; and

(iii) promptly provide customers, upon request, with documentation of fraudulent SIM changes involving their accounts.

(7) *Employee training.* A CMRS provider shall develop and implement training for employees to specifically address fraudulent SIM change attempts, complaints, and remediation. Training shall include, at a minimum, how to identify potentially fraudulent SIM change requests, how to identify when a customer may be the victim of SIM swap fraud, and how to direct potential victims and individuals making potentially fraudulent requests to employees specifically trained to handle such incidents.

(8) *SIM change recordkeeping.* A CMRS provider shall establish processes to reasonably track, and maintain for a minimum of three years, the total number of SIM change requests it received, the number of successful SIM change requests, the number of failed SIM change requests, the number of successful fraudulent SIM change requests, the average time to remediate a fraudulent SIM change, the total number of complaints received regarding fraudulent SIM change requests, the authentication measures the CMRS provider has implemented, and when those authentication measures change. A CMRS provider shall provide such data and information to the Commission upon request.

(9) *Compliance.* Paragraph (h) may contain information-collection and/or recordkeeping requirements. Compliance with paragraph (h) will not be required until this subparagraph is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS

AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after the Office of Management and Budget completes review of any information collection requirements in paragraph (h) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for this paragraph (h) by subsequent Public Notice and to cause this paragraph to be revised accordingly.

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 into the *Protecting Consumers from SIM Swap and Port-Out Fraud Notice of Proposed Rulemaking* (*SIM Swap and Port-Out Fraud Notice*) released in September 2021.[2] The Commission sought written public comment on the proposals in the *SIM Swap and Port-Out Fraud Notice*, including comment on the IRFA. The comments received are discussed below. 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* establishes protections to address SIM swap and port-out fraud. With SIM swap fraud, a bad actor impersonates a customer of a wireless provider and convinces the provider to reassign the customer's SIM from the customer's device to a device controlled by the bad actor. Similarly, with port-out fraud, the bad actor impersonates a customer of a wireless provider and convinces the provider to port the customer's telephone number to a new wireless provider and a device that the bad actor controls.[4] Both fraudulent practices transfer the victim's wireless service to the bad actor, allow the bad actor to gain access to information associated with the customer's account, and permit the bad actor to receive the text messages and phone calls intended for the customer.

3. The rules adopted in the *Report and Order* aim to foreclose these fraudulent practices while preserving the relative ease with which customers can obtain legitimate SIM changes and number ports. Specifically, the *Report and Order* revises the Commission's CPNI and LNP rules to require that wireless providers use secure methods of authenticating customers prior to performing SIM changes and number ports. This requirement is reinforced by other rules, including that wireless providers adopt processes for responding to failed authentication attempts, institute employee training for handling SIM swap and port-out fraud, and establish safeguards to prevent employees who receive inbound customer communications are unable to access CPNI in the course of that customer interaction until after customers have been authenticated. The *Report and Order* also adopts rules that will enable customers to act to prevent and address fraudulent SIM changes and number ports, including requiring that wireless providers notify customers regarding SIM change and port-out requests, offer customers the option to lock their accounts to block processing of SIM changes and number ports, and give advanced notice of available account protection mechanisms. Additionally, the *Report and Order* establishes requirements to minimize the harms of SIM swap and port-out fraud when it occurs, including requiring wireless providers to maintain a clear process for customers to report fraud, promptly investigate and remediate fraud, and promptly provide customers with documentation of fraud involving their accounts. Finally, to ensure wireless providers track the effectiveness of authentication measures used for SIM change requests, the *Report and Order* requires that providers keep records of SIM change requests and the authentication measures they use.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments that directly addressed the proposed rules and policies presented in the *SIM Swap and Port-Out Fraud Notice* IRFA. However two commenters discussed the

[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] *SIM Swap and Port-Out Fraud Notice*, 36 FCC Rcd at 14152-14161, para. 6., Appx. B.

[3] 5 U.S.C. § 604.

[4] FCC, *Port-Out Fraud Targets Your Private Accounts*, https://www.fcc.gov/port-out-fraud-targets-your-private-accounts (last updated July 10, 2023).

potential impact of rules on small carriers. The Competitive Carriers Association (CCA) advocated that the Commission adopt security measures that give providers flexibility to account for the constraints with which many small providers operate.[5] The Rural Wireless Association (RWA) called for uniform standards for port-out authentication to prevent potential anticompetitive activities and increased costs for small providers in the event that larger providers hold small providers to standards that are difficult or costly to implement.[6] The approach taken by the *Report and Order* addresses these comments by setting baseline requirements that build on existing mechanisms that many wireless providers already use to establish a uniform framework across the mobile wireless industry, while giving wireless providers the flexibility to deliver the most advanced, appropriate, and cost-effective fraud protection measures available.

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] 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

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[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 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]

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.[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

[5] *See* CCA Comments at 6.

[6] *See* RWA Comments at 12-14.

[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* 5 U.S.C. § 601(3)-(6).

[13] 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).

businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[14]

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."[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]

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."[18] U.S. Census Bureau data from the 2017 Census 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

[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 of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[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.

[18] 5 U.S.C. § 601(5).

[19] 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.

[20] 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] *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] *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.

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]

1. Providers of Telecommunications and Other Services

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.[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 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]

11. 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

[23] *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] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[27] *Id.*

[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] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[31] 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.

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.

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[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 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.

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[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

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[33] 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. https://docs.fcc.gov/public/attachments/DOC-379181A1.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] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[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] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[39] 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.

[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] 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.

[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] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[45] *Id.*

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.

14. *Competitive Local Exchange Carriers (Competitive LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[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 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.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications

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[46] 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] 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.

[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.

[52] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[53] 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] 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.

[56] *Id.*

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.

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 an SBA small business size standard.[63] 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.[64] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[65] Mobile virtual network operators (MVNOs) are included in this industry.[66] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[67] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[68] Of that number, 1,375 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 207 providers that reported

[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] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[59] *Id.*

[60] 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] 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.

[63] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"517911 Telecommunications Resellers,"* https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[64] *Id.*

[65] *Id*.

[66] *Id*.

[67] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[68] 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.

[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.

they were engaged in the provision of local resale services.[70] Of these providers, the Commission estimates that 202 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.

17. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[72] 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.[73] Mobile virtual network operators (MVNOs) are included in this industry.[74] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[75] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[76] Of that number, 1,375 firms operated with fewer than 250 employees.[77] 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.[78] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[79] 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.[80] 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.[81] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[82] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this

[70] 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.

[71] *Id.*

[72] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"517911 Telecommunications Resellers,"* https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[73] *Id.*

[74] *Id*.

[75] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[76] 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.

[77] *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.

[78] 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. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[79] *Id.*

[80] *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.

[81] *Id.*

[82] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry that operated for the entire year.[83] Of that number, 2,837 firms employed fewer than 250 employees.[84] 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.[85] Of these providers, the Commission estimates that 511 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.

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."[87] 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.[88] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[89] Of this number, 242 firms had revenue of less than $25 million.[90] 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.[91] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[92] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

20. *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.[93] 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,

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[83] 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.

[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] 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.

[86] *Id.*

[87] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[88] 13 CFR § 121.201, NAICS Code 517410.

[89] 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.

[90] *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.

[91] 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.

[92] *Id.*

[93] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

satellite systems.[94] 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.[95] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[96] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[97] Of those firms, 1,039 had revenue of less than $25 million.[98] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

2. Internet Service Providers

21. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[99] Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[100] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[101] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[102] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[103] Of this number, 2,964 firms operated with fewer than 250 employees.[104]

22. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.[105] The Commission does not collect data on the

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[94] *Id.*

[95] *Id*.

[96] 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[97] 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.

[98] *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.

[99] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[100] 47 CFR § 1.7001(a)(1).

[101] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[102] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[103] 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.

[104] *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.

[105] *IAS Status 2018*, Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet

(continued….)

number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,[106] we believe that the majority of wireline Internet access service providers can be considered small entities.

23. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[107] Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"[108] Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[109] Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[110] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[111] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[112] Of that number, 2,837 firms employed fewer than 250 employees.[113]

24. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.[114] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,[115] as

(Continued from previous page)
over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

[106] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[107] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[108] Federal Communications Commission, Internet Access Services: Status as of December 31, 2018 *(IAS Status 2018)*, Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports.

[109] *See* 47 CFR § 1.7001(a)(1).

[110] *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.

[111] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[112] 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.

[113] *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.

[114] *See IAS Status 2018*, Fig. 30.

[115] *2022 Communications Marketplace Report* , 2022 WL 18110553 at 27, paras. 64-68.

well as on terrestrial fixed wireless broadband providers in general,[116] we believe that the majority of wireless Internet access service providers can be considered small entities.

25. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.[117] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[118] For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[119] Of those firms, 1,039 had revenue of less than $25 million.[120] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. This *Report and Order* adopts rules that could result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements for affected providers of service, including small wireless providers. Specifically, it requires that wireless providers use secure methods of authenticating customers prior to performing SIM changes and number ports, and to review and update these authentication methods as needed, but at least annually. It requires wireless providers to adopt processes for customer notification and response to failed authentication attempts, institute employee training for handling SIM swap and port-out fraud, and establish safeguards to prevent employees who receive inbound customer communications from accessing CPNI in the course of that customer interaction until after customers have been authenticated. The *Report and Order* also adopts rules requiring that wireless providers notify customers regarding SIM change and port-out requests, offer customers the option to lock their accounts to block processing of SIM changes and number ports, and give advanced notice of available account protection mechanisms. Additionally, the *Report and Order* requires wireless providers to maintain a clear process for customers to report fraud, promptly investigate and remediate fraud, and promptly provide customers with documentation of fraud involving their accounts. Finally, the *Report and Order* requires that providers keep records of SIM change requests and the authentication measures they use.

27. We are cognizant that, in some instances, strict prescriptive requirements to prevent SIM swap and port-out fraud could be technically and economically infeasible for wireless providers to implement, particularly for smaller providers. 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. However, the record reflects that many wireless providers have already developed and implemented some form of the customer authentication requirements in the *Report and Order*, minimizing cost implications for small entities. We also permit

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[116] *Id.* at 8, para. 22.

[117] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[118] 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[119] 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.

[120] *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.

wireless providers have already developed and implemented some form of the customer authentication requirements in the *Report and Order*, minimizing cost implications for small entities. We also permit wireless providers to use existing methods of notification that are reasonably designed to reach the affected customer. Several of our rules build on existing mechanisms that many wireless providers already use, and therefore, we expect that our new rules will further minimize the costs and burdens for those providers, and should significantly reduce compliance requirements for small entities that may have smaller staff and fewer resources.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. 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."[121]

29. The requirements established in this *Report and Order* are designed to minimize the economic impact on wireless providers, including small providers. The baseline, flexible rules adopted reflect a recognition that, in some cases, strict prescriptive requirements to prevent SIM swap and port-out fraud could be technically and economically infeasible for wireless providers to implement, particularly for smaller providers. We therefore decline to adopt certain specific authentication methods mentioned in the *SIM Swap and Port-Out Fraud Notice* because they may discourage carriers from adopting new methods to address evolving techniques used by bad actors. The record shows that many wireless providers already have in place some of the policies and procedures this *Report and Order* adopts and that the rules may therefore only require them to adapt, refine, or consistently apply those existing practices. Additionally, by setting baseline requirements and giving wireless providers flexibility on how to meet them, this *Report and Order* allows providers to adopt the most cost-effective and least burdensome solutions to achieve the level of security needed to protect customers against SIM swap and port-out fraud in a given circumstance. The *Report and Order* further minimizes any potential burdens of customer notifications by declining to prescribe particular content and wording and giving wireless providers flexibility on how to deliver such notifications. Similarly, for customer notices, the *Report and Order* declines to require a specific format and content and declines to require such notices be delivered to customers annually. With respect to employee training, we decline to adopt overly prescriptive safeguards, such as two-employee sign off. Instead, the requirement this *Report and Order* adopts minimizes potential burdens because it builds on the Commission's existing CPNI training rule and gives wireless providers flexibility on how to develop their training programs. Further, the *Report and Order* mitigates the potential burdens of the recordkeeping requirement by declining to require that wireless providers include historic data in their recordkeeping, which the *Report and Order* acknowledged would be particularly burdensome for small providers, and declining to require that providers report this data to the Commission regularly.

G. Report to Congress

30. The Commission will send a copy of the *SIM Swap and Port-Out Fraud Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[122] In addition, the Commission will send a copy of the *SIM Swap and Port-Out Fraud Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *SIM Swap*

[121] 5 U.S.C. § 604(a)(6).

[122] *Id*. § 801(a)(1)(A).

and Port-Out Fraud Report and Order (or summaries thereof) will also be published in the Federal Register.[123]

[123] *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 *Protecting Consumers from SIM Swap and Port-Out Fraud Further Notice of Proposed Rulemaking* (*Further Notice*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice* provided on the first page of the item. 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 IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *SIM Swap and Port-Out Fraud Report and Order* (*Report and Order*), the Commission adopts rules to address fraudulent practices that transfer a customer's wireless service to a bad actor, allowing the bad actor to gain access to information associated with the customer's account, and permitting the bad actor to receive the text messages and phone calls intended for the customer.. Specifically, the *Report and Order* revises the Commission's Customer Proprietary Network Information (CPNI) and Local Number Portability (LNP) rules to require wireless providers to adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device or provider. The *Report and Order* also requires wireless providers to immediately notify customers whenever a SIM change or port-out request is made on customers' accounts, and take additional steps to protect customers from SIM swap and port-out fraud. This approach sets baseline requirements that establish a uniform framework across the mobile wireless industry while giving wireless providers the flexibility to deliver the most advanced and appropriate fraud protection measures available.

3. In this *Further Notice*, we seek comment on whether to harmonize the existing requirements governing customer access to CPNI[4] with the SIM change authentication and protection measures adopted in the *Report and Order*. This *Further Notice* expands on questions asked in the *SIM Swap and Port-Out Fraud Notice* and several comments in the record, but seeks more targeted feedback on a specific approach. The *Further Notice* explores whether justifications identified by commenters in the record, or any other justifications, provide a rationale for harmonizing the existing CPNI rules with the customer protection measures adopted in the *Report and Order*, as well as any reasons why the Commission should not harmonize its existing CPNI rules with the SIM swap fraud protection measures adopted in the *Report and Order*.

4. Recognizing that there may be other efforts within the government to tackle SIM swap and port-out fraud to address the broader implications of these harmful practices, the *Further Notice* also seeks comment on information about those other efforts and what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud. The *Further Notice* also seeks comment on whether to require wireless providers to immediately notify customers in the event of a failed authentication attempt, except to the extent otherwise required by the Safe Connections Act of 2022 (47 U.S.C. § 345) or the Commission's rules implementing that statute, or whether to permit carriers to employ reasonable risk assessment techniques to determine when a failed authentication attempt requires

[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] *See* 47 CFR § 64.2010.

customer notification, or require notification only in instances of multiple failed attempts or when there is reasonable suspicion of fraud.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 4, 201, 222, 251, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201, 222, 251, 303(r), and 332.

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.[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]

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.[9] 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.[10] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[11]

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."[12] 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.[13] Nationwide, for tax year 2020, there

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[5] 5 U.S.C. § 603(b)(3).

[6] *Id.* § 601(6).

[7] *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."

[8] 15 U.S.C. § 632.

[9] 5 U.S.C. § 601(3)-(6).

[10] 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).

[11] *Id.*

[12] 5 U.S.C. § 601(4).

[13] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "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

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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.[14]

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."[15] U.S. Census Bureau data from the 2017 Census of Governments[16] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[17] Of this number, there were 36,931 general purpose governments (county,[18] municipal, and town or township[19]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[20] with enrollment populations of less than 50,000.[21] 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."[22]

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does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[14] *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.

[15] 5 U.S.C. § 601(5).

[16] 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.

[17] 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.

[18] *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.

[19] *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.

[20] *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.

[21] 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.

[22] 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 -
(continued….)

1. Providers of Telecommunications and Other Services

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.[23] 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.[24] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[25] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[26]

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[27] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[28] Of this number, 2,964 firms operated with fewer than 250 employees.[29] 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.[30] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[31] 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

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independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

[23] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[24] *Id.*

[25] *Id.*

[26] 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.

[27] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[28] 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.

[29] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[30] 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. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[31] *Id.*

Telecommunications Carriers[32] is the closest industry with an SBA small business size standard.[33] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[34] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[35] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[36] Of this number, 2,964 firms operated with fewer than 250 employees.[37] 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.[38] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[39] 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[40] is the closest industry with an SBA small business size standard.[41] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[42] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[43] Of this number, 2,964 firms operated with fewer than 250 employees.[44] 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.[45] Of these providers, the Commission estimates that 916 providers have

[32] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[33] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[34] 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.

[35] *Id.*

[36] 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.

[37] *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.

[38] 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.

[39] *Id.*

[40] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[41] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[42] *Id.*

[43] 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.

[44] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[45] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022),

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1,500 or fewer employees.[46] 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.

14. *Competitive Local Exchange Carriers (Competitive LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[47] Wired Telecommunications Carriers[48] 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.[49] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[50] Of this number, 2,964 firms operated with fewer than 250 employees.[51] 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.[52] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[53] 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 have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[54] is the closest industry with an SBA small business size standard.[55] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[56] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[57] Of this number, 2,964 firms operated with fewer than 250 employees.[58]

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https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[46] *Id.*

[47] 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.

[48] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[49] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[50] 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.

[51] *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.

[52] 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.

[53] *Id.*

[54] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[55] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[56] *Id.*

[57] 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,

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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.[59] 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. *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 an SBA small business size standard.[60] 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.[61] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[62] Mobile virtual network operators (MVNOs) are included in this industry.[63] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[64] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[65] Of that number, 1,375 firms operated with fewer than 250 employees.[66] 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.[67] Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.[68] 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[69] is the closest industry with

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https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[58] *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.

[59] 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.

[60] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[61] *Id.*

[62] *Id*.

[63] *Id*.

[64] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[65] 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.

[66] *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.

[67] 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.

[68] *Id.*

[69] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

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.[70] Mobile virtual network operators (MVNOs) are included in this industry.[71] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[72] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[73] Of that number, 1,375 firms operated with fewer than 250 employees.[74] 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.[75] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[76] 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.[77] 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.[78] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[79] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[80] Of that number, 2,837 firms employed fewer than 250 employees.[81] 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.[82] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer

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[70] *Id.*

[71] *Id*.

[72] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[73] 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.

[74] *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.

[75] 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. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[76] *Id.*

[77] *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.

[78] *Id.*

[79] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[80] 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.

[81] *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.

[82] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022),
(continued….)

employees.[83] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Wireless Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with an SBA small business size standard is Telecommunications Resellers.[84] 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.[85] Establishments in this industry resell telecommunications and they do not operate transmission facilities and infrastructure.[86] Mobile virtual network operators (MVNOs) are included in this industry.[87] Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees.[88] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year.[89] Of that number, 1,375 firms operated with fewer than 250 employees.[90] Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

20. *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."[91] 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.[92] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[93] Of this number, 242 firms had revenue of less than $25 million.[94] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report,

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https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[83] *Id.*

[84] *See* U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[89] 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.

[90] *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.

[91] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[92] 13 CFR § 121.201, NAICS Code 517410.

[93] 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.

[94] *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.

as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[95] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[96] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

21. *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.[97] 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.[98] 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.[99] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[100] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[101] Of those firms, 1,039 had revenue of less than $25 million.[102] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

2. Internet Service Providers

22. *Wired Broadband Internet Access Service Providers (Wired ISPs).*[103] Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[104] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[105] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[106] U.S. Census Bureau data for 2017 show that

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[95] 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.

[96] *Id.*

[97] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[98] *Id.*

[99] *Id*.

[100] 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[101] 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.

[102] *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.

[103] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[104] 47 CFR § 1.7001(a)(1).

[105] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[106] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

there were 3,054 firms that operated in this industry for the entire year.[107] Of this number, 2,964 firms operated with fewer than 250 employees.[108]

23. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.[109] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,[110] we believe that the majority of wireline Internet access service providers can be considered small entities.

24. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[111] Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"[112] Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[113] Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[114] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[115] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[116] Of that number, 2,837 firms employed fewer than 250 employees.[117]

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[107] 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.

[108] *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.

[109] *See IAS Status 2018,* Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

[110] *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[111] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[112] Federal Communications Commission, Internet Access Services: Status as of December 31, 2018 *(IAS Status 2018)*, Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports.

[113] 47 CFR § 1.7001(a)(1).

[114] *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.

[115] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[116] 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.

25. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.[118] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,[119] as well as on terrestrial fixed wireless broadband providers in general,[120] we believe that the majority of wireless Internet access service providers can be considered small entities.

26. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.[121] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[122] For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[123] Of those firms, 1,039 had revenue of less than $25 million.[124] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

27. In this *Further Notice*, we seek comment on whether to harmonize the existing requirements governing customer access to CPNI[125] with the SIM change authentication and protection measures adopted in the *Report and Order*, and if so, the extent to which the rules should be harmonized. We tentatively conclude that harmonized authentication and protection requirements will be easier for wireless providers to implement and therefore will reduce costs and burdens on carriers, including small carriers. Recognizing that there may be other efforts within the government to tackle SIM swap and port-out fraud to address the broader implications of these harmful practices, the *Further Notice* also seeks comment on information about those other efforts and what steps the Commission can take to harmonize government efforts to address SIM swap and port-out fraud.

28. Should the Commission decide to modify existing rules or adopt new rules to harmonize

(Continued from previous page)

[117] *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.

[118] *See IAS Status 2018*, Fig. 30.

[119] *2022 Communications Marketplace Report*, 2022 WL 18110553 at 27, paras. 64-68.

[120] *Id.* at 8, para. 22.

[121] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[122] 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[123] 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.

[124] *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.

[125] 47 CFR § 64.2010.

its existing CPNI rules with rules to protect customers from SIM swap fraud, such action could potentially result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements for affected providers of service. Likewise, should the Commission decide to adopt rules requiring notification of a failed authentication attempt, such action could potentially result in increased, reduced, or otherwise modified recordkeeping, reporting, or other compliance requirements. We seek comment on the effect of any proposals on small entities. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any reporting, recordkeeping, or compliance requirement that may be established in this proceeding. 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 *Further Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. 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."[126]

30. In this *Further Notice*, we seek comment on whether we should harmonize the existing requirements governing customer access to CPNI[127] with the SIM change authentication and protection measures adopted in the *Report and Order*, and if so, the extent to which the rules should be harmonized. Among the justifications on which we seek comment are whether inconsistent rules are more burdensome on carriers and whether carriers need flexibility to implement more secure authentication measures. We also tentatively conclude that harmonized authentication and protection requirements will be easier for wireless providers to implement and therefore will reduce costs and burdens on carriers. In considering additional alternatives, we also ask whether it would it be costly and burdensome for carriers to adjust the CPNI authentication and protection practices they have already implemented to comply with the authentication requirements adopted in the *Report and Order*, and whether there are other reasons harmonized rules could increase the costs or burdens on carriers, including small carriers. Regarding notification to customers of failed authentication attempts, the *Further Notice* seeks comment whether the Commission should require immediate notification by all telecommunications carriers or only wireless providers. The *Further Notice* also asks whether providers should be required to notify customers immediately of all failed authentication attempts, or whether instead to permit carriers to employ reasonable risk assessment techniques to determine when failed authentication attempts require customer notification, or require notification only in instances of multiple failed attempts or when there is reasonable suspicion of fraud. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *Further Notice* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

31. None.

[126] 5 U.S.C. § 603(c)(1)–(4).

[127] 47 CFR § 64.2010.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341, Report and Order and Further Notice of Proposed Rulemaking (November 15, 2023).

If you want to know something about someone, just look at their phone. Because our phones do more than just connect us to friends and family. They are a record of where we have been and who we are. For many of us, these devices are internet gateways to our bank accounts, health records, social media profiles, and more. The convenience of accessing all of this through our phones is undeniable. But it also makes our devices a growing target for fraud—like SIM-swapping scams.

SIM cards are the dime-sized chips that are inserted into a mobile phone to identify and authenticate subscribers. When you want to upgrade your device, transferring your SIM card makes it easy to move your subscriber information to a new phone. But that's where fraudsters step in. A bad actor can call up your wireless provider and convince the customer service representative on the other end of the line that you really need to transfer your SIM card to a new device—a device that is in their control, not yours. If they are successful, they can divert two-factor authentication messages to drain your bank account, take over your social media profile, and hijack your e-mail.

The Federal Bureau of Investigation reports SIM-swapping scams are on the rise. But they are not alone. Because we see it here, too. At the Federal Communications Commission we are getting more and more complaints from consumers who have suffered losses due to SIM-swapping fraud. On top of this, the Cyber Safety Review Board at the Department of Homeland Security recently released a report investigating a bad actor responsible for extortion of a mix of companies and government agencies though SIM-swapping fraud. The report recommended that we take action to support consumer privacy and cut off these scams.

That is exactly what we do today. We require wireless carriers to give subscribers more control over their accounts and provide notice to consumers whenever there is a SIM transfer request, in order to protect against fraudulent requests made by bad actors. We also revise our customer proprietary network information and local number portability rules to make it harder for scam artists to make requests that get them access to your sensitive subscriber information.

We take these steps to improve consumer privacy and put an end to SIM scams. Because we know our phones know a lot about us. They are an entry to our records, our accounts, and so much that we value. That is why across the board we need policies that make sure our information is secure. It is also why I created the Commission's first-ever Privacy and Data Protection Task Force earlier this year. I want to thank them for their work on this initiative.

I also want to thank Allison Baker, Emily Caditz, Callie Coker, Adam Copeland, CJ Ferraro, Trent Harkrader, Melissa Kirkel, Chris Laughlin, Jodie May, and Jordan Reth from the Wireline Competition Bureau; Diane Burstein, Eliot Greenwald, Erica McMahon, Ike Ofobike, Suzy Rosen Singleton, Karen Schroeder, Kristi Thornton, and Kimberly Wild from the Consumer and Governmental Affairs Bureau; Loyaan Egal, Michael Epshteyn, James Graves, Phil Rosario, Kimbarly Taylor, Kristi Thompson, and Shana Yates from the Enforcement Bureau; Justin Cain, Ken Carlberg, Debra Jordan, Nicole McGinnis, Zenji Nakazawa, Erika Olsen, and Austin Randazzo from the Public Safety and Homeland Security Bureau; Garnet Hanly and Jennifer Salhus from the Wireless Telecommunications Bureau; Mark Azic, Patrick Brogan, Chelsea Fallon, Eugene Kiselev, Eric Ralph, and Emily Talaga from the Office of Economics and Analytics; Andrea Kearney, Doug Klein, Richard Mallen, and Derek Yeo from the Office of General Counsel; and Joycelyn James and Joy Ragsdale from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-34, Report and Order and Further Notice of Proposed Rulemaking (November 15, 2023).

It's a frightening thought – that a stranger could successfully impersonate you to your phone company, and in one conversation gain access to your primary means of communication. But this is more than a thought, it's reality. Bad actors are taking advantage of the services that let you keep your old number when you change phones or providers, leveraging identity authentication protocols and underdeveloped fraud response systems to, essentially, steal your phone and your account – without ever gaining physical control of it.

These scams – SIM swap and port-out fraud – don't just put wireless account access and details at risk. Because we so frequently use our phone numbers for two-factor authentication, a bad actor who takes control of a phone can also take control of financial accounts, social media accounts, the list goes on. Consumers must be able to count on secure verification procedures and reliable privacy guarantees from their wireless providers. And they should be able to go about their day without fearing that someone, somewhere, might take control of their phone without a single warning sign.

Today, we take action to provide that security. This order updates the Commission's existing Customer Proprietary Network Information ("CPNI") and Local Number Portability ("LNP") rules to protect against SIM swap and port-out fraud. While the framework we implement today is responsive to the current scope of these deceptive practices, it is also forward-looking. We require wireless providers to adopt secure authentication methods and to immediately notify customers of SIM change or port-out requests before they are processed, among other things. But we emphasize that these are baseline requirements, rather than prescriptive rules. In doing so, we acknowledge two things the record makes clear: first, that many providers may already have certain protective measures in place that may fulfill some of these new requirements, and second, that the threat landscape is rapidly evolving, and providers need flexibility to adopt and adapt their security methods accordingly.

Cell phones are near-ubiquitous, and many Americans rely on them as their sole means of connection, as well as the key to their many online accounts. The Commission's statutory duty to safeguard consumer privacy within the telecommunications space, and our unparalleled regulatory expertise within that space, gives rise to the strength of today's item. I thank the Chairwoman for her focus and leadership on these issues, and I thank the Commission staff for their excellent work on this item. It has my full support.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341, Report and Order and Further Notice of Proposed Rulemaking (November 15, 2023).

Phone numbers are a lifeline. In addition to keeping us connected to our family and friends, our phone numbers are associated with a variety of digital accounts used for everything from banking to healthcare. And now, messages sent to our phones for multifactor authentication are also used to grant access to these accounts that hold so much of our personal information.

Through two types of fraudulent activity, SIM swapping and number port-outs, malicious actors are able to take over control of a victim's phone, meaning phone number, without ever accessing their physical phone. Then, using this control, they go after the sensitive consumer information they now have access to. This is unacceptable.

Today, we take meaningful steps to protect consumers against SIM swap and port-out fraud. We will require more secure customer authentication, notify consumers before a SIM swap occurs, and provide the option for consumers to lock their SIM to prevent changes.

Thank you to the Wireline Competition Bureau for your work on this item and to Chairwoman Rosenworcel's office for incorporating our edits that ensure notifications are available in consumers' language of choice.

DECLARACIÓN DE LA COMISIONADA ANNA M. GOMEZ

Re: *Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341, Report and Order and Further Notice of Proposed Rulemaking (November 15, 2023).

Los números de teléfono son un salvavidas. Además de mantenernos conectados con nuestra familia y amigos, nuestros números telefónicos están asociados con una variedad de cuentas digitales que se utilizan para todo, desde los trámites bancarios hasta la atención médica. Y ahora, los mensajes enviados a nuestros teléfonos para la autenticación multifactorial también se utilizan para otorgar acceso a estas cuentas que contienen gran parte de nuestra información personal.

A través de dos tipos de actividad fraudulenta: el intercambio de tarjetas SIM y la transferencia de números (la estafa "port-out", en inglés), personas malintencionadas pueden adueñarse del número telefónico de una víctima, sin siquiera acceder a su teléfono físico. Luego, buscan la información confidencial del consumidor utilizando su número telefónico para lograr acceso a los datos. Eso es inaceptable.

Hoy, tomamos medidas significativas para proteger a los consumidores contra el fraude de transferencia y el cambio de tarjetas SIM. Requeriremos una autenticación de cliente más segura, notificaremos a los consumidores antes de que se produzca un intercambio de tarjetas SIM y brindaremos a los consumidores la opción de bloquear su tarjeta SIM para evitar cambios.

Agradecemos a la oficina de competencia en línea fija (Wireline Competition Bureau) por su trabajo en este tema, y a la oficina de la presidenta de la FCC, Jessica Rosenworcel, por incorporar los cambios que hemos sugerido para garantizar que las notificaciones estén disponibles en el idioma elegido por los consumidores.

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

In the Matter of	)	
	)	
Supporting Survivors of Domestic and Sexual Violence	)	WC Docket No. 22-238
	)	
	)	
Lifeline and Link Up Reform Modernization	)	WC Docket No. 11-42
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	

REPORT AND ORDER

Adopted: November 15, 2023 **Released: November 16, 2023**

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements.

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I. INTRODUCTION

1. Today we take action to protect survivors of domestic violence and ensure they are able to maintain critical access to reliable, safe, and affordable connectivity. Such connectivity permits survivors to contact family and friends, and seek help through services such as domestic abuse hotlines without fear of reprisals. These measures will help survivors whose devices and associated telephone numbers are shared with abusers and who can face difficulties separating lines from such plans and maintaining affordable service. At the same time, survivors may be reluctant to call support services such as hotlines for fear of the call log exposing the call to an abuser. Survivors may also experience financial hardship as a result of leaving a relationship with an abuser. By this *Report and Order*, we work to relieve these challenges and implement the Safe Connections Act of 2022 (Safe Connections Act or SCA).[1] We believe that the measures we adopt today will aid survivors who need meaningful support and communications options when establishing independence from an abuser.[2]

II. BACKGROUND

2. Domestic violence remains a significant safety and public health issue that results in individual harm and societal costs, affecting not just survivors but also their families, friends, and colleagues.[3] More than one in three women and one in four men in the United States will experience some form of domestic violence during their lifetimes,[4] and every year, domestic violence will affect more than 12 million people.[5]

3. Multi-line shared mobile service contracts present unique challenges for survivors of domestic violence seeking to maintain essential connectivity while distancing themselves from their abusers.[6] Such plans can allow the account holder (who may be the abuser) to monitor a survivor's calls and text messages, including to domestic abuse hotlines or other lines of support, and the precise location of the device that the survivor uses.[7] It can sometimes be difficult for a survivor to separate a mobile service line (and associated device) from a shared mobile service plan, particularly when that shared plan is controlled by the abuser.[8] Furthermore, if a domestic violence survivor is considering initiating a

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[1] Safe Connections Act of 2022, Pub. L. No. 117-223, 116 Stat. 2280 (Safe Connections Act or SCA).

[2] *See* Safe Connections Act § 3.

[3] *See Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program; Supporting Survivors of Domestic and Sexual Violence*, WC Docket Nos. 11-42, 21-450, 22-238, Notice of Inquiry, 37 FCC Rcd 8964, 8965-67, paras. 4-7 (2022) (*Notice of Inquiry*); Safe Connections Act § 3(1) (noting that "[d]omestic violence, dating violence, stalking, sexual assault, human trafficking, and related crimes are life-threatening issues and have last and harmful effects on individuals, families, and entire communities"); N.Y. State Off. for the Prevention of Domestic Violence (NYS OPDV) Comments at 2.

[4] National Domestic Violence Hotline, *Domestic Violence Statistics*, https://www.thehotline.org/stakeholders/domestic-violence-statistics (last visited Nov. 11, 2023).

[5] *Id.*

[6] *Supporting Survivors of Domestic and Sexual Violence et al.*, WC Docket Nos. 22-238 et al., Notice of Proposed Rulemaking, FCC 23-9, at 3, para. 5 (Feb. 17, 2023) (*Safe Connections Notice*).

[7] *See, e.g.*, AT&T, *Access Digital Home Phone Call History*, https://www.att.com/support/article/u-verse-voice/KM1001418 (last visited Aug. 22, 2023); AT&T, *Location Tracking with AT&T Secure Family*, https://www.att.com/support/article/wireless/KM1299008 (last visited Aug. 22, 2023); Comcast, *View and Download Xfinity Voice Call History*, https://www.xfinity.com/support/articles/check-voicemail-xfinity-connect (last visited Aug. 22, 2023); Ooma, *Call Logs*, https://support.ooma.com/home/call-logs (last visited Aug. 22, 2023); T-Mobile, *T-Mobile FamilyWhere App*, https://www.t-mobile.com/support/plans-features/t-mobile-familywhere-app (last visited Aug. 22, 2023); Verizon, *Verizon SmartFamily FAQs*, https://www.verizon.com/support/verizon-smart-family-faqs (last visited Aug. 22, 2023).

[8] Safe Connections Act § 3(2)-(3).

communications service of their own, or leaving a family plan controlled by their abuser, affordability may be a key factor. Personal safety and economic security are often closely tied for survivors.[9] One survey found that 83% of survivors of intimate partner violence reported that their abusive partners disrupted their ability to work.[10] In that same survey, 70% of survivors reported not being able to have a job when they wanted or needed one, and 53% lost at least one job as a result of the abuse.[11]

4. *Safe Connections Act.* In recognition of the fact that communications services are vital to survivors' efforts to maintain essential connections with family, social safety networks, employers, and support services,[12] Congress enacted the Safe Connections Act in November of 2022 to ensure survivors can separate from abusers without losing independent access to their mobile service plan.[13] The SCA amends the Communications Act of 1934 (Communications Act) to require mobile service providers to separate the line of a survivor of domestic violence (and other related crimes and abuse), and any individuals in the care of the survivor, from a mobile service contract shared with an abuser within two business days after receiving a request from the survivor.[14] The SCA also directs the Commission to issue rules, within 18 months of the statute's enactment, implementing the line separation requirement.[15] Additionally, the SCA requires the Commission to designate either the Lifeline program[16] or Affordable Connectivity Program (ACP)[17] as the vehicle for providing survivors suffering financial hardship with emergency communications support for up to six months.[18] Further, the legislation requires the

[9] *Safe Connections Notice* at 4, para. 7.

[10] *See* Cynthia Hess & Alona Del Rosario, *Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors' Education, Careers, and Economic Security* at 23 (2020), https://iwpr.org/wp-content/uploads/2020/09/C475_IWPR-Report-Dreams-Deferred.pdf.

[11] *Id*.

[12] NYS OPDV Comments at 2 ("[A]ccess to safe technology is a primary means for survivors to attain and maintain economic and financial stability. . . . Connectivity is critical to survivors in need of accessing emergency responders, and mental health support for themselves and their children while planning for futures free from abuse. The lack of connectivity greatly diminishes a survivor's ability to apply for jobs, find affordable housing, access public benefits, attend virtual court hearings and receive telehealth services."); Network of Victims Recovery of DC (NVRDC) Notice of Inquiry Comments at 2 (noting that "the ability to privately access external service providers and support organizations, or law enforcement, can be the critical determining factor in whether a survivor is able to break free from the cycle-of-abuse").

[13] Safe Connections Act § 3(4) (finding that "independent access to a wireless phone plan can assist survivors in establishing security and autonomy").

[14] Safe Connections Act § 4 (adding section 345 to the Communications Act, 47 U.S.C. § 345).

[15] Safe Connections Act § 5(b)(1)(A).

[16] The Lifeline program currently offers qualifying low-income consumers discounts on fixed or mobile voice or broadband Internet access service, as well as on bundled service. 47 CFR § 54.401. Qualifying low-income consumers can receive a $9.25 monthly discount on Lifeline-supported broadband Internet access service or a $5.25 monthly discount on Lifeline-supported voice service. *See* 47 CFR § 54.403(a)(1)-(2). Lifeline consumers residing on qualifying Tribal lands can receive up to a $34.25 monthly discount on Lifeline-supported service. 47 CFR § 54.400(e); 47 CFR § 54.403(a)(3).

[17] The ACP offers eligible low-income households a monthly discount for broadband service of up to $30 per household or up to $75 for households on qualifying Tribal lands, and a one-time discount on a connected device. *See Affordable Connectivity Program, Emergency Broadband Benefit Program*, WC Docket Nos. 21-450 and 20-445, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (2022) (*ACP Order*); 47 CFR § 54.1803(a). For the purposes of the ACP, a connected device is defined as a laptop, desktop computer, or a tablet, and excludes cellular phones, smartphones, and tablets with cellular calling capabilities. *ACP Order*, 37 FCC Rcd at 538-39, paras. 110-12.

[18] Safe Connections Act § 5(b)(1), (2).

Commission to open a rulemaking within 180 days of enactment to consider whether to, and how the Commission should, establish a central database of domestic abuse hotlines to be used by service providers and require such providers to omit, subject to certain conditions, any records of calls or text messages to the hotlines from consumer-facing call and text message logs.[19]

5. *Safe Connections Notice of Proposed Rulemaking.* On February 16, 2023, the Commission adopted a Notice of Proposed Rulemaking (*Safe Connections Notice*) to begin the process of implementing the SCA, which provides important statutory support for specific measures to benefit survivors. The *Safe Connections Notice* sought comment on proposed rules that would help survivors separate service lines from accounts that include their abusers, protect the privacy of calls made by survivors to domestic abuse hotlines, and support survivors that pursue line separation requests and face financial hardship through the Commission's affordability programs. The Commission received comments from a wide range of parties, including governmental entities, domestic violence survivor advocacy organizations, consumer groups, and voice service providers.

III. DISCUSSION

A. Separation of Lines from Shared Mobile Service Contracts

6. We adopt rules to codify and implement the line separation provisions in the SCA.[20] Our rules largely track the statutory language, with key additions and clarifications to address privacy, account security, and fraud detection; operational or technical infeasibility; implementation timelines; and compliance with other laws.

1. Definitions

7. In order to implement the SCA's line separation requirements, we adopt definitions for the terms listed in new section 345 of the Communications Act, as added by the SCA, including "covered act," "survivor," "abuser," "covered provider," "shared mobile services contract," and "primary account holder." We discuss each definition below.

8. *Covered Act.* As proposed in the *Safe Connections Notice*, we define "covered act" as conduct that constitutes (1) a crime described in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. § 12291(a)), including, but not limited to, domestic violence, dating violence, sexual assault, stalking, and sex trafficking; (2) an act or practice described in paragraph (11) or (12) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7102) (relating to severe forms of trafficking in persons and sex trafficking, respectively); or (3) an act under State law, Tribal law, or the Uniform Code of Military Justice that is similar to an offense described in clause (1) or (2) of this paragraph.[21]

9. As we noted in the *Safe Connections Notice*, this definition is identical to the statutory definition, except that we add the phrase "but not limited to" in describing the crimes covered by the first clause.[22] Although the SCA defines "covered act" as "a crime described" in section 40002(a) of the Violence Against Women Act "including domestic violence, dating violence, sexual assault, stalking, and sex trafficking,"[23] it does not say that *only* those listed crimes may be included. Section 40002(a) of the Violence Against Women Act of 1994 describes a number of additional crimes and abuses beyond those enumerated in the SCA's definition, including abuse in later life, child abuse and neglect, child maltreatment, economic abuse, elder abuse, female genital mutilation or cutting, forced marriage, and

[19] Safe Connections Act § 5(b)(3).

[20] 47 U.S.C. § 345(b)(1).

[21] *Safe Connections Notice* at 9, para. 20; Appx. A, § 64.6400(e). No commenter objected to our proposal.

[22] *Id.*

[23] *See* 47 U.S.C. § 345(a)(2).

technological abuse.[24] We find that the best reading of the definition of "covered act" in the SCA includes all crimes listed in section 40002(a); we see no reason why Congress would choose to protect only a subset of survivors of these crimes. We further find that the second clause of the definition of "covered act" in the SCA, which identifies specific subsections ("an act or practice *described in paragraph (11) or (12)* of section 103 of the Trafficking Victims Protection Act of 2000") also supports our analysis because in contrast, the first clause of the definition of "covered act" does not limit the definition to specific subsections of section 40002(a) of the Violence Against Women Act.

10. Consistent with the SCA, we conclude that a criminal conviction or any other determination of a court is not required for conduct to constitute a covered act.[25] The SCA separately addresses the evidence needed to establish that a covered act has been committed or allegedly committed. We address those requirements below.

11. *Survivor.* We track the statutory language and define "survivor" as an individual who is not less than 18 years old and either (1) against whom a covered act has been committed or allegedly committed; or (2) who cares for another individual against whom a covered act has been committed or allegedly committed (provided that the individual providing care did not commit or allegedly commit the covered act).[26] Although we share the concerns raised by Asian Pacific Institute on Gender-Based Violence (API-GBV) and the National Domestic Violence Hotline (NDVH) that emancipated minors would not be covered by the statutory definition because they are neither age 18 or older nor likely to be in the care of an individual age 18 or older,[27] the term "survivor" is unambiguously defined by the SCA to only include "individual[s] who [are] not less than 18 years old," and we do not believe that the SCA otherwise provides us with the authority to extend the scope of that definition.[28] Regardless, we strongly encourage covered providers to treat legally emancipated minors as though they are survivors if they meet the SCA's criteria but for their age, and offer them the full scope of protections under the SCA.

12. As we observed in the *Safe Connections Notice*, the statutory language describing a survivor as an individual "who cares for another individual" against whom a covered act has been

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[24] We note that API-GBV recommended that the Commission clarify that the term "covered act" is not limited to criminal behavior, asserting that the "referenced provisions are not only crimes, but include or [sic] 'acts' or 'behavior' similar to mentioned crimes, and severe forms of trafficking, which can include crimes as well as acts that do not constitute a crime." API-GBV Comments at 2. Apart from API-GBV's comments, the record lacks any further input on this issue. Because no industry commenter raised concerns with implementing this provision of the SCA, we find it unnecessary to provide further guidance or clarification at this time.

[25] 47 U.S.C. § 345(a)(2)(B); *see Safe Connections Notice* at 10, para. 22; *see also* API-GBV Comments at 2 ("API-GBV applauds guidance that specifies that a criminal conviction or any other determination of a court not be required for conduct to constitute a covered act."); Knight Comments at 2 ("Any provision requiring [a criminal conviction or court determination] for any portion of this act would tend to exclude a large population the Act intends to protect as majority of survivors never seek legal intervention."); NYS OPDV Comments at 3 ("We also agree that a criminal conviction should not be required for conduct to constitute a covered act.").

[26] 47 U.S.C. § 345(a)(6); Appx. A, § 64.6400(m).

[27] *See* National Domestic Violence Hotline Comments at 1 ("Not considering the needs of those experiencing abuse and under the age of 18 creates a significant void, and without options for cellular services may in fact reinforce a dependency on the abusive partner."); API-GBV Comments at 3 (recommending inclusion of individuals who are less than 18 years old by are emancipated under state, territorial, or Tribal law who have experienced harm in the definition of "survivor"). Emancipated minors may generally legally engage in actions typically reserved for adults without parental consent or notice, including but not limited to consenting to personal healthcare, entering into contracts, bringing suit and being sued, establishing residency, purchasing and selling property, and marrying. *See, e.g.*, Va. Code § 16.1-334; Cal. Fam. Code § 7050; Tex. Fam. Code § 31.006. Legally emancipated minors have many of the same rights and responsibilities as individuals who are 18 or older, including the ability to legally contract for telecommunications services, and in that regard, the status of such individuals is akin to "an individual who is not less than 18 years old." Safe Connections Act § 3(2).

[28] 47 U.S.C. § 345(a)(6).

committed or allegedly committed is broad.[29] We conclude that this phrase should be understood to encompass: (1) any individuals who are part of the same household, as defined in section 54.400 of the Commission's rules[30]; (2) parents or guardians of minor children even if the parents and children live at different addresses; (3) those who care for another individual by valid court order or power of attorney; and (4) an individual who is the parent, guardian, or caretaker of a person over the age of 18 upon whom an individual is financially or physically dependent.[31] The record generally supports a broad interpretation of the phrase "who cares for," while noting the need to provide clear and certain guidance to providers.[32] We disagree with the NDVH's assertion that our proposed interpretation would have prevented a person who does not live in the same household from claiming survivor status if a covered act were not directly committed against them,[33] but we nonetheless make explicit that we interpret this provision to include those individuals who are the parent, guardian, or caretaker of a person over the age of 18 upon whom an individual is financially or physically dependent (e.g., a non-minor child financially dependent on his or her parents or guardians, but who no longer lives at the same address). We find that this interpretation appropriately balances the needs of survivors to have meaningful access to line separations and clarity for providers for administrability and fraud deterrence.

13. We decline, however, to adopt NDVH's proposal to include emotional care within the meaning of "care for"[34] as we find that doing so would be difficult to administer and could raise account security risks.[35] The record does not evince any examples of laws or regulations in which the phrase "cares for" is used to connote emotional caring, and as such we have no basis for finding that Congress intended this provision to be interpreted to include such circumstances.

14. We decline to mandate that covered providers establish a process for individuals age 18 or older who are considered in the care of another person to object to a line separation request made on

[29] *See Safe Connections Notice* at 10, para. 24; 47 U.S.C. § 345(a)(6)(B).

[30] 47 CFR § 54.400(h) ("A 'household' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An 'economic unit' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.").

[31] *See* API-GBV Comments at 3 (supporting the Commission's proposed determination of what circumstances cover "care for").

[32] *See* NDVH Comments at 2 ("We support a broad statutory interpretation of the legislative text. Upon consulting with our partners at the National Resource Center on Domestic Violence we believe the definition of "care for" should not be narrowed and should be allowed to be survivor centered."); CCA Comments at 3 (noting that "the best solution is for the Commission to provide clear guidance for all carriers to follow"). In the *Safe Connections Notice*, we tentatively concluded that "the Safe Connections Act contemplates that an individual who is the parent, guardian, or caretaker of a person over the age of 18 qualifies as someone who provides care for another person and, thus, as a "survivor" when a covered act is committed against the person for whom the individual cares." *Safe Connections Notice* at 10-11, para. 25.

[33] *Id.*

[34] NDVH Comments at 2 (proposing that "care for" mean "an individual who provides physical, *emotional,* or financial care to another individual, which supports that person's ability to sustain or perform tasks related to their physical or household well-being and care") (emphasis added).

[35] *See* Safe Connections Act § 5(b)(1)(B)(ii), (xii) (directing the Commission to consider, among other things, account security and fraud detection and ensuring covered providers have the necessary account information to comply with the rules).

their behalf.[36] We agree with Verizon that an objection process could "hinder a wireless provider's ability to timely effectuate [a line separation request] within the two-business day period, put the wireless provider in an untenable position of uncertainty as to whether an otherwise valid line separation request should move forward, or both."[37]

15. *Abuser.* As proposed in the *Safe Connections Notice*, we define "abuser" for purposes of our rules as an individual who has committed or allegedly committed a covered act against (1) an individual who seeks relief under section 345 of the Communications Act and the Commission's implementing rules; or (2) an individual in the care of an individual who seeks relief under section 345 of the Communications Act and the Commission's implementing rules,[38] mirroring the substance of the SCA.[39] No commenters objected to our proposed definition. As we explained in the *Safe Connections Notice*, we do not intend our definition to serve as independent evidence of, or establish legal liability in regards to, any alleged crime or act of abuse, and adopt this definition only for purposes of implementing the SCA.[40]

16. *Covered Provider.* Consistent with the SCA, we define "covered provider" as a provider of "a private mobile service or commercial mobile service, as those terms are defined in 47 U.S.C. 332(d)."[41] No commenters objected to the *Safe Connections Notice*'s proposal to adopt such a definition.[42] Section 332(d) defines "commercial mobile service" as "any mobile service (as defined in [47 U.S.C. § 153]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission,"[43] and defines "private mobile service" as "any mobile service (as defined in [47 U.S.C. § 153]) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission."[44] We find

[36] *See Safe Connections Notice* at 10-11, para. 25 (seeking comment whether certain persons over the age of 18 who are in the care of another individual should be permitted to object to a line separation request that is made by a survivor who cares for them on their behalf).

[37] Verizon Comments at 6-7.

[38] 47 U.S.C. § 345(a)(1); Appx. A, § 64.6400(a).

[39] *Safe Connections Notice* at 9, paras. 20-21. For clarification purposes, we changed "under subsection (b)" in both clauses to "under section 345 of the Communications Act and the Commission's implementing rules."

[40] *See* API-GBV Comments at 2; NY Office for the Prevention of Domestic Violence Comments at 4 (concurring with the proposed definition and agreeing that the definition is not intended to create legal liability).

[41] Appx. A, § 64.6400(g); *see* 47 U.S.C. § 345(a)(3).

[42] *Safe Connections Notice* at 11, para. 27.

[43] 47 U.S.C. § 332(d)(1). Section 3 of the Communications Act defines "mobile service" as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communications among themselves, and includes (A) both one-way and two-way radio communications services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding." 47 U.S.C. § 153(33). Section 332(d) defines "interconnected service" as "service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to [section 332(c)(1)(B)]." 47 U.S.C. § 332(d)(2).

[44] 47 U.S.C. § 332(d)(1). The Commission has forborne in whole or in part from applying sections 203, 204, 205, 211, 212 and 214 of Title II of the Communications Act to any service classified as commercial mobile radio service under section 332, but declined to forbear from other sections of the Act that it found were necessary to protect (continued….)

that the line separation obligations apply to all providers of commercial mobile service or private mobile service, as the Commission might interpret and apply those definitions, regardless of the underlying technology used to provide the service (e.g., whether provided through land, mobile, or satellite stations).[45]

17. Consistent with the Commission's proposal, we conclude that covered providers include both facilities-based mobile network operators and resellers/mobile virtual network operators (MVNOs).[46] No commenters objected to this proposal and several concurred.[47] The record indicates that for some MVNOs, the underlying facilities-based provider may have control over some parts of, or all of, the systems and infrastructure necessary to effectuate line separations.[48] Therefore, we find that to the extent that an MVNO relies upon an underlying facilities-based provider to effectuate line separations, the MVNO should fulfill its obligations under the SCA and our rules through its contractual relationship with the underlying facilities-based provider, and may satisfy its obligations by utilizing the same procedures and processes the facilities-based provider makes available to its own customers.[49] However, to the

(Continued from previous page)
consumers. 47 CFR § 20.15; *see Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1475-90, paras. 164-213 (1994) (*CMRS Second Report and Order*).

[45] 47 U.S.C. § 345(a)(3); *Safe Connections Notice* at 12, para. 28. For example, as technological capabilities evolve, mobile service providers are seeking ways to leverage satellite communications to provide expanded coverage to consumer handsets. *See Single Network Future: Supplemental Coverage from Space*, GN Docket No. 23-65, Notice of Proposed Rulemaking, FCC 23-22 (2023) (proposing a framework that would facilitate collaboration between satellite operators and terrestrial networks).

[46] *See CMRS Second Report and Order*, 9 FCC Rcd at 1425, para. 37 (finding that "mobile resale service is included within the general category of mobile services as defined by Section 3(n) and for purposes of regulation under Section 332" and that "there is no indication in the statute or the legislative history that resellers are not 'mobile service' providers or exempt from the Section 332 regulatory classification"). Mobile virtual network operators do not necessarily own any network facilities, but instead purchase mobile wireless services wholesale from facilities-based providers and resell these services to consumers. *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, FCC 22-203, at 50, para. 62 (Dec. 30, 2022) (*2022 Communications Marketplace Report*).

[47] *See* CTIA Comments at 7 (agreeing with the Commission's proposed definition of "covered providers"); National Lifeline Association Comments at 3 (agreeing with the Commission that covered providers should include" both facilities-based mobile network operators as well as resellers/MVNOs since either could be called upon to separate lines of service for an abuser or a survivor"); Verizon Comments at 4, 7 ("The term 'covered provider' necessarily includes resellers of wireless services (MVNOs); otherwise, hundreds of thousands of wireless consumers would be ineligible to invoke the Safe Connections Act's protections and the Commission would create an unfair competitive environment.").

[48] *See* CTIA Comments at 7 (noting that "some MVNOs may depend on their underlying facilities-based providers for systems necessary to effectuate line separations, screen call logs, or both"); Verizon Comments at 7 (suggesting that MVNOs may be reliant on the underlying facilities-based provider for certain actions, such as number ports or number changes).

[49] *See* CTIA Comments at 7 (suggesting that in cases where the MVNO relies upon the underlying facilities-based provider, "the MVNO's obligations should be limited to the capabilities that the facilities-based provider makes available to its own customers."); Verizon Comments at 7 ("Where an MVNO requires a wholesale provider's support to implement aspects of the new rules, such as a number port or number change relating to an LSR, those matters are appropriately left to the parties' contractual relationships."); CCA Reply at 5 (citing support for both CTIA's and Verizon's comments on MVNO responsibilities); *cf.* EPIC et al. Reply at 4-5 (urging the Commission to ensure that the responsibilities of the MVNO/reseller and the underlying facilities-based provider are clear).

extent an MVNO controls any facilities or systems (for example, customer care or billing), the obligations imposed by the SCA fall entirely upon the MVNO and not the underlying facilities-based provider.[50]

18. Additionally, we conclude that the statutory definition of "covered provider" includes a provider of mobile broadband-only or mobile text service that does not also offer mobile voice service, if such provider assigns a telephone number to a device.[51] Because the SCA defines a "covered provider" to include any provider offering private mobile service or commercial mobile service, we conclude that providers offering data-only mobile service or text-only mobile services (i.e., no voice services) are "covered providers." We therefore disagree with National Lifeline Association's suggestion that mobile broadband providers who do not offer mobile voice service should not be considered covered providers,[52] as such providers are statutorily covered by the SCA as providers of private mobile service.

19. *Shared Mobile Service Contract.* Consistent with the Commission's proposal in the *Safe Connections Notice*,[53] we define "shared mobile service contract" as a mobile service contract for an account that includes not less than two lines of service and does not include enterprise services offered by a covered provider, mirroring the definition set forth in the SCA,[54] except that we interpret "2 consumers" to mean "two lines of service."[55] As the Commission explained in the *Safe Connections Notice*, "[i]t is our understanding that mobile service contracts are typically structured around the number of *lines of service* associated with an account rather than the number of *consumers*."[56] As a result of this contract structure, providers may not have information about any users other than the primary account holder and are therefore unlikely to be able to determine whether an account is a shared mobile service contract (i.e., has two or more consumers).[57] Our interpretation, however, resolves this issue without requiring providers to collect additional information about each user of a multi-line account, and the record supports our approach. CTIA commented that our definition "will help enable program success because it

[50] CTIA Comments at 7 ("To the extent MVNOs control their own systems relevant to the new rules, compliance obligations would fall solely on the MVNO."); Verizon Comments at 7 ("Compliance with any new requirements relating to customer care, training, billing and other matters, however, relates to an MVNO's direct customer relationships and to the billing and care systems it controls."); CCA Reply at 5 (supporting Verizon's comments).

[51] In prior Orders, the Commission has at different times classified mobile broadband Internet access service as either a private mobile service or a commercial mobile service. *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, 30 FCC Rcd 5601, 5778-90, paras. 388-408 (2015) (*2015 Open Internet Order*) (classifying mobile broadband Internet access service as commercial mobile service); *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 352-62, paras. 65-85 (2017) (*2017 RIF Order*) (reclassifying mobile broadband Internet access service as private mobile service), *aff'd in part and remanded in part*, *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019), *on remand*, Order on Remand, 35 FCC Rcd 12328 (2020), *pets. for recon. pending*, *pet. for review pending*, *Cal. Pub. Utils. Comm'n v. FCC*, No. 21-1016 (D.C. Cir.). *See also Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7, Declaratory Ruling, 33 FCC Rcd 12075 (2018) (discussing regulatory classification of Short Message Service and Multimedia Messaging Service under the Communications Act), *pet. for recon. pending*, Rept. No. 3011 (Feb. 5, 2019).

[52] National Lifeline Association Comments at 3 (asserting that "voice service is of primary importance for survivors who would generally be better off with a separate voice and data line . . . than splitting off a data-only line from a shared mobile service contract").

[53] *Safe Connections Notice* at 12-13, paras. 29-32.

[54] 47 U.S.C. § 345(a)(5).

[55] Appx. A, § 64.6400(k).

[56] *Safe Connections Notice* at 12-13, paras. 29-30.

[57] *See Advanced Methods to Target and Eliminate Unlawful Robocalls Fourth Report and Order*, 35 FCC Rcd 15221, paras. 32-34 (requiring providers to "know their customers," but does not require providers to identify each individual user or a line or even that each line on shared mobile service contract has its own discrete user).

generally aligns with providers' customer service and billing systems" and that "adopting a definition focused on 'lines of service' rather than 'consumers' will avoid impediments to survivors' ability to obtain line separations," particularly when providers do not know the identity of each consumer associated with an account.[58] Notably, there were no objections to this proposed definition in the record. Furthermore, we find that the operational language of the SCA supports our interpretation, as it requires providers to separate particular lines rather than particular consumers from shared mobile service contracts.[59] Consistent with the tentative conclusion in the *Safe Connections Notice*, we also find that "shared mobile service contract" includes both prepaid and post-paid mobile service contracts.[60] This tentative conclusion was also unopposed and supported by CTIA.[61]

20. We also conclude that a "line of service" under a shared mobile service contract is one that is associated with a telephone number,[62] even if that line of service does not include voice services, and includes all of the mobile services associated with that line under the shared mobile service contract, regardless of classification, including voice, text, and data services. There is nothing in the statutory text to suggest that Congress intended to permit survivors to separate only certain services associated with their line but not others. Each service—voice, text, or data—could play a vital role in addressing survivors' communications needs. For example, although a device may lack voice service or capability over commercial mobile radio service, if a phone number is associated with the device, a survivor may use the number with certain over-the-top (OTT) services to send and receive messages or make voice calls by utilizing VoIP technology using data services or data messaging services.[63] Permitting separation of such lines may help avoid complications that could arise from disassociating with an existing number for these services. Had Congress wanted to limit line separations to only those lines with voice service, it could have done so explicitly in the statutory text. Congress, however, noted that "perpetrators of violence and abuse increasingly use technological and communications *tools* to exercise control over, monitor, and abuse their victims."[64] Clearly, Congress recognized that abusers might try to exercise control over survivors not only by limiting access to or monitoring devices with voice services but also by controlling other technological and communications tools. Because Congress sought to promote "reliable communications tools to maintain essential connections with family, social safety networks, employers, and support services,"[65] we see no reason to limit the definition of "line of service" to only those lines with voice service when so doing could impede a survivor's access to certain devices and hamper their ability to gain support and services they need.

21. We disagree with Verizon's assertion that "it is far from clear that Congress intended certain other devices," such as tablets with no mobile capability, which only "nominally" have a line

[58] CTIA Comments at 6.

[59] *See* Safe Connections Act § 4(b) (requiring covered providers to separate certain *lines* rather than certain *consumers* and entitled "Separation of *Lines* From Shared Mobile Service Contract") (emphasis added).

[60] *Safe Connections Notice* at 13, para. 31.

[61] *See* CTIA Comments at 6 (agreeing that "the scope of a mobile service contract may include all services, regardless of classification, as well as pre- and post-paid plans").

[62] *See, e.g.*, 47 U.S.C. § 345(b)(5) ("[B]eginning on the date on which a covered provider transfers billing responsibilities for and use *of a telephone number or numbers* to a survivor under paragraph (1)(A) in response to a line separation request. . ."); *id*. § 345(b)(6) (discussing responsibility for transferred *telephone numbers* from a survivor's account); *id*. § 345(b)(7) (discussing responsibility for mobile devices after a covered provider "transfers billing responsibilities for and rights to a *telephone number or numbers* . . . in response to a line separation request") (emphasis added).

[63] Such OTT services may include, for example, applications like WhatsApp, Signal, Messenger, and Telegram.

[64] Safe Connections Act § 3(3).

[65] Safe Connections Act § 3(2).

associated with a customer account, to be covered by the SCA.[66] Denying a survivor the ability to separate a line simply because it is "nominally" associated with a device could allow an abuser to maintain control over or monitor the line and the device associated with line and inhibit a survivor's ability to break free from an abusive situation. For example, a survivor may want to separate a line for a device in order to protect his or her location information from an abuser with access to the shared mobile account information. Had Congress wanted to limit line separations in the manner Verizon suggests, Congress could have explicitly done so. However, Congress defined a shared mobile service contract as a mobile service contract that includes not less than two "consumers"—it did not in any way cabin "consumer" to a particular type of mobile service. Therefore, rather than "being far from clear," it would seem counter to congressional intent to disallow a survivor's line separation request because the line at issue is only "nominally" associated with a device.

22. We also disagree with Verizon's assertion that covered providers are not statutorily required to (but may voluntarily) separate more than one line per survivor on the basis that Congress intended to limit separations to one line per survivor because "the statute uses the term 'line' in the singular, not plural."[67] As an initial matter, we read the statutory language in subsection (b) as framing the process to address each discrete line separation request, which grammatically requires the use of "line" in the singular, and in no way limits the number of lines for which a survivor may seek separation. Furthermore, limiting a survivor to one line separation request could potentially allow an abuser to maintain control over or monitor the survivor's other lines (or devices connected to other lines) that remain on the shared contract. We believe this would be contrary to Congress's goals, particularly of helping survivors establish "independent access to a wireless phone plan."[68] We also believe that had Congress intended to allow only one line separation per survivor (and one line per each individual in the care of a survivor), it would have made this limitation clear in the text. For example, instead of using the term "the line," Congress could have said that a provider must "separate *one* line of the survivor, and *one* line of any individual in the care of the survivor."[69] Alternatively, Congress could have expressly limited the number of separations by stating that "a survivor is entitled to one line separation for the survivor and one line separation for each individual in the care of the survivor." Moreover, the statute uses the exact same term "the line" when discussing the separation of an abuser's line as it does when discussing the separation of a survivor's line. Accepting Verizon's statutory interpretation would mean that a survivor is limited to separating only one line of the abuser's from the shared account. We do not believe that Congress intended to limit a survivor's ability to completely remove an abuser from a shared mobile service contract when so doing would likely impair the survivor's ability to establish independent wireless communications and leave the abusive situation. For all these reasons, we disagree with Verizon's assertion and conclude that covered providers must separate multiple lines, when applicable.

23. The SCA's definition of "shared mobile service contract" explicitly excludes "enterprise services."[70] Consistent with the Commission's proposal in the *Safe Connections Notice*, we conclude that enterprise services are those products or services that are not ordinarily available to mass market customers and are primarily offered to entities to support and manage business operations, which may provide greater security, integration, support, or other features than are ordinarily available to mass market customers, and excludes services marketed and sold on a standardized basis to residential

[66] Verizon Comments at 7-8 (asserting that a "tablet with Wi-Fi but not 'mobile' capability, for example, is not used for either a CMRS or PMRS offering covered by the Safe Connections Act, even if it nominally has a 'line' associated with it in the customer account").

[67] Verizon Comments at 4, 7-8.

[68] Safe Connections Act § 3(4) ("Communications law can play a public interest role in the promotion of safety, life, and property with respect to the types of violence and abuse described in paragraph (1). For example, independent access to a wireless phone plan can assist survivors in establishing security and autonomy.").

[69] 47 U.S.C. § 345(b).

[70] 47 U.S.C. § 345(a)(5).

customers and small businesses.[71] Our conclusion is consistent with the Commission's past findings that mass market services are those that are generally "marketed and sold on a standardized basis to residential customers [and] small businesses" whereas enterprise services are "typically offered to larger organizations through customized or individually negotiated arrangements."[72]

24. Although we appreciate industry concerns over fraud,[73] we decline to create a presumption that wireless accounts listing a business entity as the primary account holder are "enterprise" accounts.[74] We find the concerns of NCTA that business accounts will be greater targets for fraud without a presumption that all accounts with a business listed as the primary account holder are enterprise accounts or a presumption that any account for which a party has subscribed to a "business wireless service" is an enterprise account to be overstated.[75] The SCA includes adequate safeguards against the type of potential enterprise account fraud raised by NCTA by requiring survivors to submit documentation along with a line separation request demonstrating that an "abuser" who uses a line under the shared mobile service contract has committed or allegedly committed a covered act against the survivor (i.e., the person requesting the line separation) and an affidavit that the survivor is the user of the specific line.[76] In practical terms, we expect that it would be challenging for a bad actor to make this required showing where the account holder is a business, and not an individual, unless the abuser's name is also the business name on the account. We believe this required showing will minimize the potential for fraud on business accounts. As such, we decline to adopt the CTIA and NCTA suggested presumptions.

25. *Primary Account Holder.* Finally, as proposed in the *Safe Connections Notice*, we define "primary account holder" as "an individual who is a party to a mobile service contract with a covered provider,"[77] mirroring the definition in the SCA.[78] While no commenters opposed this proposal, Verizon noted that "accounts typically have one named account owner," and explained that "the possibility that 'more than a single individual [may be] a party to a mobile service contract' should not affect how the SCA is implemented in practice.'"[79] As such, we see no need to depart from the statutory definition of primary account holder.

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[71] *Safe Connections Notice* at 13, para. 32.

[72] *Accord Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17932, para. 45 (2010) (*2010 Open Internet Order*), *aff'd in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014); *2015 Open Internet Order*, 30 FCC Rcd at 5683, para. 189; *RIF Order*, 33 FCC Rcd at 318, n.58.

[73] *See* NCTA Reply at 2-3 ("Indeed, bad actors may be particularly likely to prey on business lines since taking over a business line under false pretenses would present an attractive opportunity for lucrative financial gain or to otherwise damage the business. For example, bad actors could separate or port a business telephone number and use it to impersonate the business or intercept its customers. Even a legitimate employee of a business with authorization to use the line might seek to separate it under false pretenses, for example, if they are moving to a new company and trying to take customers with them.").

[74] *See* CTIA Comments at 6-7 (requesting that the Commission "establish a presumption that wireless service accounts where the account holder is a business, not an individual, are 'enterprise' accounts unless the business has subscribed to a plan that is also available to individual subscribers"); NCTA Reply at 3 (noting that its request "builds upon CTIA's recommendation" and asks the Commission to find that any "party that enters into a contract for a business wireless service has an 'enterprise' account").

[75] *See* CTIA Comments at 3; NCTA Comments at 2-3.

[76] 47 U.S.C. § 345(c)(1)(A).

[77] Appx. A, § 64.6400(j).

[78] 47 U.S.C. § 345(a)(4); *Safe Connections Notice* at 13, para. 33.

[79] Verizon Comments at 8.

2. Submission of Line Separation Requests

26. In this section, we adopt rules to clarify the requirements for submission of a line separation request under section 345 of the Communications Act. We largely codify the requirements set out in the SCA for how survivors submit line separation requests while adopting some measures that clarify those requirements pursuant to the SCA's command that we consider various factors when enacting regulations for the line separation requirement.[80] Our aim is to maximize survivors' ability to obtain line separations by ensuring that covered providers have clear direction on their obligations related to the submission of line separation requests.[81] Specifically, we establish requirements regarding the information that survivors must submit to request a line separation and the options providers must give survivors when survivors are making a line separation request, taking into account flexibility for survivors wherever possible.

a. Information Required to Submit Line Separation Requests

27. The rules we adopt concerning the information that survivors must submit to make a line separation request are closely aligned with the requirements set out in the SCA.[82] Specifically, we require that a survivor's line separation request: (1) state that the survivor is requesting relief from the covered provider under section 345 of the Communications Act and our rules; (2) identify each line that should be separated using the phone number associated with the line; (3) regardless of which lines will be separated, identify which line(s) belong to the survivor and state that the survivor is the user of those lines; (4) when a survivor is seeking separation of the line(s) of any individual under the care of the survivor, include an affidavit setting forth that any such individual is in the care of the survivor and is the user of the specific line; (5) when a survivor is seeking separation of the abuser's line, state that the abuser is the user of that specific line;[83] and (6) include documentation that verifies that an individual who uses a line under the shared mobile service contract (i.e., an "abuser") has committed or allegedly committed a covered act

[80] In particular, the SCA requires the Commission to consider, among other things, privacy protections; account security and fraud detection; the requirements for remote submission of line separation requests, including submission of verification information; feasibility of remote options for small covered providers; compliance with CPNI requirements; and ensuring covered providers have the necessary account information to comply with the SCA and our rules. *See* Safe Connections Act § 5(b)(1)(B).

[81] *See* Electronic Privacy Information Center (EPIC), National Network to End Domestic Violence (NNEDV), Cyber Civil Rights Initiative, Cline to End Tech Abuse, Electronic Frontier Foundation, Iowa Coalition Against Domestic Violence, National Consumer Law Center, The National Domestic Violence Hotline, National Resource Center on Domestic Violence, Ohio Domestic Violence Network, Pennsylvania Coalition Against Domestic Violence, The Pennsylvania Utility Law Project, Thomas Kadri Comments at 4 (EPIC et al. Comments) ("We support the Commission's proposals that prioritize program accessibility and utilization by minimizing the burdens and barriers that might prevent or discourage survivors from engaging in programs authorized by the Safe Connections Act."); CTIA Comments at 14 (asserting that "the Commission's rules should enable covered providers to protect against fraud and identity theft by bad actors attempting to exploit the SCA requirements as a security vulnerability"); CCA Comments at 4 ("Where the Commission creates additional requirements regarding matters like documentation of survivor status, security and navigability for remote submissions of line-separation requests, and the options a carrier must make available to a survivor submitting a request, CCA urges the Commission to make its expectations as clear and simple as possible.") (footnotes omitted).

[82] *See* 47 U.S.C. § 345(c)(1)(B), (C); *see also Safe Connections Notice* at 16, para. 41 (proposing to codify the SCA's requirements and seeking comment on alternative approaches); Appx. A, § 64.6401(a).

[83] We recognize that there may be some instances in which a survivor may wish to separate an abuser's line but is not able to identify the phone number of the abuser that is associated with the account. *See* EPIC et al. Comments at 18 & n.68 (advocating that survivors should still be permitted to obtain line separations in instances when they cannot identify the specific phone number of the abuser, such as when the abuser uses multiple lines or has only provided the survivor with a virtual phone number (e.g., a Google Voice number)). We expect that in these instances, covered providers will work with survivors to separate the lines of the survivor and those in the survivor's care from the account.

against the survivor or an individual in the survivor's care.[84] We also require that a line separation request include the name of the survivor and the name of the abuser that is known to the survivor, which may assist covered providers' fraud detection efforts.[85] While some commenters generally expressed that we should ensure the process for requesting line separations is not cumbersome,[86] none specifically addressed our proposed approach. We find that these requirements are consistent with the statutory requirements set forth in the SCA and properly balance the needs of survivors and covered providers' interest in preventing fraudulent line separations.

28. *Affidavits Regarding an Individual in the Care of a Survivor.* When a survivor is seeking a line separation for an individual in the care of a survivor, we require the survivor to submit an affidavit that is signed by the survivor and dated near the time of submission.[87] We decline to adopt Verizon's suggestion, however, that we require such affidavits include the name of the individual being cared for, relationship of the survivor to the cared-for individual, or other information for fraud deterrence purposes.[88] We conclude that requiring information about such individuals raises privacy concerns that are not outweighed by the potential fraud deterrence benefits, particularly given covered providers may not have this information documented in the shared mobile account in the first place. In addition, we agree with the New York City Mayor's Office to End Domestic and Gender-Based Violence (NYC ENDGBV) that there should not be a notarization requirement for affidavits, as such a requirement would be burdensome for survivors because they "may not have access to a form of identification to verify their identity to a notary and may not have the resources to find, travel to, or acquire a notary public."[89]

29. *Documentation Demonstrating Survivor Status.* Consistent with the SCA,[90] we require survivors seeking a line separation to submit documentation that verifies that an individual who uses a line under the shared mobile service contract has committed or allegedly committed a covered act against the survivor or an individual in the survivor's care (i.e., is an "abuser").[91] To meet the requirement for demonstrating survivor status, survivors must submit one or more of the eligibility documents prescribed by the SCA: (1) a copy of a signed affidavit from a licensed medical or mental health care provider, licensed military medical or mental health care provider, licensed social worker, victim services provider, licensed military victim services provider, or an employee of a court, acting within the scope of that person's employment; or (2) a copy of a police report, statements provided by police, including military

[84] Appx. A, § 64.6401(a).

[85] Appx. A, § 64.6401(a). *See* Verizon Comments at 12 ("Accurate identification information in the affidavit is critical for purposes of authentication and fraud prevention, given that providers' standard authentication processes may not be available or appropriate in these circumstances and that similar state laws may impose less stringent documentation standards."). While covered providers cannot deny requests if the names do not match, mismatched names may serve as a "red flag" that could form the basis for a reasonable belief that a request is fraudulent. *See infra* para. 34 (discussing denials of requests for survivors whose identities cannot be authenticated).

[86] *See, e.g.*, EPIC et al. Comments at 16 ("The Commission should strive to avoid a cumbersome stressful process for applicants to its programs, and as a result, we encourage the Commission to address additional unnecessary barriers so more survivors will benefit from the Commission's programs."); NYPSC Comments at 2 ("[T]he FCC should ensure that its rules are broad and flexible to make it relatively easy for survivors to seek the help they may need."); Rose Marie Vegara Comments at 2-3 ("It is important to streamline policies and procedures to provide immediate and respectful assistance to the survivors who are still fearful of the abuser, undergoing a stressful life change, navigating various systems, and trying to re-build their lives.").

[87] Appx. A, § 64.6401(a)(4); *see also Safe Connections Notice* at 16-17, para. 41 (proposing to require that affidavits be signed and dated).

[88] *See* Verizon Comments at 13.

[89] NYC ENDGBV Comments at 1.

[90] 47 U.S.C. § 345(c)(1)(A).

[91] Appx. A, § 64.6401(a)(9); *see Safe Connections Notice* at 19-20, para. 48.

or Tribal police, to magistrates or judges, charging documents, protective or restraining orders, military protective orders, or any other official record that documents the covered act.[92] The documentation provided should clearly indicate a known name for the abuser and the survivor, as well as include some kind of affirmative statement that constitutes an indication that the abuser actually or allegedly committed an act that qualifies as a covered act against the survivor or an individual in the care of a survivor. No commenter opposed our establishment of such requirements.[93] Consistent with the Commission's proposal,[94] we also codify the proviso in the SCA stating that nothing in our rules implementing section 345(c) "shall affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) that has less stringent requirements for providing evidence of a covered act,"[95] which was unopposed in the record.[96]

30. We interpret the phrase "any other official record that documents a covered act" to mean records from any governmental entity, including Tribal governments.[97] We find that this is the best interpretation of this phrase because the documents listed preceding this phrase are records from government entities, and although they are specifically records from law enforcement entities,[98] Congress did not limit the scope of the phrase by qualifying it with "any other official *law enforcement* record that documents a covered act." We also find that this reading is most consistent with the goals of the SCA as it permits survivors to submit official records from other government entities not listed in the statute that might commonly assist survivors, such as child and family service agencies. No commenter urged us to interpret the phrase narrowly, and for the reasons discussed below, we decline to interpret this clause more broadly to allow survivors to submit self-certification of survivor status. We also decline to interpret the "other official record" phrase to include records of domestic violence services organizations, or medical or mental health records that describe treatment for injuries, without the need to obtain a signed affidavit from the provider, as the New York State Office for the Prevention of Domestic Violence requests[99] as the first clause of the SCA's documentation provision specifically requires that such records be accompanied by a signed affidavit from the care provider[100] and we find there is no basis for interpreting the "other official record" phrase to directly contradict that requirement.

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[92] 47 U.S.C. § 345(c)(1)(A); Appx. A, § 64.6401(a)(9); *Safe Connections Notice* at 20, para. 48; *see* Verizon Comments at 12 (explaining that the "documentation requirements appropriately incorporate the statute's clear requirements, and serve Congress's twin goals of expediting and standardizing the [line separation request] process while deterring and mitigating the risk of fraud and abuse of the new rules").

[93] We clarify, in response to NYC ENDGBV's concerns, that the SCA, and the rule we adopt, does not require survivors to submit "police reports, court documents, or any other legal records as a prerequisite for separating a survivor's line." NYC ENDGBV Comments at 1. While police reports or court documents would be sufficient to meet the documentation requirements in the SCA and our rules, the statute and our rules offer many alternative ways to satisfy the documentation requirement.

[94] *See Safe Connections Notice* at 21, para. 51.

[95] 47 U.S.C. § 345(c)(3); Appx. A, § 64.6401(e).

[96] NYS OPDV Comments at 4 ("[W]e are pleased with the inclusion of language in the proposed rules that would allow covered providers to comply with state or local laws that provide greater protections than those set out in the federal rules.").

[97] *See, e.g.*, 15 U.S.C. § 6602(3) (defining "government entity" as "an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities)"); 18 U.S.C. § 2711(4) (defining "governmental entity" as "a department or agency of the United States or any State or political subdivision thereof").

[98] 47 U.S.C. § 345(c)(1)(A)(ii).

[99] NYS OPDV Comments at 4.

[100] 47 U.S.C. § 345(c)(1)(A)(i).

31. Although we are sympathetic to concerns raised in the record that some survivors may have difficulty securing the documents specified by the SCA to demonstrate survivor status, or doing so in a timely manner,[101] we find that there is no valid basis for interpreting the statute to allow self-certification of survivor status. Several commenters urge us to permit self-certification,[102] but none explain how the SCA provides the Commission with the authority to do so, or how doing so is consistent with congressional intent. On the contrary, we find that doing so would contradict congressional intent. As the Commission explained in the *Safe Connections Notice*, when Congress adopted the SCA, it was not unaware that self-certification could be an option for survivors to demonstrate survivor status, as the Commission had sought comment on allowing self-certification in its *Notice of Inquiry*.[103] We expect that Congress also likely knew of the option for survivors to self-certify their status given that a similar New York law already permitted it as an option.[104] Congress nevertheless excluded self-certification from its detailed list of permissible documentation.[105] Presumably recognizing that the documentation requirements it set were more stringent than those that already existed in New York, Congress included a savings clause in the statute that specifically preserves states' ability to adopt less stringent certification requirements in state laws or regulations.[106] Although EPIC et al. cites this provision as a reason why the Commission should conclude that the list of permitted documentation is non-exhaustive and that self-certification should be permitted,[107] it is precisely because the SCA sets out a list of permitted documentation and preserves states' rights to set less stringent requirements in separate state laws that we conclude the Commission is restricted in its ability to expand the scope of permitted documentation to include self-certification. We likewise conclude that self-certification does not fit into the phrase permitting survivors to submit "any other official record that documents a covered act,"[108] given our conclusion that Congress intended that clause to be limited to records created by government entities. We also find that the best reading of "official record" is a "record created by, received by, sanctioned by, or proceeding from an individual acting within their designated capacity,"[109] which would not include self-

[101] *See* API-GBV Comments at 4 (discussing the challenges survivors may face in providing documentation); Boston College Law School Student Reply at 7-8 (discussing reasons survivors may not seek assistance from health care providers or law enforcement entities in the first place); NYS OPDV Comments at 4 (similar); EPIC et al. Comments at 2-3 (explaining that survivors may not be in a position to request documentation from third parties and that they may not be able to access services offered by third parties without first having an independent means of communication).

[102] *See* API-GBV Comments at 4; EPIC et al. Comments at 2-3; NYC ENDGBV Comments at 1.

[103] *See Safe Connections Notice* at 20-21, para. 49.

[104] 2022 N.Y. Laws ch. 578 (enacted Oct. 18, 2022) (requiring utility corporations and providers of wireless telephone service to permit a person to opt-out of a shared contract without fee, penalty, or charge, when such a person "is a victim of domestic violence and provides an attestation in writing of their eligibility as a victim of domestic violence").

[105] 47 U.S.C. § 345(c)(1)(A).

[106] *See* 47 U.S.C. § 345(c)(3) (stating that the SCA "shall not affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) *that has less stringent requirements for providing evidence of a covered act* (or any similar category of conduct) than this subsection") (emphasis added).

[107] EPIC et al. Comments at 13 ("Because Congress explicitly preserved the rights of states to set less stringent requirements for line separation, the Commission should similarly be explicit with communications services providers that the lists of affidavits and of records offered in § 345(c)(1)(A) are non-exhaustive.") (footnote omitted).

[108] 47 U.S.C. § 345(c)(1)(A)(ii); *see also* EPIC et al. Comments at 13 (suggesting that the "official record" phrase leaves room for the Commission to interpret it to include self-certification).

[109] *See Official Record*, Dictionary of Archives Terminology, https://dictionary.archivists.org/entry/official-record.html (last visited Sept. 6, 2023).

certification. For many of the reasons discussed in this paragraph, we also conclude that the SCA does not permit us to allow survivors to submit any other forms of documentation of survivor status besides those already discussed.[110]

32. Next, we do not require that such documentation be dated or that the date be within a certain time period before the survivor submits the line separation request. We agree with API-GBV that we should "provide flexibility to allow people to disclose victimization or to apply for protections at their own pace, given the risks that survivors face as they plan for their safety."[111] We also anticipate that many survivors may have sought assistance years before the effective date of the SCA and our implementing rules, and we do not want to deter those survivors from taking advantage of the new benefit that is available to them or require them to seek assistance again just for the purpose of having newer documentation created. We likewise do not require that the documentation show that the covered act occurred within a certain time period prior to the request. We are cognizant of how difficult it may be for survivors to seek assistance[112] and expect there may be instances where a survivor reported a covered act years ago but has not done so again recently despite ongoing abuse.

33. *Assessing the Authenticity of Documentation.* The record reflects broad agreement from stakeholders that we should not require covered providers to assess the authenticity of the documentation that survivors submit,[113] and therefore we decline to adopt such a requirement. We find this approach is appropriate given concerns that many covered providers may not have the expertise to accurately evaluate the authenticity of documentation and could mistakenly deny legitimate requests.[114] We conclude, however, that the SCA does not prohibit covered providers from attempting to assess the authenticity of documentation and from denying line separation requests based on a reasonable belief the request is or may be fraudulent,[115] and we therefore permit them to do so.[116] Such authentication might include confirming the documentation is from an entity that actually exists, assessing whether the documentation has identifiers that demonstrate the documentation is actually a record of that entity, and comparing any identifying information in the documentation about the abuser and survivor with information in the

[110] *See* API-GBV Comments at 4 (strongly recommending that survivors be permitted to provide other documentation if they cannot provide the documentation specifically identified in the Safe Connections Act and strongly discouraging an absolute requirement that survivors submit "official documentation").

[111] API-GBV Comments at 4-5 (further explaining that many survivors "may face significant trauma in sharing information about the harm they have experienced").

[112] *See, e.g.*, Rose Marie Vegara Comments at 2-3 (describing the challenges for survivors seeking to leave their abusers); NYPSC Comments at 2 ("[E]ach survivor seeking to leave their abuser experiences challenging and unique circumstances . . . .").

[113] *See, e.g.*, CTIA Comments at 6 (arguing that the Commission's rules should not create an expectation or requirement that covered providers confirm the authenticity of documents survivors submit with their line separation requests to show survivor status); NCTA Reply at 3-4 ("[T]he record is clear that the Commission should not require providers to verify the documentation a survivor submits demonstrating that a covered act was committed."); NYC ENDGBV Comments at 1 (asserting that covered providers should not authenticate documentation).

[114] NCTA Reply at 3-4 ("Put simply, communications service providers are ill-equipped to accurately assess the validity of these materials and attempts to verify the information would risk retraumatizing the survivor.").

[115] *See Safe Connections Notice* at 17, para. 43; EPIC et al. Comments at 12 (explaining that the Commission should interpret the SCA's prohibition on making line separations contingent on other requirements "to mean that a covered provider may reject a line separation request that is not accompanied by any verification of survivor status or of the phone line to be separated, but not to mean that each individual provider is entitled to narrow what constitutes adequate verification" beyond what is established in the Commission's rules).

[116] Appx. A, § 64.6401(b).

covered provider's records to confirm that it matches.[117] However, to protect survivor privacy, we prohibit covered providers from directly contacting entities that created any documentation to confirm its authenticity.[118] To mediate concerns about the accuracy of covered providers' assessments, we emphasize that covered providers must first form a reasonable belief that a request is or may be fraudulent before denying the request, and urge covered providers to consider possible legitimate reasons for why submitted documentation may not pass a provider's standard authentication checks. For example, mismatched identifying information could result from a document's use of nicknames or other names that would not match providers' records. We find that allowing, but not requiring, a covered provider to attempt to authenticate submitted documentation balances the public interests of fraud prevention and ensuring survivors' ability to obtain legitimate line separations.[119]

34. *Assessing the Veracity of Evidence of Survivor Status.* We prohibit covered providers from assessing the veracity of the evidence of survivor status contained within the submitted documents, or relying on third parties to do so.[120] We expect that, in most cases, survivors will not be in a position to control what information other entities include in the documentation to ensure it clearly establishes survivor status. Thus, allowing covered providers to evaluate the truthfulness of the information provided and potentially use it as a basis for denying requests could limit legitimate line separations. We also make clear that the prohibition on assessing the veracity of survivor status evidence means that covered providers may not contact survivors to interrogate them about their experience, which "can be retraumatizing for survivors," particularly since "providers are likely not trained in trauma-informed engagement."[121] The record affirms our belief that many covered providers may not have the expertise to accurately evaluate the veracity of the documentation survivors submit.[122] We find that it would undermine the goals of the SCA if a covered provider denied a line separation based on an incorrect determination about the veracity of the evidence presented.[123] We agree with Verizon and CTIA that the

[117] *Safe Connections Notice* at 20, para. 48 (seeking comment on whether covered providers should be required to confirm that identifying information in submitted documentation matches the providers' records). *See* Verizon Comments at 13 (explaining that employees will need to ensure the completeness of the information in survivors' documentation, including by confirming that the basic information in the documentation is consistent with their account records and the affidavit).

[118] *See* NYC ENDGBV Comments at 1.

[119] Accordingly, we decline NYC ENDGBV's suggestion to altogether prohibit covered providers from attempting to authenticate documents submitted by survivors. *See* NYC ENDGBV Comments at 1; *see also* EPIC et al. Comments at 11-12 (stating that the SCA does not permit covered providers "to put their own processes in place (e.g., verification) on top of the Commission's own rules").

[120] EPIC et al. Comments at 11-12 (explaining that covered providers' ability to verify documentation should be restricted); CTIA Comments at 12 ("CTIA agrees with survivor advocacy and support groups and members of Congress that the Commission's rules should not place providers and their front-line customer service representatives in the position of evaluating the veracity of abuse survivors' claims or documents and mediating domestic or other abusive situations."); Verizon Comments at 4 (arguing that the Commission should avoid creating rules that incentivize wireless providers to second-guess a user's "survivor" status); Rose Marie Vegara Comments at 2-3 ("If the survivor is making a fraudulent claim, law enforcement and the Courts should be the entities making that determination.").

[121] NYC ENDGBV Comments at 1.

[122] *See Safe Connections Notice* at 21, para. 50; CTIA Comments at 12-13 (discussing providers' inconsistent practices for verifying subscriber eligibility for the Lifeline program as evidence that providers are also unprepared to evaluate the documentation submitted by survivors).

[123] *See Safe Connections Notice* at 21, para. 50.

SCA's liability limitation clause[124] provides protections for covered providers if they reasonably rely on the documentation survivors provide to demonstrate survivor status and approve line separation requests that turn out to be fraudulent.[125]

35. *Other Information.* We do not, at this time, require a survivor who is not the primary account holder to submit other information, including passwords, about the account or the primary account holder,[126] as the record does not show that such additional information is needed to address fraud and could be unnecessarily burdensome for survivors.[127] No commenter advocated that we require such information. Rather, consistent with the concern raised in the *Safe Connections Notice*,[128] Verizon noted that "survivors may have little if any visibility into account information such as PINs, billing addresses, and primary numbers that an abuser may keep private."[129] We do, however, permit a covered provider to request the account number, primary phone number, full or partial address, and PIN or password associated with the account, as long as the covered provider makes clear to the survivor that such information is not required to process the line separation request and that the request will not be denied if the information is not provided or is inaccurate.[130] We acknowledge Verizon's assertion that such information, if available, "could help a provider to process the [line separation request] more quickly in some cases, and to investigate and remedy transactions that later turn out to have been fraudulent or unauthorized."[131]

36. *Assistance with Completing Line Separation Requests.* To maximize survivors' ability to pursue line separation requests, we conclude that survivors may rely on assistance from other individuals, including the survivor's designated representative, to prepare and submit line separation requests.[132] We agree with commenters that this approach maximizes survivor self-determination and agency, and that it could be particularly useful for individuals with disabilities or whose first language is not English.[133] No

[124] 47 U.S.C. § 345(g) ("A covered provider or any officer, director, employee, vendor, or agent thereof shall not be subject to liability for any claims deriving from an action taken or omissions made with respect to compliance with this section and the rules adopted to implement this section.").

[125] *See* Verizon Comments at 7-8; CTIA Reply at 13-14.

[126] *Safe Connections Notice* at 19, para. 47.

[127] *See* EPIC et al. Comments at ii ("We support the Commission's inquiry regarding waiting and weighing whatever evidence of fraud, waste, and misuse may or may not ultimately present itself, rather than pre-emptively introducing barriers that might inhibit survivor utilization of its programs.").

[128] *Safe Connections Notice* at para. 47 (stating that "we appreciate that many survivors may have limited information about the abuser and the account associated with the mobile service contract").

[129] Verizon Comments at 13; *see also* EPIC et al. Comments at 18 ("[I]t is conceivable that an abuser uses an address the survivor is not aware of for their phone bills. Even if it is the same address as their residence, the survivor might not have access to the abuser's account number, PIN, or password. If an abuser has multiple phones, a survivor may not know the phone number designated as the primary account owner's.").

[130] Verizon Comments at 13 ("A provider may *request* additional information if known, such as account information, but it may not refuse to process or otherwise deny a line separation request if the survivor does not or cannot provide it.").

[131] Verizon Comments at 13.

[132] *See* EPIC et al. Notice of Inquiry Comments at 5, n.17 (rec. Aug. 18, 2022) (highlighting one study showing that "[m]ore than 50% of advocates surveyed indicated that at least half of the victims they work with need assistance in accessing public benefits, due to factors including difficulty understanding the application process, documentation and other requirements that are burdensome for victims, and shifting rules for program compliance").

[133] EPIC et al. Comments at 2 ("We support the Commission's proposals that maximize survivor self-determination and agency. Such proposals include assistance with line separation requests from supportive services providers . . . ."); API-GBV Comments at 6 ("[T]he final rule should provide maximum flexibility allowing survivors to seek the assistance of designated representatives to submit line separation requests, especially in

(continued….)

commenter opposed this approach. While the SCA requires covered providers to effectuate line separations after receiving a completed line separation request from a survivor,[134] it also permits survivors to indicate a designated representative for communications regarding line separation requests,[135] which we find signifies Congress's expectation that survivors might rely on other individuals in relation to line separation requests. To ensure that covered providers have the means to identify the individuals who survivors select to assist with line separation requests, we require providers to request the name and relationship to the survivor for individuals who assist survivors and we require those assisting survivors to provide that information, along with a statement that the person assisted the survivor with the line separation request.[136] Providers may use methods that are reasonably designed to confirm the identity of the "designated representative."[137] We expect that any added cost for requiring covered providers to request this information will be negligible.

37. *Confidential Treatment and Secure Disposal of Personal Information*. We adopt our proposal[138] to require a covered provider, including any officer, director, and employee—as well as a covered provider's vendors, agents, or contractors that receive or process line separation requests with the survivor's consent, or as needed to effectuate the request—to treat the fact of the line separation request as well as any documentation or information a survivor submits as part of a line separation request as confidential, and securely dispose of the information not later than 90 days after receiving the information, consistent with the SCA.[139] The record supports adoption of this requirement, including our proposed clarification that a "vendor," as used in the SCA,[140] includes a "contractor" who may receive a line separation request in its provision of services to a covered provider, on the basis that this interpretation reflects the business practices of covered providers and will mitigate privacy risks to survivors.[141] We note that covered providers must abide by this requirement even if they are unable to process a line separation request.[142]

38. We conclude that treating the line separation request itself, as well as documentation and information a survivor submits as part of a line separation request, as confidential means not disclosing or

(Continued from previous page)
instances where the survivor's primary language is not English (or Spanish), or the survivor has disabilities that limit her or his ability to submit the requests.").

[134] 47 U.S.C. § 345(b)(1).

[135] 47 U.S.C. § 345(c)(2)(A) (indicating that covered providers must notify survivors or the survivors' designated representatives).

[136] Appx. A, § 64.6401(a)(8); API-GBV Comments at 6 ("When a third party submits a line separation request, they should be required to indicated, at a minimum, their name and/or organization name, and relationship to the survivor.").

[137] *See* Letter from Scott Bergman, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 22-238, 21-450, 11-42, at 4 (filed Nov. 8, 2023) (CTIA et al. Nov. 8, 2023 *Ex Parte* Letter).

[138] *See Safe Connections Notice* at 22, para. 53.

[139] 47 U.S.C. § 345(d)(1); Appx. A, § 64.6401(d).

[140] 47 U.S.C. § 345(d)(1), (g)(1).

[141] *See Safe Connections Notice* at 22, para. 53; API-GBV Comments at 5 ("We further appreciate the provisions in the proposed rule relating to the treatment of personal information submitted by a survivor, especially the provisions that cover vendors and contractors."); EPIC et al. Comments at 20 ("For those reasons, we support the Commission's proposals to require disposal of survivor information not later than 90 days after receiving it, treating that data as confidential throughout its lifecycle, and applying the same requirements to vendors, contractors, etc. whom carriers task with handling this data."). No commenter opposed this interpretation.

[142] *See* Rose Marie Vegara Comments at 1 (explaining that the confidentiality and secure disposal rules must apply even if a covered provider's systems prevent the provider from effectuating a line separation).

permitting access to such information unless subject to a valid court order, except: (1) to the individual survivor submitting the line separation request; (2) to anyone that the survivor specifically designates; (3) to those third parties necessary to effectuate the request (i.e., vendors, contractors, and agents); and (4) to the extent necessary, to the Commission and the Universal Service Administrative Company (USAC) to process emergency communications support through the designated program or address complaints or investigations.[143] We disagree with CTIA that the Commission should not afford protections to survivors (and alleged abusers) from the misuse of their data by law enforcement on the basis that doing so is outside the scope of the SCA and the *Safe Connections Notice*.[144] The SCA directs the Commission to adopt regulations concerning the line separations requirements,[145] which includes the confidentiality requirements,[146] and thus we find that addressing this issue is within the scope of the SCA. Given concerns expressed by EPIC et al.,[147] we find that requiring law enforcement to obtain a court order to access information about a line separation request is a necessary protection for survivors (and alleged abusers). We do not anticipate that this requirement will be burdensome for providers to implement given that they already have a duty to protect the confidentiality of proprietary information of customers,[148] including a duty to prevent access to customer proprietary network information (CPNI) "[e]xcept as required by law or with the approval of the customer."[149] Additionally, requiring a court order prevents covered providers from being placed in a position of having to assess whether a law enforcement official may be misusing their official authority.[150]

39. We limit providers from using, processing, or disclosing the line separation request—or any documentation or information submitted with line separation request—for purposes unrelated to implementing the request, providing services, or otherwise managing the survivor's account.[151] We also conclude that the requirement to "treat" information submitted in connection with a line separation request as "confidential" prohibits covered providers from using, processing, or disclosing (e.g., to joint-venture partners) such information for marketing purposes.[152]

40. We confirm our tentative conclusion[153] that to the extent that any information a survivor submits as part of a line separation request would be considered CPNI[154] and therefore subject to

[143] *See Safe Connections Notice* at 23, para. 55; Appx. A, § 64.6401(d); API-GBV Comments at 5 (asserting that the Commission should limit disclosure of personally identifiable information to government agencies, including law enforcement agencies, unless there is a judicial order to do so); EPIC et al. Reply at 9-10 (supporting restricted access to line separation information without judicial or grand jury order). We conclude that a survivor's initiation of a line separation request gives covered providers consent to share necessary information with necessary third parties to effectuate the request. *See* NYC ENDGBV Comments at 2 (arguing that covered providers should not be permitted to share information submitted with line separation requests with third parties, except where required by law, without the consent of the survivor).

[144] CTIA Reply at 7.

[145] *See* Safe Connections Act § 5(b)(1)(A).

[146] 47 U.S.C. § 345(d).

[147] EPIC et al. Comments at 25-27.

[148] 47 U.S.C. § 222(a).

[149] 47 U.S.C. § 222(c)(1).

[150] *See* NCTA Reply at 11.

[151] *See* EPIC et al. Comments at 20; API-GBV Comments at 5.

[152] *See Safe Connections Notice* at 23, para. 55; API-GBV Comments at 5 (arguing that covered providers should not be permitted to use personally identifying information for marketing purposes); EPIC et al. Comments at 20 (same).

[153] *Safe Connections Notice* at 22, para. 54.

disclosure to the customer or a designee, the SCA's confidentiality requirement nevertheless requires that such information (along with any information submitted by a survivor that would not be considered CPNI) be treated confidentially and disposed of securely. We conclude that this is the best reading of the SCA's language requiring confidential treatment "[n]otwithstanding section 222(c)(2)" of the Communications Act. EPIC et al. agrees with this reading, and no commenter offered an alternative interpretation.[155] Thus, although section 222(c)(2) normally requires telecommunications carriers to "disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer,"[156] when such CPNI is submitted by survivors as part of a line separation request, covered providers must follow the SCA's heightened requirements for confidentiality and secure disposal.

41. We decline to find that the identity of the abuser and the reason for the line separation (i.e., the alleged abuse) should be treated as CPNI for the purpose of protecting the personal information of abusers, as requested by EPIC et al.[157] Neither data element fits logically within the categories of information that constitute CPNI,[158] and it need not for those data to benefit from the SCA's confidential and secure disposal protections, which protect the privacy of both survivors and alleged abusers. The confidentiality obligation itself, that is, requires that such information be protected.[159]

42. To help ensure confidential treatment and secure disposal of information submitted with line separation requests, we also require covered providers to follow data security measures commensurate with the sensitivity of line separation requests, as well as the information and documentation submitted with line separation requests. Specifically, we require covered providers to

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[154] The Communications Act defines CPNI as "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by a customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship," and "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier," but does not include subscriber list information. 47 U.S.C. § 222(h)(1). While the Commission has not provided an exhaustive list of what constitutes CPNI, it has explained that CPNI includes, but is not limited to: the phone numbers called by a consumer; the frequency, duration, and timing of such calls; and any services purchased by the consumer, such as call waiting. *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 69927, 6930, para. 5 (2007) (*2007 CPNI Order*); *see also AT&T, Inc.*, File No.: EB-TCD-18-00027704, Notice of Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743, 1757, paras. 33-35 (2020) (finding that customer location information is CPNI under the Communications Act).

[155] EPIC et al. Comments at 20 (expressing support for applying the confidential and secure disposal requirements to both CPNI and to data that might not otherwise qualify as CPNI).

[156] 47 U.S.C. § 222(c)(2).

[157] *See* EPIC et al. Comments at 23-24 ("We urge the Commission to treat the reason for line separation (i.e., alleged abuse) as CPNI for alleged abusers as well as for survivors. The Safe Connections Act prioritizes the safety and stability of the survivor, not actions against the alleged abuser. For this reason, and especially because we are advocating for self-attestation of survivor status rather than requiring certified proof of abuse, it would be inappropriate for a survivor's participation in the Commission's programs to have repercussions for the alleged abuser beyond phone line separation."). EPIC et al. cite to paragraph 179 of the *Safe Connections Notice*, which sought comment on what the Commission could do to protect the personal information of abusers when that information is disclosed to the Commission or USAC. The CPNI requirements in section 222 of the Communications Act and the Commission's CPNI rules apply to carriers. *See* 47 U.S.C. § 222(c); 47 CFR §§ 64.2001-64.2011.

[158] *See* 47 U.S.C. § 222(h)(1).

[159] *See* 47 U.S.C. § 222(a).

implement policies and procedures governing confidential treatment and secure disposal of this information, train employees on those policies and procedures, and restrict access to databases storing such information to only those employees who need access to that information.[160] We believe these baseline requirements will create the foundation for covered providers to treat line separation information confidentially and dispose of it securely. We conclude that these requirements will not be burdensome for most covered providers given that all telecommunications carriers and interconnected Voice over Internet Protocol (VoIP) providers must already train employees to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers and that we have specific rules governing the protection of CPNI,[161] and we expect that most providers already have data security policies and procedures to limit access to certain information. In all cases, we anticipate that covered providers will only need to modify their practices and systems to include treatment of line separation information.

43. Understanding that covered providers may need flexibility to comply with the confidentiality and disposal requirements,[162] we otherwise decline to prescribe specific measures that covered providers must use to treat information submitted with a line separation request as confidential and securely dispose of it. We conclude, however, that unauthorized disclosure of, or access to, information survivors submit as part of a line separation request will be considered evidence in an investigation by the Commission that a covered provider has not adopted sufficient measures to protect against such disclosure or access.[163] This approach aligns with our expectations for carriers' treatment of CPNI.[164] The SCA's confidentiality and disposal requirements demonstrate that Congress thought the privacy of information related to line separation requests is paramount,[165] and we anticipate that our approach will incentivize covered providers to adopt best practices as they evolve over time to ensure the confidentiality and secure disposal of such information.[166] Indeed, a covered provider may be able to

[160] *See Safe Connections Notice* at 23, para. 55; NYS OPDV Comments at 4 ("Given the confidential nature of these requests and the documentation that survivors must provide to be eligible for a line separation, we believe that covered providers should be required to restrict employee access to these requests to those who need access to effectuate requests, and to keep these records in a secure location to prevent unauthorized access or disclosure of the documentation. Additionally, employees handling these requests should receive training to prevent the misuse of survivor data and to learn how to evaluate andlelee [sic] requests for access to data from law enforcement."); EPIC et al. Reply at 10 ("We also agree with commenters who call for restricting employee access to information about line separation requests, and for providing extensive training to employees who need access."); Rose Marie Vegara Comments at 1 (asserting that covered providers must have policies and procedures in place to protect the confidentiality and privacy of the survivor and dependents making line separation requests and that employees should receive training for these purposes).

[161] *See* 47 U.S.C. § 222(a), (c); 47 CFR §§ 64.2009-64.2010.

[162] Verizon Comments at 14 ("[T]he confidentiality and security requirements for these documents are also largely self-executing and do not require prescriptive regulations. Wireless providers will have different methods for handling these requests, and different methods (and combinations of methods) for storing, maintaining and ultimately disposing of the information and documentation, which may or may not include encryption.").

[163] *See Safe Connections Notice* at 23, para. 55; EPIC et al. Comments at 20 ("We support the Commission's proposal to treat unauthorized disclosure of or access to information submitted by survivors as evidence that a provider did not treat information confidentially.").

[164] *See 2007 CPNI Order*, 22 FCC Rcd at 6959, para. 63 ("[W]e hereby put carriers on notice that the Commission henceforth will infer from evidence that a pretexter has obtained unauthorized access to a customer's CPNI that the carrier did not sufficiently protect that customer's CPNI.").

[165] 47 U.S.C. § 345(d); *see also* NDVH Comments at 2 ("When supporting victims/survivors ensuring consistent privacy and confidentiality is paramount.").

[166] Such best practices might include encryption, masking, data minimization (i.e., only collecting data necessary for the intended purpose and deleting data when it is no longer necessary), access controls, secure password policies, traffic monitoring, and internal firewalls. *See* EPIC et al. Comments at 19-20 (advocating that carriers be required to (continued….)

overcome evidence related to a breach of survivor information if the provider is able to show that it used industry best practices at the time of the breach. We are also concerned that prescribing specific data security practices might result in the rules becoming obsolete over time.[167] We make clear that the liability protections in the SCA[168] do not shield covered providers, or their vendors, agents, and contractors, from enforcement actions that may result from their failure to adopt adequate practices to treat line separation information as confidential and securely dispose of it. Additionally, we emphasize that covered providers subject to section 222 have an independent responsibility to protect such confidential information and will therefore be subject to potential enforcement action for failures by their vendors, agents, and contractors to adopt sufficient confidentiality and secure disposal measures.[169]

44. We also clarify the limited instances in which a covered provider may retain information about a line separation request beyond the 90-day disposal deadline established by the SCA.[170] First, consistent with the SCA,[171] we permit a covered provider to maintain a record that verifies that a survivor fulfilled the conditions of a line separation request for longer than 90 days, but prohibit providers to retain, as part of this record, the affidavit, documentation of survivor status, or other original records a survivor submits with the request, as that information is deemed confidential and subject to secure disposal within 90 days.[172] Second, we permit a covered provider to retain any confidential record related to the line separation request, including an affidavit and documentation of survivor status, for longer than 90 days upon receipt of a legitimate law enforcement request.[173] In both cases, we require a covered provider to treat the records it retains as confidential,[174] and dispose of such records securely.[175]

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implement data security best practices, such as these); NYC ENDGBV Comments at 2 ("All information related to service or other actions under the Safe Connections Act should be treated as sensitive and should be protected and secured in accordance with appropriate cybersecurity standards.").

[167] *See Safe Connections Notice* at 23, para. 55.

[168] 47 U.S.C. § 345(g).

[169] *See, e.g.*, 47 U.S.C. §§ 217, 222(a), 345(d).

[170] *See Safe Connections Notice* at 23, para. 56. We also decline BRETSA's suggestion that we require covered providers to deliver a 911 call placed by a survivor over the survivor's separated line with "some indication to the PSAP that the call is from service assigned to an individual escaping an abusive relationship." BRETSA Comments at 3. We agree with commenters that such a requirement falls outside the scope of the SCA and our implementing rules. *See, e.g.*, CCA Reply at 1 n.2; CTIA Reply at 7; EPIC et al. Reply at 11; NCTA Reply at 10; *see also id.* at 11 (arguing that implementing BRE'SA's proposal would "undoubtedly complicate and likely delay compliance for providers and . . . is not feasible with current 911 systems.").

[171] *See* 47 U.S.C. § 345(d)(2).

[172] *See* 47 U.S.C. § 345(d)(1); *cf.* Verizon Comments at 14 ("Accounts subject to [a line separation request] will need to be flagged to ensure that compliance with the rules is memorialized and that customer care and billing systems and employees manage the accounts consistent with the new rules, well after the 90-day document retention period."); CTIA Reply at 6 ("[T]the retention of some data is necessary to . . . establish and maintain a customer account for wireless service.").

[173] *See* Verizon Comments at 14 ("The systems and processes used to secure and dispose of survivor documentation will need to account for both the statutory 90-day period as well as law enforcement requests that may require retention for a longer period."). While we permit a covered provider to retain these records for longer than 90 days in response to a legitimate law enforcement request, it still may not provide any records to law enforcement without a valid court order.

[174] To be clear, even though the record that verifies that a survivor fulfilled the conditions of a line separation request is not an original record submitted with a request, it must nonetheless be treated as a confidential record.

[175] EPIC et al. Comments at 20 (advocating the confidential and secure disposal requirements "apply to any data that a provider has chosen to retain").

b. Required Options Covered Providers Must Offer to Survivors

45. We now adopt requirements regarding basic categories of information covered providers must make available to, or request from, survivors when granting a line separation request.[176] These requirements are intended to streamline the line separation process for covered providers and to maximize the simplicity with which survivors can obtain line separations in a timely manner. First, we codify in our rules the SCA's requirement that a covered provider inform the survivor, through remote means,[177] at the time the survivor submits a line separation request, that the provider may contact the survivor, or the survivor's designated representative, to confirm the line separation or inform the survivor if the provider is unable to complete the line separation.[178] As explained in the *Safe Connections Notice*, we find that this approach will allow survivors to make an informed choice regarding which contact information and manner of communication is best given their particular circumstances.[179] No commenter opposed this approach.

46. Second, for line separation requests submitted by a survivor through remote means, we require covered providers to "allow the survivor to elect in the manner in which the covered provider may—(i) contact the survivor, or designated representative of the survivor, in response to the request, if necessary; or (ii) notify the survivor, or designated representative of the survivor, of the inability of the covered provider to complete the line separation," which mirrors the SCA.[180] We conclude that this requirement simply obligates a covered provider to allow a survivor to select, at the time the survivor submits a line separation request through remote means, the manner the provider must use to communicate with a survivor after the survivor submits the request.[181] Among the communication options offered to the survivor, we require a covered provider to include at least one means of communication that is a "remote means."[182] We also require covered providers to allow survivors to indicate their preferred language for future communications from among those in which the covered provider currently advertises,[183] and deliver any such future communications in the survivor's preferred language if it is one in which the provider currently advertises.[184] Additionally, we require covered

[176] *See Safe Connections Notice* at 25, paras. 62-63; EPIC et al. Comments at 16 ("The Commission should strive to avoid a cumbersome stressful process for applicants to its programs, and as a result, we encourage the Commission to address additional unnecessary barriers so more survivors will benefit from the Commission's programs."); *id.* at 12 (advocating that the Commission "establish parameters to ensure carriers do not frustrate program accessibility and utilization").

[177] We discuss "remote means" below, *infra* Section III.A.3.b.

[178] *Safe Connections Notice* at 28, para. 72; 47 U.S.C. § 345(c)(2)(A)-(B).

[179] *Safe Connections Notice* at 28, para. 72. We received no comment on these proposals.

[180] *See Safe Connections Notice* at 21, para. 52; 47 U.S.C. § 345(c)(2)(C); *see also* API-GBV Comments at 5 (expressing support for these provisions, explaining that they will "help survivors maximize their ability to plan for their safety" because it allows them to "know where to check for communications regarding their line separation"); EPIC et al. Comments at 2 ("We support the Commission's proposals that maximize survivor self-determination and agency, including "survivors designating their preferred means of communication.").

[181] *See Safe Connections Notice* at 21-22, para. 52.

[182] *Id.* at 29, para. 73. As discussed further below, a "remote means" are those that do not require the survivor to interact in person with an employee of the covered provider at a physical location.

[183] *See id.* at 25, para. 62; API-GBV Comments at 6-7 (recommending that covered providers have the capacity to engage with applicants in the languages they speak).

[184] *Safe Connections Notice* at 29, para. 73; *see also* EPIC et al. Comments at 14 (supporting a requirement that covered providers "communicate in the survivor's preferred language if the provider has published marketing materials or conduct[ed] marketing outreach in that language"); Verizon Comments at 15 ("The *NPRM*'s interpretation of the term 'remote means,' with respect to initiating a[line separation request] and when engaging in follow-up discussions and notifications (including an infeasibility notification), makes sense.").

providers to ask survivors to provide the appropriate contact information with their requests.[185] We decline Verizon's suggestion that we require a survivor to submit a telephone number and email address with its request for use in contacting the survivor.[186] The SCA permits survivors to select the means that covered providers must use to communicate with them, which may or may not be both phone and email. To prevent covered providers from attempting to contact survivors using any other means, we only require survivors to provide contact information for the means they select, unless it is otherwise necessary to provide documentation of a completed line separation request for Lifeline purposes, as discussed below.[187] We also prohibit providers from engaging in communications that are not directly related to the line separation request, such as marketing and advertising communications that are not related to assisting survivors with understanding and selecting service options.[188] No commenter opposed adoption of these requirements.

47. Third, we require covered providers to allow a survivor submitting a line separation request to indicate their service choices when they are submitting a line separation request. Specifically, we require covered providers to allow a survivor to indicate the service plan a survivor chooses from among all commercially available plans the covered provider offers for which the survivor may be eligible, including any prepaid plans,[189] as well as whether the survivor intends to retain possession (and therefore take financial responsibility) of any device associated with a separated line. API-GBV and CCA both supported such a requirement, and no commenter opposed it.[190]

48. Fourth, as mandated by the SCA,[191] we require a covered provider to inform the survivor of the existence of the Lifeline program as a source of support for emergency communications for qualifying survivors, and to include a description of who might qualify for the program and how to participate.[192] We require covered providers to provide this information to survivors as part of the line separation request mechanism as we anticipate that having this information may help survivors determine which service plan may suit them best.[193] We require covered providers, at a minimum, to inform survivors that their participation in the Lifeline program and the ACP based on their status as survivors

[185] *See Safe Connections Notice* at 22, para. 52.

[186] *See* Verizon Comments at 12.

[187] *See infra* Section III.A.3.d.

[188] *See Safe Connections Notice* at 30, para. 76; API-GBV Comments at 7 (supporting our proposal to require covered providers to limit their communications with survivors to those directly related to the line separation request, observing that "unsolicited communications from unknown entities may increase [the survivor's] anxiety or fear."); EPIC et al. Comments at 2 (supporting our proposal to prohibit covered providers from subjecting survivors to marketing efforts, explaining that it "support[s] survivors' self-determination and agency" and "give[s] survivors the ability to take what assistance they need, in the manner they need it, when they need it."); Appx. A, § 64.6402(j).

[189] In the *Safe Connections Notice*, we tentatively concluded that the full scope of service options includes the ability to "move the line to an existing account of another person with service from the covered provider." *Safe Connections Notice* at 25, para. 63. We maintain that covered providers should permit survivors to do this, if feasible, but we find that this is outside the scope of the SCA's goals and therefore that covered providers are not required to allow survivors to indicate their desire to do this when submitting a line separation request.

[190] *See* API-GBV Comments at 6 ("To maximize the ability of survivors to plan for their safety as it relates to lines of service, API-GBV recommends that covered providers provide all available options for ongoing or new service for survivors who've submitted a line separation request."); CCA Comments at 4 (urging the Commission to provide clarity to covered providers regarding the options they must make available to a survivor submitting a request).

[191] 47 U.S.C. § 5(b)(2)(E).

[192] *Safe Connections Notice* at 29, para. 74; *see also infra* Section III. C. Because those that enroll in Lifeline are also eligible for the Commission's other affordability program, the ACP, we require providers to inform survivors that enrolling in Lifeline will enable them to also receive ACP benefits from an ACP provider.

[193] *Safe Connections Notice* at 29, para. 74.

will be limited to six months unless they can qualify to participate in Lifeline and/or ACP under the programs' general eligibility requirements.[194] We decline to adopt standardized language regarding the content of this communication as we do not find it necessary at this time.[195] We find that our approach provides sufficient guidance to covered providers regarding what information they must include in their communications. We also require covered providers to allow survivors to indicate whether they intend to apply for emergency communications support through the designated program, if available through the provider.

49. Finally, to the extent that a covered provider cannot operationally or technically effectuate certain types of line separations in all instances, we require a covered provider to identify—in a contemporaneous communication to the survivor—which types of line separations the provider cannot perform and state that it cannot perform those separations due to operational or technical limitations.

3. Requirement to Separate Lines Upon Request

50. We codify the SCA's requirement[196] that, for a shared mobile service contract under which a survivor and abuser each use a line, a covered provider must, not later than two business days after receiving a completed line separation request from a survivor, (1) separate the line(s) of the survivor, and the line(s) of any individual in the care of the survivor, from the shared mobile service contract, or (2) separate the line(s) of the abuser from the shared mobile service contract.[197] We conclude, as proposed,[198] that because the SCA requires covered providers to implement line separation requests from survivors for shared mobile service contracts "under which the survivor and the abuser each *use a line*,"[199] neither the

[194] *See* 47 U.S.C. § 5(b)(2)(A)(ii)(II).

[195] *See* NYC ENDGBV Comments at 1-2.

[196] *See Safe Connections Notice* at 13-14, para. 34; 47 U.S.C. § 345(b)(1).

[197] We acknowledge the seriousness of concerns raised in the records about dangers to survivors from spyware applications or software installed on a survivor's device that could remain after a line separation. EPIC et al. Comments at 27-29 ("Stalkerware—phone apps that abusers can use as a tool for invasive monitoring of cell phone or tablet activity—are an increasingly pervasive attack vector favored by abusers."); NVDH Comments at 2 ("It is also important for victims and survivors to know that their information could still be tracked even after the line separation depending on the cellular device itself or applications that have been downloaded to the device (separate from the wireless carrier)."); Rose Marie Vegara Comments at 3 (noting that abusers will use access to a device's GPS signal to track survivors and others in the care of the survivor). We find, however, that regulation of such third-party applications and software is beyond the scope of the SCA. We further note providers' assertions that removal of such applications and software may not be within the control of the covered provider. *See, e.g.*, NCTA Reply at 11 (asserting that "[p]roviders are not stalkerware experts and should not be put in position of managing a customer's device"); CTIA Reply at 7 (noting that "advising survivors on device setting and third-party applications will, in many instances, be outside service provider representative's expertise; engagement with additional stakeholders, including device manufacturers and app developers, on this idea or alternative ways to ensure survivors are informed, may be warranted."). However, with respect to carrier-branded apps and software on devices that may enable shared mobile plan account owners to track users' devices or provide access to customer information through online accounts, we expect covered providers to take all steps necessary to ensure that such apps and software do not enable an abuser to retain access to information about a survivor's line or device post-separation. *See* EPIC et al. Reply at 5 (urging the Commission to "investigate 'dual-use' apps (e.g. apps that are designed to be used as a family tracker but which abusers could leverage as functional equivalents to stalkerware), especially carrier-branded apps. Each of the three largest carriers offer this functionality, with varying degrees of notice and control to the phone subscriber who is being tracked by the 'parental' account. Survivor advocates have observed that these carrier-branded apps can be even harder to remove or disable than third-party stalkerware apps."). *See Safe Connections Notice* at 34-35, para. 104 (seeking comment on what steps covered providers might be able to take to remove, or assist survivors with removing, any spyware that an abuser may have installed on devices of the survivor or individuals in the care of the survivor).

[198] *See Safe Connections Notice* at 14, para. 35.

[199] *Id.* (emphasis added).

abuser nor the survivor must be the primary account holder for a line separation to be effectuated, regardless of whose line is separated from the account.[200] We also find that a person who does not use a line on an account—but is a "survivor" under the statute because the person is someone who cares for another individual against whom a covered act has been committed or allegedly committed—would be able to request a line separation because the definition of "survivor" allows that person to stand in for the individuals in their care.[201]

51. Below, we clarify covered providers' obligations under this requirement, and in doing so, we emphasize the importance of survivors' ability to obtain the line separations of their choosing in a timely manner while recognizing the practical challenges that covered providers may face in effectuating those separations.

a. Identity Authentication

52. We first require that covered providers attempt to authenticate, using multiple authentication methods if necessary, that a survivor, or a person in the care of the survivor, requesting a line separation is a user of a specific line or lines,[202] and permit covered providers to deny line separation requests when the survivor cannot be authenticated or the provider has a reasonable belief that the request is or may be fraudulent.[203] Specifically, when the survivor is the primary account holder or a user designated to have account authority by the primary account holder (designated user), we require covered providers to attempt to authenticate survivors just as they would any other primary account holder or designated user. This means that requests coming from primary account holders and designated users must comply with any other Commission rules that apply to authentication of such individuals, including those related to access to CPNI and the Commission's rules adopted to address Subscriber Identity Module (SIM) swap and port-out fraud.[204] When the survivor is not the primary account holder or a designated user, we require covered providers to attempt to authenticate their identity using methods that are reasonably designed to confirm the survivor, or a person in the care of the survivor, is actually a user of the specified line(s) on the account, and that such authentication shall also be sufficient for requesting a SIM change when made in connection with a line separation request.[205] We agree with CTIA and CCA that providers may need flexibility to authenticate and therefore we decline to specify or otherwise limit the methods that covered providers can use to authenticate the identity of survivors who are not primary account holders.[206] Although we acknowledge that some authentication methods may be less secure than

[200] *See* EPIC et al. Comments at 6 ("We also support the Commission's proposed interpretation that neither the abuser nor the survivor must be the primary account holder on a group plan for the survivor to be eligible to request a line separation under the Safe Connections Act. An alternative interpretation might exclude survivors whom Congress intended to protect through these programs.") (footnote omitted); Verizon Comments at 8 ("The Safe Connections Act is designed to ensure that a survivor can quickly separate their or the abuser's line, regardless of his or her status on the account.").

[201] *See Safe Connections Notice* at 14, para. 35.

[202] *See id.* at 18, para. 45.

[203] Appx. A, § 64.6402(b).

[204] *See* 47 CFR § 64.2010; *see Protecting Consumers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-95 (rel. Nov. 16, 2023) (*SIM Swap and Port-Out Fraud Order*); Press Release, FCC, FCC Privacy Task Force Announces Proposed Rules to Protect Consumers' Cell Phone Accounts (July 11, 2023).

[205] To the extent this requirement differs from other authentication requirements, *see, e.g.*, 47 CFR § 64.2010, the line separation authentication requirement we adopt today to implement 47 U.S.C. § 345 serves as an exception to those other requirements.

[206] *See* CTIA Comments at 14 ("[T]he Commission should permit covered providers the flexibility to use any reasonable means to verify the requestors' authority to separate a line and avoid an overly proscriptive approach."); CCA Comments at 5-6 (advocating against the Commission adopting a one-size-fits-all approach on the basis that (continued….)

others,[207] the record demonstrates that certain methods, such as verification using phone calls or text messages delivered to a survivor's number or knowledge-based checks using call detail information, may be the only practical means in some instances to authenticate survivors who are not the primary account holder and about whom covered providers have no other information.[208]

53. Our approach balances our twin goals of maximizing survivors' ability to obtain legitimate line separations and of preventing fraud.[209] On this issue, industry commenters agreed that covered providers should be given flexibility on how to authenticate survivors and their ability to deny individuals who cannot be authenticated.[210] Conversely, EPIC et al. asserted that the Commission should prioritize survivors' ability to access and use the line separations process over speculative concerns that the line separations process will be used for fraud.[211] We find that the rule we adopt is sufficiently supported by the record and therefore we disagree with CTIA that it is necessary to find a consensus before establishing authentication requirements.[212] We also find that the authentication requirement preserves account security by helping to prevent fraudulent account takeovers, protects privacy by preventing unauthorized access to account information, and ensures covered providers have the necessary account information to comply with our rules and the SCA, consistent with the issues the SCA requires the Commission to consider when adopting line separation rules.[213]

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carriers should have flexibility to authenticate identities in the ways that best suit their needs and the needs and expectations of their customer bases).

[207] *See Safe Connections Notice* at 18, para. 45.

[208] Verizon Comments at 12 (noting that "providers' standard authentication processes may not be available or appropriate" for line separation requests); CCA Comments at 6 (explaining that MVNOs, in particular, "may not have information on the identities of all plan members beyond the account holder" and that they therefore "may be working with limited information when it comes to verifying information to authenticate a survivor's identity"); NCTA Reply at 4 (highlighting authentication by calling or texting a line as successful authentication measures because bad actors would not be able to respond to confirm the separation request); EPIC et al. Comments at 12 ("[P]roviders should be empowered to offer alternative methods of certification in the interest of promoting accessibility and utilization. If providers want to offer additional methods of verification that they believe balance survivor accessibility and consumer protections against fraud, the providers should be free to do so—so long as any one method is sufficient to fulfill a line separation request . . .").

[209] *Safe Connections Notice* at 17-18, paras. 44-45; *see also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*; *IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, 22 FCC Rcd 6927, 6936-41, 6945-46, paras. 13-22, 33-36 (2007); 47 CFR § 64.2010(b)-(c); *see also* CCA Comments at 5-6 ("Authentication is important for deterring fraud and abuse, as the Commission has recognized.").

[210] *See* CCA Comments at 5-6 ("One area where flexibility is especially important for CCA's members is authentication of the identity of survivors submitting line-separation requests."); CTIA Comments at 14 ("A covered provider should not be obligated to separate a subscriber's line if there is no reasonable means to verify the requestor's authority over the service plan or telephone number. Otherwise, covered providers would be unable to protect the security of subscriber accounts from SIM swap and port-out fraud. Thus, the Commission should permit covered providers the flexibility to use any reasonable means to verify the requestors' authority to separate a line and avoid an overly proscriptive approach.") (footnotes omitted); NCTA Reply at 4 ("Providers should have the ability under the Commission's rules to implement procedures that are designed to minimize fraud by ensuring that the party requesting the separation is the user of the line to be separated. For this purpose, covered providers should be permitted to use any reasonable authentication measure, such as calling or texting the line to be separated, to confirm that the separation request is authorized.").

[211] EPIC et al. Comments at 15 ("[U]ntil evidence demonstrates the need for stronger fraud prevention to authenticate the identity of a survivor, the appropriate balance is to err on the side of accessibility and utilization.").

[212] CTIA Reply at 2.

[213] *See* Safe Connections Act § 5(b)(1)(B)(i), (ii) & (xiii).

54. We decline NCTA's request to permit covered providers to call or text lines of those in the care of the survivor that are the subject of the line separation request to confirm that the non-abuser individual "approves the separation request" or otherwise "confirm that the request is valid before approving it."[214] NCTA argues that covered providers "should be permitted to decline to process the line separation request if this verification is not completed (e.g., because the abuser has taken the device associated with the line) and, instead, give the party requesting the separation the option of creating a new account with a new telephone number."[215] As an initial matter, the SCA contemplates that a survivor would be able to separate a line even when the abuser is in possession of the device associated with that line, and therefore we disagree that we should approve of covered providers denying separation requests for those lines in all instances. More significantly, we are concerned that allowing covered providers to attempt verification on other lines may alert abusers about the survivor seeking a line separation at an early stage in the process. This might occur, for example, if the abuser is near to or in possession of the devices associated with those lines, such as if the abuser is with children who are in the care of the survivor while the survivor is elsewhere seeking a separation that includes those children's lines. We therefore find that these potential threats to survivors and those in their care outweigh the potential fraud prevention benefits of NCTA's proposed verification process.

b. Establishing "Secure Remote Means" for Line Separation Request Submissions

55. We codify the SCA's requirement that covered providers "offer a survivor the ability to submit a line separation request . . . through secure remote means that are easily navigable, provided that remote options are commercially available and technically feasible."[216] No commenter opposed this requirement, and we elaborate on the various aspects of this requirement below.

56. *Secure Means.* Consistent with the SCA's goals to protect the confidentiality of survivor information,[217] we adopt requirements regarding the secure submission of line separation requests. First, we conclude that any means a covered provider offers survivors to submit a line separation request, including non-remote means, must be secure. Second, we find that, at a minimum, secure means are those that prevent unauthorized disclosure of, or access to, the fact of the line separation request or the information and documentation submitted with the line separation request during the submission process.[218] Third, as with the Commission's CPNI rules[219] and the rules we adopt above for confidential treatment and secure disposal of the records survivors submit to covered providers with a line separation request, we conclude that unauthorized disclosure of, or access to, the fact of the line separation request or the information and documentation submitted with a line separation request will be considered evidence in an investigation by the Commission that a covered provider did not provide a "secure" means for submitting the request. We otherwise decline to prescribe specific requirements for what constitutes "secure" with respect to the means of submitting line separation requests,[220] but as with our rules governing treatment of line separation records, we expect our approach will incentivize covered providers

[214] NCTA Comments at 7.

[215] *Id*.

[216] Appx. A, § 64.6403(a); *see Safe Connections Notice* at 23, para. 57; 47 U.S.C. § 345(b)(4).

[217] *See* 47 U.S.C. § 345(d).

[218] NYPSC Comments at 2 ("NYPSC . . . urges the FCC to ensure that any information a survivor shares remotely during a line separation request is kept secure and confidential.").

[219] *See, e.g.*, *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 63 ("[W]e hereby put carriers on notice that the Commission henceforth will infer from evidence that a pretexter has obtained unauthorized access to a customer's CPNI that the carrier did not sufficiently protect that customer's CPNI.").

[220] Verizon Comments at 15 (asserting that prescriptive requirements for line separation request information are unnecessary).

to adopt best practices for security as they evolve over time. No commenter opposed our adoption of any such requirements.[221]

57. *Remote Means.* Although the SCA does not define what constitutes "remote means," we interpret that phrase in a manner that maximizes survivor flexibility for submitting line separation requests.[222] First, we conclude that a "remote means" for submitting a line separation request is a mechanism that does not require the survivor to interact in person with an employee of the covered provider at a physical location.[223] No commenter opposed this interpretation. We agree with API-GBV that this interpretation "is particularly important for survivors in remote areas, or in communities in which physically going to a single location might jeopardize a survivor's safety or confidentiality."[224] As such, requiring survivors to visit a brick and mortar store would not constitute remote means. Conversely, a form on a covered provider's website with the ability to input required information and attach necessary documents would constitute remote means.[225] We also find that submissions via email, a form on a provider's mobile app, a chat feature on a provider's website, interactive voice response (IVR) phone calls, fax, and postal mail would constitute remote means.[226] Additionally, we conclude that a live telephone interaction, text message communication, or video chat with a customer service representative would constitute remote means.[227] We do not intend this list to be exhaustive as there may be other methods currently available or developed in the future that would not require a survivor to interact in person with an employee of a covered provider at a physical location. Furthermore, to maximize survivor choice, we conclude that covered providers can offer survivors means that are not considered remote as long as the provider does not require survivors to use those non-remote means or make it more difficult for survivors to access remote means than to access non-remote means.[228]

58. Second, consistent with API-GBV and NYC ENDGBV's requests,[229] we require covered

[221] *See Safe Connections Notice* at 24, para. 60.

[222] *See* EPIC et al. Comments at 2 (expressing support for providing survivors with flexibility with the means of submitting line separation requests); NYPSC Comments at 2 ("[T]he FCC should ensure that its rules are broad and flexible to make it relatively easy for survivors to seek the help they may need."); Rose Marie Vegara Comments at 2-3 (expressing the importance of streamlining policies and procedures to for line separation requests).

[223] *See Safe Connections Notice* at 23, para. 58.

[224] API-GBV Comments at 5; *see also* NYPSC Comments at 2 (agreeing that survivors should be able "to make line separation requests remotely (i.e., not at a physical store location)"); Verizon Comments at 15 (expressing support for the *Notice*'s interpretation of the term "remote means"); Accessibility Advocacy Organizations Reply at 7 (AAO) (expressing support for the proposed interpretation of remote means).

[225] NYS OPDV Comments at 5-6 (expressing that remote means includes submissions via a covered provider's website).

[226] NYS OPDV Comments at 5-6 (asserting that a chat feature, a mobile application, or email constitute remote means); Verizon Comments at 15 (expressing that Verizon considers email and fax to be remote means for its purposes).

[227] *See* Verizon Comments at 15 (listing "live call" as among the means it considers remote); Accessibility Advocacy Organizations Reply at 7 (supporting this conclusion with respect to communications between a person who is deaf, hard of hearing, or DeafBlind and a customer service representative).

[228] The SCA seems to contemplate that survivors may submit line separation requests through non-remote means. *See* 47 U.S.C. § 345(f)(2) (stating that "[i]f a covered provider cannot operationally or technically effectuate a line separation request," it must "notify the survivor who submitted the request of that infeasibility . . . at the time of the request," but specifying that, if the survivor submitted the request using remote means, this notification may not be later than two business days after the request is made).

[229] API-GBV Comments at 5 (asserting that "[i]deally, covered providers would allow for multiple methods to remotely submit a request"); NYC ENDGBV Comments at 2 (asserting that "[p]roviders should accept requests for line separation in as many forms as possible").

providers to offer survivors more than one remote means of submitting a line separation request, and encourage them to offer several means.[230] We are concerned that certain remote means may be so obsolete or so novel that they would be difficult for some survivors to access, and that if those means are the only ones a covered provider offers, they would deter survivors from pursuing a line separation. We also anticipate that offering alternative remote means will make line separations more accessible to survivors who may be using different technologies or have different levels of digital literacy.[231] We conclude that when Congress directed covered providers to "offer a survivor the ability to submit a line separation request . . . through secure remote *means*," the word "means" in this context is ambiguous as to whether providers must offer one or more than one means. Given this ambiguity, and the lack of the singular article "a" before the phrase "secure means," we interpret "means" as a plural noun.

59. Third, we conclude that the remote means a covered provider offers must allow survivors to submit any necessary documentation, but we permit providers to offer means that allow or require survivors to initiate a request using one method (such as an IVR phone call) and submit the documentation through another method (such as via email). This approach received support in the record and was otherwise unopposed.[232] Fourth, we require covered providers to accept documentation in any common format, including, for example, pictures of documents or screenshots.[233] We find that this approach will minimize difficulty for survivors seeking line separations.

60. Additionally, consistent with existing statutory and regulatory requirements, we make clear that a covered provider must offer alternative remote means that are accessible by individuals with different types of disabilities.[234] The Accessibility Advocacy Organizations highlight the importance of such a requirement, explaining that such individuals are often at increased risk of domestic violence, and therefore that it is critical that they be able to access the protections afforded by the SCA.[235] We decline,

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[230] *See Safe Connections Notice* at 23, para. 57 (seeking comment on how to implement the SCA's requirement that covered providers offer a survivor the ability to submit a line request through secure remote means that are easily navigable).

[231] *See id.* at 25, para. 62.

[232] *See* Verizon Comments at 15 (specifying that survivors may submit line separation requests using several means, "or some combination thereof"); Accessibility Advocacy Organizations Reply at 7 (supporting a requirement that covered providers offer a means that allows an individual who is deaf, hard of hearing, or DeafBlind to initiate a request using one method and submit documentation through another method).

[233] *See* NY Office for the Prevention of Domestic Violence Comments at 5-6 ("Covered providers should accept documentation in a variety of electronic formats.").

[234] *See Safe Connections Notice* at 25, para. 62; 47 CFR § 14.20(a)(2) (requiring manufacturers of equipment and software used for advanced communications services to ensure that such equipment and software is accessible to, and usable by, individuals with disabilities); 47 CFR §§ 6.3(a)(1)(i), 14.21(b)(1)(i) (requiring carriers to "[p]rovide at least one mode that does not require user vision" to operate a phone or use an account); 47 CFR §§ 6.3(a)(1)(iv), 14.21(b)(1)(iv) (requiring carriers to "[p]rovide at least one mode that does not require user auditory perception" to operate a phone or use an account); 47 CFR §§ 6.3(a)(1)(ix), 14.21(b)(1)(ix) (requiring carriers to "[p]rovide at least one mode that does not require user speech" to operate a phone or use an account); *see also* Accessibility Advocacy Organizations Reply at 8 ("[T]he Commission already requires the provision of [advanced communications services (ACS)] and telecommunications services to be accessible and usable under its corresponding rules in Part 14 and Part 6 implementing the provisions of Section 716 and Section 255, respectively. Thus, to the extent the means of submitting a line separation request qualifies as either ACS or a telecommunications service, Section 716 and Section 255 provide the Commission ample supplementary authority, in addition to the Safe Connections Act, to ensure that people with disabilities have accessible means for submitting such requests."); *see also* Accessibility Advocacy Organizations Reply at 3-4 (explaining that "direct means of text messaging services regularly used by these communities" include "SMS, real-time text, RCS, iMessage for Business, as well as TRS, including video relay service (VRS), IP Relay, IP captioned telephone service, TTY-to-voice, and speech-to-speech relay").

[235] *See* Accessibility Advocacy Organizations Reply at 2-3 (explaining that "the need for line separation requests disproportionally impacts individuals who are deaf, hard of hearing and DeafBlind more than it does for hearing

(continued….)

however, to require that covered providers offer direct video calling (DVC) as a means of submitting line separation requests, as the Accessibility Advocacy Organizations request.[236] Although we appreciate that DVC may have benefits for survivors with disabilities who are seeking line separation requests,[237] we decline at this time to impose any specific technology given the wide variety of providers and accessible technologies available.[238] We instead strongly encourage covered providers to offer the "most accessible and effective services available,"[239] such as DVC, whenever feasible.

61. *Technically Feasible and Commercially Available Means.* No commenter addressed whether secure remote means for submitting line separation requests are currently "technically feasible" and "commercially available,"[240] and if not, how long it would take them to be.[241] CTIA noted that the *Safe Connections Notice* appropriately incorporated into the proposed rules the "commercial availability" and "technical feasibility" limitations that apply to certain requirements.[242] We observe that the remote means we identify above are commonly used by commercial entities to interact with consumers and there are technological processes available to make each of those means secure. We also anticipate that many, if not all, of these mechanisms can be modified by covered providers to be used for line separation requests. Accordingly, we find that secure remote means for submitting line separation requests are currently both technically feasible and commercially available, and we anticipate that covered providers will be able to update their systems and procedures to implement use of more than one means before the rules go into effect.

62. *Easily Navigable.* We next address how the means to submit line separation requests must be "easily navigable."[243] To give covered providers flexibility and ensure they are positioned to request all the information they need to process line separations in a way that is most suitable for their systems, we decline to prescribe the specific format, process, or form covered providers must use for survivors to submit line separation requests, and instead allow covered providers to develop their own mechanisms.[244] However, consistent with the record,[245] to ensure consistency and predictability for

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individuals" and providing statistics showing that individuals who are deaf or hard of hearing are more likely to be victims of sexual harassment, sexual assault, psychological abuse, and physical abuse).

[236] *See* Accessibility Advocacy Organizations Reply at 3-4. Direct Video Calling is a point-to-point video call between two fluent American Sign Language (ASL) users that "enables callers with hearing or speech disabilities to engage in real-time direct video communication in ASL with ASL speakers in a call center operation." 47 CFR § 64.601(a)(16). Further information on DVC is available at https://www.fcc.gov/direct-video-calling-dvc.

[237] *See* Accessibility Advocacy Organizations Reply at 4-6.

[238] The Accessibility Advocacy Organizations submit that many other communications technologies besides DVC exist and are used by deaf, hard of hearing, and deafblind consumers. *See* Accessibility Advocacy Organizations Reply at 4 (mentioning "TRS, including video relay service (VRS), IP Relay, IP captioned telephone service, TTY-to-voice, and speech-to-speech relay"). We also anticipate that allowing survivors to obtain assistance with completing line separation requests from persons of their choosing may allow survivors with disabilities to rely on individuals with whom they are comfortable and can communicate effectively to complete the request.

[239] Accessibility Advocacy Organizations Reply at 3.

[240] 47 U.S.C. § 345(b)(4).

[241] *See Safe Connections Notice* at 24, para. 59.

[242] CTIA Comments at 10-11.

[243] 47 U.S.C. § 345(b)(4); *see also Safe Connections Notice* at 24-25, paras. 61-62.

[244] *See* CCA Comments at 2 (urging that the Commission "allow flexibility to account for the variations among carriers' internal systems and resources"); CTIA Comments at 17 ("By adopting outcome-oriented rules, the Commission can support the needs of survivors and the goals of the SCA while ensuring that providers have sufficient flexibility to implement the necessary modifications across their diverse operations."); NCTA Comments
(continued….)

survivors and the individuals and entities that assist them, reduce difficulty for survivors, and give covered providers clarity regarding their obligations, we establish several requirements for the mechanisms that covered providers develop to ensure they are easily navigable for survivors submitting line separation requests. Specifically, we require that the mechanisms: (1) use wording that is simple, clear, and concise; (2) present the information requests in a format that is easy to comprehend and use; (3) generally use the same wording and format on all platforms available for submitting a request; and (4) clearly identify the information and documentation that survivors must include with their requests, including clearly listing what survivors should have on hand when contacting the provider, and allow survivors to easily provide that information. We decline to create or mandate the use of a standardized form as requested by NYC ENDGBV[246] as we find that allowing covered providers the flexibility to develop their own approaches while establishing requirements to ensure those mechanisms are easily navigable better balances providers' expertise with the need to streamline the process for survivors. Nevertheless, we encourage stakeholders to work together to develop such a standardized mechanism, to the extent one would be useful for covered providers.

63. We also require that the means through which a covered provider permits survivors to submit line separation requests must be available in all the languages in which the covered provider currently advertises its services as well as all formats (e.g., large print, braille, etc.) in which the provider makes its service information available to persons with disabilities.[247] We agree with EPIC et al. that a "lack of meaningful language access can further isolation created by an abuser,"[248] and conclude that

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at 1 ("[T]he Commission should give providers the time and flexibility necessary to ensure that the new procedures required by the Act will work as intended to support survivors.").

[245] *See* API-GBV Comments at 5-6 ("With respect to making the means of request submission 'easily navigable,' API-GBV recommends that the final rule include standard elements to be developed across covered providers to provide consistency and predictability about requirements, allowing for improved safety planning with survivor advocates."); EPIC et al. Comments at 16 ("The Commission should enact regulations designed to reduce friction caused by things like bothersome distractions, lengthy forms, and unnecessary data collection. Prospective program participants in any program are less likely to engage if there is friction in the process of achieving their goal."); *id.* at 12 (advocating that the Commission "establish parameters to ensure carriers do not frustrate program accessibility and utilization"); Rose Marie Vegara Comments at 2-3 ("It is important to streamline policies and procedures to provide immediate and respectful assistance to the survivors who are still fearful of the abuser, undergoing a stressful life change, navigating various systems, and trying to re-build their lives."); CCA Comments at 4 (urging that the Commission make its expectations as clear and simple as possible for such matters as the means for submitting line separation requests, which will help carriers update systems and process effectively and efficiently); NYS OPDV Comments at 5-6 ("We agree with the Commission's determination that secure, remote means of submitting line separation requests should include an easily accessible form and submission process."); Verizon Comments at 12 n.23 ("To simplify the [line separation request] process for its customer care representatives and customers, Verizon would endeavor to maintain a single intake format that meets all requirements while deterring fraudulent requests."); Accessibility Advocacy Organizations Reply at 9-10 (expressing support for provisions to ensure the means for submitting line separation requests are easily navigable).

[246] NYC ENDGBV Comments at 1.

[247] *See Safe Connections Notice* at 25, para. 62; *cf.* EPIC et al. Comments at 14 (urging the Commission to extend the SCA's requirement that a covered provider notify survivors in "clear and accessible" language that the provider may contact the survivor about the line separation to any communications between providers and survivors and to interpret the "clear and accessible" language to require that providers communicate in the survivor's preferred language if the provider has published marketing materials or conducts marketing outreach in that language); NCTA Reply at 11 ("Finally, to the extent the Commission adopts language availability requirements in implementing the Safe Connections Act, the Commission should begin by taking the same approach as in the broadband labeling proceeding. In that proceeding, the Commission required providers to 'display online and printed labels in English' and 'make labels available in any other languages in which the ISP markets its services in the United States.'").

[248] EPIC et al. Comments at 14.

requiring language availability for the means of submitting requests will help alleviate that isolation. We decline, however, to adopt API-GBV's recommendation that covered providers offer "translated forms and instructions in a minimum of the 10 most commonly used languages in the provider's covered service area, as well as any other languages (if any) that the provider advertises its services in."[249] We find that such a requirement would be unreasonably burdensome on covered providers, particularly smaller providers, but we encourage all providers to know the predominant languages used in their respective communities and translate their materials into as many different languages as is feasible. At the same time, because we permit survivors to rely on assistance from designated representatives and others to pursue line separations, we anticipate that survivors who speak languages other than those in which a covered provider advertises its services can seek interpretation assistance if necessary.[250]

c. Processing Line Separation Requests

64. *Implementing Survivors' Election of Line Separation.* Consistent with the statutory language, we interpret the line separation requirement as granting survivors the flexibility to pursue line separations in the manner that is best for their circumstances. We thus conclude, as proposed,[251] that the SCA gives survivors discretion to request separation from the account of either the line(s) of the survivor (and the line(s) of any individuals in the survivor's care) or the line(s) of the abuser, regardless of whether the survivor is the primary account holder.[252] We decline to prescribe the circumstances in which survivors may pursue each type of line separation, as CTIA and NCTA request.[253] The industry trade groups specifically ask the Commission to dictate that when a survivor is a primary account holder, the abuser's line must be separated from the shared mobile service contract and that covered providers can process such line separations by canceling the abuser's line.[254] NCTA makes a second request that the Commission stipulate that when a survivor is not a primary account holder, their lines (and the lines of individuals in the survivor's care) must be separated from the shared mobile service contract.[255] In both circumstances, the industry groups assert that they are trying to avoid situations where they have to

[249] API-GBV Comments at 5-6; *see* NCTA Reply at 10-11 (urging the Commission to eschew API-GBV's proposal, among others, on the basis that they are "beyond the scope of the SCA and this proceeding").

[250] *Cf.* API-GBV Comments at 6 (supporting survivors' ability to rely on assistance from designated representatives to submit line separation requests in part on the basis that survivors whose primary language is not English may need to seek language translation assistance to submit such requests).

[251] *See Safe Connections Notice* at 14, para. 35.

[252] The SCA indicates that the survivor can choose whether to request separation of the lines of the survivor (and the lines of any individuals in the survivor's care) *or* the line of the abuser. *See* 47 U.S.C. § 345(c)(1) ("In the case of a *survivor seeking* to separate a line from a shared mobile service contract the survivor shall submit to the covered provider a line separation request that— . . . (B) in the case of *relief sought under subsection (b)(1)(A)*, with respect to—(i) a line used by the survivor that the survivor seeks to have separated, states that the survivor is the user of that specific line; and (ii) a line used by an individual in the care of the survivor *that the survivor seeks to have separated*, includes an affidavit setting forth that the individual—(I) is in the care of the survivor; and (II) is the user of that specific line; and (C) *requests relief under subparagraph (A) or (B)* of subsection (b)(1) and identifies each line that should be separated.") (emphasis added); *see also* API-GBV Comments at 3-4 ("Ultimately the decision as to whether to separate the line of the survivor or the line of the abuser will likely depend on future safety and cost considerations for a survivor, and should be left at the discretion of the consumer seeking line separation."); Verizon Comments at 11 ("Verizon also agrees that survivors have 'discretion to *request* separation from the account of either the line of the survivor (and the lines of any individuals in the survivor's care) or the line of the abuser.'") (emphasis in original) (quoting *Safe Connections Notice* at 14, para. 35).

[253] *See* CTIA Comments at 9; NCTA Reply at 6.

[254] *See* CTIA Comments at 9; NCTA Comments at 3-4.

[255] *See* NCTA Comments at 4.

establish new accounts in the name of the abuser, which they say cannot be done without the abuser's knowledge and consent, thereby potentially compromising survivors' safety.[256]

65. As an initial matter, we find that the industry groups' requested approaches are contrary to the text of the SCA and disincentivizes covered providers from developing solutions that will allow survivors to obtain the line separations of their choosing, thereby limiting the SCA's benefits to survivors.[257] If Congress had intended to limit the types of line separations a survivor could request in a given circumstance, it could have easily said so. We are particularly unmoved by the suggestion that Congress intended that survivors who are primary account holders must separate the line of the abuser and that the abuser's line would then be canceled, as this outcome is no different than what primary account holder survivors can achieve now, and would therefore make the SCA's benefit in this regard superfluous.[258] We do not presume to understand all the reasons why a survivor might choose to separate an abuser's line or their lines and the lines of those in their care, but Congress chose not to limit survivors' choices and neither do we.

66. Additionally, while we appreciate the practical challenges of effectuating line separations precisely as survivors request, we anticipate that covered providers will be able to address these situations without compromising survivor safety. For instance, covered providers may be able to create a temporary placeholder account and contact the abuser after the line separation has been completed (and the survivor has been notified) to request consent and the necessary information to establish a permanent account.[259] Alternatively, covered providers could give survivors advance notice that the provider would need to contact the abuser prior to effectuating the line separation to request the abuser's consent and necessary account information, and survivors could then choose whether to proceed or select another line separation

[256] *See* CTIA Comments at 9; NCTA Comments at 4; NCTA Reply at 6. NCTA also expresses concern that in instances when an abuser who is the primary account holder is separated from the shared mobile service contract and the survivor becomes the primary account holder, "the abuser likely would know details about the account such as the PIN or account number that could be used to compromise the survivor's service after the line separation." NCTA Comments at 4. However, NCTA does not explain why the covered provider would not allow the survivor, as the primary account holder, to change the PIN to prevent the abuser from accessing the account or use other measures to prevent the abuser from accessing the account.

[257] For the same reasons, we decline to find that covered providers have the discretion to determine whether to separate the line of the abuser or the lines of the survivor (and those in the survivor's care). *See Safe Connections Notice* at 14, para. 35.

[258] *See* CTIA Comments at 9 (acknowledging that "[w]here the survivor is the account holder, the abuser can be removed from the account at any time with the survivor's authorization"); CTIA Reply at 6-7 (stating that "in cases where the survivor is the account holder . . . a survivor can already and most effectively separate an abuser's line from the survivor's account by simply removing the abuser's line from the account."); NCTA Comments at 3-4 ("In most cases, account holders likely already have the ability to cancel a service line on their account without needing to submit a line separation request under the Safe Connections Act."). The industry groups' solution effectively forces survivors to cancel their abuser's service, and could potentially result in the abuser losing their phone number, which may aggravate their abuser at a time when there is already substantial risk of retribution to the survivor from the abuser. *See* Rose Marie Vegara Comments at 2 ("Survivors are at greatest risk for lethality (i.e., at risk of being murdered by their abuser) when they attempt to separate from or leave their intimate partner."); Knights Comments at 2 ("[S]tudies show that survivors are at significantly increased risk of harm by their abusers after seeking help.").

[259] Because temporarily suspended numbers are not permanently disconnected numbers, they are not "aging numbers" under the Commission's rules. *See* 47 CFR § 52.15(f)(1)(ii) ("*Aging numbers*" are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time."); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, 33 FCC Rcd 12024, 12030, para. 15 (2018). Covered providers must ensure that telephone numbers assigned to a user of a shared mobile account and which are the subject of a line separation request remain available to be assigned to the user of that number (*i.e.*, a survivor, an individual in the care of a survivor, or an abuser).

or account change option.[260] Absent these or other solutions that providers may develop, a third option is that covered providers can rely on the operational and technical infeasibility exception established by the SCA and discussed further below.[261] NCTA suggests that the Commission dictating survivors' line separation options is a better approach than allowing covered providers to deny line separations due to operational or technical infeasibility because "[s]urvivors who chose the incorrect option or required further guidance to complete the separation would be forced to engage in additional communications with the covered provider at a time when it may be difficult or even dangerous for a survivor to be involved in such exchanges."[262] While we acknowledge NCTA's concern, we believe that our requirement that a covered provider state in a contemporaneous communication which types of requests it cannot complete due to operational or technical infeasibility should address the concern. We nevertheless strongly encourage covered providers to strive to develop the means to allow survivors to separate lines as they see fit.

67. We also address the circumstances under which an individual who is "in the care of" a survivor may receive a line separation. As proposed,[263] we adopt the same approach for determining who qualifies as "in the care of" the survivor for the purposes of line separation requests as we do for who may be considered someone "who cares for another individual" in the definition of "survivor."[264] Specifically, we conclude that phrase encompasses: (1) any individuals who are part of the same household, as defined in section 54.400 of the Commission's rules;[265] (2) minor children of parents or guardians who are survivors even if the parents and children live at different addresses; (3) individuals who are cared for by a survivor by valid court order or power of attorney; (4) and a person over the age of 18 who is financially or physically dependent upon a parent, guardian, or caretaker (e.g., a non-minor child financially dependent on his or her parents or guardians, but who no longer lives at the same address).[266] We further find that, unlike the definition of "survivor," for the purposes of line separation requests, an individual "in the care" of a survivor need not be someone against whom a covered act has been committed or allegedly

[260] Verizon argues that "[i]f a survivor requests that an account owner abuser be removed from an account, in practice this may technically or operationally require the latter to consent to establishment of a new account, undermining Congress's objective of ensuring the line separation is not visible to the abuser," and that "[t]he Safe Connections Act envisions that the wireless provider would create a new account for the survivor(s) in those circumstances." Verizon Comments at n.19. We recognize that in situations where the survivor is not the account holder, it is more likely than not that the survivor will elect to establish a new account (rather than separate the line of the abuser from the existing account) because such a choice will delay notice to the abuser, and in some cases may be the only technical or operational solution available for the covered provider. But, contrary to Verizon's claim, the SCA does not contemplate that the line separation will be invisible to the abuser in all cases. Rather, the statute expressly contemplates that the primary account holder, who may be the abuser, may be notified about the line separation. *See* 47 U.S.C. § 345(b)(8). Therefore we disagree with Verizon that the SCA envisions that covered providers would create a new account for survivors who might otherwise seek to separate an abuser who is the primary account holder just so that the separation is not visible to the abuser.

[261] *See infra* paras. 70-74; 47 U.S.C. § 345(f)(1).

[262] NCTA Reply at 6.

[263] *See Safe Connections Notice* at 14, para. 36.

[264] *See supra* para. 12. No commenters objected to, or even addressed, our proposed approach and analyses, and we therefore find there is no reason to depart from it.

[265] 47 CFR § 54.400(h) (A 'household' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An 'economic unit' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.").

[266] Appx. A, § 64.6400(m).

committed. As we explained in the *Safe Connections Notice*,[267] the SCA defines "survivor" as including an individual at least 18 years old who "cares for another individual *against whom a covered act has been committed or allegedly committed*," but it requires covered providers to separate the lines of both the survivor and "*any individual* in the care of the survivor," upon request of the survivor.[268] As such, we interpret these provisions to mean that covered providers must separate the lines, upon request, of any individual in the care of a survivor without regard to whether a covered act has been committed or allegedly committed against the individual in the care of the survivor.[269] Some commenters expressed support for our interpretation and none objected.[270]

68. *Timeline for Processing Line Separation Requests.* Recognizing the urgency with which survivors may be seeking line separation requests, we adopt a rule that clarifies the SCA's requirement that covered providers effectuate line separations not later than two business days after receiving a completed line separation request from a survivor.[271] No commenters opposed this approach, although Verizon expressed opposition to a more stringent approach, such as requiring processing "48 hours after receipt."[272] Specifically, we require covered providers to process line separation requests as soon as feasible, but not later than close of business two business days after the day the provider receives a completed request.[273] For example, requests received before midnight at the end of a Monday must be processed no later than close of business on Wednesday. Under our rule, covered providers must take all steps to effectuate line separation requests within the two business day timeframe, including reviewing the request to determine if it is complete and effectuating or rejecting the request.[274] We

[267] *See Safe Connections Notice* at 14, para. 36.

[268] 47 U.S.C. § 345(a)(6) (defining "survivor"); *id.* § 345(b)(1)(A) (requiring covered providers to separate the line of the survivor and the line of any individual in the care of the survivor).

[269] *See Safe Connections Notice* at 14, para. 36; Verizon Comments at 9 ("The proposed rules and the *NPRM* correctly follow the statutory language, including the proposed broad application of the terms 'survivor' and 'individual in the care of a survivor' eligible to benefit from [a line separation request]"); EPIC et al. Comments at 4 (expressing support for the Commission's proposal because it "avoid[s] excluding eligible survivors from program participation by . . . including caretakers of survivors among those who can initiate line separation").

[270] *See* Verizon Comments at 9 ("The proposed rules and the *NPRM* correctly follow the statutory language, including the proposed broad application of the terms "survivor" and "individual in the care of a survivor" eligible to benefit from an LSR."); API-GBV Comments at 3 (noting that it "supports the NPRM's proposal that 'this phrase should be understood to encompass any individuals who are part of the same household, including adult children, as well as adults who are older, and those who are in the care of another individual by valid court order or power of attorney'").

[271] 47 U.S.C. § 345(b)(1).

[272] *See* Verizon Comments at 11-12. We recognize that in some instances, the two-business day standard we adopt will require the line separation to be completed within 48 hours, but that will not always be the case. For instance, when submissions are made on Fridays or during the weekend, a carrier will have longer than 48 hours to effectuate the line separation, though we would encourage them to effectuate it sooner whenever possible.

[273] Appx. A, § 64.6402(a); *see Safe Connections Notice* at 15, para. 37; API-GBV Comments at 3 ("API-GBV strongly supports the NPRM's clear guidance about the obligation to timely separate a survivors' line, or an abuser's line, from shared mobile service contracts within a specific timeline.").

[274] *See* Verizon Comments at 10-11 ("Once the two business day period is triggered by a complete [line separation request], this will generally ensure that customer care employees have sufficient time to authenticate the survivor's account status *and ensure that the request documentation is complete*, in order to timely complete the request or notify the requester of the rejection.") (emphasis added); CTIA Comments at 15 ("[T]he Commission's line separation rule should make clear that providers' two business days' deadline to implement a line separation request or notify the subscriber of technical infeasibility runs from the date that the provider 'receiv[es] a completed line separation request from a survivor pursuant to subsection (c),' which specifies the documentation required for such requests."); Knights Comments at 1 (expressing support for clarifying the timeline covered providers have to

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conclude that our rule is consistent with the text and goals of the SCA.[275] We define business days as Monday-Friday, 8:00 AM to 5:00 PM, excluding provider holidays, which fulfills requests from industry commenters[276] that we incorporate the same definition for business hours that make up a business day as is used in the Commission's porting rules.[277] Notwithstanding the two-business day requirement, we clarify that our "rules do not undermine the Safe Connections Act's strong incentives for wireless providers to accommodate [line separation requests]."[278] Therefore, "[i]f effectuating [a line separation request] is technically infeasible for a particular provider in two business days, but three days is feasible," the covered provider can rely on the technical infeasibility exception to delay completion of the request rather than denying the request and requiring survivors to start the entire process again,[279] as long as the provider notifies the survivor of the status of their request and the expected completion timeline within two business days of receiving the request.

69. We decline to require that covered providers process line separation requests in less than two business days in cases of emergency or extreme hardship for the survivor, as the National Domestic Violence Hotline requests.[280] Although we appreciate that some survivors may experience increased urgency for their line separation requests, we agree with NCTA that Congress was likely aware of the hardship that survivors may be facing when it explicitly gave covered providers up to two business days to complete requests,[281] and we otherwise anticipate that it would be difficult for covered providers to accurately determine which requests qualify as emergencies or extreme hardship.[282] However, we expect that requiring providers to complete all requests as soon as feasible will prevent undue delay in completion of requests.

70. *Operational and Technical Infeasibility.* We codify the SCA's provision that covered providers who cannot operationally or technically effectuate a line separation request are relieved of the

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determine whether a request is complete and suggesting short timelines for covered providers to notify requesters of deficiencies in their requests).

[275] If the request is complete when it is received, the SCA requires covered providers to effectuate the line separation within two business days and does not contemplate that a provider will have additional time to determine whether the request is complete. *See* 47 U.S.C. § 345(b)(1). If covered providers must determine whether a request is complete and effectuate it within two business days, we see no reason why they cannot determine whether a request is incomplete and reject it within two business days.

[276] CTIA Comments at 15 ("[T]he Commission should incorporate a reasonable rule regarding business hours that make up the business day, as it did for the mandatory number porting interval."); Verizon Comments at 10-11 ("The Commission should generally apply the term 'two business days' similarly to how it has applied the term in the context of number portability, to match a wireless provider's customer care business hours"); NCTA Reply at 8 (expressing support for CTIA and Verizon's requested approach and stating that adopting this approach "would provide clarity as well as an additional measure of certainty to both survivors and providers").

[277] *See* 47 CFR § 52.35(a).

[278] Verizon Comments at 10.

[279] *See id.*

[280] NDVH Comments at 2.

[281] For the same reason, we decline requests to require that covered providers process line separation requests within two calendar days. *See* Rose Marie Vegara Comments at 2; Knights Comments at 1; Boston College Law School Student Reply at 5.

[282] *See* NCTA Reply at n.23 ("[T]here is no basis for mandating an accelerated time frame for 'emergency' requests. . . . Congress plainly was aware that customers requesting a line separation likely are facing difficult circumstances, but there is nothing in the statute that requires, or even suggests, that Congress intended for the Commission to adopt distinct requirements for 'emergency' situations, nor is there any basis in the legislation for identifying what type of situations would qualify for such treatment.").

obligation to effectuate line separation requests.[283] Additionally, we conclude that any line separation a covered provider can complete within two business days under its existing capabilities, as those may change over time, does not qualify as operationally or technically infeasible.[284] We conclude that because this provision specifies that covered providers are only relieved of the "requirement to *effectuate* a line separation request,"[285] providers are generally obligated to offer survivors the ability to *submit* requests for line separations described in the statute, even if the provider may not be able to effectuate such separations in some instances. However, to avoid survivor confusion and minimize the need for communications between covered providers and survivors,[286] if a covered provider cannot operationally or technically effectuate certain types of line separations in all instances, we require the covered provider to clearly notify the survivor in its Notice to Consumers[287] and through whatever mechanisms survivors are permitted to use to request line separations, which types of line separations the provider cannot perform and state that it cannot perform those separations due to operational or technical limitations.

71. We require covered providers to take reasonable steps to be able to effectuate all types of line separations permitted by the statute, but decline to prescribe when a provider can rely on the operational or technical infeasibility exception.[288] We find that the intent and spirit of the SCA's line separation requirement is that survivors be able to obtain the line separations of their choosing, and the record indicates that covered providers intend to and will be capable of effectuating most line separation requests.[289] We therefore think it is appropriate that all covered providers be required to take reasonable steps to be able to effectuate all types of line separations. However, given the significant differences in covered providers' processes and systems, we conclude that we cannot categorically define which types of line separations qualify as operationally or technically infeasible and that the better course of action is to give providers flexibility to make such determinations.[290] We nevertheless expect that all covered providers will be able to effectuate at least some types of line separations.[291]

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[283] Appx. A, § 64.6402(d); *see Safe Connections Notice* at 15, para. 39; 47 U.S.C. § 345(f)(1); *see also* CTIA Comments at 10-11 ("In recognition of [] technical and operational challenges, the SCA recognizes that certain requirements should be tied to 'commercial availability' and 'technical feasibility.' In the NPRM, the Commission appropriately incorporates these standards into its proposed line separation rules.") (footnote omitted).

[284] *See Safe Connections Notice* at 15-16, para. 40; NCTA Reply at 9 (expressing support for this standard).

[285] 47 U.S.C. § 345(f)(1).

[286] *See* NCTA Reply at 6 (explaining that survivors could be confused or forced to engage in additional communications with covered providers if they are given line separation options that are not feasible for the covered provider).

[287] *See infra* Section III.A.4.

[288] *See Safe Connections Notice* at 15, para. 39. A suggestion that covered providers could receive a tax credit for upgrading their systems is outside the scope of this proceeding. *See* Rose Marie Vegara Comments at 3.

[289] *See Safe Connections Notice* at 15-16, para. 40; CCA Comments at 6-7 ("CCA's members generally expect that it will be feasible for them to effect line separations . . ."); NCTA Comments at 3 ("NCTA's members want to perform line separations when requested consistent with the spirit and intent of the Act."); Verizon Comments at 14 ("Verizon expects that its existing practices will achieve compliance with the statute for many [line separation requests . . .").

[290] *See* Verizon Comments at 4 ("Flexible, non-prescriptive rules for processing [line separation requests] will best serve survivors' and Congress's interests; the Commission should not attempt to exhaustively define technical or operational infeasibility given the different IT systems, billing and number management practices in the industry."); NCTA Reply at 9 ("The Commission's rules should not attempt to define technical or operational infeasibility. Different IT systems, billing systems and policies, and number management practices are used by different companies across the industry. Accordingly, allowing each covered provider to reasonably determine what constitutes infeasibility with respect to line separation requests would be the best policy.") (footnote omitted); CTIA Comments at 2 (arguing that because the line separation requirement "will require wireless providers to make significant changes to their existing and unique systems, processes, and training programs," the Commission should

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72. We also codify the SCA's requirement that a covered provider that cannot operationally or technically effectuate a line separation request must: (1) notify the survivor who submitted the request of that infeasibility, and (2) provide the survivor with information about alternatives to submitting a line separation request, including starting a new account for the survivor.[292] We require covered providers to explain in the notification the nature of the operational or technical limitations that prevent the provider from completing the line separation as requested and any available alternative options that would allow the survivor to obtain a line separation.[293] Consistent with the SCA, we require a covered provider to notify a survivor of any rejection of a line separation request as a result of operational or technical infeasibility at the time of the request, or for a request made using remote means, not later than two business days after the covered provider receives the request.[294] Covered providers shall deliver these notifications in the manner of communication selected by the survivor at the time of the request and in the language selected by the survivor, if applicable.[295] Verizon encourages the Commission to permit providers to give "short plain-English explanations" regarding the nature of a operational or technical limitation preventing the processing of a line separation.[296] While we agree with Verizon that covered providers should not overwhelm survivors with technical explanations, we do require providers to give survivors as much information about the operational or technical limitation as will allow them to make informed decisions about what to do next, such as, e.g., revise their request, initiate a new request, or seek other options.[297]

73. We conclude that covered providers must offer, allow survivors to elect, and effectuate any available alternative options that would allow survivors to obtain a line separation. This proposal was

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"[a]void overly prescriptive obligations by incorporating the SCA's 'commercial availability' and 'technical feasibility' standards" for the line separation obligation); *id.* at 10 (asserting that a "one-size-fits-all" approach would undermine rather than support providers' ability to efficiently and effectively meet survivors' needs); CCA Comments at 5 ("The Safe Connections Act recognizes in multiple sections that not all carriers will have the same technical and operational capabilities, and it directs the Commission to consider those issues in its rulemaking.") (footnote omitted).

[291] As we noted in the *Safe Connections Notice*, there is evidence that covered providers already have some ability to effectuate line separations. *See Safe Connections Notice* at 15-16, para. 40 (citing T-Mobile, *Transfer account or line ownership*, https://www.t-mobile.com/support/account/transfer-account-or-line-ownership (last visited Feb. 13, 2023) ("[A]ccount holders can let another person take ownership of an existing T-Mobile line or account."); AT&T, *Transfer billing responsibility*, https://www.att.com/support/article/wireless/KM1045265/ (last visited Feb. 13, 2023) ("You can transfer one line or multiple lines on the same account."); Verizon, *Transfer mobile numbers between Verizon accounts FAQs*, https://www.verizon.com/support/transfer-your-service/ (last visited Feb. 13, 2023) ("Learn how to transfer a line of service between Verizon mobile accounts."); Republic Wireless, *How to Split Your Account*, https://help.republicwireless.com/hc/en-us/articles/4413579144599-How-to-Split-Your-Account (last visited Feb. 13, 2023) ("Keep one or more existing service line(s) on a Legacy plan and upgrade other existing service lines (s) to a 5.0 plan")).

[292] 47 U.S.C. § 345(f)(2); *Safe Connections Notice* at 29-30, para. 75; Appx. A, § 64.6402(d); *see generally* API-GBV Comments at 7 (supporting the Commission's proposed approach). The SCA uses the phrase "starting a new line of service," which is ambiguous. A new line, if made on the same shared account with the abuser, would not accomplish Congress's goal of ensuring survivors "establish[] independence from . . . abuser[s]." Safe Connections Act § 3(2),. We thus understand this phrase to describe starting a new account for the survivor, which we believe accords with Congress's intent.

[293] *Safe Connections Notice* at 30, para. 75; Appx. A, § 64.6402(d).

[294] *Safe Connections Notice* at 30, para. 75.

[295] *See supra* Section III.A.2.b.

[296] Verizon Comments at 17-18.

[297] We find insufficient, for example, Verizon's proposed approach that covered providers merely state that "Approach #1 won't work," without giving more information as to the cause. Verizon Comments at 17-18.

unopposed in the record. For example, if a covered provider is not able to separate an abuser's line from an account because the abuser is the primary account holder, but can separate the survivor's line from the account, the provider must offer that alternative. Likewise, if a covered provider is not capable of processing a line separation request in the middle of a billing cycle but can do so at the end of the billing cycle, the provider must offer that.[298] This approach maximizes the benefits of the line separation requirement and helps prevent survivors from being forced into a less desirable alternative. We find that the approach we take here achieves the goals of the SCA without placing undue costs and burdens on covered providers.

74. Finally, we also require covered providers to deliver a clear and concise notification to survivors, within two business days after receiving the request, if a line separation request is rejected for any other reason, and such notification must include the basis for the rejection and information about how the survivor can either correct any issues, submit a new line separation request, or select alternative options to obtain a line separation, if available.[299]

75. *Resubmissions.* To ensure that survivors making legitimate line separation requests can receive timely relief, we conclude that any corrections, resubmissions, or selected alternatives for obtaining a line separation submitted by survivors following a denial should be treated as new requests and therefore must be processed by covered providers as soon as feasible, but not later than close of business two business days after the provider receives the request.[300] We agree with EPIC et al. that "[t]ime may be of the essence when a survivor initiates the line separation request, and there is no reason a provider expected to respond within two days of the initial submission cannot respond within two days for subsequent submissions."[301]

76. *Measures to Stop Abusers from Preventing Survivors from Obtaining Line Separations.* We are concerned that some abusers may take preemptive steps to prevent survivors from obtaining line separations, particularly if an abuser becomes aware of a survivor's attempt to separate a line.[302] We reiterate our conclusion in the *Safe Connections Notice* that the SCA requires covered providers to complete non-fraudulent line separations as long as the request provides the information required or permitted by the statute and our implementing rules, subject to operational and technical feasibility. Accordingly, we implement rules to ensure survivors can obtain line separations notwithstanding abusers' efforts to prevent them from doing so. First, to stop an abuser or other user from removing the survivor's access to the line before the request is processed, we require covered providers to lock an account to prevent all SIM changes, number ports, and line cancellations (other than those requested as part of the line separation request pursuant to section 345 and our rules) as soon as feasible after receiving a

[298] Verizon explains that "in some cases, a wireless provider may not be able to create a new account for a survivor without initially applying certain financial obligations as part of the account setup" and argues that "as long as those obligations are promptly waived by the system or the customer service employee after the new account is created, Congress's objective is met." Verizon Comments at 10. We agree; however, in such instances survivors must not be required to take additional steps for such financial obligations to be waived; the wavier must be automatic.

[299] Appx. A, § 64.6402(e); *Safe Connections Notice* at 30, para. 75; *see* API-GBV Comments at 7 (supporting this approach).

[300] *See* Appx. A, § 64.6402(f); *Safe Connections Notice* at 15, para. 38; EPIC et al. Comments at 14.

[301] EPIC et al. Comments at 14.

[302] *See Safe Connections Notice* at 34-35, para. 104; *see also* NDVH Comments at 1 ("Those who choose to cause harm will use anything, including technology, within their reach to further isolate, harass, control and abuse their victims. The pervasive issue of domestic violence, and the fact that technology, especially wireless communication, and smart phones, continues to become a larger part of our daily life and activities, means that abusive partners are going to misuse technology to cause harm.").

completed line separation request from a survivor, and until a request is processed or denied.[303] Second, given evidence in the record that abusers may seek to exert control over survivors[304] and to ensure that account locks do not become an avenue for perpetuating abuse and other crimes, we require covered providers to effectuate line separations, and any number port[305] and SIM change requests made by the survivor as part of the line separation request, regardless of whether an account lock is activated on the account. There is some evidence in the record that stalkerware apps and spyware can be used to further endanger survivors, and we think it is reasonable to conclude that some survivors may request a SIM change so they can keep their separated number, but use a new device, for safety reasons.[306] Finally, in situations where any customer other than the survivor requests that the covered provider stop or reverse a line separation on the basis that the line separation request was fraudulent, covered providers must complete or maintain any valid line separation request and make a record of the customer's complaint in the customer's existing account and, if applicable, the customer's new account, in the event further evidence shows that the request was in fact fraudulent.[307] We conclude that our approach here best balances the importance of account protection measures to prevent fraud with the goal of ensuring survivors can obtain legitimate line separations.[308]

77. *Notification to Primary Account Holders and Abusers.* As contemplated by the SCA, we require a covered provider to inform a survivor who has submitted a line separation request, but who is not the primary account holder, of the date on which the covered provider intends to give any formal notification to the primary account holder.[309] We also require covered providers to inform survivors of the date the covered provider will inform the abuser of a line separation, cancellation, or suspension of service, involving the abuser's line to the extent such notification is necessary.[310] We require covered providers to give such notice to the survivor as soon as is feasible after receiving a completed line separation request.[311] As API-GBV notes, by informing survivors of the date the abuser will learn of the line separation, covered providers will give survivors an opportunity to "do relevant and timely safety

[303] Appx. A, § 64.6402(k); API-GBV Comments at 8 ("API-GBV further agrees that covered providers should lock an account to prevent all SIM changes, number ports, and line cancelations as soon as possible and no more than 12 hours after receiving a line separation request from a survivor, to prevent the abuser or other users from removing the survivor's access to the line before the request is processed.").

[304] NDVH Comments at 1 (explaining that abusers "will use anything, including technology, within their reach to further isolate, harass, control and abuse their victims."); EPIC et al. Comments at 3 ("An abusive partner can attempt to exert control over a survivor in various ways"); Rose Marie Vegara Comments at 2 (describing how abusers exert control over survivors); Boston College Law Student Reply at 2 ("Through manipulation, threats, and stalking behaviors, abusers can exert an extreme amount of control to keep survivors from leaving.").

[305] As a practical matter, we anticipate that covered providers will need to complete number ports after the line separation is effectuated, and therefore account locks that existed prior to the separation may not apply to those requests. *See infra* Section III.A.7.

[306] *See* EPIC et al. Comments at 26-30; EPIC et al. Reply at 8-9; *see also* Written Testimony of Thomas E. Kadri, U.S. House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Hearing on "Strengthening our Communications Networks: Legislation to Connect and Protect," May 24, 2022, at 5 (*Kadri Testimony*) ("Stalkerware and other apps that reveal communications or location data usually require abusers to gain physical access to a device for their installation or activation. . . .").

[307] Appx. A, § 64.6402(m).

[308] No industry commenters raised any technical, operational, or other concerns with implementing these procedures.

[309] 47 U.S.C. § 345(b)(8); *id.* § 5(b)(1)(B)(iv); Appx. A, § 64.6402(g); *Safe Connections Notice* at 31, para. 78.

[310] Appx. A, § 64.6402(g); *Safe Connections Notice* at 31, para. 78.

[311] Appx. A, § 64.6402(g).

planning."[312] We prohibit a covered provider from notifying an abuser who is not the primary account holder when the lines of a survivor or an individual in the care of a survivor are separated from a shared mobile service contract.[313] By limiting the scope of when covered providers may notify abusers of line separations, we acknowledge the concerns of multiple commenters who stress that "[o]ne of the most dangerous times for a victim is when they are attempting to leave an abusive situation and the abuser becomes aware of their intent."[314] We also prohibit a covered provider from notifying a primary account holder, or an abuser who is not a primary account holder, of a survivor's request for a SIM change when made in connection with a line separation request pursuant to section 345. We decline to require covered providers to further delay notification to a primary account holder or abuser whose line is being separated, as proposed by some commenters,[315] though we permit and encourage covered providers to do so if operationally feasible. As some commenters have noted, a line separation request involving the separation of the abuser's line may require the abuser to become financially responsible for the line immediately following the separation, or to give consent to open a new account.[316] In such situations, the covered provider may need to inform the abuser immediately upon or before separating the abuser's line, making a notification delay infeasible.[317] In implementing processes to ensure that primary account holders and, when necessary, abusers, are not notified about line separations until the date that the covered provider has provided to the survivor, we emphasize that covered providers should be mindful of their existing internal systems and processes that may cause some or all account users to receive automatic notifications about account activity, which may serve as de facto notifications about the line separation request.

d. Documentation of Completed Line Separation Request Submission

78. We require covered providers to provide a survivor with documentation that clearly identifies the survivor and shows that the survivor has submitted a legitimate line separation request under section 345(c)(1) and the Commission's rules[318] upon completion of the providers' line separation request review process.[319] The SCA limits access to "emergency communications support" in the designated program to those survivors that meet the requirements of section 345(c)(1) and that are experiencing financial hardship, regardless of their ability to otherwise participate in the designated program.[320] As such, survivors will require documentation demonstrating their submission of a legitimate line separation request to enroll in Lifeline, as the designated program, and receive support. Although no commenter

[312] API-GBV Comments at 7; NDVH Comments at 2 (explaining that giving the survivor "an exact timeline for when that notification [to an abuser] will take place is critical in ensuring the safety of a survivor").

[313] Appx. A, § 64.6402(h).

[314] NDVH Comments at 2; Boston Coll. L. Student Comments at 8 ("If [survivors] act on their desire to leave, even just by taking the initial step of reaching out for help, survivors may be hurt or killed by their abuser, their kids or other family members and friends may be hurt or killed, they may be ruined financially, or any other of a multitude of outcomes could occur.").

[315] *See* API-GBV Comments at 7-8 (suggesting that we require covered providers to wait 21 to 30 days after the approval of a line separation request to give notice to abusers of changes to an abuser's service or billing so that survivors may have sufficient time to plan for their safety); EPIC et al. Comments at 18-19 (suggesting a notification delay, and recommending requiring covered providers to permit survivors to decide the timeframe).

[316] *See* CTIA Comments at 9; Verizon Comments at 11 n.19. Indeed, as previously mentioned, the SCA prohibits covered providers from holding survivors financially responsible for the abuser's line once the covered provider has separated it from the shared account. 47 U.S.C. § 345(b)(6); *see also id.* § 5(b)(1)(B)(x).

[317] *See* 47 U.S.C. § 345(b)(1).

[318] *See* 47 U.S.C. § 345(c)(1); *supra* Section III.A.2.a.

[319] Appx. A, § 64.6402(n); *see Safe Connections Notice*, at 58, paras. 163-64.

[320] Safe Connections Act § 5(b)(2)(A)(ii).

offered specific suggestions about the type of information that should be included in this documentation to process a request for Lifeline support, we rely on the Commission's substantial experience managing its affordability programs to determine an appropriate approach. Specifically, regarding survivor identity, we require that the documentation include the survivor's full name and confirmation that the covered provider authenticated the survivor as a user of the line(s) subject to the line separation request.[321] We further require that covered providers give survivors this documentation even if the line separation request could not be processed due to operational or technical infeasibility, as long as the survivor submitted a completed request in accordance with the requirements of section 345(c)(1) and the Commission's rules. We observe that entry into the emergency communications program is not limited to only those survivors who successfully obtain a line separation, but rather to those who satisfy the requirements of section 345(c)(1) and are experiencing financial hardship.[322] Finally, we require covered providers to provide this documentation to survivors in a manner that would allow the survivor to share that documentation with USAC when the survivor seeks Lifeline support pursuant to the SCA.[323] Accordingly, covered providers must provide the documentation in a written format that can be easily saved and shared by a survivor, such as an electronic notice delivered over email, information in a survivor's new account that can be easily downloaded or captured via a screenshot, some method of text messaging that can be easily captured via screenshot, or regular mail delivered to an address designated in the request. Telephonic delivery of this notice is insufficient, as it will not allow the survivor to confirm that they complied with the requirements of the line separation process. Covered providers should deliver this documentation via the means selected by the survivor for communications regarding the line separation request,[324] to the extent such means satisfy both requirements. We acknowledge, however, that depending on the methods a survivor chooses for communications with a covered provider regarding the line separation request, covered providers may not have contact information that would allow them to send certain written documentation, and we permit providers to request contact information only for the purpose of providing this documentation for Lifeline enrollment under the SCA.

e. Employee Training

79. We conclude that all covered provider employees who may interact with survivors regarding a line separation request must be trained on how to assist them or on how to direct them to other employees who have received such training.[325] Industry commenters stressed the need for flexibility regarding employee training requirements to account for differences in provider resources, customer bases, and systems.[326] Moreover, NCTA noted that "avoiding prescriptive rules also would reduce the

[321] Appx. A, § 64.6402(n).

[322] Safe Connections Act § 5(b)(2)(A)(ii).

[323] Appx. A, § 64.6402(n).

[324] *See supra* Section III.A.2.b (discussing implementation of the SCA's requirement that covered providers to "allow the survivor to elect in the manner in which the covered provider may—(i) contact the survivor, or designated representative of the survivor, in response to the request, if necessary; or (ii) notify the survivor, or designated representative of the survivor, of the inability of the covered provider to complete the line separation," which mirrors the SCA).

[325] Appx. A, § 64.6408.

[326] CCA Reply at 4 ("Flexible rules will enable wireless providers to comply and make necessary technical and operational updates in a manner best adapted to their service model, customer base, and available resources."); Verizon Comments at 18-19 (urging that "[t]his same flexibility should extend to any training requirements so that wireless providers can adapt their training policies and practices for the LSR process to their own business and customer care models"); NCTA Reply at 10 ("Providers should be able to craft employee training and customer notification and outreach programs that are tailored to their operations and customer bases. Affording providers such flexibility would benefit survivors by enabling service providers to customize their materials and programs in ways that experience has taught will be most effective in providing clear communications to consumers.").

implementation burdens associated with the new requirements."[327] We believe that a flexible approach to training and customer service will best allow providers, particularly small providers, to account for differences in operational capabilities, resources, service models, and customer bases, and as such, we decline to adopt more prescriptive requirements regarding training of employees. Verizon noted that it "maintains a group of customer care employees specially trained to handle the sensitivities surrounding [line separation requests] from domestic violence survivors and to walk the survivors through the secure process of documenting the abuse, establishing a new account (or removing an alleged abuser from an existing account), selecting a service plan and, where requested, facilitating a number change or port out."[328] While we applaud Verizon's efforts and urge covered providers to consider a similar approach, we decline to mandate that every covered provider maintain specialized staff to address survivor line separation requests, as API-GBV suggests.[329] The record reflects that not all providers, particularly small providers, may have the operational capabilities or resources to establish specialized units of staff.[330]

4. Notice to Consumers

80. As proposed in the *Safe Connections Notice*,[331] we require covered providers to provide a "Notice to Consumers" with information about the options and process for a line separation request made readily available to all consumers through the provider's public-facing communication avenues. We specifically incorporate the SCA's requirement that covered providers "make information about the options and process" regarding line separations "readily available to consumers: (1) on the website and the mobile application of the provider; (2) in physical stores; and (3) in other forms of public-facing consumer communication"[332] for this "Notice to Consumers."[333] The record reflects that the Notice to Consumers should be available in an "easy to find," "prominent," or "obvious" place on provider websites and applications,[334] and as such, we require covered providers to place the Notice to Consumers, or a prominent link to it, on a support-related page of the website and mobile application of the provider, such as a customer service page.[335] We agree with Verizon and NCTA that adopting a flexible, rather than a one-size-fits-all, requirement for the placement of the Notice to Consumers on provider websites and applications enables the wide variety of covered providers to display it in the way that is most suitable to their customers,[336] and find that our approach here strikes the right balance between being

[327] NCTA Reply at 10.

[328] Verizon Comments at 2-3.

[329] *See* API-GBV Comments at 6 (suggesting that covered providers be required to have "specialized units of staff that survivors and their representatives can access").

[330] CCA Reply at 3-4 (noting that "not all carriers will have the same technical and operational capabilities, and that the FCC should consider those differences in developing implementing rules with a particular emphasis on what is feasible for smaller carriers").

[331] *Safe Connections Notice* at 26, para. 66.

[332] 47 U.S.C. § 345(e); *see also Safe Connections Notice* at 26-28, paras. 66-71.

[333] Appx. A, § 64.6406.

[334] *See* API-GBV Comments at 7 ("A prominent link on a covered provider's customer service page or support section . . . should be sufficient to meet the SCA's requirements."); NYC ENDGBV Comments at 2 ("[I]nformation about line separation should be easy to find on a provider's website and mobile application . . . ."); Verizon Comments at 15 (suggesting that a "Support" or "Customer Service" page may be a more obvious—and thus appropriate—place than the home page for a link to line separation-related information).

[335] Appx. A, § 64.6406; *see Safe Connections Notice* at 27, para. 67. API-GBV suggests that we require providers to include links to other victim-related resources, such as the National Domestic Violence Hotline, or National Sexual Assault Hotline. *See* API-GBV Comments at 7. We decline to do so as this is outside the scope of the requirements of the SCA.

[336] Verizon Comments at 15; NCTA Reply at 10.

minimally prescriptive and ensuring that there is some consistency between covered providers' practices. In physical stores, we permit covered providers to make the Notice to Consumers readily available via flyers, signage, or other handouts,[337] and require covered providers, at a minimum, to ensure that any materials containing the Notice to Consumers in-store are clearly visible to consumers and accessible.[338] We also require covered providers to provide the Notice to Consumers in-store in all languages in which the provider advertises within that particular store and on its website in all languages in which the provider advertises on its website, and in all formats (large print, braille, etc.) that the provider uses to make its service information available to persons with disabilities.[339] Commenters take no direct issue with this approach for the in-store or website Notice to Consumers.[340]

81. We decline at this time to provide more specific guidance regarding the SCA's requirement that covered providers make the Notice to Consumers readily available "in other forms of public-facing consumer communication."[341] We received no comment regarding what other forms of communication covered providers employ and how such providers should make the Notice to Consumers readily available through those avenues.[342] Given the wide variety of communication methods that could fall within this category, and the lack of record received from industry and consumer stakeholders, we conclude the best approach is to preserve the flexibility of covered providers to determine how best to communicate the Notice to Consumers beyond their websites and stores. We may revisit this approach in the future should we determine that covered providers are not doing enough to apprise consumers of their rights under the SCA.

82. Consistent with the SCA,[343] we require covered providers to include in the Notice to Consumers, at a minimum, an overview of the line separation process that we adopt today; a description of survivors' service options that may be available to them;[344] a statement that the SCA does not permit covered providers to make a line separation conditional upon the imposition of penalties, fees, or other requirements or limitations;[345] and at least basic information concerning the availability of the Lifeline support for qualifying survivors.[346] We decline to adopt the suggestion of the NYC ENDGBV that we "require standardized language to explain the entire process of line separation to survivors,"[347] as we find it is most appropriate to allow covered providers to tailor the Notice to Consumers to their services,

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[337] *See* Verizon Comments at 16 (asserting that because many brick-and-mortar retail stores "are neither owned by service providers nor staffed directly by company employees," and "may offer services and plans for multiple providers," the Commission should permit providers to be flexible with regard to how the Notice is given in-store).

[338] Appx. A, § 64.6406; *Safe Connections Notice* at 27, para. 68; 47 U.S.C. § 345(e)(2).

[339] Appx. A, § 64.6406; *Safe Connections Notice* at 27, para. 68.

[340] NYC ENDGBV Comments at 2 ("Information should be available in as many languages as possible."); NCTA Reply at 11 (suggesting that covered providers should make communications regarding the Safe Connections Act "available in [English and] any other languages in which the [provider] markets its services . . .").

[341] 47 U.S.C. § 345(e)(3).

[342] *Safe Connections Notice* at 27, para. 69.

[343] 47 U.S.C. § 345(e).

[344] *See* API-GBV Comments at 7.

[345] *Safe Connections Notice* at 27, para. 70.

[346] Appx. A, § 64.6406; *Safe Connections Notice* at 28, para. 71; *see generally* API-GBV Comments at 7 (recommending that the Notice to Consumers should at least "generally describe survivors can request a line separation, and explain alternative options that survivors can choose to obtain a line separation"). We discuss our designation of the Lifeline program for emergency communications support for qualifying survivors below, *see infra* Section III.C.

[347] NYC ENDGBV Comments at 1-2, 16-17.

operations, and systems. By permitting some flexibility in how covered providers communicate the Notice to Consumers, covered providers may give detail regarding how their particular customers may request a line separation. Additionally, given the variety of platforms and media on which the Notice to Consumers will be published, this flexibility will give covered providers the leeway to optimally design the notice for each communication method.

5. Prohibited Practices in Connection with Line Separation Requests

83. We adopt our proposal to codify the provisions of the SCA prohibiting covered providers from making line separations contingent on: (1) payment of a fee, penalty, or other charge; (2) maintaining contractual or billing responsibility of a separated line with the provider; (3) approval of separation by the primary account holder, if the primary account holder is not the survivor; (4) a prohibition or limitation, including payment of a fee, penalty, or other charge, on number portability, provided such portability is technically feasible, or a request to change phone numbers; (5) a prohibition or limitation on the separation of lines as a result of arrears accrued by the account; (6) an increase in the rate charged for the mobile service plan of the primary account holder with respect to service on any remaining line or lines; or (7) any other requirement or limitation not specifically permitted by the SCA.[348] We agree with Verizon that the SCA's "restrictions on various rates, terms, and conditions of service are largely self-executing and self-explanatory," and commenters generally support our approach in interpreting these provisions of the SCA.[349] We provide further guidance on these prohibitions, as necessary, below.

84. *Fees, Penalties, and Other Charges.* We adopt the SCA's prohibition on making a line separation contingent on payment of a fee, penalty, or other charge.[350] As explained in the *Safe Connections Notice*, and supported by the record,[351] we conclude that this clause would prohibit covered providers from enforcing any contractual early termination fees triggered by the line separation request, if the line separation request was made pursuant to section 345, regardless of whether a survivor continues to receive service from the provider as part of a new arrangement upon a line separation or ceases to receive service from the provider. We make this explicit in our rule implementing this provision.

85. *Number Portability and Number Changes.* We incorporate into our rules the SCA's prohibition on conditioning a line separation on the customer maintaining service with the provider (provided that such portability is technically feasible).[352] We interpret the SCA's prohibition on number portability restrictions and fees in relation to a line separation request as requiring covered providers to permit both the party remaining on an account and the party separating from an account to port their numbers, without fees or penalties, provided such portability is technically feasible.[353] Likewise, we incorporate into our rules the SCA's provision that prevents a covered provider from prohibiting or limiting a survivor's ability to request a phone number change as part of a line separation request, as proposed.[354] As we explained in the *Safe Connections Notice*, a survivor who is the primary account

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[348] *Safe Connections Notice* at 31, paras. 79-89; 47 U.S.C. § 345(b)(2).

[349] *See* API-GBV Comments at 6; Verizon Comments at 20 ("The Safe Connections Act's restrictions on various rates, terms and conditions of service are largely self-executing and self-explanatory.").

[350] 47 U.S.C. § 345(b)(2)(A); Appx. A, § 64.6404(a).

[351] *See* API-GBV Comments at 8; Verizon Comments at 20.

[352] 47 U.S.C. § 345(b)(2)(D); *Safe Connections Notice* at 31, para. 81; Appx. A, § 64.6404(a).

[353] *Safe Connections Notice* at 32, para. 81; *see also* EPIC et al. Comments at 2 ("We support the Commission's proposals that maximize survivor self-determination and agency [by, for example,] providing flexibility in terms of . . . number portability . . . ."); Verizon Comments at 20 ("Verizon will continue to support a survivor's request to port out or change a number once the line separation process is completed . . . .").

[354] 47 U.S.C. § 345(b)(2)(D); *Safe Connections Notice* at 32, para. 82.

owner requesting separation of an abuser's line from the account might want to keep the account to maintain any promotional deals, complete device pay-off, or avoid early termination fees, but change a telephone number for safety purposes.[355] We conclude that this provision of the SCA bars covered providers from prohibiting such telephone number change requests or attaching a fee or penalty for doing so.

86. *Rate Increases.* We incorporate in our rules the SCA's provision that prohibits covered providers from making line separations contingent on a rate increase for the primary account holder's plan with respect to service on any remaining line or lines,[356] although a covered provider is not required to provide a rate plan for the primary account holder that is not otherwise commercially available.[357] As proposed in the *Safe Connections Notice*, we interpret this provision to prohibit covered providers from denying a survivor's line separation request if the primary account holder for the remaining lines does not agree to a rate increase, or from forcing the remaining primary account holder to switch to a service plan that has a higher rate, although the person may elect to switch to a rate plan that has a higher or lower rate from among those that are commercially available.[358] We also find this provision does not require covered providers to offer survivors or remaining parties a specialized rate plan that is not commercially available if the party does not choose to continue the existing rate plan.[359] We agree with Verizon that beyond this guidance, "it would be unnecessary and counterproductive to micromanage or prescriptively regulate how wireless providers implement" these duties, given their wide variety of "different service plans and business models."[360] Accordingly, we decline NCTA's suggestion to make explicit in our rules "that it is permissible for accounts affected by a line separation to remain eligible for multi-line discounts based on the number of lines active on each account after the separation has been implemented,"[361] though we note that such a practice would not be prohibited under the SCA or our implementing rules, as long as the line separation was not contingent on the acceptance by the account holder of a new plan.

87. *Contractual and Billing Responsibilities.* We incorporate in our rules the SCA's prohibition on making a line separation contingent upon "maintaining contractual or billing responsibility of a separated line" with the covered provider.[362] As proposed in the *Safe Connections Notice*, we interpret this provision as requiring covered providers to give the party with the separated line the option to select any commercially available prepaid or non-contractual service plan offered by the covered provider, whether that party is a survivor or abuser. We also conclude that this provision prohibits covered providers from requiring a survivor who separates a line to maintain the same contract, including any specified contract length or terms, as the account from which those lines were separated (i.e., continuing a contract for the remainder of the time on the original account for the new account or requiring the survivor to maintain all previously-subscribed services (voice, text, data) under the new account).

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[355] *See Safe Connections Notice* at 32, para. 82. We received no comments on our proposed analysis.

[356] 47 U.S.C. § 345(b)(2)(F); Appx. A, § 64.6404(a).

[357] 47 U.S.C. § 345(b)(3); Appx. A, § 64.6404(a).

[358] *Safe Connections Notice* at 32, para. 83.

[359] *Id.*

[360] Verizon Comments at 20.

[361] NCTA Comments at 9; CCA Reply at 2-3 ("CCA also agrees that the FCC should confirm that the [Safe Connections] Act allows providers to apply . . . multi-line discounts based on post-separation lines to line separations involving grandfathered plans or multi-line offerings.").

[362] 47 U.S.C. § 345(b)(2)(B); Appx. A, § 64.6404(a).

88. *Credit Checks.* Consistent with the record,[363] we adopt our proposal to specify that covered providers may not make line separations contingent on the results of a credit check or other proof of a party's ability to pay.[364] We likewise adopt our proposal to prohibit covered providers from relying on credit check results to determine the service plans from which a survivor is eligible to select and whether a survivor can take on the financial responsibilities for devices associated with lines used by the survivor or individuals in the care of the survivor.[365] As Congress explained, "[s]urvivors often lack meaningful support and options when establishing independence from an abuser, including barriers such as financial insecurity,"[366] and survivors may thus not be able to demonstrate their financial stability as a result of their abusive situation.[367] As such, we find it consistent with the SCA to prohibit covered providers from making line separations contingent on the results of a credit check or other proof of a party's ability to pay. Consistent with our tentative findings in the *Safe Connections Notice*, however, we find that these restrictions would not impact the ability of a covered provider to perform credit checks that are part of its routine sign-up process for all customers as long as the covered provider does not take the results of the credit check into account when determining whether it can effectuate a line separation.[368]

6. Financial Responsibilities and Account Billing Following Line Separations

89. We adopt our proposal to codify the SCA's statutory requirements for financial responsibilities and account billing following line separations.[369] Specifically, unless otherwise ordered by a court, when survivors separate their lines and the lines of individuals in their care from a shared mobile service contract, they must assume the financial responsibilities, including monthly service costs, for the transferred numbers beginning on the date on which a covered provider transfers the billing responsibilities for and use of the transferred numbers to those survivors.[370] Covered providers may not require survivors to assume financial responsibility for mobile devices associated with those separated lines unless the survivor purchased the mobile devices, affirmatively elected to maintain possession of the

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[363] *See* EPIC et al. Comments at 6 ("[W]e support the Commission's prohibition of making line separation contingent upon a survivor credit check or other estimation of survivor's ability to pay, and the Commission's presuming financial hardship."); Knights Comments at 2 ("[A] credit check requirement could be seen as an 'other limitation' under 345(b)(1)(G). It would go against the [Safe Connections] Act's finding that survivors face financial insecurity."); Verizon Comments at 20 ("The Safe Connections Act ensures that a provider may not condition a[line separation request] on a particular rate plan or credit check . . . ."). CTIA supports this approach, but adds that we should permit covered providers to engage in credit checks as a method of authenticating a survivor's identity. CTIA Comments at 14-15. We discuss how covered providers may authenticate survivor's identity above.

[364] *Safe Connections Notice* at 33-34, paras. 87-88 (seeking comment whether the SCA's general prohibition of making line separations contingent on practices not specifically permitted by the SCA would prohibit covered providers from making a line separation request contingent on the results of a credit check or other proof of a party's ability to pay); Appx. A, § 64.6404(a).

[365] *Id.*

[366] Safe Connections Act § 3(2).

[367] *See Notice of Inquiry* at 3, para. 5. Commenters support this finding. *See, e.g.*, API-GBV Comments at 5 (rec. Aug. 18, 2022) ("[A]busive partners . . . will isolate survivors and try to prevent or sabotage them from attaining economic independence or stability by[, for example,] ruining credit . . . .").

[368] *Safe Connections Notice* at 33-34, paras. 87-88. We believe this approach addresses NCTA's suggestion that the Commission not prohibit covered providers from "requir[ing] other proof of ability to pay or other verification information" as part of "applying their standard payment terms to separated accounts . . . ." NCTA Comments at 9-10. Stated another way, we permit covered providers to use credit checks in the generally applicable account sign-up process after they have effectuated the line separation for survivors.

[369] *See Safe Connections Notice* at 34-35, para. 90.

[370] 47 U.S.C. § 345(b)(5); Appx. A, § 64.6405(a).

mobile devices, or are otherwise ordered to by a court.[371] When survivors separate an abuser's line from a shared mobile service contract, a covered provider may not impose on survivors any further financial responsibilities to the transferring covered provider for the services and mobile devices associated with the telephone number of the separated line.[372] To ensure that providers can implement processes and procedures that work with their particular IT, billing, and other administrative systems, we decline to implement more prescriptive rules governing covered providers' administration of the financial responsibility and account billing requirements. Given the complexities and uniqueness of each provider's systems, we agree with CCA that "flexible rules will enable wireless providers to comply and make necessary technical and operational updates in a manner best adapted to their service model, customer base, and available resources."[373] Although we decline to implement more prescriptive rules beyond those established in the SCA, in consideration of the record, and pursuant to the SCA's charge that we consider account billing procedures and financial responsibilities in adopting rules governing line separations,[374] we clarify how providers apply those obligations below.

90. *Lines.* Although the SCA contemplates that survivors will not be financially responsible for the abuser's line the moment the line separation is processed, we recognize that there may be instances when a covered provider cannot practically prorate those financial responsibilities.[375] In such instances, we make clear that a covered provider can rely on the operational and technical infeasibility exception to process the request without prorating the financial responsibilities for the abuser's line, as long as the provider releases the survivor from financial responsibility for the abuser's line at the start of the next billing cycle, which we expect will not be more than one month following the date the request is processed.[376]

91. Similarly, we understand, as Verizon explains, that "in some cases, a wireless provider may not be able to create a new account for a survivor without initially applying certain financial obligations as part of the account setup."[377] We agree that, "as long as those obligations are promptly waived by the system or the customer service employee after the new account is created, Congress's objective is met."[378] We stress, however, that covered providers must waive these fees without requiring survivors to follow up or take additional steps.

92. *Devices*. We clarify how the obligations for device financial responsibilities apply when a third party is involved with the financing or sale of the device. NCTA states that "some providers offer device financing through a third party, and it is the third party that has a contractual relationship with the customer."[379] In that scenario, NCTA asserts, "the provider may not have the ability to waive device

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[371] 47 U.S.C. § 345(b)(7).

[372] 47 U.S.C. § 345(b)(6).

[373] CCA Reply at 4; *see also* CCA Comments at 3; CTIA Comments at 14; Verizon Comments at 20.

[374] Safe Connections Act § 5(B)(1)(B)(iii), (x)-(xi).

[375] *See* Verizon Comments at n.46 (explaining that the line separation process for a prepaid plan, for example, "will necessarily occur at some period of time *after* payment is submitted during the month in which the line separation occurs" and arguing that "a true-up for that monthly period that might be available to the abuser under a postpaid plan is not required under Section 345(b)(5) (and may not even be feasible in) the prepaid context, where prepaid airtime is typically nonrefundable at the outset").

[376] *See also Safe Connections Notice* at 16, n.100 (recognizing that it may be operationally or technically infeasible for a covered provider to separate a line in the middle of a billing cycle).

[377] Verizon Comments at 10.

[378] *Id.*

[379] NCTA Comments at 10.

costs and it should not be required to bear such costs."[380] We observe that, in most cases, a contract to finance a device through a third party is an agreement to "purchase" the device, and as such, a survivor may be financially responsible for the financed device associated with the separated line under the provisions of the SCA.[381] In any event, neither the SCA nor our rules require covered providers to bear device costs. If, however, a covered provider offers a device for sale on its website, in a retail store, or through some other means, we conclude that it is the provider's responsibility to ensure that the financial responsibilities for any devices are assigned to the appropriate party following a line separation, including when the device is purchased using third-party financing offered by the provider. We find that this approach most closely aligns with the goals of the SCA.

93. We agree with Verizon, however, that when a device is offered and financed by a third party, such as a big-box retailer or directly from the device manufacturer, the covered provider does not have an obligation to ensure that third party complies with the SCA's device financial responsibility obligations. In this scenario, the covered provider was not involved with the sale or financing of the device and has no relationship with the seller or financier, so there is no means by which the covered provider can compel the third party to comply with the obligations the SCA places on the provider.

94. *Payment Terms and Conditions.* We conclude that the SCA permits covered providers to apply their standard payment or contract terms and conditions to separated lines and devices, to the extent that such terms are consistent with the SCA's limitations on penalties, fees, and other requirements.[382] We agree with NCTA that the statute "is not intended to upend the customer-provider relationship," and that requiring different terms and conditions in service agreements for survivors could "increase the incidence of fraud."[383] In this regard, NCTA noted that "some providers may require a credit card to secure the device, require or incentivize enrollment in monthly auto-pay programs, or require other proof of ability to pay or other verification information, such as billing address or the last four digits of the social security number."[384] These provider practices do not appear to run afoul of the SCA's limitations. Providers, however, should be keenly aware that some survivors may lack access to credit, may be in a transitory state and temporarily lack a permanent address, or be otherwise unable to satisfy some other standard provider requirements.[385] In such cases, providers should work closely with survivors by either helping them gather the necessary payment and verification documentation or by providing information on how they can otherwise satisfy provider requirements, such as by applying to the Lifeline program for financial assistance. If a survivor is ultimately unable to satisfy the provider's standard terms, the provider should also be prepared to inform the survivor of alternative communications service options the provider may offer, such as prepaid or postpaid plans, or the ability to port a number to another provider who may offer service to those in similar circumstances. Though not required by the SCA or by our rules, providers should consider waiving certain terms and conditions some survivors may be temporarily unable to satisfy due to extenuating circumstances. Congress's findings note the key role communications services can play in helping survivors establish autonomy and safety from abusers, but

[380] *Id.*

[381] 47 U.S.C. § 345(b)(7) (requiring that "unless otherwise ordered by a court, a survivor shall not assume financial responsibility for any mobile device associated with the separated line, unless the survivor *purchased the mobile device*, or affirmatively elects to maintain possession of the mobile device") (emphasis added).

[382] Appx. A, § 64.6405(b); *Safe Connections Notice* at 33, para. 86; Verizon Comments at 20; CCA Reply at 2-3.

[383] NCTA Comments at 7, 9.

[384] *Id.* at 9-10.

[385] *See* Safe Connections Act § 3(2) (stating that "[s]urvivors often lack meaningful support and options when establishing independence from an abuser, including barriers such as financial insecurity and limited access to reliable communications tools to maintain essential connections with family, social safety networks, employers, and support services").

provider terms and conditions that are too onerous on survivors could unnecessarily impede survivor access to the SCA's benefits, including the ability to establish independent wireless service.[386]

95. *Arrears*. We adopt our proposal that any previously accrued arrears on an account following a line separation must stay with the person who was the primary account holder prior to the separation.[387] For example, if the abuser's line is separated and the abuser was the primary account holder, the arrears would be reassigned to the abuser's new account. Similarly, if the survivor was the primary account holder and separates the abuser's line, the arrears would stay with the survivor's account. Conversely, if the survivor's line is separated and the abuser was the primary account holder, the arrears would stay with the abuser's account. No commenters raised any concerns about the administrability of this approach.

7. Effects on Other Laws and Regulations

96. *Number Porting*. We conclude that the Commission's current telephone number porting rules apply for lines that have been separated pursuant to section 345 of the Communications Act. As explained in the *Safe Connections Notice*,[388] we do not believe, and the record provides no indication, that there is anything unique about number ports associated with line separations that would make such ports more or less technically feasible than under other circumstances. Accordingly, we conclude that any ports covered providers are currently required to complete, and technically capable of completing, are technically feasible under the SCA.[389] We also conclude that should the requirements or capabilities for number porting change in the future, any newly feasible ports will also be considered technically feasible when sought in connection with a line separation under the SCA.

97. We also find that, as a practical matter, although survivors may indicate as part of their line separation request that they intend to port out the separated (or remaining) telephone numbers to a new provider, a covered provider must complete a line separation request prior to effectuating a number port pertaining to that line. As the Commission explained in its *Safe Connections Notice*, customers who want to port a number to a new provider currently must provide the telephone number, account number, ZIP code, and any passcode on their existing account to the new provider.[390] Survivors who are not primary account holders, however, may have limited access to the necessary account information. However, once a line separation is completed, a survivor will have a new account and presumably have access to all the information needed to port a number to a new provider. Furthermore, as Verizon noted and as NCTA echoed, completing the line separation process and then porting a number will "enable providers to leverage their existing porting processes, to apply appropriate porting fraud prevention measures, and to manage their number inventories in a manner that facilitates continued compliance with the number aging and Reassigned Number Database (RND) reporting requirements."[391] And, because simple wireless-to-wireless ports typically happen within a few hours, there would be little time saved by

[386] Safe Connections Act § 3(4).

[387] *See Safe Connections Notice* at 36, para. 93; Appx. A, § 64.6405(c).

[388] *Safe Connections Notice* at 36, para. 95.

[389] The Commission's current rules require wireless carriers to port numbers to other wireless carriers upon request without regard to proximity of the requesting carrier's switch to the porting-out carrier's switch and to port numbers to wireline carriers within the number's originating rate center. *See* 47 U.S.C. § 251(b)(2); *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23706, para. 22 (2003) (wireless carriers must port numbers to wireline carriers within a number's originating rate center); *Telephone Number Requirements for IP-Enabled Services Providers* et al., WC Docket No. 07-243 et al., Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19535, 19540, 19549-50, paras. 8, 16, 34-35 & n.114 (2007), *aff'd sub nom. National Telecomms. Cooperative Ass'n v. FCC*, 563 F.3d 536 (D.C. Cir. 2009) (*VoIP LNP Order*).

[390] *See Safe Connections Notice* at 19 and 34-35, paras. 47 and 96.

[391] Verizon Comments at 20; *see also* NCTA Reply at 5.

requiring providers to concurrently separate lines and process ports.[392] As such, we find that providers should process and complete line separation requests before completing number ports, which will allow them to leverage their existing systems and processes that port numbers "routinely and reliably."[393] To the extent that a survivor initiates a port-out request with a new service provider for a line that is the subject of an in-process line separation request, we prohibit the current service provider from notifying the account holder of the request to port-out that number until after the line separation request has been completed, to avoid situations where an abuser who is the account owner is notified of a survivor's pending line separation or port-out request on an account shared by an abuser and a survivor.

98. *Compliance with Privacy Protections and Other Law Enforcement Requirements*. In adopting rules to implement the SCA, Congress directed the Commission to consider, among other things, privacy protections and compliance with the Commission's CPNI rules or any other legal or law enforcement requirements.[394] The Commission's CPNI rules implement section 222 of the Communications Act, which obligates telecommunications carriers to protect the privacy and security of information about their customers to which they have access as a result of their unique position as network operators.[395] Section 222(a) requires carriers to protect the confidentiality of proprietary information of and relating to their customers.[396] Subject to certain exceptions, section 222(c)(1) specifically provides that a carrier may use, disclose, or permit access to CPNI that it has received by virtue of its provision of a telecommunications service only: (1) as required by law; (2) with the customer's approval; or (3) in its provision of the telecommunications service from which such information is derived or its provision of services necessary to or used in the provision of such telecommunications service.[397] The Commission's rules implementing section 222 are designed to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of customers' proprietary information. Among other things, the rules require carriers to appropriately authenticate customers seeking access to CPNI.[398] The Commission's CPNI rules also require carriers to take reasonable measures to both discover and protect against attempts to gain

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[392] *See Local Number Portability Interval and Validation Requirements; Telephone Number Portability*, WC Docket No. 07-244, CC Docket No. 95-116, Report and Order, 25 FCC Rcd 6953, 6956-62, para. 59 (2010) (noting that "the wireless industry has established a voluntary standard of two and one-half hours for wireless-to-wireless ports").

[393] Verizon Comments at 14, n.29 (stating that "requiring a port-out number change to occur concurrently with the LSR process, rather than sequentially after the line separation is complete—as is routinely and reliably done today—would require integration of number porting and telephone number management databases and systems into the LSR process, with little if any practical improvement to the LSR process or benefit to survivors").

[394] Safe Connections Act § 5(b)(1)(B)(i), (xii) (requiring the Commission to consider "privacy protections" and "compliance with subpart U of part 64 of title 47, Code of Federal Regulations, or any success regulations (relating to customer proprietary network information) of any other legal or law enforcement requirements").

[395] 47 U.S.C. § 222; *see also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket Nos. 96-115, et al., Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14419-20, paras. 12-14 (1999) (denying petitions for reconsideration and forbearance seeking different treatment for wireless providers under the Commission's CPNI rules, concluding that "there is nothing in the statute or its legislative history to indicate that Congress intended the CPNI requirements in section 222 should not apply to wireless carriers"); *accord 2007 CPNI Order*, 22 FCC Rcd at 6954-6957, paras. 54-59 (extending CPNI requirements to providers of interconnected VoIP service).

[396] 47 U.S.C. § 222(a).

[397] 47 U.S.C. § 222(c)(1); *see also* 47 U.S.C. § 222(h)(1) (defining CPNI).

[398] *See* 47 CFR § 64.2010(b)-(e). The Commission's CPNI rules define a "customer" as "a person or entity to which the telecommunications carrier is currently providing service." 47 CFR § 64.2003(f).

unauthorized access to CPNI[399] and to notify customers immediately of certain account changes, including whenever a customer's password, response to a carrier-designed back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed.[400]

99. We provide additional guidance regarding the treatment of historical CPNI and notification of account changes related to lines subject to a line separation request pursuant to section 345.[401] In particular, we make clear that historical CPNI shall remain with the original account, though we permit covered providers to move CPNI associated with a separated line if feasible. We agree with NDVH that retroactively separating historical CPNI by each line on an account and then transferring it along with the separated line to a new account may not be technically feasible or practical for providers.[402] Therefore, we conclude that covered providers are not required to move historical CPNI associated with a separated line to a new account, although we encourage providers to do so to the extent possible.

100. We also modify the Commission's rule requiring telecommunications carriers to notify customers "immediately" whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed"[403] to clarify that this rule does not apply when such changes are made in connection with a line separation request made pursuant to the SCA.[404]

101. Finally, we make clear that except for any enhanced protections provided to survivors under state law as described in section 345(c)(3),[405] compliance with the line separation provisions of the SCA and the rules we have adopted in this *Order* to implement those provisions supersede and preempt any conflicting obligations under state law, Commission rules, or state rules.[406] Commenters did not raise concerns regarding conflicts with any law enforcement provisions regarding line separations.

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[399] *See* 47 CFR § 64.2010(a).

[400] *See* 47 CFR § 64.2010(f). In the Commission's *SIM Swap and Port-Out Fraud Order*, the Commission also adopted rules requiring wireless providers to notify a customer immediately after receiving a SIM change or port-out request, except as required otherwise by the Commission's rules implementing the SCA. *See SIM Swap and Port-Out Fraud Order*, FCC 23-95.

[401] *See* CCA Comments at 4-5 (noting the importance of clarifying for providers who should be allowed access to historical CPNI after a line separation).

[402] *See* NVDH Comments at 21-22 (asserting that "[r]etroactively segregating the call detail information associated with the abuser and survivor would be extremely difficult and unnecessary to meet Congress's goals").

[403] 47 CFR § 65.2010(f).

[404] Appx. A, § 64.2010(f)(2).

[405] 47 U.S.C. § 345(c)(3) ("This subsection shall not affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) that has less stringent requirements for providing evidence of a covered act (or any similar category of conduct) than this subsection.").

[406] *See Safe Connections Notice* at 38, para. 100 (seeking comment on what other legal or law enforcement requirements may be impacted by line separations or the rules discussed in the *NPRM*); Safe Connections Act § 5(B)(1)(B)(xii); CCA Reply at 3 (agreeing that "the truth-in-billing rules, state privacy laws and regulations, and the like are also areas of liability concern that the FCC should clarify in terms of preemption with regard to compliance with the Safe Connections Act"); CTIA Reply at 5 (urging the Commission to "make clear that a covered provider's compliance with the SCA rules takes priority over, and preempts, any otherwise applicable obligations that are inconsistent, such as the provisions of 47 U.S.C. section 222 or state laws").

8. Implementation

102. *Compliance Timeframe*. Consistent with prior Commission actions,[407] and in light of the urgency of this issue to survivors' safety, we require covered providers to comply with our rules implementing the SCA's line separation provisions within a short period of time, six months after the effective date of this Order or after review of the rules by the Office of Management and Budget (OMB) is completed, whichever is later. The SCA states that the line separation requirements in the statute "shall take effect 60 days after the date on which the Federal Communications Commission adopts the rules implementing" those requirements,[408] but also directs the Commission, in adopting rules, to consider "implementation timelines, including those for small covered providers."[409] We find the SCA's direction that the Commission consider "implementation timelines" in adopting rules to implement new section 345 of the Communications Act provides the Commission with discretion to establish an appropriate compliance timeframe as necessary based on the record.[410] Further, because many of the rules we adopt to implement new section 345 of the Communications Act contain information collections that are subject to review by OMB under the Paperwork Reduction Act (PRA) and the SCA provides no stated exception to the PRA, we have an independent statutory obligation to comply with the PRA in adopting rules to implement the SCA. We therefore require covered providers to comply with the rules implementing the line separation provisions of the SCA six months after the effective date of this Order, or after OMB completes review of the rules, whichever is later. We direct the Wireline Competition Bureau to issue a Public Notice announcing the compliance date for the rules implementing section 345 once OMB completes its review.

103. The record demonstrates that implementing the line separation provisions of the SCA will require providers to make significant changes to their systems and processes.[411] As NCTA explains,

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[407] *See, e.g.*, *2007 CPNI Order*, 22 FCC Rcd at 6958, para. 61 (requiring carriers to implement new rules to protect customers against pretexting six months after the Order's effective date "in light of the importance of this issue to the public interest" and "because of the important consumer and public safety considerations raised by pretexting that demand near immediate action"); *see also* CCA Comments at 8 (noting that the Commission adopted a nine month compliance date for small providers and a six month compliance date for other providers for compliance with the Mandatory Disaster Response Initiative).

[408] Safe Connections Act § 6. We will publish a summary of this *Report and Order* in the Federal Register not later than thirty days prior to the effective date.

[409] Safe Connections Act § 5(b)(1)(B)(ix).

[410] Because we establish a compliance timeframe for our implementing rules that is after the effective date of new section 345 of the Communications Act, we will delay enforcement of those rule provisions until after the compliance date of the rules.

[411] *See* CCA Comments at 6-7 ("CCA's members generally expect that it will be feasible for them to effect line separations and omit domestic-abuse-hotline information from newly created call logs and other customer-facing records, but building those systems after the Commission adopts rules will take significant time."); Verizon Comments at 3 ("Implementation of the proposed line separation and call data privacy requirements will require some of the most significant reassessment, re-programming and upgrades of customer billing, online account, and customer care systems and practices since the Commission promulgated the original CPNI rules in 1998 and 1999."); CTIA Reply at 4 (arguing that "compliance deadlines for the new rules should provide sufficient time for covered providers, including small, regional providers, to implement the requirements, test their systems, and train customer service representatives"); CTIA Comments at 10-11; CTIA et. al Nov. 8, 2023 *Ex Parte* Letter at 3-4 (explaining that line separation requests where the abuser is the user of a line on the survivor's account are complex and will require providers to modify or develop new tools and processes to respond to unique requests, and that several of the rules "could implicate a provider's IT capabilities and must be done reliably and securely"); Letter from Steven F. Morris, Vice President & Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-238 et al., at 2 (filed Nov. 7, 2023) (NCTA Nov. 7, 2023 *Ex Parte* Letter) (asserting that "there are numerous steps required for providers to implement these types of changes, including, for example, IT

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"providers will need time to build internal systems to meet the requirements of the Commission's rules, to test, deploy, and train. There are a number of unknown variables that make it difficult to fully build out a provider's compliance system until the Commission adopts the final rules."[412] We agree with CTIA that "[g]iven the highly sensitive nature of supporting survivors, it is vitally important that providers have sufficient time to implement the necessary changes to their systems and processes accurately and effectively."[413] We are also mindful that, absent sufficient time to modify and test their systems, a significant number of covered providers will employ the technical and operational infeasibility exception to deny line separation requests, leading to widespread survivor confusion.[414] For these reasons, we require covered providers to comply with the rules implementing the statutory line separation requirements six months after the effective date of this *Report and Order*, or after OMB review of those rules that involve information collections under the PRA, whichever is later. We find, however, that permitting a more extended compliance timeframe[415] for implementing the line separation provisions, as advocated for by industry commenters,[416] would be inconsistent with the urgency Congress demonstrated with the underlying statutory obligation[417] as well as with the critical wireless communications needs of survivors well-documented in the record.[418] We anticipate that many covered providers will be equipped

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grooming, design and development, unified customer communications notification and development, development testing, quality assurance testing, user acceptance testing, and training").

[412] Letter from Pamela Arluk, Vice President & Assoc. General Counsel, NCTA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (filed Oct. 11, 2023) (NCTA Oct. 11 *Ex Parte* Letter).

[413] CTIA Comments at 3; *see also id.* at 11 (noting the critical importance of ensuring that "all changes to systems and training are carefully and fully implemented and validated").

[414] *See* 47 U.S.C. § 345(f)(1); *see also* NCTA Comments at 17 (asserting that for at least 10 months following the initial 60-day period, "many providers would need to invoke the technical and operational infeasibility provision of the statute and offer requesting survivors the option of transferring a line to a new account").

[415] *See, e.g.*, Verizon Comments at 17 ("[I]mplementing the [SCA's] line separation requirements is a complicated task that will require most providers at least one year to implement after rules are adopted."); NCTA Oct. 11 *Ex Parte* Letter at 2 (requesting that the Commission provide a minimum of one year for providers to implement line separation requirements).

[416] *See* CTIA et. al Nov. 8, 2023 *Ex Parte* Letter at 3 (encouraging the Commission to allow at least an 18 month, rather than a 6 month implementation period); Letter from Angela Simpson, Senior Vice President & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 21-341, 22-238, 21-450, 11-42, at 1-2 (filed Nov. 9, 2023) (CCA Nov. 9, 2023 *Ex Parte* Letter) (asserting that compliance will require "significant systematic and information technology changes and updates, along with significant updates to carrier customer service processes and employee training," and requesting a compliance timeframe of at least 18 months); NCTA Nov. 7, 2023 *Ex Parte* Letter at 2 (requesting that the Commission increase from 6 months to 18 months the time frame for implementation of new SCA and SIM swap fraud rules, asserting that the new rules will "require providers to fundamentally assess and revise their subscription and account management procedures and systems, including significant new training of customer-facing personnel" and that without an extension, many covered providers would be forced to rely on the statutory infeasibility exception "for some period of time").

[417] *See* Safe Connections Act § 5(b)(1)(A) (requiring the Commission to adopt rules to implement section 345 of the Act within 18 months of the SCA's enactment); Safe Connections Act § 6 (stating that the requirements under section 345 of the Act "shall take effect 60 days after the date on which the . . . Commission adopts the rules implementing that section"); Safe Connections Act § 3(4) ("[I]ndependent access to a wireless phone plan can assist survivors in establishing security and autonomy.").

[418] *See, e.g.*, NY Office for the Prevention of Domestic Violence Comments at 2 (noting that "the need for safe, reliable communication for survivors can literally be a lifeline towards achieving safety" and can be "critical to survivors in need of accessing emergency responders, and mental health support for themselves and their children while planning for futures free from abuse"); CTIA Comments at 3 ("Wireless services and devices are essential tools for survivors escaping domestic violence, sexual violence, dating violence, intimate partner violence, human trafficking, or stalking to access emergency services and helplines and gain the financial independence to protect
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to effectuate line separations within six months of the effective date of this Order, given the steps that the industry has already taken to advance this important process,[419] and we encourage covered providers to implement the rules we adopt today as expeditiously as possible given the urgency of the concerns at issue. We also remind covered providers that given the urgency expressed by Congress in the SCA, they should be sensitive to survivors that may need assistance during the six-month implementation and compliance timeframe, and strongly encourage covered providers not to subject survivors to fees or other restrictions in conjunction with setting up a new account or cancelling an existing account while the line separation process is technically or operationally infeasible.

104. The SCA directs the Commission to consider implementation timelines for small covered providers,[420] and after examination of the record, we decline to adopt a different compliance timeframe for small providers.[421] First, given the critical and potentially lifesaving importance of independent communications for survivors escaping abusive circumstances, we think it self-evident that survivors who receive service from small covered providers are no less entitled to the protections made available by the SCA than survivors who receive service from other covered providers. Second, we find that adopting inconsistent timelines for small and large providers may make it difficult for stakeholders to carry out effective messaging campaigns touting the availability of line separations. This inconsistency may confuse survivors and ultimately dissuade them from further pursuing a line separation if they are told that their current carrier does not offer the ability despite having been informed of the SCA's features by a stakeholder messaging campaign. Third, we believe that Congress included the technical and operational infeasibility provisions to account for differences in the capabilities of providers (among other reasons), particularly between large and small providers, and to incentivize and protect providers while they work

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themselves from their abusers. With the wide availability of wireless services and devices, survivors can call or text 9-1-1, seek mental health support by calling or texting 9-8-8, and utilize increasingly affordable service plans to access educational, health, and occupational services."); CCA Comments at 2 (noting support for the Commission's statement that communications services are "vital to survivors' efforts to maintain essential connections with family, social safety networks, employers, and support services").

[419] *See* Verizon Comments at 2 ("Verizon and many other wireless providers already have line separation capabilities and processes upon which to build. Verizon, for example, maintains a group of customer care employees specially trained to handle the sensitivities surrounding LSRs from domestic violence survivors and to walk the survivors through the secure process of documenting the abuse, establishing a new account (or removing an alleged abuser from an existing account), selecting a service plan, and where requested, facilitating a number change or port out."); CTIA Comments at 2, 4-5 (explaining that the "wireless industry is continuing to step up to achieve the goals of the SCA through a multi-year partnership with the National Domestic Violence Hotline;" among other things, the Hotline "expects to provide training materials that can help customer service representatives to understand what survivors go through when they are trying to escape traumatic experiences like domestic violence, stalking, or human trafficking"); CTIA et. al Nov. 8, 2023 *Ex Parte* Letter at 3 ("CTIA and its member company appreciate the urgency of enabling survivors to establish independence from abusers, which is why we have partnered with the Hotline to voluntarily develop new training materials for customer service representatives."); Press Release, National Domestic Violence Hotline, *National Domestic Violence Hotline and Wireless Industry Enter Into Multi-Year Partnership to Support Survivors* (Feb. 16, 2023), https://www.thehotline.org/news/national-domestic-violence-hotline-and-wireless-industry-enter-into-multiyear-partnership-to-support-survivors/. *But see* NCTA Nov. 7, 2023 *Ex Parte* Letter at 2, 3 (asserting that providers "could not have begun the technical and operational implementation necessary to effectuate these requirements while the precise parameters of any new rules were still uncertain" and even if a provider has an existing line separation process, it will "need to reassess and potentially revise that process based on new or revised systems and procedures that it establishes to implement the *SIM Swap and Port-Out Fraud* rules").

[420] *See* Safe Connections Act § 5(b)(1)(B)(ix).

[421] *See* CCA Comments at 6-7 (requesting that the Commission extend the compliance deadline for 24 months, "at least for smaller carriers"); CCA Nov. 9, 2023 *Ex Parte* Letter at 1 (asserting that small providers have limited staff and resources, making a six-month implementation timeframe "excessively difficult").

to update or develop systems and processes capable of fully effectuating the SCA's requirements and our rules within the compliance timeframe.

B. Ensuring the Privacy of Calls and Text Messages to Domestic Abuse Hotlines

105. The SCA directs the Commission to consider (i) whether and how to "establish, and update on a monthly basis, a central database of covered hotlines to be used by a covered provider or a wireline provider of voice service," and (ii) whether and how to "require a covered provider or a wireline provider of voice service to omit from consumer-facing logs of calls or text messages any records of calls or text messages to covered hotlines in [such a] central database, while maintaining internal records of those calls and messages."[422] As discussed below, we find it is in the public interest to establish such a central database and adopt a process for doing so. We begin our discussion with the requirement for covered providers to exclude calls or text messages to covered hotlines from consumer-facing call logs, and the definitions of key terms.

1. Creating an Obligation to Protect the Privacy of Calls and Text Messages to Covered Hotlines

106. We adopt our proposal to require covered providers and wireline providers of voice service to exclude from consumer-facing logs of calls or text messages any records of calls or text messages to covered hotlines that appear in a central database (discussed further below), and to retain internal records of the omitted calls and text messages.[423] Congress determined that "perpetrators of [sexual] violence and abuse . . . increasingly use technological and communications tools to exercise control over, monitor, and abuse their victims," and that "[s]afeguards within communications services can serve a role in preventing abuse and narrowing the digital divide experienced by survivors of abuse."[424] These findings are supported by, among other things, field work with domestic violence survivors demonstrating the risk of abusers' accessing domestic abuse survivors' digital footprint, particularly call logs.[425] The record in this docket also reflects concerns raised regarding call and text logs. For example, the New York State Office for the Prevention of Domestic Violence notes that "[r]isk to survivors escalates when they are seeking to leave their abuser and calls to hotlines often precede separation from one's abuser," and the NVRDC observes that "[c]all and text records to and from covered organizations would likely tip off an abuser who is closely monitoring all communications."[426] We are concerned that survivors may be deterred in seeking help by the threat of an abuser using access to call and text logs to determine whether the survivor is in the process of seeking help, seeking to report, or seeking to flee.[427] We therefore conclude that protecting the privacy of calls and text messages to covered

[422] *See* Safe Connections Act § 5(b)(3)(A)(ii).

[423] *Safe Connections Notice* at 41, para. 110. We make clear that the use of the word "omit" in our rule provision regarding this requirement (Appx. A, section 64.6408(a) ("All covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service shall . . . [o]mit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission")), should be understood to mean "completely exclude," not merely redact identifying detail.

[424] Safe Connections Act § 3(3), (5).

[425] *See Safe Connections Notice* at 41, para. 110; Diana Freed, Jackeline Palmer, Diana Minchala, Karen Levy, Thomas Ristenpart & Nicola Dell, *"A Stalker's Paradise": How Intimate Partner Abusers Exploit Technology*, Proceedings of the 2018 CHI Conference on Human Factors in Computing Systems, Paper No. 667, 4-6 (2018) (*Freed et al. 2018*), https://dl.acm.org/doi/pdf/10.1145/3173574.3174241.

[426] NYS OPDV Comments at 5; NVRDC Notice of Inquiry Comments at 10; 1075, Student, Boston College Law School Reply at 4-5, 8-9.

[427] *See also Safe Connections Notice* at 41, para.110; Section II, *supra*.

hotlines, as described by the SCA, is in the public interest. This proposal received broad support and no opposition.[428]

107. The SCA specifically requires the Commission to consider certain matters when determining whether to adopt a requirement for protecting the privacy of calls and text messages to hotlines. Specifically, section 5(b)(3)(B) of the SCA requires us to consider the technical feasibility of such a requirement—that is, "the ability of a covered provider or a wireline provider of voice service to . . . identify logs that are consumer-facing . . . and . . . omit certain consumer-facing logs, while maintaining internal records of such calls and text messages," as well as "any other factors associated with the implementation of [such requirements], including factors that may impact smaller providers."[429] Section 5(b)(3)(B) also requires us to consider "the ability of law enforcement agencies or survivors to access a log of calls or text messages in a criminal investigation or civil proceeding."[430]

108. The Commission tentatively concluded in the *Safe Connections Notice* that covered providers and wireline providers of voice service are able to identify consumer-facing call and text logs,[431] and no commenter disputed this assertion. Nor did any commenter contend that excluding calls and text messages to covered hotlines from consumer-facing call logs was technically infeasible, or that it was technically infeasible to retain internal records of such calls while excluding such calls from consumer-facing call logs. Indeed, none of the trade associations representing substantially different segments of covered providers and/or providers of wireline voice service raises specific issues relating to selectively omitting calls and text messages from call and text logs in their discussion of implementation.[432]

109. We also adopt our proposal to require providers that remove calls and text messages to covered hotlines from consumer-facing call logs to retain an internal record of such calls for as long as they normally retain internal records of calls.[433] Retaining such internal records is necessary to ensure some record remains available if disputes or criminal investigations or civil or criminal legal proceedings arise. Further, records of calls and text messages do not appear to exist solely in the form of call logs, but, rather, are independent records—that is, some processing must be applied to the records to create call logs.[434] As a result, as proposed,[435] we require service providers to maintain internal records of calls and text messages that they exclude from consumer-facing logs when such records are required for any

[428] API-GBV Comments at 8; CTIA Comments at 15; EPIC et al. Comments at 30; NCTA Comments at 10; New York City Mayor's Office to End Domestic and Gender-Based Violence Comments at 2 (NYC Mayor's Office); New York State Dep't of Pub Serv. Comments at 2-3 (NYC DPS); NYS OPDV Comments at 3; USTelecom Comments at 2; 1075, Student, Boston College Law School Reply at 7-8.

[429] Safe Connections Act §§ 5(b)(3)(B)(ii)(II), 5(b)(3)(B)(iii).

[430] Safe Connections Act § 5(b)(3)(B)(i).

[431] *Safe Connections Notice* at 41, para. 112.

[432] *See* CTIA Comments at 10-11 (stating that rules should "enable providers to consider technical feasibility," but not identifying specific technical feasibility issues); NCTA Comments at 10-11 (discussing the call log requirement but not addressing technical feasibility); USTelecom Comments at 4-6 (stating that covered providers will need time to implement system upgrades and address unforeseen complexities, but not identifying specific technical feasibility issues); CCA Reply at 7 (emphasizing need for time to implement call log requirements, but not identifying specific issues of technical feasibility); CTIA Reply at 3-4 (discussing the call log requirement but not addressing technical feasibility); NCTA Reply at 13-14 (discussing the call log requirement but not addressing technical feasibility); USTelecom Reply at 3-4 (stating that providers need "sufficient flexibility to help minimize instances of technical or operational feasibility, but not identifying specific issues of technical feasibility).

[433] Appx. A, section 64.6408(a)(2); *Safe Connections Notice* at 41-42, paras. 110, 112-14.

[434] *See*, *e.g.*, *Sumco Panama SA et al.*, File No. EB-TCD-21-00031913, Notice of Apparent Liability for Forfeiture, FCC 22-99, at 17, para. 28 n.102 (Dec. 23, 2022).

[435] *Safe Connections Notice* at 42, para. 113.

criminal or civil enforcement proceeding, or for any other reason.[436] No commenter opposed this proposal.

110. *Extension of Obligation to Fixed Wireless and Fixed Satellite Providers of Voice Service.* The Commission observed in the *Safe Connections Notice* that subscribers to fixed wireless and fixed satellite voice service may expect that the privacy of their calls and text messages to hotlines are also protected, despite the providers of the service likely being neither "covered provider[s]" or wireline providers, and sought comment on whether we should therefore extend related obligations to such providers.[437] No party responded to our request for comment on factors that would prevent such providers from complying with our rules in any respect. We believe that subscribers to such services should be afforded such protections, a matter that no party disputes, and that we should seek to meet survivor expectations regarding the privacy of their calls and text messages to hotlines. We therefore extend our related obligations to fixed wireless and fixed satellite providers of voice service.

111. We conclude that we have direct authority to adopt this requirement under Titles II and III of the Communications Act, and we independently assert our ancillary authority to that end as well. We have direct authority to extend our rules protecting the privacy of calls and texts to hotlines to fixed wireless and fixed satellite providers of voice. Section 201(b) of the Communications Act requires that all charges, practices, classifications, and regulations in connection with common carrier service be just and reasonable, and authorizes the Commission to prescribe rules as necessary in the public interest to carry out this requirement.[438] If fixed wireless and fixed satellite providers of voice service were not subject to our rule, they could continue to include calls to hotlines in their call logs. That practice would be unjust and unreasonable, particularly in instances in which the abuser established and controls the household account, and survivors in that household may not know that the relevant service in that account is provided over fixed wireless or fixed satellite rather than wireline facilities. In that situation, the survivors might believe, incorrectly, that their calls to hotlines would be omitted from call logs to which the abuser has access. Further, even if the survivors knew that the household service was fixed wireless or fixed satellite, they often would not appreciate the legal nicety that the Commission's rules shielded only certain types of calls to hotlines (mobile wireless or wireline) but did not shield two other types of calls (fixed wireless and fixed satellite) that were functionally indistinguishable from the survivor's point of view. In either of those situations, the safety, even the lives, of survivors would be threatened.[439] For instance, if a survivor wrongly assumed that a fixed wireless hotline call to a hotline was shielded and then placed such a call, the abuser could readily discover that call and, in retribution, threaten or harm the survivor or prevent the survivor from separating his or her line or fleeing to safety. Such consequences would not be just and reasonable, and we therefore assert our authority under section 201(b) to require common-carrier providers of fixed wireless and fixed satellite voice to comply with new section 64.6408 of our rules. To the extent these providers are wireless or satellite licensees, we also have authority to impose these obligations pursuant to sections 301, 303, and 316 of the Communications Act.

112. As a separate and independent basis, we assert our ancillary authority, which may be employed, at the Commission's discretion, when the Communications Act "covers the regulated

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[436] *See* Safe Connections Act § 5(b)(3)(B)(ii)(II). We use the term "service provider" to refer all types of providers to which we apply the obligation to protect the privacy of calls and text messages to hotlines—covered providers, wireline providers of voice service, and, as discussed below, fixed wireless and fixed satellite providers. We discuss specifically who such providers may be below in Section III.A.2, below.

[437] *Safe Connections Notice* at 44, para. 122.

[438] 47 U.S.C. § 201(b).

[439] *Notice of Inquiry*, 37 FCC Rcd at 8965-67, paras. 4-7; Safe Connections Act § 3(1) (noting that "[d]omestic violence, dating violence, stalking, sexual assault, human trafficking, and related crimes are life-threatening issues and have last and harmful effects on individuals, families, and entire communities"); NYS OPDV Comments at 2.

subject"[440] and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [the Commission's] various responsibilities."[441] Section 1 of the Communications Act grants the Commission authority over, among other things, "radio communication,"[442] which fixed wireless and fixed satellite providers of voice services provide when processing originating calls and text messages.[443] The duty to protect the privacy of calls and text messages to hotlines is reasonably ancillary to the Commission's duty to enable survivors safely to obtain line separations under section 4 of the SCA, and its duty under section 5(b)(3)(A) of the SCA to consider whether and how to adopt rules to establish a central database of domestic violence hotlines and to require covered providers and wireline providers of voice service to omit from consumer-facing logs of calls or text messages any records of calls or text messages to such hotlines.[444] As explained above, if our new rule protecting the privacy of calls and text messages to hotlines were to apply to wireline providers of voice service but not fixed wireless or fixed satellite providers of voice,[445] survivors often would not know whether their calls and text messages to hotlines would be omitted from the pertinent call logs. And that uncertainty likely would have devastating consequences for the safety of survivors, which in turn would defeat the purpose of the line-separation and protection of privacy of calls and texts to hotlines provisions of the SCA and, more generally, would undermine the SCA's overall goal of establishing "safeguards within communications services [that] can serve a role in preventing abuse . . . experienced by survivors of abuse."[446] Accordingly, we assert our ancillary authority to prevent those harms and ensure that new section 64.6408 works efficaciously.

113. *Technical Feasibility and Exceptions.* Consistent with the statutory directive, the Commission sought comment in the *Safe Connections Notice* on the technical feasibility of imposing an obligation to protect the privacy of calls and text messages to hotlines on certain types of services providers and relating to certain calls.[447] The Commission received requests relating to two matters in addition to a request pertaining to the compliance deadline for small service providers, which we discuss below. First, USTelecom seeks clarification that the rules that the Commission adopts do not apply to calls placed by, and any logs created in association with, (wireline) enterprise and similar multi-line telephone system (MLTS) customers.[448] USTelecom argues that logs relating to such services are not *consumer*-facing logs and that these systems are managed, maintained, and controlled by the customer rather than the service provider.[449] USTelecom's proposal was unopposed. We agree that both the SCA

[440] *American Library Ass'n v. FCC*, 406 F.3d 689, 691 (D.C. Cir. 2005); *see also United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*); *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972); *American Library Ass'n v. FCC*, 406 F.3d 689, 691-93 (D.C. Cir. 2005).

[441] *American Library Ass'n*, 406 F.3d at 692; *Southwestern Cable*, 392 U.S. at 178.

[442] 47 U.S.C. § 151.

[443] The Act defines "radio communication" as "transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." 47 U.S.C. § 153(40).

[444] Safe Connections Act § 5(b)(3)(A).

[445] This is more likely to be the case when the abuser controls (and was therefore more likely to have established) the account, which is a common fact pattern when a survivor would be concerned about their abuser being able to see calls and text messages to hotlines on call logs. *See Freed et al. 2018* at 4-6.

[446] Safe Connections Act §§ 3(1), (5).

[447] Safe Connections Act § 5(b)(3)(B)(ii); *Safe Connections Notice* at 41-43, paras. 112-17.

[448] USTelecom Comments at 4-5. An MLTS is comprised of common control units, telephone sets, control hardware and software and adjunct systems, including network and premises based systems, such as Centrex and VoIP, as well as PBX, Hybrid, and Key Telephone Systems, and includes systems owned or leased by governmental agencies and non-profit entities, as well as for profit businesses. *See* 47 CFR § 9.3.

[449] USTelecom Comments at 4-5.

and the proposed rules are directed to *consumer*-facing logs and recognize that applying our rules to call logs that are not controlled by the service provider would complicate our implementation of the SCA. In addition, in the event that a survivor were to use an enterprise system to place a call to a hotline, we believe that the large number of users of such enterprise systems, as compared to consumer accounts, creates more anonymity for survivors. As a result, we clarify that the rules we adopt pertaining to protecting the privacy of calls and text messages to hotlines do not apply to non-consumer accounts, such as for enterprise and MLTS service.

114. Second, commenters also raise undisputed concerns about the extent to which resellers, such as MVNOs, that "depend on their underlying facilities-based providers for systems necessary to . . . screen call logs" should be expected to comply, arguing that such resellers' obligations should be "limited to the capabilities that the facilities-based provider makes available to its own customers."[450] We conclude that it is not practical for service providers that do not create their own call logs but, instead, rely on their underlying facilities-based provider to create such call logs, to comply with our rules for protecting the privacy of calls and text messages to hotlines. We therefore exempt such service providers from these obligations. At the same time, however, we conclude that the underlying facilities-based service provider that produces the call logs for its wholesale customers (that is, the call logs that are "consumer-facing" toward the wholesale customers' end user customers) is obligated to comply with our rules. The definitions we adopt for "covered provider," "wireline provider of voice services," "fixed wireless provider of voice services," and "fixed satellite provider of voice services" are not limited to retail services. And the definition we adopt for "consumer-facing logs of calls and text messages" does not state that the consumer at issue has to be a customer of the pertinent covered provider, wireline provider of voice service, fixed wireless provider of voice services, or fixed satellite provider of voice services. Accordingly, the definitions we adopt have the effect of imposing the same duty on wholesale providers that create call logs for their wholesale customers as imposed on providers that produce their own consumer-facing call logs.[451] Imposing this duty also furthers the overall goal of removing calls and text messages to covered hotlines from consumer-facing call logs in the most comprehensive manner possible. Further, we expect resellers that do not control their own call logs to make good faith efforts, such as through their contracts, to ensure that their wholesale providers are complying with our rules.[452]

115. Third, we decline to adopt CTIA's proposal to create a general technical infeasibility exception.[453] While the SCA requires the Commission to consider "the ability of a covered provider or wireline provider of voice service" to identify consumer-facing logs and omit calls from consumer facing logs while retaining internal records of such calls,[454] in contrast to the provisions relating to line separations,[455] the SCA does not contain an explicit technical infeasibility exception. As previously discussed, the record demonstrates that service providers generally have these technical abilities. Furthermore, we find that survivor safety, which is promoted through the uninhibited use of domestic violence hotlines, weighs against leaving technical infeasibility standards to the subjective determination of service providers. Should service providers encounter specific technical feasibility issues in their implementation of the rules we adopt that they believe warrant an exception to those rules, they may use

[450] CTIA Comments at 7; *see also* National Lifeline Association (NaLA) Comments at 25-26; CCA Reply at 5.

[451] *See Safe Connections Notice* at 44, para. 122 (seeking comment on what type of providers should be required to remove calls and text messages to hotlines from consumer-facing call logs).

[452] Verizon appears to envision such efforts. *See* Verizon Comments at 22.

[453] CTIA Comments at 10-11 ("the Commission should also enable providers to consider technical feasibility" in the rules on the call-log removal duty).

[454] Safe Connections Act § 5(b)(3)(B).

[455] *See* 47 U.S.C. § 345(f).

the Commission's general process for requesting waiver of a Commission rule.[456] We delegate consideration of such waiver requests to the Wireline Competition Bureau.

116. *Access to Retained Internal Call Records.* As noted above, we require providers to retain internal records of the calls and text messages they omit from consumer-facing call logs as a result of the new rules. We do so recognizing, among other things, that section 5(b)(3)(C) of the SCA states that the Commission cannot "limit or otherwise affect" the ability of law enforcement to access call logs "in a criminal investigation" or "alter or otherwise expand provider requirements" under the Communications Access for Law Enforcement Act (CALEA).[457] Although no commenter opposed our proposal to adopt this retention requirement, EPIC et al. proposed that we limit law enforcement's access to such records to instances where the survivor requests that law enforcement be given access, and to require a judicial order or grand jury subpoena before a provider could disclose the internal call or text records to law enforcement.[458] We decline this request. The SCA prohibits us from "limit[ing]or otherwise affect[ing] the ability of a law enforcement agency to access a log of calls or text messages in a criminal investigation[],"[459] and EPIC et al.'s request would appear to "affect" law enforcement's access as it would add constraints on law enforcement's access ability to call logs during a criminal investigation, especially in instances where speed is essential or where a survivor is unavailable to give consent. At the same time, we emphasize that while our rules neither limit or otherwise affect the ability of a law enforcement agency to access a log of calls or text messages in a criminal investigation, they are also not intended to enhance such access. They merely preserve the status quo by ensuring that service providers maintain the same records that the maintain today.

2. Definitions

117. How we define certain critical terms in the SCA significantly affects which service providers are subject to the call-log removal obligations discussed above and hotline-database obligations discussed below, the extent of such obligations, and to which hotlines the obligations apply. We adopt definitions of "covered provider," "voice service," "call," "text message," "covered hotline," and "consumer-facing logs of calls and text messages."[460]

118. *Covered Provider*. We conclude that all "covered provider(s)," as defined in the SCA, should be obligated to protect the privacy of calls and text messages to covered hotlines.[461] We therefore adopt the same definition of covered provider used for the purpose of applying line separation obligations under section 345(a)(3) of the Communications Act, as added by the SCA. EPIC et al. supported this proposal, which received no opposition.[462]

119. The National Lifeline Association argues that "covered providers should not include mobile broadband providers that do not offer mobile voice service."[463] To the extent that a covered provider does not actually have consumer-facing logs of calls, as the National Lifeline Association seems to assert some covered providers do not,[464] then there is no obligation for omitting certain calls and text messages with which such covered provider must comply. This reasoning applies equally to covered

[456] *See* 47 CFR § 1.3.

[457] CALEA is Public Law 103-414, 108 Stat. 4279 and its amendments.

[458] EPIC et al. Comments at 25-27 and Appx. 2; EPIC et al. Reply at 9-10.

[459] Safe Connections Act § 5(b)(3)(C)(i).

[460] *See generally* Safe Connections Act § 5(b)(3).

[461] 47 U.S.C. § 345(a)(3); *Safe Connections Notice* at 43, para. 119.

[462] Appx. A, § 64.6400(f). EPIC et al. Comments at 6.

[463] NaLA Reply at 10.

[464] *Id.*

providers that do not actually have consumer-facing logs of text messages. It is therefore unnecessary for us to create an exception for these situations within the definition of "covered provider."

120. *Voice Service*. In addition to covered providers, we apply the call-log removal duty to all "wireline providers of voice service," as suggested by the SCA, as well as "fixed wireless providers of voice service" and "fixed satellite providers of voice service."[465] These definitions require defining "voice service," which we base on the definition in section 5 of the SCA.[466] That provision references section 4(a) of the TRACED Act, which defines "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," including transmissions from facsimile machines and computers and "any service that requires internet protocol-compatible customer premises equipment . . . and permits out-bound calling, whether or not the service is one-way or two-way voice over internet protocol."[467] No commenter opposed this proposal. We also note that the Commission interpreted the TRACED Act definition when implementing that Act's requirements, and chose to mirror the definition in its rules.[468]

121. *Call*. The SCA does not define the term "call," nor does the Communications Act. Consistent with our proposal in the *Safe Connections Notice*, solely for purposes of implementing section 5(b)(3) of the SCA, we elect to define a "call" as a voice service transmission, regardless of whether such transmission is completed.[469] Given the expansive definition of "voice service," which we define without regard to whether the service is wireline or wireless, this term sufficiently captures the means by which survivors would use the public switched telephone network to reach covered hotlines.[470] Although we suspect that only completed transmissions would appear on call logs, out of an abundance of caution in deference to the safety concerns of survivors, we will include completed and uncompleted transmissions in the definition of "call." No commenter opposed this proposal.

122. *Text Message*. Section 5(a)(7) of the SCA defines "text message" as having the same meaning as in section 227(e)(8) of the Communications Act, and we adopt the same definition consistent with our proposal in the *Safe Connections Notice*.[471] Section 227(e)(8) defines "text message" as "a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number" and includes short message service (SMS) and multimedia message service (MMS) messages.[472] This definition explicitly excludes "message[s] sent over an IP-enabled messaging service to another user of the same messaging service" that do not otherwise meet the general definition, as well as "real-time, two-way voice or video communication."[473] When the Commission previously interpreted section 227(e)(8)

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[465] Appx. A, section 64.6400(o). Safe Connections Act § 5(a)(8); *Safe Connections Notice* at 43-44, para. 120.

[466] Safe Connections Act § 5(a)(8); *Safe Connections Notice* at 44, para. 120.

[467] *See* Safe Connections Act § 5(a)(8), in turn referring to section 4(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3276 (TRACED Act) (codified at 47 U.S.C. § 227b(a)).

[468] *Call Authentication Trust Anchor, Implementation of the TRACED Act Section 6(a) Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97, 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3259-61, paras. 37-40 (2020) (*Second ID Authentication Report and Order*); 47 CFR § 64.6300(n).

[469] *Safe Connections Notice* at 44-45, para. 123.

[470] Appx. A, § 64.6400(b); *Safe Connections Notice* at 44-45, para. 123.

[471] Safe Connections Act § 5(a)(7); *Safe Connections Notice* at 45, para. 124.

[472] Safe Connections Act § 5(a)(7); 47 U.S.C. § 227(e)(8).

[473] 47 U.S.C. § 227(e)(8)(C)(iii).

for purposes of implementation, it adopted a rule that mirrors the statutory text,[474] and we do the same here, as proposed in the *Safe Connections Notice*.[475] No commenter opposed adoption of this definition. Similar to our analysis with respect to uncompleted calls, out of an abundance of caution in deference to the safety concerns of survivors, we will include delivered and undelivered text messages in the definition of "text message."

123. *Covered Hotline*. The SCA defines the term "covered hotline" to mean "a hotline related to domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act."[476] We adopt this definition, and further clarify what constitutes a "hotline" and how much of the counseling services and information provided on the "hotline" must relate to "domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act[s]" for the "hotline" to be a "covered hotline."[477]

124. As an initial matter, we note that in providing these clarifications, we strive to meet the broadest reasonable expectations of a survivor seeking to place calls and send text messages without fear that they will appear in logs. Commenters uniformly supported this approach.[478] Turning to the specific definition, we conclude that a "covered hotline" need not exclusively provide counseling and information to serve domestic violence survivors; for instance, the hotline could provide services to individuals in need of other types of support unrelated to domestic violence or other related issues under the SCA.[479] Such a single subject requirement would be overly restrictive and potentially exclude some hotlines that provide essential services to domestic violence survivors. Accordingly, we define "covered hotline" as any hotline that provides counseling and information on topics described in the SCA's definition of "covered hotline" as more than a *de minimis* portion of the hotline's operations. No commenter opposed this approach.

125. We next conclude that the counseling service associated with the pertinent telephone number must be a "hotline." Given the SCA's definition of "covered hotline," as well as the potential use of a central database of "covered hotlines" (calls and text messages which would be omitted from customer-facing logs), we interpret "hotline" generally to mean a telephone number from which counseling and information is provided.[480] We suspect, however, that certain telephone numbers may serve as "hotlines" and also be used for other purposes, such as the main telephone number for the organization providing the counseling and/or information service. We conclude that telephone numbers should not be excluded from being "covered hotlines" merely because they do not serve exclusively as "hotlines."[481] We find that we can best achieve the goal of minimizing hotline hesitancy by interpreting "hotline" as broadly as possible, and therefore interpret it to include numbers on which an organization provides anything more than a *de minimis* amount of counseling service and will use this standard as a

[474] *Implementing Section 503 of RAY BAUM'S Act*, WC Docket No. 18-335, Second Report and Order, 34 FCC Rcd 7303, 7309-11, paras. 15-19 (2019); 47 CFR § 64.1600(o).

[475] Appx. A, § 64.6400(n); *Safe Connections Notice* at 45, para. 124.

[476] Safe Connections Act § 5(b)(3)(A)(ii).

[477] Appx. A, § 64.6400(e); *Safe Connections Notice* at 45, para. 125; Safe Connections Act § 5(a)(4).

[478] API-GBV Comments at 8; EPIC et al. Comments at 6; NDVH Comments at 3; NYC Mayor's Office Comments at 2; NYS OPDV Comments at 3.

[479] *Safe Connections Notice* at 46, para. 128.

[480] The SCA appears to acknowledge this by equating the adjective "covered" to the topics, which, in this case are "domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, [and]. . . other similar act[s]." Safe Connections Act § 5(a)(4).

[481] *See Safe Connections Notice* at 46, para. 128.

component in our definition of "covered hotline." No commenter opposed this approach and several supported it.[482]

126. The Commission proposed in the *Safe Connections Notice* to delegate to the Bureau the task of providing further clarification, as necessary, of the scope and definition of "covered hotline," in light of the novelty of overseeing a central database of covered hotlines, and to maximize the efficiency in resolving future matters of interpretation under these provisions of the SCA.[483] We adopt this unopposed proposal.

127. *Consumer-Facing Logs of Calls and Text Messages*. The SCA does not define the term "consumer-facing logs of calls or text messages."[484] In light of our goal of minimizing any hesitancy by survivors to contact hotlines by preventing abusers from being made aware of survivors' calls and text messages to hotlines, we seek to define the term as broadly as possible.[485] We therefore define such logs, consistent with the proposal in the *Safe Connections Notice*,[486] as any means by which a service provider presents to a consumer a listing of telephone numbers to which calls or text messages were directed, regardless of, for example, the medium used (such as by paper, online listing, or electronic file), whether the calls were completed or the text messages were successfully delivered, whether part of a bill or otherwise, and whether requested by the consumer or otherwise provided.[487] In addition, our definition includes both oral disclosures of call and text message information that would appear in consumer-facing logs of calls and text messages (likely through customer service representatives) and written disclosures by service providers of individual call or text message records.[488] We exclude from this definition any logs of calls or text messages stored on consumers' wireless devices or wireline telephones, such as recent calls stored in the mobile device's phone app or lists of recently dialed numbers on cordless wireline handsets.[489] No commenter opposed this approach and several supported it.[490]

128. *Wireline Provider of Voice Service.* As discussed above, we conclude that we should extend the obligation to protect the privacy of calls and text messages to hotlines to fixed wireless providers of voice service and to fixed satellite providers of voice service, in addition to "covered providers" and "wireline providers of voice service" as identified in the SCA. Because including such

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[482] API-GBV Comments at 8; EPIC et al. Comments at 30; National Domestic Violence Hotline Comments at 3; NYC Mayor's Office Comments at 2; NYS OPDV Comments at 3.

[483] *Safe Connections Notice* at 46, para. 129.

[484] Safe Connections Act § 5(b)(3)(A)(ii).

[485] *Safe Connections Notice* at 46-47, para. 130.

[486] *Id.*

[487] Appx. A, § 64.6400(c).

[488] *Safe Connections Notice* at 46-47, para. 130.

[489] *Id. See, e.g.*, Apple, *View and delete the call history on your iPhone*, https://support.apple.com/en-us/HT207729 (last visited Oct. 4, 2023); AT&T, *2-Handset Expandable Cordless Phone with Unsurpassed Range, Bluetooth Connect to Cell™, Smart Call Blocker and Answering System, DL72210*, https://telephones.att.com/pd/4380/2-Handset-Expandable-Cordless-Phone-with-Unsurpassed-Range-Bluetooth-Connect-to-Cell-Smart-Call-Blocker-and-Answering-System-DL72210 (last visited Oct. 4, 2023) ("[l]ast 10 number redial" for cordless phone handset). The provisions of the SCA regarding the protection of calls and text messages to hotlines appear to apply to call logs under the control of pertinent service providers, not logs that might be generated by or stored on the wireline or wireless device. Thus, the obligation to protect the privacy of calls and text messages to hotlines would still apply to call and text logs accessed on a smart phone or other device through service provider apps or websites. *See*, *e.g.*, Verizon, *How to view & download mobile bill statements & bill history*, https://www.verizon.com/support/view-latest-bill/ (last visited Oct. 4, 2023).

[490] API-GBV Comments at 8; EPIC et al. Comments at 6; NDVH Comments at 3; NYC Mayor's Office Comments at 2; NYS OPDV Comments at 3.

providers in our rules requires new definitions, we conclude that to maintain maximum clarity, we should also define the term "wireline provider of voice service."[491] Such term is defined neither in the Safe Connections Act nor the Communications Act. We adopt as our definition, solely for purposes of our rules implementing the Safe Connections Act, as "a provider of voice service that connects customers to its network primarily by wire."[492] We believe that this definition captures what is ordinarily considered to be a "wireline provider," allowing for intermediate legs of wireless transport, such as by microwave.[493]

129. *Fixed Wireless Provider of Voice Service*. Solely for purposes of our rules implementing the Safe Connections Act, we define the term "fixed wireless provider of voice service" to mean "a provider of voice service to customers at fixed locations that connects such customers to its network primarily by terrestrial wireless transmission."[494]

130. *Fixed Satellite Provider of Voice Service*. Solely for purposes of our rules implementing the Safe Connections Act, we define the term "fixed satellite provider of voice service" to mean "a provider of voice service to customers at fixed locations that connects such customers to its network primarily by satellite transmission."[495]

3. Creating and Maintaining the Central Database of Hotlines

131. The SCA directs the Commission to consider whether and how to establish a central database of hotlines related to domestic violence, dating violence, stalking, sexual assault, human trafficking, and other related crimes, which could be updated monthly and used by providers to determine the covered hotline for which they must remove records from their customer-facing logs.[496] Commenters strongly supported establishing a central database.[497] Establishing a central database will provide certainty as to which call-log records are to be suppressed, thus fulfilling the SCA's objective to protect survivors while also clarifying service providers' compliance obligations.[498]

132. The record supports either the Commission's or a third party's creating and administering the database,[499] but no commenters addressed how the costs incurred by a third party administrator would be recovered.[500] Parties have made a variety of suggestions for engaging with stakeholders, and have noted the complexity of the process.[501] We believe that these decisions are worthy of further

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[491] In the *Safe Connections Notice*, in which the Commission merely sought comment on whether to apply the duty to protect the privacy of calls and text messages to hotlines to fixed wireless and fixed satellite providers, the Commission proposed that it need not define "wireline provider" given what it considered to be its plain meaning when used in conjunction with "of voice service," as the latter term was proposed to be defined. *Safe Connections Notice* at 44, para. 121.

[492] Appx. A, § 64.6400(p).

[493] *See, e.g.*, *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 1013 (2016) (describing the use of microwave transmission in Alaska).

[494] Appx. A, § 64.6400(h).

[495] Appx. A, § 64.6400(i).

[496] Safe Connections Act § 5(b)(3)(A)(i).

[497] NCTA Comments at 11; CTIA Reply at 4; NaLA Reply at 11.

[498] *Safe Connections Notice* at 47, para. 131. *See* NCTA Reply at 2 (explaining that this approach will provide certainty for all parties regarding which records are to be suppressed).

[499] USTelecom Comments at 3 (recommending the database be administered by either the Commission or a third party); Verizon Comments at 23 (same); NCTA Reply at 13-14 (same).

[500] *Safe Connections Notice* at 49, para. 139.

[501] CTIA Comments at 17 ("The Commission should seek guidance from the North American Numbering Council ('NANC') on the likely costs and technical criteria necessary to create and maintain the central hotline database."); (continued….)

consideration, and we therefore delegate to the Bureau, working in conjunction with the Office of the Managing Director (including the Office of the Chief Information Officer (OCIO)) and the Office of General Counsel (including the Senior Agency Official for Privacy (SAOP)), the matter of determining the administrator for the database consistent with the determinations we make in this Order. We direct the Bureau to announce the administrator details, and adopt any necessary rules, through a Public Notice or other appropriate means. The Bureau should not select an option that would require recovering costs for the administrator through an assessment on service providers, as we find that such an option would unnecessarily delay establishing the database. We also decline at this time to refer technical details of the database to the North American Numbering Council (NANC), as suggested by CTIA.[502] The Bureau should work with stakeholders as it manages the process of selecting an administrator (whether it be self-provisioned, through a third party, or some combination thereof) and establishing the database. If the Bureau later concludes that input from the NANC is warranted, it will seek out such input.

133. In addition, the Commission also delegates authority to the Bureau, working in conjunction with the Office of the Managing Director (including OCIO) and the Office of General Counsel (including the SAOP), to address all administrative and technical matters relating to the creation and maintenance of the database that are not prescribed in this Order. We expect the implementation process could involve complex legal, administrative, or technical questions, and we find that it is important to retain flexibility to address such issues as they arise. This is consistent with the approach the Commission has taken in other areas when overseeing the implementation of new programs such as the Broadband Data Collection and Robocall Mitigation Database.[503]

134. We find that the database should always be as comprehensive and accurate as possible so as to best fulfill the expectations of survivors that their calls and text messages to hotlines will not appear in service provider's consumer-facing call logs.[504] In this regard, we direct the Bureau to work with experienced stakeholders to help in identifying hotlines for the database administrator to include in the database, and developing procedures for updating the database; we direct the Bureau to establish procedures that will enable submissions by both operators of hotlines and from third parties.[505] We likewise direct the Bureau to consider how best to verify the accuracy of submissions while balancing administrative concerns such as the need to initiate use of the database as soon as possible. Should the Bureau elect to use a third party to serve as the database administrator, the Bureau, not the third party,

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Verizon Comments at 23 ("The Commission should work with industry stakeholders to ensure that any database—whether administered by the Commission or a third party—maintains the information in a format (or formats) compatible with wireless providers' billing and other systems."); USTelecom Reply at 2-3 ("[T]he Commission should engage voice service providers—the ultimate users of the database—on the database's design, which will help ensure that hotline data in the database is in a format that is compatible with providers' systems. For example, to obtain input on the database's design the Commission could, through the Wireline Competition Bureau, issue a public notice specifically seeking comment on the design of the database or task an advisory committee, such as the North American Numbering Council, to make recommendations. The agency also could hold informal discussions with industry stakeholders for information sharing and collaboration.").

[502] CTIA Comments at 17.

[503] *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7488-89, 7494, paras. 66-68, 82 (2020); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1877-82, para. 83 (2020) (*Second Caller ID Authentication Order*).

[504] *See Safe Connections Notice* at 45-46, paras. 126-30.

[505] EPIC et al. Comments at 30-31; NDVH Comments at 3; NYC Mayor's Office Comments at 2; Rose Marie Vergara Comments at 4; USTelecom Comments at 3; Verizon Comments at 23; *see Safe Connections Notice* at 48, para. 137 (proposing that the database administrator take update submissions from third parties, subject to verification by the administrator).

will have final authority over determining whether particular potential database entries are "covered hotlines."

135. While we recognize that comprehensiveness and accuracy are key elements in database design and administration, the safety of survivors of domestic violence is paramount and should be taken into account in all database-related decisions and administration. As a result, we conclude that the database should not be made publicly available, as proposed in the *Safe Connections Notice*.[506] As the NDVH argues, providing convenient public access to such a large database of telephone numbers through which all manner of domestic violence survivor assistance is made available provides opportunities for abusers to interfere with survivors' ability to place calls and send texts to hotlines in the database by a variety of means, thereby undermining the purpose for which we are establishing the database (to enable protection of the privacy of calls and text messages to hotlines).[507] While we acknowledge, as the *Safe Connections Notice* did,[508] that making the database publicly available could potentially improve the accuracy of the list and be a resource for survivors, we find the benefits of making the database publicly available are outweighed by the potential harms to survivors as identified by the NDVH.

136. Consistent with our concerns regarding the sensitivity of the database, we direct the Bureau to ensure that access to the full database file is available only to covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service through secure means. Recognizing the potential value of the database to governmental agencies with general subject matter jurisdiction (law enforcement and health and human service-type agencies), however, we direct the Bureau to also permit such agencies access to the full database file through secure means as long as an administratively reasonable method of determining eligibility for access can be arranged. Moreover, although the database itself will not be publicly accessible, survivors still will be able to view the administrator's public website, and we therefore direct the Bureau to consider a means by which the administrator's website could identify, for survivors' benefit, any covered service provider that has been granted a technical-infeasibility exception from the call-log obligation, as well as any service providers that have been granted an extension of the compliance deadline. More generally, we encourage the Bureau to consider the possibility of designing a limited form of access for survivors to determine whether a call that they are about to make or a text that they are about to send to a hotline will not appear in a call log. To this end, we direct the Bureau to explore creating a web-based lookup feature that would allow survivors to determine if a particular number appears in the database while, at the same time, preventing such a lookup feature being exploited by bad actors to reverse-engineer the full list of hotlines. Such a feature may also permit operators of hotlines to determine if their number has been properly included.

4. Using the Central Database of Hotlines

137. *Service Provider Compliance Deadline.*[509] The record reflects the urgency of issues faced by survivors of domestic abuse.[510] Survivors need to place calls and send text messages to hotlines

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[506] *Safe Connections Notice* at 48, para. 134.

[507] Letter from Marium Durrani, Vice President of Policy, The National Domestic Violence Hotline, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450 et al. (filed Oct. 17, 2023); *see also* Diana Freed, Sam Havron, Emily Tseng, Andrea Gallardo, Rahul Chatterjee, Thomas Ristenpart, and Nicola Dell, *Is My Phone Hacked? Analyzing Clinical Computer Security Interventions with Survivors of Intimate Partner Violence*, 3 Proceedings of the ACM on Human-Computer Interaction 202 (2019), https://dl.acm.org/doi/pdf/10.1145/3359304 (*Freed et al. 2019*). We do not detail these multiple methods in the interest of preventing advertising their availability. We have consulted with Commission engineers who describe similar potential methods.

[508] *Safe Connections Notice* at 48, para. 134.

[509] For ease of discussion, we use the term "compliance deadline" to refer to the effective date of our rules regarding the protection of the privacy of calls and text messages to hotlines.

without fear of discovery (and potential reprisal) by their abuser as soon as possible as such calls and text messages save lives.[511] Further, no party claims that the implementation challenges faced by service providers, which in some cases appear to be complex,[512] are insurmountable. At the same time, there are important administrative milestones on which a successful database rollout depends. Although the Commission sought comment in the *Safe Connections Notice* on how long service providers would take to implement the requirements that it proposed,[513] the record has only one specific proposal, a request for at least 24 months for smaller carriers.[514] Balancing the immediate need to provide help to survivors of domestic violence with the potential complexity of implementing systems to comply with our consumer-facing call log rules, we believe that 12 months from the date of publication of this Order in the Federal Register is a reasonable timeline for all but the smaller service providers, particularly because the record lacks evidence that it would take such providers longer. We therefore adopt a 12-month compliance deadline.[515]

138. We delegate to the Bureau the responsibility of implementing this compliance deadline and communicating with all stakeholders about progress towards completing the database, associated milestones, and service provider requirements, consistent with the decisions in this Order. In establishing this timeline, we recognize the need for service providers to have the necessary detail as early as possible for designing their systems and to be able to test the database files in such systems prior to full implementation.[516] In this regard, we also establish two milestones affecting the final compliance deadline. First, the compliance deadline will be no earlier than eight months after the Bureau has published the database download file specification, which should be the final detail necessary for service providers to complete design of their systems.[517] Second, the compliance deadline will be no earlier than

(Continued from previous page)

[510] EPIC et al. Comments at 3; NDVH Comments at 1; NVRDC Comments at 10; Rose Marie Vergara Comments at 2-4; NYS OPDV Comments at 2, 5; 1075, Student, Boston College Law School Reply at 4-5, 8-9.

[511] *See generally* Section II, *supra*.

[512] CTIA Comments at 10 ("Covered providers may need to revise and update their existing IT and operational systems for billing, account access, and account management. Covered providers may also need sufficient time to develop, implement, and test technical solutions, required systems and processes to receive, store, and discard the required information from survivors."); *id.* at 11-12 ("Given the substantial operational challenges involved in implementing the line separation and call log screening requirements, covered providers will need a substantial period of time to implement the requirements, test the systems, and train customer service representatives."); USTelecom Comments at 5-6 ("Ultimately, providers will need sufficient time to make the updates and upgrades necessary to comply with the rule, as well as fully address any complexities that arise as implementation work begins."); Verizon Comments at 3 ("Implementation of the proposed line separation and call data privacy requirements will require some of the most significant reassessment, re-programming and upgrades of customer billing, online account, and customer care systems and practices since the Commission promulgated the original CPNI rules in 1998 and 1999."); CCA Reply at 6-7 ("The need for sufficient time is especially important for smaller carriers, with limited staff and resources needed to work with vendors, plan the upgrades/solutions, and test and deploy them.").

[513] *Safe Connections Notice* at 50, para. 142.

[514] CCA Comments at 7 ("CCA requests that the Commission establish compliance deadlines for both line-separation requests and omission of calls and texts to domestic abuse hotlines that are at least 24 months from the effective date of the Commission's rules, at least for smaller carriers.").

[515] Appx. A, § 64.6408(b).

[516] USTelecom Comments at 5-6.

[517] Appx. A, § 64.6408(b). Although we delegate such details to the Bureau, we observe that the most likely form of the database file would be comma separated value (CSV) formatted with three fields for each database record: (1) a seven-digit integer representing a unique record identifier; (2) a ten-digit integer representing the hotline telephone number; and (3) the date, in yyyy/mm/dd format, representing the vintage of database file in which the hotline was added to the database.

two months after the Bureau announces that the database administrator has made the initial database download file available for testing.[518] To the extent that the date of either announcement causes the deadline to be later than 12 months after Federal Register publication, the Bureau should provide notice of the new compliance deadline for implementation based on the date of the announcement.[519] Given the potential unpredictability of the implementation process, including development of the database, we delegate authority to the Bureau to extend the compliance deadline as necessary.

139. For smaller service providers, we adopt a compliance deadline of 18 months from the date of publication of this Order in the Federal Register to comply with our new rules on consumer-facing call logs.[520] We find that granting smaller providers extra implementation time is appropriate, given that they may face more resource challenges than larger providers in complying with the new rules,[521] and consistent with the SCA's charge to the Commission to consider "factors that may impact smaller providers."[522] The 18-month period is less than the 24 months sought by CCA,[523] but we find that our 18-month compliance deadline for small providers properly balances the significance of the risks faced by domestic abuse survivors, and the benefits of them being able to call hotlines and seek help without fear of the abuser accessing their call records, against the implementation challenges faced by smaller providers.

140. We define a small provider as "a provider that has 100,000 or fewer voice service subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the provider's affiliates)."[524] We find it appropriate to adopt the definition of "small voice service provider" that the Commission adopted for the purpose of creating a delayed deadline for such providers to implement the Commission's call authentication rules stemming from the

[518] Appx. A, § 64.6408(b). *See* USTelecom Comments at 5-6 ("[T]he Commission should allow time for providers to come into compliance *after* the database is established. This will enable providers to finish deployments, which are dependent on the new database, and test new mechanisms to ensure that they successfully suppress records of calls to covered hotlines in consumer logs[.]"). In light of the compliance deadline being no less than two months after the availability of the initial database file for download, we do not condition such deadline on any approval by OMB review under the PRA of any data collection necessary to create the database. This is because any necessary approval would have to occur prior to creation of the initial database file.

[519] Thus, for example, if the Bureau's announcement of the availability of the initial download file for testing were not to come until 11 months after publication of this Order in the Federal Register, the Bureau would announce that the compliance deadline has become 13 months after Federal Register publication – in this example, continuing to ensure that service providers have two months to test the file. We note that this second database implementation milestone cannot be met without a database administrator having been selected and well-established. Service providers will be assured at least an eight-month period between the availability of the database download file specification and their compliance deadline. As a result, service providers will not be prejudiced by any potential delay introduced by deferring the determination of who should administer the database to a later decision by the Bureau.

[520] Appx. A, § 64.6408(c).

[521] CCA Comments at 6-7; CCA Reply at 6-7. We acknowledge that our decision to create a separate compliance deadline for small carriers in the case of protecting the privacy of calls and text messages to hotlines differs from our decision with respect to line separations. *See supra* Section II.A.8. Through stating that the line separation requirements in the statute "shall take effect 60 days after the date on which the Federal Communications Commission adopts the rules implementing" those requirements, the SCA provides what amounts to a presumptive compliance deadline of 60 days. *Id.*; Safe Connections Act § 6. There is no similar provision in the SCA regarding protecting the privacy of calls and text messages to hotlines differs from our decision with respect to line separations. *See* Safe Connections Act § 5.

[522] Safe Connections Act § 5(b)(3)(ii)(II)-(III).

[523] CCA Comments at 7.

[524] Appx. A, § 64.6400(l).

TRACED Act and in defining which small service providers are exempt from certain rural call completion rules.[525] In both cases, the Commission was establishing rules relating to service providers' processing of calls, which is relevant to the rules for protecting the privacy of calls and text messages to hotlines, and the Commission considered the 100,000-line threshold to appropriately balance the need for implementation with the rules with burdens on small service providers.[526] We believe that for the same reasons, a 100,000-line threshold is appropriate here.[527] We reject CCA's proposal to define small providers as those that do not provide nationwide service.[528] We find that the "small provider" definition we adopt is better established by Commission precedent,[529] creates more administrative certainty as it obviates the need for the Commission to make determinations as to what constitutes "nationwide" service, and fosters technological neutrality given that it will not discriminate between wireline providers, none of which have "nationwide" service areas, and wireless providers, some of which may.

141. We recognize that in extending the compliance deadline for small service providers, we need to ensure that this translates to additional system development time after the data file specification is announced. As a result, the compliance deadline for small service providers will in no case be earlier than 14 months after the Bureau has published the database download file specification, ensuring that small service providers will have sufficient time to complete design of their systems.[530] Further, exercising an abundance of caution, the compliance deadline for small service providers will be no earlier than two months after the Bureau announces that the database administrator has made the initial database download file available for testing for larger service providers.[531]

142. Creating a later compliance deadline for small service providers, however, will lead to a six-month period in which some survivors' calls and text messages to hotlines will be omitted from call logs (those served by non-small providers) while calls and text messages of other survivors (those served by small providers, likely the vast minority of survivors) will not. To minimize confusion, we direct the Bureau to consider creating a means by which survivors can determine on the database administrator's

[525] 47 CFR § 64.6304(a)(2); *Second Caller ID Authentication Order*, 36 FCC Rcd at 1877-82, paras. 40-48; *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16168, para. 27 (2013) (*First Rural Call Completion Order*).

[526] *Second Caller ID Authentication Order*, 36 FCC Rcd at 1877-82, paras. 40-48; *First Rural Call Completion Order*, 28 FCC Rcd at 16168, para. 27.

[527] In adopting the 100,000 voice subscriber line threshold in the *First Rural Call Completion Order*, the Commission noted a review of fixed and mobile subscription counts reported to the Commission via FCC Form 477 revealed that the 100,000-subscriber-line threshold would leave as much as 95% of callers served by providers subject to the full obligations. *First Rural Call Completion Order*, 28 FCC Rcd at 16168, para. 27. A recent similar review has determined that such a threshold should leave nearly 98% of callers served by providers subject to the 12-month compliance deadline. FCC staff analysis of FCC Form 477 data as of June 30, 2022.

[528] *See* CCA Nov. 9, 2023 *Ex Parte* Letter at 2-3.

[529] CCA claims that the Commission has made the nationwide/non-nationwide distinction in public safety proceedings, *see id.*, but CCA's cited examples are only to proposals on which the Commission sought comment, and. in any event, were not seeking to define the term "small provider," a term used in the Safe Connections Act. *See Location-Based Routing for Wireless 911 Calls*, Notice of Proposed Rulemaking, FCC 22-96, PS Docket No. 18-64, para. 4 (seeking comment on whether to provide six months for nationwide providers and an additional six months for non-nationwide providers to implement location-based routing for wireless 911 calls)*; Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Further Notice of Proposed Rulemaking, FCC 23-30, PS Docket Nos. 15-91, 15-94, para. 76 (Apr. 21, 2023) (seeking comment on a distinction between nationwide and non-nationwide providers for the purpose of setting Emergency Alert System compliance timeframes).

[530] Appx. A, § 64.6408(c).

[531] *Id.*

website whether their service provider is currently (at the time of inquiry) required to comply with the obligation to protect the privacy of calls and text messages to hotlines.

143. We also provide clarity regarding the relationship between compliance deadlines and the dates of particular calls and text messages that may be subject to our rules. We recognize that service providers may maintain two kinds of relevant call logs: (1) online consumer-facing logs, and (2) consumers' bills (whether electronic or paper), which we also consider to be logs. We also recognize that, as of a service provider's compliance deadline, the service provider's online consumer-facing logs will include records of calls and text messages from prior to the compliance deadline – and, in the ordinary course of business, such service provider may continue to make such online logs of pre-compliance deadline calls and text messages available for potentially multiple months.[532] These online call logs may be difficult to retroactively revise. Similarly, we acknowledge that consumers' bills that pertain exclusively to periods before the compliance deadline may remain available on service providers' websites on and after the compliance deadline.[533] Not only might it be difficult for service providers to retroactively revise such bills, but such bills may have already been e-mailed or physically mailed to the account holder.

144. Balancing these considerations, we establish the following requirements. With respect to online consumer-facing logs, we clarify that, after a service provider's compliance deadline, such logs may continue to display records of calls and text messages to hotlines that were placed or sent prior to a service provider's compliance deadline. That same service provider's online consumer-facing logs, however, must omit calls and text messages to hotlines that were placed or sent on or after the compliance deadline. With respect to consumers' bills, we clarify that bills for periods exclusively before the compliance deadline need not omit calls placed to and text messages sent to hotlines omitted. For bills that include calls and text messages both before and after the compliance deadline, service providers need only omit calls placed to and text messages sent to hotlines on or after the compliance deadline.[534] Bills exclusively for periods on or after the compliance deadline must fully comply with our rules. With regard to other written and oral disclosures of information regarding calls placed to and text messages sent to hotlines, our rules apply only to such calls and text messages placed or sent on or after the compliance deadline.

145. *Database Updates.* As proposed in the *Safe Connections Notice* and consistent with the SCA,[535] we require service providers to download the central database once it is established, and thereafter to download updates from the central database once per calendar month.[536] This is necessary to ensure service providers stay up to date on the covered hotlines in order to abide by their call-log removal duties. We anticipate new covered hotlines will be added to, and potentially removed from, the central database on an ongoing basis, so regular downloading of the updated database will be necessary. Commenters broadly supported a monthly download requirement, which strikes a balance between requiring providers to stay current but not requiring constant updates.[537] To make updates easier, we

[532] *See, e.g.*, Doralia Creamer, How To Get My T-Mobile Call Log (Sept. 20, 2023), https://cellularnews.com/mobile-phone/how-to-get-my-t-mobile-call-log/; AT&T, *Access Digital Home Phone Call History*, https://www.att.com/support/article/u-verse-voice/KM1001418 (last visited Oct. 4, 2023) (referring to call logs with up to 60 days of history).

[533] *See, e.g.*, T-Mobile, T-Mobile app > Billing and Payments – View Bill History, https://www.t-mobile.com/support/tutorials/device/app/ios/topic/t-mobile-app/billing-and-payments-view-bill-history (last visited Oct. 4, 2023); (Lumen, Viewing an Invoice, https://www.lumen.com/help/en-us/control-center/billing/viewing-an-invoice.html (last visited Oct. 4, 2023).

[534] Service providers are also welcome to voluntarily omit such calls and texts for all days in such bills.

[535] *See* Safe Connections Act § 5(b)(3)(A)(i).

[536] *Safe Connections Notice* at 49, para. 136.

[537] EPIC et al. Comments at 30; NaLA Comments at 26; NaLA Reply at 11; NCTA Reply at 14.

direct the Bureau to work with the database administrator to set a fixed date each month (for example, the 1st or 15th of the month) when it will update the database, so providers can schedule their monthly downloads of the updated database accordingly.[538] Service providers will be required to download and implement their monthly downloaded updates in their systems within 15 days of the release of these new monthly updates.[539]

146. *Penalties, Safe Harbor, and Interplay With Other Laws and Regulations.* We conclude that we should not establish special penalties for violations of our rules pertaining to protecting the privacy of calls and text messages to hotlines.[540] We believe that the relative novelty of the requirements that we establish make appropriate penalties difficult to assess in advance and are likely, at least initially, to be best assessed on a case-by-case basis. Thus, we conclude that, contrary to EPIC et al.'s suggestion,[541] we should rely on pre-existing penalties and enforcement mechanisms,[542] but will revisit this topic in the future if such mechanisms prove to be insufficient.

147. Some service providers have raised concerns about facing civil liability for unintentional errors or failures in removing calls and text messages to covered hotlines from their call logs, and recommended the Commission establish a "safe harbor" in this area.[543] As an initial matter, we note that the SCA already establishes a safe harbor from civil liability for providers that update their databases every 30 days to match the Commission's central database.[544] The rules that we establish make clear that covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service need omit from consumer-facing call and text logs only calls and text messages to numbers that appear in the database. Thus, as long as these providers are faithfully downloading updates to the database and have properly implemented systems for redacting calls and text messages to such numbers from consumer-facing call logs, they will not be in violation of our rules. Put another way, such providers will not have an independent duty to authenticate and verify the accuracy of the central database.[545]

148. Commenters have raised examples of laws and regulations that service providers might arguably violate through their compliance with the privacy rules that we establish for the protection of

[538] *See* CTIA Comments at 16 (suggesting monthly updates be on a date certain).

[539] Appx. A, § 64.6408(a)(3). We decline USTelecom's request to permit providers to perform database updates "any time within the month after the central database is updated." *See* Letter from Morgan Reeds, Director, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 22-238 et al., at 1-2 (filed Nov. 6, 2023) (USTelecom Nov. 6, 2023 *Ex Parte* Letter). Because we do not believe manual updates will be required, as USTelecom posits, we find that 15 days will be sufficient for providers to download the necessary updates for use in their systems. *Id.*

[540] *Safe Connections Notice* at 50, paras. 144-45.

[541] EPIC et al. Comments at 24.

[542] *See, e.g.*, 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2).

[543] CTIA Comments at 16 ("the Commission should establish a safe harbor from enforcement for failure to omit information about calls and text messages to hotlines from consumer facing logs if the covered provider relies upon the most recent information accessed from the central hotline database"); NaLA Comments at 26 ("[T]he Commission should establish a safe harbor to shield providers from liability if providers does not meet the requirement to omit calls and texts from consumer-facing logs but reasonably rely on the most recent information provided in the database."); Verizon Comments at 23 ("Providers should only be responsible for accurately and timely applying the hotline numbers in the database to their SCA-covered systems."); NCTA Reply at 14 ("[T]he Commission should also adopt a safe harbor provision for providers that block records of calls based on numbers in the database."); USTelecom Reply at 4.

[544] *See* Safe Connections Act § 5(b)(3)(D).

[545] *See* Verizon Comments at 25; USTelecom Reply at 4.

calls and text messages to hotlines.[546] In response, and consistent with the principle that subsequent, more specific statutes control in the event of a conflict with earlier broader statutes,[547] we make clear our intent that the rules we adopt here to implement the SCA supersede any conflicting requirements in the Communications Act, other Commission rules, or state requirements. This would include the requirement in section 222(c)(2) of the Act that a telecommunications carrier disclose CPNI to the customer upon request.[548] However, we remind parties that pursuant to section 5(b)(3)(C) of the SCA, the rules that we adopt in this Order pertaining to the protection of calls and text messages to hotlines do not alter service provider obligations under CALEA.[549]

149. We decline to adopt a number of requests and recommendations put forth by EPIC et al. pertaining to matters that extend beyond implementation of the SCA. For example, EPIC et al. asks that we require providers to help survivors detect/delete stalkerware from phones and investigate dual-use tracking apps that can double as stalkerware, compile list sources of Commission authority over stalkerware.[550] We decline to adopt these proposals, which fall outside the scope of the SCA and *Safe Connections Notice* and raise complex issues on which we have no record other than EPIC et al.'s request.

C. Emergency Communications Support for Survivors

150. We designate the Lifeline program as the program that will provide emergency communications support for survivors. As further detailed below, we also define financial hardship to allow survivors to receive this support, establish the application and enrollment processes for qualifying survivors, and address additional implementation challenges.

1. The Designated Program for Emergency Communications Support

151. The SCA requires the Commission to designate either the Lifeline program or the Affordable Connectivity Program to provide emergency communications support[551] to survivors who have pursued the line separation process and are suffering from financial hardship, regardless of whether the survivor might otherwise meet the designated program's eligibility requirements.[552] Given this

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[546] *See Safe Connections Notice* at 50, para. 145. Parties specifically raise CPNI and equivalent state obligations (CTIA Comments at 7-8, CTIA Reply at 7, Verizon Comments at 24-25) and truth in billing requirements (CTIA comments at 8, NCTA Comments at 11, Verizon Comments at 25). CTIA generally requests that "the Commission . . . make clear that the Commission's rules adopted to implement the SCA supersede any conflicting provisions of the Commission's rules or state requirements." CTIA Comments at 7-8.

[547] *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (later statute may control where "the scope of the earlier statute is broad but the subsequent statute[] more specifically addresses the topic at hand").

[548] 47 U.S.C. § 222(c)(2).

[549] Safe Connections Act § 5(b)(3)(C) (with respect to *id.* § 5(b)(3)(A)); *see also* Section III.B.1, *supra*.

[550] EPIC et al. Reply at 5-11.

[551] While "emergency communications support" is not defined by the SCA, we construe the Act's references to emergency communications support to be the time-limited support offered to survivors suffering financial hardship through the designated program. *See* Safe Connections Act § 5(b)(2). We note that one commenter suggested that the Commission allow survivors to choose either the ACP or Lifeline. EPIC et al. Comments at 2. We do not believe we have the authority to pursue that option given the SCA's specific direction to designate a "single program." Safe Connections Act § 5(b)(2)(A)(i).

[552] *See* Safe Connections Act § 5(b)(2)(A). The Safe Connections Act directs that the designated program serve survivors suffering from financial hardship and meet the requirements of the newly added section 345(c)(1) of the Communications Act of 1934, as amended. That section details ways in which a survivor can substantiate their status as a survivor and references how survivors should request line separation relief. *See* Safe Connections Act § 5(b)(2)(A); 47 U.S.C. § 345(c)(1).

requirement and the record before us, we designate the Lifeline program to provide emergency communications support to impacted survivors.[553] The Lifeline program allows participants to receive discounts on voice-only service, broadband service, or bundled service.[554] The ACP does not allow consumers to receive a discount on voice-only services.[555] We believe the flexibility offered by the Lifeline program to support voice-only services makes the program uniquely valuable for survivors, who may be experiencing significant disruption in their lives and need the ability to choose a voice-only service to help them reach other social support services.

152. Particularly in light of the SCA's focus on enabling survivors to establish connections independent from their abusers,[556] we recognize the importance of allowing qualifying survivors to choose to apply their emergency communications support benefit to a voice-only option. Voice services are ubiquitous and provide reliable access for reaching necessary support services and, if necessary, accessing emergency services.[557] Additionally, real-time human voice communications can provide connection, comfort, and reassurance to the survivor during a time of upheaval and new challenges. By designating Lifeline as the emergency communications support program under the SCA, we enable survivors to maintain their voice-only service connection if they so choose.

153. In addition to voice services, Lifeline also provides discounts on broadband services, which may be equally essential in different ways to many survivors as they research support services for assistance as they flee their abusers.[558] While both Lifeline and the ACP allow consumers to receive bundled support, the Lifeline program offers the greatest flexibility for survivors.[559] As such, by selecting the Lifeline program, we are providing survivors with the option to access either or both of these crucial

[553] *See* New York State Public Service Commission (NYPSC) Comments at 3 (remarking that Lifeline should be the designated program); National Lifeline Association (NaLA) Comments at 2 (recommending that "the Commission should designate the Lifeline program to provide emergency communications support to survivors because it is a permanent solution reliably funded through the Universal Service Fund" and suggesting that "Lifeline subscribers are also automatically eligible for ACP"). In its comments, NaLA also advocated for additional Lifeline reforms including increasing the Lifeline support amount, acting on pending Lifeline compliance plans and petitions for ETC designation, eliminating minimum service standards for Lifeline service, expanding Lifeline to support consumer devices, limiting Lifeline subscribers' ability to transfer their benefit, and limiting provider liability for noncompliance with our rules. NaLA Comments at 2. As these issues are not the focus of this proceeding and were not raised in the *Safe Connections Notice*, we decline to address them in this *Report and Order*.

[554] *See* 47 CFR § 54.403; *see also Lifeline and Link Up Reform and Modernization et al.*, Order, WC Docket No. 11-42, DA 23-589, at 4, para. 10 (WCB 2023) (extending the pause of the phase-out of Lifeline support for voice-only service until December 1, 2024).

[555] 47 CFR § 54.1802.

[556] *See* Safe Connections Act § 3(4) (finding that "independent access to a wireless phone plan can assist survivors in establishing security and autonomy").

[557] NaLA Comments at 8 (noting that "voice service is important for survivors of domestic and sexual violence, so that they can reach emergency services as well as support services").

[558] *See* NYS OPDV Comments at 3 (quoting a discouraged survivor who lacked the communications resources to find a food bank, housing, and remote employment as she lamented that "[a]ll survivors should have access to the internet so they can survive and not have to go back to their abuser. I'm close to having to do that because I can't get my needs met without the ability to connect.").

[559] NaLA Comments at 2 (stating that "Lifeline would be especially useful for survivors of domestic and sexual violence because Lifeline service plans generally include bundles of broadband and voice service, which would allow survivors to dial 911 when necessary and the ability to call shelters and other support services"); *see also* NaLA Comments at 17 (opining that "[w]hen an emergency arises, survivors need access to a device with both voice and data services and functionality to make the necessary calls to get to safety or research available support services on the internet.").

communications services, broadband and voice, giving survivors the security and autonomy we believe that Congress intended with the Safe Connections Act.

154. The maximum Lifeline discount for voice-only services is currently set at $5.25 and further phasedown in that support level is currently paused.[560] To ensure the designated program best serves qualifying survivors, we believe that the Lifeline program should offer survivors the maximum base Lifeline discount,[561] even for voice-only services. As noted in the *Safe Connections Notice*, we also believe that survivors receiving emergency communications support should be able to benefit from the Lifeline program's enhanced Tribal benefit if they reside on qualifying Tribal lands.[562] As such, we modify our rules at section 54.403 to allow survivors to receive support of up to $9.25 per month for all qualifying Lifeline services and up to a $34.25 monthly discount on Lifeline-supported services for survivors residing on qualifying Tribal lands. Regardless of any future changes to the reimbursement amount for voice-only services in the Lifeline program, we believe that survivors' needs present a unique situation that should permit survivors choosing voice-only plans to receive the full Lifeline reimbursement amount for which they are eligible. This level of support will be limited to the survivor's six-month emergency communications support period. If a survivor is eligible to participate in the Lifeline program beyond their initial emergency support period, and they choose to subscribe to a voice-only plan, then they will receive the voice-only discount applicable for all non-Tribal Lifeline subscribers, which is currently $5.25.[563]

155. USTelecom urges the Commission to limit this enhanced support opportunity for voice-only services to only mobile wireless service plans.[564] We decline to adopt such a limitation. The SCA requires that survivors pursue a line separation request that meets the requirements under section 345(c)(1) before receiving emergency communications support, but it does not limit the type of service that a survivor can then receive after completing that line separation request.[565] Additionally, the SCA's direction to the Commission to designate either the Lifeline program or the ACP, which both allow eligible households to apply their benefit to fixed service, indicates that survivors enrolling in the designated program pursuant to the SCA should be afforded the same choice.[566] We also believe that imposing this suggested limitation would not serve the public interest. Further, we believe that the implementation concerns raised by USTelecom will be minimized by our direction to USAC to identify survivor enrollments in its systems, which will not only allow service providers to treat survivor information with heightened sensitivity, but will also give service providers the appropriate insight necessary to determine whether a consumer is a survivor eligible to receive up to $9.25 in support for voice-only services.[567]

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[560] *See Lifeline and Link Up Reform and Modernization et al.*, Order, WC Docket No. 11-42, DA 23-589, at 1, para. 2 (WCB 2023).

[561] *See* 47 CFR § 54.403(a)(1)-(2). NaLA Comments at 9 (commenting that "qualified survivors should be eligible for the full Lifeline discount which should be increased to be consistent with the ACP").

[562] *Safe Connections Notice* at 53, para. 151.

[563] Survivors on qualifying Tribal lands still qualify for the enhanced Tribal benefit. *See* Universal Service Administrative Company, *Lifeline Rules and Requirements: Minimum Service Standards,* https://www.usac.org/lifeline/rules-and-requirements/minimum-service-standards/ (noting that "[t]he up to $25 enhanced Tribal benefit remains available to eligible residents of Tribal lands. Additionally, continued voice support of up to $5.25 per month (or $5.25 plus up to $25 for the enhanced Tribal benefit) will still be available in areas with only one Lifeline provider in the Census block.").

[564] *See, e.g.,* USTelecom Nov. 6, 2023 *Ex Parte* Letter at 2-3.

[565] Safe Connections Act § 5(b)(2)(A)(ii).

[566] *See* Safe Connections Act § 5(b)(2)(A)(i).

[567] *See infra* para. 172.

156. We note that some commenters expressed support for the ACP as the designated program because it offers a higher monthly benefit amount.[568] While we certainly recognize that as an advantage of the ACP, we believe that the Lifeline program overall offers the better longer-term solution for survivors because of its ability to support voice-only services and because of its stable funding source. We also believe that our efforts to expand the Lifeline benefit amount for voice-only support help to address the concerns raised by these commenters regarding the difference in the program benefit amounts.

157. In addition to being unable to support voice-only services, the ACP has a finite source of funds and its continuation is dependent upon additional congressional appropriations. Therefore, the ACP does not present the same long-term funding stability as the Lifeline program.[569] Consumers eligible for the Lifeline program are also eligible to participate in the ACP, pursuant to the Infrastructure Investment and Jobs Act (Infrastructure Act), and the amendments to the Lifeline rules that we make in this *Report and Order* preserve that option for survivors enrolling in Lifeline pursuant to the SCA as well.[570] We believe it is appropriate, however, to limit this combined Lifeline and ACP support to the emergency communications support period of six months because adhering to the time limitation is consistent with both the language and intent of the SCA.[571] This will protect program integrity and target limited funding where it is most needed. Survivors will have the opportunity to confirm their eligibility to participate in Lifeline and/or ACP under each respective program's existing eligibility criteria as they approach the end of their emergency support periods, as detailed below.[572]

158. Some commenters identified the Lifeline program's requirement that service providers be designated as Eligible Telecommunications Carriers (ETCs) as a drawback of designating the Lifeline program for emergency communications support, with one commenter briefly suggesting that the Commission exempt carriers from the ETC requirement to allow more service providers to support survivors in the emergency communications period.[573] The ETC requirement is a statutory requirement and cannot be waived.[574] The ETC requirement is also a critical oversight component of the Communications Act, and the record here does not include the level of analysis required for us to consider

[568] CCA Comments at 9-10; NCTA Comments at 12.

[569] *See* FCC, *Affordable Connectivity Program*, https://www.fcc.gov/affordable-connectivity-program (explaining that the Infrastructure Investment and Jobs Act provided $14.2 billion to modify and extend the Emergency Broadband Benefit Program (EBB Program) to a longer-term broadband affordability program called the Affordable Connectivity Program (ACP)); *see also* Benton Institute for Broadband and Society, *When Will Affordable Connectivity Program Funding Run Out?*, https://www.benton.org/headlines/when-will-affordable-connectivity-program-funding-run-out-0 (last visited October 10, 2023).

[570] Our rules adopted today revise 47 CFR § 54.409(a), allowing entry into the ACP. *See* 47 CFR § 54.1800(j)(1); 47 U.S.C. § 1752(a)(6)(A). *See* Comments of the New York State Office of Prevention of Domestic Violence (NYOPDV) at 5 (supporting the Commission allowing participation in the Lifeline program during the emergency communications period to qualify a survivor to also participate in the ACP).

[571] *See* Safe Connections Act §§ 5(b)(2)(A)(ii)(II) and 5(b)(2)(D).

[572] *See infra* Section III.C.4.

[573] *See* NCTA Comments at 12-13 (advocating for carriers that participate in ACP and would like to provide emergency communications services through the Lifeline program to receive an exemption/waiver from the ETC designation requirement for Lifeline program participation or allow non-ETC ACP providers to offer customers the option of porting their line to an ETC Lifeline provider). Providers participating in the ACP are not required to be ETCs. *See* 47 CFR § 54.1801(d). Because we permit survivors that qualify for emergency communications support through Lifeline to enroll in ACP, survivors benefitting from emergency communications support through the ACP can receive ACP service from non-ETCs in addition to Lifeline service from an ETC.

[574] 47 U.S.C. §§ 214(e), 254(e).

whether forbearance would be appropriate or warranted.[575] Furthermore, as we discussed above regarding line separations, the Safe Connections Act prohibits providers from limiting or preventing survivors from porting their line to another service provider.[576] Therefore, survivors have the ability to port their line to a service provider that is designated as an ETC. Survivors will be able to receive the intended emergency support by receiving service from ETCs in the Lifeline program. Any service provider that is not currently an ETC but wishes to support survivors eligible for benefits under the SCA can do so by obtaining designation as a Lifeline-only ETC from the relevant state commission or the Commission, as applicable, and we encourage providers to do so.

159. In the *Safe Connections Notice* we sought comment on the impact of the designated program's benefit as it pertains to survivors' access to devices.[577] There was limited discussion of this issue among commenters, but some commenters advocated for support for devices through the SCA designated program or suggested that the Commission take steps to incentivize service providers to provide devices to survivors.[578] Historically, the Lifeline program has not generally supported devices,[579] and on balance here, we believe it would be appropriate to continue focusing Lifeline funding on the subscriber's service offering. This approach is consistent with the Commission's long-standing approach in other universal service programs, which also do not fund end-user devices.[580] One commenter

[575] *See, e.g.*, NaLA Reply at 6 (acknowledging the possibility of forbearance from ETC requirement, but suggesting that the Commission not undergo the extensive section 10 forbearance analysis in this context and instead allow non-ETCs to port lines to ETCs that do provide Lifeline-supported services).

[576] Safe Connections Act § 4.

[577] *Safe Connections Notice* at 54, para. 153.

[578] *See, e.g.*, NaLA Comments at 17 (suggesting that survivors receiving services from Lifeline ETCs be provided either deeply discounted or free mobile devices and recommending that the Commission incentivize such a program); EPIC et al. Reply at 3 (suggesting that the Commission explore ways that survivors can be provided functional and safe phones if the survivor does not feel safe using their existing device); NYS OPDV Comments at 5 (indicating that a benefit for devices may expand access for survivors).

[579] *See Lifeline and Link Up Reform and Modernization et al*., WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6805, para. 349 (2012) (*2012 Lifeline Order*) ("However, in keeping with the Commission's historic approach to using the Fund, we will not subsidize equipment purchases as part of the pilot program."); *Lifeline and Link Up Reform and Modernization et al*., WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4005-4006, para. 125 (2016) (*2016 Lifeline Order*) ("Past Commission precedent makes it clear that Lifeline, with the exception of a brief period after Hurricane Katrina, has been used to fund services, and not equipment. At this time, we see no reason to deviate from that approach.").

[580] *See Rural Health Care Support Mechanism,* WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16754, para. 167 & n.455 (2012) (*Healthcare Connect Fund Order*) ("The Universal Service Fund historically has not supported end user devices."); *see also id.* at 16754, para. 157 & n.435 ("The Commission previously has concluded that it lacked statutory authority to support telemedicine equipment."); 47 CFR § 54.617 (listing end user devices, telemedicine equipment, applications and software as examples of ineligible expenses); *Modernizing the E-rate Program for Schools and Libraries*, Order, DA 22-1313, Appendix B, Eligible Service List for Funding Year 2023 (WCB 2022) ("Examples of items that are ineligible components of Internet access services include applications . . . and end-user devices and equipment such as computers, laptops, and tablets."). The RHC Pilot Program also did not fund end-user devices, medical equipment or telemedicine applications. *See Rural Health Care Support Mechanism,* WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20398, para. 75 (2012) (*RHC Pilot Program Selection Order*). In addition, the Connected Care Pilot Program did not provide support for end-user devices such as smartphones, tablets, or computers. *See Promoting Telehealth for Low Income Consumers et al.*, WC Docket No. 18-213, Report and Order, 35 FCC Rcd 3366, 3402, para. 65 (2020) (*Connected Care Pilot Program Order*).

suggested that the Commission should create a pilot device program for survivors,[581] but we believe that the limited duration of emergency communications support cautions against funding devices. We are aware that certain providers and community organizations have provided survivors with access to free devices,[582] and we are supportive of those efforts, but we do not believe it would be appropriate to support devices for survivors through the Lifeline program.[583]

2. Defining Financial Hardship

160. As proposed in the *Safe Connections Notice*,[584] we define "financial hardship" to largely mirror the ACP's eligibility requirements as outlined in the Infrastructure Act. Defining financial hardship in this way gives survivors greater flexibility to confirm their status, and we hope that this more expansive definition for financial hardship will enable greater participation for survivors. Consumers can qualify to participate in the ACP if they participate in certain federal assistance programs or if their household income is at or below 200% of the Federal Poverty Guidelines.[585] These eligibility standards are more expansive than the standards used by the Lifeline program, which allows consumers to qualify for the program through participation in fewer federal assistance programs or if their household income is at or below 135% of the Federal Poverty Guidelines.[586] We believe that adopting this more expansive approach in our definition of financial hardship allows the emergency communications support effort to reach a wider range of survivors, as contemplated by the SCA.[587] Indeed, Congress noted in its findings that survivors often face significant financial insecurity.[588] In adopting this approach, however, we decline to allow survivors who participate in a provider's existing low-income program, which are based on the provider's own eligibility criteria, to use that participation as a basis for demonstrating financial hardship.[589] The Lifeline program has not historically relied on provider-specific eligibility criteria, and

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[581] *See* NaLA Comments at 17 (suggesting the creation of a pilot device support program for survivors); EPIC et al. Reply at 3 (supporting NaLA's pilot program idea).

[582] *See, e.g.*, CTIA Comments at 4 (citing the efforts of the CTIA Wireless Foundation to provide free recycled cell phones to victims of domestic violence).

[583] Although the Lifeline program does not offer support for devices, if survivors who qualify for the Lifeline program use that qualification to enroll in the ACP, then they may avail themselves of the connected device benefit available under the ACP. *See* 47 CFR § 54.1803(b).

[584] *See Safe Connections Notice* at 56-57, para. 160.

[585] *See* 47 CFR § 54.1800(j); *ACP Order*, 37 FCC Rcd at 509, para. 49 (explaining qualifying income and eligibility programs for the ACP, specifically, "pursuant to the Infrastructure Act, a household may qualify for the Affordable Connectivity Program if at least one member of the household: (1) meets the qualifications for participation in the Lifeline program (with the modification that the qualifying household income threshold is at or below 200 percent of the Federal Poverty Guidelines for a household of that size); (2) has been approved to receive school lunch benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act, or the school breakfast program under section 4 of the Child Nutrition Act of 1966; (3) has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 in the current award year; (4) meets the eligibility criteria for a participating provider's existing low-income program, subject to approval by the Commission and any other requirements deemed by the Commission to be necessary in the public interest; or (5) receives assistance through the WIC Program, established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. § 1786)").

[586] *See* 47 CFR § 54.409 (permitting applicants to qualify for the Lifeline program if they participate in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, Veterans and Survivors Pension Benefit, or reside on Tribal lands and participate in certain Tribal benefit programs).

[587] *See* Safe Connections Act § 5(b)(2)(A)(ii) (allowing survivors to enroll in the designated program "without regard to whether the survivor meet the otherwise applicable eligibility requirements of the designated program").

[588] *See* Safe Connections Act § 3(2) (finding that "survivors often lack meaningful support and options when establishing independence from an abuser, including barriers such as financial insecurity . . .").

[589] 47 CFR § 54.1800(j)(5).

the record does not provide a basis for concluding that such programs are prevalent among Lifeline providers, or that these programs would be a predominant qualifying program for survivors given the other expansive qualifying criteria.

161. With the definition of financial hardship that we adopt today, we believe that we are aligning with the spirit of the congressional findings in the SCA and commenter concerns in our record. We also note that in addition to demonstrating financial hardship, survivors are also required by the SCA to meet the requirements of section 345(c)(1), which details the process for a survivor completing a line separation request.[590] We anticipate that the documentation confirming submission of a valid and completed line separation request as detailed above[591] will be sufficient to satisfy the requirement that survivors seeking to receive emergency communications support must have pursued a line separation request and, when paired with some substantiation of financial hardship, will allow us to ensure compliance with the SCA's limitations for receiving emergency communications support.

162. Though there are no significant comments in the record offering a specific definition of financial hardship, there is some support among commenters for the Commission implementing an approach that would presume that all survivors suffer financial hardship.[592] We decline to implement this approach. Although (as noted) Congress found in the SCA that "survivors *often* lack meaningful support and options when establishing independence from an abuser, including barriers such as financial insecurity,"[593] that finding indicates that not all survivors face financial hardship. A presumption of financial hardship for all survivors for purposes of qualifying for emergency communications support would be inconsistent with this finding. In addition, and most critically, the SCA specifically states that survivors may qualify for emergency communications support if the survivor attempts a line separation request with their communications service provider *and* they are suffering financial hardship.[594] A presumption of financial hardship for all consumers applying for the Lifeline benefit through the SCA would fail to give effect to the second qualification prong established by the statute, and would also pose an unacceptable risk to the program's integrity. We therefore do not adopt such a presumption, but we take steps to streamline the application process for survivors seeking to qualify for emergency communications support.

163. As further discussed below,[595] we believe that the use of the National Verifier for all applications for emergency communications support will allow for the most streamlined process for survivors and will best protect program integrity by ensuring a unified review process. As our definition of financial hardship will largely align with the eligibility standards for the ACP, the National Verifier and its connections to relevant state databases may allow for automatic confirmation of a survivor's

[590] Safe Connections Act § 5(b)(2)(A).

[591] *See supra* Section III.A.3.d.

[592] *See* EPIC et al. Comments at 6, 15 (supporting the Commission presuming that survivors experience financial hardship); NYPSC Comments at 3 (asserting that survivors should be considered automatically eligible for support when requesting a line separation); API-GBV Comments at 9 (recommending that the "final rule provide that documentation of domestic violence sufficiently demonstrates financial hardship, given the prevalence of economic abuse, as well as the likelihood that survivors will experience financial instability due to increased expenses or reducing economic dependence on abusive partners"); BRETSA Comments at 2-3 (suggesting that "individuals certifying that they are seeking Lifeline Service in connection with escaping a relationship they consider abusive, should be provided Lifeline Service without demonstration or certification of *financial* qualification for the service").

[593] Safe Connections Act § 3(2) (emphasis added).

[594] Safe Connections Act § 5(b)(2)(A).

[595] *See infra* Section III.C.3.

financial hardship status.[596] In instances where an individual's eligibility cannot be determined through these database connections, however, we believe that it is appropriate to allow survivors to self-certify their financial hardship in the National Verifier.[597] By allowing self-certification of financial hardship, we recognize that survivors often lack access to financial documentation to verify their financial hardship and could place themselves in danger if they made an attempt to access such documentation.[598] Currently, if a consumer cannot automatically confirm their participation in a qualifying federal assistance program through USAC's database checks, then they must submit appropriate documentation to USAC that demonstrates their participation in the relevant program.[599] The SCA, however, requires that the Commission allow survivors' entrance into the designated program regardless of their ability to otherwise participate in the program.[600] With a self-certification approach, we offer that greater flexibility and also protect program integrity by securing a self-certification under penalty of perjury from the survivor. By combining a self-certification approach with the use of the National Verifier, we can reduce the barriers of participation for survivors and help survivors access the benefits of the designated program "as quickly as is feasible."[601] To implement this process, we direct the Bureau to work with USAC to develop standardized self-certification documentation[602] and implement changes to USAC's application workflows to allow for survivors from across the United States to easily enter the program through the National Verifier.

164. We believe that concerns about the risks of a self-certification approach to program integrity[603] are mitigated by the statutory limitation of emergency communications support to survivors who are seeking to separate a line from a shared mobile service contract and meet the line separation requirements discussed above, and the temporary nature of the emergency communications support benefit. First, the SCA mandates that survivors seeking to receive emergency communications support

[596] *See* USAC, *National Verifier*, https://www.usac.org/lifeline/national-verifier/ (last visited Oct. 10, 2023) (detailing state and federal database connections that the National Verifier can rely upon to confirm eligibility to participate in qualifying federal assistance programs).

[597] *See* EPIC et al. Comments at 7-10 (supporting a self-certification approach and detailing the concerns with third-party certification of financial hardship).

[598] *See, e.g.*, BRETSA Comments at 2 (warning that "accessing financial documents in the abuser's possession may place the person fleeing the relationship in peril").

[599] *See* USAC, *Resolve Application Errors*, https://www.usac.org/lifeline/national-verifier/how-to-use-nv/resolve-application-errors/ (last visited Oct. 10, 2023) (detailing the documentation requirements for consumers who cannot confirm their eligibility to participate in the Lifeline program through automated database checks).

[600] *See* Safe Connections Act § 5(b)(2)(A)(ii) (requiring the Commission to adopt rules that will allow a survivor to enroll in the designated program "without regard to whether the survivor meets the otherwise applicable eligibility requirements of the designated program").

[601] *See* Safe Connections Act § 5(b)(2)(A)(ii)(I).

[602] In implementing the application and certification process, we direct the Bureau and USAC to ensure that those processes are appropriately accommodating and user-friendly for survivors while still protecting program integrity. *See* API-GBV Comments at 9 (remarking that "[i]n self-certifying, survivors should be able to submit a financial declaration, signed under penalty of perjury"); *see also* EPIC et al. Comments at 7 (commenting that, if the Commission adopts a self-certification approach instead of a presumption of financial hardship approach, the Commission should model its policies after the Department of Housing and Urban Development's self-certification policies, which help survivors maintain housing subsidy and occupancy); Verizon Comments at 12 (explaining that wireless providers will require accurate identification information on survivor affidavits for purposes of authentication and to prevent fraud and abuse).

[603] *See* NaLA Comments at 3; *see also* NaLA Reply at 9 (remarking that "while self-certification would be good for survivors of domestic and sexual violence, and would undoubtedly reduce barriers to needed communications services, the Commission's history with self-certification should cause any participating provider to run screaming from any self-certification recommendations.").

through the designated program also demonstrate that they have met the line separation requirements of section 345(c)(1).[604] That statutory requirement means that survivors will have to compile and submit documentation of their abuse in order to pursue a line separation request. Satisfying such an obligation will protect Lifeline program integrity, as survivors should be a small subset of the overall population, and those receiving emergency communications support will be an even smaller subset of those survivors as these survivors would have to pursue a line separation request and be suffering financial hardship. Second, the SCA limits survivor participation in the designated program to six months, also limiting the potential impact on the Lifeline program's resources.[605] Between these two requirements for receiving emergency communications support, we believe that permitting self-certification for the financial hardship component strikes the best balance between program integrity concerns and ensuring that survivors have access to vital connectivity services.

165. One commenter suggested that if the Commission adopted a self-certification approach for survivors documenting their financial hardship, then the Commission should determine that National Verifier review of such documentation provides an "ironclad safe harbor for service providers."[606] We decline to adopt this approach. The National Verifier relies on the information it receives from service providers, and while it is an important tool for protecting program integrity, to say that approval by the National Verifier creates a safe harbor for provider activity would open the program to potential service provider abuse. Service providers remain responsible for implementing policies that ensure compliance with the Lifeline program's rules,[607] and this includes, among other things, implementing policies that ensure that information received by the National Verifier is accurate. The Commission has never intended for the National Verifier to be a safe harbor,[608] and we do not believe that it would be appropriate to implement such an approach here. If service provider policies, when implemented in conjunction with the National Verifier, are found to be inadequate for ensuring that a subscriber is eligible to receive Lifeline service, then such service provider may be subject to recovery action from USAC or forfeiture efforts from the Commission's Enforcement Bureau.

166. In the *Safe Connections Notice*, we sought comment on how we might be able to address survivors with a temporary financial hardship.[609] These are survivors who might have a reliable source of income that would otherwise not qualify them to meet our definition of financial hardship but may be facing a short-term, acute financial strain as a result of experiencing or escaping domestic violence or abuse. We received no specific comments on how we might treat survivors suffering temporary financial hardship. While we understand the challenges that these individuals might encounter, we do not believe it would be appropriate to allow entry into the program based only on a position of temporary financial hardship. In the case of a temporary financial hardship, a benefit that extends for six months could significantly outlast the subscriber's actual financial hardship and see the program supporting an individual with significant financial resources. Making the emergency communications support available in that situation would be inconsistent with the conditions established in the SCA and would be an ineffective use of limited USF funding. We also do not have a reliable way of confirming temporary financial hardship, so implementing such an approach would raise significant program integrity concerns. For these reasons, we decline to define financial hardship to include temporary financial hardship.

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[604] *See* Safe Connections Act § 4 (enacting survivor's option to request line separation from their abuser).

[605] *See* Safe Connections Act § 5(b)(2)(A)(ii)(II).

[606] NaLA Reply at 9.

[607] *See* 47 CFR § 54.410(a).

[608] *Lifeline Providers Remain Liable for Ensuring the Eligibility of Their Subscribers to Receive Lifeline Services*, Enforcement Advisory No. 2019-07, DA 19-1211 (EB 2019) (reminding service providers of their compliance obligations, even after the launch of the Lifeline National Verifier).

[609] *Safe Connections Notice* at 56, para. 159.

3. Program Application and Enrollment

167. In the *Safe Connections Notice*, we proposed that survivors entering the designated program be required to use the National Verifier to have their eligibility to participate in the program confirmed by USAC.[610] We adopt this proposal and direct USAC to allow for such an approach for survivors living in all states, including the NLAD opt-out states of California, Texas, and Oregon.[611] There was limited discussion of this issue in the record, but NaLA and USTelecom both supported such an approach.[612] We believe that this approach will create a more streamlined application and enrollment experience for survivors. It will also allow USAC to better protect program integrity. USAC will be able to develop a greater understanding of the material provided by service providers after an attempted line separation request,[613] and, therefore, is in the best position to verify the validity of line separation request documentation. USAC will also be able to act as a centralized repository for this information, minimizing the potential for data leakages compared to having this information reviewed by both USAC and a state administrator. As noted above, survivors will be able to leverage the database connections that the National Verifier uses to confirm program participation when seeking to confirm their financial hardship status. Finally, by requiring survivors to apply through the National Verifier, we ensure more consistent messaging to survivors and review standards for all documentation.[614] To this end, we direct USAC to explore avenues for ensuring that application information and materials are made available to survivors in a variety of different formats and languages.[615]

168. In applying for emergency communications support through the National Verifier, we believe that the current amount of personal information collected for enrollment into the Lifeline program is generally appropriate.[616] This information allows USAC to confirm that individuals are who they say they are—and by collecting the last four digits of an applicant's or subscriber's Social Security number or Tribal Identification number, that process can often be completed automatically. That automated confirmation often allows subscribers to provide less documentation than if they were required to confirm

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[610] *See Safe Connections Notice* at 61-62, para. 169.

[611] In California, Texas, and Oregon, subscribers' eligibility is determined through their respective state administrators. *See Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier in California*, WC Docket No. 11-42, Public Notice, 35 FCC Rcd 13029 (WCB 2020); *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier in Oregon and Texas*, WC Docket No. 11-42, Public Notice, 35 FCC Rcd 11721 (WCB 2020).

[612] NaLA Comments at 23 (suggesting that the National Verifier and NLAD are the best option for survivors' eligibility verification and enrollment in the Lifeline program and are likely the best option for all Lifeline providers in all states); USTelecom Comments at 3-4 (supporting the "use of USAC's National Verifier to verify eligibility and facilitate enrollment of survivors experiencing financial hardship, whether the Commission ultimately designates the Lifeline or the ACP program").

[613] *See supra* Section III.A.3.d.

[614] In adopting this approach, we do not remove any of the existing channels by which consumers can be supported in their Lifeline application process. *See, e.g.*, USAC, *Account Types*, https://www.usac.org/lifeline/national-lifeline-accountability-database-nlad/how-to-use-nlad/account-types/#State (last visited Oct. 10, 2023) (detailing how state and Tribal organizations can gain access to the NLAD and National Verifier to support applicants to the Lifeline program).

[615] *See* API-GBV Comments at 10 (encouraging outreach to survivors in multiple languages).

[616] *See, e.g.*, 47 CFR § 54.404(b)(6) (indicating that ETCs are obligated to transfer to the NLAD a subscriber's full name, their full residential address, their data of birth, and the last four digits of the subscriber's Social Security number or Tribal Identification number, if the subscriber is a member of a Tribal nation and does not have a Social Security number); *see also* USAC, *Eligibility Verification*, https://www.usac.org/lifeline/national-verifier/eligibility-verification/# (last visited Oct. 10, 2023).

their identity through a manual review process.[617] Some survivor advocates called for either omitting survivor identifiers or using alternative identifiers, and to avoid using Social Security numbers whenever possible.[618] We find that requiring only the last four digits of an applicant's Social Security number will balance the legitimate interests in protecting the safety and security of survivors while also adequately verifying survivors' identities.[619] Given the similar program integrity concerns and significant administrative challenges, we also decline to modify the information collected from survivors to permit alias names as EPIC suggests.[620]

169. We understand, however, that current address information is extremely sensitive information for survivors escaping domestic violence or abuse. Unlike a survivor's name or the last four digits of their Social Security number, if address information is disclosed it could imminently allow an abuser to locate a survivor, and because of this risk, survivors may not reside at one location or have a fixed address. A survivor also may be hesitant to seek emergency communications support if they believe doing so could risk disclosing their location to an abuser. In light of these unique risks, we will allow survivors to submit prior address information from within the last six months on their Lifeline applications, thereby giving survivors the opportunity to shield their current address information and to confirm their identity automatically.[621] By requiring a survivor's name, the last four digits of their Social Security Number, and a relatively recent address, we may have enough information to allow USAC to automatically confirm the survivor's identity without further information. At the same time, by allowing survivors to submit prior address information where possible, we acknowledge and accommodate the critical privacy and safety concern of survivors and survivor advocacy organizations in protecting the current location information of survivors.[622] However, if it is not possible to confirm the survivor's identity in this manner, then the survivor will need to submit their documentation manually and should rely on their current address in such instances.

170. Having current address information better allows USAC to conduct consumer outreach and prevent against duplicate household enrollment, but we believe that affording flexibility to apply with prior address information is appropriate for survivors. We confirm, however, that USAC should not modify its practices for protecting the program against enrolling duplicate households. In instances where the survivor's submitted address indicates a potential duplicate enrollment, that survivor will need to complete the Lifeline program's Household Worksheet.[623] This approach should allow for authentication of a survivor's identity, while also speaking to concerns of commenters related to protecting program

[617] *See* USAC, *Third Party Identity Verification (TPIV) Resolution*, https://www.usac.org/lifeline/national-lifeline-accountability-database-nlad/subscriber-management/dispute-resolution/third-party-identity-verification-tpiv-failure-resolution/ (last visited Oct. 10, 2023) (detailing the document submission requirements for confirming identity when an applicant cannot be confirmed through USAC's automated database process).

[618] *See* API-GBV Comments at 5-6 (urging the use of alternate identifiers or completely omitting use of identifiers).

[619] USAC complies with federal privacy requirements when handling all consumer information, does not sell or rent personal information, and significantly limits any disclosure of such information. *See, e.g.*, USAC, Privacy Policies, https://www.usac.org/about/privacy-policies/ (Feb. 11, 2022).

[620] *See* EPIC et al. Comments at 24 (supporting the use of alias names).

[621] EPIC et al. Comments at 6 (supporting survivors providing alternative information address privacy and security concerns).

[622] *See* BRETSA Comments at 2 (citing the need for survivors to shield their location information from their abuser); *see also* EPIC et al. Comments at 4 (remarking about survivors' elevated need to keep their location information private); Rose Marie Vergara Comments at 1 (noting that "passage of this [Safe Connections] Act will keep confidential the locations and activities of survivors of domestic/intimate partner violence ('survivors'), including their children and their families, and will allow them to be in safer environments as they piece their lives back together after the violence they have been enduring").

[623] *See* USAC, *Consumer Eligibility*, https://www.usac.org/lifeline/consumer-eligibility/#Household (last visited Oct. 10, 2023).

integrity.[624] Finally, during the emergency communications support period, enrolled survivors will not be required to comply with the current requirement in the Lifeline program's rules that subscribers must update their address within 30 days of moving.[625]

171. In the *Safe Connections Notice*, we sought comment on how we might collect information from survivors when they are applying or enrolling in the designated program.[626] It does not appear that the Commission's forms and other documents require significant changes to account for survivors, and we did not receive any specific feedback from commenters suggesting changes to the forms. However, we do believe that there will need to be some minor refinements to account for survivors' entry into the emergency communications support program. To that end, we direct the Bureau and USAC, in coordination with the Office of General Counsel, as necessary, to consider and adopt appropriate revisions to the relevant forms. We expect that the Bureau and USAC will work to update the forms to request confirmation of a survivor's line separation request, consistent with the documentation that service providers will give to survivors.[627] We also expect similar updates regarding the submission of material to demonstrate financial hardship. Finally, we direct the Bureau and USAC to include in appropriate program forms information soliciting communications preferences, so that survivors can make clear how USAC should contact them in the future. This may be particularly helpful for survivors who do not wish to receive mail at their address. Survivors should be given options for such outreach such as physical mail, email, text messaging, and Interactive Voice Response (IVR).

172. We also do not believe that any significant changes need to be made to the enrollment process and the information that is provided to survivors to share with their service provider for enrolling in the program or the information that is shared between USAC's systems and service providers through any API connections that might exist. We direct USAC to make the necessary system changes to flag survivor entries in its systems so that service providers are aware of a survivor's status and treat such information with heightened sensitivity. While we decline to prescribe specifics at this time, we also direct the Bureau and USAC to implement enhancements as they deem appropriate to protect survivor information that is shared with service providers. We strongly encourage service providers to take steps similar to those taken today around address submission in their systems, and we remind service providers of their obligations under the confidentiality rules we adopt in this order, as well as Section 222 of the Communications Act and the Commission's Customer Proprietary Network Information (CPNI) rules when it comes to survivor privacy.[628]

173. *General Program Requirements*. As proposed in the *Safe Connections Notice*,[629] the Lifeline program's general rules and requirements will remain largely in effect for survivors and service providers. Any areas where there might be confusion between the existing Lifeline program's general rules and the rules meant to implement the SCA have been specifically addressed in our amendments to

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[624] *See* Verizon Comments at 2 (referencing the requirement of the Safe Connections Act to consider "account security and fraud detection"); *see also* NYPSC at 3 (recognizing the need to mitigate waste, fraud, and abuse); NCTA Comments at 5-6; CTIA Comments at 14 (remarking that "the Commission's rules should enable covered providers to protect against fraud and identity theft by bad actors attempting to exploit the SCA requirements as a security vulnerability"); CCA Comments at 5-6 (stressing the importance of authentication in deterring fraud and abuse); *but see* NYC ENDGBV Comments at 1 (remarking that "a survivor's access to safety should be prioritized over a fear of fraud"); EPIC et al. Reply at 2 (noting that "to the extent that fraud, waste, and abuse concerns were raised by commenters, these were addressed by our observation that the fraud was committed by service provider staff incentivized to commit fraud and not by subscribers themselves").

[625] 47 CFR § 54.410(d)(3).

[626] *See Safe Connections Notice* at 60-61, paras. 167-68.

[627] *See supra* Section III.A.3.d.

[628] 47 CFR § 64.2001 *et seq*.

[629] *Safe Connections Notice* at 62, para. 171.

the Lifeline program's rules.[630] Perhaps most significantly, we do not modify any of the Lifeline program's usage requirements for survivors receiving emergency communications support.[631] We do not believe that the rationale for those requirements, namely ensuring that limited program resources go to individuals that truly need the service,[632] is less compelling when applied to survivors.[633] We also decline to change the Lifeline program's limit of one benefit per household. While "survivor" is defined as inclusive of an individual caring for another individual against whom a covered act has been committed,[634] we view such a situation as inclusive of our current definition of household.[635] We did not receive significant comments expressing concerns with this portion of the Lifeline rules or identifying any potential challenges that survivors might encounter were we to continue to adhere to the one per household limitation. Finally, we allow survivors to enter the Lifeline program while requiring that service providers adhere to the program's existing record retention and audit rules. We have not received any specific concerns indicating how tensions might arise from the need to adhere to these requirements while serving survivors.[636]

4. Additional Program Concerns

174. In the *Safe Connections Notice*, we raised a number of concerns dealing with how survivors can take advantage of the benefit and how low-income survivors might be transitioned to longer-term participation in the program after their emergency support runs its course.[637] As proposed in

[630] There were no commenters that addressed this concern specifically in the context of the designated program for emergency communications support. However, several commenters had more open-ended statements suggesting that the Commission should clearly articulate that rules meant to implement the SCA should supersede existing program rules. *See* CTIA Comments at 7-8 (remarking that "the Commission should make clear that the Commission's rules adopted to implement the SCA supersede any conflicting provisions of the Commission's rules or state requirements"); USTelecom Comments at 6 (stating that "the Commission should make clear that a service provider's compliance with the Safe Connections Act rules takes priority over, and preempts, any other applicable obligations that are inconsistent"). Because we amend our Lifeline program rules to incorporate our actions today taken pursuant to the SCA, we do not need to issue such a blanket statement to address provider concerns. Where we have not acted to specifically address the SCA changes adopted today, we expect that the Lifeline program's rules remain appropriate as applied to survivors seeking emergency communications support, and Lifeline providers should continue to comply with the program rules, including the amendments we make through this Order.

[631] *See* 47 CFR § 54.405(e)(3) (detailing service provider de-enrollment obligations for subscriber non-usage); 47 CFR § 54.407(c) (detailing reimbursement limitations for service providers providing no-cost service to subscribers who do not use their service).

[632] *2012 Lifeline Order*, 27 FCC Rcd at 6768-69, para. 257.

[633] NaLA urges the Commission to eliminate the program's usage requirement and contends that survivors may value any communications access they receive as an "emergency phone," which we interpret to mean a phone or device that may not be used by the survivor. NaLA Comments at 21; EPIC et al. Reply Comments at 3 (supporting NaLA's request to not implement the non-usage rule for survivors). As explained above, we do not believe that adopting such an understanding would result in the best usage of the limited financial resources available to the Lifeline program.

[634] Safe Connections Act § 4 (codified at 47 U.S.C. § 345(a)(6)).

[635] *See* 47 CFR § 54.400(h) (defining household as an individual or group of individuals who are living together as one economic unity).

[636] NaLA Comments at 20 (indicating at a very high level that the Commission should modify the Lifeline program's audit and record retention rules, without offering explanation as to how those rules might be negatively impacted by allowing survivors to enter the program).

[637] *See Safe Connections Notice* at 63-64, paras. 173-76. We note that EPIC et al. seem to indicate that we should offer emergency communications support to survivors for up to three years. EPIC et al. Comments at 10-11. We do not believe that is consistent with the Act, which specifically limits support before the customer can transition into

(continued….)

the *Safe Connections Notice*, we will permit survivors receiving emergency communications support to receive six monthly benefits from the Lifeline program and by extension the ACP, in accordance with the SCA.[638] While we expect that this support will largely be provided in a single six-month time frame, we do not believe it would be appropriate to limit survivors to such a requirement. As such, we direct USAC to implement processes and procedures for tracking the emergency communications support provided to survivors to ensure that they do not receive more than six months of emergency communications support tied to a single line separation, even if that support is not provided in a single six-month block of time. We also do not believe that we need to place any limitations on the ability of survivors to change their service, as available to any other Lifeline subscriber,[639] during this time period. To ensure the smooth operation of this effort, we strongly encourage service providers to file claims for reimbursement for emergency communications support provided to survivors on a monthly basis. Service providers are permitted to submit claims for reimbursement for Lifeline service within one year,[640] but in the context of emergency communications support, timely claim submission allows USAC to accurately track and apprise survivors and service providers of the status of the survivor's remaining available emergency communications support.[641]

175. The SCA is silent on whether emergency communications support can be received more than once in a survivor's lifetime, but survivor advocates expressed support for allowing survivors to participate in the program beyond an initial six-month period if appropriate.[642] To best support survivors, we allow a survivor to receive multiple periods of emergency communications support through the designated program if each period is paired with proof of completion of a new line separation process.[643] With the SCA silent on this exact issue, we believe that the requirement that any further emergency support be paired with a new line separation request, as adopted here, is consistent with the statute and sufficiently supports survivors who need to leave abusive situations more than once in their lives while ensuring the benefits are not unjustifiably expanded beyond the six-month period prescribed by the SCA. We believe that this approach reflects the realities of survivors' situations while also ensuring the protection of the designated program and adhering to the requirements of the SCA. Any process established by USAC to ensure survivors' compliance with the six-month period of support should account for situations where a survivor may need to re-enter the designated program for a new emergency support period tied to a new line separation request and demonstration of financial hardship, in accordance with the rules adopted today.

176. The SCA specifically contemplates that survivors may wish to continue to receive support from the designated program beyond their initial support period if they can qualify for the

(Continued from previous page)
the designated program if they can meet that program's eligibility standards. *See* Safe Connections Act §§ 5(b)(2)(A)(ii)(II), 5(b)(2)(D).

[638] Safe Connections Act § 5(b)(2)(A)(ii)(II).

[639] *See Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10487, para. 33 (2017) (*2017 Lifeline Order*) (eliminating the Lifeline port freeze for voice and broadband Internet access service).

[640] *2012 Lifeline Order*, 27 FCC Rcd at 6788, para. 305.

[641] *See* 47 CFR § 54.405 (requiring ETCs to de-enroll subscribers where they have a reasonable basis to believe that the subscriber no longer meets the requirements to participate in the Lifeline program).

[642] EPIC et al. Comments at 10 (opining "it would be contrary to the goals of the Safe Connections Act to limit survivors to only one period of support."). EPIC et al. notes research that evidence from the University of Missouri-St. Louis found that "24% of relentlessly stalked women report 16 or more prior attempts before they were able to successfully leave the relationship". EPIC et al. Comments at 10, n.55.

[643] BRETSA suggests that there should be limitations on the amount of times a survivor can receive emergency support. BRETSA Comments at 3.

underlying program.[644] Because USAC will process initial applications and enrollments into the emergency support program, we believe that USAC will be well-positioned to handle this transition for survivors eligible to continue to receive Lifeline and/or ACP benefits after their emergency communications support period has finished. We therefore adopt a process to allow survivors who wish to continue in the program to demonstrate their eligibility to do so.[645] We note that survivors going through this process must meet the standard eligibility requirements for participation in Lifeline and/or the ACP.

177. To support longer-term low-income survivor enrollment and to ease customer transition efforts, we direct USAC to notify a survivor receiving emergency communications support approximately 75 days before the period of emergency support is meant to expire. Prior to this notification, USAC will attempt to verify the survivor's eligibility through its automated eligibility database check process. If the survivor's eligibility can be automatically confirmed through this process, USAC's outreach to the survivor will notify them that they are eligible to continue receiving the Lifeline benefit and will continue to do so with their current provider unless they de-enroll or transfer their benefit to a different Lifeline provider. If USAC cannot confirm a survivor's eligibility through its automated database checks, then USAC will notify the survivor that they can continue to participate in the program if they meet the Lifeline program's eligibility requirements and submit documentation to confirm their eligibility to participate. USAC will notify the survivor of this change in status through written communication, either through e-mail, written letter, text messaging, or other automated process as appropriate. Where possible, this outreach should also align with a survivor's expressed contact preferences. USAC's communication will also make the survivor aware of any changes in their benefit amount that might result from the transition from emergency communications support, in which a survivor may receive the full base Lifeline support for a voice-only plan, to the standard Lifeline support amounts for voice-only service. Any potential change to the voice-only support from the survivor option of $9.25 to the standard Lifeline reimbursement amount of $5.25 should be communicated to survivors so they are aware of the change and can pursue an alternative plan if so desired. For survivors who take advantage of their Lifeline participation to enroll in the ACP, this outreach will also provide information on qualifying for ACP longer-term, and the general differences between the programs in eligibility requirements and features.

178. In responding to this outreach for continued support, survivors must confirm their eligibility in accordance with the existing requirements for entry into the Lifeline program[646]—that is, a self-certification of financial hardship will not be sufficient to confirm long-term eligibility to participate in Lifeline. This approach is consistent with the SCA.[647] Throughout this process, service providers may contact survivors as they might through the regular continued eligibility or recertification process, in addition to USAC-led outreach. Similarly, survivors that rely on their enrollment in Lifeline through the emergency communications support process to qualify for ACP will also be required to demonstrate that they are eligible to remain in ACP. We encourage such outreach to be respectful of survivors' communications preferences and the sensitive nature of their personal information. Finally, consistent with our standard processes, survivors who are unable to confirm their eligibility to continue to participate in the Lifeline program should have their de-enrollment from the Lifeline program processed by USAC within five business days of the end of their six-month period of emergency participation. This de-enrollment requirement also applies where a survivor used their Lifeline enrollment through emergency

[644] Safe Connections Act § 5(2)(D).

[645] *See* NYPSC Comments at 3-4 (endorsing an approach similar to our current recertification efforts).

[646] USAC largely follows the documentation requirements applied by our rules to service providers when assessing documentation used for enrollment and recertification in the Lifeline program. *See* 47 CFR § 54.410(b)-(d), (f); *see also* USAC, *Eligibility Verification*, https://www.usac.org/lifeline/national-verifier/eligibility-verification/#:~:text=Manual%20Eligibility%20Verification&text=Submitting%20supporting%20documentation%20to%20the,online%20is%20reviewed%20within%20minutes (last visited Oct. 10, 2023).

[647] Safe Connections Act § 5(b)(2)(D).

communications support processes to qualify for and enroll in the ACP.

179. *Privacy Concerns*. Under the Privacy Act of 1974,[648] the Federal Information Security Modernization Act of 2014 (FISMA),[649] and applicable guidance,[650] the Commission and USAC have strong privacy protections in place for the information collected in the administration of the Commission's programs. However, we believe that handling survivor data may present some unique challenges. As such, we direct the Bureau to work with USAC, in coordination with the Office of Managing Director (OMD) (and specifically Office of Chief Information Officer (OCIO)) and the Commission's Senior Agency Official for Privacy, to consider ways in which USAC might further limit access to data tied to survivors. The Bureau and USAC should consider, for the USAC-run call center, requiring call center supervisor review before the release of any survivor personal information from a USAC (or its contractor's) call center, developing and delivering specific training on handling survivor data for all support center staff, and limiting the type of survivor data shared with service providers outside of more routine system interactions. With oversight from the Bureau, USAC should implement responsive changes that cause minimal burdens on consumers and service providers.

180. The systems that USAC uses to manage the Lifeline program and the ACP collect only data elements that have been prescribed by the Commission to allow for the effective management of the programs and to protect program integrity. We direct USAC to pay particular attention to whether inclusion of survivor enrollments in USAC reports could reveal sensitive information about enrollees. For example, if a survivor is the only enrollee, or one of a few enrollees, in a geographic region for which there is a report, then a savvy analyst, perhaps with local knowledge, might be able to deduce the survivor's identity. In cases in which inclusion of survivor enrollments could reveal sensitive information, USAC should utilize privacy enhancing technologies or methodologies (e.g., excluding data, masking data, or employing differential privacy[651]) to avoid doing so. We also direct service providers to protect the privacy of both the survivor and the alleged abuser consistent with the standards we adopt above regarding covered provider obligations for handling survivor information.[652]

181. *Program Evaluation*. The SCA requires the Commission to complete a program evaluation within two years of the Commission completing its rulemaking.[653] The evaluation is meant to examine the impact and effectiveness of the support offered to survivors suffering from financial hardship and to assess the detection and reduction of risks to program integrity with respect to the support offered.[654] To this end, the Commission directs USAC, under the oversight of the Bureau and either directly or with the support of a vendor, to complete an evaluation of the effectiveness of the support offered to survivors. This evaluation should be completed and approved by the Bureau no later than two years after the Order adopted today is published in the Federal Register, and the Commission will share the completed evaluation with the appropriate congressional committees.[655] To develop this evaluation,

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[648] Pub. L. No. 93-579, 88 Stat. 1896 (*codified at* 5 U.S.C. § 552a).

[649] Pub. L. No. 113-283, 128 Stat. 3073 (*codified at* 44 U.S.C. § 3501 *et seq.*).

[650] *See, e.g.*, Office of Management and Budget (OMB) Circular A-130, *Managing Information as a Strategic Resource* (2016), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A130/a130revised.pdf.

[651] *See* U.S. Census Bureau, Press Release, *Census Bureau Sets Key Parameters to Protect Privacy in 2020 Census Results* (June 9, 2021), https://content.govdelivery.com/accounts/USCENSUS/bulletins/2e32ea9.

[652] *See supra* Section III.A.2.a.

[653] Safe Connections Act § 5(b)(2)(C)(i).

[654] Safe Connections Act § 5(b)(2)(C)(i)-(ii).

[655] *See* Safe Connections Act §§ 5(a)(2), 5(b)(2)(C)(iii) (requiring that the Commission share the program evaluation with the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives).

USAC, operating under the guidance of the Bureau and the Office of Economics and Analytics, with coordination from the Senior Agency Official for Privacy, should develop surveys that can be sent to stakeholder groups that work directly with survivors, inclusive of service providers, for program evaluation input. These surveys should be ready to be shared with relevant stakeholder groups no later than sixteen months after the adoption of this Order, a time frame we believe will properly accommodate the necessary Paperwork Reduction Act[656] and Privacy Act timelines that may accompany such outreach. By working with stakeholder groups we avoid going directly to survivors, who may have privacy and safety concerns. Information developed through the survey process can be supplemented by any data that USAC is able to develop through its general maintenance of survivor data in USAC's systems. In response to the *Safe Connections Notice*, no commenter provided significant feedback regarding program evaluations.

IV. PROCEDURAL MATTERS

182. *Paperwork Reduction Act Analysis*. This *Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such requirements will be submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

183. In this *Report and Order*, we adopt rules, pursuant to Congress's direction in the SCA, that have an impact on all covered providers, including covered providers that are small entities. We impose certain obligations regarding communications with consumers and survivors. We also establish a compliance date six months after the effective date of the *Report and Order*, finding that the countervailing public interest in ensuring survivors have access to line separations regardless of their provider outweighs an extended compliance deadline for small covered providers. Further, staggered compliance deadlines could cause confusion for consumers, and we believe that the SCA's operational and technical infeasibility provisions we codify in our rules will account for differences in the capabilities between large and small covered providers regarding information collection requirements. Regarding protecting the privacy of calls and texts to hotlines, we require covered providers and wireline providers of voice service, within 12 months, subject to certain conditions that may extend this time, (1) omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission; and (2) maintain internal records of calls and text messages excluded from consumer-facing logs of calls and text messages. Covered providers and wireline providers of voice service that are small service providers are given 18 months, subject to certain conditions that may extend this time, to comply with the same obligations. We received comments requesting that smaller providers be afforded 24 months to comply with such obligations. Recognizing that the SCA contains no language regarding specific timeframes with respect to this obligation, we found that granting smaller providers extra implementation time is appropriate, given that they may face more resource challenges than larger providers in complying with the new rules. We acknowledged that this 18-month period is less than the requested 24-month period, but we found that our 18-month compliance deadline for small providers properly balances the significance of the risks faced by domestic abuse survivors, and the benefits of them being able to call hotlines and seek help without fear of the abuser accessing their call records, with the implementation challenges faced by smaller providers. Third, regarding emergency communications support for survivors, we designate the Lifeline program as the program that will support emergency communications efforts for survivors with financial hardship. This will have an impact on eligible telecommunications carriers designated to provide Lifeline support, but we expect any new regulatory impacts to be minor and consistent with our existing rules. As the SCA has

[656] *See* 44 U.S.C. §§ 3501 et seq.

no definition for financial hardship we adopt a definition that is more expansive than the current Lifeline eligibility standards, and we adopt an approach for documenting that financial hardship that allows for self-certification. We also direct USAC to prepare for a program evaluation of our efforts to provide emergency communications support to survivors. This evaluation will require surveys of relevant stakeholder groups that USAC will develop under the oversight of the Bureau and the Office of Economics and Analytics.

184. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA)[657] 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."[658] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of the rule and policy changes adopted in this *Report and Order* on small entities. The FRFA is set forth in Appendix B.

185. *Congressional Review Act.* The Commission has determined, and 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).

186. *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 FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

187. *Additional Information.* For additional information on this proceeding, contact Melissa Kirkel, Wireline Competition Bureau, Competition Policy Division, at melissa.kirkel@fcc.gov or Nicholas Page, Wireline Competition Bureau, Telecommunications Access Policy Division, at Nicholas.Page@fcc.gov.

V. ORDERING CLAUSES

188. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 251, 254, 301, 303, 316, 332, 345, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 251, 254, 301, 303, 316, 332, 345, and 403, section 5(b) of the Safe Connections Act of 2022, Pub. L. No. 117-223, 136 Stat. 2280, and section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, as amended by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, this *Report and Order* in WC Docket Nos. 22-238, 11-42, and 21-450 IS ADOPTED and that Parts 54 and 64 of the Commission's Rules, 47 CFR Parts 54, 64, are AMENDED as set forth in Appendix A.

189. IT IS FURTHER ORDERED that this *Report and Order* SHALL BE EFFECTIVE January 14, 2024. Compliance with the rule changes adopted in this *Report and Order*, except for § 64.6408, shall not be required until the later of: i) six months after the effective date of this *Report and Order*; or ii) after the Office of Management and Budget (OMB) completes review of any information collection requirements associated with this *Report and Order* that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the compliance date for these rule changes by subsequent Public Notice and to cause Part 54, Subpart E, § 54.1800, § 64.2010, and Part 64, Subpart II to be revised accordingly. Compliance with § 64.6408 shall be required as described in paragraphs 138-45 of this *Report and Order.* The Wireline Competition Bureau is delegated authority to extend the dates upon which compliance with the provisions of § 64.6408 shall be required, consistent with paragraphs 138-145 of this *Report and*

[657] 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[658] 5 U.S.C. § 605(b).

Order, and to revise § 64.6408 accordingly.

190. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

191. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records 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

The Federal Communications Commission amends 47 CFR parts 54 and 64 to read as follows:

Part 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted

2. Amend § 54.400 to add paragraphs (q) through (s) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(q) *Survivor*. Survivor has the meaning given such term at 47 CFR § 64.6400(m).

(r) *Emergency Communications Support*. "Emergency communications support" means support received through the Lifeline program by qualifying survivors pursuant to the Safe Connections Act of 2022, Pub. Law. 117-223.

(s) *Financial Hardship*. A survivor is suffering from "financial hardship" when the survivor's household satisfies the requirements detailed at § 54.409(a)(1) or (2) or is a household in which --

(1) The household's income as defined in § 54.400(f) is at or below 200% of the Federal Poverty Guidelines for a household of that size;

(2) At least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), or at least one member of the household is enrolled in a school or school district that participates in the Community Eligibility Provision (42 U.S.C. 1759a);

(3) At least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under § 54.1806(a)(2);

(4) At least one member of the household receives assistance through the special supplemental nutritional program for women, infants and children established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786).

3. Amend § 54.403 to add paragraph (a)(4) and paragraph (a)(5) as follows:

§ 54.403 Lifeline Support Amount

(a) * * *

(4) *Emergency communications support amount.* Emergency communications support in the amount of up to $9.25 per month will be made available to eligible telecommunications carriers providing

service to qualifying survivors. An eligible telecommunications carrier must certify to the Administrator that it will pass through the full amount of support to the qualifying survivor and that it has received any non-federal regulatory approvals necessary to implement the rate reduction.

(i) This base reimbursement can be applied to survivors receiving service that meets either the minimum service standard for voice service or broadband Internet access service, as determined in accordance with § 54.408.

(ii) Additional federal Lifeline support of up to $25 per month will be made available to an eligible telecommunications carrier providing emergency communications support to an eligible survivor resident of Tribal lands, as defined in § 54.400(e), to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(5) *Compliance Date.* Paragraph (a)(4) of this section may contain an information-collection and/or recordkeeping requirement. Compliance with paragraph (a)(4) will not be required until this paragraph (a)(5) is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after OMB completes review of any information collection requirements in this paragraph (a)(4) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraph (a)(5) by subsequent Public Notice and to cause this section 54.403 to be revised accordingly.

4. Amend § 54.405 to add paragraph (e)(6) and paragraph (e)(7) to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

* * * * *

(e) * * *

* * * * *

(6) *De-enrollment from emergency communications support*. Notwithstanding paragraph (e)(1) of this section, upon determination by the Administrator that a subscriber receiving emergency communications support has exhausted the subscriber's six months of support and has not qualified to participate in the Lifeline program as defined by § 54.409 of this subpart, the Administrator must de-enroll the subscriber from participation in the Lifeline program within five business days. An eligible telecommunications carrier shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

(7) *Compliance Date.* Compliance with paragraph (e)(6) will not be required until this paragraph (e)(7) is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after OMB completes review of any information collection requirements in Subpart E, section 54.403(a)(4), section 54.410(d)(2)(ii), section 54.410(i), and section 54.424 that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (e)(6) by subsequent Public Notice and to cause this section 54.405 to be revised accordingly.

5. Amend § 54.409 to add paragraph (a)(3) and paragraph (a)(4) as follows:

§ 54.409 Consumer qualification for Lifeline.

* * * * *

(a) *****

(3) Consumers that are survivors can qualify to receive emergency communications support from the Lifeline program without regard to whether the survivor meets the otherwise applicable eligibility requirements of the Lifeline program, if:

(A) the survivor suffers from financial hardship as defined by section 54.400(s), and

(B) the survivor requested a line separation as required under 47 U.S.C. 345(c)(1) of the Communications Act of 1934.

(4) *Compliance Date.* Compliance with paragraph (a)(3) will not be required until this paragraph (a)(4) is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after OMB completes review of any information collection requirements in Subpart E, section 54.403(a)(4), section 54.410(d)(2)(ii), section 54.410(i), and section 54.424 that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (a)(3) by subsequent Public Notice and to cause this section 54.409 to be revised accordingly.

6. Amend § 54.410 to revise paragraph (d) and add paragraph (i) and paragraph (j) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(d) *****

(2) *****

(ii) The subscriber's full residential address, or, for a subscriber seeking to receive emergency communications support from the Lifeline program, a prior billing or residential address from within the past six months;

* * * * *

(i) *Survivors of Domestic Violence*. All survivors seeking to receive emergency communications support from the Lifeline program must have their eligibility to participate in the program confirmed through the National Verifier. The National Verifier will also transition survivors approaching the end of their six-month emergency support period in a manner consistent with the requirements applied to eligible telecommunications carriers at 54.410(f), and the National Verifier will de-enroll survivors whose continued eligibility to continue to participate in the Lifeline program cannot be confirmed, consistent with § 54.405(e)(6).

(j) *Compliance Date.* Paragraph (d)(2)(ii)(B) and paragraph (i) of this section may contain information-

collection and/or recordkeeping requirements. Compliance with paragraph (d)(2)(ii)(B) and paragraph (i) will not be required until this paragraph (j) is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after OMB completes review of any information collection requirements in this paragraph (d)(2)(ii)(b) and paragraph (i) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraph (d)(2)(ii)(B) and paragraph (i) by subsequent Public Notice and to cause this section 54.410 to be revised accordingly.

7. Add § 54.424 to subpart E to read as follows:

§ 54.424 Emergency Communications Support for Survivors.

(a) *Confirmation of subscriber eligibility*. All eligible telecommunications carriers must implement policies and procedures for ensuring that subscribers receiving emergency communications support from the Lifeline program are eligible to receive such support. An eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's eligibility to receive emergency communications support, unless the carrier has received from the National Verifier:

(1) Notice that the prospective subscriber meets the eligibility criteria set forth in § 54.409(a)(3);

(2) A copy of the subscriber's certification that complies with the requirements set forth in § 54.410(d).

(3) An eligible telecommunications carrier must securely retain all information and documentation provided by the National Verifier or received from the survivor to document their line separation request as required by § 54.417.

(b) *Emergency communications support duration*. Qualified survivors shall be eligible to receive emergency communications support for a total of no more than six months. The Administrator will inform eligible telecommunications carriers when participating survivors have reached their limit of allowable emergency communications support. A survivor may seek and receive further emergency communications support if that request is related to a new line separation request and a showing of financial hardship completed by the survivor and confirmed by the National Verifier.

(c) *Compliance Date.* Paragraph (a) and paragraph (b) of this section may contain information-collection and/or recordkeeping requirements. Compliance with paragraph (a) and paragraph (b) will not be required until this paragraph (c) is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after OMB completes review of any information collection requirements in this paragraph (a) and paragraph (b) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraph (a) and paragraph (b) by subsequent Public Notice and to cause this section 54.424 to be revised accordingly.

8. Amend § 54.1800 by revising paragraph (j)(1) and adding paragraph (j)(7) to read as follows:

(j) ***

(1) At least one member of the household meets the qualifications in § 54.409(a)(2), (a)(3) or (b) (or any successor regulation);

***

(7) Compliance with paragraph (j)(1) will not be required until this paragraph (j)(7) is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after OMB completes review of any information collection requirements in Subpart E, section 54.403(a)(4), section 54.410(d)(2)(ii), section 54.410(i), and section 54.424 that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (j)(1) by subsequent Public Notice and to cause this section 54.1800 to be revised accordingly.

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is revised 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, 301, 303, 316, 345, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091; Pub. L. No. 117-223, § 5, 136 Stat 2280, 2285-88.

2. Add subpart II as follows:

Subpart II—Communications Service Protections for Victims of Domestic Violence, Human Trafficking, and Related Crimes

Sec.
64.6400 Definitions.
64.6401 Line Separation Request Submission Requirements.
64.6402 Processing of Separation of Lines from a Shared Mobile Service Contract.
64.6403 Establishment of Mechanisms for Submission of Line Separation Requests.
64.6404 Prohibitions, Limitations, and Financial Responsibility for Line Separation Requests.
64.6405 Notice of Line Separation Availability to Consumers.
64.6407 Employee Training.
64.6408 Protection of the Privacy of Calls and Text Messages to Covered Hotlines.
64.6409 Compliance Date.

§ 64.6400 Definitions.

For purposes of this subpart:

(a) *Abuser.* "Abuser" means an individual who has committed or allegedly committed a covered act, as defined in 47 U.S.C. 345 and this subpart, against (1) an individual who seeks relief under 47 U.S.C. 345 and this subpart; or (2) an individual in the care of an individual who seeks relief under 47 U.S.C. 345 and this subpart.

(b) *Business day.* "Business day" means the traditional work week of Monday through Friday, 8 a.m. to 5 p.m., excluding the covered provider's company-defined holidays.

(c) *Call*. "Call" means a voice service transmission, regardless of whether such transmission is completed.

(d) *Consumer-facing logs of calls and text messages.* "Consumer-facing logs of calls and text messages" means any means by which a covered provider, wireline provider of voice service, fixed wireless provider of voice service, or fixed satellite provider of voice service presents to a consumer a listing of telephone numbers to which calls or text messages were directed, regardless of, for example, the medium used (such as by paper, online listing, or electronic file), whether the call was completed or the text message was delivered, whether part of a bill or otherwise, and whether requested by the consumer or otherwise provided. The term includes oral and written disclosures by covered providers, wireline provider of voice service, fixed wireless provider of voice service, and fixed satellite provider wireline providers of voice service of individual call and text message records.

(e) *Covered act.* "Covered act" means conduct that constitutes (1) a crime described in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)), including, but not limited to, domestic violence, dating violence, sexual assault, stalking, and sex trafficking; (2) an act or practice described in paragraph (11) or (12) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102) (relating to severe forms of trafficking in persons and sex trafficking, respectively); or (3) an act under State law, Tribal law, or the Uniform Code of Military Justice that is similar to an offense described in clause (1) or (2) of this paragraph. A criminal conviction or any other determination of a court shall not be required for conduct described in this paragraph to constitute a covered act.

(f) *Covered hotline*. "Covered hotline" means a hotline related to domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act. Such term includes any telephone number on which more than a *de minimis* amount of counseling and/or information is provided on domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar acts.

(g) *Covered provider.* "Covered provider" means a provider of a private mobile service or commercial mobile service, as those terms are defined in 47 U.S.C. 332(d).

(h) *Fixed wireless provider of voice service*. For purposes of this subpart, "fixed wireless provider of voice service" means a provider of voice service to customers at fixed locations that connects such customers to its network primarily by terrestrial wireless transmission.

(i) *Fixed satellite provider of voice service*. For purposes of this subpart, "fixed satellite provider of voice service" means a provider of voice service to customers at fixed locations that connects such customers to its network primarily by satellite transmission.

(j) *Primary account holder*. "Primary account holder" means an individual who is a party to a mobile service contract with a covered provider.

(k) *Shared mobile service contract*. "Shared mobile service contract" means a mobile service contract for an account that includes not less than two lines of service, and does not include enterprise services offered by a covered provider. For purposes of this subpart, a "line of service" shall mean one that is associated with a telephone number, and includes all of the services associated with that line under the shared mobile service contract, regardless of classification, including voice, text, and data services.

(l) *Small service provider*. For purposes of this subpart, "small service provider" means a covered provider, wireline provider of voice service, fixed wireless provider of voice service, or fixed satellite

provider of voice service that has 100,000 or fewer voice service subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the provider's affiliates).

(m) *Survivor*. "Survivor" means an individual who is not less than 18 years old and (1) against whom a covered act has been committed or allegedly committed; or (2) who cares for another individual against whom a covered act has been committed or allegedly committed (provided that the individual providing care did not commit or allegedly commit the covered act). For purposes of this subpart, an individual who "cares for" another individual, or individual "in the care of" another individual, shall encompass: (1) any individuals who are part of the same household, as defined in § 54.400 of this chapter; (2) parents, guardians, and minor children even if the parents and children live at different addresses; (3) those who care for, or are in the care of, another individual by valid court order or power of attorney; and (4) an individual who is the parent, guardian, or caretaker of a person over the age of 18 upon whom an individual is financially or physically dependent (and those persons financially or physically dependent on the parent, guardian or caretaker).

(n) *Text message*. "Text message" has the meaning given such term in section 227(e)(8) of the Communications Act of 1934, as amended (47 U.S.C. 227(e)(8)).

(o) *Voice service*. "Voice service" has the meaning given such term in section 4(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (47 U.S.C. 227b(a)).

(p) *Wireline provider of voice service*. For purposes of this subpart, "wireline provider of voice service" means "a provider of voice service that connects customers to its network primarily by wire."

§ 64.6401 Line Separation Request Submission Requirements.

(a) A survivor seeking to separate a line from a shared mobile service contract pursuant to 47 U.S.C. 345 and this subpart, or a designated representative of such survivor, shall submit to the covered provider a line separation request that:

(1) requests relief under 47 U.S.C. 345 and this subpart;

(2) identifies each line that should be separated, using the phone number associated with the line;

(3) identifies which line(s) belong to the survivor and states that the survivor is the user of those lines;

(4) in the case of a survivor seeking separation of the line(s) of any individual in the care of a survivor, includes a signed and dated affidavit that states that the individual is in the care of the survivor and is the user of the specific line(s) to be separated;

(5) in the case of a survivor seeking separation of the abuser's line(s), states that the abuser is the user of that specific line;

(6) includes the name of the survivor and the name of the abuser that is known to the survivor;

(7) provides survivor's preferred contact information for communications regarding the line separation request;

(8) in the case of a designated representative assisting with or submitting the line separation request on behalf of a survivor, provides the name of that designated representative and the designated

representative's relationship to the survivor, and states that the designated representative assisted the survivor;

(9) includes evidence that verifies that an individual who uses a line under the shared mobile contract has committed or allegedly committed a covered act against the survivor or an individual in the survivor's care. Such evidence shall be either:

(i) a copy of a signed affidavit from a licensed medical or mental health care provider, licensed military medical or mental health care provider, licensed social worker, victim services provider, or licensed military victim services provider, or an employee of a court, acting within the scope of that person's employment; or

(ii) a copy of a police report, statements provided by police, including military or Tribal police, to magistrates or judges, charging documents, protective or restraining orders, military protective orders, or any other official record that documents the covered act.

(b) A covered provider may attempt to assess the authenticity of the evidence of survivor status submitted pursuant to paragraph (a)(9) of this section, and may deny a line separation request if the covered provider forms a reasonable belief of fraud from such an assessment, but in any case shall not directly contact entities that created any such evidence to confirm its authenticity.

(c) A covered provider shall not assess the veracity of the evidence of survivor status submitted pursuant to paragraph (a)(9) of this section.

(d) Notwithstanding 47 U.S.C. 222(c)(2), and except as provided in paragraphs (d)(1) through (3) of this section, a covered provider; any officer, director, or employee of a covered provider; and any vendor, agent, or contractor of a covered provider that receives or processes line separation requests with the survivor's consent or as needed to effectuate the request, shall treat the fact of the line separation request and any information or documents a survivor submits under this subpart, including any customer proprietary network information, as confidential and securely dispose of the information not later than 90 days after receiving the information, except as provided in subparagraphs (2) and (3) below.

(1) A covered provider may only disclose or permit access to information a survivor submits under this subpart pursuant to a valid court order; to the individual survivor submitting the line separation request; to anyone that the survivor specifically designates; to those third parties necessary to effectuate the request (i.e., vendors, contractors, and agents); or, to the extent necessary, to the Commission or the Universal Service Administrative Company for processing of emergency communications support through the Lifeline program for qualifying survivors, as provided in § 54.424 of this chapter.

(2) A covered provider may retain any confidential record related to the line separation request for longer than 90 days upon receipt of a legitimate law enforcement request.

(3) A covered provider may maintain a record that verifies that a survivor fulfilled the conditions of a line separation request under this subpart for longer than 90 days after receiving the information as long as the covered provider also treats such records as confidential and securely disposes of them. This record shall not contain the documentation of survivor status described in paragraph (a)(9) of this section or other original records a survivor submits with a request under this subpart.

(4) A covered provider shall implement data security measures commensurate with the sensitivity of the information submitted with line separation requests, including policies and procedures governing

confidential treatment and secure disposal of the information a survivor submits under this subpart, train employees on those policies and procedures, and restrict access to databases storing such information to only those employees who need access to that information.

(5) A covered provider shall not use, process, or disclose the fact of a line separation request or any information or documentation provided with such a request to market any products or services.

(e) Nothing in this section shall affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) that has less stringent requirements for providing evidence of a covered act (or any similar category of conduct) than this section.

§ 64.6402 Processing of Separation of Lines from a Shared Mobile Service Contract.

(a) Subject to the requirements of this section, as soon as feasible, but not later than close of business two businesses days after receiving a completed line separation request from a survivor submitted pursuant to § 64.6401, a covered provider shall, consistent with the survivor's request:

(1) separate the line(s) of the survivor, and the line(s) of any individual in the care of the survivor, from the shared mobile service contract; or

(2) separate the line(s) of the abuser from the shared mobile service contract.

(b) A covered provider shall attempt to authenticate, using multiple authentication methods if necessary, that a survivor requesting a line separation is a user of the specific line(s).

(1) If the survivor is the primary account holder or a user designated to have account authority by the primary account holder, a covered provider shall attempt to authenticate the identity of the survivor in accordance with the covered provider's authentication measures for primary account holders or designated users.

(2) If the survivor is not the primary account holder or a designated user, the covered provider shall attempt to authenticate the identity of the survivor using methods that are reasonably designed to confirm the survivor is actually a user of the specified line(s) on the account.

(c) At the time a survivor submits a line separation request, a covered provider shall:

(1) inform the survivor, through remote means established in § 64.6403, that the provider may contact the survivor (or the survivor's designated representative) to confirm the line separation or inform the survivor if the provider is unable to complete the line separation;

(2) inform the survivor of the existence of the Lifeline program as a source of support for emergency communications for qualifying survivors, as provided in § 54.424 of this chapter, including a description of who might qualify for the Lifeline program, how to participate, and information about the Affordable Connectivity Program, or other successor program, for which the survivor may be eligible due to their survivor status;

(3) if the line separation request was submitted through remote means, allow the survivor to elect the manner in which the covered provider may contact the survivor (or designated representative of the survivor) in response to the request, if necessary, which must include at least one means of communications that does not require a survivor to interact in person with an employee of the covered provider at a physical location;

(4) if the line separation request was submitted through remote means, allow a survivor to select a preferred language for future communications from among those in which the covered provider advertises, and deliver any such future communications in the language selected by the survivor; and

(5) allow a survivor submitting a line separation request to indicate the service plan the survivor chooses from among all commercially available plans the covered provider offers for which the survivor may be eligible, including any prepaid plans; whether the survivor intends to retain possession of any device associated with a separated line; and whether the survivor intends to apply for emergency communications support through the Lifeline program, as provided in § 54.424 of this chapter, if available through the covered provider.

(d) If a covered provider cannot operationally or technically effectuate a line separation request after taking reasonable steps to do so, the covered provider shall, at the time of the request (or for a request made using remote means, not later than two business days after receiving the request) notify the survivor (or designated representative of the survivor) of that infeasibility. The covered provider shall explain the nature of the operational or technical limitations that prevent the provider from completing the line separation as requested and provide the survivor with information about available alternative options to obtain a line separation and alternatives to submitting a line separation request, including starting a new account for the survivor. The covered provider shall deliver any such notification through the manner of communication and in the language selected by the survivor at the time of the request.

(e) If a covered provider rejects a line separation request for any reason other than operational or technical infeasibility, the covered provider shall, not later than two business days after receiving the request, notify the survivor (or designated representative of the survivor), through the manner of communication and the language selected by the survivor at the time of the request, of the rejection. The covered provider shall explain the basis for the rejection, describe how the survivor can either correct any issues with the existing line separation request or submit a new line separation request, and, if applicable, provide the survivor with information about available alternative options to obtain a line separation and alternatives to submitting a line separation request, including starting a new account for the survivor.

(f) A covered provider shall treat any correction, resubmission, or alternatives selected by a survivor following a denial as a new request.

(g) As soon as feasible after receiving a legitimate line separation request, a covered provider shall notify a survivor of the date on which the covered provider intends to give any formal notification of a line separation, cancellation, or suspension of service:

(1) to the primary account holder, if the survivor is not the primary account holder; and

(2) to the abuser, if the line separation involves the abuser's line.

(h) A covered provider shall not notify an abuser who is not the primary account holder when the covered provider separates the line(s) of a survivor or an individual in the care of a survivor from a shared mobile service contract.

(i) A covered provider shall not notify a primary account holder of a request by a survivor to port-out a number that is the subject of a line separation request. A covered provider shall not notify a primary account holder of a survivor's request for a SIM change when made in connection with a line separation request pursuant to 47 U.S.C. 345 and this subpart.

(j) A covered provider shall only communicate with a survivor as required by this subpart or as necessary to effectuate a line separation. A covered provider shall not engage in marketing and advertising communications that are not related to assisting the survivor with understanding and selecting service options.

(k) As soon as feasible after receiving a legitimate line separation request from a survivor, a covered provider shall lock the account affected by the line separation request to prevent all SIM changes, number ports, and line cancellations other than those requested as part of the line separation request pursuant to 47 U.S.C. 345 and this subpart until the request is processed or denied.

(l) A covered provider shall effectuate a legitimate line separation request submitted pursuant to this subpart, and any associated number port and SIM change requests, regardless of whether an account lock is activated on the account.

(m) A covered provider receiving a request from any customer other than the survivor requesting that the covered provider stop or reverse a line separation on the basis that the line separation request was fraudulent shall make a record of the request in the customer's existing account and, if applicable, the customer's new account, in the event further evidence shows that the line separation request was in fact fraudulent.

(n) A covered provider shall provide a survivor with documentation that clearly identifies the survivor and shows that the survivor has submitted a legitimate line separation request under 47 U.S.C. 345(c)(1) and this subpart upon completion of the provider's line separation request review process. The documentation shall include: (1) the survivor's full name; (2) confirmation that the covered provider authenticated the survivor as a user of the line(s) subject to the line separation request; and (3) a statement that the survivor has submitted a legitimate line separation request under 47 U.S.C. 345(c)(1). The covered provider shall provide this documentation to survivors in a written format that can be easily saved and shared by a survivor.

§ 64.6403 Establishment of Mechanisms for Submission of Line Separation Requests.

(a) A covered provider shall offer a survivor the ability to submit a line separation request through secure remote means that are easily navigable, provided that remote options are commercially available and technically feasible. A covered provider shall offer more than one remote means of submitting a line separation request and shall offer alternative means to accommodate individuals with different disabilities. A covered provider may offer means of submitting a line separation request that are not remote if the provider does not require a survivor to use such non-remote means or make it more difficult for survivors to access remote means than to access non-remote means. For purposes of this subpart, remote means are those that do not require a survivor to interact in person with an employee of the covered provider at a physical location.

(b) The means a covered provider offers pursuant to this section must allow survivors to submit any information and documentation required by 47 U.S.C. 345 and this subpart. A covered provider may offer means that allow or require survivors to initiate a request using one method and submit documentation using another method. A covered provider shall permit a survivor to submit any documentation required by 47 U.S.C. 345 and this subpart in any common format.

(c) Any means that a covered provider offers pursuant to this section shall:

(1) use wording that is simple, clear, and concise;

(2) present the information requests in a format that is easy to comprehend and use;

(3) generally use the same wording and format on all platforms available for submitting a request;

(4) clearly identify the information and documentation that a survivor must include with a line separation request and allow survivors to provide that information and documentation easily;

(5) be available in all the languages in which the covered provider advertises its services; and

(6) be accessible by individuals with disabilities, including being available in all formats (e.g., large print, braille)in which the covered provider makes its service information available to individuals with disabilities.

§ 64.6404 Prohibitions and Limitations for Line Separation Requests.

(a) A covered provider may not make separation of a line from a shared mobile service contract under this subpart contingent on any limitation or requirement other than those described in section 64.6405 of this subpart, including, but not limited to:

(1) payment of a fee, penalty, or other charge;

(2) maintaining contractual or billing responsibility of a separated line with the provider;

(3) approval of separation by the primary account holder, if the primary account holder is not the survivor;

(4) a prohibition or limitation, including payment of a fee, penalty, or other charge, on number portability, provided such portability is technically feasible;

(5) a prohibition or limitation, including payment of a fee, penalty, or other charge, on a request to change phone numbers;

(6) a prohibition or limitation on the separation of lines as a result of arrears accrued by the account;

(7) an increase in the rate charged for the mobile service plan of the primary account holder with respect to service on any remaining line or lines;

(8) the results of a credit check or other proof of a party's ability to pay; or

(9) any other requirement or limitation not specifically permitted by the Safe Connections Act of 2022, Pub. L. No. 117-223, 47 U.S.C. 345.

(b) Nothing in paragraph (a) shall be construed to require a covered provider to provide a rate plan for the primary account holder that is not otherwise commercially available or to prohibit a covered provider from requiring a survivor requesting a line separation to comply with the general terms and conditions associated with using the covered provider's services, as long as those terms and conditions do not contain the enumerated prohibitions in 47 U.S.C. 345(b)(2) and this section, and do not otherwise hinder a survivor from obtaining a line separation.

§ 64.6405 Financial Responsibility Following Line Separations.

(a) Beginning on the date on which a covered provider transfers billing responsibilities for and use of telephone number(s) to a survivor following a line separation under § 64.6402(a), the survivor shall assume financial responsibility, including for monthly service costs, for the transferred telephone number(s), unless ordered otherwise by a court. Upon the transfer of the telephone number(s) under § 64.6402(a) to separate the line(s) of the abuser from a shared mobile service contract, the survivor shall have no further financial responsibilities to the transferring covered provider for the services provided by the transferring covered provider for the telephone number(s) or for any mobile device associated with the abuser's telephone number(s).

(b) Beginning on the date on which a covered provider transfers billing responsibilities for and rights to telephone number(s) to a survivor following a line separation under § 64.6402(a), the survivor shall not assume financial responsibility for any mobile device(s) associated with the separated line(s), unless the survivor purchased the mobile device(s), or affirmatively elects to maintain possession of the mobile device(s), unless otherwise ordered by a court.

(c) Following a line separation under § 64.6402(a), a covered provider shall maintain any arrears previously accrued on the account with the subscriber who was the primary account holder prior to the line separation.

§ 64.6406 Notice of Line Separation Availability to Consumers.

(a) A covered provider shall make information about the line separation options and processes described in this subpart readily available to consumers:

(1) on a support-related page of the website and mobile application of the provider in all languages in which the provider advertises on the website;

(2) in physical stores via flyers, signage, or other handouts that are clearly visible and accessible to consumers, in all languages in which the provider advertises in that particular store and on its website;

(3) in a manner that is accessible to individuals with disabilities, including all formats (e.g., large print, braille) in which a covered provider makes its service information available to individuals with disabilities; and

(4) in other forms of public-facing consumer communication.

In providing this information to consumers, a covered provider shall include, at a minimum, an overview of the line separation process; a description of survivors' service options that may be available to them; a statement that the Safe Connections Act does not permit covered providers to make a line separation conditional upon the imposition of penalties, fees, or other requirements or limitations; basic information concerning the availability of the Lifeline support for qualifying survivors; and a description of which types of line separations the provider cannot perform in all instances due to operational or technical limitations, if any.

§ 64.6407 Employee Training.

A covered provider must train its employees who may interact with survivors regarding a line separation request on how to assist them or on how to direct them to other employees who have received such training.

§ 64.6408 Protection of the Privacy of Calls and Text Messages to Covered Hotlines.

(a) All covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service shall:

(1) Omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission.

(2) Maintain internal records of calls and text messages omitted from consumer-facing logs of calls and text messages pursuant to subparagraph (a)(1) of this section.

(3) Be responsible for downloading the initial database file and subsequent updates to the database file from the central database established by the Commission. Updates must be downloaded and implemented by covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service no later than 15 days after such updates are made available for download.

(b) With respect to covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service that are not small service providers, compliance with paragraph (a) of this section shall be required [INSERT DATE ONE YEAR AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In the event the Wireline Competition Bureau has not released the database download file specification by [INSERT DATE 4 MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], or in the event the Wireline Competition Bureau has not announced that the database administrator has made the initial database download file available for testing by [INSERT DATE 10 MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the compliance deadline set forth in this paragraph shall be extended consistent with the delay, and the Wireline Competition Bureau is delegated authority to revise this § 64.6408 accordingly.

(c) With respect to small service providers that are covered providers or wireline providers of voice service, compliance with paragraph (a) of this section shall be required [INSERT DATE 18 MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In the event the Wireline Competition Bureau has not released the database download file specification by [INSERT DATE 10 MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], or in the event the Wireline Competition Bureau has not announced that the database administrator has made the initial database download file available for testing by [INSERT DATE 16 MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the compliance deadline set forth in this paragraph shall be extended consistent with the delay, and the Wireline Competition Bureau is delegated authority to revise this § 64.6408 accordingly.

§ 64.6409 Compliance Date.

Sections 64.6400 – 64.6407 of this Subpart II may contain information-collection and/or recordkeeping requirements. Compliance with sections 64.6400 – 64.6407 will not be required until this section 64.6409 is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after the Office of Management and Budget completes review of any information collection requirements in sections 64.6400 – 64.6407 of this Subpart II that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for sections 64.6400 – 64.6407 by subsequent Public Notice and to cause this Subpart II to be revised accordingly.

3. Amend § 64.2010 to read as follows:

§ 64.2010 Safeguards on the disclosure of customer proprietary network information.

* * * * *

(f) Notification of Account Changes. (1) Telecommunications carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten password, online account, or address of record is created or changed. This notification is not required when the customer initiates service, including the selection of a password at service initiation. This notification may be through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record, and must not reveal the changed information or be sent to the new account information.

(2) Paragraph (f)(1) of this section does not apply to a change made in connection with a line separation request under 47 U.S.C. 345 and Subpart II of this chapter.

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(h) Compliance with the provision in paragraph (f) applicable to line separation requests under 47 U.S.C. 345 and Subpart II of this chapter will not be required until this paragraph (h) is removed or contains a compliance date, which will not occur until the later of: i) [INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS REPORT AND ORDER]; or ii) after OMB completes review of any information collection requirements in Subpart II of this Part 64 that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (f) by subsequent Public Notice and to cause this section 64.2010 to be revised accordingly.

* * * * *

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 *Supporting Survivors of Domestic and Sexual Violence; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program Notice of Proposed Rulemaking* (*Safe Connections Notice*), released in February 2023.[2] The Commission sought written public comment on the proposals in the *Safe Connections 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. Congress enacted the Safe Connections Act of 2022[4] (Safe Connections Act or SCA) in November of 2022 to ensure survivors of domestic violence can separate from abusers without losing independent access to their mobile service plan.[5] The SCA amends the Communications Act of 1934 (Communications Act) to require mobile service providers to separate the line of a survivor of domestic violence (and other related crimes and abuse), and any individuals in the care of the survivor, from a mobile service contract shared with an abuser within two business days after receiving a request from the survivor.[6] The SCA also directs the Commission to issue rules, within 18 months of the statute's enactment, implementing the line separation requirement.[7] Additionally, the SCA requires the Commission to designate either the Lifeline program or Affordable Connectivity Program (ACP) as the vehicle for providing survivors suffering financial hardship with emergency communications support for up to six months.[8] Further, the legislation requires the Commission to open a rulemaking within 180 days of enactment to consider whether to, and how the Commission should, establish a central database of domestic abuse hotlines to be used by service providers and require such providers to omit, subject to certain conditions, any records of calls or text messages to the hotlines from consumer-facing call and text message logs.[9]

3. The *Report and Order* implements the SCA, adopting measures we believe will aid survivors who lack meaningful support and communications options when establishing independence from an abuser.[10] We take action to ensure that survivors of domestic violence are able to maintain critical access to reliable, safe, and affordable connectivity. Such connectivity permits survivors to contact family and friends, and seek help through services such as domestic abuse hotlines. Survivors

[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] *See Supporting Survivors of Domestic and Sexual Violence; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-450, Notice of Proposed Rulemaking, FCC 23-9 (Feb. 17, 2023) (*Safe Connections Notice*).

[3] 5 U.S.C. § 604.

[4] Safe Connections Act of 2022, Pub. L. No. 117-223, 116 Stat. 2280 (Safe Connections Act or SCA).

[5] Safe Connections Act § 3(4) (finding that "independent access to a wireless phone plan can assist survivors in establishing security and autonomy").

[6] Safe Connections Act § 4 (adding section 345 to the Act).

[7] Safe Connections Act § 5(b)(1)(A).

[8] Safe Connections Act § 5(b)(1), (2).

[9] Safe Connections Act § 5(b)(3).

[10] Safe Connections Act § 3.

whose devices and associated telephone numbers are part of multi-line or shared plans with abusers can face difficulties separating lines from such plans and maintaining affordable service. Survivors may be reluctant to call support services such as hotlines for fear of the call log exposing the call to an abuser. Survivors may also experience financial hardship as a result of leaving a relationship with an abuser.

4. Specifically, the *Report and Order* adopts rules to implement the line separation requirement in the Safe Connections Act; adopts the Commission's proposal from the *Safe Connections Notice* relating to protecting the privacy of calls and text messages to domestic abuse hotlines to establish a central database of domestic abuse hotlines to be used by service providers and require such providers to omit, subject to certain conditions, any records of calls or text messages to the hotlines from consumer-facing call and text message logs; and designates the Lifeline program as the vehicle for providing survivors suffering financial hardship with emergency communications support for up to six months.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, we 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

6. 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.[11] 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.[12] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[13] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[14] 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.[15]

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.[16] First, while there

[11] 5 U.S.C. § 604(a)(3).

[12] *Id.* § 604 (a)(4).

[13] *Id.* § 601(6).

[14] *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."

[15] 15 U.S.C. § 632.

[16] *See* 5 U.S.C. § 601(3)-(6).

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.[17] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[18]

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."[19] 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.[20] 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.[21]

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."[22] U.S. Census Bureau data from the 2017 Census of Governments[23] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[24] Of this number, there were 36,931 general purpose governments (county,[25] municipal, and town or township[26]) with populations of

[17] *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)

[18] *Id*.

[19] *See* 5 U.S.C. § 601(4).

[20] 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.

[21] *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.

[22] *See* 5 U.S.C. § 601(5).

[23] *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.

[24] *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.

[25] *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

(continued….)

less than 50,000 and 12,040 special purpose governments—independent school districts[27] with enrollment populations of less than 50,000.[28] 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."[29]

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[30] 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.[31] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[32] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[33]

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[34] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[35] Of this number, 2,964 firms operated

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with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[26] *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.

[27] *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.

[28] 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.

[29] 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.

[30] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[31] *Id.*

[32] *Id.*

[33] 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.

[34] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[35] *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.

with fewer than 250 employees.[36] 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.[37] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[38] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[39] is the closest industry with an SBA small business size standard.[40] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[41] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[42] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[43] Of this number, 2,964 firms operated with fewer than 250 employees.[44] 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.[45] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[46] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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.[47]

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[36] *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.

[37] 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. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[38] *Id.*

[39] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[40] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[41] 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.

[42] *Id.*

[43] *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.

[44] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[45] 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.

[46] *Id.*

[47] 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

(continued….)

Wired Telecommunications Carriers[48] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[49] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[50] Of this number, 2,964 firms operated with fewer than 250 employees.[51] 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.[52] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[53] 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 have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[54] is the closest industry with a SBA small business size standard.[55] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[56] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[57] Of this number, 2,964 firms operated with fewer than 250 employees.[58] 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.[59] 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.

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Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[48] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[49] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[50] *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.

[51] *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.

[52] 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.

[53] *Id.*

[54] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[55] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[56] *Id.*

[57] *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.

[58] *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.

[59] 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.

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."[60] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.[61] Based on industry data, only six cable system operators have more than 498,000 subscribers.[62] 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.[63] 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[64] is the closest industry with a SBA small business size standard.[65] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[66] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[67] Of this number, 2,964 firms operated with fewer than 250 employees.[68] 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.[69] Of these providers,

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[60] 47 U.S.C. § 543(m)(2).

[61] *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice.. *See* 47 CFR § 76.901(e)(1).

[62] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q (*last visited Sept. 27, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[63] 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).

[64] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[65] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[66] *Id.*

[67] *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.

[68] *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.

[69] 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. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

the Commission estimates that 87 providers have 1,500 or fewer employees.[70] 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.[71] 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.[72] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[73] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[74] Of that number, 2,837 firms employed fewer than 250 employees.[75] 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.[76] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[77] 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."[78] 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.[79] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[80] Of this number, 242 firms had revenue of less than $25 million.[81] 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

[70] *Id.*

[71] *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.

[72] *Id.*

[73] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[74] *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.

[75] *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.

[76] 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.

[77] *Id.*

[78] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[79] *See* 13 CFR § 121.201, NAICS Code 517410.

[80] *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.

[81] *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.

satellite telecommunications services.[82] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[83] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

20. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[84] Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"[85] Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[86] Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[87] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[88] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[89] Of that number, 2,837 firms employed fewer than 250 employees.[90]

21. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.[91] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,[92] as well as on terrestrial fixed wireless broadband providers in general,[93] we believe that the majority of

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[82] 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.

[83] *Id.*

[84] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[85] Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports.

[86] *See* 47 CFR § 1.7001(a)(1).

[87] *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.

[88] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[89] *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.

[90] *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.

[91] *See IAS Status 2019,* Fig. 30.

[92] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

[93] *Id.* at 8, para. 22.

wireless Internet access service providers can be considered small entities.

22. *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.[94] 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.[95] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[96] Mobile virtual network operators (MVNOs) are included in this industry.[97] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[98] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[99] Of that number, 1,375 firms operated with fewer than 250 employees.[100] 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.[101] Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.[102] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

23. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[103] 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.[104] Mobile virtual network operators (MVNOs) are included in this industry.[105] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[106] U.S. Census Bureau data for 2017

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[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] *Id*.

[98] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[99] *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.

[100] *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.

[101] 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.

[102] *Id.*

[103] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[104] *Id.*

[105] *Id*.

[106] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

show that 1,386 firms in this industry provided resale services for the entire year.[107] Of that number, 1,375 firms operated with fewer than 250 employees.[108] 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.[109] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[110] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

24. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[111] 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.[112] 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.[113] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[114] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[115] Of those firms, 1,039 had revenue of less than $25 million.[116] 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

25. In the *Report and Order*, the rules we adopt regarding the separation of lines from shared mobile service contracts require all small and other covered providers to take several actions with regard to reporting, recordkeeping, and other compliance matters.

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[107] *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.

[108] *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.

[109] 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. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[110] *Id.*

[111] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[112] *Id.*

[113] *Id*.

[114] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[115] *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.

[116] *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. Specifically, within two business days of receiving a completed line separation request from a survivor, a covered provider must separate the line(s) of a survivor (and any line(s) of an individual in the care of a survivor) or the line(s) of an abuser from a shared mobile service contract under which a survivor and abuser each use a line. To facilitate such line separations, a covered provider must establish more than one secure remote means through which a survivor may submit all information required to effectuate a line separation request and such means must be accessible by survivors with disabilities. A covered provider must treat any information submitted by a survivor in connection with a line separation request as confidential, which means the covered provider must securely dispose of such information within 90 days, subject to certain exceptions; implement policies and procedures governing the treatment and disposal of such information; train employees on such procedures; and restrict access to databases storing such information. Furthermore, at the time a survivor submits a line separation request, a covered provider must allow the survivor to indicate service choices, including from among any commercially available plans offered by the covered provider. Our rules also require that, as part of the line separation request mechanism, a covered provider inform a survivor of the availability of funding from the Lifeline program, and about the rules pertaining to participation in Lifeline.

27. After receiving a line separation request from a survivor, a covered provider must notify the survivor that the covered provider may contact the survivor or the survivor's designated representative to confirm the line separation or to inform them of the covered provider's inability to complete the line separation. When communicating with a survivor or a survivor's designated representative, a covered provider must allow the survivor or the designated representative to select the manner of communication. Furthermore, a covered provider must provide documentation confirming receipt of the survivor's legitimate line separation request that clearly identifies the survivor by name. A covered provider must attempt to authenticate that a survivor submitting a line separation request is in fact a user of the specific line identified by the survivor. A covered provider must also lock the account subject to a line separation to prevent all SIM changes, number ports, and line cancellations and effectuate a line separation for the completed request, subject to operational or technical infeasibility. If a line separation is operationally or technically infeasible, a covered provider must inform the survivor of the nature of the infeasibility and provide information about alternative options, such as establishing a new account for the survivor. A covered provider must notify the survivor of the date it will notify the primary account holder of the completed line separation if the survivor who submitted a complete line separation request is not also the primary account holder. In the event a survivor elects to separate an abuser's line, a covered provider must also provide notice to the survivor of when it will notify the abuser of the separation. Additionally, if the covered provider rejects a line separation request for any reason other than operational or technical infeasibility, the covered provider must notify the survivor within two business days through the manner of communication selected by the survivor of the rejection. This notification must also explain the basis for rejection, describe how the survivor can correct any issues with the existing request or submit a new one, and, if applicable, provide the survivor with information about alternative options, including starting a new account.

28. The new rules also require a covered provider to effectuate a line separation request regardless of whether an account lock is activated on the account. To balance the need to protect survivors with the need to protect against fraud, our rules also require that covered providers make a record of any customer other than the survivor who requests that the covered provider stop or reverse a line separation because of fraud.

29. In addition to the procedural requirements mentioned above, we require that covered providers train employees who will interact with survivors on the sensitivities surrounding such interactions. We also require that covered providers notify consumers of the availability of line separations from shared mobile service contracts on its website, in physical stores, and in other forms of public-facing consumer communication. Our rules detail the specific information that must be included by covered providers and we require that this notice be in any language in which the covered provider currently advertises.

30. Our rules also implement the SCA's statutory requirements that covered providers take

certain actions with regard to financial responsibilities and account billing following completed line separations. Specifically, unless otherwise ordered by a court, when survivors separate their lines and the lines of individuals in their care from a shared mobile service contract, a covered provider must ensure that the financial responsibilities, including monthly service costs, for the transferred numbers are assumed by the survivor beginning on the date on which the covered provider transfers the billing responsibilities for and use of the transferred numbers to those survivors. We also require covered providers to ensure that any previously-accrued arrears on an account following a line separation stay with the person who was the primary account holder prior to the line separation.

31. The rules we adopt relating to protecting the privacy of calls and text messages to domestic abuse hotlines require all covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service to omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database that we establish. These service providers must maintain internal records of these omitted calls and text messages. In addition, these providers are responsible for downloading the initial database file and subsequent updates to the database file from the central database that we establish. Updates must be downloaded and implemented by covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service no later than 15 days after such updates are made available for download. In the *Report and Order*, we exempt from its rules pertaining to protecting the privacy of calls and text messages to domestic abuse hotlines service providers that do not create their own call logs but, instead, rely on their underlying facilities-based provider to create such call logs and clarifying that wholesale service providers incur such an obligation.

32. We delegate many of the details regarding establishing the central database of hotlines to the Wireline Competition Bureau (Bureau), but direct the Bureau not to fund creation and maintenance of the database through an assessment on service providers. The rules adopted in the *Report and Order* service providers serving the vast majority of Americans to comply with the rules 12 months after publication of the *Report and Order* in the Federal Register. Small service providers, defined as covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service that have 100,000 or fewer voice service subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the provider's affiliates), are provided additional time an additional six months to comply (18 months). We provide two important caveats to aid the ability of service providers to comply with these deadlines. First, the deadline for compliance will be no earlier than eight months after the Bureau has published the database download file specification (14 months for small service providers), which should be the final detail necessary for service providers to complete design of their systems. Second, the deadline will be no earlier than two months after the Bureau announces that the database administrator has made the initial database download file available for testing (eight months for small service providers). To the extent that the date of either announcement causes the deadline to be later than 12 months after Federal Register publication (18 months for small service providers), the Bureau should announce the new deadline for implementation based on the date of the announcement.

33. The *Report and Order* directs the Universal Service Administrative Company (USAC) to ensure that survivors experiencing financial hardship will be able to apply for and enroll in the Lifeline program. The *Report and Order* also directs USAC to implement processes to transition survivors from emergency communications support at the end of the six-month emergency support period mandated by the SCA. The actions taken in the *Report and Order* do not place any significant new requirements on service providers that are also eligible telecommunications carriers (ETC) participating in the Lifeline program, regardless of whether ETCs are large or small businesses. The Lifeline rules already applicable to ETCs remain largely the same. We therefore expect the actions we have taken in the *Report and Order* achieve the goals of the SCA without placing additional costs and burdens on covered providers; however, there is not sufficient information on the record to quantify the cost of compliance for small entities, or to determine whether it will be necessary for small entities to hire professionals to comply with the adopted requirements.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. 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."[117]

35. With regard to line separations, the Safe Connections Act directs the Commission to consider implementation timelines for small covered providers,[118] and after examining the record, we declined to adopt a different implementation timeframe for small providers.[119] First, while the record indicated that small covered providers may need additional time to comply with the Safe Connections Act and our rules as a whole, commenters failed to provide sufficient justification for why small covered providers would require additional time to implement the line separation provisions specifically. Second, given the critical and potentially lifesaving importance of independent communications for survivors escaping abusive circumstances, we think it self-evident that survivors who receive service from small covered providers are no less entitled to the protections made available by the Safe Connections Act than survivors who receive service from other covered providers. Third, we found that adopting inconsistent timelines for small and large providers may make it difficult for stakeholders to carry out effective messaging campaigns touting the availability of line separations. This inconsistency may confuse survivors and ultimately dissuade them from further pursuing a line separation if they are told that their current carrier does not offer the ability despite having been informed of the Safe Connections Act's features by a stakeholder messaging campaign. Fourth, we believe that Congress included the technical and operational infeasibility provisions to account for differences in the capabilities of providers (among other reasons), particularly between large and small providers, and to incentivize and protect providers while they work to update or develop systems and processes capable of fully effectuating the SCA's requirements and our rules within the statutory timeframe. For these reasons, we declined to extend the implementation timeline for small entities.

36. With regard to our rules pertaining to protecting the privacy of calls and texts to hotlines, we received comments noting that smaller service providers work with limited staff and other resources, requiring it taking longer to implement changes in their systems, specifically requesting 24 months to comply with any obligations that the Commission might establish.[120] As part of the directive under the Safe Connections Act to consider factors reflecting implementation of such requirements on smaller providers,[121] we adopted a deadline of 18 months from the date of publication of the *Report and Order* in the Federal Register to comply with our new rules. We found that granting smaller providers extra implementation time is appropriate, given that they may face more resource challenges than larger providers (which are given 12 months) in complying with the new rules. We found that our 18-month compliance deadline for small providers properly balances the significance of the risks faced by domestic abuse survivors, and the benefits of them being able to call hotlines and seek help without fear of the abuser accessing their call records, with the implementation challenges faced by smaller providers. We also adjusted the guaranteed periods between the two important database creation milestones and the compliance deadline for smaller service providers to compensate for the additional six months that such

[117] 5 U.S.C. § 604(a)(6).

[118] *See* Safe Connections Act § 5(b)(1)(B)(ix).

[119] *See* CCA Comments at 6-7 (requesting that the Commission extend the compliance deadline for 24 months, "at least for smaller carriers").

[120] *Id*.

[121] Safe Connections Act § 5(b)(3)(B)(ii), (iii).

providers are granted to comply. Our decision to exempt from the requirements service providers that do not create their own call logs but, instead, rely on their underlying facilities-based provider to create such call logs should be of significant benefit to smaller service providers that rely on resale rather than constructing capital-intensive networks to provide service.

37. We delegated many of the details regarding establishing the central database of hotlines to the Wireline Competition Bureau (Bureau), but direct the Bureau not to fund the creation and maintenance of the database through an assessment on service providers. In designating the Lifeline program to provide emergency communications support to survivors experiencing financial hardship, the *Report and Order* largely places requirements on USAC, as the Lifeline program administrator, to implement the mandated requirements. Service providers that are also ETCs are still required to ensure their compliance with all Lifeline rules, but this is not a new requirement. There are limited new requirements for ETCs, large and small, but these requirements align with existing requirements for participation in the Lifeline program and merely clarify that such requirements will also apply to survivors that might enter the Lifeline program. This approach allowed the Commission to minimize any significant impact on all participating entities.

G. Report to Congress

38. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[122] 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.[123]

[122] 5 U.S.C. § 801(a)(1)(A).

[123] *See id*. § 604(b).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Supporting Survivors of Domestic and Sexual Violence*; *Lifeline and Link Up Reform Modernization*; *Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-450, Report and Order (Nov. 15, 2023).

Last week I traveled to Texas to visit the headquarters of the National Domestic Violence Hotline. You think you know strength and resilience. But to see in action those who work at the Hotline and the way they take in calls and respond to inquiries is extraordinary. They have a steely patience, a deep empathy, and a special skill providing guidance that helps women and men leave violent and abusive situations.

Their work is so important. Because according to the Hotline, one in four women in this country is a survivor of domestic violence. One in seven men, too. These are your friends, your family, and your neighbors. Every one of them needs a safe connection. And for those affected by domestic abuse, a phone is a lifesaver. It makes it possible to reach out for help. It is a gateway to building a new life, away from harm.

That is why we are focusing on the connection between survivors and communications. This is new for the Federal Communications Commission. We have never before dedicated our resources to identifying how to help securely connect survivors of domestic violence. But in July of last year we began an inquiry to explore this intersection and ask what we could do. Then Congress stepped in and passed the Safe Connections Act, giving us new tools to address communications for survivors. So in February of this year we started a rulemaking to put this new authority to use. And today, we adopt the FCC's first-ever rules to help with safe communications for survivors of domestic violence.

With these rules, we do three things. First, we address family plans. For many of us, family plans cut costs and make wireless communications simple with one bill for multiple phones. But for survivors, these plans are fraught. They can be used to monitor calls and location. They can be a tool for control. So we are setting up a way for survivors to swiftly and securely separate their phone lines from family plans. Second, we are making sure that survivors can safely call domestic violence hotlines by removing these numbers from call and text logs so that they can reach out without fear of discovery from their abusers. Third, we are making sure struggling survivors can receive low-cost phone service through our Lifeline program for six months after separation. These are meaningful changes and across the board we appreciate the work of the wireless industry to ensure they happen.

We would not be here today without the input and support of so many people working to end domestic violence. Let me start by thanking the heroes at the National Domestic Violence Hotline who I had the privilege to meet in Texas. Let me also extend my gratitude to others I met during this visit, including representatives from the Texas Council on Family Violence, Asian Family Support Services of Austin, Family Violence Prevention Services San Antonio, Hays Caldwell Women's Center, SAFE Alliance, and Texas Health and Human Services. I also want to thank the many organizations we worked with here in Washington, including the National Coalition Against Domestic Violence, The National Center for Victims of Crime, the DC Coalition Against Domestic Violence, Mary's Center, and My Sister's Place, which provided my office with the opportunity to spend some time at their shelter, which is a sanctuary for survivors right here in our own backyard. These relationships matter. Because what we are doing today is a start. We want to ensure this community stays in contact with us so we can make sure our policies work and support the connections survivors need.

I also want to thank Senator Schatz, Senator Fischer, Representative Eshoo, Representative Walberg, and Representative Kuster for championing the Safe Connections Act, plus those at the agency who worked to make this possible, including: David Brodian, Jessica Campbell, Adam Copeland, Ty Covey, Denise Golumbaski, Jodie Griffin, Melissa Kirkel, Ed Krachmer, Chris Laughlin, Jodie May, Nick Page, Mason Shefa, and Noah Stein from the Wireline Competition Bureau; Garnet Hanly from the

Wireless Telecommunications Bureau; Eduard Bartholme, Diane Burstein, Aaron Garza, Eliot Greenwald, Suzy Rosen Singleton, Kristi Thornton, and Bill Wallace from the Consumer and Governmental Affairs Bureau; Hunter Deely, Kalun Lee, Phil Rosario, and Kristi Thompson from the Enforcement Bureau; Malena Barzilai, Andrea Kearney, Andrea Kelly, Doug Klein, Rick Mallen, Karen Schroeder, Anjali Singh, Jeffrey Steinberg, Elliot Tarloff, and Chin Yoo from the Office of General Counsel; Mark Azic, Eugene Kiselev, Eric Ralph, Emily Talaga, and Maciej Wachala from the Office of Economics and Analytics; and Joycelyn James and Joy Ragsdale from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Supporting Survivors of Domestic and Sexual Violence*; *Lifeline and Link Up Reform Modernization*; *Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-450, Report and Order (Nov. 15, 2023).

Today marks a significant milestone in our unwavering commitment to support survivors of domestic violence—a pervasive issue that transcends race, gender, and sexual orientation. A staggering number of individuals—over 12 million annually in the United States alone[1]—live this harrowing reality. With one in three women and one in four men experiencing such violence in their lifetimes,[2] the urgency to provide timely and effective assistance is more pressing than ever.

The Commission's implementation of the Safe Connections Act of 2022 is a crucial step in this direction. It assures survivors that in a time of need, they will have secure communication. The ability to seek help without fear or the risk of being tracked by an abuser is truly a lifeline. Our new rules mandating that providers exclude calls and texts to survivor assistance hotlines from consumer call logs ensures that survivors can reach out to vital resources, like the National Domestic Violence Hotline, with confidence and privacy.

Moreover, we recognize the acute challenges survivors face, particularly where an urgent escape means resources are critical but documentation may be out of reach. By integrating temporary communications services into the Lifeline program, we are extending a critical helping hand to those in financial hardship.

I am immensely proud of the Commission's dedication to this cause. This decision is more than just about access to communication services; it's about providing survivors with the safety and privacy they need to utilize these resources. Thank you to Senators Schatz, Fischer, Blumenthal, Scott, Rosen, and Congresswomen Kuster and Eshoo for their leadership in passing the Safe Connections Act. I extend my gratitude to the staff for their exceptional work and approve.

[1] The National Domestic Hotline, *Domestic Violence Statistics*, available at https://www.thehotline.org/stakeholders/domestic-violence-statistics/#:~:text=Over%201%20in%203%20women,intimate%20partner%20in%20their%20lifetime (last visited Nov. 13, 2023).

[2] *Id.*

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Supporting Survivors of Domestic and Sexual Violence*; *Lifeline and Link Up Reform Modernization*; *Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-450, Report and Order (Nov. 15, 2023).

Anyone can find themselves in an abusive situation, needing to exit. When survivors of abuse and their loved ones are looking for a way out, disentangling their cell phone – their lifeline to support – from an abuser is critical. Today, the Commission takes an important step to make it easier for survivors to exit safely.

At the direction of Congress, we require providers to separate the phone line of a survivor of abuse from the phone line of the abuser, when the survivor submits a completed request to separate the lines. Individuals that provide care for survivors of abuse can also request line separations that help the survivor.

Abuse occurs in many ways and our action today will provide relief for individuals facing a variety of abusive situations. For example, according to the Centers for Disease Control (CDC), about 41% of women and 26% of men experienced sexual violence, physical violence, or stalking by an intimate partner during their lifetime.[784] The CDC also estimates that 1 in 10 people aged 60 and older (who live at home) experience elder abuse, including neglect and exploitation.[785]

I would like to highlight the plight of two communities facing specific situations of abuse – farmworker women and indigenous women.

Farmworker women report higher rates of Intimate Partner Violence than the general population.[786] Additionally, farmworker women are at particular risk for sexual harassment, assault, and rape on the job, with a study noting that 80% of farmworker women reported experiencing some form of sexual harassment.[787] This community is at risk, in part, because farmworkers often lack familiarity with their legal rights, live in remote places due to the nature of their work, and have little access to resources and transportation to reach support.

Especially during Native American Heritage Month, I would also like to shine a light on the crisis of Missing and Murdered Indigenous Women and Girls across our nation. A 2016 study by the National Institute of Justice (NIJ) found that 84.3% of American Indian and Alaska Native women have experienced violence in their lifetimes.[788] In 2022, the National Crime Information Center accounted for

[784] CDC, *National Intimate Partner and Sexual Violence Survey (NISVS)*, https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html (last visited Nov. 15, 2023).

[785] CDC, *Fast Facts: Preventing Elder Abuse*, https://www.cdc.gov/violenceprevention/elderabuse/fastfact.html (last visited Nov. 15, 2023).

[786] Andrea L. Hazen & Fernando I. Soriano, *Experiences with Intimate Partner Violence Among Latina Women*, Violence Against Women, 13(6), 562–582 (2007), https://doi.org/10.1177/1077801207301558.

[787] Irma Morales Waugh, *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,* Violence Against Women, 16(3), 237-261 (2010), https://journals.sagepub.com/doi/abs/10.1177/1077801209360857?journalCode=vawa. This study examined sexual harassment experiences of Mexican immigrant farmworking women (n = 150) employed on California farms.

[788] André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, NIJ Journal, 277, 38-45 (2016), https://nij.ojp.gov/topics/articles/violence-against-american-indian-and-alaska-native-women-and-men.

5,491 reports of missing American Indian and Alaska Native women.[789] And, according to the CDC, American Indian and Alaska Native women experienced the second highest rate of homicide in 2020, with homicide being in the top 10 leading causes of death for this community.[790] These statistics are devastating.

Although a long-established government-to-government relationship between Native Nations and the United States government has affirmed the inherent right to self-government of Native Nations, a fraught history of evolving federal policy towards Native peoples has left a criminal jurisdiction gap exposing indigenous women to harm. This gap means that when a Native person is harmed by a non-Native person on a Tribal Land, it is unclear who can bring the wrongdoer to justice – resulting in perpetrators that can act with impunity. This criminal jurisdiction gap leaves Native women exposed and fuels the crisis of Missing and Murdered Indigenous Women and Girls.

I thank Chairwoman Rosenworcel for incorporating edits into the item that highlight the important role that Tribal Governments and Tribal police departments can play in providing information to substantiate an individual's status as a survivor when requesting a line separation.

I would also like to acknowledge that in order for farmworker and indigenous women to be able to benefit from our decision today, we must reach them where they are. For that reason, I would like to encourage organizations that serve farmworker and indigenous communities such as Alianza Nacional de Campesinas, Justice for Migrant Women, the National Indigenous Women's Resource Center, and Native Hope, to help us get the word out. We look forward to collaborating with you so that women in your communities learn about how to request a phone line separation in order to retain their phones as they navigate exiting an abusive environment.

Finally, a heartfelt thank you to the staff of the Wireline Competition Bureau for your remarkable work on this life-affirming item.

[789] Federal Bureau of Investigations (FBI), *2022 National Crime Information Center (NCIC) Missing and Unidentified Person Statistics*, at 5 (Feb. 2, 2023), https://www.fbi.gov/file-repository/2022-ncic-missing-person-and-unidentified-person-statistics.pdf/view.

[790] National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence (2022), https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf.

DECLARACIÓN DE LA COMISIONADA ANNA M. GOMEZ

Re: *Supporting Survivors of Domestic and Sexual Violence*; *Lifeline and Link Up Reform Modernization*; *Affordable Connectivity Program*, WC Docket Nos. 22-238, 11-42, 21-450, Report and Order (November 15, 2023).

Cualquiera puede encontrarse en una situación de abuso y necesitar salir de ella. Cuando los sobrevivientes de abusos y sus seres queridos buscan un escape, es fundamental separar su teléfono móvil (es decir, su salvavidas) del abusador. Hoy, la Comisión da un paso importante, facilitando el resguardo de los supervivientes que abandonan situaciones de abuso.

Por orden del Congreso, cuando el sobreviviente de abusos presenta una solicitud, incluyendo toda la documentación necesaria, para separar las líneas telefónicas, requerimos a los proveedores la separación de la línea telefónica del sobreviviente de abusos de la línea telefónica del abusador. Las personas que brindan atención a los sobrevivientes de abusos también pueden solicitar la separación de la línea telefónica para ayudar al sobreviviente.

Los abusos ocurren de muchas maneras, y nuestras medidas de hoy brindarán alivio a las personas que enfrentan una variedad de situaciones abusivas. Por ejemplo, según los Centros para el Control y la Prevención de Enfermedades (CDC), alrededor del 41% de las mujeres y el 26% de los hombres experimentaron violencia sexual, violencia física o acoso por parte de una pareja íntima durante su vida.[791] Los CDC también estiman que una de cada diez personas de 60 años o más (que viven en sus casas) sufren abusos, incluidos el abandono y la explotación.[792]

Quiero destacar la difícil situación de dos comunidades que enfrentan circunstancias específicas de abuso: las mujeres campesinas y las mujeres indígenas.

Las mujeres trabajadoras agrícolas reportan tasas más altas de violencia de pareja que la población general.[793] Además, ellas en particular corren el riesgo de sufrir acoso sexual, agresión y violación en el trabajo. Un estudio señala que el 80% de las mujeres trabajadoras agrícolas reportaron haber pasado por algún tipo de acoso sexual.[794] Esta comunidad está en riesgo, en parte, porque las trabajadoras agrícolas a menudo no están familiarizadas con sus derechos legales, viven en lugares remotos debido a la naturaleza de su trabajo y tienen poco acceso a recursos y transporte para conseguir apoyo.

Especialmente durante el mes de la herencia indígena estadounidense (Native American Heritage Month), también me gustaría arrojar luz sobre la crisis de las mujeres y niñas indígenas desaparecidas y asesinadas en toda nuestra nación. Un estudio realizado por el instituto nacional de justicia (Institute of Justice, NIJ) en 2016 reveló que el 84.3% de las mujeres indígenas americanas y nativas de Alaska han sufrido violencia en su vida.[795] En 2022, el centro nacional de información sobre delitos (National Crime

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[791] CDC, *National Intimate Partner and Sexual Violence Survey (NISVS)*, https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html (last visited Nov. 15, 2023).

[792] CDC, *Fast Facts: Preventing Elder Abuse*, https://www.cdc.gov/violenceprevention/elderabuse/fastfact.html (last visited Nov. 15, 2023).

[793] Andrea L. Hazen & Fernando I. Soriano, *Experiences with Intimate Partner Violence Among Latina Women*, Violence Against Women, 13(6), 562–582 (2007), https://doi.org/10.1177/1077801207301558.

[794] Irma Morales Waugh, *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,* Violence Against Women, 16(3), 237-261 (2010). https://journals.sagepub.com/doi/abs/10.1177/1077801209360857?journalCode=vawa. This study examined sexual harassment experiences of Mexican immigrant farmworking women (*n* = 150) employed on California farms.

[795] André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, NIJ Journal, 277, 38-45 (2016), https://nij.ojp.gov/topics/articles/violence-against-american-indian-and-alaska-native-women-and-men.

Information Center, NCIC) registró 5,491 informes de mujeres indígenas americanas y nativas de Alaska desaparecidas.[796] Y, según los CDC, las mujeres indígenas americanas y las nativas de Alaska sufrieron la segunda tasa más alta de homicidio en 2020, y el asesinato es una de las diez causas más frecuentes de muerte entre esas comunidades.[797] Estas estadísticas son devastadoras.

Aunque la relación de gobierno a gobierno establecida desde hace mucho tiempo entre las naciones indígenas y el gobierno de los Estados Unidos ha reafirmado el derecho inherente al autogobierno de las naciones indígenas, las históricas tensiones en la evolución de la política federal hacia los pueblos indígenas han derivado en una brecha de jurisdicción penal que expone a los pueblos indígenas. Esta brecha significa que cuando una persona indígena es perjudicada por una persona no indígena en una tierra tribal, no está claro quién puede llevar al transgresor ante la justicia, lo que resulta en infractores que pueden actuar con impunidad. Esta brecha de jurisdicción penal deja a las mujeres indígenas expuestas y exacerba la crisis de mujeres y niñas indígenas desaparecidas y asesinadas.

Agradezco a la presidenta de la FCC, Jessica Rosenworcel, por incorporar modificaciones a este ítem, resaltando el importante papel que los gobiernos de tribus nativo-americanas y sus departamentos de policía pueden desempeñar al proporcionar información para fundamentar el estatus de una persona como sobreviviente de abusos, al solicitar la separación de su línea telefónica.

También me gustaría subrayar que la única forma en que las trabajadoras agrícolas y las mujeres indígenas pueden beneficiarse de nuestra decisión de hoy es acercándonos a ellas. Por eso, quiero alentar a las organizaciones que sirven a los trabajadores agrícolas y a las comunidades indígenas, como la Alianza Nacional de Campesinas, Justicia para Mujeres Migrantes, el centro nacional de recursos para mujeres indígenas (National Indigenous Women's Resource Center) y Native Hope, para que nos ayuden a difundir esta información. Esperamos colaborar con ustedes para que las mujeres de sus comunidades sepan cómo solicitar la separación de una línea telefónica para conservar sus teléfonos cuando abandonan un entorno abusivo.

Finalmente, un sincero agradecimiento al personal de la oficina de competencia de servicios de línea fija (Wireline Competition Bureau) por su notable labor en este ítem que ayuda a sustentar vidas.

[796] Federal Bureau of Investigations (FBI), *2022 National Crime Information Center (NCIC) Missing and Unidentified Person Statistics*, at 5 (Feb. 2, 2023), https://www.fbi.gov/file-repository/2022-ncic-missing-person-and-unidentified-person-statistics.pdf/view.

[797] National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence (2022), https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf.

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

In the Matter of	)	
	)	
Dexter Blake	)	File No.: EB-FIELDNER-17-00023354
Mount Vernon, New York	)	NAL/Acct No.: 202432010003
	)	FRN: 0018292433

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 15, 2023 **Released: November 16, 2023**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $2,316,034 against Dexter Blake (Blake) for operating an unauthorized radio station on 104.5 MHz in Mount Vernon, New York. Blake appears to have engaged in the longstanding illicit operation of an apparently unauthorized radio station known as "Linkage Radio". Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act).[1] Pirate radio stations undermine the Commission's primary mission to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.[2] Some of the most egregious pirate radio operations are run by individuals who have ignored prior enforcement actions by the Commission. This is one such case. As such, it merits the strongest possible enforcement measures to the fullest extent of the law.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[3] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[4] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

[3] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[4] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019). That maximum limit was increased to $2,000,000 by the PIRATE Act.

inflation adjustments.[5] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[6] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain power limit.[7] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[8]

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Blake has been directly involved in the operation of a pirate radio station (Station) on 101.5 MHz and 104.5 MHz in Mount Vernon, New York, for at least fifteen years. The Station is known as Linkage Radio.[9] On August 13, 2008, in response to complaints, Enforcement Bureau (Bureau) field agents (Agents) from the New York Field Office traced the source of radio transmissions on 101.5 MHz to an FM transmitter antenna on the roof of Linkage Caribbean Restaurant, an establishment then owned by Blake, at 78 East 3rd Street, Mt. Vernon, New York (3rd Street site).[10] The Agents took field strength measurements and determined that the Station's signal exceeded the limits for operation under part 15 of the Commission's rules.[11] Commission records indicated no authorization for any FM broadcast station to operate at or near the 3rd Street site on any frequency. One of the agents spoke to Blake, who admitted to operating the Station. Blake shut down the audio remotely and told the agents that he would not operate the Station again.[12]

4. On March 3, 2009, the Commission issued an NAL (2009 NAL) against Blake for the unauthorized operation of a radio transmitter at the 3rd Street site, proposing a $10,000 forfeiture.[13] The 2009 NAL stated that the Agents "discovered a website called 'Linkage Radio' which identified Dexter Blake, aka DJ Linkage, as the owner of the Station on 101.5 MHz and the Linkage Caribbean

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[5] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,316,034 and 47 U.S.C. § 511(b) at $115,802); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

[6] 47 U.S.C. § 511(h).

[7] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[8] 47 CFR § 15.203.

[9] *See* Linkage Radio, http://www.linkageradio.com (last visited June 8, 2023).

[10] *See Dexter Blake,* Notice of Unauthorized Operation, File No. EB-08-NY-0291 (Northeast Region, New York Office, Aug. 20, 2008).

[11] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("μV/m") at three meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the Station's signal exceeded the permissible level for a non-licensed part 15 transmitter. Documentation of field strength measurements are on file in EB-FIELDNER-17-00023354.

[12] *Dexter Blake, Mt. Vernon, New York*, Notice of Apparent Liability for Forfeiture, File No. EB-08-NY-0291, para. 4 (EB 2009) (2009 NAL), *aff'd*, *Dexter Blake, Mt. Vernon, New York*, Forfeiture Order, 25 FCC Rcd 10038 (EB 2010) (*Blake Forfeiture Order*).

[13] *Id.*

Restaurant."[14] Blake did not respond to the 2009 NAL.

5. On July 22, 2010, the Commission issued a Forfeiture Order against Blake in the amount of ten thousand dollars ($10,000) for willful and repeated violations of section 301 of the Communication Act.[15] Blake subsequently acknowledged operating without a license but asked that the forfeiture be cancelled or reduced based on his inability to pay.[16] The Commission reduced the forfeiture to one thousand seven hundred dollars ($1,700) but warned Blake that "future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Blake's financial condition."[17] Blake never paid the reduced forfeiture.

6. On February 22, 2017, the Commission received a complaint that Dexter Blake was operating an unlicensed radio station on 101.5 MHz in the Mount Vernon area under the name Linkage Radio. On March 2, 2017, Agents from the New York Field Office observed the signal on 101.5 MHz and, using direction finding techniques, traced the source to a building at 159 South 13th Avenue in Mount Vernon, New York (Thirteenth Avenue site). The Agents observed a mast mounted on the roof of the building supporting a Dominator vertical antenna with a coaxial cable running down the side of the building and entering a window at the basement level.[18] The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[19] Commission records indicated no authorization for any FM broadcast station to operate at or near the Thirteenth Avenue site.[20] Agents also determined that the over-the-air signal monitored on 101.5 MHz matched the audio being streamed by lingkageradio.com.[21] A Notice of Unlicensed Operation (NOUO) was subsequently mailed to Blake.[22]

7. On April 18, 2017, using direction finding techniques, Agents traced the source of an unauthorized signal on 104.5 MHz to a small apartment building at 53 Mount Vernon Avenue, Mount Vernon, NY (Mount Vernon Avenue site).[23] The Agents observed a Dominator type vertical antenna on the apartment building rooftop. The Agents interviewed the manager of a restaurant located on the

[14] *Id.* at para. 4, n.5.

[15] *Blake Forfeiture Order*, 25 FCC Rcd at 10038.

[16] Blake "admit[ted] to having operated the unlicensed station, but claims that cancellation [was] warranted because the individual from whom he received the equipment did not advise him that he needed an individual license." *Dexter Blake*, Memorandum Opinion and Order, 27 FCC Rcd 15087, para. 3 (EB 2012).

[17] *Id.* at 15088-89, para. 6.

[18] The Dominator is a 3/4 wavelength vertical antenna designed to operate in the 87.5 to 108 MHz range providing +3 dB gain.

[19] 47 CFR § 15.239(b).

[20] On March 2, 2017, the agents also visited 511 S Fulton Avenue, Mount Vernon, NY. The Agents had identified this address as Blake's residence and also saw a map on the Linkage Radio website suggesting that this could be the location of the studio. There was a small apartment building at the address, but agents were not able to gain entry. The owner of a business location next door to the apartment building confirmed to the Agents that Dexter Blake had a "radio station" at this address.

[21] Linkage Radio programming is streamed online via the linkageradio.com site and via a Linkage Radio smartphone application. During investigations of Blake's pirate radio activities, Agents would often monitor the Linkage Radio audio stream and verified that it corresponded to the same programming that was contemporaneously being transmitted on 101.5 or 104.5 MHz, providing further evidence that Blake and Linkage Radio are responsible for the unauthorized transmissions. *See also infra* at para. 15.

[22] *Dexter Blake*, Notice of Unlicensed Operation, File No. EB-FIELDNER-17-00023354 (Columbia Field Office, Mar. 14, 2017).

[23] Agents had first visited the Thirteenth Avenue site but found that was not the source of the signal and that the previously observed roof-mounted antennas were no longer visible.

ground floor who stated that he was aware of a radio station in the building and that it was owned by Blake. The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[24] Commission records indicated no authorization for any FM broadcast station to operate at or near the Mount Vernon Avenue site. The Agents left an on-scene NOUO for both Blake and the owner of the apartment building.[25]

8. On June 12, 2017, Agents conducted a follow-up investigation at the Mount Vernon Avenue site and observed that the Dominator type vertical antenna that had been observed at this location on April 18, 2017, was no longer visible. The Agents returned to the Thirteenth Avenue site and observed that a Dominator type vertical antenna was once again visible on the roof. The Agents also monitored broadcasting on 104.5 MHz at that location and took field strength measurements of the Station and determined that the transmissions exceeded the limits for operation under part 15 of the Commission's rules.

9. During further investigations in 2017, Agents found that the Facebook icon on the Linkage Radio website linked directedly to Blake's Facebook page with a profile picture showing Blake wearing headphones and seated at a microphone, with a superimposed graphic reading "101.5 FM."[26] Another image on the Linkage Radio website at that time showed Blake seated in what appears to be a broadcast studio with a large banner behind him reading "Linkage Radio – 101.5 FM & 104.5 FM.[27]

10. In follow-up investigations at the Thirteenth Avenue site Agents took field strength measurements of the Linkage Radio transmissions on 104.5 MHz on May 29, October 18, and October 30, 2018, and on April 18 and August 20, 2019. On each of these dates the signal level exceeded the limits for unlicensed operation under part 15 of the Commission's rules.[28]

2. PIRATE Act Investigation

11. The PIRATE Act, among other provisions, codified the definition of pirate radio,[29] increased fines for pirate radio operators,[30] and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.[31]

12. On May 3 and 5, 2022, Agents observed Linkage Radio activity on 104.5 MHz in the Mount Vernon area. On both dates, using direction finding techniques, agents traced the source of the transmissions to the Thirteenth Avenue site where they observed a Dominator type vertical antenna on the roof. The Agents took field strength measurements of the Station's signal on both dates and determined

[24] 47 CFR § 15.239(b).

[25] *Dexter Blake*, Notice of Unlicensed Operation, File No. EB-FIELDNER-17-00023354 (Chicago Field Office, Apr. 18, 2017); *Brown, George*, Notice of Unlicensed Operation, File No. EB-FIELDNER-17-00023354 (Chicago Field Office, Apr. 18, 2017). NOUOs were subsequently sent via USPS and UPS. *Dexter Blake*, Notice of Unlicensed Operation, File No. EB-FIELDNER-17-00023354, File No. EB-FIELDNER-17-00023354 (Columbia Field Office, May 11, 2017); *George Brown*, Notice of Unlicensed Operation, File No. EB-FIELDNER-17-00023354 (Columbia Field Office, May 11, 2017). The Commission also mailed an NOUO to Blake on June 6, 2017. *Dexter Blake*, Notice of Unlicensed Operation, File No. EB-FIELDNER-17-00023354 (Columbia Field Office, June 6, 2017). Copies of the cited NOUOs are on file in EB-FIELDNER-17-00023354.

[26] Copy of image on file in File No. EB-FIELDNER-17-00023354.

[27] *Id*.

[28] 47 CFR § 15.239(b).

[29] 47 U.S.C. § 511(h).

[30] *Id.* § 511(a)-(b).

[31] *See id.* § 511(a) ("Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000.") (emphasis added).

that it exceeded the limits for operation under part 15 of the Commission's rules.[32]

13. On July 15, 2022, the Commission, pursuant to its new authority granted by the PIRATE Act, sent a Notice of Illegal Pirate Radio Broadcasting (NIPRB) to Michelle Hepburn—the apparent owner of the building at the Thirteenth Avenue site.[33] The NIPRB provided notice to the property owner that, under section 511(a) of the Act, persons or entities found to willfully and knowingly suffer (i.e., permit) a third party to engage in pirate radio broadcasting on their property can face significant financial penalties. Accordingly, the NIPRB notified and warned Hepburn that under the PIRATE Act the FCC may issue a fine of up to $2,000,000 if the FCC determines that she continued to permit any individual or entity to engage in pirate radio broadcasting from any property that she owned or managed. Although Hepburn did not respond to the NIPRB, pirate radio activity at the Thirteenth Avenue site ceased shortly after it was issued.

14. On February 21, 2023, Agents heard programming being transmitted on 104.5 MHz with the Station identifying itself as Linkage Radio. Using direction finding techniques the Agents determined that the transmissions were coming from a house located at 322 South Third Avenue in Mount Vernon, New York (Third Avenue site). A Dominator type vertical antenna was mounted on the roof of the building. Agents took field strength measurements and determined that the transmissions exceeded the limits for operation under part 15 of the Commission's rules.[34]

15. During the next two months the Agents continued their investigation, monitoring the pirate radio broadcasting at the Third Avenue site. Transmissions by Linkage Radio on 104.5 MHz were observed on April 13-22, 24-30, and May 1-2, 2023. Agents determined, based on field strength measurements, that the 104.5 MHz transmissions exceeded the limits for operation under part 15 of the Commission's rules,[35] and corresponded to the audio being streamed on linkageradio.com. During the 2023 investigation, Agents also confirmed that the Facebook icon on the Linkage Radio website continued to link directedly to Blake's Facebook page. While Blake's Facebook profile picture had changed, the photos section contained an image similar to the profile picture found during the 2017 investigation.[36] The videos section of Blake's Facebook page also contained several recordings in which the banner found in the 2017 investigation reading "Linkage Radio – 101.5 FM & 104.5 FM"[37] is shown.[38]

[32] 47 CFR § 15.239(b).

[33] *Michelle Hepburn*, Notice of Illegal Pirate Radio Broadcasting, File No. EB-FIELDNER-17-00023354 (Region One Regional Office, July 15, 2022).

[34] 47 CFR § 15.239(b). Blake has relocated the Station three times since 2017: (1) from the Thirteenth Avenue site to the Mount Vernon Avenue site; (2) back to the Thirteenth Avenue site; and (3) to the Third Avenue site. Each relocation occurred after agents found the Station on the air and issued NOUO's to Blake or, in the case of the third relocation, a NIPRB to the property owner. *See supra*, paras. 7-8.

[35] 47 CFR § 15.239(b).

[36] https://www.facebook.com/linkageradio/photos (last visited on June 5, 2023).

[37] Copy of image on file in File No. EB-FIELDNER-17-00023354.

[38] https://www.facebook.com/linkageradio/videos (last visited on June 5, 2023). These include videos showing Blake at the studio controls with captions announcing that "Dexter Blake was live" on the following dates: September 9, 2022 (https://www.facebook.com/linkageradio/videos/power-pack-sunday/1552084221913354/); October 1, 2022 (https://www.facebook.com/linkageradio/videos/power-pack-sunday/1552084221913354/); and October 22, 2022 (https://www.facebook.com/linkageradio/videos/675910637135416/ and https://www.facebook.com/linkageradio/videos/605357718008740/) (each of the foregoing links last visited on June 20, 2023).

III. DISCUSSION

16. We find that Blake apparently willfully and knowingly violated section 511 of the Act[39] by operating a pirate radio station on 104.5 MHz, at a minimum, on February 21, 2023; April 13-22 and 24-30, 2023; and May 1-2, 2023, resulting in a total of at least 20 days of apparent violations. Agents observed Blake's pirate radio Station, Linkage Radio, operating on these dates at the Third Avenue site on 104.5 MHz and determined that the transmissions exceeded the limits for operation under part 15 of the Commission's rules.[40] Therefore, all transmissions from the Third Avenue site during this period failed to comply with part 15 of the Commission's rules.[41] Commission records indicate no authorization for any FM broadcast station to operate at or near the Third Avenue site at any time relevant to this NAL. Accordingly, the Commission finds that Blake's actions—on a total of 20 days—constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[42]

A. Proposed Forfeiture

17. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[43] In exercising our forfeiture authority, we consider the "nature, circumstances, extent and gravity of the violations 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."[44] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[45]

18. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[46] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $115,802 for each day during which the offense occurs, but not more than $2,316,034.[47]

19. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[48] Accordingly, as explained in two recent notices of apparent liability for forfeiture under

[39] 47 U.S.C. § 511.

[40] 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[41] 47 CFR § 15.209(a); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[42] 47 U.S.C. § 511(a), (h).

[43] *Id.* § 511(a).

[44] *Call Identification Trust Anchor,* 18 Fed Reg 40096, 40116 (June 21, 2023) (amending 47 CFR § 1.80 by redesignating paragraphs (b)(9) through (11) as paragraphs (b)(10) through (12)) (to be codified at 47 CFR § 1.80 (b)(11)).

[45] *Id*.

[46] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[47] 47 U.S.C. § 511(a)-(b); *see* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,316,034 and 47 U.S.C. § 511(b) at $115,802); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, *supra* note 5, at *5; *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, *supra* note 5, 88 Fed. Reg. at 783 (setting January 15, 2023, as the effective date for the increases).

[48] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

the PIRATE Act, we impose a base forfeiture of $20,000[49] (twice the pre-PIRATE Act base forfeiture level) for each of the 20 days that Blake apparently willfully and knowingly violated section 511 of the Act, for a total proposed base forfeiture of $400,000.[50]

20. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement,*[51] we conclude that a significant upward adjustment is warranted. First, we find that Blake's conduct was intentional. In conversations with Agents in 2008, Blake admitted to being the operator of the pirate Station at the 3rd Street site.[52] Moreover, Blake has been repeatedly placed on notice that his conduct is illegal. He admitted to operating an unlicensed transmitter in his response to the 2010 Forfeiture Order.[53] Since that admission, the Commission mailed three different NOUOs to Blake, each advising that such unauthorized operation is illegal and could result in further enforcement action, and expressly directed him to cease such operations.[54] Further, the relocation of the transmitter each time the Station location was detected by the Commission and notice was provided to Blake or to others at the relevant property, indicates an intent to conceal illegal conduct.[55] Second, we find that an upward adjustment is warranted based on Blake's history of prior violations (and specifically illegal pirate radio transmissions) of the Act between 2008 and May 2022.[56] Based on the severity of the facts underlying these factors, we propose the maximum penalty of $115,802[57] for each day of the 20 days during which the Blake operated his pirate radio Station in 2023 for a total penalty of $2,316,040. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. Finally, we reduce the proposed penalty from $2,316,040 to $2,316,034 based on the statutory limits imposed by section 511(a) of the Act.[58] After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, Blake is apparently liable for a proposed monetary forfeiture of $2,316,034.[59]

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[49] The Commission first used this base forfeiture amount in two prior Notices of Apparent Liability for Forfeiture. *See César Ayora and Luis Angel Ayora, Queens, New York,* Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023); *Thomas Barnes, La Grande, Oregon,* Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023).

[50] *See* 47 U.S.C. § 511.

[51] *See 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 17087,17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10).

[52] *See supra* para. 3.

[53] *See supra* para. 5.

[54] *See Dexter Blake*, *supra* note 22; *see also supra* note 25. Despite delivery confirmations Blake not responded to these NOUOs.

[55] *See supra* para. 14; *see also Michelle Hepburn*, *supra* note 33.

[56] *See supra* paras. 6-8 and 12-14.

[57] 47 U.S.C. § 511(a); *see* 47 CFR § 1.80(b)(6); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, *supra* note 5, at *5 (setting the current inflation adjusted statutory daily maximum for a violation of 47 U.S.C. § 511(a) at $115,802); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, *supra* note 5, 88 Fed. Reg. at 783 (setting January 15, 2023, as the effective date for the increases).

[58] 47 U.S.C. § 511(a). Section 511(a) limits the maximum forfeiture for pirate radio broadcasting to $2,000,000 which has subsequently been adjusted for inflation to $2,316,034.

[59] 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.

IV. CONCLUSION

21. We have determined that Dexter Blake apparently willfully and knowingly did or caused pirate radio broadcasting in apparent violation of section 511 of the Act. As such, Dexter Blake is apparently liable for a forfeiture of $2,316,034.

V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Dexter Blake is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two million three hundred sixteen thousand and thirty-four dollars ($2,316,034) for willful and knowing violation of section 511 of the Act.[60]

23. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Dexter Blake **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 26 below.

24. In order for Dexter Blake to pay the proposed forfeiture, Dexter Blake shall notify the Office of the Field Director at field@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. Upon payment, Dexter Blake shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@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 Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[61]

- 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[62] or printed CORES form[63] 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).[64] 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

[60] 47 U.S.C. § 511.

[61] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[62] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[63] 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.

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

process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.

- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

25. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.[65] 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.

26. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's rules.[66] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. 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 CFR § 1.80(b)(10) support that result.

[65] *See* 47 CFR § 1.1914.

[66] *Id.* §§ 1.16, 1.80(f)(3).

28. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Dexter Blake at 621 S 9th Ave Mount Vernon, NY 10550.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Dexter Blake, Mount Vernon, New York*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-17-00023354 (November 15, 2023)

At the Federal Communications Commission we are stewards of the public airwaves. To ensure that this essential resource is broadly available, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In the PIRATE Act, Congress upped the ante. It increased the penalties for those who transmit unauthorized signals over the FM and AM radio bands because they can compromise public trust in this service and jeopardize the broadcasting of emergency alerts. This means higher fines and more regular enforcement sweeps in our largest radio markets.

Here we propose fines against three unauthorized radio operators in New York that are the direct result of an enforcement sweep taken pursuant to this new law. They add up to more than $6,412,000 in penalties. They also demonstrate that the agency's field agents are taking their broadcast enforcement duties under the PIRATE Act and that we are taking our responsibility as stewards of the public airwaves seriously.

I want to thank Representative Velazquez, Representative Rice, Representative Bilirakis, Senator Peters, and Senator Daines for their work on the PIRATE Act. I also want to thank the Field Regional Management and Agents of our New York Field Office for their work on these investigations. In addition, I want to share my appreciation for other staff at the agency responsible for these actions, including Reggie Breshears, Loyaan Egal, Robert Keller, Jeremy Marcus, David Marks, Ryan McDonald, and Michael Rhodes from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Matthew Bowen	)	File No.: EB-FIELDNER-22-00034507
Brooklyn, New York	)	NAL/Acct No.: 202432010002
	)	FRN: 0034392332

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 15, 2023 **Released: November 16, 2023**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $1,780,000 against Matthew Bowen (Bowen) for operating an unauthorized radio station on 99.9 MHz in Brooklyn, New York, by which he apparently willfully and knowingly did or caused pirate radio broadcasting during the period from November 21, 2022 to February 18, 2023, resulting in a minimum of 89 days of apparent violations. Bowen appears to have engaged in the illicit operation of an unauthorized radio station known as "Triple9HD." Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act).[1] Pirate radio stations undermine the Commission's primary mission to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.[2] Accordingly, Commission enforcement action in this area is essential.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[3] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[4] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

[3] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[4] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511(a).

inflation adjustments.[5] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[6] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[7] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[8]

3. The PIRATE Act, among other provisions, codified the definition of pirate radio, increased fines for pirate radio operators, and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.[9]

B. Factual Background

4. The Enforcement Bureau (Bureau) first became aware of Bowen's pirate radio station (Station) on November 21, 2022. On that date, and in response to complaints of interference with a licensed station in the area, field agents (Agents) from the Bureau's New York Field Office traced the source of radio transmissions on 99.9 MHz to a multi-family dwelling located at 890 Rockaway Avenue in Brooklyn, New York (Rockaway Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[10] They also took photographs of the building and a broadcast antenna mounted on its roof and made an audio recording of the unlicensed broadcast, during which an announcer identified the Station as "Triple9HD." Commission records indicated no authorization for any FM broadcast station to operate at or near the Rockaway Site on any frequency.

5. Returning to the Rockaway Site on December 13, 2022, the Agents observed the same rooftop broadcast antenna first seen on November 21, 2022. During their building inspection the next day (December 14, 2022), the Agents took close-up photographs of the broadcast antenna and determined that it used a standard coaxial connector and was not compliant with the part 15 rules.[11] The Agents advised the building owner and his representative that the broadcasting activity was illegal and should be halted immediately.

6. On February 18, 2023, Agents conducted a follow-up investigation and again detected broadcast activity on 99.9 MHz from a station identifying itself as "Triple9HD." Utilizing direction-finding techniques, the agents traced the source of the transmissions to the Rockaway Site. The Agents took additional photographs of the antenna used to broadcast the signal and determined that it was the

[5] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,316,034 and 47 U.S.C. § 511(b) at $115,802); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

[6] 47 U.S.C. § 511(h).

[7] 47 CFR § 15.239(b) (stating that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter at three meters).

[8] *Id.* § 15.203.

[9] *See* 47 U.S.C. § 511.

[10] *See* 47 CFR § 15.239(b).

[11] *Id.* § 15.203 ("[T]he use of a standard antenna jack or electrical connector is prohibited.").

same part 15 non-compliant antenna used to broadcast the signal since November 21, 2022.[12] After confirming the Rockaway Site as the origin of the Triple9HD signal, the Agents measured the Station's signal strength and determined that it was in excess of part 15 limits. Commission records reflect no authorization for any FM broadcast station to operate at or near the Rockaway Site on any frequency.

7. Through an online search, which included social media platforms, Agents discovered the Triple9HD website, which features a distinctive logo with "999FM Triple9HD" and palm trees in the background (Station Logo).[13] Agents also discovered the Station's Facebook page, which includes the Station Logo and states: "99.9FM/Triple9Radio known as a family station is the #1 Caribbean station in New York, Tri-State & Wor[ld.]."[14]

8. The Station's Instagram account also included the Station Logo and advertised regularly scheduled radio programming being broadcast on 99.9 MHz each day of the week: (1) "Tiki Fever Show" is broadcast on Sundays, Tuesdays, and Wednesdays;[15] (2) "Chinee Golden Touch Sound" is broadcast on Mondays, Wednesdays, and Saturdays;[16] (3) "Selecta Boobie and Kumi" is broadcast on Saturdays;[17] (4) "The Vibes Unit" is broadcast on Fridays and Saturdays;[18] (5) "Dred Solo" is broadcast on Wednesdays;[19] and (6) "DJ X Rated" is broadcast on Mondays, Wednesdays, and Thursdays.[20] This program advertising continued for at least the twelve-plus weeks between the observations on November 21, 2022 (a Sunday) and February 18, 2023 (a Saturday); this period of advertised Station operation totaled eighty-nine (89) days.

9. Further investigation uncovered more information regarding a regular program host on the Station with the alias "Chinee Goldentouch" (Goldentouch), who appears to be the principal "face" and most prominent and prodigious broadcaster on the Station. He is featured on the Station's Facebook page, which includes 31 videos of his shows—almost 100 hours' worth—posted during a three-month period from November 2022 through January 2023,[21] Goldentouch is the only operator of the Station with any videos posted on Triple9HD's Facebook page in the last four years.[22]

10. Using the telephone number provided by Goldentouch in his videos and social media,

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[12] *See id*.

[13] *See* Triple9HD Radio website, https://streamdb5web.securenetsystems.net/cirrusencore/triple9 (last visited May 24, 2023) (on file in EB-FIELDNER-22-00034507).

[14] *See* Triple9HD, Facebook, https://www.facebook.com/Triple9hd (last visited May 24, 2023) (on file in EB-FIELDNER-22-00034507).

[15] *See* Triple9HD, Instagram, https://www.instagram.com/p/CbqdWfRvXs0/ (last visited July 26, 2023) (on file in EB-FIELDNER-22-00034507).

[16] *See* Triple9HD, Instagram, https://www.instagram.com/p/B8PXIPXAgF4/ (last visited July 26, 2023) (on file in EB-FIELDNER-22-00034507).

[17] *See* Triple9HD, Instagram, https://www.instagram.com/p/B-A6iSrAhic/ (last visited July 26, 2023) (on file in EB-FIELDNER-22-00034507).

[18] *See* Triple9HD, Instagram, https://www.instagram.com/p/B8dDDDEAHJK/ (last visited July 26, 2023) (on file in EB-FIELDNER-22-00034507).

[19] *See* Triple9HD, Instagram, https://www.instagram.com/p/B8wsBGjAt0x/ (last visited July 26, 2023) (on file in EB-FIELDNER-22-00034507).

[20] *See* Triple9HD, Instagram, https://www.instagram.com/p/B8e18v2hUiM/ (last visited July 26, 2023) (on file in EB-FIELDNER-22-00034507).

[21] *See* Triple9HD, Facebook, https://www.facebook.com/Triple9hd/videos (last visited May 24, 2023) (on file in EB-FIELDNER-22-00034507). Seventeen hours of those videos prominently display the Triple9HD 99.9 FM logo.

[22] *See id.*

Agents were able to identify him as Matthew Bowen. Bowen maintains several different social media accounts under his Goldentouch alias, and videos of him on those accounts confirm that it is the same person shown broadcasting on-air on Triple9HD.[23]

III. DISCUSSION

11. We find that Bowen apparently willfully and knowingly violated section 511 of the Act[24] by operating a pirate radio station on 99.9 MHz from November 21, 2022 to February 18, 2023. On both of those dates, Agents observed Bowen's Station, Triple9HD, operating at the Rockaway Site on 99.9 MHz. Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules. Based upon the evidence gathered, Bowen appears to have a close connection to the Station; he is the Station's principal "face" and its most prominent and prodigious host.[25] In addition, Bowen advertised on social media that Triple9HD programming was being broadcast on 99.9 MHz each day of the week during the more than twelve weeks between November 21, 2022, and February 18, 2023, totaling at least eighty-seven (87) additional apparent violations.[26] Agents determined that the antenna used to broadcast Triple9HD from the Rockaway Site during this more than twelve-week period was not compliant with the part 15 requirements.[27] Therefore, all transmissions from the Rockaway Site during this more than twelve-week period failed to comply with part 15 of the Commission's rules.[28] Commission records indicate no authorization for any FM broadcast station to operate at or near the Rockaway Site at any time relevant to the apparent violations discussed in this NAL.

12. Considering the totality of the circumstances and facts before us, including the two separate observed violations, the advertised weekly programming demonstrating dozens of additional apparent violations, the part 15 non-compliant antenna used to broadcast the Triple9HD signal, and Bowen's prominent connection to Triple9HD's operations, we find that Bowen operated a pirate radio station and apparently willfully and knowingly did or caused pirate radio broadcasting during the period from November 21, 2022 to February 18, 2023, resulting in a minimum of 89 days of apparent violations. Accordingly, the Commission finds that Bowen's actions constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[29]

A. Proposed Forfeiture

13. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[30] In exercising our forfeiture authority, we consider the "nature, circumstances, extent and gravity of the violations 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."[31] We may adjust a forfeiture

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[23] *See* https://linktr.ee/Chineegoldentouch (last visited June 22, 2023), which provides a list of links to Bowen's accounts, including Facebook Fan Page (https://www.facebook.com/chineepublicfigure/videos/1726320977764053/, Instagram (https://www.instagram.com/chineegoldentouch/), Twitch (https://www.twitch.tv/chineegoldentouch), YouTube (https://www.youtube.com/channel/UCb8WJ2UcUwm-azb0OtwSk2Q), and Twitter (https://twitter.com/GoldenTouchsnds).

[24] 47 U.S.C. § 511.

[25] *See supra* para. 9.

[26] *See supra* para. 8.

[27] *See* 47 CFR § 15.203; *see also supra* para. 6.

[28] *See* 47 CFR § 15.203; *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[29] 47 U.S.C. § 511(a), (h).

[30] *Id.* § 511(a).

downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[32]

14. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[33] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $115,802 for each day during which the offense occurs, but not more than $2,316,034 in total.[34]

15. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[35] Accordingly, as explained in two recent notices of apparent liability for forfeiture under the PIRATE Act, we impose a base forfeiture of $20,000[36] for each of the eighty-nine (89) days that Bowen apparently willfully and knowingly violated section 511 of the Act, for a total proposed base forfeiture of $1,780,000.[37]

16. We further find no applicable factors that would dictate an upward or downward adjustment of the base forfeiture amount. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*,[38] Bowen is apparently liable for a proposed total monetary forfeiture of $1,780,000.[39]

IV. CONCLUSION

17. We have determined that Matthew Bowen apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Matthew Bowen is apparently liable for a forfeiture of $1,780,000.

V. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80,

(Continued from previous page)

[31] *Call Identification Trust Anchor,* 18 Fed Reg 40096, 40116 (June 21, 2023) (amending 47 CFR § 1.80 by redesignating paragraphs (b)(9) through (11) as paragraphs (b)(10) through (12)) (to be codified at 47 CFR § 1.80 (b)(11)).

[32] *Id*.

[33] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[34] 47 U.S.C. § 511(a)-(b); see 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,316,034 and 47 U.S.C. § 511(b) at $115,802); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, supra note 5, at *5 (EB Dec. 23, 2022); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, supra note 5, at 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

[35] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[36] The Commission first used this base forfeiture amount in two prior Notices of Apparent Liability for Forfeiture. *See César Ayora and Luis Angel Ayora, Queens, New York,* Notice of Apparent Liability for Forfeiture 2023 WL 2560017, at *5 (Mar. 15, 2023); *Thomas Barnes, La Grande, Oregon,* Notice of Apparent Liability for Forfeiture 2023 WL 2560016, at *4 (Mar. 15, 2023).

[37] *See* 47 U.S.C. § 511.

[38] *See 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, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[39] 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.

Matthew Bowen is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one million seven hundred eighty thousand dollars ($1,780,000) for willful and knowing violations of section 511 of the Act.[40]

19. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Matthew Bowen **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 22.

20. In order for Matthew Bowen to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his 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, Bowen shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@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 Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[41]

- 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[42] or printed CORES form[43] 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).[44] 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

[40] 47 U.S.C. § 511.

[41] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[42] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[43] 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.

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

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.

21. 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, N.E., Washington, D.C. 20554.[45] 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.

22. 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.[46] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

23. 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. 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 CFR § 1.80(b)(10) support that result.

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Matthew Bowen at 9915 Seaview Ave., Apt. 3C, Brooklyn, New York 11236-5530.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[45] *See* 47 CFR § 1.1914.

[46] *Id.* §§ 1.16, 1.80(f)(3).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Matthew Bowen, Brooklyn, New York*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-22-00034507 (November 15, 2023)

At the Federal Communications Commission we are stewards of the public airwaves. To ensure that this essential resource is broadly available, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In the PIRATE Act, Congress upped the ante. It increased the penalties for those who transmit unauthorized signals over the FM and AM radio bands because they can compromise public trust in this service and jeopardize the broadcasting of emergency alerts. This means higher fines and more regular enforcement sweeps in our largest radio markets.

Here we propose fines against three unauthorized radio operators in New York that are the direct result of an enforcement sweep taken pursuant to this new law. They add up to more than $6,412,000 in penalties. They also demonstrate that the agency's field agents are taking their broadcast enforcement duties under the PIRATE Act and that we are taking our responsibility as stewards of the public airwaves seriously.

I want to thank Representative Velazquez, Representative Rice, Representative Bilirakis, Senator Peters, and Senator Daines for their work on the PIRATE Act. I also want to thank the Field Regional Management and Agents of our New York Field Office for their work on these investigations. In addition, I want to share my appreciation for other staff at the agency responsible for these actions, including Reggie Breshears, Loyaan Egal, Robert Keller, Jeremy Marcus, David Marks, Ryan McDonald, and Michael Rhodes from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Johnny Peralta	)	File No.: EB-FIELDNER-18-00026578
Bronx, New York	)	NAL/Acct No.: 202432010001
	)	FRN: 0034392233

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 15, 2023 **Released: November 16, 2023**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $2,316,034 against Johnny Peralta a/k/a Jhonny Peralta (Peralta), for operating an unauthorized radio station on 105.7 MHz in the Bronx, New York, by which Peralta apparently willfully and knowingly did or caused pirate radio broadcasting during a period from November 16, 2022 to February 21, 2023, resulting in 98 days of apparent violations. Peralta appears to have engaged in the longstanding illicit operation of an unauthorized radio station known as "La Mia Radio." Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act).[1] Pirate radio stations undermine the Commission's primary mission to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.[2] Accordingly, Commission enforcement action in this area is essential.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[3] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[4] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

[3] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

inflation adjustments.[5] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[6] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[7] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[8]

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Peralta has been directly involved in the operation of a pirate radio station (Station) on 105.7 MHz in the Bronx, New York, for years. The Station is known as La Mia Radio,[9] and Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the Station has continually identified itself on-air as La Mia Radio since at least 2018. The Bureau first became aware of Peralta's Station on September 26, 2018, when, in response to complaints, Agents from the New York Field Office (New York Office) traced the source of radio transmissions on 105.7 MHz to an FM transmitter antenna at an apartment building at 226 Mt. Hope Place, Bronx, New York (Mt. Hope site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[10] Commission records indicated no authorization for any FM broadcast station to operate at or near the Mt. Hope site on any frequency. Returning to the Mt. Hope site on October 2, 2018, the Agents confirmed the Station was still operating and took photos of the antenna equipment on the building. The Agents also took photographs of the antenna used to broadcast the signal and determined that it used a standard coaxial connector and was not compliant with the part 15 rules.[11] After unsuccessfully attempting to contact any of the building's occupants, the Agents posted a Notice of

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[4] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR § 1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511.

[5] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,316,034 and 47 U.S.C. § 511(b) at $115,802); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

[6] 47 U.S.C. § 511(h).

[7] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[8] *Id.* § 15.203.

[9] The Station is also known as "La Mia Radio 105.7." *See* La Mia Radio, https://lamiaradio.com (last visited July 10, 2023).

[10] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("μV/m") at three meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the Station's signal exceeded the permissible level for a non-licensed part 15 transmitter.

[11] 47 CFR § 15.203 ("[T]he use of a standard antenna jack or electrical connector is prohibited.").

Unauthorized Operation (NOUO) on the building's entry door.[12] The NOUO stated that the unauthorized operation of the Station was illegal, and that continued operation of it could result in further enforcement action. The NOUO contained the directive that unlicensed operation of the Station must be discontinued immediately. The Bureau received no response to the NOUO.

4. The Station left the air briefly following the October 2, 2018 NOUO's issuance, but soon resurfaced. On February 11, 2019, in response to complaints, an Agent from the New York Office checked the Mt. Hope site and discovered that while the FM antenna had been removed from that building, a signal was still broadcasting La Mia Radio on 105.7 MHz within the general area. Using direction-finding techniques, an Agent traced La Mia Radio's signal to an apartment building at 1652 Dr. Martin Luther King Jr. Boulevard, Bronx, New York (MLK Blvd. site) approximately 1.2 miles from the Mt. Hope site. The Agent took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[13] The Agent also took photographs of the antenna used to broadcast the signal and determined that it used a standard coaxial connector and was therefore not compliant with the part 15 rules.[14] Commission records indicated no authorization for any FM broadcast station to operate at or near the MLK Blvd. site on any frequency.

5. On March 13, 2019, Agents visited the MLK Blvd. site to follow up on their earlier investigation. They determined that while the rooftop antenna had been removed from that site, radio transmissions on 105.7 MHz were still occurring in the vicinity. The Agents traced the source of the signal to an FM transmitter antenna that had been reinstalled atop the Mt. Hope site. Photographs confirmed that the antenna atop the Mt. Hope site looked identical to the antenna that had been removed from the MLK Blvd. site, used a standard coaxial connector and was therefore not compliant with the part 15 rules.[15] The Agents made audio recordings of the Station's broadcasts and confirmed the Station still identified itself as La Mia Radio. They also confirmed that the Station continued to operate on 105.7 MHz, at power levels above the part 15 limits, and without a Commission authorization.[16]

6. On May 14, 2019, the Agents returned to the Mt. Hope site. They took photographs of the rooftop antenna equipment, made audio recordings of on-air broadcasts announcing the Station's contact phone numbers, and confirmed through measurements that the unlicensed Station's signal remained above part 15 power limits without authorization.[17] On August 6, 2019, the Agents again traced a broadcast signal for La Mia Radio on 105.7 MHz back to the Mt. Hope site and took more photographs of the antenna equipment.

2. PIRATE Act Investigation

7. The PIRATE Act, among other provisions, codified the definition of pirate radio,[18] increased fines for pirate radio operators,[19] and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.[20]

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[12] *See 226 Mt. Hope Place*, Notice of Unlicensed Operation (New York Field Office, Oct. 2, 2018) (on file EB-FIELDNER-18-00026578).

[13] *See* La Mia Radio, https://lamiaradio.com (last visited July 10, 2023).

[14] *See* 47 CFR § 15.239.

[15] *See id.*

[16] *See* La Mia Radio, https://lamiaradio.com (last visited July 10, 2023).

[17] *See id.*

[18] 47 U.S.C. § 511(h).

[19] *Id.* § 511(a)-(b).

8. On March 3, 2020, Agents again identified the unauthorized La Mia Radio signal transmitting in excess of part 15 power limits from an antenna at the Mt. Hope site on frequency 105.7 MHz. They took photographs of the equipment and made audio recordings of the broadcast. Shortly thereafter, COVID-19 travel restrictions prevented further onsite inspections.

9. On May 3, 2022, after COVID-19-related travel restrictions had been lifted, an Agent returned to the Mt. Hope site and verified a rooftop antenna was transmitting the La Mia Radio signal on 105.7 MHz in excess of part 15 power limits.[21] The Agent measured the signal power and made audio recordings identifying the Station as La Mia Radio and supplying a phone number for would-be callers. The Agent also photographed the equipment and determined that it was the same part 15 non-compliant antenna used to broadcast the signal since February 11, 2019.[22]

10. On June 23, 2022, an Agent from the New York Office again used direction-finding techniques to confirm that La Mia Radio continued to transmit on 105.7 MHz from the Mt. Hope site. The Agent measured the Station's signal strength and determined that the La Mia Radio signal was in excess of part 15 limits.[23] The Agents took additional photographs of the antenna used to broadcast the signal and determined that it was the same part 15 non-compliant antenna used to broadcast the signal since February 11, 2019.[24] Commission records reflect no authorization for any FM broadcast station to operate at or near the Mt. Hope site on any frequency.

11. On September 24, 2022 and February 21, 2023, Agents from the New York Office again used direction-finding techniques to confirm that La Mia Radio continued to transmit from the Mt. Hope site. The Agents measured the Station's signal strength and determined that the transmission on 105.7 MHz exceeded the limits for operation under part 15 of the Commission's rules.[25] The Agents took additional photographs of the antenna used to broadcast the signal and determined that it was the same part 15 non-compliant antenna used to broadcast the signal since February 11, 2019.[26]

12. Publicly available information confirms that Peralta is the owner/director of La Mia Radio. For example, multiple newspaper articles identify Johnny Peralta as the owner of La Mia Radio.[27] La Mia Radio's social media accounts also identify Johnny Peralta as the Station's director.[28] Moreover,

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[20] *See* 47 U.S.C. § 511(a) ("Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000.") (emphasis added).

[21] *See* La Mia Radio, https://lamiaradio.com (last visited July 10, 2023).

[22] *See* 47 CFR § 15.239.

[23] *See* La Mia Radio, https://lamiaradio.com (last visited July 10, 2023).

[24] *See* 47 CFR § 15.239.

[25] *See* La Mia Radio, https://lamiaradio.com (last visited July 10, 2023).

[26] *See* 47 CFR § 15.239.

[27] Diario Digital Dominicano, *Radio entrepreneur Jhonny Peralta celebrates birthday* (July 18, 2022), https://diariodigitaldominicano.com/nueva-york-empresario-radial-jhonny-peralta-celebra-cumpleanos/ (identifying Peralta as the Station owner); Diario Digital Dominicano, *Radiodifusores de origen dominicano unen esfuerzos para destacar espíritu de la diaspora* (Dec. 20, 2021), https://diariodigitaldominicano.com/radiodifusores-de-origen-dominicano-radicados-en-nueva-york-unen-esfuerzos-para-destacar-el-espiritu-de-la-diaspora/ (identifying Peralta as the Station owner); Notisdom, *«La Mia Radio» celebra en grande fiesta navideña a sus empleados* (Dec. 19, 2021), https://notisdom.com/la-mia-radio-celebra-en-grande-fiesta-navidena-a-sus-empleados/ (identifying Peralta as the "owner and director" of La Mia Radio).

[28] Instagram, *La Mia Radio August 2021 birthday greeting to Johnny Peralta* (July 8, 2021), (https://www.instagram.com/p/CRESEcdhBBv/; La Mia Radio (lamiaradio2), Facebook,

(continued….)

internet service provider Dominican Internet Group lists a "Johnny Peralta" of La Mia Radio as a client since 2016.[29] The investigation also determined that Peralta is the identified subscriber (i.e., owner) of all phone numbers associated with the Station as listed on social media platforms and the La Mia Radio website.[30]

13. Additional investigative work by the Agents revealed that, as of June 20, 2023, La Mia Radio was continuing to advertise on its web site seven ongoing programs broadcast on 105.7 MHz: (1) "Musicalizando Ymas" is broadcast Monday through Friday; (2) "Preludio Musical" is broadcast every Saturday and Sunday; (3) "Ultra Sabado" is broadcast every Saturday; (4) "Hablemos Claro New York" is broadcast every Friday; (5) "La Hora Espiritual" is broadcast every Wednesday; (6) "En Bachata Urbanos Y Algo Mas…" is broadcast every Thursday and Sunday; (7) "K-Rollo Con El Pollo" is broadcast Monday through Friday.[31] Thus, according to the illegal Station's own advertising, pirate radio broadcasting occurred at least 97 times between November 16, 2022 and February 21, 2023 (in addition to the violation on February 21, 2023). Moreover, as previously discussed, Agents determined that the same part 15 non-compliant antenna was used by Peralta to broadcast before and after this period.[32]

III. DISCUSSION

14. We find that Peralta apparently willfully and knowingly violated section 511 of the Act[33] by operating a pirate radio station on 105.7 MHz from November 16, 2022 to February 21, 2023. Agents observed Peralta's Station, La Mia Radio, operating at the Mt. Hope site on 105.7 MHz both prior to and at the end of that timespan.[34] Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.[35] In addition, Peralta advertised the availability of La Mia Radio programming being broadcast on 105.7 MHz for the 14 weeks between November 16, 2022 and February 21, 2023, evidencing at least 97 additional apparent violations.[36] Agents determined that the antenna used to broadcast La Mia Radio from the Mt. Hope site prior to and during the subject period was not compliant with the part 15 requirements.[37] Therefore, all transmissions from the Mt. Hope site during this period failed to comply with part 15 of the Commission's rules.[38] Commission records indicate no authorization for any FM broadcast station to operate at or near the Mt. Hope site at any time relevant to the violations discussed in this NAL.

(Continued from previous page)
https://www.facebook.com/lamiaradio2/posts/pfbid02AQYcQRvNRc2VoQrDdwRLZMKT8ewSFJcN6sBm8LyhYdan5xe521rMtt3qoZ3KkmEil (identifying Peralta as the Station director).

[29] *See* Dominican Internet Group, *Customer List*, https://dominicaninternet.com/client-details/379, (last visited May 15, 2023) (listing Peralta/La Mia Radio as a customer since May 4, 2016).

[30] *See* La Mia Radio, http://lamiaradio.com (last visited July 10, 2023).

[31] *See id.*

[32] *See* 47 CFR § 15.239.

[33] 47 U.S.C. § 511.

[34] Agent observations occurred on September 24, 2022 and February 21, 2023. *See supra* para. 11.

[35] 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[36] *See supra* para. 13.

[37] *See* 47 CFR § 15.239.

[38] *Id.*; *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

15. Considering the totality of the circumstances and facts before us, including the multiple violations documented on each day of the week, the numerous apparent violations during the PIRATE Act investigation, including weekday and weekend programming as advertised, the part 15 non-compliant antenna used to transmit the La Mia Radio signal, and the abundant evidence showing that Peralta owned and operated La Mia Radio,[39] we find that Peralta operated a pirate radio station and apparently willfully and knowingly did or caused pirate radio broadcasting on each day from November 16, 2022 to February 21, 2023, resulting in a minimum of 98 days of apparent violations. Accordingly, the Commission finds that Peralta's actions—conservatively, on a total of 98 days[40]—constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[41]

A. Proposed Forfeiture

16. Section 511 of the Act authorizes *the* Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[42] In exercising our forfeiture authority, we consider the "nature, circumstances, extent and gravity of the violations 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."[43] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[44]

17. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[45] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $115,802 for each day during which the offense occurs, but not more than $2,316,034 in total.[46]

18. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[47] Accordingly, as explained in two recent notices of apparent liability for forfeiture under the PIRATE Act, we impose a base forfeiture of $20,000[48] (twice the pre-PIRATE Act base forfeiture

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[39] *See supra* para. 11.

[40] We note that advertising for weekly programming is still active on the La Mia Radio website, indicating continued operation past the February 21, 2023 observation. *See* La Mia Radio, http://lamiaradio.com/ (last visited October 23, 2023)

[41] 47 U.S.C. § 511(a), (h).

[42] *Id.* § 511(a).

[43] *Call Identification Trust Anchor,* 18 Fed Reg 40096, 40116 (June 21, 2023) (amending 47 CFR § 1.80 by redesignating paragraphs (b)(9) through (11) as paragraphs (b)(10) through (12)) (to be codified at 47 CFR § 1.80 (b)(11)).

[44] *Id*.

[45] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[46] 47 U.S.C. § 511(a)-(b); *see* 47 CFR § 1.80(b)(6); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, *supra* note 5, at *5; *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, *supra* note 5, at 783 (setting January 15, 2023, as the effective date for the increases).

[47] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[48] The Commission first used this base forfeiture amount in two prior Notices of Apparent Liability for Forfeiture. *See César Ayora and Luis Angel Ayora, Queens, New York,* Notice of Apparent Liability for Forfeiture 2023 WL 2560017, at *5 (Mar. 15, 2023); *Thomas Barnes, La Grande, Oregon,* Notice of Apparent Liability for Forfeiture 2023 WL 2560016, at *4 (Mar. 15, 2023).

level) for each of the 98 days that Peralta apparently willfully and knowingly violated section 511 of the Act, for a total proposed base forfeiture of $1,960,000.[49]

19. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,[50] we conclude that a significant upward adjustment is warranted based on Peralta's history of prior violations of the Act discovered by Commission Agents from 2018 to 2022.[51] Based on the severity of the facts underlying these factors, we propose the maximum penalty of $115,802[52] for each day of the 98 days during which Peralta operated his unauthorized Station in 2022 and 2023 for a total penalty of $11,348,596. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. Finally, we reduce the proposed penalty from $11,348,596 to $2,316,034 based on the statutory limits imposed by section 511(a) of the Act.[53] After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, Peralta is apparently liable for a proposed total monetary forfeiture of $2,316,034.[54]

IV. CONCLUSION

20. We have determined that Johnny Peralta apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Johnny Peralta is apparently liable for a forfeiture of $2,316,034.

V. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Johnny Peralta is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two million three hundred sixteen thousand and thirty-four dollars ($2,316,034) for willful and knowing violation of section 511 of the Act.[55]

22. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Johnny Peralta **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a

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[49] *See* 47 U.S.C. § 511.

[50] *See 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, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10).

[51] *See supra* paras. 3-9.

[52] 47 U.S.C. § 511(a); *see* 47 CFR § 1.80(b)(6); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, *supra* note 5, at *5; *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, *supra* note 5, at 783 (setting January 15, 2023, as the effective date for the increases).

[53] 47 U.S.C. § 511(a). Section 511(a) limits the maximum forfeiture for pirate radio broadcasting to $2,000,000, which has subsequently been adjusted for inflation to $2,316,034. *See* 47 CFR § 1.80(b)(6); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, *supra* note 5, at *5; *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, *supra* note 5, at 783 (setting January 15, 2023, as the effective date for the increases).

[54] 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.

[55] 47 U.S.C. § 511.

written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 25.

23. In order for Johnny Peralta to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his 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, Peralta shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@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 Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[56]

- 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[57] or printed CORES form[58] 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).[59] 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

[56] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[57] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[58] 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.

[59] Instructions for completing the form may be obtained at http://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.

24. 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, N.E., Washington, D.C. 20554.[60] 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.

25. 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.[61] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

26. 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. 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 CFR § 1.80(b)(10) support that result.

27. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Johnny Peralta at 2832 Marion Ave., Apt. 3, Bronx, New York 10458-3003.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[60] *See* 47 CFR § 1.1914.

[61] *Id.* §§ 1.16, 1.80(f)(3).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Johnny Peralta, Bronx, New York*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDNER-18-00026578 (November 15, 2023)

At the Federal Communications Commission we are stewards of the public airwaves. To ensure that this essential resource is broadly available, we have rules that govern its use. And for those who fail to follow the rules, there are consequences.

In the PIRATE Act, Congress upped the ante. It increased the penalties for those who transmit unauthorized signals over the FM and AM radio bands because they can compromise public trust in this service and jeopardize the broadcasting of emergency alerts. This means higher fines and more regular enforcement sweeps in our largest radio markets.

Here we propose fines against three unauthorized radio operators in New York that are the direct result of an enforcement sweep taken pursuant to this new law. They add up to more than $6,412,000 in penalties. They also demonstrate that the agency's field agents are taking their broadcast enforcement duties under the PIRATE Act and that we are taking our responsibility as stewards of the public airwaves seriously.

I want to thank Representative Velazquez, Representative Rice, Representative Bilirakis, Senator Peters, and Senator Daines for their work on the PIRATE Act. I also want to thank the Field Regional Management and Agents of our New York Field Office for their work on these investigations. In addition, I want to share my appreciation for other staff at the agency responsible for these actions, including Reggie Breshears, Loyaan Egal, Robert Keller, Jeremy Marcus, David Marks, Ryan McDonald, and Michael Rhodes from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination	)	GN Docket No. 22-69
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 15, 2023 **Released: November 20, 2023**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements; Commissioners Carr and Simington dissenting and issuing separate statements.

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I. INTRODUCTION AND SUMMARY

1. Today, we take an important step to promote equal access to broadband for all people in the United States. In the Infrastructure Investment and Jobs Act (Infrastructure Act),[1] Congress appropriated more than $65 billion to help ensure that every American has access to reliable, high-speed internet. Along with the federal initiatives of the Infrastructure Act, addressing digital discrimination of access is an important part of closing the digital divide.[2] To that end, Congress enacted section 60506 of the Infrastructure Act, which directs the Commission to adopt final rules to facilitate equal access to broadband internet access service.[3]

2. In this *Report and Order*, we adopt rules pursuant to section 60506 of the Infrastructure Act that establish a framework to facilitate equal access to broadband internet access service[4] by

[1] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1754) (Infrastructure Act).

[2] In 1999, the National Telecommunications and Information Administration (NTIA) defined the digital divide as: "the divide between those with access to new technologies and those without." NTIA, *Falling Through the Net: Defining the Digital Divide* (July 08, 1999), https://www.ntia.doc.gov/legacy/ntiahome/fttn99/contents.html.

[3] 47 U.S.C. § 1754.

[4] *Id.* § 1754(b). The Infrastructure Act defines "broadband internet access service" for section 60506 and the remainder of Title V as having "the meaning given the term in section 8.1(b) of [the Commission's rules], or any (continued….)

preventing digital discrimination of access. These rules address policies and practices that impede equal access to broadband, while taking into account issues of technical and economic feasibility that pose serious challenges to full achievement of the equal access objective. The rules we adopt today constitute an effective, balanced means to accomplish Congress's objective of ensuring that historically unserved and underserved communities throughout the Nation have equal opportunity to receive high-speed broadband service comparable to that received by others, without discrimination as to the terms and conditions on which that service is received. Accompanying the *Report and Order* is a *Further Notice of Proposed Rulemaking* in which we seek additional comment on matters pertaining to our implementation of section 60506 and our diligent efforts to facilitate equal access.

3. The actions taken today are summarized below.

- **Digital Discrimination of Access Defined**

In furtherance of our goal to facilitate equal access to broadband internet access service, we adopt the following definition of "digital discrimination of access": "policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion or national origin, or are intended to have such differential impact." Under the rules we adopt today, we will investigate conduct alleged to be motivated by discriminatory intent, as well as conduct alleged to have discriminatory effect, based on income level, race, ethnicity, color, religion, or national origin. Consistent with the definition of "equal access" in the statute, we find that differentiation as to any available quality of service metric for broadband service may provide a basis for liability under these rules, absent sufficient justification.

- **Technical and Economic Feasibility**

Consistent with Congress's directive, our definition of digital discrimination of access fully takes into account "issues of technical and economic feasibility," constituting impediments to full achievement of the equal access goal of the statute. We define "technically feasible" to mean "reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized." We similarly define "economically feasible" to mean "reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized."

- **Consumers Afforded Protection from Digital Discrimination, and Entities and Services that Are Subject to the Prohibition Against Digital Discrimination of Access**

We adopt rules focusing on whether policies and practices differentially impact consumers' access to broadband internet access service or are intended to do so. In this vein, we specify that

(Continued from previous page)
successor regulation." *See* Infrastructure Act § 60501(1); *see also* 47 CFR § 8.1(b) (defining broadband internet access service as "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part."). In this *Report and Order* and *Further Notice of Proposed Rulemaking*, we use the terms "broadband," "broadband service," and "broadband internet access service" interchangeably.

"consumer" means current and prospective subscribers to broadband internet access service, including individuals, groups of individuals, organizations, and groups of organizations. Moreover, the scope of the rules we adopt today extends not only to providers of broadband internet access service, but also to entities that facilitate and otherwise affect consumer access to broadband internet access service.

We adopt today the same definition of "broadband internet access service" that appears in our rules at 47 CFR § 8.1(b). In accordance with section 60506, the rules we adopt today shall apply to all policies and practices that affect a consumer's ability to have equal access to broadband internet access service, including but not limited to deployment, network upgrades, and maintenance. Covered elements of service include both technical and non-technical elements of service that may affect a consumer's ability to receive and effectively utilize the service.

- **Enforcement**

We adopt rules that allow for enforcement of our prohibition against digital discrimination of access through self-initiated Commission investigations and revise our informal complaint process to accept complaints alleging digital discrimination of access, including offering parties voluntary mediation overseen by Commission staff when appropriate. Possible violations will be investigated by Commission staff using our standard investigative toolkit, and all penalties and remedies will be available when we determine that our rules have been violated. The Commission will consider utilizing consent decrees when appropriate. We decline, at this time, to create an additional process for the filing and adjudication of formal complaints akin to section 208 of the Communications Act.

- **Consumer Complaints**

Consistent with Congress's directive, we revise our informal consumer complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination of access by establishing a dedicated pathway for digital discrimination of access complaints including from organizations, and collecting voluntary demographic information from complainants.

- **State and Local Model Policies and Best Practices**

We adopt the Communications Equity and Diversity Council's recommendations that propose model policies and practices for states and localities to address digital discrimination of access.[5] We emphasize that these model policies and practices do not foreclose adoption by states and localities of additional measures to ensure equal access to broadband service in their communities.

- **Annual Reports and Compliance Programs, and Office of Civil Rights**

In the *Further Notice*, we seek comment on affirmative obligations for broadband providers, through: (1) annual reports that facilitate greater transparency regarding substantial broadband projects recently completed by providers, and (2) internal compliance programs requiring periodic evaluation of the demographics of communities served—and not served—by such recently completed projects, as well as pending and planned substantial projects. We also seek further focused comment on establishing an Office of Civil Rights.

[5] Communications Equity and Diversity Council, Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity at 12 (2022), https://www.fcc.gov/sites/default/files/cedc-digital-discrimination-report-110722.pdf (CEDC Report). The report is attached as Appendix D.

II. BACKGROUND

4. Section 60506 of Division F, Title V of the Infrastructure Act is entitled "Digital Discrimination." This provision supports extensive broadband expansion programs in the Infrastructure Act and requires that the Commission adopt rules to facilitate equal access to broadband internet service. Section 60506(b) reads:

> "Not later than 2 years after November 15, 2021, the Commission shall adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including –
>
> (1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and
>
> (2) identifying necessary steps for the Commission to take to eliminate discrimination described in paragraph (1)."[6]

5. The Commission's implementation of section 60506 builds on a robust history of Commission regulatory action premised on nondiscrimination and universal service, which, in turn, furthers the goal of broadband internet access for all and addresses the digital divide.

A. Commission's Efforts to Further Consumer Access to Broadband Internet Service

6. At the core of the Commission's commitment to broadband internet access for all is section 1 of the Communications Act of 1934, as amended, which states the agency's purpose "to make available, so far as possible," a "rapid, efficient, Nation-wide" wire and radio communication service with adequate facilities "to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex."[7] Nondiscrimination and universal service are cornerstone principles and drive agency policies to achieve the broadest possible consumer access to communications services.[8] In the Telecommunications Act of 1996 (1996 Act), Congress expanded the traditional goal of universal service to include increased access to telecommunications and advanced services, such as broadband internet access service, for all consumers at just, reasonable, and affordable rates.[9] The 1996 Act established principles for universal service that focus on increasing access for consumers living in rural and insular areas, and for low-income consumers.[10] Section 706 of the 1996 Act requires the Commission to report annually on whether broadband "is being deployed to all Americans in a reasonable and timely fashion."[11]

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[6] 47 U.S.C. § 1754(b).

[7] *Id.* § 151.

[8] *See id.* § 202(a) (prohibiting unjust or unreasonable discrimination by common carriers in charges, practices, classifications, or regulations in connection with like communications services); *id*. § 1302(b) (requiring Commission to inquire as to whether "advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."); *id*. § 541(a)(3) (providing that local franchise authorities must "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area); *id*. § 257.

[9] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*) (1996 Act); 47 U.S.C. §§ 254(b), 1302(a).

[10] 47 U.S.C. § 254(b)(3).

[11] 47 U.S.C. § 1302(b). Annual Broadband Progress Reports are housed on the Commission's website. FCC, *Broadband Progress Reports*, https://www.fcc.gov/reports-research/reports/broadband-progress-reports (last visited Nov. 14, 2023).

7. In 2009, Congress directed the Commission to develop a National Broadband Plan to ensure every American has "access to broadband capability."[12] The Commission released the National Broadband Plan in March 2010, highlighting ways to "[r]eform current universal service mechanisms to support deployment of broadband and voice in high-cost areas; and ensure that low-income Americans can afford broadband; and in addition, support efforts to boost adoption and utilization."[13]

8. The Commission has long used its Universal Service funding programs to further consumer access to broadband and bridge the digital divide. These funding programs, which preceded the Infrastructure Act, have historically helped to deliver broadband services to low-income consumers and to unserved and underserved communities in rural and insular areas. Further, these programs provide support in various ways, including: offering to low-income consumers discounts on voice service and/or broadband internet access service; providing funding to eligible schools and libraries for affordable broadband services to help connect students and members of local communities; providing funding for health care providers to ensure that patients have access to broadband enabled healthcare services; and offering subsidies to providers to build out, deploy, and maintain networks that provide voice and broadband service in high-cost areas.[14]

9. These Commission actions help to ameliorate a digital divide that has underpinnings in the country's historical segregation and redlining practices in housing.[15] The record in this proceeding reflects that the digital divide significantly tracks housing redlining that came into existence under the National Housing Act of 1934,[16] when the Federal Housing Administration directed the Home Owners'

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[12] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009).

[13] *See* FCC, Connecting America: The National Broadband Plan at xi (2010), https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf.

[14] *See Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Notice of Inquiry, 36 FCC Rcd 18006, 18017-23, paras. 30-43 (2021) (describing the various universal service programs and seeking comment on how the Commission might improve its effectiveness in achieving its universal service goals).

[15] Relying on historical research, data, and surveys, numerous commenters correlate inequities in broadband access to historically segregated housing patterns and discriminatory housing practices. *See, e.g.*, Electronic Frontier Foundation et al. Comments at 5-10, 19-20 (rec. Feb. 21, 2023) (Joint Advocates); Electronic Frontier Foundation et al. Reply at 5-6, 9 (rec. Apr. 20, 2023) (Joint Advocates); Lawyers' Committee for Civil Rights Under Law Comments at 34-40 (rec. Feb. 21, 2023); Letter from NAACP Legal Defense and Educational Fund, Inc., to Chairwoman Rosenworcel, FCC, GN Docket 22-69, at 3-4 (filed Aug. 10, 2023); National Hispanic Media Coalition Reply at 6-7 (rec. Apr. 20, 2023); National Urban League et al. Comments at 2 (rec. Feb. 21, 2023); National Digital Inclusion Alliance and Common Sense Media Comments at 5 & n.9-10 (rec. Feb. 21, 2023); Multicultural Media, Telecom and Internet Council and the U.S. Black Chambers Comments at 3-7 (rec. Feb. 21, 2023) (National Multicultural Organizations).

[16] *See* Public Knowledge et al. Comments at 61-62 & n.202 (rec. Feb. 21, 2023) (citing Benjamin Skinner, Hazel Levy, and Taylor Burtch, Digital Redlining: The Relevance of 20th Century Housing Policy to 21st Century Broadband Access and Education, at 11 (2023), https://www.edworkingpapers.com/ai21-471); Lawyers' Committee for Civil Rights Under Law Comments at 36 & n.170 (citing Congressional Research Service, The Digital Divide: What Is It, Where Is It, and Federal Assistance Programs (2021), https://crsreports.congress.gov/product/pdf/R/R46613); National Multicultural Organizations Comments at 7& n.17 (citing Shara Tibken, *The Broadband Gap's Dirty Secret: Redlining Still Exists in Digital Form* (June 28, 2021), https://www.cnet.com/home/Internet/features/the-broadband-gaps-dirty-secret-redlining-still-exists-in-digital-form/); *see also Inclusive Communities*, 576 U.S. at 528 (explaining that some segregated housing patterns can be traced to conditions that arose in the mid-20th century, that rapid urbanization, concomitant with the rise of suburban developments accessible by car, led many white families to leave the inner cities, and that this often left minority families concentrated in the center of the Nation's cities).

Loan Corporation to create "residential security maps."[17] These federally created maps outlined as "high-risk" those areas highly populated by minorities. Banks used these maps to deny mortgage capital to minority residents living in those high-risk areas, leading to disinvestment in these communities.[18] Against this historical and demographic backdrop, researchers have long found that metropolitan areas with a history of redlining "generally remain more segregated and more economically disadvantaged, [and] . . . have lower median household income, lower home values, older housing stock, and rents which are lower in absolute terms (but often higher as a percentage of income)."[19] This history has carried forward to broadband access, as researchers have found that access to broadband in the home can decrease in tandem with historical residential risk classifications, and such differences in broadband access vary depending on income levels, race, and ethnicity.[20]

1. Consumer Access to Broadband

10. The Commission regularly reports on the number of Americans who lack access to broadband internet access service.[21] While the Commission reported in 2021 that 14.5 million Americans lack access to broadband,[22] an independent study suggested that the actual number was as high as 42

[17] Joint Advocates Comments at 5 & n.1 (citing R. Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017)); *see also* Federal Reserve Bank of St. Louis: Economic Research, *Archive: Records of the Federal Home Loan Bank Board: Home Owners Loan Corporation, Record Group* 195,, https://fraser.stlouisfed.org/archival-collection/records-federal-home-loan-bank-board-6751?view=flat (last visited Nov. 14, 2023).

[18] Joint Advocates Comments at 5-9*; see also* Kerner Commission, Report of the National Advisory Commission on Civil Disorders at 259 (1968) ("Discrimination prevents access to many nonslum areas, particularly the suburbs, and has a detrimental effect on ghetto housing itself. By restricting the area open to a growing population, housing discrimination makes it profitable for landlords to break up ghetto apartments for denser occupancy, hastening housing deterioration."); *Inclusive Communities*, 576 U.S. at 529 ("Racially restrictive covenants prevented the conveyance of properties to minorities, . . . steering by real-estate agencies led potential buyers to consider homes in racially homogenous areas; and discriminatory lending practices, often referred to as redlining, precluded minority families from purchasing homes in affluent areas.").

[19] Lawyers' Committee for Civil Rights Under Law Comments at 36 & n.168 (citing A. Perry and D. Harshbarger, *America's Formerly Redlined Neighborhoods Have Changed and So Must Solutions to Rectify Them* (Oct. 14, 2019), https://www.brookings.edu/articles/americas-formerly-redlines-areas-changed-so-must-solutions/).

[20] *See id.* at 36 (citing Congressional Research Service, The Digital Divide: What Is It, Where Is It, and Federal Assistance Programs (2021), https://crsreports.congress.gov/product/pdf/R/R46613); Public Knowledge et al. Comments at 61-62, n.202 (citing Skinner et al. at 11; *see also* Joint Center for Political and Economic Studies Reply at 3 (rec. June 30, 2022) (citing Dominique Harrison, Joint Center for Political and Economic Studies, Affordability and Availability, Expanding Broadband in the Black Rural South (2021)) (reporting that in the black rural south, 20.8% of blacks, compared to 12% of whites, lack broadband Internet infrastructure); *id.* at 4 & n.2 (citing S. Katsinas, N. Keeney, E Jacobs, E. Corley and H. Whann, Education Policy Center, Internet Access Disparities in Alabama & the Black Belt (2023), https://ir.ua.edu/bitstream/handle/123456789/9922/201018_Internet-access-disparities-al-black-belt.pdf?sequence=1); Joint Advocates Comments at 5-7; Mississippi Center for Justice Reply at 5 (rec. Apr. 17, 2023).

[21] *See* Press Release, FCC, Chairwoman Rosenworcel Proposes National Goal of 100% Access to Affordable Broadband (July 25, 2023) (announcing that the Chairwoman recently circulated an updated Notice of Inquiry that would kick off the agency's evaluation of the state of broadband across the country, as required by section 706 of the Telecommunications Act), https://www.fcc.gov/document/rosenworcel-proposes-goal-100-access-affordable-broadband.

[22] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269, Fourteenth Broadband Deployment Report, 36 FCC Rcd 836, 837, para. 2 (2021), https://www.fcc.gov/reports-research/reports/broadband-progress-reports/fourteenth-broadband-deployment-report.

million.[23] Further, Microsoft's data usage, as of 2020, suggested that as many as 120.4 million people in the United States did not *use* the internet at broadband speeds of 25/3 Mbps.[24]

11. The uncomfortable reality is that too many households in the United States lack equal access to broadband. Lack of equal access to broadband is not limited to historically redlined urban communities,[25] but also encompasses and acutely affects both rural and urban low-income communities, other rural communities, and Tribal areas.[26]

2. The Global COVID-19 Pandemic Heightened the Inequities in Broadband Internet Access

12. The global COVID-19 pandemic compounded the problem of unequal access to broadband internet access service in the United States. The digital divide became more stark as shutdowns caused a heightened need for high-quality broadband internet access service to meet basic needs such as working from home, distance learning, accessing public benefits and services, telehealth, job-hunting, remote worship activities, remote family and social connections, and other daily activities.[27] In 2020, a Pew Research Center survey found that nearly half of adults surveyed stated that internet access was essential during the pandemic.[28] And in that same survey, Pew found that at that time, "[s]ome 43% of lower-income parents with children whose schools shut down say it is very or somewhat likely their children will have to do schoolwork on their cellphones; 40% report the same likelihood of their child having to use public Wi-Fi to finish schoolwork because there is not a reliable internet connection at home."[29] Subsequently, in 2021, Pew surveys found that 57% of households making less

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[23] John Busby et al., *BroadbandNow Estimates Availability for All 50 States; Confirms that More than 42 Million Americans Do Not Have Access to Broadband* (May 9, 2023), https://broadbandnow.com/research/fcc-broadband-overreporting-by-state); *see also* National Urban League et al. Reply Comments, Attach. at 33-34 (rec. Apr. 20, 2023) (citing The Lewis Latimer Plan for Digital Equity and Inclusion) (Lewis Latimer Plan)).

[24] CEDC Report at 19 (citing Microsoft Airband Initiative, Maps Showing FCC Fixed Broadband Availability and Broadband Usage Based on Microsoft Data Updated as of October 2020, https://app.powerbi.com/view?r=eyJrIjoiYzlhZWIyNWEtMDlkOS00MWJkLWExZGYtOWQ3NTNjNzJiNDIwIiwidCI6ImMxMzZlZWMwLWZlOTItNDVlMC1iZWFlLTQ2OTg0OTczZTIzMiIsImMiOjF9).

[25] *See* Skinner et al. at 2-4, 11; Letter from Task Force to Prevent Digital Discrimination to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69 (filed Aug. 29, 2023) (Baltimore, MD, Listening Session *Ex Parte*).

[26] *See* National Urban League et al. Reply, Attach. at 34-35 citing Lewis Latimer Plan) (discussing obstacles affecting deployment on tribal lands)); *see also* Elizabeth A. Dobis et al., Economic Research Service, U.S. Department of Agriculture, Rural America at a Glance (2021), https://www.ers.usda.gov/publications/pub-details?pubid=102575 (analyzing FCC Form 477 and U.S. Census block data and finding that from 2015-2019, households in rural, persistently poor counties were the least likely to have home internet), https://www.ers.usda.gov/publications/pub-details?pubid=102575); U.S. Department of Agriculture, *Broadband*, https://www.usda.gov/broadband (last visited Nov. 14, 2023); Anahid Bauer, Donna L. Feir, Matthew T. Gregg, The Tribal Digital Divide: Extent and Explanations, 46 Telecommunications Policy 102401 at 6 (2022) https://www.minneapolisfed.org/research/cicd-working-paper-series/the-tribal-digital-divide-extent-and-explanations) (examining the broadband access gap between Tribal and non-Tribal areas).

[27] National Urban League et al. Comments at 1 ("the COVID-19 pandemic demonstrated that our country has reached a critical juncture and the need for broadband to connect households and individuals to jobs, education, healthcare, civic duties, essential services and community is more necessary than ever.").

[28] Emily A. Vogels, Andrew Perrin, Lee Rainie, Monica Anderson, *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, Pew Research Report (Apr. 30, 2020), https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.

[29] *Id.*

than $30,000 had home broadband, compared to 93% of households making $100,000 or more,[30] and additionally, white survey participants were more likely than black and Hispanic survey participants to report having home broadband access.[31]

13. Moreover, based on data contributed by civil society organizations, educational institutions, and private sector companies, among households with broadband access, lower-income communities were observed to have slower effective speeds.[32] For example, broadband internet access service has been found to be 21% lower in Tribal areas, compared to neighboring non-Tribal areas, and download speeds were lower.[33] Overall, research and data indicate that during the pandemic, entrenched disparities in broadband internet access service in low-income, rural, and minority households adversely affected all aspects of daily life, including accessing education, seeking housing and employment online, accessing telehealth medical care, and applying for services.[34]

B. Infrastructure Investment and Jobs Act of 2021

14. On November 15, 2021, in the midst of the pandemic, Congress enacted the Infrastructure Act providing $65 billion for broadband programs for the purpose of expanding access and

[30] Emily Vogels, *Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption*, Pew Research Center (June 22, 2021), https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/.

[31] Sara Atske & Andrew Perrin, *Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S.*, Pew Research Center (2021), https://www.pewresearch.org/short-reads/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/); *see also* Andrew Perrin, *Mobile Technology and Home Broadband 2021*, Pew Research Center Fact Sheet, https://www.pewresearch.org/Internet/2021/06/03/mobile-technology-and-home-broadband-2021/.

[32] R. Gallardo & B. Whitacre, *The Real Digital Divide? Advertised vs. Actual Internet Speeds*, Purdue Center for Regional Development (2020), https://pcrd.purdue.edu/the-real-digital-divide-advertised-vs-actual-Internet-speeds/).

[33] A. Bauer, D.L. Feir, M. Gregg, *The Tribal Digital Divide: Extent and Explanation*, Center for Indian Development, Federal Reserve Bank of Minneapolis, at 4 (rev. June 27, 2022), https://www.minneapolisfed.org/research/cicd-working-paper-series/the-tribal-digital-divide-extent-and-explanations.

[34] For example, as the pandemic caused the vast majority of K-12 students across the country to receive online instruction, 14% of parents had to access public Wi-Fi because there was no reliable connection to the home. This figure was 4% in high-income households and 23% in lower income households. *See* C. McClain, *The Internet and the Pandemic, Parents, Their Children and School During the Pandemic*, Pew Research Center (2021), https://www.pewresearch.org/Internet/2021/09/01/parents-their-children-and-school-during-the-pandemic/; *see also* Leadership Conference on Civil and Human Rights et al. Comments at 5 & n.28 (rec. Feb. 21, 2023) (citing K. Hampton, L. Fernandez, C. Robertson and J. Bauer, Broadband and Student Performance Gaps, Michigan State Univ. (2020) (https://quello.msu.edu/wp-content/uploads/2020/03/Broadband_Gap_Quello_Report_MSU.pdf)); National Multicultural Organizations Comments at 3 n.10 (citing Julia Perrino, *Redlining" and Health Indicators: Decisions Made 80 Years Ago Have Health Consequences Today*, Nat'l Cmty. Reinvestment Coal. (July 2, 2020), https://ncrc.org/redlining-and-health-indicators-decisions-made-80-years-ago-have-health-consequences-today); Julian Agyeman, *How Urban Planning and Housing Policy Helped Create "Food Apartheid" in US Cities*, The Conversation (Mar. 9, 2021, 8:36 AM), https://theconversation.com/how-urban-planning-and-housing-policy-helped-create-food-apartheid-in-us-cities-154433); Leadership Conference on Civil and Human Rights et al. Comments at 5 n.29 (citing A. Roy, *Telehealth Is a Good Option – If Your Internet is Fast Enough*, 9News (Jan. 16, 2020), https://www.9news.com/article/news/local/next/telehealth-is-a-good-option-if-your-Internet-connection-is-fast-enough/73-1bed9e35-914b-4c97-a435-9c5622c0b42f); Lawyers' Committee for Civil Rights Under Law Comments at 39 & nn.194-198.

affordability to under-served and unserved areas and addressing the "digital divide."[35] Division F of the Infrastructure Act is entitled "Broadband." In the legislation, Congress found:

> (1) Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States.
>
> (2) The persistent "digital divide" in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education.
>
> (3) The digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all.
>
> (4) In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high quality options for broadband service.
>
> (5) The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing.[36]

1. The Infrastructure Act's Funding Measures Promote Equal Access

15. The Infrastructure Act's funding measures are intended to promote access to broadband internet access service and reduce the digital divide. Under Title I through Title V of Division F of the Act, Congress authorized funding for expansive broadband access, affordability, and digital literacy programs. These programs fall into seven major program areas[37]: the Broadband Equity, Access, and Deployment Program ($42.45 billion),[38] the Affordable Connectivity Program ($14.2 billion),[39] Digital Equity Planning, Capacity and Competitive Grants ($2.75 billion),[40] the Tribal Broadband Connectivity

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[35] During House debates on the Infrastructure Act, House Majority Whip James Clyburn (D-SC) testified about the harm caused by the digital divide and the need to address inequities in access to high-speed broadband internet service. He stated:

> Millions of Americans are not connected to the internet. In my home state of South Carolina, nearly 1 in 10 households lack access to an internet connection, and even more cannot afford service. As a result, they cannot work remotely, cannot learn remotely, and cannot access telehealth. The internet is as essential to the 21st century as electricity was to the 20th century, and far too many Americans are left out. That is why I worked closely with the House Rural Broadband Task Force, Chairman Pallone, and members of the Energy and Commerce Committee to craft comprehensive legislation to make high-speed broadband accessible and affordable for all. . . the Infrastructure Investment and Jobs Act will make America's greatness accessible and affordable for all Americans. I urge passage of this legislation. 167 Cong. Rec. H5473-06 (2021).

See also testimony of House Majority Leader Steny Hoyer (D-MD) (testifying about the bipartisan infrastructure bill that it is designed to "make[] sure that all of us can make it in America because we have access to the internet."). 167 Cong. Rec. H5473-06 (2021); Transcribed from House Debate on Infrastructure Bill, C-SPAN (Sept. 28, 2021), C-Span - House Debate Infrastructure Bill (Sept. 28, 2021).

[36] 47 U.S.C. § 1701.

[37] For a summary of Broadband Funding Programs, *see* White House, A Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments and Other Partners at 383-97 (2021), https://www.whitehouse.gov/wp-content/uploads/2022/05/BUILDING-A-BETTER-AMERICA-V2.pdf.

[38] *See* 135 Stat. 1182.

[39] *See* 135 Stat. 1238.

[40] *See* 135 Stat. 1212, 1222, 1354.

Program ($2 billion),[41] Rural Utilities Service at the Department of Agriculture ($2 billion),[42] the Middle Mile Grant Program ($1 billion),[43] and Private Activity Bonds (approximately $600 million).[44]

2. The Infrastructure Act Requires that the Commission Undertake Specific Measures to Support the Goal of Equal Access

16. In addition to providing funding for broadband deployment in unserved and underserved communities, the Infrastructure Act sets out specified measures for the Commission in service of the goal that "every American ha[ve] access to reliable high-speed internet."[45] Title I directs the Commission to create a broadband funding map, which is an "online mapping tool to provide a locations overview of the overall geographic footprint of each broadband infrastructure deployment project funding by the Federal Government."[46] Through this map, and the National Broadband Map, the Commission and other governmental and non-governmental stakeholders can track broadband deployment projects to ensure that broadband is deployed in historically unserved and underserved areas. Title V, entitled "Broadband Affordability," addresses affordability of broadband internet for low-income consumers. In addition to expanding funding to offset the cost of broadband internet for low-income households through the Affordable Connectivity Program (ACP), Title V promotes transparency by requiring the Commission to adopt rules for broadband providers to display easy-to-understand labels that allow consumers to comparison shop for broadband services.[47] This promotes competition by providing consumers clear, concise, and accurate information about broadband internet prices and fees, performance, and network practices.[48]

17. Most relevant here, section 60506 of the Infrastructure Act sets out further measures to support the fundamental objective of ensuring equal access to broadband.[49] The Statement of Policy provides that "insofar as technically and economically feasible" the Commission "should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service."[50] In addition to mandating the adoption of rules to facilitate equal access by "preventing digital discrimination of access" on specified bases and identifying necessary steps to eliminate such discrimination,[51] matters we discuss in great depth throughout this *Report and Order*, section 60506 requires the Commission and the Attorney General to "ensure that Federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination" on specified bases.[52] The Commission must also "develop model policies and best practices that can be adopted by

[41] *See* 135 Stat. 1208, 1353.

[42] *See* 135 Stat. 1351.

[43] *See* 135 Stat. 1231, 1355.

[44] *See* 135 Stat. 1330.

[45] *See* White House Fact Sheet, Bipartisan Infrastructure Investment and Jobs Act (Aug. 2, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/.

[46] *See* 135 Stat. 1206, Sec. 60105(b).

[47] *See* 135 Stat. 1238 & 1244, P.L. 117-58, Sec. 60502 (Broadband affordability) and Sec. 60504 (adoption of consumer broadband labels); 47 U.S.C. §§ 1752-53.

[48] *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Noticed of Proposed Rulemaking, FCC 22-86 (Nov. 17, 2022) (*Broadband Labels Order and Further Notice*).

[49] 47 U.S.C. § 1754.

[50] *Id.* § 1754(a).

[51] *Id.* § 1754(b).

[52] *Id.* § 1754(c).

States and localities to ensure that broadband internet access service providers do not engage in digital discrimination," and revise its "public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination."[53]

C. Commission's Actions to Further Promote Equal Access

1. Commission Funding Programs

18. The Commission's most recent efforts to get marginalized communities connected to high-quality broadband internet access service include administration of well-targeted subsidy programs. The Affordable Connectivity Program and its predecessor, the Emergency Broadband Benefit (EBB) Program, have been instrumental in helping low-income households afford broadband internet. Under the program, eligible low-income households can receive a discount of $30 per month toward internet service and up to $75 per month for eligible households on qualifying Tribal lands. Eligible households can also receive a one-time discount of up to $100 to purchase a laptop, desktop computer, or tablet from participating providers. As of August 2023, more than 20 million households in the United States have enrolled in the program.

19. During the pandemic, the Commission expedited adoption of the Emergency Connectivity Fund (ECF)[54] and COVID-19 Telehealth Programs[55] to provide funding to eligible schools and libraries for broadband services and connected devices for use by students, school staff, or library patrons and health care providers for telecommunications services, information services, and connected devices.

2. Communications Equity and Diversity Council

20. On June 29, 2021, the Commission chartered the Communications Equity and Diversity Council (CEDC), a federal advisory committee created for the purpose of presenting recommendations to the Commission on "advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability."[56] Within the CEDC is the Digital Empowerment and Inclusion Working Group that was tasked with recommending "model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination" as required by section 60506(d).[57]

21. Since its formation, the CEDC and its working groups have taken significant steps towards satisfying its mission. On November 7, 2022, the CEDC submitted Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity to the Commission.[58] The CEDC

[53] *Id.* § 1754(d), (e).

[54] *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696 (2021) (*ECF Report and Order*).

[55] *Promoting Telehealth for Low-Income Consumers: COVID 19 Telehealth Program*, WC Docket Nos. 18-213 and 20-89, Report and Order, 35 FCC Rcd 3366 (2020) (Round 1); *COVID-19 Telehealth Program; Promoting Telehealth for Low-Income Consumers*, WC Docket Nos. 20-89 and 18-213, Report and Order and Order on Reconsideration, 36 FCC Rcd 7141 (2021) (Round 2).

[56] In chartering the CEDC, the Commission renewed the charter of the Advisory Committee on Diversity and Digital Empowerment under a new name. *FCC Seeks Nominations for Membership on Communications Equity and Diversity Council,* Public Notice, 36 FCC Rcd 10391, 10391 (2021).

[57] 47 U.S.C. § 1754(d); *FCC Announces Working Group Members of the Communications Equity and Diversity Council, Public Notice*, 37 FCC Rcd 329 (MB Jan 13, 2022); *Agenda Released for February 23, 2022 Virtual Meeting of the Communications Equity and Diversity Council*, Public Notice, 37 FCC Rcd 1850 (MB Feb. 16, 2022).

[58] CEDC Report.

found that "COVID-19 exacerbated economic disparities for those who did not already have access to broadband services, especially in communities of color, where a lack of broadband access can reinforce systemic inequality."[59] The CEDC further found that data supported the conclusion that minority status and income correlated with broadband access.[60] To that end, the CEDC compiled findings from its three CEDC Working Groups and proposed recommendations for, among other things, model policies and best practices for states and localities that address discrimination in broadband access.[61]

22. Moreover, in furtherance of its mission, on March 23, 2023, the CEDC convened a range of community organizations, broadband internet access providers, federal agencies with emergency broadband funding, and state agencies to assess lessons learned concerning programs that provided broadband connectivity to communities during the pandemic.[62] The CEDC released recommendations on this topic on June 15, 2023.[63]

3. Task Force to Prevent Digital Discrimination

23. On February 8, 2022, Chairwoman Rosenworcel announced the formation of a cross-agency Task Force to Prevent Digital Discrimination (Task Force). The Task Force is charged with coordinating the development of rules and policies to combat digital discrimination and promote equal access to broadband, overseeing the development of model state and local policies, and improving how the Commission seeks feedback from persons facing digital discrimination in their communities.[64]

24. The Task Force has engaged in significant outreach nationwide to understand the depth of problems in accessing broadband, particularly as experienced by persons in historically excluded, low-income, rural, and marginalized communities. On January 25, 2023, the Task Force released a Broadband Access Experience Form for consumers to state their experience with accessing broadband internet.[65] The Task Force explained that the experiences shared by consumers help inform the work of the Commission.[66] Further, the Task Force has held numerous public listening sessions to gain additional

[59] *Id.* at 20 & n.22 (citing N. Turner, K. Henderson, M. Morial, A. Perry, Can We Alleviate Racism and Systemic Inequality by Expanding Broadband During COVID-19?, Panel, The Brookings Institution, Washington, DC, August 25, 2020, https://www.brookings.edu/events/can-we-alleviate-racism-and-systemic-inequality-by-expanding-broadband-during-covid-19/).

[60] *Id.* at 20-22.

[61] *Id.* at 33-35.

[62] Communications Equity and Diversity Council, Panel, *Lessons Learned from the Pandemic – Roundtable on Broadband Access, Affordability and Deployment* (2023), https://www.fcc.gov/news-events/events/2023/03/lessons-learned-pandemic-roundtable-broadband-access-affordability-and.

[63] Communications Equity and Diversity Council, Connecting Opportunity Communities to Broadband During the COVID-19 Pandemic: Lessons Learned and Recommendations (June 15, 2023), https://www.fcc.gov/sites/default/files/cedc-digital-empowerment-inclusion-wg-broadband-access-report-06152023.pdf. *See also* Disability Advisory Committee, Concerns and Lessons Learned Regarding Communication Access for People with Disabilities During the Pandemic (Sept. 9, 2021), https://www.fcc.gov/file/21920/download. Chairwoman Rosenworcel rechartered the CEDC for two more years effective June 22, 2023. Charter of the Federal Communications Commission's Communications Equity and Diversity Council (June 22, 2023), https://www.fcc.gov/sites/default/files/cedc-charter-06222023.pdf.

[64] Federal Communications Commission, *Task Force to Prevent Digital Discrimination* (Oct. 26, 2023), https://www.fcc.gov/task-force-prevent-digital-discrimination.

[65] Federal Communications Commission, *Broadband Access Experience Form*, https://consumercomplaints.fcc.gov/hc/en-us/articles/12303650382868-Broadband-Access-Experience-Form (last visited Nov. 14, 2023).

[66] Federal Communications Commission, *Consumer Inquiries and Complaint Center*, https://consumercomplaints.fcc.gov/hc/en-us/articles/12303650382868-Broadband-Access-Experience-Form (last visited Nov. 14, 2023).

information and understanding from affected communities, state, local and Tribal governments, public interest advocates, and providers about challenges, barriers, and experiences with accessing broadband.[67] In addition, the Task Force conducted outreach efforts to educate the public on the Commission's rulemaking procedure, and to gather data, narratives, best practices, and recommendations.[68] Summaries of these listening sessions and meetings have been entered into the record in this proceeding.[69]

[67] At the Los Angeles Listening Session on February 21, 2023, the Task Force heard public comments from the California Public Utilities Commission's Public Advocates Office, SoLa Impact, California Community Foundation, California Cable and Telecommunications Association, and the Utility Reform Network. Federal Communications Commission, Task Force to Prevent Digital Discrimination Listening Session (Feb. 21, 2023), https://www.fcc.gov/news-events/events/2023/02/task-force-prevent-digital-discrimination-listening-session). At the Baltimore Listening Session on March 28, 2023, the Task Force heard public comments from the Baltimore Digital Equity Coalition, Disability Rights Maryland, Enoch Pratt Free Library, Mayor's Office for the City of Baltimore, National Federation for the Blind, Baltimore Public Schools, Project Waves, Wide Angle Youth Media, and Baltimore Tracks. Federal Communications Commission, Task Force to Prevent Digital Discrimination Listening Session (Mar. 28, 2023), https://www.fcc.gov/news-events/events/2023/02/task-force-prevent-digital-discrimination-listening-session. The Washington D.C. listening session was held on September 14, 2023. The Task Force heard from representatives from the American Association of People with Disabilities, the American Foundation for the Blind, Communication First, TDIforAccess, Inc., the University of Kansas University Center on Developmental Disabilities, Telecommunications Access of Maryland, the Partnership of Employment and Accessible Technology, the Maryland Initiative for Digital Accessibility with the University of Maryland, and the Gallaudet University Technology Accessibility Program. Federal Communications Commission, Task Force to Prevent Digital Discrimination Listening Session (Sept. 14, 2023), https://www.fcc.gov/news-events/events/2023/09/task-force-prevent-digital-discrimination-listening-session-gallaudet-u. At the New York Listening Session on September 29, 2023, the Task Force heard public comments from NY ConnetALL, New York State Broadband Office; Consumer Reports; The Fortune Society; Silicon Harlem; Digital Equity Research Lab; NYC Office of Technology and Innovation; Aspen Institute Latinos and Society Program; Brooklyn Public Library; The STEM Alliance; Hispanic Federation; Asian Community Care Organization; Housing and Financial Capability, National Urban League; and Per Scholas. Federal Communications Commission, Task Force to Prevent Digital Discrimination Listening Session (Sept. 29, 2023), https://www.fcc.gov/news-events/events/2023/09/task-force-prevent-digital-discrimination-listening-session-new-york. At the Topeka, Kansas Listening Session on October 5, 2023, the Task Force heard public comment from the Deputy Mayor's office, Kansas Commerce Broadband Development Office; ISBA, Inc.; Topeka Public Schools; Jayhawk Area Agency on Aging; State of Kansas Department of Children and Families; KC Digital Drive; Topeka Shawnee County Public Library; Greater Topeka Partnership; United Methodist Health Ministry Fund. Federal Communications Commission, Task Force to Prevent Digital Discrimination Listening Session (Oct. 5, 2023), https://www.fcc.gov/news-events/events/2023/10/task-force-prevent-digital-discrimination-listening-session-topeka-ks.

[68] *See* Letter from Task Force to Prevent Digital Discrimination to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1-2 (filed Aug. 29, 2023) (Chicago, IL, Listening Session *Ex Parte*); Letter from Task Force to Prevent Digital Discrimination to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1-2 (filed Aug. 30, 2023) (Tacoma, WA, Listening Session *Ex Parte*); Letter from Task Force to Prevent Digital Discrimination to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1-2 (filed Aug. 30, 2023) (Tribal Workshop Ferndale, WA, Listening Session *Ex Parte*); Letter from Task Force to Prevent Digital Discrimination to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1 (filed Oct. 24, 2023) (Seattle, WA, Listening Session *Ex Parte*); Letter from Task Force to Prevent Digital Discrimination to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1 (filed Oct. 24, 2023) (American Association of Retired Persons (AARP) Listening Session *Ex Parte*); Letter from Task Force to Prevent Digital Discrimination to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1 (filed Oct. 24, 2023) (National Digital Inclusion Alliance (NDIA) Listening Session *Ex Parte*).

[69] *Ex parte* filings for the listening sessions can be found on the Commission's website by entering the docket number, 22-69, in the "Proceeding(s)" box under Search All Public Filings. Federal Communications Commission, *Welcome to the FCC's Electronic Comment Filing System*, https://www.fcc.gov/ecfs/search/search-filings (last visited Nov. 14, 2023).

D. Notice of Inquiry and Notice of Proposed Rulemaking

25. The Commission has taken iterative steps to form a robust record for the rules adopted in today's *Report and Order* and proposed in the accompanying *Further Notice of Proposed Rulemaking*. In March 2022, the Commission released a *Notice of Inquiry* seeking comment on the rules that the Commission should adopt to implement section 60506. By the *Notice of Inquiry*, the Commission invited comment on the requirements encompassed in section 60506, in order to inform a forthcoming rulemaking to implement the requirements of the statute.[70]

26. In December 2022, the Commission released a *Notice of Proposed Rulemaking* (*Notice*) seeking focused comment on potential rules to address digital discrimination of access pursuant to section 60506.[71] The Commission sought comments on its proposals to: (1) adopt a definition of "digital discrimination of access," (2) revise the Commission's informal consumer complaint process to accept complaints of digital discrimination of access, and (3) adopt model policies and best practices for states and localities combatting digital discrimination of access. The Commission also sought comment on other rules the Commission should adopt to facilitate equal access and combat digital discrimination of access, and on the legal authority for adopting rules. The Commission received more than 1,400 pages of record comments and ex partes from a wide range of stakeholders including public interest organizations, broadband internet access providers, state, local and Tribal governments, industry advocacy organizations, and research institutes. Informed by this record, we adopt rules in fulfillment of our mandate from Congress in section 60506 of the Infrastructure Act.

III. DISCUSSION

27. Based on our review of the record received in response to the *Notice of Inquiry* and *Notice*, we adopt rules in this *Report and Order* to implement subsections (b), (d) and (e) of section 60506. First, we adopt a definition of "digital discrimination of access" and explain its component parts. Next, we adopt rules to prohibit digital discrimination of access. Third, we outline the scope of that prohibition, identifying the consumers, entities, and services covered by the prohibition. Fourth, we adopt rules for enforcing the prohibition and other requirements set forth in our rules, and we explain how we will assess when a policy or practice differentially affects consumer access to broadband internet access service. Finally, we adopt changes to our informal complaints process so the Commission can accept digital discrimination of access complaints, address other issues on the record, and adopt model policies and best practices for states and localities combating digital discrimination.

A. Definition of Statutory Terms

28. Section 60506 is part of a comprehensive broadband access and affordability framework intended to expand broadband coverage in the United States, improve the quality of broadband services, and increase broadband adoption rates in low-income communities. As many commenters note, the bulk of the Infrastructure Act's broadband-related provisions are directed toward (1) improving broadband access in unserved and underserved communities by incentivizing investment in hard-to-build areas (principally through tens of billions of dollars in federally administered grants), and (2) improving broadband adoption rates in low-income communities through subsidies to qualifying consumers for high-speed broadband service and related equipment.

29. The Infrastructure Act's historic investment incentives represent an acknowledgement by Congress that: (1) deploying, upgrading, and maintaining high-speed broadband networks is an

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[70] *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Inquiry, 37 FCC Rcd 4198 (2022) (*Notice of Inquiry*), https://docs.fcc.gov/public/attachments/FCC-22-21A1.pdf.

[71] *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98 (rel. Dec. 22, 2022) (*Notice*), https://docs.fcc.gov/public/attachments/FCC-22-98A1.pdf.

expensive enterprise, even for the largest of broadband providers, (2) networks will only be built where they can be deployed at acceptable cost and then profitably operated, and (3) such legitimate, profit and loss considerations likely account for many of the gaps in access to high-speed broadband service across the United States. The investment incentives in the Infrastructure Act directly address the very real technical and economic constraints facing many broadband providers as they work to expand their networks to reach unserved and underserved communities across the country.

30. But even while seeking to address these legitimate business constraints, Congress recognized that other factors might also have played a significant role in creating and maintaining the digital divide in the United States. Thus, alongside the ambitious programs in the Infrastructure Act for improving broadband access in unserved and underserved communities, Congress, in section 60506, specifically directed the Commission to facilitate equal access to broadband service, including addressing discrimination in the provision of access to broadband service.

31. Section 60506(a) first declares "the policy of the United States that, insofar as technically and economically feasible . . . subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service . . . [and that] the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service." Section 60506(b) then directs the Commission to "adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective," and mandates that those rules include "preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin" and "identifying necessary steps for the Commission[] to take to eliminate" such digital discrimination of access.

32. Critically important to our understanding of the reach of section 60506 is its definition of "equal access." Section 60506(a) declares in the Statement of Policy that the Commission should take steps to ensure "equal access" to broadband internet access service across our Nation, and section 60506(b) directs the Commission to adopt rules to "facilitate equal access" to broadband internet access service.[72] The "equal access" that we are to ensure and facilitate is defined in subsection (a)(2) as "the *equal opportunity* to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions."[73] The statute thus focuses the Commission's energies on the objective of *equal opportunity*, a concept and goal that is well known in American life. And in service of this equal opportunity goal, the Commission is directed, and thereby authorized, to adopt rules to prevent discrimination on the listed bases and to identify ways to eliminate its occurrence and effects.

1. Digital Discrimination of Access Defined

33. By enacting section 60506, Congress vested the Commission with authority to adopt and enforce rules to address the problem of digital discrimination of access.[74] To achieve that purpose, the *Notice* advanced proposals for defining "digital discrimination of access" and the legal standard for determining a violation of the rules.[75] We adopt the following definition of "digital discrimination of access," which is essentially identical to our proposal in the *Notice*:

> Policies or practices, not justified by genuine issues of technical or economic feasibility, that (1) differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or

[72] 47 U.S.C. § 1754(a), (b).

[73] *Id.* § 1754(a)(2) (emphasis added).

[74] *Id.* §1754(b) ("Not later than 2 years after November 15, 2021, the Commission shall adopt rules to facilitate equal access. . . .").

[75] *See Notice* at 6-13, paras. 11-24.

(2) are intended to have such differential impact.

34. In so defining "digital discrimination of access," we find that to achieve the statute's equal access purposes, the legal standard must address not only business conduct motivated by discriminatory intent, but also business conduct having discriminatory effects.

35. Virtually all commenters agree that digital discrimination of access encompasses business conduct motivated by discriminatory intent.[76] Certainly treating a person or a group of persons "less favorably than others because of a protected trait" is "the most easily understood type of discrimination."[77] Under our adopted rules, business conduct *motivated by discrimination* on one of the six listed bases (income level, race, color, ethnicity, religion, and national origin) would generally be prohibited.

36. The disagreement among commenters centers on whether policies and practices having discriminatory *effects* should be prohibited under our definition of digital discrimination of access. Most industry commenters argue that the definition must be limited to disparate treatment, i.e., intentional discrimination, relying largely on case law interpreting the Fair Housing Act (FHA) and asserting that a Commission rule permitting claims based on disparate impact, i.e., discriminatory effect, would conflict with other provisions of the Infrastructure Act, and could disincentivize investment in broadband networks.[78] On the other hand, most public interest and government commenters, relying on the same case law, argue that the rule must encompass disparate impact claims because most discrimination in broadband access stems from business practices having discriminatory effect, and any rule that excludes a disparate impact liability standard would render section 60506 largely meaningless.[79] In adopting a

[76] Americans for Tax Reform and Digital Liberty Comments at 2 (rec. Feb. 21, 2023); California Public Utilities Commission Comments at 1 (rec. Feb. 21, 2023); City of Long Beach Comments at 1 (rec. Feb. 21, 2023); CTIA Comments at 3 (rec. Feb. 21, 2023); Greenlining Institute Comments at 5-6 (rec. Feb. 21, 2023); Jeffrey Westling Comments at 2-3 (rec. Feb. 21, 2023) (American Action Forum); Lawyers' Committee for Civil Rights Under Law Comments at 8-15; NCTA Comments at 2-3 (rec. Feb. 21, 2023); National Digital Inclusion Alliance and Common Sense Media Comments at 3; National Hispanic Media Coalition Comments at 8; National Multicultural Organizations Comments at 2; National Urban League et al. Comments at 4-5; T-Mobile Comments at 2-3 (rec. Feb. 21, 2023); U.S. Chamber of Commerce Comments at 2, 7 (rec. Feb. 21, 2023); USTelecom Comments at 3-4, 21-22 (rec. Feb. 21, 2023); Verizon Comments at 14 (rec. Feb. 21, 2023); American Civil Liberties Union Reply at 9 (rec. Apr. 20, 2023) (ACLU); AT&T Reply at 17 (rec. Apr. 20, 2023); Competitive Carriers Association Reply at 3 (rec. Apr. 20, 2023); Free State Foundation Reply at 1,5 (rec. Apr. 20, 2023); WISPA Reply at 9-10 (rec. Apr. 20, 2023).

[77] *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009).

[78] *See, e.g.*, ACA Connects Comments at 18 (rec. Feb. 21, 2023); AT&T Comments at 16-17 (rec. Feb. 21, 2023); Americans for Tax Reform and Digital Liberty Comments at 2-4; CTIA Comments at 3, 20-22; NCTA Comments at 2-3; T-Mobile Comments at 2-3, 14-16; U.S. Chamber of Commerce Comments at 6-7; USTelecom Comments at 11; Verizon Comments at 14; American Action Forum Comments at 1-5; CTIA Reply at 12 (rec. Apr. 20, 2023); International Center for Law & Economics Reply at 6 (rec. Apr. 20, 2023); Lumen Reply at 16 (rec. Apr. 20, 2023); NCTA Reply at 11 (rec. Apr. 20, 2023); Verizon Reply at 5-6 (rec. Apr. 20, 2023).

[79] *See, e.g.*, National Hispanic Media Coalition Comments at 7 (a disparate treatment only liability standard would "miss a large quantity of discrimination"); National Hispanic Media Coalition Reply at 2 (explaining that not providing for a disparate impact standard in our digital discrimination of access rules would effectively remove the "teeth" of this rulemaking); National Urban League et al. Comments at 4 ("[T]here are policies and practices that have the potential to be adopted by ISPs that may appear to be neutral, such as profit-driven deployment or customer acquisition decisions; however, those seemingly 'neutral' decisions could negatively impact historically marginalized communities' ability to connect to [broadband]."); California Public Utilities Commission Comments at 1-7; City of Long Beach Comments at 1; City of Philadelphia, City of Oklahoma, City of Minneapolis et al. Comments at 15-16, 20 (rec. Feb. 21, 2023) (Local Governments); Japanese American Citizen League Comments at 1-2 (rec. Feb. 21, 2023); Joint Advocates Comments at 17-20; Lawyers' Committee for Civil Rights Under Law Comments at 8-15; Leadership Conference on Civil and Human Rights et al. Comments at 2; National Multicultural Organizations Comments at 2-3; National Digital Inclusion Alliance and Common Sense Media Comments at 2-3;
(continued….)

definition of digital discrimination of access that encompasses both disparate treatment and disparate impact, we are guided primarily by the text of the statute, including its expressly stated goal of ensuring "equal access" to broadband internet access service.[80]

a. Section 60506 Supports the Commission's Adoption of the Legal Standards Stated in the Defined Term

37. Statutory interpretation focuses on "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."[81] The text and context of section 60506 of the Infrastructure Act fully support our adopted definition of digital discrimination of access and its application, as does the overall framework of the Infrastructure Act and section 60506.

(i) Disparate Treatment

38. Section 60506 plainly addresses intentional discrimination, i.e., an intentional act that treats a person, or group of persons, "less favorably than others because of a protected trait."[82] Virtually all commenters agree on this point,[83] and we find no basis for disagreeing with this consensus view. Our definition of "digital discrimination of access" thus includes any act by a covered entity that is intended to differentially impact access to broadband internet access service on one of the listed bases and is not justified by genuine issues of technical or economic feasibility. Based on the record before us, we do not expect to encounter many instances of intentional discrimination with respect to deployment and network upgrades, as there is little or no evidence in the legislative history of section 60506 or the record of this proceeding indicating that intentional discrimination by industry participants based on the listed characteristics substantially contributes to disparities in access to broadband internet service across the Nation.[84] Moreover, in the cases in which we do encounter intentional discrimination, we believe the entity that engaged in the discriminatory conduct will be hard pressed to justify such conduct on technical or economic feasibility grounds. Therefore, while we will allow such justifications to be raised and will consider them on a case-by-case basis, we expect that in most cases, a determination that a covered entity engaged in intentional discrimination will lead to a finding of liability under our rules.

(ii) Disparate Impact

39. In determining whether section 60506 authorizes us to include disparate impact in our definition of digital discrimination of access, we look to the guidance provided in the Supreme Court's

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New York State Public Service Commission Comments at 2 (rec. Feb. 21, 2023); Public Knowledge et al. Comments at 29, 50-56; WISPA Comments at 13 (rec. Feb. 21, 2023); ACLU Reply at 9.

[80] 47 U.S.C. § 1754(a)(3).

[81] *Robinson v. Shell Oil Co*., 519 U.S. 337, 341 (1997); *see also West Virginia v. Environmental Protection Agency*, 142 S.Ct. 2587, 2607 (June 30, 2022) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)).

[82] *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009).

[83] *Supra* para. 35.

[84] Lawyers' Committee for Civil Rights Under Law Comments at 12; Multicultural Media, Telecom and Internet Council Reply at 5 (rec. Apr.20, 2023); Letter from Stephanie Weiner, Chief Counsel, National Telecommunications and Information Administration, to the Federal Communications Commission, GN Docket No. 22-69, at 4-5 (filed Oct. 6, 2023) (NTIA *Ex Parte*) (arguing that the Commission should adopt a definition that encompasses both disparate treatment and disparate impact standards because disparities in service more commonly result "from business decisions and institutional behaviors that were set in motion without any discriminatory intent," and noting that industry "[has] been careful to point out that documented evidence of disparate treatment in this area is nearly non-existent"); *see also* CTIA Comments at 20; Free State Foundation Comments at 5 (rec. Feb. 21, 2023) (explaining that "no comments filed appear to allege that any recent or ongoing specific instances of broadband ISPs intentionally discriminating on the basis of deployment decisions"); NTCA Comments at 15 (rec. Feb. 21, 2023) (stating that the record in this administrative proceedings does not point to evidence of discriminatory intent based on any of the protected classes enumerated in section 60506 has been found).

decision in *Texas Department of Housing and Comm'ty Affairs v. Inclusive Communities Project*.[85] There, the Court set out a framework for determining when an antidiscrimination statute "must be construed to encompass disparate impact claims."[86] Under that framework, a disparate impact legal standard is authorized where the statutory text is "results based" and such a standard is "consistent with statutory purpose."[87] And, where evidence of a statistical disparity is shown to support a complaint of disparate impact, liability is properly limited where (1) the challenged policy or practice is shown to cause the disparity complained about,[88] and (2) business owners are permitted to explain the valid interests served by the challenged policy or practice.[89] We find that 60506 authorizes a disparate impact liability standard and that our implementing rules, outlined below, fully comport with the limiting criteria set out in *Inclusive Communities*.

(a) Statutory Text and Context

40. The language of section 60506 falls within Division F (Broadband Access) of the Infrastructure Act, where Congress addresses the problem of the "digital divide" in our country and the urgency of corrective action because "[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States."[90] The term "equal access" is defined in section 60506 as "the equal opportunity to subscribe to an offered service" of comparable quality on comparable terms and conditions.[91] The term "equal access" lies at the center of section 60506's Statement of Policy in subsection (a).[92] At subsection (b) Congress directs the Commission to adopt final rules to "facilitate equal access" which includes "preventing digital discrimination" and "identifying necessary steps . . . to eliminate [such] discrimination."[93] As we explain below, the facial text, context and purposes of the statute establish Congress's intent that our implementing rules address conduct having discriminatory effects as well as conduct motivated by discriminatory intent.

41. The operative text mandates the adoption of rules to "facilitate equal access to broadband" which includes "preventing digital discrimination of access based on" specified characteristics, and "identifying necessary steps . . . to eliminate [such] discrimination."[94] The term "equal access" is defined in section 60506(a) as "the *equal opportunity* to subscribe to an offered service" of comparable quality on comparable terms and conditions[95] and lies at the center of section 60506's

[85] *Texas Dep't of Housing and Comm'ty Affairs* v. *Inclusive Communities*, 576 U.S. 519, 533 (2015).

[86] *Id.*

[87] *Id.* at 533 (stating that "antidiscrimination laws must be construed to encompass disparate impact claims when their text refers to the consequences of actions and not just to the mindset of actors and where that interpretation is consistent with statutory purpose.").

[88] *Id.* at 541-42.

[89] *Id.* ((1) and (2) are not criteria for determining if disparate impact liability is authorized but limitations "that avoid the serious constitutional questions that might arise . . . if such liability were imposed based solely on a showing of a statistical disparity.").

[90] *Supra* para. 15; 47 U.S.C. §1701.

[91] 47 U.S.C. § 1754(a)(2).

[92] *Id.* § 1754(a)(1), (3).

[93] *Id.* § 1754(b)(1), (2).

[94] *Id.* § 1754(b).

[95] *Id.* § 1754(a)(2) (emphasis added). We reject the argument that section 60506(a)(2) "is irrelevant to the meaning of 'discrimination'" even if it focuses on consequence. *See, e.g.*, AT&T Comments at 17. As explained, we interpret "of access" in subsection (b)(1) to incorporate the definition of "equal access" in (a)(2). *Infra* para. 54.

Statement of Policy.[96] At subsection (b), Congress directs the Commission to adopt final rules to "facilitate equal access" to broadband internet access service.[97] Like Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act, section 60506 defines "access" in terms of opportunity.[98] Because the statute defines "access" as the "*opportunity* to subscribe,"[99] this operative text focuses on the impact of a policy or practice on the consumer's chance or right to obtain service rather than intent.[100]

42. Courts commonly look to the "ordinary meaning" of a statute's words to interpret their meaning when the statute itself does not provide a definition.[101] Looking at other operative text of section 60506, given its ordinary meaning, we find that each term targets the "consequences of actions."[102] For instance, subsection (a)(1) of the statute focuses on the "opportunity" to subscribe[103] and subsection (a)(3) states that consumers should "benefit" from equal access to broadband.[104] The plain meaning of "opportunity" is "a good chance for advancement or progress,"[105] and "benefit" means "to receive help or an advantage."[106] Neither term depends on the mindset of the actor, but rather the effect of the action.

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[96] 47 U.S.C. § 1754(a)(1), (3) (providing in subsection (a)(1) that "subscribers should benefit from equal access to broadband internet access service" and requiring in subsection (a)(3) that the Commission take steps to ensure that all persons "benefit from equal access" to broadband service).

[97] *Id.* § 1754(b)(1), (2).

[98] *Compare id.* § 1754(a)(2) ("equal access" means "the equal *opportunity* to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions") (emphasis added) *with* 42 U.S.C. § 2000e–2(a) (making it unlawful for employers to act "in any way which would deprive or tend to deprive any individual of employment *opportunities* or otherwise adversely affect his status as an employee") (emphasis added) *and* 29 U.S.C. § 623(a)(2) (same).

[99] 47 U.S.C. § 1754(a)(2) (emphasis added).

[100] *See* Merriam-Webster, *Opportunity*, https://www.merriam-webster.com/dictionary/opportunity) (last visited Nov. 14, 2023) ("Opportunity" means "a good chance for advancement or progress.'"); National Multicultural Organizations Comments at 12-13 (arguing that the definition of "equal access" provided in subsection 60506(a)(2) is framed from the subscriber's perspective and "[t]hus[] [s]ubsection 60506(b)'s use of the term is directed towards the consequences that service-related actions and policies have on the subscriber's opportunity to obtain broadband service, not the intent of service providers").

[101] *Tanzin* v. *Tavir*, 141 S.Ct. 486, 491 (2020) (citing *FCC v. AT&T, Inc*., 562 U.S. 397, 403 (2011) ("When a statute does not define a term, we typically give the phrase its ordinary meaning.")); *see also Inclusive Communities*, 576 U.S. at 535.

[102] *Inclusive Communities*, 576 U.S. at 533. For undefined statutory terms, courts can look to the "dictionary for clarification of the plain meaning of words selected by Congress." *Perez-Olivio* v. *Chavez*, 394 F.3d 45, 49 (1st Cir. 2005). *See also United States v. Lachman*, 387 F.3d 42, 50 (1st Cir. 2004) ("Dictionaries of the English language are a fundamental tool in ascertaining the plain meaning of terms used in statutes and regulations."). *See also* National Urban League et al. Comments at 4 (stating that "the statutory language of section 60506 is results-oriented and refers to consequences of actions taken by providers because Congress instructs the Commission to ensure that individuals 'benefit from equal access to broadband internet service' and 'identify steps to eliminate discrimination.'").

[103] 47 U.S.C. § 1754(a)(1).

[104] *Id.* § 1754(a)(3).

[105] *See supra* note 100; *see also* Lawyers' Committee for Civil Rights Under Law Comments at 21-22; Lawyers' Committee for Civil Rights Under Law Reply at 8 (rec. Apr. 20, 2023); Multicultural Media, Telecom and Internet Council and the U.S. Black Chambers Comments at 13; Greenlining Institute Comments at 6.

[106] Merriam-Webster, *Benefit*, https://www.merriam-webster.com/dictionary/benefit (last visited Nov. 14, 2023) (providing this definition for the verb form of "benefit" and defining the noun form as "something that produces good or helpful results or effects or that promotes well-being"); s*ee, e.g.*, Joint Advocates Comments at 15

(continued….)

Section 60506(b), moreover, directs the Commission to "facilitate" equal access by "preventing" digital discrimination of access, and identifying necessary steps to "eliminate" it.[107] The plain meaning of "facilitate" is "to make easier or help bring about."[108] The meaning of "prevent" as referenced in subsection (b)(1) is "keep[ing] (something) from happening or arising,"[109] and "eliminate" as referenced in subsection(b)(2) means to "put an end to or get rid of."[110] Again, these definitions, taken from the Merriam-Webster's (online) Dictionary, clearly suggest an effects-based orientation—whether looking at each word independently or in context as written in the statute—rather than a singular focus on the mindset of the actor. Equal access can be denied by policies and practices having discriminatory effects even where no discriminatory motive is present,[111] and it is our considered view that most of the gaps in access to broadband internet service in our country, to the extent that they are not a product of legitimate business constraints that Congress sought to address in other provisions of the Infrastructure Act, stem from policies and practices that are neutral on their face, rather than from intentionally discriminatory conduct on the part of covered entities and other industry participants.[112] Further, the use of the words "based on" in section 60506(b)(1) does not limit its reach to instances of intentional discrimination under controlling precedent.[113]

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(explaining that "subsection (a)'s use of the term 'benefit' signals that the statutory objective is to improve public welfare rather than punish bad actors").

[107] 47 U.S.C. § 1754(b).

[108] Merriam-Webster, *Facilitate*, https://www.merriam-webster.com/dictionary/facilitate (last visited Nov. 14, 2023).

[109] 47 U.S.C. § 1754(b)(1); Merriam-Webster, *Prevent*, https://www.merriam-webster.com/dictionary/prevent (last visited Nov. 14, 2023); Public Knowledge et al. Comments et al. at 52-53 (citing to Lawyers' Committee for Civil Rights Under Law Dec. 12, 2022 *Ex Parte*); National Hispanic Media Coalition Reply at 3-4 (agreeing that the natural construction of "prevent" is results-oriented).

[110] 47 U.S.C. § 1754(b)(2); Merriam-Webster, *Eliminate*, https://www.merriam-webster.com/dictionary/eliminate (last visited Nov. 14, 2023); Joint Advocates Comments at 13 (arguing that effectuating the goals through "identifying [the] necessary steps . . . to eliminate discrimination" supports a disparate impact regime); National Hispanic Media Coalition Reply at 3-4 (agreeing that the natural construction of "eliminate" is results-oriented).

[111] *See, e.g.*, Japanese American Citizen League Comments at 1-2; Joint Advocates Comments at 17-20; National Hispanic Media Coalition Comments at 7; National Urban League et al. Comments at 4. Commenters urge us to adopt a disparate impact legal standard due to the documented disparities in broadband access nationwide. *See, e.g.*, American Library Association Comments at 2 (rec. Feb. 21, 2023); Leadership Conference on Civil and Human Rights et al. Comments at 2-4; National League of Cities Comments at 2 (rec. Feb 20, 2023); County of Santa Clara Comments at 1-3, 9 (rec. Feb. 21, 2023).

[112] *See, e.g.*, Japanese American Citizen League Comments at 1-2 ("No one would believe any [provider] would intentionally overlook a community such as Japantown because of the ethnic makeup of the community, but other decisions that somehow led to Japantown being overlooked in broadband deployment leaving a clear disparate impact upon a minority community without broadband service."); Joint Advocates Comments at 17-20 (discussing how providers' implicit biases, rather than discriminatory intent, may drive unequal access); National Hispanic Media Coalition Comments at 7 (agreeing that a regime that only accounts for a disparate treatment standard would "will miss a large quantity of discrimination" and that a disparate impact standard will encompass "facially neutral practices that result in harmful and discriminatory effects for protected classes of people"); National Urban League et al. at 4 (agreeing that a disparate impact framework is necessary because "policies and practices that have the potential to be adopted by [providers] . . . may appear to be neutral," but can "negatively impact historically marginalized communities' ability to connect to vital communications services"); Texas Coalition of Cities for Utility Issues et al. Reply at 6 (rec. Apr. 20, 2023) (Texas Coalition of Cities et al.) (reiterating their position that we should include disparate impact standard in our definition in part because "facially neutral or even unintentional practices could still produce discriminatory effects and 'the devastating consequences are much the same' as intentional discrimination," citing their comments to the *Notice of Inquiry*).

[113] Some commenters argue that the statute's use of the term "based on" limits the statute to an intent-only legal
(continued….)

43. In reaching this conclusion, we are mindful of the history of disparate impact analysis as it applies to federal anti-discrimination statutes. It was first addressed in *Griggs* v. *Duke Power Co*.[114] where the Supreme Court interpreted section 703(a)(2) of Title VII of the Civil Rights Act to authorize disparate impact liability. Section 703(a)(2) of Title VII made it "an unlawful practice for an employer" to "limit, segregate, or classify . . . employees or applicants for employment in any way which would deprive any individual of employment opportunities *or otherwise adversely affect* his status as an employee because of such individual's race, color, religion, sex or national origin."[115] There, the Court interpreted the statutory text to prohibit not only "overt discrimination" but also "practices that are fair in form, but discriminatory in operation."[116] Further, the Court stated that "[u]nder [Title VII], practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices."[117] The Court reasoned that from this language "Congress directed the thrust of [Sec. 703(a)(2)] to the consequences of employment practices, not simply the motivation."[118] Notably, the Court stated that the statute's goal of achieving "*equality of employment opportunities* and remov[ing] barriers that have operated in the past" to favor some individuals over others afforded protected status must be interpreted to allow disparate impact claims.[119] Section 4(a)(2) of the Age Discrimination in Employment Act (ADEA) contains similar language as that of Title VII, and a plurality of the Court in *Smith* v. *City of Jackson* ruled that the statutory text authorized disparate impact liability just as it did in *Griggs*.[120]

44. Similar reasoning was employed in examining section 804(a) of the FHA by the Court in *Inclusive Communities*, even though the provision used different results-based language than did Title VII and the ADEA. The FHA makes it unlawful to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of" a protected status.[121] The Court in *Inclusive Communities* observed "the logic of *Griggs* and *Smith* provides strong support for the conclusion that the FHA

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standard. *See, e.g.*, ACA Connects Comments at 7; AT&T Comments at 6, 16-17; NCTA Comments at 20-21; T-Mobile Comments at 16; USTelecom Comments at 22-24; Verizon Comments at 13-14; ACA Connects Reply at 10-12; AT&T Reply at 19; International Center for Law & Economics Reply at 16; NTCA Reply at 5-6 (rec. Apr. 20, 2023). This argument by commenters has already been expressly rejected by the Supreme Court in *Griggs* and its progeny. Looking at the other nondiscrimination statutes that contain similar "based on" language—section 703(a)(2) of Title VII, section 4(a)(2) of the ADEA, and section 804(a) of the FHA—each of these statutes were found by the Court to authorize disparate impact claims because of the results-based statutory language. *See Inclusive Communities*, 576 U.S. at 535 (explaining that *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and *Smith v. City of Jackson*, 544 US 228 (2005), "dispose of this argument. Both Title VII and the ADEA contain identical 'because of' language . . . and the Court nonetheless held those statutes impose disparate-impact liability."). Just as with these antidiscrimination statutes, section 60506's "based on" text does not foreclose utilizing a disparate impact legal standard. The disparate impact standard is authorized by section 60506, as it is drawn from the "equal access" and other "results-based" statutory language and clear purposes of the statute. *See, e.g.*, Joint Advocates Comments at 13-17; Lawyers' Committee for Civil Rights Under Law Comments at 11-13; National Digital Inclusion Alliance and Common Sense Media Comments at 4-5; National Multicultural Organizations Comments at 12-14; Next Century Cities Comments at 8 (rec. Feb. 21, 2023); Public Knowledge et al. Comments et al. at 52-53.

[114] *Griggs*, 401 U.S. at 431.

[115] *Id.* at 426 & n.1; 42 U.S.C. § 2000e-2(a) (emphasis added).

[116] *Griggs*, 401 U.S. at 431.

[117] *Id*. at. 430.

[118] *Id*. at 432.

[119] *Id*. at 429-30 (emphasis added).

[120] *Smith*, 544 U.S. at 228.

[121] 42 U.S.C. § 3604(a).

encompasses disparate-impact claims" even though the results-oriented language was different.[122] The Court observed that "[i]t is true that Congress did not reiterate Title VII's exact language in the FHA, but that is because to do so would have made the relevant sentence awkward and unclear."[123] So, instead, "Congress thus chose words that serve the same purpose and bear the same basic meaning but are consistent with the structure and objectives of the FHA."[124] Likewise, in the context of section 60506, Congress did not repeat the results-based language that appears in Title VII, the ADEA, the FHA or the many other federal anti-discrimination statutes that have been determined to prohibit disparate impacts on specified bases.[125] Instead, Congress chose words appropriate to the statute's purpose of promoting equal access to broadband internet service; the statute appropriately references "equal access," "equal opportunity" and other terminology that goes to results or consequences of actions (or counteracting those results or consequences), and not to the mindset of actors.[126]

(b) Statutory Purpose

45. Our reading of the statutory text to encompass disparate impact aligns with the overall scheme of the Infrastructure Act, and with the purpose of section 60506 specifically.[127] As described above,[128] promoting broadband internet access has been a longstanding policy objective for the Commission. The 1996 Act expanded the goal of universal service to include advanced services such as broadband internet service, and the Commission used its universal funding programs to address the persistent digital divide.[129] Then, in 2020, the global COVID-19 pandemic necessitated social distancing

[122] *Inclusive Communities*, 576 U.S. at 534.

[123] *Id.* at 535.

[124] *Id.*

[125] Title VI authorizes promulgation of disparate impact regulations. *Alexander v. Choate*, 469 U.S. 287, 292-294 (1985); *see also*34 CFR §§ 106.21(a), 106.23(a), 106.31(a) (Title IX regulations promulgated by the Department of Education); Department of Justice, *Title VI Legal Manual*, https://www.justice.gov/crt/fcs/T6manual (last visited Nov. 14, 2023) (stating that "the applicable legal standards under Title VI and Title IX are generally identical and investigative officials can rely on case law decided under Title VI in establishing violations under Title IX"). The Equal Credit Opportunity Act authorizes fair lending regulations promulgated by the Consumer Financial Protection Bureau. *See* Consumer Financial Protection Bureau, *Laws and Regulations – ECOA*, https://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf (last visited Nov. 14, 2023) ("The ECOA has two principal theories of liability: disparate treatment and disparate impact.").

[126] *See, e.g.*, Joint Advocates Comments at 14-16 ("Taken together, § 60506(a) and (b) therefore provide the kind of 'results-oriented' language that the Court found indicative of a disparate impact approach in *Inclusive Communities*."); *see also* Lawyers' Committee for Civil Rights Under Law Comments at 12-14. For these reasons, we disagree with commenters who argue that section 60506 does not have results-oriented language or other textual markers that authorize disparate impact liability. *See, e.g.*, Verizon Comments at 14-16 ("In *Inclusive Communities*, the Supreme Court identified several textual through-lines in the [FHA], Title VII, and the [ADEA] that supported reading the FHA to encompass disparate-impact liability. . . use of the phrases 'otherwise adversely affect' or 'otherwise make unavailable,' which 'refer[] to the consequences of an action rather than the actor's intent'. . . placement of those 'catchall phrases looking to consequences, not intent,' 'at the end of lengthy sentences that begin with prohibitions on disparate treatment' . . . [and] uses of the 'catchall phrases' in the 'operative text' of the statute. None of these textual through-lines appear in Section 60506(b), or anywhere else in Section 60506"); AT&T Reply at 2-3, 17-19 (arguing that Congress failed to use an established term of art like "otherwise adversely affect" in section 60506 so they did not intend for the Commission to adopt a disparate impact standard).

[127] *See Catskill Mountains Chap. Of Trout Unlim'd, Inc. v. EPA*, 846 F.3d 492, 513 (2d Cir. 2017) (The plain meaning of a statutory provision may be "understood by looking to the statutory scheme as a whole and placing the particular provision within the context of that statute").

[128] *Supra* paras. 6-8, 18-19.

[129] *Id.*

that made the ongoing digital divide even more evident and troublesome.[130] Some commenters in this proceeding argue, directly or indirectly, that "digital discrimination" does not exist.[131] But those arguments are belied by Congress's findings in the Infrastructure Act and the record compiled in this proceeding correlating the digital divide with historical discrimination.[132] In all events, Congress has directed the Commission to take swift action to prevent digital discrimination of access.[133] Indeed, section 60506 aligns with the Commission's longstanding obligation to promote nondiscrimination in the telecommunications sector.[134]

46. Gaps in access to high-quality broadband across the country led Congress to enact the broadband-related provisions of the Infrastructure Act, which creates historic investment incentives and affordability subsidies to address some of the causes of the digital divide. The Infrastructure Act also clearly mandates certain prophylactic measures to address discriminatory conduct that is not addressed elsewhere in the legislation. For the past half century, our country's civil rights jurisprudence has recognized that equal opportunity to achieve economic and social benefits can be denied intentionally because of the personal characteristics or status of the person seeking the opportunity or benefit, or it can be denied unintentionally because of facially neutral policies or practices that disproportionately exclude

[130] *Supra* paras. 12-15.

[131] *See, e.g.*, ACA Connects Comments at 9 (explaining that the lack of complaints and enforcement of discrimination claims under authority currently provided under the Communications Act indicates that providers are not engaging in digital discrimination of access); T-Mobile Comments at 5, 7-8; Declaration of Glenn Woroch, Attach. To AT&T Reply to *Notice of Inquiry* (rec. June 30, 2022) (combining nationwide census-block broadband deployment data from Form 477 with demographic data from the Census Bureau and concluding that 100/20 Mbps wireline broadband availability rates for minority households are higher than for white households, and that availability rates for households above and below the poverty line are nearly identical); Free State Foundation Reply at 4-5 (arguing that "there is no evidence of systemic digital discrimination"); Lumen Reply at 7-13; TechFreedom Reply at 4-10 (rec. Apr. 20, 2023). *But see* Leadership Conference on Civil and Human Rights et al. Reply at 2-3 (citing many examples of digital discrimination of access on the record as support that "[t]he allegations by some commenters that digital discrimination does not exist are belied by this evidence"); North Suburban Communications Commission Reply at 4 (explaining that claims that "digital discrimination does not exist lack credibility and ignores nationwide efforts to promote digital equity and inclusion and to eliminate digital discrimination").

[132] *See supra* paras. 9, 12-14.

[133] Therefore, we do not find it necessary to evaluate claims by commenters that digital discrimination of access does not exist. *See infra* para. 45, note 14. Such arguments would more appropriately have been made to Congress when it was considering this legislation. We have neither the authority, nor the inclination, to question the factual bases for Congress's directives to the Commission.

[134] Section 202(a) of the Communications Act is a nondiscrimination provision that makes it unlawful for common carriers to "discriminat[e] in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service . . . or to . . . . advantage . . . any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage." 47 U.S.C. § 202(a). It requires no showing of discriminatory intent to establish a violation. Under section 202, where "like communications services" are provided by the same provider but on different terms or conditions, the provider must justify any difference as reasonable. In *National Communications, Inc. v. AT&T Corp.*, a reseller of a common carrier's long distance service sued the carrier, alleging discrimination in the provision of "like communication services" in violation of section 202(a). *See National Communications, Inc. v. AT&T Corp.*, 238 F.3d 124, 125 (2d Cir. 2001). The district court "instructed the jury, and the parties [did] not dispute, that a § 202(a) claim consists of three elements: (1) whether the services are 'like'; (2) if so, whether the services were provided under different terms or conditions; and (3) whether any such difference was reasonable." *Id.* at 127; *see also Competitive Telecomm. Ass'n v. FCC*, 998 F.2d 1058, 1061 (D.C. Cir. 1993); *MCI Telecomms. Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990). Further, "[i]f the services are 'like,' the carrier offering them has the burden of justifying the price disparity as reasonable." *MCI Telecomms. Corp.*, 917 F.2d at 39.

persons possessing such characteristics or status, and both types of denial are unlawful.[135] Disparate impact analysis has maintained its foundational standing in the courts, most recently in *Inclusive Communities*, as a means for addressing harm caused by policies or practices that have discriminatory effects and lack adequate business justification. We find that by defining the goals of section 60506 in terms of "equal access" and "equal opportunity," especially in light of the 52-year history of disparate impact analysis in civil rights law,[136] Congress expressed its intention that the Commission's implementing regulations address business conduct having the effect of denying designated groups of consumers the equal opportunity to subscribe to an offered broadband service, regardless of the motivation for such actions.

47. As further support for the Congressional purpose that drives our actions today, the record in this proceeding contains substantial evidence of gaps in access among persons in some low-income, rural, Tribal, and minority communities.[137] As noted above, there is little or no evidence in the legislative history of the Infrastructure Act or the record of this proceeding that impediments to broadband internet access service are the result of intentional discrimination based on the criteria set forth in the statute.[138] Rather, we must conclude that such impediments are more likely driven by neutral policies or practices (i.e., business decisions) that have discriminatory effects.[139]

b. Section 60506 Properly Limits Disparate Impact Liability

48. Even where a statute contains "results-based" text that authorizes disparate impact claims, the liability standard must require a showing that a challenged policy or practice is causing the disparity complained about, [140] and "avoid displacement of legitimate practices."[141] Both of these factors are met by the rules we adopt today.

49. First, we will require that any determination of differential impact that relies on observed disparity must point to a specific policy or practice that is causing the disparity.[142] A "robust causality requirement" ensures that any statistical imbalance does not alone establish liability and thus protects covered entities "from being held liable for . . . disparities they did not create."[143] We therefore require that any determination of liability under our rules that is founded on statistical disparity must include a determination that the disparity is caused by a specific policy or practice of the covered entity under investigation.[144]

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[135] *See Griggs*, 401 U.S. at 431.

[136] *Id*.

[137] *See, e.g.*, Baltimore, MD, Listening Session *Ex Parte*; Letter from Vangela M. Wade, Esq., President & CEO, Mississippi Center for Justice, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1-2 (filed May 26, 2023); Lawyers' Committee for Civil Rights Under Law Comments at 37-40; Leadership Conference on Civil and Human Rights et al. Comments at 5-6; Next Century Cities Comments at 10-14; *supra* para. 13.

[138] *See, e.g.*, Free State Foundation Reply at 5 ("No comments filed appear to allege any recent or ongoing specific instances of broadband ISPs intentionally discriminating on the basis of deployment decisions."); CTIA Comments at 20 ("There is no evidence of intentional discrimination in the broadband industry, although in other contexts disparate treatment remains a very real problem."); Japanese American Citizen League Comments at 1-2 (alleging digital discrimination of access on a disparate impact basis in the Japantown neighborhood of San Francisco).

[139] *See supra* para. 42 & note 112.

[140] *Inclusive Communities*, 576 U.S. at 541-42.

[141] *Id.* at 541 ("An important and appropriate means of ensuring that disparate impact-liability is properly limited is to give housing and private developers leeway to state and explain the valid interest served by their policies.").

[142] *Id.* at 542.

[143] *Id.*

[144] *See infra* paras. 138-139.

50. Next, the rules will give covered entities an opportunity to present justifications for discriminatory policies and practices. Section 60506 sets out such limitation by requiring that our rules facilitate equal access while taking into account "issues of technical and economic feasibility."[145] Where the Commission believes there is credible evidence that a covered entity's policy or practice differentially impacts access to broadband internet access service on the basis of income level, race, ethnicity, color, religion, or national origin, the covered entity will have the opportunity to prove that the policy or practice is nevertheless "justified by genuine issues of technical or economic feasibility."[146] We anticipate that such justification will include proof that there is not a reasonably available and achievable alternative policy or practice that would serve the entity's legitimate business objectives with less discriminatory effect. In this *Report and Order*, we explain the meaning of these terms, and how they will be applied on a case-by-case basis in the context of our self-initiated investigations of digital discrimination of access complaints.[147]

c. Adopting a Rule That Encompasses Disparate Impact Claims Does Not Conflict with the Infrastructure Act's Funding Programs and Will Not Chill Broadband Investment

51. Contrary to some commenters' claims,[148] including disparate impact in our definition of digital discrimination of access does not conflict with the broadband funding programs set out in the Infrastructure Act and will not otherwise chill investment in broadband networks. The deployment and digital equity funds provided for in the Infrastructure Act[149] prioritize unserved and underserved areas by addressing technical and economic issues that have hindered investment in "hard-to-build" areas. By contrast, section 60506 and the Commission's implementing rules are centered on conduct that does not stem from such issues. Our definition of "digital discrimination of access" highlights this contrast by specifically exempting policies and practices that are justified by "genuine issues of technical and economic feasibility." Thus, the discrimination addressed in section 60506 and our implementing rules is not addressed in other provisions of the statute, and vice versa. There is no conflict.

52. Nor do we believe that including disparate impact in our definition of digital discrimination of access will chill investments in broadband networks.[150] Congress has provided historic funding incentives aimed to spur broadband investments in unserved and underserved communities throughout the United States.[151] Those incentives, once again, address the very real technical and

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[145] 47 U.S.C. § 1754(b).

[146] *See* WISPA Reply at 11 (recommending adoption of *Inclusive Communities* framework to determine whether the "disparate impact was justified by a 'legitimate rationale.'").

[147] *See infra* Part III.A.2.c.

[148] *See, e.g.*, ACA Connects Comments at 19 (explaining that complying with a disparate impact standard is unclear and "would divert resources from maintaining and improving their networks and ultimately interfere with the statute's overarching objective of facilitating equal access to broadband service"); Americans for Tax Reform and Digital Liberty Comments at 3 (contending that a disparate impact standard will impose costs on providers by subjecting them to litigation); CTIA Comments at 3, 19-22 (arguing that "[t]he [Infrastructure Act's] approach to broadband as a whole further counsels in favor of a disparate treatment approach" and that a disparate impact standard may force providers into an "all or none" approach to deployment); USTelecom Comments at 34-35 ("Such a standard would create regulatory overhang on every deployment decision made by a provider, thereby stifling innovation and investment . . . ."); American Consumer Institute Reply at 3-6 (rec. Apr. 19, 2023) ("Not only does the disparate impact standard make certain forms of normal business decisions and operations potentially illegal, but it obfuscates the underlying issue of inequality of broadband connectivity . . . ."); Verizon Reply at 3-5 (noting additionally that there are factors and parties outside of a provider's control that can effect deployment).

[149] 47 U.S.C. §§ 1721-1726.

[150] *See* Georgia Tech Center for Advanced Communications Policy Reply at 7-8 (rec. Apr. 11, 2023) (discussing how "stricter" European Union broadband guidelines have not thwarted investment).

economic challenges that have hindered deployment, upgrades, and maintenance of networks in those communities. We are not persuaded that adoption of a disparate impact standard will disincentivize economic investments in networks out of fear that doing so might somehow require uneconomic investments. Again, we emphasize that under the rules we adopt today, there can be no liability determination for disparate impact unless (1) there is a differential in access to broadband service; (2) the differential is caused by a specific policy or practice of the covered entity; and (3) the covered entity fails to prove that the policy or practice is justified on genuine technical or economic grounds. When providing broadband access to a particular area is impeded by genuine issues of technical or economic feasibility, the covered entity should be able to explain those issues and offer substantial evidence to support them. While our rules will require greater diligence by covered entities in determining and documenting the reasons for access gaps in their service areas, we do not think that result is overly burdensome in furtherance of the statutory goal of equal access, nor do we think it will disincentivize investment in broadband networks.

d. Other Considerations

53. Having reached the central determinations for adopting a definition of digital discrimination of access and the applicable legal standards, we respond to other considerations commenters raise. Commenters raise additional arguments regarding interpretation of "equal access," legislative history, and the role that a covered entity's profitability and access to consumer data should play in our definition of digital discrimination of access analysis. We address each of those considerations in turn.

54. *Interpretation of "equal access."* Commenters urge us to interpret "equal access" to require a showing of intent.[152] Given that "equal access" is defined by statute, is inherently "results based," and is coupled with other operative terms that are "results based," we must reject each of these proposals.[153] Certainly, requiring any showing of intent would conflict with our reasoned interpretation of the statutory text and purpose.[154] We likewise decline the City of Long Beach's suggestion that we

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[151] *See, e.g.*, 47 U.S.C. § 1702 (BEAD Program).

[152] *See, e.g.*, CTIA Comments at 9-10, 19; Free State Foundation Comments at 1, 3, 9; Lincoln Network Comments at 11 (rec. Feb. 21, 2023); Kirsten Compitello Comments at 4 (rec. Feb. 20, 2023) (Michael Baker International); T-Mobile Comments at 20-21; Verizon Comments at 2; American Consumer Institute Reply at 9; Jeffrey Westling Reply at 1 (rec. Apr. 12, 2023) (American Action Forum); AT&T Reply at 17; Block Communications, Inc. Reply at 10 (rec. Apr. 20, 2023); California Emergency Tech Fund Reply at 1 (rec. Mar. 21, 2023); USTelecom Reply at 2-3, 13 (rec. Apr. 20, 2023).

[153] *Supra* Part III.A.1.a.ii.a; A.1.a.ii.b. Some commenters argue that the intent legal standard should apply specifically to digital discrimination of access claims that pertain to the characteristics of particular technologies. *See* Competitive Carriers Association Reply at 3 ("The wisdom of an intent-based framework is particularly relevant due to the unique characteristics of wireless broadband providers"); CTIA Comments at 3, 22-23 (explaining that "a disparate impact standard is particularly inappropriate for wireless service for many reasons"); Americans for Tax Reform and Digital Liberty Comments at 6 (arguing that the Commission should reject race-based disparate impact standard because a cell tower will service any signal). We find no basis for adopting different legal standards for specific technologies because the rules we adopt today are sufficiently flexible to accommodate all technologies through which broadband internet access service is provided.

[154] *Supra* Part III.A.1.a.ii.a; A.1.a.ii.b; *see also* American Library Association Comments at 3 ("To ensure 'all people of the United States benefit from equal access to broadband internet access service,' it should not matter if there was/is discriminatory intent creating unequal access to broadband internet services."); California Public Utilities Commission Comments at 3 ("Section 60506 does not, however, mention the intent or motive of broadband companies, the absence of which strongly indicates that Congress did not intend a finding of digital discrimination to require a finding of intent."); Public Knowledge et al. Comments at 51 (explaining that the definition of "equal access" supports adopting a disparate impact standard as "[n]owhere is there a mention of a provider's actions or decision-making"); Texas Coalition of Cities et al. Comments at 2 (rec. Feb. 21, 2023) (supporting adopting a definition that encompasses a disparate impact standard because 60506 does not specify that intent is a required

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"should seek to achieve and facilitate *equitable* access[] rather than equal access," because that interpretation would directly conflict with the Statement of Policy.[155] We also reject TechFreedom's proposal to give a fluid meaning to "equal access" that would vary from the definition in the statute.[156] As the term "equal access" is expressly defined in section 60506(a)(2) and "access" as used in section 60506 (b)(1) is a derivative of that definition, we find no basis or authority to deviate from the statutory text.[157]

55. We also disagree with Lincoln Network's argument that the statute's reference to an "opportunity" to subscribe requires a disparate treatment standard.[158] This interpretation ignores that a consumer's "opportunity" to subscribe could be impeded by policies and practices having discriminatory

element of digital discrimination); Joint Advocates Comments at 15 (arguing that the language of section 60506 "clearly turns on the impact of broadband providers' discriminatory policies, rather than their individual intent"). Commenters disagree as to whether language in recent telecommunications laws explicitly referencing intent is relevant. *See* Texas Coalition of Cities et al. Comments at 2 (additionally arguing that "Congress has included such language in recent telecommunications related consumer protection laws, thus indicating that Congress intended to not require discriminatory intent"); USTelecom Comments at 25 ("[I]t is irrelevant whether the Telephone Consumer Protection Act ('TCPA'), 47 U.S.C. § 227, or other telecommunications laws explicitly include language referencing intent."). Given the disagreement on the record and that section 60506's statutory text authorizes a legal standard showing for discriminatory effect, we are not persuaded that we should adopt an intent-only legal standard.

[155] 47 U.S.C. § 1754(a); City of Long Beach Comments at 1 (explaining that this "accounts for existing and historic service gaps and outcomes that have resulted from digital redlining, uneven deployment of internet and technology services, and other policy decisions").

[156] TechFreedom Comments at 15-18 (rec. Feb. 21, 2023). In particular, TechFreedom argues that the word "access" in section 60506(b)(1) "has a purely technical meaning: it is the technological 'capability to transmit [. . .] and receive data' enjoyed by the user." TechFreedom Comments at 16 ("It is precisely because 'access' has this narrow ordinary meaning that it was necessary for Congress to define 'equal access' with a special meaning in terms of the 'opportunity to subscribe.'"). We disagree. Because "preventing digital discrimination of access" is included within the broader mandate of rules to "facilitate equal access," the word "access" in the phrase "preventing digital discrimination of access" incorporates the statutory definition of "equal access." 47 U.S.C. § 1754(b), (b)(1); *see* Lawyers' Committee Comments at 18 (arguing that section 60506(b)(1) "incorporate[s] the defined term 'equal access' when it says 'digital discrimination of access' such that (b)(1) applies to discrimination impairing 'equal access' to broadband."). Congress defined "equal access" as "the equal opportunity to subscribe" to broadband. Thus, "digital discrimination of access" is best understood as referring to discrimination in the "opportunity to subscribe." For those same reasons, we also disagree with commenters who argue that section 60506's operative text does not contain results-oriented language. *See, e.g.*, AT&T Comments at 17 (arguing that "the question is . . . the meaning of the 'discrimination . . . based on' clause").

[157] *See, e.g.*, Lawyers' Committee for Civil Rights Under Law Comments at 18, 21 ("The Commission should read subsection (b)(1) to incorporate the defined term 'equal access' when it says 'digital discrimination of access'. . ."); Verizon Comments at 10 ("Because 'preventing digital discrimination of access' is included within the broader objective of 'facilitat[ing] equal access,' 'of access' in the phrase 'digital discrimination of access' is no broader than the 'equal access' that Congress directed the Commission to 'facilitate.'"). Some commenters request that we give "digital discrimination" and "digital discrimination of access" the same meaning, or define only the term "digital discrimination". *See Notice* at 7, para. 13; Lawyers' Committee for Civil Rights Under Law Comments at 18 (asking that we define "digital discrimination" because it occurs three times in section 60506 and explaining that "it would be confusing if 'digital discrimination' and 'digital discrimination of access' meant two different things"). We decline to do so. We define and give meaning to "digital discrimination of access" because Congress charged the Commission with adopting rules that "prevent[] digital discrimination of access" in subsection (b), and defining that term in our rules better aligns with our mandate to "facilitate equal access" in this proceeding. 47 U.S.C. § 1754(a), (b); Mississippi Center for Justice Reply at 2 (explaining that "[r]emoval of the phrase 'of access' is in opposition" to the language of section 60506).

[158] Lincoln Network Comments at 11 (stating that "[b]y choosing to focus on opportunity, Congress directed this Commission to focus on intent to discriminate, rather than equality of outcome"); *see also* Verizon Comments at 11 (arguing that "access" refers to intentional acts that prevent an opportunity to subscribe).

effects even where discriminatory intent is absent.[159] Consequently, limiting our definition to conduct motivated by discriminatory intent would not fully accomplish our mandate from Congress to facilitate equal access to broadband service and prevent discrimination on the listed bases.[160]

56. *Interpretation of legal standards*. We disagree with commenters who argue that the terms of section 60506 do not support including disparate impact in our definition of digital discrimination of access. AT&T argues that the phrase "to facilitate equal access" speaks only to the Commission's broader obligations to incentivize broadband deployment and does not support using disparate impact analysis to reach that objective.[161] CTIA argues that Congress would not have used the term "facilitate" "if it intended for the Commission to create a burdensome liability and enforcement regime."[162] As explained herein, the statutory text, context, and purposes of the Infrastructure Act and section 60506 make clear that Congress intended that our rules addressing digital discrimination of access reach not only discriminatory treatment, but also policies and practices having discriminatory effect.[163] By commenters' own admission, there is little to no evidence of intentional digital discrimination of access.[164] The Commission is obligated to adhere to Congress's mandate and adopt rules that address the problems that do exist rather than those that do not.[165]

57. *Legislative History*. Commenters argue that the sparse legislative history of section 60506 and/or the absence of a specific mention of disparate impact in the legislative history forecloses inclusion of a disparate impact liability standard.[166] We disagree. As explained by this *Report and Order*, we conclude that the text, context, and purpose of the statute clearly authorize that liability standard. USTelecom argues, however, that Title VII of the Civil Rights Act, the FHA, and the ADEA were all grounded in a congressional record of "specific, historic discrimination that the statute was designed to remedy and prevent" and that history of discrimination in the legislative history supported a disparate impact liability standard.[167] While the legislative history of section 60506 is not as robust as that of Title VII, the ADEA, and the FHA, the Supreme Court has made clear that even "silence in the legislative history . . . cannot defeat the better reading of the text and statutory context."[168] "If the text is

[159] *See, e.g.*, National Hispanic Media Coalition Comments at 7 (agreeing that a regime that only accounts for a disparate treatment standard would "will miss a large quantity of discrimination" and that a disparate impact standard will encompass "facially neutral practices that result in harmful and discriminatory effects for protected classes of people"); National Urban League et al. Comments at 4 ("[T]here are policies and practices that have the potential to be adopted by ISPs that may appear to be neutral, such as profit-driven deployment or customer acquisition decisions; however, those seemingly 'neutral' decisions could negatively impact historically marginalized communities' ability to connect to [broadband].").

[160] Lawyers' Committee for Civil Rights Under Law Comments at 12-13, 27; 47 U.S.C. § 1754(b).

[161] AT&T Reply at 17-19.

[162] CTIA Comments at 19.

[163] *See, e.g.*, Joint Advocates Comments at 14-15.

[164] *See, e.g.*, CTIA Comments at 20 ("There is no evidence of intentional discrimination in the broadband industry, although in other contexts disparate treatment remains a very real problem."); Free State Foundation Comments at 5 ("No comments filed appear to allege any recent or ongoing specific instances of broadband ISPs intentional discriminating on the basis of deployment decisions.").

[165] *See* Lawyers' Committee for Civil Rights Under Law Comments at 11-12.

[166] *See, e.g.*, International Center of Law & Economics Reply at 15; NTCA Reply at 8-9; National Multifamily Housing Council and the National Apartment Association Comments at 18 (rec. Feb. 21, 2023) (NMHC and NAA); USTelecom Comments at 26-27.

[167] USTelecom Comments at 27-28 & n.96 (citing additionally to the Equal Credit and Opportunity Act's legislative history).

[168] *Encino Motor Cars v. Navarro*, 138 S.Ct. 1134, 1143 (2018).

clear, it needs no repetition in the legislative history; and if the text is ambiguous, silence in the legislative history cannot lend any clarity."[169] As to section 60506, the text, statutory context, and purpose is clear.[170] The statute's text and purpose, to promote equal access to broadband internet, fully authorize including a disparate impact liability standard for enforcing our prohibition against digital discrimination of access.[171]

58. *Profitability Considerations*. We additionally decline the suggestion in the policy paper submitted by the Americans For Tax Reform and Digital Liberty that we define digital discrimination of access "[as] when differences in the deployment of and/or the quality, terms, and conditions of access to broadband services are not explained by differences in the profitability of serving the different areas, but instead reflect non-economic decisions to underserve protected classes in a manner that causes adverse or negative consequences."[172] This definition would limit the Commission to considering "profitability" rather than "issues of technical and economic feasibility," and would appear to place primary weight on economic rather than technical considerations. Our adopted rule properly includes both technical and economic considerations, as explained in this *Report and Order*.[173]

59. *Data Access*. The LGBT Technology Partnership proposes that we adopt a definition of digital discrimination of access that encompasses data access concerns and issues pertaining to personal data that is processed by an algorithm.[174] We decline to include that within the scope of our covered services. By LGBT Technology Partnership's own admission, section 60506 is "not directly related to how emerging technologies like algorithms facilitate greater precision of structural discrimination."[175] However, to the extent that such privacy- and data-related practices can be shown to differentially affect consumer access to broadband service on one or more of the listed bases, those practices might fall within the scope of our definition.

2. Technical and Economic Feasibility

60. Section 60506 twice references technical and economic feasibility. First, as noted above, Congress declared in section 60506(a)(1) the "policy of the United States that, *insofar as technically and economically feasible* . . . subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service . . . ."[176] And in section 60506(b), Congress directed the Commission to "adopt final rules to facilitate equal access to broadband internet access service, *taking into account the issues of technical and economic feasibility presented by that objective* . . . ."[177]

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[169] *Id*.

[170] *Supra* Part III.A.1.a.ii.a; A.1.a.ii.b.

[171] Some commenters argue that our reading of section 60506 is foreclosed because disparate-impact liability would enable the Commission to regulate the rates of broadband internet access service providers, "impose requirements to build-out service, and more." TechFreedom Comments at 24; *see* AT&T Comments at 44 ("[H]ad Congress decided to impose massive new obligations on broadband providers in the unlikely guise of a discrimination ban, it would have taken several additional steps that, revealingly, it did not take."). But the "new regime of unfunded mandates and price regulation" that these commenters posit has no foundation in the rules we adopt herein. *Id*. We also note our agreement with the Lawyers' Committee that the major questions doctrine has no application to our implementation of section 60506. *See* Lawyers' Committee for Civil Rights Under Law Comments Reply at 9-11.

[172] Americans for Tax Reform Digital Liberty Comments Attach. A, Phoenix Center Policy Paper Number 58 at 13.

[173] *Infra* Part III.A.2.

[174] LGBT Technology Partnership Comments at 2 (rec. Feb. 21, 2023).

[175] *Id*.

[176] 47 U.S.C. § 1754(a)(1) (emphasis added).

[177] *Id.* at (b) (emphasis added).

61. These references are clear indicators that full achievement of the "equal access" and "equal opportunity" goals of the statute might, in some instances, be limited by genuine technical or economic constraints. If the technology does not yet exist to provide a particular broadband internet access service to a particular geographic area, or the technology to provide the service does exist but utilizing it to reach the area in question would be prohibitively expensive, the failure to provide that specific service to that specific area would be explained by genuine technical or economic constraints. In order to account for these types of circumstances, in our December 2022 *Notice*, we proposed to define the term "digital discrimination of access" in section 60506(b)(1) such that any Commission determination that prohibited discrimination has occurred must be preceded by analysis of whether the policy or practice in question was "justified by genuine issues of technical or economic feasibility."[178] Having adopted a definition of "digital discrimination of access" that includes a specific carve out for conduct found to be so justified, we now adopt definitions for the terms "technically feasible" and "economically feasible" in the context of section 60506 and we explain how the Commission will evaluate "genuine issues of technical or economic feasibility" under our rules.[179] We agree with commenters that our application of these concepts is critical to the successful implementation of section 60506.[180]

a. Technical and Economic Feasibility are Fundamental Components of Digital Discrimination of Access

62. We first find that including the carve out for technical and economic feasibility in our definition of "digital discrimination of access" is the soundest, most straightforward, and most effective means of satisfying our statutory responsibility to facilitate equal access while "taking into account the issues of technical and economic feasibility presented by that objective."[181] We disagree with those commenters that suggest we omit the carve out language[182] or argue that it should only be considered as an affirmative defense if the Commission were to create a structured complaint process to receive allegations of digital discrimination of access.[183] We similarly decline USTelecom and WISPA's request

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[178] *Notice* at 6-7, para. 12.

[179] *See* 47 U.S.C. § 1754(a), (b).

[180] *See* USTelecom Comments at 37 ("Congress placed technical and economic feasibility at the center of the Commission's analysis."); Competitive Carriers Association Reply at 6; NCTA Reply at 15 ("Congress made 'technical and economic feasibility' a central part of the Commission's analysis.").

[181] 47 U.S.C. § 1754(b).

[182] California Public Utilities Commission Comments at 9-10 (arguing that we should not include feasibility language); Lawyers' Committee for Civil Rights Under Law Comments at 18-20 ("Whether or not someone is discriminated against—definitionally—does not turn on whether the provider has some valid reason for discriminating."); National Digital Inclusion Alliance and Common Sense Comments at 4 (arguing that the Commission should strike "not justified by genuine issues of economic and technical feasibility" from the proposed definition); *see also* Free Press Comments at 12-13 (suggesting a definition of "digital discrimination of access" that does not reference issues of technical or economic feasibility); California Emerging Technology Fund Comments at 3.

[183] *See* California Public Utilities Commission Comments at 9-10 (arguing that we should not include feasibility language because we should instead consider technical and economic feasibility as affirmative defenses); Lawyers' Committee for Civil Rights Under Law Comments at 18-20 ("[T]echnical and economic feasibility should be considerations in step two of a disparate impact analysis, where one assesses whether a provider has a legitimate business necessity for its action."); National Digital Inclusion Alliance and Common Sense Comments at 4 (arguing that the Commission should strike feasibility language because "[a]n area's feasibility is a separate issue from whether or not it suffers from digital discrimination" and including it in weakens the definition). We are also not persuaded by the argument that feasibility should not be included in our definition because it is not included in subsections (b)(1), (d), or (e). Lawyers' Committee for Civil Rights Under Law Comments at 19. The proffered

(continued….)

that we omit the word "genuine" from the carve out.[184] The record reflects widespread concern that naked assertions of technical or economic infeasibility could become a loophole to complying with our digital discrimination of access rules such that they would not actually "facilitate equal access to broadband" as Congress intended.[185] We include the word "genuine" in our definition of digital discrimination of access to convey that bare assertions and justifications created after the fact will not suffice to prove that a business practice falls within the carve out and is therefore exempt from liability.[186]

b. Consideration of Technical and Economic Feasibility Supports a Disparate Impact Approach

63. We further find that Congress's directive in section 60506(b) that we take into account issues of technical and economic feasibility supports including a disparate impact approach in our definition of "digital discrimination of access" and fits neatly into the framework of disparate impact analysis. Under traditional disparate impact analysis, once a policy or practice is shown to have a meaningful adverse impact on a protected group, the covered entity may affirmatively produce evidence that the challenged policy or practice is justified by a substantial, legitimate business interest.[187] If the covered entity does so, it may still be liable if there is a less discriminatory alternative to the challenged policy or practice. Congress's directive that the Commission take into account issues of technical and economic feasibility represents a formulation of this traditional test as tailored to the specific context of section 60506 and the issues it aims to address. As further discussed above in the disparate impact paragraphs and below in the enforcement-related paragraphs, a covered entity in a Commission investigation under section 60506 will likewise have the opportunity to show that the policy or practice under scrutiny is justified by genuine technical or economic constraints. And as part of the Commission's consideration of these issues, a covered entity will be allowed to present for the Commission's review any legitimate business impediment to the use of less discriminatory alternatives.[188] We find that the feasibility provision is largely superfluous to intentional discrimination of access,[189] and that when

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construction misreads subsection (b), which places feasibility concerns squarely within each of the tasks assigned to the Commission under that subsection.

[184] USTelecom Comments at 37 (arguing that including "genuine" "would incorrectly skew the Commission's consideration of technical and economic considerations in a manner that is at odds with the statutory text"); WISPA Reply at 15. *But see* Public Knowledge et al. Reply at 38-39 (disagreeing with USTelecom and arguing also that section 60506(b)(2) provides authority for the Commission to require justifications based on "genuine" issues of technical and economic feasibility).

[185] *See, e.g.*, ACLU Reply at 10-13 (warning that technical and economic feasibility considerations could "easily create a loophole that swallows the rule if the Commission defines these terms broadly, defers to provider determinations about feasibility or creates broad safe harbors."); Leadership Conference on Civil and Human Rights et al. Comments at 6 ("[T]he [C]ommission cannot allow these claims to serve as a loophole for providers to engage in discriminatory practices without consequence."); Local Governments at 17-18.

[186] Public Knowledge et al. Reply at 38-39.

[187] *See* Department of Justice, *Title VI Legal Manual*, *Section VII: Proving Discrimination – Disparate Impact*, https://www.justice.gov/crt/fcs/T6Manual7 (last visited Nov. 14, 2023) (explaining how an entity articulates a "substantial legitimate justification" as part of a disparate impact analysis); *Inclusive Communities*, 576 U.S. at 541.

[188] *See Inclusive Communities*, 576 U.S. at 541-42.

[189] *See* Lawyers' Committee for Civil Rights Under Law Comments at 14-15 ("The Lawyers' Committee is not aware of any anti-discrimination law where a business could excuse purposeful racial animus on economic grounds."); Local Governments Comments at 16 (noting that accounting for technical and economic feasibility "would be unnecessary if Congress intended the Commission address only discriminatory intent."); *Smith v. City of Jackson*, 544 U.S. 279, 238-39 (2005) (reasoning that the ADEA's Reasonable Factor Other than Age (RFOA) provision supports the availability of disparate-impact liability under that statute because, in most disparate-treatment cases, an employer can defeat liability without reference to the RFOA provision by showing that it acted on a reasonable factor other than age); *Inclusive Communities*, 576 U.S. at 539 ("A similar logic applies [under the (continued….)

Congress directed the Commission to be mindful of technical and economic considerations, its objective was to ensure that covered entities in any investigation the Commission conducts under our rules to prevent digital discrimination of access would have an opportunity to explain and justify their conduct.

64. We disagree with commenters asserting that the technical and economic feasibility language in section 60506 does not support inclusion of disparate impact in our definition of digital discrimination of access.[190] These commenters fail to explain why consideration of technical and economic feasibility makes sense only in the context of disparate treatment claims or why it makes more sense in the context of disparate treatment claims than in the context of disparate impact claims.

65. We are also not persuaded by AT&T's argument that Congress's contemplation of technical and economic justifications for challenged practices does not support an inference that Congress intended to capture cases of disparate impact. AT&T argues that section 60506's feasibility provision has "independent significance even if Congress intended the Commission to address only intentional discrimination" because "income levels are routinely used [] as a basis for business decisions in a wide variety of [] industries."[191] But as the Lawyers' Committee for Civil Rights Under Law notes, "there is still no scenario in which intentional discrimination on the basis of income level—or any other protected characteristic—could ever be justified by technical feasibility."[192] We find that AT&T's reading "is thus at odds with one of the most basic interpretive canons, that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . ..'"[193] And, as we have stated elsewhere, there is little or no evidence in the legislative history or in the record of this proceeding that intentional discrimination on *any* basis by industry participants contributes meaningfully to the digital divide in this country.[194]

c. Definitions of "Technically Feasible" and "Economically Feasible"

66. As discussed in more detail below, we adopt clear definitions of the terms "technically feasible" and "economically feasible" based on the record in this proceeding and Commission precedent;

FHA]. If a real-estate appraiser took into account a neighborhood's schools, one could not say the appraiser acted because of race."). *See also Notice* at 11-12, para. 21 ("In directing the Commission to take into account "issues of technical and economic feasibility" when adopting our rules, did Congress effectively build a business justification defense into section 60506?").

[190] *See, e.g.*, CTIA Comments at 19 (arguing that Congress "recognizing that deployment may be uneven because it is shaped by technical and economic feasibility" shows that Congress rejected a disparate impact standard); AT&T Reply at 18 & n.52 (saying that the argument that including "technical and economic feasibility" indicates that Congress intended for our rules to cover disparate impact claims "fails both because the qualifier modifies the equal access clause rather than the discrimination clause and because, in any event, Congress plainly did wish to apply it to the concept of income discrimination"); Information Technology and Innovation Foundation Reply at 2-4 (explaining that "[t]echnical and economic feasibility are thus considerations for the Commission in making its rules" and not the creation of the business necessity defense).

[191] AT&T Comments at 18-19.

[192] Lawyers' Committee for Civil Rights Under Law Comments at 15.

[193] *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (internal quotation marks and citations omitted)).

[194] AT&T also argues that the feasibility provision does not support the existence of disparate-impact liability under section 60506 because it "applies to the broader mandate to the Commission to 'facilitate equal access' and is not restricted only to the narrower included 'discrimination' provision." AT&T Comments at 18. In response, Lawyers' Committee for Civil Rights Under Law argues that, "the feasibility qualifier must also apply to [(b)(1)] providing specific instructions on how the Commission needs to execute that preamble. AT&T does not explain how the 'preventing discrimination' provision—if interpreted to cover only intentional discrimination—would 'tak[e] into account technical and economic feasibility.'" Lawyers' Committee for Civil Rights Under Law Reply at 7.

and, we explain how the Commission will assess issues of technical or economic feasibility under section 60506(b). We interpret section 60506(b)'s reference to "issues of technical and economic feasibility" to mean issues of "technical feasibility" on the one hand, and issues of "economic feasibility" on the other.[195] We define a "technically feasible" policy or practice to mean one that is "reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized." Similarly, we define an "economically feasible" policy or practice to mean a policy or practice that is "reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized."

67. In the *Notice*, we sought comment on how to define and incorporate into our rules the concepts of technical and economic feasibility as they are used in section 60506.[196] We asked detailed questions on the merits and mechanisms of adopting various approaches, including safe harbors, case-by-case analyses, or a combination thereof.[197] Because neither the statute nor the legislative history contain definitions of these terms, the Commission must adopt an interpretation that, taken in the context of the statute as a whole, best effectuates the goal of section 60506.[198] Based on this touchstone, the record we received in response to the *Notice*, and Commission precedent, we adopt definitions of these terms that balance the goal of facilitating equal access to broadband internet access services with the technical and economic challenges facing covered entities as they work to expand and improve their networks in unserved and underserved communities.

68. *Commission and Legal Precedent*. We adopt definitions of "technical feasibility" and "economic feasibility" that are consistent with the Commission's precedent.[199] The Commission has previously interpreted, individually or as a pair, the concepts of technical and economic feasibility in connection to its implementation of various statutes.[200] While the Commission's previous interpretations

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[195] 47 U.S.C. § 1754(a), (b). We understand subsection (a)'s use of "technically and economically feasible" and subsection (b)'s use of "technical and economic feasibility" to reference the same concepts.

[196] *Notice*, at 18-21, paras. 34-36.

[197] *Id*. at 19-20, paras. 35-36.

[198] *See* 47 U.S.C. § 1754; *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Report and Order, 27 FCC Rcd 787, 843, para. 97 (2012) (*IP Closed Captioning Order*) (finding that because Congress did not define "technically feasible" as it is used in the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission was "obligated to interpret the term to best effectuate the purpose of the statute."). *See also* Lawyers' Committee for Civil Rights Under Law Comments at 30 ("Congress gave the Commission wide discretion as to *how* it would identify technical and economic feasibility issues, how those issues interact with ensuring equal access, and how to 'tak[e] into account' these issues.").

[199] *See* Public Knowledge et al. Comments at 41 (writing that the Commission "has often been tasked with determining what is 'feasible' when it comes to following regulatory requirements" and that the Commission should look to these past efforts to determine "what technical and economic feasibility should mean here."); Verizon Comments at 27-28 (writing that the Commission should draw on its prior interpretations of technical and economic feasibility to interpret these concepts to mean more than what is "possible," involving consideration of practical factors related to resource deployment and availability of technology); Public Knowledge et al. Reply at 39-40 (agreeing with Verizon on the appropriateness of drawing on Commission precedent, but arguing that Verizon's analysis is "incomplete" because Verizon does not emphasize the contexts in which the Commission places the burden on carriers to demonstrate technical and economic feasibility and does not simply defer to providers on such determinations).

[200] *See, e.g.*, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, Report and Order, 11 FCC Rcd 15499 (1996) (*First Local Competition Order*); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, (continued….)

and applications of these terms have varied by context, these instances provide guidance for our implementation of section 60506. For example, the Commission has previously made determinations as to whether an activity was technically and economically feasible based on record support or lack thereof,[201] adopted a rebuttable presumption of technical feasibility based on prior findings by a state commission,[202] adopted a list of activity that is technically feasible,[203] and established a process to analyze feasibility issues on a case-by-case basis.[204] Furthermore, the Commission has closely scrutinized technical and economic feasibility issues,[205] relied on industry past practice and success as key indicators

15 FCC Rcd 3696 (1999) (*UNE Remand Order*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999) (*First Advanced Services Order*); *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (*First Number Portability Order*); *IP Closed Captioning Order*, 27 FCC Rcd 787; *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107 and 11-43, 28 FCC Rcd 4871 (2013) (*2013 CVAA Order*); *Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999) (*Section 255 Order*); *Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-71, Report and Order, 30 FCC Rcd 10406 (2015) (*STELAR 2014 Reauthorization Report and Order*); *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Docket No. 93-22, Report and Order, 8 FCC Rcd 6885 (1993) (*1993 TDDRA Order*).

[201] *See STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10429-30, para. 30 (stating that "[b]ased on the constraints described in the record, we conclude that it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is . . . outside the relevant spot beam on which that station is currently carried."); *IP Closed Captioning Order*, 27 FCC Rcd at 844-45, para. 98 (rejecting a request from CTIA to exempt mobile devices from a close captioning requirement because CTIA had not adequately substantiated its claim that providing such a service on mobile devices was technically infeasible).

[202] *UNE Remand Order*, 15 FCC Rcd at 3799, para. 227 ("[W]e establish a further rebuttable presumption that, once one state has determined that it is technically feasible to unbundle subloops at a designated point, it will be presumed that it is technically feasible for any incumbent LEC, in any other state, to unbundle the loop at the same point everywhere."); 47 CFR § 51.319(b)(3)(ii); 47 CFR § 51.321(c).

[203] 47 CFR § 51.305(a)(2) (providing a non-exhaustive list of technically feasible points of interconnection in an incumbent local exchange carrier's network); 47 CFR § 51.321(b); *First Number Portability Order*, 11 FCC Rcd at 8409, para. 110.

[204] *STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10430, para. 30 ("[W]ith respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible . . . we will review these assertions on a case-by-case basis."); *Regulations Concerning Indecent Communications by Telephone*, GEN Docket No. 90-64, Report and Order, 5 FCC Rcd 4926, 4932, para. 42 (1990) (*1990 Indecent Communications by Telephone Order*) ("The extent to which a carrier may claim blocking is technically infeasible, by reason of equipment anomaly, cost or regional protocol incompatibility, represents a factual question that can be resolved only on a case by case basis in the context of a particular proceeding."); *Implementation of the Satellite Home Viewer Improvement Act of 1999; Broadcast Signal Carriage Issues; Retransmission Consent Issues*, CS Docket Nos. 00-96 and 99-363, Report and Order, 16 FCC Rcd 1918, 1964-65, para. 108 (2000).

[205] *See, e.g.*, *STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10438, para. 42 (writing that to demonstrate infeasibility, a satellite carrier "must provide detailed technical or economic information to substantiate its claim of infeasibility."); *Panola County, Texas; Petitions for Modification of the Satellite Television Markets of KFXK-TV, Longview, Texas and KLTV, Tyler, Texas*, MB Docket No. 18-337, CSR No. 8965-A, MB Docket No. 18-338, CSR No. 8966-A, Memorandum Opinion and Order, 34 FCC Rcd 1085, 1091-1093, paras. 15-19 (MB 2019) (*KFXK-TV and KLTV Order)* (rejecting claims of technical and economic infeasibility).

of technical feasibility,[206] and placed the burden on the entity asserting technical or economic infeasibility to prove the claim to the Commission's satisfaction.[207]

69. Judicial case law also informs our definitions of technical and economic feasibility for section 60506 purposes. In 2002, the Supreme Court decided a challenge to the Commission's implementation of section 251 of the Communications Act that involved the Commission's interpretations of the statutory phrase "technically feasible."[208] Petitioners in that case argued that Commission rules requiring incumbent carriers to combine unbundled network elements where "technically feasible" was unreasonable and in conflict with the statutory language.[209] In upholding the Commission's rules, the Court rejected the petitioners' argument that the rules imposed no reasonable limits on the requirement to combine network elements. Rather, the Court held that the Commission's definition of "technically feasible" provided real limits on what would be required of incumbent local exchange carriers, concluding that "[i]f 'technically feasible' meant what is merely possible, it would have been no limitation at all."[210] The Court's ruling, albeit in a different context, instructs that we should be skeptical of arguments suggesting that technical and economic feasibility are concepts operating at the margins of what is technical and economically *convenient* on the one hand, or what is technically and economically *possible* on the other.

70. *Technical Feasibility*. Taking into account long-standing Commission precedent, we define a "technically feasible" policy or practice as one that is "reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized." We use the Commission's definition of "technically feasible" from section 54.5 of the Commission's rules as a starting point.[211] When implementing the interconnection provisions of the 1996 Act, the Commission similarly leveraged prior successful practice to identify and define technical feasibility.[212] In that context, the Commission adopted rules that established previous points of interconnection or methods of access to unbundled network elements as "substantial evidence" that analogous points or methods are technically feasible.[213] In the context of section 60506, a policy or practice will be considered technically feasible if it is reasonably achievable, as evidenced by prior success under similar circumstances. Moreover, because technological advances might provide ready

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[206] *See, e.g.*, 47 CFR § 51.321(c) ("A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on any incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points."); 47 CFR § 51.305(c)-(d).

[207] *E.g.*, *STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10438, para. 42 ("[A] satellite carrier bears the burden of demonstrating that the carriage contemplated in a market modification would not be technically and economically feasible by operation of its satellites."); 47 CFR § 51.305(e); 47 CFR § 51.5; 47 CFR § 51.319(b)(3)(i); 47 CFR § 51.321(d).

[208] *Verizon Communications, Inc. v. F.C.C.*, 535 U.S. 467, 535-36 (2002) (*Verizon)*.

[209] *Id.*; 47 CFR § 51.315(c)-(f).

[210] *Verizon*, 535 U.S. at 536.

[211] 47 CFR § 54.5 (defining "technically feasible" to mean "capable of accomplishment as evidenced by prior success under similar circumstances. For example, preexisting access at a particular point evidences the technical feasibility of access at substantially similar points."); Public Knowledge et al. Comments at 41-42 (identifying the definition of "technically feasible" from § 54.5 as an approach that can "provide guidance" to the Commission in interpreting section 60506).

[212] *See First Local Competition Order*, 11 FCC Rcd at 15606, para. 204.

[213] *See* 47 CFR § 51.305(c) ("Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point."); 47 CFR §§ 51.305(d), 51.321(c).

means of achieving successful outcomes that have not occurred in the past, we will allow for the possibility that technical feasibility may be shown by "demonstrated technological advances clearly indicating the reasonable achievability" of the policy or practice in question.

71. *Economic Feasibility*. We define an "economically feasible" policy or practice to mean one that is "reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized." We again use the language of the Commission's definition of "technically feasible" in section 54.5 as a baseline because anchoring economic feasibility in past industry practice will provide guidance to allow all interested stakeholders to gauge what is or is not economically feasible.[214] Factors for analyzing economic feasibility of a policy or practice include, but are not limited to, projected income, projected expenses, net income, expected return on investment, competition, cash flow, market trends, and working capital requirements, and the standards under which such calculations are determined. A policy or practice will be considered economically feasible if relevant economic variables fall within acceptable ranges based on past industry practice. Determining economic feasibility thus requires a comparative analysis that accounts for past and present industry practices and new economic conditions that might, in some circumstances, require variances from such historical ranges.

72. Our definitions of "technically feasible" and "economically feasible" join previous Commission interpretations of these terms with several important attributes specific to the present context. As a baseline, we interpret the categories of "technical" and "economic" feasibility broadly to encompass any legitimate business impediment to achievement of equal access.[215] In addition to using prior successful policies and practices as the foundation for determining what is technically or economically feasible, we design our definitions to flexibly encompass future policies and practices and the inherent differences in the operation of covered entities of varying sizes and technologies. We also take a measured approach that considers the real burdens industry participants face in deploying and providing service, while also ensuring that we do not create "a loophole that renders the rules meaningless."[216] And lastly, we make clear that issues of technical and economic feasibility are related but ultimately distinct from each other.

73. We take a measured approach to defining these terms, providing guideposts for understanding what is technically or economically feasible today and what could be feasible in the future. We emphasize that we do not define technical and economic feasibility as simple deference to a single entity's judgment, as many industry commenters argue we should.[217] We agree with those commenters

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[214] 47 CFR § 54.5.

[215] *See Inclusive Communities*, 576 U.S. at 541-42; Letter from Pamela Arluk, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 4-5 (filed Nov. 3, 2023) (NCTA Nov. 3 *Ex Parte*) (arguing that to align our rules with *Inclusive Communities*, the Commission must "recogniz[e] that a covered entity may have a justification that lies outside the scope of technical and economic feasibility."); Letter from Jordan Goldstein, Comcast, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 2 (filed Nov. 8, 2023) (Comcast Nov. 8 *Ex Parte*).

[216] Local Governments Comments at 17-18; *see also* Leadership Conference on Civil and Human Rights et al. Comments at 6; National Digital Inclusion Alliance and Common Sense Media Comments at 7-8; ACLU Reply at 10; Leadership Conference on Civil and Human Rights et al. Reply at 7; National Hispanic Media Coalition Reply at 6-7; North Suburban Communications Commission Reply at 5; Public Knowledge et al. Reply at 37-40; Texas Coalition of Cities et al. Reply at 8.

[217] *See* NCTA Comments at 30 ("In defining feasibility, the Commission should allow for providers' exercise of business judgment in the provision of services given the particular technologies utilized by the provider in question."); NTCA Comments at 24; TechFreedom Comments at 44-47; T-Mobile Comments at 27-28 ("The Commission must ensure that this standard does not disrupt or impede the market and account for business considerations that drive decisions about how and where to deploy their networks, what services to offer, and how
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asserting that Congress did not adopt section 60506 to enshrine the current industry status quo.[218] When considering what is technically or economically feasible, we expect covered entities to consider more than just what is the most convenient.[219] At the same time, we do not create an "impossibility" standard as some commenters have warned against, which would define any action as technically or economically feasible unless it was impossible.[220] Like the Commission's approach to defining "technically feasible" in the *First Local Competition Order*,[221] the definitions we adopt today include reasonable limitations on what is considered technically or economically feasible and do not represent any attempt to "control" covered entities' investment decisions.[222] Complying with the rules we adopt today does not displace the ability of industry participants to make "practical business choices and profit-related decisions."[223] Rather, they are designed to ensure that industry participants incorporate into their decision-making processes consideration of the potential discriminatory impacts of their policies and practices, and that they seek to minimize any such discriminatory impacts.

74. We acknowledge that the technical and economic challenges that covered entities face in deploying and serving rural, Tribal, and urban areas can vary greatly.[224] At the same time, we agree with Public Knowledge et al. that "broadband deployment may still be feasible in areas even where there are no similar circumstances to use as a benchmark," and if feasibility "was limited to circumstances where there is a direct analog, certain areas that have gone long underserved due to unique characteristics might continue to fall through the cracks."[225] Thus, we intend for our approach to technical and economic

best to manage and maintain their networks to deliver their services to subscribers."); USTelecom Comments at 40; Verizon Comments at 23-24; Competitive Carriers Association Reply at 6. *But see* Joint Advocates Comments at 21-22 ("ISPs' past business decisions may have been 'rational' but still have a disparate impact on consumers of color, consumers with disabilities, and other unserved and underserved communities.").

[218] *See* Joint Advocates Comments at 21-22; Public Knowledge et al. Comments at 43 ("A project plainly cannot be economically 'feasible' only if a provider would choose to undertake it absent government policy—Congress did not pass a law to tell providers to do things they already were going to do."); ACLU Reply at 11.

[219] For example, the Commission found in other contexts that the novelty or costliness of a particular business path does not, in itself, answer the question of whether that path is feasible, nor does the difficulty of a change in product design. *See Section 255 Order*, 16 FCC Rcd at 6444, para. 63; *IP Closed Captioning Order*, 27 FCC Rcd at 844, para. 98.

[220] *See* NCTA Comments at 30 (writing that Congress "did not intend the Commission to apply an impossibility standard, whereby *any* disparity in services would amount to discrimination unless provision of service was impossible."); NTCA Comments at 26; T-Mobile Comments at 28; USTelecom Comments at 38;. *But see* ACLU Reply at 12 (urging the Commission to define "feasibility" based on the Merriam-Webster definition as "capable of being done or carried out.").

[221] *See First Local Competition Order*, 11 FCC Rcd at 15602-03, 15605-06, paras. 198-99, 203; *Verizon*, 535 U.S. at 535-36.

[222] Verizon Comments at 23-24.

[223] *Inclusive Communities*, 576 U.S. at 533 (finding that Supreme Court precedent "teach[es] that disparate-impact liability must be limited so employers and other regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system.").

[224] *See Schools and Libraries Universal Service Support Mechanism; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-56 (rel. July 21, 2023); California Public Utilities Commission Comments at 17, 20 (describing California's efforts to expand broadband to Tribal lands, and providing that "CPUC has found that many tribal communities, particularly those in rural areas of the state, are unconnected or underconnected."); Free Press Comments at 22-33 (comparing the economic challenges of deploying fiber and cable network technology); NCTA Comments at 28-31 (identifying various factors that "may lead to different deployment levels across communities."); USTelecom Comments at 39; WISPA Comments at 9-13 (arguing for the Commission to consider factors in addition to technical and economic feasibility to encompass various deployment obstacles faced by small providers).

feasibility to encompass new, but analogous, policies and practices to account for variations among covered entity types and industry advancement. The Commission has previously crafted a definition of technical feasibility to outlast current technological development in the context of certain unbundling obligations for incumbent local exchange providers.[226] Under those rules, the Commission adopted a rebuttable presumption that once one state had determined an approach was technically feasible, the same approach would be presumed to be technically feasible for incumbent local exchange carriers in every state.[227] We decline at this time to adopt a presumption of feasibility, and therefore do not take the precise approach taken by the Commission in 1999. But we do find that we are similarly defining our concepts of technical and economic feasibility to allow for consideration of technical, infrastructure, economic, or other developments in the area under review.[228]

75. While our definitions of technical and economic feasibility mirror each other, and in certain respects might be related, we consider each to be a distinct concept. The Commission has taken this approach previously,[229] and commenters urge us to adopt the same approach here.[230] We agree that a policy or practice may be technically feasible but not economically feasible, and vice versa.

76. *Standard*. At this time, we find that a case-by-case approach provides the Commission needed flexibility to evaluate issues of technical and economic feasibility. In the *Notice*, the Commission sought comment on whether we should assess infeasibility claims on a case-by-case basis, adopt safe harbors, or take a combination of the two.[231] In response, commenters voiced support for each of these approaches, as well as urging the Commission to adopt blanket presumptions of feasibility as opposed to a case-by-case review.[232] We understand the arguments in favor of the adoption of one or more safe

[225] Public Knowledge et al. Comments at 42.

[226] *See UNE Remand Order*, 15 FCC Rcd at 3799, para. 227 (creating a "best practices" approach to identifying technically feasible unbundling practices that would capture developments in technology); 47 CFR § 51.319(b)(3)(ii).

[227] *See UNE Remand Order*, 15 FCC Rcd at 3799, para. 227; 47 CFR § 51.319(b)(3)(ii).

[228] We also decline at this time to adopt any explicitly different standard for evaluating claims of economic feasibility for existing service offerings versus new deployments. *See* Free Press Comments at 36.

[229] 47 CFR § 54.5 ("A determination of technical feasibility does not consider economic, accounting, billing, space or site except that space and site may be considered if there is no possibility of expanding available space."); 47 CFR § 51.5; *First Local Competition Order*, 11 FCC Rcd at 15602-04, paras. 198-201 (adding that in addition to the statutory arguments for why technical and economic feasibility are distinct, the Commission did not "believe the term 'technical,' when interpreted in accordance with its ordinary meaning as referring to engineering and operational concerns in the context of sections 251(c)(2) and 251(c)(3), includes consideration of accounting or billing restrictions.").

[230] NCTA Comments at 31 ("[T]he Commission should account for the independent meaning of both 'economic' and 'technical' feasibility in considering defenses, as underscored by the statute's reference to those 'issues' as plural."); NTCA Comments at 17-18; Public Knowledge et al. Comments at 41-43 (referring to technical and economic feasibility as "distinct but related concepts").

[231] *Notice*, at 19-20, paras. 35-36.

[232] *See, e.g.*, Free Press Comments at 35-36 (arguing that the Commission should proceed on a case-by-case basis because it "does not yet have a complete understanding of these issues, and does not yet have a robust enough record to support the establishment of safe harbors."); NTIA *Ex Parte* at 10-13 (recommending that the Commission "treat actions taken in strict compliance with BEAD program requirements as presumptively also compliant with digital discrimination rules," and potentially apply this principle to other similarly operating federal funding programs); Public Knowledge et al. Comments at 3, 41 ("Congress clearly intended for the Commission to adopt presumptions of technological and economic feasibility."); Verizon Reply at 20 ("Safe harbors would foster certainty in business decisions and would support ongoing efforts to close the digital divide — exactly what Congress sought to do with the Infrastructure Act.").

harbors to promote regulatory certainty[233] and reduce the regulatory burden on providers,[234] as well as arguments favoring a list of *per se* feasible methods of providing broadband internet access service[235] or presumptions of feasibility in all or certain instances to increase compliance.[236] The Commission has in the past adopted rules taking each of these approaches.[237] Based on the record and information we have today, however, we find it is premature to incorporate safe harbors or feasibility presumptions into our definitions of technical and economic feasibility. In this connection, we defer any further decisions regarding the adoption of one or more safe harbors until we have developed experience on how they would operate in practice.[238] Thus, at this juncture, we will evaluate issues of technical or economic feasibility on a case-by-case basis so as to deter violations of our rules while allowing those issues to be fully explained to and considered by the Commission.[239]

77. We also design our case-by-case approach to flexibly account for the differences between covered entities of varying sizes, technologies, and circumstances. We agree with those commenters, like Competitive Carriers Association, who encourage us to take a "a practical and flexible approach that encourages innovation and investment to close the digital divide."[240] Therefore, we decline at this time to

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[233] *See, e.g.*, CTIA Comments at 3; T-Mobile Comments at 30-31. *But see* Lawyers' Committee for Civil Rights Under Law Comments at 30 ("Nowhere in the statute is technical and economic feasibility considered or recommended to be a complete safe harbor, excuse, or justification for discrimination."); ACLU Reply at 12 (writing that section 60506 "was written because . . . a provider's profit-seeking behavior has caused the dramatic disparity in access between protected and non-protected classes that we see today. If the Commission were to provide safe harbors . . ., they would cement existing practices, and fail to eliminate digital discrimination, as required by Congress.").

[234] *See, e.g.*, WISPA Comments at 17 ("A safe harbor is a reasonable and practical alternative that will reduce the regulatory burdens on small providers, while balancing the interest of consumers.").

[235] *See* Public Knowledge et al. Comments at 43.

[236] *See* Joint Advocates Comments at 24-26; Local Governments at 17-18; Public Knowledge et al. Comments at 44; ACLU Reply at 12; *but see* Americans for Tax Reform and Digital Liberty Reply at 3 (rec. Apr. 20, 2023); AT&T Reply at 25-26; NCTA Reply at 3.

[237] *See, e.g.*, *STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10429-42, paras. 30-50; 47 CFR § 51.321(b), (c).

[238] As explained in more detail in Part E below, we do adopt a presumption of compliance from enforcement action that we find will lower the compliance burden for covered entities without compromising consumer protection. *See infra* para. 142.

[239] *See* National Digital Inclusion Alliance and Common Sense Comments at 7 (arguing that the "adoption of safe harbors would allow ISPs to sidestep the necessary processes by which all disparate impact complaints, no matter how seemingly non-discriminatory, would be subject to a review process to discover the nature and impact of the discrimination."); Next Century Cities Reply at 5 (rec. Apr. 20, 2023) ("Taking a filtered, case-by-case approach allows for more transparency and leads to a more equitable approach as a result of the established relationships between the working groups and the communities most vulnerable to discrimination."); North Suburban Communications Commission Reply at 5; Public Knowledge et al. Comments at 44-47; Public Knowledge et al. Reply at 37-40.

[240] Joint Advocates Comments at 20-21 (writing that economic and technical feasibility are meant to provide flexibility to smaller providers); Public Knowledge et al. Comments at 44 ("In this context, 'taking into account' questions of feasibility means that the size and resources available to a provider are relevant. What may be economically feasible for a Nationwide cable provider might not be for a non-profit co-op, or a smaller commercial provider."); T-Mobile Comments at 29 ("The Commission's standard must be holistic and consider a totality of circumstances."); USTelecom Comments at 39 ("Because no two broadband providers are alike in the constraints they face, providers must have flexibility in how they assess technical and economic feasibility just as they do in the marketplace today."); Public Knowledge et al. Comments at 44 ("In this context, 'taking into account' questions of feasibility means that the size and resources available to a provider are relevant. What may be economically feasible

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adopt distinct standards or definitions for different types of covered entities.[241] We find that our adopted definitions will allow the Commission to consider what is reasonably achievable for the particular entity under investigation.[242] Moreover, as the Commission has found previously, legal or regulatory constraints can also be considered when determining technical feasibility.[243]

78. Furthermore, we find that when the Commission conducts an investigation under the enforcement process described in Part E below, the entity under investigation will have the burden of proving to the Commission that the policy or practice in question is justified by genuine issues of technical or economic feasibility. The Commission has commonly taken this approach in previous approaches analyzing "technical feasibility," as well as regarding satellite carriers claiming "technical or economic infeasibility" in the market modification context.[244] In the context of section 60506, we find that assigning this burden to the entity under investigation is inherent in the structure of our definition of "digital discrimination of access." We find, as the Commission has previously, that as a practical matter, it is the entity providing the justifications for its policies and practices that has access to the necessary information to support their factual assertions.[245] And, as we have previously stated, those justifications will usually involve arguments and evidence that technical or economic constraints limit the availability of less discriminatory alternatives.

79. Finally, we emphasize that the Commission will closely scrutinize claims of technical or economic feasibility through review of documentation submitted by the entity under investigation, publicly available reports and other information, interviews and depositions of relevant personnel, and other available information. Under the Commission's market modification rules, the Commission created a process for satellite carriers to claim an inability to broadcast in certain locations due to technical and economic feasibility.[246] In practice, the Commission's Media Bureau closely scrutinizes satellite carriers' infeasibility claims under section 76.59 of the Commission's rules.[247] Similarly, in the context of our

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for a Nationwide cable provider might not be for a non-profit co-op, or a smaller commercial provider."); Competitive Carriers Association Reply at 6.

[241] *See also* NCTA Reply at 21-22 (describing AT&T as arguing that it should be subject to lesser economic scrutiny than cable providers, NTCA urges the Commission to "not apply an elevated level of scrutiny to cable broadband providers when assessing deployment feasibility").

[242] *See* AT&T Comment at 12-15 (describing the risks AT&T faces when deploying fiber); Block Reply at 8-10; WISPA Reply at 2, 4-7.

[243] *Section 255 Order*, 16 FCC Rcd at 6445, para. 64 (agreeing with commenters that technical infeasibility "may result from legal or regulatory constraints."); T-Mobile Comments at 29 (urging the Commission to "account for regulatory or other barriers to deployment and service offerings," such as the timeline of the Commission's own spectrum licensing process); NCTA Comments at 28-29; NTCA Comments at 17-18, 24; Verizon Comments at 8-9, 29-30.

[244] *See UNE Remand Order*, 15 FCC Rcd at 3797, para 223; 47 CFR §§ 51.319(b)(3)(i), (ii), 51.321(d); *STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10435, para. 38; *First Local Competition Order*, 11 FCC Rcd at 16140, para. 1317.

[245] *STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10435, para. 38.

[246] 47 CFR § 76.59(e); *STELAR 2014 Reauthorization Report and Order*, 30 FCC Rcd at 10438-42, paras. 43-50.

[247] *See Panola County, Texas; Petitions for Modification of the Satellite Television Markets of KFXK-TV, Longview, Texas and KLTV, Tyler, Texas*, MB Docket No. 18-337, CSR No. 8965-A, MB Docket No. 18-338, CSR No. 8966-A, Memorandum Opinion and Order, 34 FCC Rcd 1085, 1091-1093, paras. 15-19 (MB 2019) (*KFXK-TV and KLTV Order)*; *Harrison County, Texas Petitions for Modification of the Satellite Television Markets of KLTV, Tyler, Texas and KFXK-TV, Longview, Texas*, MB Docket Nos. 18-24 and 18-25, Memorandum Opinion and Order, 33 FCC Rcd 5272 at para. 16, n.47 (MB 2018); *Gray Television Licensee, LLC For Modification of the Satellite Television Market For WSAW-TV, Wausau, Wisconsin*, MB Docket No. 16-293, Memorandum Opinion and Order, 32 FCC Rcd 668 (MB 2017); *Victory Television Network, Inc. For Modification of the Satellite Television Market For*
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section 60506 rules, the Commission will not defer to the entity seeking to justify policies and practices alleged to be discriminatory.[248] We will require proof by a preponderance of the evidence that the policy or practice in question is justified by genuine issues of technical or economic feasibility.[249] Stated differently, a covered entity can demonstrate that a policy or practice is justified by genuine issues of technical or economic feasibility by showing that less discriminatory alternatives are not reasonably available and achievable because of genuine technical or economic constraints.

B. Prohibition of Digital Discrimination of Access

80. Today we adopt a rule broadly and directly prohibiting "digital discrimination of access" as we have now defined it. Our prohibition thus forbids both intentionally discriminatory conduct (that is, applies a disparate treatment standard) as well as conduct that produces discriminatory effects (that is, applies a disparate impact standard). This approach does not supplant, but rather supplements the Commission's past and ongoing efforts to facilitate broadband access through affirmative approaches.

81. At this time, we find that this broad prohibition and the enforcement mechanisms described below are the most cost-effective means to accomplish Congress's stated objectives in section 60506.[250] Prohibiting discrimination in access to broadband service is necessary to facilitate equal access to broadband and prevent digital discrimination of access, and both of these goals are required by the statute. In that same vein, unequal access to broadband service imposes significant costs on unserved and underserved communities, and on the Nation as a whole.[251] The voluntary informal complaint process described below is a low-cost approach toward meeting the statutory requirement that leverages existing Commission systems. Similarly, enforcement of the broad prohibition through self-initiated investigations affords the Commission ample flexibility without substantially overhauling the enforcement process. Such low-cost approaches will allow the Commission to enforce the statute in a cost-effective manner, while bringing the undeniable benefits of expanded broadband access. Lastly, our rules are designed to minimize the compliance- and other-related costs they will likely impose on broadband providers and the other entities our prohibition covers.

82. Fundamentally, a policy or practice will violate our prohibition on digital discrimination of access if it discriminates, either by intent or in effect, based on one of section 60506's listed characteristics. In determining whether a policy or practice violates the prohibition we adopt today, the Commission will look first to whether the policy or practice in question differentially affects access to

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KVTJ-DT, Jonesboro, Arkansas, MB Docket No. 17-157, Memorandum Opinion and Order, 32 FCC Rcd 7389 (MB 2017); *Monongalia County, WV and Preston County, WV Petitions for Modification of the Satellite Television Markets of WDTV, Weston, West Virginia, and WBOY-TV and WVFX, Clarksburg, West Virginia*, MB Docket Nos. 17-274, 17- 275, Memorandum Opinion and Order, 33 FCC Rcd 1168 (MB 2018).

[248] *See* Verizon Comments at 8 (citing "negotiating access to multiple tenant environments" as a technical and economic challenge to deploying broadband); AT&T Comments at 13. B*ut see* NMHC and NAA Reply at 13-22 (rec. Apr. 20, 2023) (rejecting claims from providers that owners of multifamily housing are a significant impediment to deploying broadband). *See also* Michael L. Katz and Bryan Keating, An Economic Approach To Defining "Economic Feasibility" To Prevent & Eliminate Digital Discrimination at 15 (Apr. 20, 2023) (stating that in addition to the financial factors providers use making investment decisions, "[a] firm may take other factors into account in its investment decision-making in ways that fall outside of its formal financial projections.") (submitted with Verizon Reply).

[249] *Section 255 Order*, 16 FCC Rcd at 6445, para. 64 (finding that under section 255, the Commission would not allow manufacturers and providers to make "bald assertions of technical infeasibility," and that "[a]ny engineer or legal conclusions that implantation of a feature is technically infeasible should be substantiated by empirical evidence or documentation.").

[250] 47 U.S.C. § 1754(b).

[251] *Id.* § 1701(2) ("The persistent 'digital divide' in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education.").

broadband service or is intended to do so. If that question is answered in the affirmative, the Commission will review any issues of technical or economic feasibility that may compel use of the challenged policy or practice rather than a less discriminatory policy or practice.[252] In other words, the rules we adopt today require assessment in the first instance of whether a policy or practice is discriminatory; and if so, whether there were reasonably available and achievable alternatives (i.e., alternatives that were technically and economically feasible) that would have been less discriminatory.

83. We disagree with commenters asserting that section 60506 does not authorize a prohibition on private conduct.[253] These commenters variously claim that section 60506, as part of the Infrastructure Act, only obligates the Commission to undertake affirmative-based efforts, e.g., by funding the expansion of covered entities' broadband footprints[254] or by promoting digital skill building and adoption of broadband by consumers through other initiatives outside this proceeding.[255] Congress did not specify the means by which the Commission should fulfill its obligations under section 60506. As explained above, we conclude that the statutory language authorizes the Commission to address and combat both intentional discrimination and disparate impacts.[256] A prohibition of the kind we adopt today proves necessary to effectuate this charge. It does so by deterring discrimination in the first instance (thereby "preventing" its occurrence) while also enabling the Commission to target behaviors that affirmative-based approaches alone may be insufficient to change.

84. We also disagree with commenters arguing that a broad prohibition against digital discrimination of access will fundamentally transform the current regulatory landscape.[257] As we explain below, our approach, which implements the directive in section 60506, involves self-initiated investigations. Such investigations may be premised on information submitted by the public, communications with state, local, or Tribal officials, or through outreach via other channels. However, we note that a complaint or allegation alone does not necessarily warrant an enforcement response from the Commission,[258] thus ameliorating any such concerns raised by some commenters.[259] Our prohibition—consistent with the Commission's nondiscrimination requirements associated with its ongoing efforts to promote broadband access—and the enforcement methods we outline below represent an important, yet incremental, step in furthering the Commission's and Congress's digital equity goals.

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[252] *See supra* note 188.

[253] *See, e.g.*, Information Technology and Innovation Foundation Comments at 3-4 (rec. Feb. 21, 2023).

[254] *See, e.g.*, AT&T Comments at 9, 11; John Mayo, Georgetown University Reply at 1 (rec. Apr. 20, 2023); NCTA Comments at 22-23; R Street Institute Reply at 3 (rec. Apr. 20, 2023); U.S. Chamber of Commerce Comments at 4.

[255] *See, e.g.*, Block Communications, Inc. Reply at 4; Information Technology and Innovation Foundation Comments at 6-7; Information Technology and Innovation Foundation Reply at 5-6 (rec. Apr. 20, 2023).

[256] *Supra* paras. 41-42. The U.S. Chamber of Commerce contends that the Commission's adoption of "new civil-rights legislation wholesale, including authorization of unfunded deployment mandates or rate regulation," would constitute a violation of the nondelegation doctrine. U.S. Chamber of Commerce Comments at 4-5. However, our prohibition today—a narrower action than that complained about—simply fulfills the task Congress, using clear language directing the Commission to prevent digital discrimination of access, gave us to perform. Adoption of these rules does not require an impermissible assumption of Congress's legislative powers; it only exercises the authority the Infrastructure Act conferred under the guidance provided in that statute.

[257] *See, e.g.*, American Action Forum Reply at 5 (arguing that section 60506 does not "grant broad rulemaking authority to transform the regulatory regime governing broadband deployment to achieve the policy goal of facilitating equal access").

[258] *See, e.g.*, USTelecom Reply at 18 (arguing that the Commission should examine trends in complaints rather than focusing resources responding to each individual complaint); *see also* NCTA Comments at 26 (arguing that complainants should first demonstrate standing to avoid wasting Commission resources).

[259] *See, e.g.*, USTelecom Comments at 41-42.

C. Scope of Prohibition

1. Covered Entities

85. We find that the digital discrimination of access rules we adopt today shall apply to entities that provide, facilitate and affect consumer access to broadband internet service. Covered entities include, but are not limited to, broadband providers as defined in rule 54.1600(b),[260] contractors retained by, or entities working through partnership agreements or other business arrangements with, broadband internet access service providers; entities facilitating or involved in the provision of broadband internet access service; entities maintaining and upgrading network infrastructure; and entities that otherwise affect consumer access to broadband internet access service as further discussed below.[261] In the *Notic*e, we sought comment on *whose* "policies or practices . . . that differentially impact consumers' access to broadband internet access service" should be covered by our definition of digital discrimination of access.[262] We also sought comment on whether we should understand digital discrimination of access to include policies or practices by a broader range of entities than broadband providers.[263] To achieve the policy that "subscribers should benefit from equal access to broadband internet access service,"[264] and fulfill Congress's directive that the Commission "facilitate equal access to broadband internet access service,"[265] we have determined that the rules must include not only broadband providers, but also other entities that provide services that facilitate and affect consumer access. The record supports this determination. We thus find that there are a range of entities that facilitate and can affect consumer access to broadband. Therefore, we find that our rules and, in particular, our prohibition against digital discrimination of access, extend not only to broadband providers, but also to entities that provide services that facilitate and meaningfully affect consumer access to broadband internet access service.[266]

86. Numerous commenters agree that broadband providers are not the only entities that should be subject to these rules.[267] To be sure, other platforms and organizations affect consumer access to broadband internet access service.[268] For example, Lawyers' Committee for Civil Rights Under Law argues that section 60506 prohibits interference with equal access to broadband by any type of entity because guaranteeing equal access to broadband for all individuals requires applying the statute to any entity that can affect the ability of an individual to access the service, not just those entities that provide

[260] 47 U.S.C. § 54.1600(b).

[261] *See Notice* at 15, paras. 29-30; *infra* para. 87 (providing examples of how entities may impact consumer access to broadband internet access service).

[262] *See Notice* at 15, para. 29.

[263] *Id*.

[264] 47 U.S.C. § 1754(a)(1).

[265] *Id.* § 1754(b).

[266] *See* Lawyers' Committee for Civil Rights Under Law Comments at 31-32.

[267] *See, e.g.*, American Library Association Comments at 3 (supporting extending the definition of digital discrimination of access to extend beyond broadband and include all entities involved in the ecosystem of providing Internet access); Benefits Data Trust Comments at 6 (rec. Feb. 21, 2023) (recommending that individuals and communities are covered by the definition of digital discrimination of access); Free Press Comments at 18-20 (explaining "that the Commission has the authority to apply it rules to all entities under its jurisdiction"); Local Governments Comments at 19 (arguing that our rules must cover all broadband providers, including infrastructure owners even if they are not also service providers); New York State Public Service Commission Comments at 3 (supporting adding additional services which may require a broadband service to use); TURN Reply at 2-4 (rec. Apr. 19, 2023) (suggesting that section 60506 is broad enough to encompass all types of technologies in provisioning [broadband internet access service subscriptions]).

[268] *See* Lawyers' Committee for Civil Rights Under Law Comments at 32.

connectivity.[269] And as TURN states, as technology evolves, the Commission's rules must be able to address future technological evolutions that may affect or interfere with broadband internet access.[270] Lastly, National Digital Inclusion Alliance and Common Sense Media urge us to apply our rules to any entity—subsidiary, parent company, or other—that provides broadband internet access service.[271]

87. We disagree with arguments that our authority under 60506(b) extends only to providers of broadband internet access service because "only a service provider, and not some other class of entity, can 'offer' a 'service'."[272] As explained below, we believe the definition of "equal access" in section 60506(a), which applies both to section 60506(b)'s mandate that we facilitate equal access and that we prevent digital discrimination of *access*, focuses on consumers' opportunity to receive and effectively utilize an offered service. Conduct by entities other than broadband providers might impede equal access to broadband internet access service on the bases specified in the statute. For example, the Lawyers' Committee for Civil Rights Under Law provides several examples of how entities may impact consumer access based on protected characteristics, including a landlord restricting broadband options within a building even if multiple providers are available.[273] While we reach no conclusion whether this, or other specific examples in the record would be covered by our rules, we are persuaded that there could be situations – now or in the future – in which non-providers could impede equal access to broadband internet access service based on the listed characteristics. Moreover, while we are not explicitly tasked with regulating entities outside the communications industry, section 60506 does require us to facilitate equal access to broadband by "preventing" and identifying steps necessary to "eliminate" digital discrimination of access. Thus, to the extent that entities outside the communications industry provide services that facilitate and affect consumer access to broadband, they may be in violation of our rules if their policies and practices impede equal access to broadband internet access service as specified in the rules.[274] To the extent that such entities have policies or practices that differentially impact consumers' access to broadband internet access service, we will consider, among other things, the closeness of the relationship between that entity's policies and practices and the provision of broadband service.[275]

88. Lastly, we acknowledge that commenters disagree on whether to include infrastructure owners and local governments within the scope of our rules, but we decline to expressly carve out

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[269] *Id.*

[270] *See* TURN Reply at 2-3.

[271] *See* National Digital Inclusion Alliance and Common Sense Media Comments at 6.

[272] *See, e.g.*, NMHC and NAA Comments at 5 (arguing that "only a service provider, and not some other class of entity, can 'offer' a 'service'"); TechFreedom Comments at 38 (arguing that the "service" congress was referring to was "broadband internet access service;" and the Commission is not free to expand that definition to other "services").

[273] *See* Lawyers' Committee for Civil Rights Under Law Comments at 31-32*; see also* National Urban League Reply Comments at 3.

[274] 47 U.S.C. § 1754(a)(1).

[275] By way of example, the U.S. Supreme Court long ago upheld the Commission's exercise of jurisdiction over prohibited surcharges imposed by hotels and apartment owners based on arrangements they made with the telephone company, and where the practice was "so identified" with the communications service that it was brought within the prohibition. *Ambassador, Inc. v. U.S.*, 325 U.S. 317, 324 (1945). We also note that section 411(a) provides as follows: "In any proceeding for the enforcement of the provisions of this Act, . . . it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practices under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers." 47 U.S.C. § 411(a).

specified entities from the scope of coverage at this time.[276] City of Philadelphia, City of Oklahoma, City of Minneapolis, etc. (Local Governments) argue that not considering infrastructure owners as providers of broadband services subject to our digital discrimination of access rules would allow broadband providers to outsource their deployments to third parties to avoid our equal access rules.[277] WIA disagrees with Local Governments in their assertion that infrastructure owners should be covered by the rules on digital discrimination of access, arguing that doing so would unlawfully expand the Commission's jurisdiction.[278] Additionally, Local Governments request that we not categorize local governments as "covered entities" based on their roles as right-of-way managers or franchise regulators.[279] While there may be tension in the record as to the role these entities play, our rule is clear that any entity that meaningfully affects access to broadband internet service is subject to our digital discrimination of access rules.

2. Covered Consumers

89. The definition of digital discrimination of access adopted today includes "policies and practices . . . that differentially impact *consumers'* access to broadband internet access service . . . or are intended to have such differential impact."[280] In the *Notice,* we sought comment on the meaning of "consumers" and who would fall within the scope of this term.[281] Commenters to the *Notice* proposed various definitions.[282] We today define "consumers" in this context to mean both current and potential subscribers, which includes individual persons, groups of persons, individual organizations, and groups of organizations having the capacity to subscribe to and receive broadband internet access service. We define "subscriber" as a current recipient of broadband internet access service as defined in section 8.1(b) of the Commission's rules.

90. Consistent with the purposes of section 60506, the term "consumers" as used in our adopted definition of digital discrimination of access comprises current subscribers and prospective subscribers of broadband internet access service.[283] And, under this rule, individual or groups of persons, organizations, or businesses fall within the scope of the term "consumer."[284] Covering both current and prospective subscribers is supported for several reasons.[285] First, section 60506's Statement of Policy

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[276] *See* Local Governments Comments at 19 (arguing that that our rules must cover all broadband providers, including infrastructure owners even if they are not also service providers); Wireless Infrastructure Association Reply at 1-2 (rec. Apr. 20, 2023) (disagreeing with Local Governments in their assertion that infrastructure owners should be covered by the rules on digital discrimination of access).

[277] *See* Local Governments Comments at 19.

[278] *See* Wireless Infrastructure Association Reply at 1-2 (arguing that section 60506 addresses only the provision of broadband internet access service).

[279] *See* Local Governments Comments at 19.

[280] *See supra* para. 33.

[281] *Notice* at 21, para. 39.

[282] *Id.* at 6, para. 12.

[283] Our rules do not cover other types of broadband service, such as business data services or enterprise customer purchases.

[284] Greenlining Institute Comments at 7*;see generally* 47 CFR § 64.1100(h) ("The term 'subscriber' is any one of the following: (1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill; (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or (3) Any person contractually or otherwise lawfully authorized to represent such party.").

[285] *See* American Association of People with Disabilities Comments at 2 (rec. Feb. 21, 2023); American Foundation for the Blind Comments at 4 (rec. Feb. 21, 2023); American Library Association Comments at 4-5; Benefits Data Trust Comments at 6-7; California Public Utilities Commission Comments at 7-8; Claire E. Coleman et al.

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directs the Commission to "ensure that all people of the United States benefit from access to broadband."[286] As the American Library Association observes, "[t]here are 'people of the United States' who are not subscribers because they experience digital discrimination that precludes them from becoming subscribers."[287] The California Public Utilities Commission further observes that "one cannot count as a subscriber if broadband service is not offered to them in the first place."[288] We agree. We would not be fulfilling our statutory mandate to facilitate equal access to broadband internet access service if we failed to include unenrolled or prospective subscribers as "consumers" under our rules. Second, limiting "consumers" to existing subscribers would do nothing to expand broadband availability in unserved communities. By way of example, the Japanese American Citizens League expressed that a large number of small businesses in the historic San Francisco Japantown business district remain unconnected to the internet with reliable broadband access.[289] If high-speed broadband service were unavailable in a particular geographic area because of discriminatory conduct, by definition there could be no subscribers in that area. And if the Commission's rules were limited to ensuring equal access by those already subscribing to a service, there would be nothing the Commission could do to investigate the reasons for this lack of access on the part of non-subscribers. Under the argument pressed by certain commenters, the Commission's rules would instead be confined to leveling service quality, pricing and other terms of service as between underserved communities and better-served communities. Such a limitation is not consistent with section 60506's overarching purpose to "ensure that *all people* of the United States benefit from equal access to broadband internet access service."[290]

91. We therefore reject commenters' arguments that the "consumers" covered by our rules should be limited to subscribers.[291] We disagree with NTCA's argument that the Commission's purview is limited to "subscribers," referring to "those who purchase service from the provider."[292] The Commission cannot fulfill Congress's directive to facilitate equal access to broadband internet access service without being able to address the issues that limit the opportunity to subscribe in the first instance. We firmly believe Congress intended the rules implementing section 60506(b) to facilitate the expansion of access of broadband service by eliminating discrimination, not just the leveling of service quality and terms. Therefore, our rules for digital discrimination of access cover all consumers, including both current and prospective subscribers.

92. We also find that, for purposes of our definition of "digital discrimination of access," the term "consumers" includes not only individuals, but also groups of persons, organizations, and businesses. We agree with National Digital Inclusion Alliance and Common Sense Media that digital discrimination of access can manifest differently when it affects a single person, as compared to a group

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Comments at 4 (rec. Feb. 21, 2023) (Connecticut Office of State Broadband & Office of Consumer General); Free Press Comments at 20-22; Greenlining Institute Comments at 3; Leadership Conference on Civil and Human Rights et al. Comments at 3-4; National Digital Inclusion Alliance and Common Sense Media Comments at 8; National Hispanic Media Coalition Comments at 5; New York State Public Service Commission Comments at 2; Public Knowledge et al. Comments at 58-59; ACLU Reply at 5, 6-7; California Emergency Tech Fund Reply at 5; Joint Advocates Reply at 3-5; Lawyers' Committee for Civil Right Under Law Reply at 21; Next Century Cities Reply at 6; Verizon Reply at 9.

[286] 47 U.S.C. § 1754(a)(3).

[287] American Library Association Comments at 4-5.

[288] California Public Utilities Commission Reply at 7-8.

[289] Japanese American Citizen League Comments at 1; *see also* Asian Americans Advancing Justice Comments at 3 (rec. Feb. 21, 2023).

[290] *See generally* American Association of People with Disabilities Comments at 2; California Public Utilities Commission Comments at 7-8; Free Press Comments at 21-22; ACLU Reply at 6-7.

[291] ACA Connects Comments at 17; Competitive Carriers Association Reply at 3; NTCA Reply at 13-14.

[292] NTCA Comments at 27.

of persons within a community, and either type of discrimination can violate the rules.[293]

93. In the *Notice*, we sought comment on whether there are practical or administrative costs and benefits to the Commission, industry and those who might suffer discrimination if both persons and organized groups of persons (such as community associations) are covered by our definition.[294] As supported by the comments, we find no significant additional costs in defining "consumers" to include persons and organized groups of persons, as well as groups of organizations.[295] As discussed in the informal complaints section below,[296] we recognize that community associations and other organizations might well submit the majority of informal complaints relating to digital discrimination of access, and we have no concerns on that score.

a. Listed Characteristics

94. Congress identified six characteristics as bases for digital discrimination of access – income level, race, ethnicity, color, religion, and national origin.[297] In the *Notice*, we sought comment on whether we should expand our definition to include additional characteristics, such as disability status, age, sex, sexual orientation, gender identity and expression, familial status, domestic violence survivor status, homelessness, and English language proficiency.[298] While some commenters argue we should expand the listed characteristics,[299] others disagree.[300]

95. Based on the language of the statute, we do not add to the listed characteristics of persons protected under the rules that serve as the bases for considering digital discrimination of access.[301]

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[293] National Digital Inclusion Alliance and Common Sense Media Comments at 8.

[294] *Notice* at 21, para. 38.

[295] Public Knowledge et al. Comments at 58 (asserting that "by looking at communities as well as individuals [a pattern can emerge] that will help the Commission identify where deployment decisions are having a discriminatory impact, regardless of whether the policies or practices are facially neutral.").

[296] *Infra* paras. 116-118.

[297] 47 U.S.C. § 1754(b)(1).

[298] *Notice* at 23, para. 42.

[299] American Association of People with Disabilities Comments at 1-2; American Library Association Comments at 5; Connecticut Office of State Broadband & Office of Consumer Counsel Comments at 3-4; Human Rights Campaign Comments at 1 (rec. Feb. 21, 2023); Joint Advocates Comments at 33; Leadership Conference on Civil and Human Rights et al. Comments at 4; ACLU Reply at 5; Georgia Tech Center for Advanced Communications Policy Reply at 13-14; Public Knowledge et al. Reply at 9-11.

[300] Free State Foundation Comments at 17-18; NCTA Comments at 12-13; Pelican Institute for Public Policy Comments at 2 (rec. Feb. 21, 2023); TechFreedom Comments at 34-35; USTelecom Comments at 50; CTIA Reply at 24.

[301] Even though the statute affords protection against digital discrimination of access based on national origin, some commenters urge us to incorporate "limited-English proficiency" (LEP) as an express listed characteristic under the rules. *See* Asian Americans Advancing Justice, Comments at 3; National Hispanic Media Coalition, Comments at 6; NDIA Comments at 9. It is well established, however, that discriminating against persons based on their limited-English proficiency can constitute a form of national origin discrimination. *See Lau v. Nichols*, 414 U.S. 563, 569 (1974) (Court stating that "it seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by [Title VI] regulations . . . ."); *Casteneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981) ("In enacting Sec. 1703(f) of [the Equal Educational Opportunity Act of 1974], Congress embraced *Lau*'s 'essential holding' that 'schools are not free to ignore the need of limited English speaking children for language assistance.'"); *see also United States v. Maricopa County*, 915 F. Supp. 2d 1073, 1079-82 (D. Ariz 2012). Federal agencies have interpreted Title VI's prohibition against national origin discrimination to require that LEP individuals have meaningful access to federally funded programs and

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Congress must be presumed to have deliberately limited the list of protected characteristics in section 60506(b) to income level, race, ethnicity, color, religion, and national origin.[302] While we acknowledge the strong record support for extending the rule to cover persons with other characteristics,[303] federal antidiscrimination laws often vary in terms of the protected classes they cover. For instance, Title VII of the Civil Rights Act protects against discrimination based on "race, color, religion, sex, or national origin,"[304] whereas the FHA goes further and includes additional protections for "disability and familial status."[305] Here, Congress chose the six listed, protected characteristics and not others.[306] We have no discretion to overrule the choice made by Congress in this regard, at least as it applies to our rules implementing section 60506(b).[307]

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activities. *See* U.S. Dep't of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455-41,457 (June 18, 2002). This same interpretation as to national origin discrimination has been given under the Fair Housing Act (U.S. Dept of Housing and Urban Dev., *Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency*, Sept. 15, 2016), and Title VII (29 C.F.R. Part 1606, *Guidelines on Discrimination Because of National Origin*).

[302] *University of Texas Medical Center v. Nassar*, 570 U.S. 338, 340 (2013) ("The conclusion that Congress acted deliberately in omitting retaliation claims from § 2000—2(m) is reinforced by the fact that another part of the 1991 Act, § 109, expressly refers to all unlawful employment actions").

[303] For example, many commenters discussed the challenges faced by people with disabilities in securing access to high quality broadband services. *See, e.g.*, American Association of People with Disabilities Comments at 4-5 (explaining that "[t]he mere presence of a broadband internet connection does not mean that every American has equal access to that connection, as certain vulnerable populations face additional barriers to access. For example, factors such as broadband capacity, speed, and latency affect the use of the assistive technologies that many people with disabilities depend on for access to communications infrastructure"); American Foundation for the Blind Comments at 1; American Library Association Comments at 5; Benefits Data Trust Comments at 7; City of Long Beach Comments at 1; Connecticut Office of State Broadband & Office of Consumer Counsel Comments at 3-4; Advocates for the EMS Disabled Comments at 2 (rec. Feb. 21, 2023); Joint Advocates Comments at 31-33; Public Knowledge, et al. Comments at 4; Texas Coalition of Cities et al. Comments at 2; Washington, D.C. Sept. 14 Listening Session regarding Disability Access to Broadband, https://www.fcc.gov/document/digital-discrimination-task-force-event-gallaudet-univ-sept-14 (discussing accessibility barriers to broadband access and negative impact on employment, education, and health care).

[304] 42 U.S.C. § 2000e-2(a).

[305] *Id.* § 3604.

[306] This does not mean that the legitimate concerns of persons with these additional characteristics is to be minimized. To the contrary, the record is replete with evidence that classes beyond the six listed groups face varying broadband-related challenges. *See, e.g.*, U.S. Census Bureau, Anniversary of Americans with Disabilities Act: July 26, 2023, https://www.census.gov/newsroom/facts-for-features/2023/disabilities-act.html (last visited Nov. 14, 2023); Leadership Conference on Civil and Human Rights et al. Comments at 4 (stating that out of approximately 42.5 million Americans with disabilities, only 41% have high-speed broadband access at home); Andrew Perrin and Sara Atske, *Americans With Disabilities Less Likely Than Those Without to Own Some Digital Devices*, Pew Research Center (Sept. 10, 2021), https://www.pewresearch.org/short-reads/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/ (last visited Nov. 14, 2023); American Association of People with Disabilities Comments at 2-3 (describing that U.S. adults with disabilities are less likely than those without disabilities to confirm they own a desktop or laptop computer (62% vs. 81%) or a smartphone (72% vs. 88%)); American Foundation for the Blind Comments at 4 (describing accessibility barriers experienced by the disability community include the lack of adequate broadband speed to support required assistive technologies, data caps, and inaccessible web content, among others); American Association of People with Disabilities Comments at 4; Leadership Conference on Civil And Human Rights et al. Comments at 5; Next Century Cities Comments at 11.

[307] 47 U.S.C. § 1754(b). Under section 60506(c)(3), the Commission and the Attorney General can seek to prohibit "deployment discrimination" based on factors other than those listed in that section, based on the record developed
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96. Our work towards ensuring broadband access does not begin or end with this statute. We will continue to address access to broadband under other sources of authority. For example, we have established accessibility protections under other statutory grants that govern the ACP, ECF, and EBB programs. The ACP supports the purchase of broadband access services and connected devices, such as tablets and laptops, and requires them to be accessible.[308] In the Emergency Connectivity Fund Report and Order, the Commission established an expectation that connected laptops be accessible to students, school staff, and library patrons with disabilities to address their remote learning needs.[309] As we move forward, we will continue to use all the tools at our disposal to ease the digital accessibility divide.

3. Covered Services

97. For purposes of these rules, we apply the same definition of "broadband internet access service" that appears in section 8.1(b) of the Commission's rules. That definition states:

> The term "broadband internet access service" means "a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part."[310]

98. In the *Notice*, we sought comment on the scope of services that should be covered by our rules.[311] We also specifically sought comment on whether the above-referenced definition of "broadband internet access service" fully captures the scope of technologies relevant to digital discrimination of access.[312] In determining the scope of our definition of digital discrimination of access, we find that the term "broadband internet access service" in that definition has the same meaning given the term in section 8.1(b), and encompasses the range of services that may give rise to digital discrimination of access.[313] No commenter opposed using this definition of "broadband internet access service."[314] We find that the straightforward and well-established definition best delineates the scope of covered services under the

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in this proceeding. Further, even if not covered by Section 60506(b), people with disabilities may avail themselves of other federal laws governing digital accessibility, such as the Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973, and the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).

[308] *Affordable Connectivity Program; Emergency Broadband Benefit Program*, WC Docket Nos. 21-450 and 20-445, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, 540, para. 115 (2022) (*ACP and EBB Report and Order and Further Notice*) (adopting requirement that connected devices be accessible and usable); *see also Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, 36 FCC Rcd 4612, 4653-54, para. 82 & n.280 (2021).

[309] *ECF Report and Order*, 26 FCC Rcd at 8709-10, para. 30. For these connected laptops, school districts have purchased accessibility features such as software providing screen magnification, screen reading functionalities, captioning services, and touchscreens for students with significant fine motor skills difficulties. *See* https://www.fcc.gov/fcc-grants-several-accessibility-waivers-emergency-connectivity-fund-program (noting that school districts may seek a waiver of the $400 reasonable purchase cap on laptops if reasonably necessary to serve the remote learning needs of people with disabilities).

[310] We use the terms "broadband," "covered services," and "broadband internet access service" interchangeably.

[311] *See Notice* at 13, para. 26.

[312] *Id*. at 14, para. 27.

[313] In the proposed definition of "digital discrimination of access," the Commission sought comment on whether "covered services" should be limited to broadband internet access service.

[314] *See Notice* at 14, para. 27.

rules we adopt today.

99. Moreover, the record reflects strong support for adopting section 8.1(b)'s definition.[315] As Local Governments notes, including all types of broadband providers is consistent with the *RIF Order*, which found that the term "broadband internet access service" includes "services provided over any technology platform, including but not limited to wire, terrestrial wireless (including fixed and mobile wireless services using licensed or unlicensed spectrum), and satellite."[316] Providers can use various forms of technology to provision broadband to consumers, including digital subscriber line (DSL), cable modem, fiber, fixed and mobile wireless, and satellite.[317] By incorporating the established meaning of "broadband internet access service" in the definition of "digital discrimination of access," we ensure that our rules accurately reflect the scope of services that may give rise to instances of digital discrimination of access and thus fulfill the Congressional direction in section 60506 to facilitate equal access to broadband internet access service and prevent digital discrimination of access.

a. Covered Elements of Service

100. The rules we adopt today apply to any lack of comparability in service quality, as indicated by the metrics specifically listed in the statutory definition of "equal access" as well as any "other quality of service metrics in a given area," and to any lack of comparability in terms and conditions of service, including but not limited to price. We find this scope of coverage to be consistent with section 60506's statutory text and necessary to effectuate its purpose.

101. In broadly applying our rules to all relevant service quality metrics and all terms and conditions of service, we note that Congress directed the Commission to facilitate equal access to the entirety of broadband internet service, not to certain elements of such service.[318] Congress defined "equal access" in section 60506's statement of policy to mean that consumers have "the equal opportunity to subscribe" to broadband internet access service with "comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions[.]"[319] As many commenters explain, the inclusion of "other quality of service metrics" and "comparable terms and conditions" in the definition of "equal access" reflects Congressional intent and authorization that the Commission's digital discrimination of access rules cover any aspect of broadband internet access service that impedes, impairs or denies "equal access" to that service.[320]

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[315] *See* NTCA Comments at 28-29 (stating that "reliance on the definition of 'broadband internet access service' as provided in 47 CFR § 8(1)(b) is a sound and reasonable approach); Public Knowledge et al. Comments at 40 (stating that "the term 'broadband internet access service' has the meaning given the term in section 8.1(b)").

[316] Local Government Comments at 18 (citing *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 333, para. 22 (2018)); *see also Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5603, para. 4 (2015) (*2015 Open Internet Order*)

[317] *See* National Digital Inclusion Alliance May 16, 2022 Comments at 13; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 2 (filed Dec. 5, 2022).

[318] 47 U.S.C. § 1754(b).

[319] *Id.* § 1754(a)(2).

[320] *Id.*; *see, e.g.*, Lawyers' Committee for Civil Rights Under Law Comments at 22-25 (arguing that "the Commission should understand 'equal access' to involve any element of broadband internet access service that would be material to a consumer"); National Multicultural Organizations Comments at 17 ("By including the phrase 'other quality of service metrics,' the Infrastructure Act expressly gives the Commission authority to consider how factors beyond broadband speed, capacity, and latency may impact the subscriber experience"); WISPA Comments at 15-16 (explaining that WISPA believes that "comparable terms and conditions" counsels that the Commission should consider technical and non-technical elements of broadband service); California Public Utilities Commission (continued….)

102. The aspects of service that could affect a consumers' ability to receive and effectively utilize broadband internet access service include, but are not limited to, deployment, technical terms and conditions of service,[321] such as policies and practices regarding speeds,[322] capacities,[323] latency,[324] data caps;[325] network infrastructure deployment,[326] network reliability,[327] network upgrades,[328] network maintenance,[329] customer-premises equipment,[330] and installation;[331] as well as non-technical terms and

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Reply at 8 (explaining that the inclusion of "other quality of service metrics" in section 60506(a)(2) "clearly grants the FCC authority to consider other characteristics that it deems appropriate"). *But see* American Action Forum Comments at 10-11 (explaining that "equal access" cabins what the Commission can regulate and that "regulating all aspects of broadband to 'facilitate equal access' goes far beyond what Congress intended"); ACA Connects Comments at 3-4, 18 ("[T]he broadband service characteristics that the Commission may consider in determining whether providers offer 'equal access' are also limited."); CTIA Comments at 11 (explaining that "'other quality of service metrics' must be understood to refer to technical capabilities of broadband akin to comparable speeds, capacities, and latency" and establishing greater authority over a greater list of terms is outside section 60506's scope); NCTA Comments at 11-12; T-Mobile Comments at 25-26 (explaining that section 60506 does not authorize the Commission to "upend decades of light regulator treatment"); U.S. Chamber of Commerce Comments at 2; USTelecom Comments at 19-20; AT&T Reply at 13 (arguing that the language of section 60506 "forecloses proposals to extend section 60506's scope beyond deployment practices"); T-Mobile Reply at 16-17 (agreeing with CTIA that "other quality of service metrics" limits what the Commission can include in our rules); Verizon Comments at 19-23; Verizon Reply at 10.

[321] *See, e.g.*, Lawyers' Committee for Civil Rights Under Law Comments at 22 (asking that we understand "'equal access' to involve any element of broadband internet access service that would be material to a consumer" in addition to technical metrics); Leadership Conference on Civil and Human Rights et al. Comments at 5 (arguing that to fulfill the statute we must include technical and non-technical aspects of service); Public Knowledge et al. Comments at 63 (suggesting that the Commission should compare service offerings over a wide range of technical and non-technical factors); Letter from Marc H. Morial, President & CEO, National Urban League, to Marlene H. Dortch, Secretary, FCC GN Docket No. 22-69, at 2 (filed Oct. 5, 2023) (National Urban League Oct. 5, 2023 *Ex Parte*).

[322] 47 U.S.C. § 1754(a)(2); National Digital Inclusion Alliance and Common Sense Media Comments at 8.

[323] 47 U.S.C. § 1754(a)(2); National Digital Inclusion Alliance and Common Sense Media Comments at 8.

[324] 47 U.S.C. § 1754(a)(2); Joint Advocates Comments at 28 (explaining that "[a] legacy network or distant wireless connection results in substantially higher latency" than a complete fiber or a short range-wireless network connected to fiber); National Digital Inclusion Alliance and Common Sense Media Comments at 8.

[325] Joint Advocates Comments at 26-29; Lawyers' Committee for Civil Rights Under Law Comments at 23-24 ("With millions of Americans relying on smartphones as their primary source of high-speed internet at home, limited availability of low-cost data plans or prohibitive fees for overages will create steep obstacles to access.").

[326] American Library Association Comments at 3; City of Long Beach Comments at 1 (asking that we address existing and historic service gaps from policy decisions like digital redlining); Joint Advocates Comments at 26; National Urban League et al. Comments at 5; *see also* Lawyers' Committee for Civil Rights Under Law Comments at 13; National Multicultural Organizations Comments at 7 (asserting that "[p]roviders are no doubt well aware of existing and historical disparities in broadband access, yet many have not addressed such disparities" but cautioning that we do not adopt such a broad definition it discourages providers from correcting past harms"); California Emergency Tech Fund Reply at 3.

[327] Joint Advocates Comments at 29 ("Consumer reports on the reliability of their service with respect to both latency as well as service disruption and speed of service restoration would also be potentially useful."); National Digital Inclusion Alliance and Common Sense Media Comments at 7 ("[T]he actual speed and reliability of services offered in one area should be similar to those offered in another."); Public Knowledge et al. Comments at 63.

[328] American Library Association Comments at 3; *see also* National Urban League Oct. 5, 2023 *Ex Parte* at 2 (stating that the rule should cover upgrades with "next generation technologies to provide enhanced network, performance, capacity and speeds.").

conditions of service,[332] such as policies and practices regarding contractual terms generally,[333] mandatory arbitration clauses,[334] pricing,[335] deposits,[336] discounts,[337] customer service,[338] language options,[339] credit checks,[340] marketing or advertising,[341] contract renewal,[342] upgrades,[343] account termination,[344] transfers to another covered entity,[345] and service suspension.[346] Moreover, in order to fully effectuate the goals of

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[329] American Library Association Comments at 3-4; New York State Public Service Commission Comments at 2-3; National Digital Inclusion Alliance and Common Sense Media Comments at 7; Leadership Conference on Civil and Human Rights et al. Reply at 6; TURN Reply at 2.

[330] Lawyers' Committee for Civil Rights Under Law Comments at 23.

[331] *Id*. at 24.

[332] *See, e.g.*, Lawyers' Committee for Civil Rights Under Law Comments at 22; Leadership Conference on Civil and Human Rights et al. Comments at 5; Public Knowledge et al. Comments at 63 (urging regulation of "[n]on-technical factors and terms of service" such as "actual and advertised service prices, customer service and technician responsiveness, the availability and advertising of promotions, additional fees, and . . . credit checks").

[333] Joint Advocates Comments at 26-29 (asking that we consider "contractual guarantees"); Lawyers' Committee for Civil Rights Under Law Comments at 23-24 (asking that we consider all contractual provisions including "price, duration, and composition of available service contracts, as well as additional contractual provisions, including—but not limited to—customer support options, data caps, promotional offerings, equipment availability and rental terms, deposits, type and number of devices allowed, forced arbitration clauses, and privacy policies.").

[334] Lawyers' Committee for Civil Rights Under Law Comments at 24.

[335] American Association of People with Disabilities Comments at 3; Lawyers' Committee for Civil Rights Under Law Comments at 23-24; Joint Advocates Comments at 26-29 (explaining how a study on pricing from the California Community Foundation "found that lower income communities in Los Angeles County must pay more money under worse terms to have the same service as their wealthier neighbors"); National Digital Inclusion Alliance and Common Sense Media Comments at 8 (arguing that equipment fees are also within section 60506's scope); Next Century Cities Comments at 6-7 (arguing that including price and affordability is necessary to combat digital discrimination of access based on income level); Joint Advocates Reply at 5 (arguing that including promotional rates, pricing, and advertising is necessary to combat digital discrimination based on income); Texas Coalition of Cities et al. Reply at i, 2 (calling on the Commission to "[c]larify that Congress established affordability as a metric in the Infrastructure Act's findings for equal access to broadband service" because "[b]roadband service that is not affordable is not available").

[336] Lawyers' Committee for Civil Rights Under Law Comments at 24.

[337] Mississippi Center for Justice Reply at 3.

[338] American Library Association Comments at 4; Lawyers' Committee for Civil Rights Under Law Comments at 22 (asking that we consider aspects of customer service, "which can be measured by the number of support channels, support wait times and call durations, available languages, and representative expertise" and ease in scheduling repairs); Next Century Cities Comments at 6-7.

[339] Lawyers' Committee for Civil Rights Under Law Comments at 23; TURN Reply at 7.

[340] Lawyers' Committee for Civil Rights Under Law Comments at 24; TURN Reply at 7.

[341] American Library Association Comments at 3; Lawyers' Committee for Civil Rights Under Law Comments at 25; National Digital Inclusion Alliance and Common Sense Media Comments at 8 (suggesting we cover marketing promotional offers); Joint Advocates Reply at 5 (asking that we cover promotional rates and advertising); TURN Reply at 7 (providing the example of "offering lower promotional rates in affluent areas compared to nearby less affluent areas for similar service offerings").

[342] Lawyers' Committee for Civil Rights Under Law Comments at 24; Mississippi Center for Justice Reply at 3.

[343] Lawyers' Committee for Civil Rights Under Law Comments at 24.

[344] *Id.*

section 60506, we find that our rules must cover both actions and omissions, whether recurring or a single instance, concerning these aspects of service, that defeat comparability of service quality, terms, and conditions.[347]

103. We find that adopting a broad definition of covered elements of service is both consistent with the language of section 60506 and necessary to fulfill its purpose. First, by including the catch-all language "and other quality of service metrics in a given area," Congress expressly authorized the Commission to supplement the listed elements of service to include all measurable quality-of-service elements that could affect consumers' ability to receive and effectively utilize broadband internet access service.[348] As the record reflects that policies and practices relating to an array of technical and non-technical aspects of service can affect a consumer's ability to access broadband, a definition with a narrower scope could lead to the Commission's rules failing to cover some aspects of service that result in digital discrimination of access.[349] Consequently, we agree with Lawyers' Committee for Civil Rights Under Law that adopting a flexible approach is necessary "to capture the long tail of intangible variables that are difficult to list exhaustively and are subject to change."[350] Second, our definition provides us with the advantage of flexibility, which will "future proof" our rules as technologies, policies, and practices change over time.[351] For these reasons, we reject the argument that by including certain quality of service metrics in 60506(a)(2), Congress foreclosed consideration of other measurable elements of service quality in evaluating whether equal access has been achieved.[352]

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[345] *Id.*

[346] *Id.*

[347] *See* Benefits Data Trust Comments at 2, 5 (asking that our rules cover provider actions and omissions); National Multicultural Organizations Comments at 7 ("Overt acts of discrimination should be strictly prohibited, even, as suggested in the NPRM, in circumstances in which an intentionally discriminatory policy or practice may not produce observably discriminatory effects."); Next Century Cities Reply at 4.

[348] 47 U.S.C. § 1754(b).

[349] *Supra* para. 102.

[350] Lawyers' Committee for Civil Rights Under Law Comments at 23 (arguing that Congress included "other quality of service metrics" as a catchall term for this purpose).

[351] *Id.*; *see* National Digital Inclusion Alliance and Common Sense Media Comments at 9 ("We encourage the Commission to review and reassess both the technical and nontechnical standards on a biennial basis, at a minimum"); New York State Public Service Commission Comments at 3 (urging the Commission to "ensure that any final rules are flexible so that they are not rendered obsolete over time"); ACLU Reply at 5-6 (providing that we should regularly reassess which metrics are most important "so that outdated metrics do not hamstring protected classes' internet experience"); *see also* National Urban League Oct. 5, 2023 *Ex Parte* at 2.

[352] *See*, *e.g.*, CTIA Comments at 11 ("It is a well-established canon of interpretation (*ejusdem generis*) that general terms in a list take their meaning from specific preceding terms, so 'other quality of service metrics' must be understood to refer to technical capabilities of broadband akin to comparable speeds, capacities, and latency."); Verizon Comments at 20-21 (arguing that "the phrase 'other quality of service metrics' appears last in a list that begins with the words 'speeds, capacities, [and] latency.' Therefore, the 'quality of service metrics' that can fall within the final phrase in the list must be metrics similar to 'speeds, capacities, [and] latency,' all of which are technical aspects of service. The *ejusdem generis* canon — a related canon of statutory construction — similarly counsels that, 'where general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.' Applying that canon here similarly requires interpreting the general phrase 'other quality of service metrics' to encompass only metrics 'similar in nature' to 'speeds, capacities, [and] latency' — again, technical aspects of service.").

104. We reject arguments that we should limit the scope of covered elements of service to deployment practices[353] or technical terms of service,[354] or that we exclude certain terms, such as pricing.[355] We are persuaded that Congress intended for the Commission's rules implementing section 60506(b) to cover more than deployment practices.[356] As noted above, Congress directed the Commission in section 60506(b) to adopt rules to facilitate equal access to broadband internet access service, including "preventing digital discrimination of access" and identifying necessary steps for the elimination of such discrimination. By contrast, in section 60506(c), Congress directed the Commission and the Attorney General to ensure that federal policies prohibit "deployment discrimination" based on the income level of an area, the predominant race or ethnicity of an area, or other factors the Commission determines to be relevant based on the record in this proceeding. Had Congress wished to limit the scope of section 60506(b) to "deployment discrimination," it would have done so explicitly.[357] The use of two different terms ("digital discrimination of access" and "deployment discrimination") in adjacent subsections of a one-page section of the statute clearly indicates that Congress intended the two terms to have different meanings.[358] Further, Congress was well aware that factors other than initial deployment

[353] *See, e.g.*, NCTA Comments at 2, 8-10 (arguing that the plain meaning of section 60506 limits the Commission to deployment issues); USTelecom Comments at 19-20 (explaining that including "of access" demonstrates Congressional intent to limit our rules to how broadband is accessed, which is deployment); AT&T Reply at 13 (arguing that the language of section 60506 limits the Commission to addressing deployment issues because "by its terms, it addresses only 'discrimination of access'—that is, any discrimination in making broadband available to consumers"); International Center of Law & Economics Reply (arguing that subsection (a) does not provide any additional authority and merely indicates Congress's goals, while subsection (c) empowers the Commission to promote broadband buildout by prohibiting deployment discrimination).

[354] *See, e.g.*, ACA Connects Comments at 18 (arguing that the definition of "equal access" "requires a comparison of the technical characteristics and terms and conditions"); NCTA Comments at 11-12 (positing that we are limited to considering deployment discrimination and certain technical terms because "[t]he statute provides the Commission with a specific and focused list of the items it should consider: speed, capacities, and latency").

[355] *See, e.g.*, ACA Connects Comments at 3, 18 (arguing that the definition of "equal access" "precludes the Commission from requiring or prohibiting specific terms of service or service characteristics" and that section 60506's language does not grant the authority to "regulate broadband network deployment decisions, service offerings, or prices"); Lincoln Network Comments at 6-7, 9-10 (positing that regulating rates under the digital discrimination framework is outside of the scope of section 60506 and would stifle infrastructure investment, raise providers' rates, and widen the digital divide); NTCA Comments at 27-28 (explaining that state and local rules provide oversight over deposits and arguing that "[d]ecisions relating to deployment, privacy, and other issues that are grounded in concerns for economic and technical feasibility are beyond any remedial measures that may be implicated by Section 60506"); Verizon Comments at 19-22 (positing that our rules should not cover pricing because Congress did not clearly state we should consistent with how it does throughout Title 47 of the U.S. Code); Competitive Carriers Association Reply at 3 (agreeing with ACA Connects); T-Mobile Reply at 4 & n.7 (disagreeing that the Commission has the authority to and should not cover provider use of algorithms in our digital discrimination of access rules); Verizon Reply at 9-10, 12 (stating that our rules are limited to infrastructure deployment and giving consumers the opportunity to subscribe, and that our rules should not apply to price or affordability because they do not fall within the definition of "equal access").

[356] 47 U.S.C. § 1754(b), (c); Lawyers' Committee Under Law Comments at 20 (arguing that "digital discrimination of access" in subsection (b) is broader than 'deployment discrimination' in subsection (c) and explaining that we should give them independent meaning because "[t]here is no indication that the distinction Congress made. . . [is] a scrivener's error"); Verizon Reply at 9 & n. 30 ("Thus, 'digital discrimination of access' in Section 60506(b) is broader than 'deployment discrimination' in Section 60506(c)[.]").

[357] 47 U.S.C. § 1754(b), (c); Lawyers' Committee Under Law Comments at 20; Verizon Reply at 9 & n.30.

[358] *See, e.g.*, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (citing to *Russello v. United States*, 464 U.S. 16, 23 (1983) and quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972) to explain that "'where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'").

of the necessary network infrastructure, such as network upgrades and maintenance at an absolute minimum, affect the ability of consumers to effectively utilize broadband internet access service.[359] Given that the definition of "equal access" expressly includes "quality of service metrics" that are determined by such network upgrades and maintenance, we cannot accept that Congress intended to limit section 60506(b)'s reach to broadband deployment. Such an interpretation would defeat the purpose of the statute.

105. Finally, regarding the inclusion of pricing within the scope of our rules, we find that the statutory language encompasses discriminatory pricing. We emphasize that the rules we adopt today do not set rates for broadband internet access service and are not an attempt to institute rate regulation. Once again, section 60506(b) directs us to "adopt final rules to facilitate equal access to broadband internet access service," and "equal access" is defined in section 60506(a)(2) as the equal opportunity to subscribe to an offered service that provides comparable quality of service "*for comparable terms and conditions*." (emphasis added).[360] We are unpersuaded by the arguments of commenters that pricing is not included (or includable) in the terms and conditions that must be "comparable" under the statutory definition of equal access. Indeed, pricing is often the most important term that consumers consider when purchasing goods and services across the Nation's economy. We find this is no less true with respect to broadband internet access service.[361] Consequently, we do not believe it was necessary for Congress to specifically reference pricing in the definition of "equal access" because the most natural reading of "terms and conditions" includes pricing.[362] The Commission need not *prescribe* prices for broadband internet access service, as some commenters have cautioned against,[363] in order to determine whether prices are "comparable" within the meaning of the equal access definition. The record reflects support for the Commission ensuring pricing consistency as between different groups of consumers.[364] We also find that

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[359] *See Broadband Labels Order and Further Notice* (implementing section 60504 of the Infrastructure Act and requiring providers to create consumer labels that include various price and performance information related to their broadband service); *ACP and EBB Report and Order and Further Notice* (implementing section 60502 of the Infrastructure Act; establishing the Affordable Connectivity Program to offer eligible low-income households discounts off the cost of broadband service and connected devices).

[360] NTIA *Ex Parte* at 8-9 & n.23 (arguing that "terms and conditions" includes pricing because "the Supreme Court upheld an FCC decision that interpreted a statutory reference to 'terms and conditions' to encompass 'rates' as well" in *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 377 (1999), which upheld the Commission implementing 47 U.S.C. § 252(i) "by adopting a rule providing that '[a]n incumbent [local exchange carrier] shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same *rates*, terms, and conditions as those provided in the agreement[,]'" quoting 47 CFR § 51.809(a). (emphasis added)).

[361] *See Broadband Labels Order and Further Notice* at 9-13, paras. 22-36 (requiring broadband providers to include various pieces of price-related information on easy-to-understand labels for consumers); 47 U.S.C. § 1753 (specifying that the broadband consumer labels include information on "introductory rate[s]").

[362] Moreover, it would be odd for Congress to direct the Commission to consider technical and economic feasibility and have our rules not allow any consideration of differential pricing when analyzing a digital discrimination of access claim.

[363] *See, e.g.*, Lincoln Network Comments at 9-10 (arguing that the definition of "equal access" only includes "terms and conditions" and not "rates" similar to sections 201 and 202 of the Communications Act and other legislation, so section 60506 does not authorize the Commission to regulate what providers charge); U.S. Chamber of Commerce Comments at 5; USTelecom Comments at 17-18.

[364] Public Knowledge et al. Comments at 65-66 (asserting that price discrimination should be a violation of comparability); Texas Coalition of Cities et al. Reply at 5 (explaining that they "are not opposed to considering a provider's intent for why not to serve, but the disparate impact on the community, including price discrimination, must be the loadstar"); *see* Free Press Comments at 17-18 (noting that there is value in comparing advertised prices,

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the Commission is well situated to analyze comparability in pricing, as we must already do so in other contexts. For example, we analyze the "lowest corresponding price" in the universal service context[365] and conduct the Urban Rate Survey, both of which require comparing the prices that covered entities charge different groups of customers for broadband.[366] We find that the "terms and conditions" covered by the "equal access" definition in section 60506(a) includes pricing terms and conditions, and that "digital discrimination of access" therefore includes discrimination with regard to such pricing.

106. We also reject Verizon's argument that our rules cannot apply to policies and practices that occur after a customer subscribes to broadband internet access service. Verizon argues that the definition of "equal access" limits the scope of our rules to policies and practices affecting only the "opportunity to subscribe" to broadband service *in the first instance*.[367] In other words, Verizon argues that our rules can only address policies and practices concerning the consumer's ability to sign up for service (i.e., contract formation), but cannot address whether the service is actually rendered on equal terms (i.e., contract performance). We disagree with this interpretation. We acknowledge that the definition of "equal access" in section 60506(a) refers to the "equal opportunity to *subscribe* to an offered service . . . ." But we find the word "subscribe" in this context means more than simply signing up for service. It refers, instead, to the ability to receive and effectively utilize the service so as to allow full participation in the social, educational, political and economic life of our Nation.[368] The Statement of Policy in section 60506(a) says that "subscribers should *benefit* from equal access to broadband internet access service" and that "the Commission should take steps to ensure that all people of the United States *benefit* from" such equal access.[369] There is little or no benefit to be derived simply from having the opportunity to sign up for broadband service if the covered entity can freely engage in discriminatory policies and practices with regard to the ongoing provision of that service. Rather, the potential social, educational, political and economic benefits flow from having the opportunity to receive the service and effectively utilize it. We find that interpreting section 60506 in the cramped manner urged by Verizon is flatly inconsistent with Congress's goal of expanding access to broadband internet access service. We therefore reject that interpretation.

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actual prices offered, and prices charged); Next Century Cities Comments at 7 (arguing that we should include price discrimination because it will ensure that we address digital discrimination of access based on income level).

[365] 47 CFR § 54.511(b) ("Providers of eligible services shall not submit bids for or charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory."); 47 CFR § 54.500 (defining the lower corresponding rate as "the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services"); *In the Matter of BellSouth Telecommunications, LLC, d/b/a/ AT&T Southeast*, Order, 35 FCC Rcd 8940, 8941, para. 3 (2020).

[366] FCC, *Urban Rate Survey Data & Resources* (Aug. 4, 2023), https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources ("Each year, the FCC conducts a survey of the fixed voice and broadband service rates offered to consumers in urban areas. The FCC uses the survey data to determine the reasonable comparability benchmarks for fixed voice and broadband rates for universal service purposes."); s*ee also* USTelecom Comments at 21 & n.69 (providing the examples of the Commission comparing rural to urban rates for voice services and Commission rules allowing reliance on comparable service for an emergency discontinuance application, citing respectively to 47 U.S.C. § 254(b)(3) and 47 CFR § 63.63(a)(7), (b)).

[367] Verizon Comments at 10-11; Verizon Reply at 9-14 (explaining that this provides that we cannot regulate conduct after subscription, nor policies and practices regarding adoption).

[368] *See* Merriam-Webster, *Subscribe* , https://www.merriam-webster.com/dictionary/subscribe (last visited Nov. 14, 2023) ("[T]o receive or have access to something (such as a periodical or service) as part of an arrangement to receive a certain number of regular deliveries or a certain period of continuous access especially by prepayment.").

[369] 47 U.S.C. § 1754(a)(1), (3).

D. Revising Commission's Informal Consumer Complaint Process

107. We adopt the proposals in the *Notice* to revise our informal consumer complaint process to: (1) add a dedicated pathway for digital discrimination of access complaints; (2) collect voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establish a clear pathway for organizations to submit digital discrimination of access complaints.[370] Subsection 60506(e) requires that the Commission "revise its public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination."[371] Currently, consumers use the Commission's Consumer Complaint Center to file informal complaints.[372] The Commission's informal consumer complaint process, administered by the Consumer and Governmental Affairs Bureau, is a long-standing, free and efficient way for consumers to raise issues with their service providers and bring problems to the attention of the Commission.[373] The collective data received from informal consumer complaints help the Commission monitor what consumers are experiencing and inform our policy and enforcement work. In adopting our proposed changes to our informal consumer complaint process, we implement subsection 60506(e).

108. We agree with the majority of commenters who assert that consumers should have an easily accessible complaint process.[374] Such a process will not only benefit consumers in filing complaints related to digital discrimination of access but will also assist the Commission in monitoring what consumers are experiencing, identifying trends, and informing potential policy determinations or enforcement.[375] Consistent with our current process and procedures, consumers may also file complaints via the Consumer Inquiries and Complaint Center, as well as by fax and postal mail.[376]

109. We thus disagree with commenters who argue that our proposed informal complaint process changes would impose undue burdens on covered entities.[377] Our proposed changes do not alter the existing informal complaint process. Rather, our proposed changes make it easier for consumers to file informal complaints related to digital discrimination of access, as mandated by Congress, and allow the Commission to better analyze such complaint data. Indeed, Commission experience with the dedicated pathway for ACP complaints has demonstrated the utility of such a dedicated pathway.

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[370] *See Notice* at 31, para. 52.

[371] 47 U.S.C. § 1754(e).

[372] *See* FCC, *Consumer Inquiries and Complaint Center*, https://consumercomplaints.fcc.gov/hc/en-us (last visited Nov. 14, 2023).

[373] The FCC's informal consumer complaint process facilitates a conversation between the consumer and their provider to address the consumer's issues. The consumer complaint process does not involve arbitration, mediation, or investigation.

[374] *See, e.g.*, American Library Association Comments at 7; Asian Americans Advancing Justice Comments at 5; Benefits Data Trust Comments at 2; Lincoln Network Comments at 17; Public Knowledge et al. Comments at 91-93; Starry Comments at 3 (rec. Feb. 21, 2023); TURN Comments at 2-3 (rec. Feb. 20, 2023); ACLU Reply at 13-14; Verizon Reply at 23.

[375] We note that the Commission's Consumer Complaint Center is responsive on mobile devices and that the FCC's call center is staffed by both English and Spanish speaking agents who can file complaints on behalf of consumers. Individuals who use videophones and are fluent in American Sign Language (ASL) may call the Commission's ASL Consumer Support line for assistance in ASL with filing informal complaints or obtaining consumer information. FCC, *FCC ASL Consumer Support Line*, https://www.fcc.gov/fcc-asl-consumer-support-line (last updated Jan. 12, 2022).

[376] *See, e.g.*, Next Century Cities Reply at 8 (arguing that the Commission should provide a process for those who cannot submit electronically, *e.g.*, creation of regional call centers).

[377] *See, e.g.*, TechFreedom Comments at 31-34; International Center for Law & Economics Reply at 20; WISPA Reply at 21.

110. We also disagree with the International Center for Law & Economics, which argues that the Commission should implement a legal "standing" requirement for filing informal complaints.[378] The Commission's informal consumer complaint process is designed specifically to provide consumers with a simple and efficient way raise concerns and file complaints with the Commission without complicated legal procedures, filing fees, or other burdensome requirements. The Commission does not currently impose any standing requirements for filing informal consumer complaints. Adopting a standing requirement specifically for digital discrimination of access issues with the Commission would, in effect, thwart a consumer's ability to do so. Such an outcome would be contrary to the express language of section 60506.

1. Dedicated Pathway for Digital Discrimination of Access Complaints

111. We adopt our proposal to add a dedicated pathway for digital discrimination of access complaints. This dedicated pathway will provide digital discrimination informational content in the Consumer Complaint Center to educate consumers about digital discrimination and to provide clear instructions to consumers on how to correctly file a digital discrimination complaint. Consumers will be able to submit their digital discrimination of access complaints through the Consumer Inquiries and Complaint Center. They will be required to choose an issue that best describes their complaint and include a narrative with pertinent details. These complaints will be reviewed and processed. If the consumer submits a complaint alleging digital discrimination of access by a covered entity, the complaint will be forwarded to the appropriate covered entity for investigation and the Commission may set a due date for the covered entity to provide a written response to the informal complaint to the Commission, with a copy to the complainant. Complaint information will be reviewed internally to inform policy and shared internally, when appropriate, for potential enforcement. In addition, we note that the Commission's established administrative processes and procedures afford the Enforcement Bureau access to all consumer complaint data that is submitted through the Consumer Inquiries and Complaint Center. The record in this proceeding reflects widespread support for establishing such a pathway.[379] We agree with commenters that adding a dedicated pathway will increase both the accessibility and efficiency of the complaint process.[380] We direct the Consumer and Governmental Affairs Bureau to implement this dedicated pathway and, in coordination with the Wireline Competition Bureau, to monitor complaints submitted through this pathway to assist in the formulation of future policy and consumer education initiatives.

112. We also agree with those commenters who stress the need to educate consumers on the issue of digital discrimination of access and the complaint process associated with such complaints.[381] We direct the Consumer and Governmental Affairs Bureau, in coordination with the Wireline Competition Bureau, to develop materials to educate consumers on digital discrimination of access and on how to file complaints via the dedicated pathway.

113. *Need for Dedicated Pathway*. We find that our informal consumer complaints process provides the best opportunity for consumers to inform the Commission of digital discrimination of access

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[378] *See* International Center for Law & Economics Reply at 20. Legal "standing" refers to how a party establishes the "right to make a legal claim or seek judicial enforcement of a duty or right." *Standing*, Black's Law Dictionary (11th ed. 2019). To have standing in federal court, a party must show that "(1) that the challenged conduct has caused the plaintiff actual injury, and (2) that the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee in question." *Id.*

[379] *See, e.g.*, Leadership Conference on Civil and Human Rights et al. Comments at 9; Lincoln Network Comments at 17; National Hispanic Media Coalition Comments at 8-9; National Urban League et al. Comments at 8; TURN Comments at 3; Verizon Comments at 30-31; USTelecom Comments at 41.

[380] *See, e.g.*, National Urban League Oct. 5, 2023 *Ex Parte* at 3-4; National Hispanic Media Coalition Comments at 9.

[381] *See* Starry Comments at 4.

issues. The informal complaint process requires no complicated legal procedures, has no filing charge, and does not require the complaining party to appear before the Commission, making it an easy and efficient method for consumers to bring issues to the Commission's attention. The Commission reviews informal consumer complaints and, when applicable, will identify trends and share information internally in furtherance of our enforcement and consumer protection efforts. As the Commission takes seriously its enforcement obligations, we direct the Enforcement Bureau, in coordination with the Consumer Governmental Affairs Bureau and the Wireline Competition Bureau, to expeditiously investigate potential violations and enforce our rules using the Commission's traditional enforcement mechanisms.

2. Voluntary Demographic Information Collection

114. We adopt our proposal to collect voluntary demographic information from filers who submit digital discrimination of access complaints.[382] We find that collecting minimal, voluntary demographic information from individuals filing complaints may enable us to identify and understand some underlying patterns of digital discrimination of access that might not otherwise be apparent from the substance of the complaints, thus increasing the utility of the informal complaint process as it relates both to policy development and enforcement.[383] We agree that this collection should be voluntary on the part of the complainant and direct the Consumer and Governmental Affairs Bureau to make clear that this information is not required in order to submit a digital discrimination of access complaint, that the provision of such information will not affect the submission or processing of the complaint, why this information is being collected, how it will be used, and how it will be maintained by the Commission.[384]

115. We disagree with WISPA that providing demographic information should be mandatory.[385] We are concerned that requiring this information may deter consumers from filing complaints. Because the purpose of our changes is to encourage consumers to file informal complaints when they believe our rules may have been violated, we find that the potential deterrence effect from requiring such information outweighs any potential benefit from making the provision of such information mandatory.

3. Pathway for Organizations to Submit Digital Discrimination of Access Complaints

116. We adopt our proposal to establish a clear pathway for organizations to submit digital discrimination of access complaints. We agree with commenters that allowing community partners and third-party organizations to file informal complaints on behalf of consumers (individuals or groups of individuals) will enable the Commission to better identify substantive complaints and collaborate with state, local and Tribal governments when addressing such complaints.[386] We also agree with commenters such as the National League of Cities that allowing third parties to file on behalf of consumers will improve access to our informal complaint process for those with language barriers, limited digital skills,

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[382] We note that the statute requires the Commission to "prevent[] digital discrimination of access based on income level, race, ethnicity, color, religion, or National origin[.]" *See* 47 U.S.C. § 1754(b)(1).

[383] *See* Benefits Data Trust Comments at 8; Free Press Comments at 41; Lincoln Network Comments at 17; National Urban League et al. Comments at 8; Public Knowledge et al. Comments at 91.

[384] *See* National Digital Inclusion Alliance and Common Sense Media Comments at 15; Public Knowledge et al. Comments at 91-92; TURN Comments at 11-12. We note that the Commission's use and disclosure of such information will be subject to the applicable System of Records Notice (SORN) governing our informal complaints system, which the Commission will modify, if necessary, based on this Report and Order. *See* FCC, FCC/CGB-1, Informal Complaints, Inquiries, and Requests for Dispute Assistance, (CGB-1, Informal Complaints, Inquiries, and Responses for Dispute Assistance), 88 Fed. Reg. 60459 (Sept. 1, 2023).

[385] *See* WISPA Reply at 34-35.

[386] *See, e.g.*, Asian Americans Advancing Justice Comments at 5; ACLU Reply at 14-15; California Emerging Technology Fund Comments at 4; Joint Advocates Comments at 30; National League of Cities Comments at 3-4; Next Century Cities Comments at 14; Public Knowledge et al. Comments at 92; TURN Comments at 12-13.

and/or limited access to devices or connectivity.[387] Improving access to our informal complaint process serves both as an important safeguard for marginalized communities and as a means of ensuring that our complaint data is complete and accurate.

117. We disagree with commenters who suggest that third party filers should be subject to more burdensome procedural or evidentiary standards.[388] We find that the benefits of promoting and enhancing access to our informal complaint process far outweigh the limited risks outlined by the commenters. We agree with Public Knowledge that one of our primary goals is to "further enable marginalized communities to be represented through the complaint process" and that "to throw up additional barriers would undermine this goal."[389]

118. *Making Available Anonymized Complaint Data*. We adopt our proposal to make anonymized or otherwise de-identified complaint data available to the public. We direct the Consumer and Governmental Affairs Bureau, in coordination with the Wireline Competition Bureau, the Office of Economics and Analytics, and the Office of General Counsel, to periodically make publicly available anonymized or otherwise de-identified digital discrimination of access complaint data. The record in this proceeding reflects widespread support for this proposal.[390] We agree with commenters that such data would be useful to third parties in conducting research, advocacy, and reporting, and we find that these data can be released without compromising the privacy of individual complainants.[391] We find that public release of anonymized or otherwise de-identified data would also promote transparency and empower third parties to assist the Commission in identifying trends in digital discrimination of access.

E. Enforcement

119. We find that effective implementation of section 60506 requires use of the Commission's traditional enforcement mechanisms to fulfill Congress's mandate that the Commission prevent and identify necessary steps to eliminate digital discrimination of access. This includes the full gamut of the Commission's enforcement toolkit, which ranges from letters of inquiry to remedial orders to forfeiture proceedings. Alleged or otherwise apparent instances of digital discrimination of access will be investigated on a self-initiated basis. This approach, which affords the Commission necessary flexibility for tackling Congress's directives, will involve data gathering via complaints and allegations made through the Commission's informal complaint process by state, local, and Tribal officials, and via other sources.

120. As explained above, a policy or practice will violate our prohibition on digital discrimination of access if it discriminates, either by intent or in effect, based on one of section 60506's listed characteristics.[392] In examining policies and practices, the Commission will look to whether the policy or practice in question differentially affects access to broadband internet access service or is intended to do so. If yes, then the Commission will look to whether less discriminatory options were available. Thus, the rules we adopt today involve a twofold assessment: first, whether a policy or practice is discriminatory; and if so, whether there were reasonably available and achievable alternatives (i.e., alternatives that were technically and economically feasible) that would have been less

[387] *See* National League of Cities Comments at 3-4.

[388] *See, e.g.*, NTCA Reply at 15; TechFreedom Comments at 39-40.

[389] Public Knowledge et al. Comments at 92.

[390] *See, e.g.*, American Library Association Comments at 7; Free Press Comments at 41; National Multicultural Organizations Comments at 19; National Hispanic Media Coalition Comments at 11-12; National Digital Inclusion Alliance and Common Sense Media Comments at 13-14; Public Knowledge et al. Reply at 12-13; TURN Comments at 15.

[391] *See, e.g.*, National Multicultural Organizations Comments at 19.

[392] *Supra* paras. 33-34.

discriminatory.

1. Legal Authority

121. In the *Notice*, we sought comment on how the Commission should enforce any such rules we might adopt, including by use of our existing "enforcement toolkit of letters of inquiry, notice of apparent liability, and forfeiture orders."[393] We further sought comment on any limitations thereon, highlighting a dispute among commenters about the legal authority underlying the use of these enforcement mechanisms.[394] We conclude that these same tools may be used to enforce the rules we adopt today pursuant to section 60506. Implementing the statute's directives necessitates use of these tools and processes, which will facilitate Congress's and the Commission's goal of facilitating equal access by preventing digital discrimination of access and identifying means to eliminate such discrimination.

122. We find that subsection (b)(1) and (e) under section 60506 provide the Commission express authority to enforce its mandates using the Commission's normal suite of enforcement mechanisms. Section 60506 directs the Commission to adopt final rules to "prevent[] digital discrimination of access," and to "identify[] necessary steps" for eliminating such discrimination. Use of the words "prevent" and "eliminate" is unusual in the context of a federal anti-discrimination statute. Congress usually adopts a statutory prohibition on the types of discrimination it seeks to address, then tasks the relevant administrative agency with implementing the prohibition through agency rules.[395] As discussed in prior sections of this Order, the words "prevent" and "eliminate" constitute strong medicine and represent a broad mandate for the Commission to take the necessary measures to fully eradicate digital discrimination of access. Moreover, a prohibition without enforcement cannot reasonably be expected to affect conduct in a meaningful way. Indeed, various commenters have identified the use of existing Commission enforcement mechanisms as necessary tools for ensuring compliance with our rules.[396] Others contend that without the use of such tools, section 60506 could not function as Congress intended.[397] Similarly, there would be little point for Congress to direct the Commission to accept complaints of digital discrimination of access if we lacked any of our traditional powers to act on them. The existing "public complaints process" serves the agency's general authority to enforce the Communications Act, so we interpret the mandate in subsection (e) to reflect Congress's intent that the agency enforce digital discrimination complaints under the Act's general enforcement provisions.

123. However, some commenters argue that the Commission lacks authority, both under the Communications Act and section 60506, to enforce any rules prohibiting digital discrimination of access. They argue that because Congress did not expressly incorporate section 60506 into the Communications Act, any remedies or enforcement mechanisms found in the Communications Act are unavailable, and section 60506 does not authorize the use of such enforcement tools.[398] AT&T, for example, argues that

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[393] *Notice* at 38-39, para. 69.

[394] *Id.* at 39-40, para. 71.

[395] *See, e.g.*, 42 U.S.C. § 2000e-12(a) (empowering the Equal Employment Opportunity Commission "to issue, amend, or rescind suitable procedural regulations to carry out the provisions" of Title VII); 20 U.S.C. § 1682 (directing federal agencies to effectuate the provisions of Title IX "by issuing rules, regulations, or orders of general applicability"); 29 U.S.C. § 794(a) (tasking federal agencies with "promulgat[ing] such regulations as may be necessary to carry out . . . the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978"); 42 U.S.C. § 6103(a)(4) (requiring federal agencies involved in distributing federal financial assistance promulgate regulations to carry out the provisions of the Age Discrimination Act of 1975).

[396] *See, e.g.*, Connecticut Office of State Broadband & Office of Consumer Counsel Comments at 5-6; Greenlining Institute Comments at 7; Leadership Conference on Civil and Human Rights et al. Comments at 8.

[397] Free Press Reply at 6-7 (arguing that it would be "remarkable" for Congress to enact a law without any enforcement potential, which would effectively render it a "nullity"); Public Knowledge et al. Comments at 5 (contending that section 60506 without enforcement authority would be superfluous).

Congress's decision to "keep [s]ection 60506 out of the Communications Act and to avoid cross-references between it and Title V" reflects Congress's desire to make enforcement by traditional mechanisms unavailable.[399] CTIA similarly observes that unlike other provisions of the Infrastructure Act, such as section 60502, Congress did not explicitly enable the Commission to "impose forfeiture penalties under [s]ection 503 of the Communications Act" in section 60506, rendering those tools unusable.[400]

124. We disagree with those asserting that section 60506 does not authorize the use of the Commission's existing enforcement mechanisms. Congress's decision not to incorporate section 60506 into the Communications Act does not suggest that it contemplated only voluntary compliance with rules designed to "prevent" digital discrimination of access.[401] Although some commenters argue that Congress implicitly or indirectly incorporated section 60506 into the Communications Act,[402] we need not rely on such arguments to justify our approach. Rather, we agree with commenters asserting that section 60506, standing alone, authorizes the Commission to adopt or amend enforcement rules deemed necessary to facilitate equal access and prevent digital discrimination of access, including the use of the Commission's existing enforcement mechanisms.[403]

125. As discussed above, section 60506 authorizes the Commission to incorporate both disparate treatment and disparate impact standards in its definition of digital discrimination of access and, consequently, to adopt rules prohibiting covered entities from engaging in such practices. Contrary to arguments that section 60506 tasks the Commission with "facilitat[ing] equal access" by way of funding providers' deployment efforts,[404] the statute expressly commands the Commission to *prevent* digital discrimination of access. That is, Congress tasked the Commission with adopting rules that would curb digital discrimination of access before its occurrence. Even had Congress tasked the Commission only with implementing a statutory prohibition on digital discrimination of access (a mandate that would be less broad than the one we were given), the Commission could not do so merely through suggestion.[405] We are aware of no instance in which a federal anti-discrimination law is without any enforcement mechanism whatsoever. Industry fails to explain how "affirmative-based approaches," like funding opportunities, would effectively implement our mandate to "prevent" digital discrimination of access.[406]

(Continued from previous page)

[398] *See, e.g.*, AT&T Comments at 37-42; AT&T Reply at 29-31; CTIA Comments at 27; International Center for Law & Economics Reply at 14-15; U.S. Chamber of Commerce Comments at 3 & n.10; USTelecom Comments at 43-47.

[399] AT&T Reply at 29-30.

[400] CTIA Comments at 27.

[401] *See* Free Press Comments at 11-12.

[402] *See, e.g.*, Connecticut Office of State Broadband & Office of Consumer Counsel Comments at 5-6; Lawyers' Committee for Civil Rights Under Law Comments at 33; Public Knowledge et al. Comments at 5, 32-24, 96-97.

[403] Connecticut Office of State Broadband & Office of Consumer Counsel at 6-7 (arguing that the Commission possesses authority to enforce "other statutes" aside from the Communications Act "that involve national matters concerning communications"); Free Press Comments at 10-11 (arguing that the Commission must interpret the law as written and that the Commission must adopt rules to fulfill the specific, if broad, mandate that Congress imposed); Lawyers' Committee for Civil Rights Under Law Reply at 21-23 (arguing that the language of section 60506 itself authorizes the use of the Commission's enforcement toolkit).

[404] *See, e.g.*, AT&T Reply at 17-19 (arguing that section 60506(b) only directs the Commission to facilitate equal access to broadband, "including through affirmative use of the Infrastructure Act's funding programs," and does not implicate "private conduct").

[405] *See* USTelecom Comments at 47 (arguing that the Commission's responsibilities include "convening parties" and "encouraging action," without any ability to otherwise enforce section 60506).

No commenter suggests that the solution to digital discrimination of access, as we have defined it, requires directing more funds to the entity responsible for such conduct. Indeed, others call such a result absurd.[407] Because preventing digital discrimination of access requires some kind of "stick" in addition to "carrots,"[408] it would render much of section 60506 a "nullity"[409] were the Commission to interpret the statute to preclude enforcement of our rules implementing section 60506.

126. We find that section 60506 provides the Commission authority to enact such rules as are necessary to fulfill its statutory obligations—including, for example, amendment or readoption of our existing enforcement rules in the specific context of digital discrimination of access.[410] Section 60506(b) directs the Commission to "adopt final rules to facilitate equal access to broadband internet service . . . including . . . preventing digital discrimination of access . . . ."[411] And as we explain above, our enforcement tools are indispensable in fulfilling this mandate. Section 60506 therefore authorizes the Commission to adopt, readopt, or amend enforcement-related rules as necessary to accomplish this task.

127. Finally, we find that section 4(i) of the Communications Act provides the Commission ancillary authority to carry out its statutorily mandated duties under section 60506, including enforcement of a prohibition on digital discrimination of access.[412] Section 4(i) provides that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, . . . as may be necessary in the execution of its functions."[413] Effective enforcement rules are reasonably ancillary to the Commission's statutorily mandated responsibility to combat discrimination in providing access to broadband service.[414] Arguments to the contrary highlight that section 60506 does not fall within the scope of the Communications Act and that its mandate lacks a limiting principle.[415] But as TechFreedom acknowledges, section 4(i) enables the Commission to carry out duties conferred by Congress outside those outlined in the Communications Act.[416] And as explained above, contrary to claims that use of its ancillary authority in this instance would release the Commission "'from its congressional tether'"[417] or would "exceed the bounds of its statutorily[] delineated authority,"[418] the Commission's establishing and enforcement of today's prohibition logically extends from and satisfies Congress's mandate of preventing digital discrimination of access.

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[406] Letter from Brian J. Benison, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 2 (filed June 29, 2023).

[407] *See, e.g.*, Lawyers' Committee for Civil Rights Under Law Reply at 4-5.

[408] *See id.*

[409] Free Press Reply at 7.

[410] *See* Free Press Comments at 11-12.

[411] 47 U.S.C. § 1754(b).

[412] *Id.* § 154(i).

[413] *Id.*

[414] *See Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (explaining that the Commission may exercise its ancillary authority when, in part, "'the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities'" and citing to the two-part test for determining when the Commission may do so in *American Library Ass'n v. FCC* (406 F.3d 689, 691-92 (D.C. Cir. 2005))).

[415] *See, e.g.*, TechFreedom Reply at 20-21, 23-36; USTelecom Comments at 45-47.

[416] TechFreedom Reply at 21.

[417] *Id.* at 25 (quoting *Comcast Corp*=, 600 F.3d at 655).

[418] USTelecom Comments at 47.

128. We note that the enforcement measures and final rules that we adopt today do not represent all that the Commission can—and must—do to combat digital discrimination of access. As noted above, section 60506(b) directs the Commission to adopt "final rules" to: (1) prevent digital discrimination of access and (2) identify necessary steps for the Commission to take to eliminate such discrimination.[419] We interpret Congress's directive with respect to "eliminating" digital discrimination of access to include steps not taken in our implementing rules that might ultimately be necessary to ensure that such discrimination does not occur after the effective date of our rules. Congress has tasked us to identify any such "necessary steps" so they can swiftly be undertaken if and when determined to be necessary, and so Congress can consider what additional statutory authority, if any, might be necessary to allow for full achievement of the equal access goal. We believe the rules we adopt today, coupled with the affirmative requirements proposed in the *Further Notice*, represent the measures necessary both to "prevent" and "eliminate" digital discrimination of access in the future. As such, we find our actions today satisfy the Commission's obligations under section 60506(b)(1) and, at a minimum, takes initial steps towards addressing our obligations under section 60606(b)(2).

129. We disagree with those asserting that enforcement of our prohibition raises a major-questions-doctrine issue.[420] As explained below, the Commission's self-initiated investigation process does not reflect a substantial overhaul of the Commission's enforcement mission.[421] Nor does taking this step, modest in comparison to the concerns raised by some commenters, risk fundamentally altering the landscape of the telecommunications industry.[422] As employers, covered entities should be familiar with the standards and processes for establishing liability under Title VII of the Civil Rights Act of 1964,[423] and many of these entities must already comply with the nondiscrimination requirements associated with the receipt of federal funds. Moreover, the Commission does not find in section 60506 an "elephant[] in a mousehole" as some commenters argue.[424] To the contrary, Congress here explicitly called on the Commission to prevent and identify necessary steps to eliminate digital discrimination of access. It mandated, using clear language, that the Commission adopt rules necessary for doing so. Our adoption of a prohibition on digital discrimination of access is directly responsive to Congress's charge, and our use of the Commission's enforcement mechanisms a necessary component of those efforts.

130. At the same time, we do not agree with some commenters' suggestion that section 60506(b)(2) represents a broad grant of authority to the Commission to require covered entities to undertake remedial measures to eradicate the effects of conduct predating the effective date of our rules.[425] While section 60506(b)(2) authorizes the Commission to "identify" the steps necessary to

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[419] 47 U.S.C. § 1754(b)(1)-(2).

[420] *See, e.g.*, CTIA Comments at 25-26 (arguing, among other things, that establishment of a "back-and-forth, highly resource intensive process" would result in a "fundamental shift in agency mission" and "raise a major questions doctrine issue").

[421] *See id.* at 26.

[422] *See, e.g.*, AT&T Comments at 43-45 (claiming that a "new regime of unfunded mandates and price regulation . . . would impose massive regulation on 'a significant portion of the American economy'"); NCTA Reply at 4, 24-25 (expressing concerns that the Commission might engage in rate regulation of broadband services); TechFreedom Comments at 4-6 (claiming that the Commission's various proposals in the *Notice* risk imposing "de facto common carriage status upon broadband providers"); AT&T Reply 2, 4-8 (arguing that under the Infrastructure Act, the burden should fall on government subsidy programs, not broadband providers, to address digital discrimination of access and that section 60506 does not open the door broadband price regulation or to "unfunded deployment mandates").

[423] Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17.

[424] *See, e.g.*, TechFreedom Comments at 5 & n.17; International Center for Law & Economics Reply at 5.

[425] *See, e.g.*, Lawyers' Committee for Civil Rights Under Law Comments at 33-34 (contending that it is insufficient to identify necessary steps to eliminate digital discrimination of access and that the Commission must take said steps (continued….)

eliminate the discrimination identified in subsection (b)(1), it does not, in our view, constitute a clear grant of authority to impose retroactive liability on industry participants.[426] Moreover, we note that determining when and where digital discrimination of access occurred across the country in the past, how to remedy such discrimination, and how to assign and allocate the cost of such remediation, would represent highly time- and resource-intensive undertakings. We will not presume that Congress intended for the Commission to undertake these highly complex tasks without clear evidence to that effect. Accordingly, for purposes of implementing section 60506(b), we will train our focus on preventing—and thus eliminating—digital discrimination of access occurring after the effective date of our rules.

2. Amending Commission Rules

131. We amend some of our existing enforcement rules today to enshrine the processes by which the Commission will undertake investigations of claims of digital discrimination of access. These include changes to Rule 1.80, which details our forfeiture procedures, so that it will now reference the provisions of section 60506 in addition to those of the Communications Act and other statutes.[427] Additionally, Rule 0.111 will now reflect the Enforcement Bureau's direction to investigate claims of digital discrimination of access and make recommendations as to potential violations and penalties.[428] We adopt these amendments pursuant to the authority expressly granted to the Commission in section 60506(b).

3. Enforcement Framework

132. The Commission will launch investigations into complaints and allegations of digital discrimination of access on a self-initiated basis and, where the Commission determines a violation has occurred, pursue remedies and penalties. Investigations may stem from complaints filed through the informal complaint process or information otherwise brought to the Commission's attention. As outlined above, the Commission will adopt a dedicated pathway for accepting digital discrimination of access claims from the public. Additionally, the Commission may receive allegations of digital discrimination of access from state, local, or Tribal governments. And as proposed in the *Further Notice*, the Commission may in the future obligate covered entities to make filings to the Commission as part of their affirmative obligations to assist in combating digital discrimination of access,[429] filings that similarly might serve as a basis for investigation. Irrespective of the origin of such complaints and information, the Commission will—at its discretion—determine whether investigation by the agency is warranted and whether further response from the entities alleged to have violated our rules will be required. However, we recognize that broadband providers and other covered entities may need time to review their policies and practices in light of the rules we adopt today. Accordingly, we will not initiate any enforcement investigation solely concerning conduct that produces differential impacts under these rules until at least six months after the effective date of the rules.

133. The Commission will conduct its investigations of digital discrimination of access

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now to remediate past discrimination); Public Knowledge et al. Reply at 13-17 (arguing that imposition of buildout requirements in response to historical wrongs would not be impermissibly retroactive); Lawyers' Committee for Civil Rights Under Law Reply at 20 (observing that even if the Commission cannot impose retroactive liability, it can still impose certain requirements on providers that would help address past discrimination).

[426] *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994) (explaining that a court must refrain from retroactive application of a new statute "absent clear congressional intent favoring such a result").

[427] 47 CFR § 1.80(a)(1)-(7). Rule 1.80, which acts as our implementing rule for forfeiture proceedings, states that a forfeiture penalty may be assessed against any person found to have violated either designated provisions of the Communications Act (and rules related thereto); Title 18 of the United States Code; or section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012, as well as rules, regulations, and orders promulgated thereunder.

[428] 47 CFR § 0.111.

[429] *Infra* para. 179.

complaints and allegations consistent with federal law and in a manner consistent with the processes and procedures followed by other federal agencies.[430] Taking this approach ensures alignment with civil rights models, as suggested by some commenters.[431] In investigating complaints and allegations of digital discrimination of access, we adopt the legal standards for proving discriminatory treatment and disparate impact set out below and in our discussion above of disparate impact and disparate treatment standards as they relate to our definition of digital discrimination of access.

134. *Investigating complaints alleging that a policy or practice is intended to differentially impact consumers' access to broadband internet access service on a prohibited basis*. Direct evidence of discriminatory intent is rare.[432] For that reason, intentional discrimination is typically proven by circumstantial evidence.[433] Federal agencies historically have used two chief legal frameworks in evaluating whether circumstantial evidence supports an inference of discriminatory intent, depending on the nature of the alleged discrimination. We will investigate complaints of intentional discrimination under these frameworks.

135. *When a facially neutral policy or practice is allegedly motivated by discrimination: Arlington Heights standard*. The Arlington Heights framework applies when an otherwise facially neutral policy or practice is allegedly motivated by discrimination.[434] Under this framework, as applied in the context of section 60506, the Commission, as factfinder, will evaluate a variety of factors that contributed to the adoption, use or application of the challenged policy or practice in order to determine discriminatory intent.[435] Where it is determined that the policy or practice was intended to discriminate, the agency evaluates whether the adoption, use or application of the policy or practice would have occurred absent the discrimination. Importantly, evidence of statistical disparity, alone, generally will not satisfy this standard.[436] In the context of section 60506, this approach would likely be most applicable to complaints involving treatment of a large group of persons, including but not limited to deployment, upgrade, and large-scale service matters alleged to have been motivated by prohibited discrimination. The Commission will find a violation of the digital discrimination of access rules where, upon close evaluation of Arlington Heights factors, (1) persons in a protected group were denied equal access to broadband internet access services, (2) the challenged conduct would not have occurred absent the discrimination, and (3) the policy or practice in question is not justified by genuine issues of technical or

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[430] *See, e.g.*, Department of Justice, *Title VI Legal Manual*, https://www.justice.gov/crt/fcs/T6manual (last visited Nov. 14, 2023) (setting forth legal standards for addressing complaints discriminatory treatment and policies and practices having discriminatory effect).

[431] *See, e.g.*, CTIA Comments at 18.

[432] *Miller v. Johnson*, 515 U.S. 900, 913-914 (1995); *Hassan v. City of New York*, 804 F.3d 277, 295 (3d Cir. 2015); *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1501 (10th Cir. 1993).

[433] The two legal standards for reviewing circumstantial evidence of intentional discrimination are set out in *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (providing the framework for analyzing whether facially neutral policies or practices are motivated by discrimination) and *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (providing the framework for allocating proof for claims of disparate treatment discrimination).

[434] *Arlington Heights*, 429 U.S. at 266.

[435] The non-exhaustive list of evidentiary factors include: background of the challenged policy or practice; sequence of events leading up to the challenged policy or practice; departures from normal, procedural sequence (how the challenged policy or practice occurred and was decided on by decisionmakers); pattern of actions that impose greater harm on persons in protected groups (i.e., whether a practice bears more heavily on minority or low-income persons); and awareness of the greater harm (i.e., whether the harm to members in the protected groups was foreseeable to decisionmakers). *See Arlington Heights*, 429 U.S. at 266-68.

[436] *See Comm. Concerning Community Improvement v. City of Modesto*, 583 F.3d 690, 703 (9th Cir. 2009); *Arlington Heights*, 429 U.S. at 264-66.

economic feasibility, as outlined above.

136. *When policies or practices are intended to impact persons within the protected group differently than similarly situated persons: McDonnell Douglas standard*. This framework applies when a policy or practice is intended to treat similarly situated persons differently because of a protected status.[437] It is typically utilized when investigating complaints involving a smaller, discrete number of complainants and where there are identifiable comparators. In the context of our rules implementing section 60506, this framework may be utilized for investigating complaints as to selection for benefits, special deals, or even qualification for broadband service.

137. The Commission will investigate three elements under this framework: (1) whether there is differential treatment of similarly situated persons;[438] (2) whether there is a legitimate, technical or economic justification for such differential treatment;[439] and, if so, (3) whether the technical or economic justification for the differential treatment is actually a pretext for prohibited discrimination.[440] As to the second element, the Commission will weigh all available evidence bearing on whether the challenged policy or practice is justified by genuine issues of technical or economic feasibility. The Commission will find a violation of the digital discrimination of access rules where persons in a protected group were treated differently, and (1) there is no legitimate technical or economic justification for the difference in treatment, or (2) the proffered technical or economic justification is determined to be pretext for discrimination.

138. *Investigating allegations that policies and practices differentially impact consumers' access to broadband internet access service on a prohibited basis*. We expect most investigations of possible violations of our rules to concern credible allegations that specific policies or practices have meaningful discriminatory effects and are not justified by genuine issues of technical or economic feasibility. We adopt the elements of proof for disparate impact as established in *Inclusive Communities* in a way that comports with section 60506 and the Commission's investigatory process. Thus, investigations concerning allegations that facially neutral policies or practices have discriminatory effects will involve: (1) the identification of a policy or practice that is causing a disparate impact on a prohibited basis; (2) assessment of whether the policy or practice in question is justified by genuine issues of technical or economic feasibility; and (3) a determination of whether there were reasonably achievable, less discriminatory alternatives.[441] If the Commission determines that a covered entity's policy or practice differentially affects access to broadband service on a prohibited basis and that a less discriminatory alternative was reasonably available and achievable, the policy or practice in question will not be deemed justified by genuine issues of technical or economic feasibility.

139. Under the first element of our disparate impact analysis, the Commission will investigate whether an identified policy or practice of the covered entity is causing the discriminatory effect. We will also investigate the nature of the disparate impact that is being complained about or otherwise brought to

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[437] *McDonnell Douglas*, 411 U.S. at 802-06.

[438] This element is shown with evidence that persons are within a protected group; they were eligible for service; were treated in an adverse manner; and that persons similarly situated, but not in the protected group, received better treatment. *Id.* at 802.

[439] This element will be investigated by the Commission, and any explanation must be clear and reasonably specific, and fully support a showing that there was a "legitimate, nondiscriminatory reason for the different treatment." *Id.*

[440] Under this element, the Commission will investigate whether any reason given for the challenged action was pretext for discrimination. Under this element, the Commission may weigh whether the reasons given were true; any weaknesses, implausibility, inconsistency or contradictions; and if action taken was contrary to written policy or practice, or was a post-hoc fabrication. *McDonnell Douglas*, 411 U.S. at 803-805.

[441] *See* Department of Justice, *Title VI Legal Manual*, *Section VII: Proving Discrimination – Disparate Impact*, https://www.justice.gov/crt/fcs/T6Manual7 (last visited Nov. 14, 2023).

our attention. As explained above, we will rely on information provided by the covered entity as well as specified data sources and, where necessary, statistical analyses to assess the extent of the differential impact on access to broadband internet access service. The Commission recognizes that any such differential impact on broadband access must be caused by a specific policy or practice of the entity under investigation.

140. Under the second element of our disparate impact analysis, the Commission will determine whether genuine issues of technical or economic feasibility support and give substantial, legitimate justification for the policy or practice that is being investigated. Third, the Commission will determine whether a less discriminatory alternative policy or practice was reasonably available and achievable and identify any such alternative policy or practice determined to have been reasonably available and achievable. If such an alternative was available to the covered entity, the policy or practice causing the differential impact will not be deemed justified by genuine issues of technical or economic feasibility, and the covered entity will be exposed to liability for digital discrimination of access.[442]

141. *Remedies*. Remedying violations of our prohibition on digital discrimination of access will depend on the context and extent of the violation. This requires that remedies be established on a case-by-case basis.[443] To this end, the Commission will bring to bear its full suite of available remedies, including the possibility of monetary forfeitures.

142. We adopt a presumption of compliance for policies and practices that are in compliance with specific program requirements for the Broadband Equity, Access, and Deployment (BEAD) and Universal Service Fund (USF) high-cost programs.[444] These programs exist to remedy current inequities in broadband deployment[445] and are consistent with section 60506 and our rules adopted today to facilitate equal access to broadband internet service.[446] We will also accept a presumption of compliance for future broadband funding programs that account for digital discrimination of access rules. We decline

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[442] Under the Commission's investigative process, the factual and legal bases for any proposed liability determination are set forth in a notice of apparent liability and the respondent has an opportunity to respond to that notice before any final liability determination is made. 47 CFR § 1.80(g).

[443] *See* Leadership Conference on Civil and Human Rights et al. Comments at 8 (arguing that the Commission "must define instances of non-compliance on a granular level").

[444] *See* NTIA *Ex Parte* at 11 (urging the Commission to "recognize the consistency between BEAD and the mandate against digital discrimination of access, and accordingly to treat actions taken in strict compliance with BEAD program requirements as presumptively also compliant with digital discrimination rules"); ; *see also* NTCA Comments at 29-30; WISPA Reply Comments at 24. As noted below, we will consider whether other presumptions or safe harbor defenses are warranted going forward, including safe harbors or presumptions of compliance for policies and practices that comply with other federal broadband deployment programs that embody similar equity and nondiscrimination principles.

[445] *See, e.g.,* Fourteenth Broadband Deployment Report, 36 FCC Rcd at 874-878, paras. 65-74 (describing how universal service support plays an essential role in deploying broadband networks in rural, insular, and hard-to-serve areas and in increasing access for low-income households); Biden-Harris Administration Announces State Allocations for $42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda, https://broadbandusa.ntia.doc.gov/news/latest-news/biden-harris-administration-announces-state-allocations-4245-billion-high-speed (stating that BEAD funding will be used to deploy or upgrade broadband networks in unserved and underserved areas).

[446] *See, e.g.*, 47 U.S.C. § 1702(g)(2)(C)(i)-(ii) ("requiring that "eligible entities" distributing BEAD funds must "distribute the funds in an equitable and nondiscriminatory manner" and "ensure . . . that each subgrantee uses the funds in an equitable and nondiscriminatory manner."); 47 U.S.C. § 254(b)(2) (providing that universal access to advanced telecommunications and information services is a basic policy principle of the universal service program); WISPA Comment at 2, 16-19 (contending that the Commission should adopt a safe harbor for recipients of the Commission's high-cost federal support programs, as they "are already subject to non-discrimination requirements").

to expand, however, presumptions or safe harbor defenses beyond these funding programs as some commenters urge.[447] Although T-Mobile correctly identifies that the Commission must take into account issues of technical and economic feasibility, we disagree that for section 60506's language to have "real meaning," the Commission must establish particular safe harbor defenses at this time.[448] The approaches outlined above prove sufficient for protecting the rights of industry participants, and we do not expect that the Commission's self-initiated approach to investigations will inundate industry participants with meritless claims that they must expend substantial resources defending against.[449] We also agree with other commenters that prematurely establishing a comprehensive list of safe harbor defenses may immunize covered entities against legitimate complaints or allegations, without commensurate reasons for doing so.[450] We do, however, recognize that properly developed safe harbors may facilitate regulatory certainty and help focus our enforcement efforts in the future. Therefore, the Commission charges the CEDC with identifying, evaluating and making recommendations with respect to particular safe harbors, rebuttable presumptions or other similar bright-line guardrails distinguishing permissible from impermissible conduct under the rules we adopt today.

143. *Structured Complaint Process*. We decline at this time to adopt a structured formal complaint process for claims of digital discrimination of access. In the *Notice*, we sought comment on whether the Commission should establish a structured complaint process similar to the formal complaint process of section 208 of the Communications Act.[451] CTIA argues that the establishment of such a

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[447] *See, e.g.*, AT&T Comments at 27 (arguing that the Commission should recognize "safe harbors for certain deployment criteria"); CTIA Comments at 3, 18, 24-25 (contending that the Commission should "adopt safe harbors to further minimize regulatory uncertainty about circumstances that could give rise to liability"); Information Technology and Innovation Foundation Comments at 5-6 (arguing that safe harbors are necessary to prevent "perverse outcomes" whereby ISPs delay deploying or upgrading its service "in some areas of a locality for fear that it will face liability for not serving every part of that locality all at once"); Free State Foundation Comments at 14-16 (providing a non-exhaustive list of "bright line" safe harbors that the Commission should adopt); NTCA Comments at 29-30 (arguing in support of a safe harbor that includes "any carrier that serves in an area with population and other characteristics substantially similar to those found in regions in which [eligible telecommunications carriers receiving high-cost universal service support] operate"); R Street Institute Comments at 3 (rec. Feb. 21, 2023) (urging the Commission to "utilize safe-harbors and identify mitigating factors that dissuade the agency of evidence of digital discrimination"); TechFreedom Comments at 44-47 (arguing that providers should be required only to provide a *prima facie* showing of technical infeasibility, such as the existence of a man-made impediment, and that the Commission should be highly deferential to any business judgments made by industry with respect to economic feasibility); T-Mobile Comments at 27, 30-31 (arguing that the Commission should adopt safe harbors for when a "provider has met or exceeded any applicable build-out requirements in the terms of its wireless license" or when "the provider is otherwise subject to an enforceable commitment to deploy service or to cover substantially all of a given population"); WISPA Comment at 2, 16-19 (contending that the Commission should adopt a safe harbor for recipients of the Commission's high-cost federal support programs, as they "are already subject to non-discrimination requirements"); American Action Forum Reply at 1, 5-8 (arguing that the Commission should establish safe harbors); Americans for Tax Reform and Digital Liberty Comments at 4 (claiming that it is "essential that ISPs enjoy safe harbor provisions for technical and economic feasibility"); International Center for Law & Economics Reply at 6, 19-20 (arguing that the Commission should have a presumption of nondiscrimination and that wading through complaints could be resource intensive for the Commission and administration of section 60506, particularly using a disparate impact standard, would become too unwieldly).

[448] T-Mobile Comments at 27.

[449] *See, e.g.*, Americans for Tax Reform and Digital Liberty Comments at 3; AT&T Comments at 27-28; NTCA Comments at 29-30; Lumen Reply at 20.

[450] *See, e.g.*, California Public Utilities Commission Reply at 7; Free Press Comments at 35-36; Lawyers' Committee for Civil Rights Under Law Reply at 17-18.

[451] *Notice* at 41-42, para. 73.

process would burden both staff at the Commission and the resources of covered entities.[452] However, it is unnecessary for us to opine on these arguments. Instead, we agree with Verizon that, currently, the informal complaint process satisfies the requirements of section 60506 and provides the necessary functionality for the Commission to carry out its duties.[453] Although some commenters encourage the Commission to establish a specific formal complaint process for digital discrimination of access claims,[454] these commenters do not articulate the reasons for its necessity in light of the self-initiated investigatory approach the Commission adopts today. We do not foreclose the possibility of adopting a structured complaint process in the future, however. As the Commission gains experience investigating digital discrimination of access complaints, our approach may evolve, leading us to revisit this issue in the future.

144. As noted above, in order effectively to identify and combat potential violations of digital discrimination of access, the Enforcement Bureau will evaluate information provided to the Commission through the dedicated digital discrimination of access informal complaint pathway or through communications from state, local, or Tribal governments. The Enforcement Bureau, in coordination with the Consumer and Governmental Affairs Bureau, will review this information on a monthly basis and examine trends and geographic or demographic clusters, among other things, in the informal complaint filings to determine whether there is possible discrimination of access based on income level, race, ethnicity, color, religion, or national origin. Relevant evidence pertaining to purported differences in the covered elements of service will be especially probative.[455] Where there is credible evidence suggesting that persons in a protected group were treated differently as the result of a policy or practice, the Enforcement Bureau, in its discretion, will use its authority to conduct investigations; issue Letters of Inquiry and subpoenas; conduct audits; inspect licenses and/or facilities; and collect information. Further, the Enforcement Bureau will use the full range of its enforcement options to enforce compliance, including the possibility of forfeiture penalties.

145. *Voluntary Mediation of Digital Discrimination of Access Complaints.* As part of the monthly review process referenced in the preceding paragraph, Commission staff shall identify particular informal complaints that would be suitable candidates for a staff-mediated resolution process. With regard to such complaints, prior to initiation of an Enforcement Bureau investigation, staff from the Bureau's Market Disputes Resolution Division (which has no involvement in Bureau-initiated investigations) may invite the informal complainant and the covered entity identified in the informal complaint to engage in a voluntary mediation process overseen by Division staff. If all parties are willing to engage in such voluntary mediation, the mediation would follow existing Commission procedures as outlined in Rule

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[452] *See* CTIA Comments at 25-27.

[453] *See* Verizon Comments at 30-31.

[454] *See, e.g.*, Benefits Data Trust Comments at 3, 9 (claiming that a process modeled after the Consumer Financial Protection Bureau's Consumer Complaint Database would help hold providers accountable and facilities supervision and enforcement activities with state and federal agencies); Free Press Comments at 40-41 (arguing that a structured complaint process would "aid the Commission in identifying and responding to substantive complaints[, and] . . . encourage and facilitate better interaction between community and consumer advocacy organizations, which will ultimately aid the Commission in better understanding the causes and potential solutions to digital discrimination"); National Digital Inclusion Alliance and Common Sense Media Comments at 17 (claiming that a "formal process gives representatives, organizations, and governments flexibility in pursuing violations"); National Multicultural Organizations Comments at 17-18 (contending that a dedicated complaint process would aid individuals and communities impacted by digital discrimination by providing a means to vindicate their rights and help those subject to the Commission's rules by "offering them a forum and straightforward approach to addressing and resolving" complaints).

[455] *See supra* para. 102 (providing a non-exhaustive list of aspects of service—both technical and non-technical—that could affect a consumers' ability to receive and effectively utilize broadband internet access service).

1.737 insofar as practicable.[456] Any resolution reached through such mediation process will be reduced to writing and will be binding only on the parties to the mediation. The parties to the mediation may agree, if they so choose, to disclose the terms of any resolution to the Enforcement Bureau's Investigations and Hearings Division, but will not be required to do so. If the parties choose to disclose the terms of the resolution to the Investigations and Hearings Division, the Enforcement Bureau will consider the terms and scope of the resolution in determining whether to initiate an investigation into the matters raised in the informal complaint. The Enforcement Bureau will not initiate such an investigation until the mediation process has concluded. This mediation process represents an alternative means of bringing speedy and effective resolution to disputes.

146. *Advisory Opinions*. In order to provide greater regulatory certainty and assist covered entities seeking to comply with our rules, we adopt a process to allow any such covered entity to seek an advisory opinion from Commission staff regarding the permissibility of a policy or practice affecting broadband access.[457] The Commission adopted such an advisory opinion process in 2015 in connection with its open internet rules.[458] We find today, as the Commission found in 2015,[459] that an advisory opinion process will promote compliance and provide clarity, guidance, and predictability regarding our rules.

147. Under the process we adopt today, any covered entity may request an advisory opinion regarding the permissibility of its own policies and practices affecting access to broadband internet access service.[460] The Commission hereby delegates to the Enforcement Bureau the authority to receive such requests and issue such advisory opinions, and we direct the Enforcement Bureau to coordinate closely with other Bureaus and Offices regarding such advisory opinions. The Enforcement Bureau will have discretion to determine whether to issue an advisory opinion in response to a particular request or group of requests and will inform each requesting entity, in writing, whether the Bureau plans to issue an advisory opinion regarding the matter in question. The Enforcement Bureau shall decline to issue an advisory opinion if the relevant policy or practice is the subject of a pending government investigation or proceeding.

148. Covered entities may submit requests for advisory opinions regarding both current and prospective policies and practices affecting broadband access. However, a request must pertain to a policy or practice that the requesting party is currently utilizing or intends to utilize, rather than a mere possible or hypothetical scenario. And as a general matter, the Enforcement Bureau will prioritize responses regarding prospective policies and practices intended to ensure compliance with our rules. The Enforcement Bureau will also prioritize requests involving substantial questions with no clear Commission precedent and/or subject matter involving significant public interest.

149. When submitting requests, covered entities must include all material information such that Commission staff can make a fully informed determination on the matter. Requesting parties will also be required to certify that factual representations made to the Enforcement Bureau are truthful, accurate, and do not contain material omissions. The Enforcement Bureau will have discretion to request

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[456] 47 CFR § 1.737.

[457] *See, e.g.*, Letter from Caroline Van Wie, AT&T, to Marlene Dortch, Secretary, FCC, GN Docket No. 22-69, at 1 (filed Nov. 8, 2023); Letter from Diana Eisner, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 8 (filed Nov. 8, 2023) (USTelecom Nov. 8 *Ex Parte*); Letter from Randy Clarke, Verizon, to Marlene Dortch, Secretary, FCC, GN Docket No. 22-69, at 2 (filed Nov. 7, 2023).

[458] *2015 Open Internet Order*, 30 FCC Rcd at 5705-09, paras. 228-39.

[459] *Id.* at 5706, para. 229.

[460] As noted in our rules, requests for an advisory opinion may be filed via the Commission's website or with the Office of the Secretary. Requests must be copied to the Chief of the Enforcement Bureau and the Chief of the Investigations and Hearings Division of the Enforcement Bureau.

additional information from the requesting entity and from other parties that might have relevant information or be impacted by the request. These might include, for example, impacted consumers or state, local, or Tribal governments.

150. Our advisory opinion process will affect covered entities and the Commission's enforcement actions as described below. First, the process is fully voluntary. No covered entity will be rewarded or penalized for seeking an advisory opinion, and the seeking (or not) of an advisory opinion will not itself influence any enforcement-related decision by the Commission. Second, in an advisory opinion, the Enforcement Bureau will issue a determination of whether or not the policy or practice detailed in the request complies with our rules implementing section 60506. If the Bureau determines that a policy or practice currently in effect violates our rules, it may provide in the opinion that it will not take enforcement action within a designated time period if the policy or practice is promptly corrected. Third, a requesting party may rely on an advisory opinion to the extent that its request fully and accurately describes all material facts and circumstances. Fourth, advisory opinions will be issued without prejudice to the Enforcement Bureau's or the Commission's ability to reconsider the questions involved, and rescind the opinion.[461] Should the Enforcement Bureau or Commission rescind a previously-issued advisory opinion, the requesting party must promptly discontinue use of the relevant policy or practice in order to remain in compliance with our rules.

151. The Enforcement Bureau will attempt to respond to requests for advisory opinions as efficiently as possible. We decline to establish firm deadlines, however, because we anticipate that the nature, complexity, and magnitude of requests might vary widely. Furthermore, it may take time for Commission staff to request any additional information needed to issue an opinion. Once issued, the Enforcement Bureau will make the advisory opinion available to the public. And to provide further guidance to industry and consumers, the Bureau will also release the initial request and any additional materials deemed necessary to contextualize the opinion.[462]

152. *Special Advisor for Equal Broadband Access*. As a further measure to provide assistance to stakeholders regarding the rules and new procedures we adopt today, the Commission shall designate a Special Advisor for Equal Broadband Access within the Wireline Competition Bureau to provide neutral technical assistance to all stakeholders. The Special Advisor will provide consumers and their representatives assistance with: understanding the scope and substance of the rules; understanding the process for filing consumer complaints of digital discrimination of access; understanding what information may best assist the agency in fully assessing such complaints; identifying Commission resources that might be helpful to consumers in determining when digital discrimination of access might have occurred and how it can be challenged; addressing questions regarding the voluntary mediation of digital discrimination of access complaints; addressing questions regarding the advisory opinion process outlined above; and interfacing with various Commission components regarding access to broadband internet access service. The Special Advisor will likewise provide industry participants and their representatives assistance with: understanding the scope and substances of the rules; understanding the process for responding to complaints of digital discrimination of access; understanding what information may best assist the agency in fully assessing such responses; identifying Commission resources that might be helpful to industry participants in complying with the rules we adopt today; questions regarding the voluntary mediation of digital discrimination of access complaints; questions regarding seeking advisory opinions regarding policies or practices affecting access to broadband internet access service; and interfacing with various Commission components regarding access to broadband internet access service. The Special Advisor may be designated other responsibilities associated with the digital discrimination of access rules we adopt today and other matters relating to our efforts to ensure equal access to broadband

[461] Because advisory opinions would be issue by the Enforcement Bureau, they would also be issued without prejudice to the Commission's right to later rescind or revoke the findings.

[462] Entities may request confidential treatment of certain information, as provided under Commission rules.

internet access service.

153. *State and Local Enforcement and Private Rights of Action*. We decline at this time to authorize state and local enforcement of our rules,[463] as some commenters urge.[464] As explained above, the Commission is taking a self-initiated approach to investigations of digital discrimination of access. By doing so, the Commission can best establish the contours of what constitutes a violation of our prohibition in a consistent manner.[465] We also decline at this time to create a private right of action, as we asked about in the *Notice*,[466] and thus find it unnecessary to opine at this time about our authority to do so.[467]

F. Differential Impact

154. We find that in determining when consumers' access to broadband internet service is "differentially impacted," whether intentionally or not, we must account for all comparable elements of service quality, terms and conditions.[468] Consistent with our discussion above regarding the elements of service covered by our rules, we may compare service availability, service quality, and the terms and conditions of service as between different geographic areas and communities to determine whether digital discrimination of access has occurred. This may include all technical and non-technical aspects of service in a given area.[469] We similarly provide ourselves the flexibility to consider any comparable geographic region that may be relevant to an alleged claim of digital discrimination of access. Finally, the data we use to determine when a policy or practice differentially impacts consumers' access to broadband service will encompass data both from within the Commission and from any outside sources that we consider relevant to evaluating the issues at hand.[470]

155. We find this scope of inquiry necessary to meet section 60506's equal access goals. First, we agree with commenters that we must have a flexible and non-exhaustive approach to comparing broadband internet access service, as quality standards and the criteria to measure quality will change over time.[471] Second, adopting a comprehensive approach is necessary to meet section 60506's aims regarding equal access because "a series of terms and conditions may have [cumulative effects on access]

[463] *Notice* at 42-43, para. 76.

[464] *See, e.g.*, Connecticut Office of State Broadband & Office of Consumer Counsel Comments at 5, 7; County of Santa Clara Comments at 3-6; TURN Comments at 29-30; TURN Reply at 25-26.

[465] *See, e.g.*, Free Press Comments at 11-12 (arguing that the Commission should take an incremental approach and massage the process through experience); R Street Institute Reply at 5 (voicing concerns that allowing state and local enforcement of Commission rules may result in a patchwork of inconsistent rules and regulations).

[466] *Notice* at 42-43, para. 76.

[467] *Id*.

[468] *Id.* at 24-31, paras. 44-51.

[469] *Supra* Part III.C.3.a; *see also* Joint Advocates Comments at 2 (suggesting we use a comprehensive means to assess discrimination to meet section 60506's "equal access" goals in the long term).

[470] Contrary to the concerns expressed by some commenters, we do not expect that our digital discrimination of access rules will require covered entities to collect any new data from their customers in order to determine the differential impacts of their policies and practices. *See* Letter from Randy Clarke, Verizon, to Marlene Dortch, Secretary, FCC, GN Docket No. 22-69, at 3 (filed Nov. 8, 2023) (expressing concern that "broadband service providers would have to collect demographic information from customers for every aspect of their broadband deployment and provision of services" in order to comply with rules); USTelecom Nov. 8 *Ex Parte* at 6. Covered entities should be able to make those determinations based solely on data from the U.S. Census Bureau.

[471] Local Governments Comments at 16-17; *see* Lawyers' Committee for Civil Rights Under Law Comments at 23.

even when each may be only slightly onerous on its own."[472] In other words, failing to have such a flexible approach could lead to our digital discrimination of access rules undermining Congress's intent for enacting section 60506 by "exacerbat[ing] digital discrimination [of access] rather than eliminating it."[473] Finally, as the record reflects that digital discrimination of access requires assessing a myriad fact patterns, including various technological and non-technological aspects of broadband service, the unique challenges that covered entities face to deploy to certain areas, and that broadband use may vary within local communities, we must adopt a scope of comparability that can holistically assess each claim.[474] This analytical approach is consistent with the goal to ensure that "all people" benefit from broadband, including those in historically disadvantaged, Tribal, and rural communities.[475] Our assessment of whether an "offered service" is of comparable quality to that available to other communities will turn on the *capabilities* of the service rather than the particular technology through which the service is offered.[476] We will focus our analysis on whether the consumer has the equal opportunity to obtain and utilize broadband internet access service of comparable quality on comparable terms and conditions.[477] In this regard, we are mindful that "comparable" does not mean "identical."[478]

156. Our approach to comparability is consistent with established civil rights law. As explained, we will require that covered entities' policies and practices cause the identified disparities, consistent with the reasoning of *Inclusive Communities*.[479] As these matters are so fact-driven, our inquiry will also be on a case-by-case basis, consistent both with longstanding precedent in civil rights law and our approach to determining feasibility.[480]

157. We disagree with commenters asserting that a determination of digital discrimination of access need not require the "robust causality" outlined in *Inclusive Communities*. Some commenters

[472] Lawyers' Committee for Civil Rights Under Law Comments at 24; Multicultural Media, Telecom and Internet Council Reply at 6 ("By taking a comprehensive view of what constitutes broadband 'access' and 'quality,' the Commission will help ensure that the goals underlying the Infrastructure Act's antidiscrimination charge are actually met by all the parties who impact these decisions[.]")

[473] Local Governments Comments at 16.

[474] *See, e.g.*, Georgia Tech Center for Advanced Communications Policy Reply at 3 (recommending a holistic approach to defining digital discrimination).

[475] *See* 47 U.S.C. §§ 1701(3), 1754(a)(3).

[476] *See* Verizon Comments at 12 ("The definition of 'access' does not turn on the underlying technology a provider uses; rather, providers may use multiple technological solutions in a given area to provide consumers the 'opportunity to subscribe' to a comparable broadband service. Thus, if a provider were to use a mix of technologies in a given area to provide the 'opportunity to subscribe' — for example, fixed wireless access and fiber-to-the-home solutions — and if those technologies 'provide[d] comparable speeds, capacities, latency, and other quality of service metrics' to each other, and were made available 'for comparable terms and conditions,' the consumers in that area all would have 'access.'").

[477] *See* AT&T May 16, 2022 Comments at 12 (arguing that "comparability should be viewed from the perspective of a reasonable consumer. For example, any service is 'comparable' to another service with nominally different performance characteristics if most consumers would not find the differences material to their broadband experience. Similarly, two consumers have 'the equal opportunity to subscribe' to comparable broadband services if each can subscribe to at least one provider of such service, irrespective of how many additional providers offer competing services in their respective areas").

[478] *See* NTCA Comments at 2, 10-11 (asking that "[t]he Commission [s]hould [m]ake C[c]ear that '[c]omparable' [d]oes [n]ot [m]ean '[i]dentical,' but [i]nstead '[s]imilar' or '[l]ike'").

[479] *Supra* para. 49; *Inclusive Communities*, 576 U.S. at 542. We disagree with T-Mobile that the "robust causality requirement simply is not workable in the broadband context[,]" as our flexible approach will allow to consider the factors that go into a provider's investment decisions. T-Mobile Comments at 19-20.

[480] *See infra* Part III.E.

argue that we should require only a showing of statistical disparity without any evidence that the challenged policies or practices caused the disparity.[481] We disagree. Instead, we agree with those commenters asserting, consistent with *Inclusive Communities*, that sound disparate impact analysis requires a determination that the challenged policies and practices are a contributing cause of the identified differential in access.[482]

1. Comparing Technical Terms of Service

158. We find that our flexible approach to comparability has several advantages when comparing the technical aspects of broadband. First, this approach is consistent with our definition of covered aspects of service.[483] Second, this flexible approach will allow us to account for the "technical realities of provisioning" broadband when comparing technological aspects of services, such as network degradation and upgrades, by encompassing variables that can explain why network performance may be better or worse during certain periods.[484] Third, it will also provide for comparing technical aspects of service that are present in certain technologies and not others, such as wireless service.[485] Finally, this approach will allow our comparability analysis to adapt as technological preferences change over time and account for substitutability.

159. The record in this proceeding regarding the "substitutability" (and therefore comparability) of broadband service provided through different technologies is mixed. While some commenters argue that the Commission's focus should be on whether the services are comparable in practical terms because section 60506 is "technology neutral,"[486] Public Knowledge cautions that "there are likely to be significant technical variations between different technologies (e.g. wireline vs wireless), such that the default assumption should be that even with stated similarities a service that employs different technology is not comparable."[487] Commenters also disagree on how substitutability should be considered with regard to emerging technologies, as some argue that service provided over fiber lacks a

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[481] *See* National Digital Inclusion Alliance and Common Sense Media Comments at 5 (arguing that, for example, to find digital discrimination has occurred, the "Commission simply must find that households in a low-income neighborhood are paying the same price for DSL that households in more affluent neighborhoods pay for fiber to the home (FTTH) service.").

[482] *See, e.g.*, AT&T Comments at 20-21 (explaining that mere racial imbalance does not create a prima facie case under Supreme Court precedent and requires "robust causality"); NTCA Comments at 14 (explaining that the Court in *Inclusive Communities* "emphasized that 'showing of a statistical disparity' is not sufficient to establish a claim of discriminatory intent"); International Center for Law & Economics Reply at 4 ("Mere statistical correlation between deployment and protected characteristics is insufficient to support a finding of discrimination.").

[483] *Supra* Part III.C.3.a; *see also* Joint Advocates Comments at 2.

[484] *See, e.g.*, National Digital Inclusion Alliance and Common Sense Media Comments at 8 (explaining that "some circumstances may temporarily create 'differential impact' like network outages and periods of network degradation"); Public Knowledge et al. Comments at 64 (positing that "service outages and interruptions are inevitable due to natural conditions as well as the practicalities of network operation, maintenance, and improvement, and need not be factored in overall network performance for the purpose of comparability").

[485] CTIA Comments at 5 (explaining that wireless service is different from fixed technologies that deliver broadband in important ways, such as the nature of deployments, cell sites covering more than a single location, coverage depending on location and use case, amongst others).

[486] Public Knowledge et al. Comments at 64 (arguing additionally that the Commission should view this inquiry from the customer's perspective and whether their user experience is impacted); Verizon Comments at 12 (supporting the Commission finding that a consumer has "equal access" if a provider uses multiple technologies in a given area because the definition of "equal access" does not turn on the underlying technology used).

[487] Public Knowledge et al. Comments at 64.

substitute[488] and others suggest the opposite.[489] The range of views on the record counsels that the Commission should take an approach to comparing technical aspects of service that can accommodate the unique considerations of each alleged instance of digital discrimination of access. The holistic and flexible approach to comparability and substitutability we describe today is consistent with that aim.

160. We decline to establish at this time a prescriptive range or standard for comparing technical aspects of service.[490] We are not persuaded by commenters who suggest that we must take a prescriptive approach to comparing technical aspects of service because greater certainty is necessary to promote deployment.[491] There are simply too many potentially relevant technical variables to each claim to suggest that a prescriptive approach could be practically administered or complied with. We agree with commenters that the varying technologies and services used to deliver broadband "have different natures and capabilities and should thus be evaluated independently using relevant performance metrics."[492] Adding to this complexity, we acknowledge commenters' perspective that, while service interruptions may occasionally occur due to events such as network outages or network maintenance,[493] significant or "chronic" network outages are red flags for possible digital discrimination of access.[494] Our

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[488] Joint Advocates Comments at 10-11 (arguing that "[i]f the goal is equal access, the transmission medium that stands at the heart of all high-speed services (both wireless and wired) without exception is fiber optics[]" because "[d]igital discrimination in the 21st century will be driven by where ISPs choose to deploy fiber within their network and, more importantly, where they are not.").

[489] R Street Institute Comments at 3 (arguing the Commission should not take a "one-size-fits-all" approach to closing the digital divide because new entrants using a variety of technologies, such as fixed and mobile wireless and satellite technologies, to access broadband, suggest that "more and more Americans are accessing broadband"); Block Communications, Inc. Reply at 7 ("Customers' access to high-speed broadband is not impaired in communities where fiber-to-the-home facilities are not yet deployed.").

[490] Public Knowledge et al. Comments at 64 ("The Commission should identify and establish a prescriptive range of permissible variability in key quality of service metrics, supported by empirical data from existing networks."); American Action Forum Comments at 5-6 (suggesting we "should clearly define the types of deployment patterns that would give rise to liability"); NMHC and NAA Comments at 18 (asking we define "comparable broadband service" to mean "an FCC-defined speed that is available everywhere in the provider's service area at the same price"); Rosa Mendoza et al. Reply at 2 (rec. Apr. 19, 2023) (ALLvanza et al.) ("[W]e we believe in establishing clear and enforceable standards for service quality."); California Public Utilities Commission Comments at 13 ("To ensure that consumers are adequately protected, the FCC must hold all broadband providers accountable by evaluating and setting standards for: (1) service quality, (2) customer- complaint tracking, and (3) deployment policies, practices, and records to ensure that there is no disparate impact or differential treatment. The FCC should set a baseline level of broadband speed and allow state governments to define affordable rates for this baseline tier of service."); Local Governments at 16-17 (asking the Commission to adopt a measurable and evolving quality of service rule).

[491] *See* American Action Forum Comments at 5-6 (suggesting without certainty providers would not deploy their networks); NMHC and NAA Comments at 18.

[492] National Digital Inclusion Alliance and Common Sense Media Comments at 6. The approach we adopt is consistent with *Orloff v. FCC*, 352 F.3d 415, 420 (D.C. Cir. 2003); contra Carr Dissent at 4. Indeed, the court in *Orloff* itself pointed out that wireless carriers, even in a competitive market, still "cannot 'decline to serve any particular demographic group (*e.g.*, customers who are of a certain race or income bracket).'" 352 F.3d at 420 (quoting *Orloff v. Vodafone Airtouch Licenses LLC*, 17 FCC Rcd.8987, 8997 (2002)). The ability of wireless carriers generally to provide sales concessions to some customers and not others without being held to have engaged in "unjust and unreasonable discrimination" within the meaning of section 201 and 202 of the Communications Act, *see id.*, Carr Dissent at 4, does not mean that broadband providers may discriminate between customers on the basis of the characteristics protected by section 60506.

[493] *Id.* at 8 ("In these situations, the affected ISP should face relaxed standards of digital discrimination."); Public Knowledge et al. Comments at 64 (positing that "service outages and interruptions are inevitable due to natural conditions as well as the practicalities of network operation, maintenance, and improvement, and need not be factored in overall network performance for the purpose of comparability").

flexible approach will provide for these considerations while avoiding a situation where our technical comparability analysis becomes outdated, the range or scope of comparability becomes too broad or narrow, or our analysis is otherwise ill-suited for the service, service elements, or service terms being compared.[495] We similarly disagree with commenters who assert that standards are necessary to ensure that our rules adequately protect consumers,[496] as our flexible approach does so by "future proofing" our rules as standards change over time.[497]

161. We decline to require network performance testing at this time.[498] As the record is mixed on the issue and such testing is not necessary to accomplish our immediate objectives, we find that adopting a network testing requirement at this time would be premature. While Public Knowledge argues we should adopt network testing requirements similar to those in the universal service context,[499] USTelecom opposes network testing because it is "unjustified as a matter of law, unnecessary, and unduly burdensome."[500]

2. Comparing Non-Technical Terms of Service

162. We find that our flexible approach to comparability likewise has several advantages for comparing non-technical elements of broadband service. First, this approach is consistent with the inclusive scope of our definition of covered elements of service.[501] Second, this flexible approach allows us to assess holistically whether and how non-technical aspects of service may vary based on protected status.[502] Third, allowing comparison of a broad range of services, service elements, and terms of service

[494] National Digital Inclusion Alliance and Common Sense Media Comments at 8 ("However, when these issues become chronic, they may indicate a pattern of unequal investment and should be considered discriminatory"); Public Knowledge et al. Comments at 64 (arguing that outages occur more often or service interruptions are longer in one geographic location, that could not be comparable service).

[495] *See* ALLvanza et al. Reply at 2 (cautioning against passing complex regulations because "that would create new barriers to entry for small and emerging broadband providers"); California Public Utilities Commission Comments at 13.

[496] California Public Utilities Commission Comments at 13; Local Governments at 16-17 ("Cable franchising has shown that clear standards and requirements are essential to ensuring that deployment and upgrades provide uniform, equal access to the same quality of services throughout a community."); *see also* WISPA Comments (cautioning that the Commission must "account for financial and technical considerations specific to [a] provider and its network" when considering the provider's policies and practices and not hamper competition).

[497] Lawyers' Committee for Civil Rights Under Law Comments at 24; New York State Public Service Commission Comments at 3 (urging the Commission to "ensure that any final rules are flexible so that they are not rendered obsolete over time"); *see* National Digital Inclusion Alliance Comments at 9 ("We encourage the Commission to review and reassess both the technical and nontechnical standards on a biennial basis, at a minimum"); ACLU Reply at 5-6 (providing that we should regularly reassess which metrics are most important "so that outdated metrics do not hamstring protected classes' internet experience").

[498] *Notice* at 26, para 46.

[499] Public Knowledge May 16, 2022 Comments at 7-8 (arguing that testing similar to that used in the universal service context would help the Commission in our comparability analysis).

[500] USTelecom Comments at 51-52 (explaining that it also is unnecessary since Congress chose the Consumer Broadband Label requirement as the method that providers should use to disclose information about their networks).

[501] *Supra* Part III.C.3.a.

[502] Lawyers' Committee for Civil Rights Under Law Comments at 23-24 (providing examples of how various technical and non-technical aspects of service could impact and access and explaining that "[e]ach policy, practice, or provision on its own may have a subtle whittling effect on the number of people able to obtain and maintain broadband access, especially lower-income consumers."); National Digital Inclusion Alliance and Common Sense Media Comments at 9 ("For non-technical aspects, the Commission should consider practices that create additional

(continued….)

allows the Commission to evaluate non-technical terms of service across covered entities.[503]

163. We decline to establish a prescriptive standard to compare non-technical aspects of service. Commenters suggest that the Commission should provide different comparability standards when comparing non-technical aspects of service offered by the same covered entity and non-technical aspects of service offered by different covered entities.[504] Commenters also suggest that for services offered by the same covered entity, we should establish that all customer groups in the same area must have the opportunity to receive the same service on the same terms and conditions.[505] Adopting this assumption, however, would not give proper weight to the feasibility analysis we adopt for claims of digital discrimination of access.[506] We agree that "comparing across providers on non-technical factors is considerably more challenging" because "there are compelling competition reasons for different providers to have different terms of service or approaches to customer service."[507] Nevertheless, our more flexible approach of considering all available information will allow the Commission to determine whether non-technical aspects of service across different covered entities in certain circumstances will provide useful evidence of reasonably available alternative practices.

3. Geographic Comparability

164. Section 60506(a)(2) defines "equal access" as the equal opportunity to subscribe to an offered service of comparable service "in a given area . . . ." Thus, when determining whether challenged policies and practices differentially impact access to broadband based on the listed characteristics, to the greatest extent possible, we must compare the service quality and terms and conditions of service in defined geographic areas that are appropriate and reasonably comparable in all respects other than the demographic characteristic(s) giving rise to the digital discrimination of access claim.

165. We find that we must adopt a broad and flexible approach to assess geographic comparability in this context.[508] This is consistent with our approach to comparing technical and non-technical aspects of service. And, as Congress did not define "a given area" in section 60506(a)(2) nor anywhere else in the statute, we agree with commenters that we should determine the appropriate "given area" for an alleged instance of digital discrimination of access on a case-by-case basis.[509] The record reflects a variety of suggestions and relevant considerations for determining an appropriate geographic area for comparison of service quality and terms, providing that a flexible, case-by-case approach is both necessary and appropriate. First, commenters suggested a variety of geographic areas may be appropriate depending on the context, including the Nation as a whole, states, counties, metropolitan statistical areas,

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burdens on some individuals and not others (e.g., where credit checks are required) or provisions that result in more favorable terms for some individuals or groups (e.g., flexibility with contracts).").

[503] *See* Public Knowledge et al. Comments at 65 (explaining that comparisons across providers for non-technical aspects of service is only necessary when conducting substitutability analysis).

[504] Public Knowledge et al. Comments at 64-65.

[505] *Id*.

[506] *Supra* Part III.E.

[507] Public Knowledge et al. Comments at 65.

[508] *Notice* at 27, para. 48.

[509] *See, e.g.*, Lawyers' Committee for Civil Rights Under Law Comments at 25-27 (arguing that "the Commission should recognize that there may not be a one-size-fits-all definition of geographic area that works for all types of digital discrimination [of access]" so we should "consider the totality of the circumstances when determining the appropriate geographic area"); Verizon Comments at 19 ("The Commission should refrain from adopting a blanket definition of a 'given area,' such as one based on a defined geography, outside of the context of a specific complaint."); Verizon Reply at 8 (positing that "the Commission should determine the relevant area for comparison on a case-by-case basis"); WISPA Reply at 17-19 (suggesting we take a "totality of the circumstances" approach to our deliberations).

and census blocks, among others.[510] Second, the record reflects that there are a variety of factors to consider to determine what area is appropriate to analyze a digital discrimination of access claim. For example, with respect to covered entities in particular, the record reflects that the geographic area that is appropriate may differ depending on the type of covered entity, such as a cable operator operating under a franchise agreement or an ILEC operating under a license area; the covered entity's size; or the type of broadband technology used to provide the service, such as fiber to the home or fixed wireless service.[511] Third, though we find that we should compare similar geographic areas to assess claims of digital discrimination of access, the record also includes a variety of suggestions on how we should determine what the relevant geographic area is. For example, commenters suggest that we consider five factors to determine the correct area, while others generally suggest we use relevant geographic comparators, such as how close areas are to each other, changes in terrain, the cost of deployment, and whether the given area is rural or urban.[512] As such, we will evaluate each claim holistically and determine what "given area" is appropriate based on the facts presented. Finally, our flexible, case-by-case approach to determining geographic comparability is consistent with our approach to determining feasibility. In both determinations, we adopt a flexible approach to account for the challenges of providing service to particular geographic areas, such as topography, population density, and other potential technical and

[510] *See, e.g.*, AT&T Comments at 21-22 (suggesting that "robust causality" requirement in *Inclusive Communities* provides that we must "requires aligning the geographic scope of any data analysis with the geographic scope of the relevant ISP deployment policy" and that "if an ISP implements a single Nationally coordinated policy across its broadband service area, as AT&T does, the demographic effects of that policy must be analyzed on a service-area-wide basis"); Public Knowledge et al. Comments at 4, 48 (suggesting that if a provider is not licensed, we consider refining a given area to census blocks within a metropolitan or micropolitan statistical area and county boundaries in rural areas); National Digital Inclusion Alliance and Common Sense Media Comments at 10 (suggesting that we consider a factor to determining the appropriate area for comparison to be a provider's legally defined service area, such as a franchise area, service area, or license area, but that we generally "use the most granular feasible geographic unit"); ACA Connects Reply at 16 (asking that we consider a "given area" to be a provider's "service area[]"); Lumen Reply at 19 (arguing that "the Commission should weigh broader (e.g. Nationwide) geographical comparisons that consider all broadband options available in a relevant area and whether there is a lack of equal access or digital discrimination" and citing to AT&T Comments at 7-8, 21-22, 31-32).

[511] Free Press at 33 & n.69 (explaining that cable multiple system operators operate under a franchise agreement while incumbent providers do not and that "[w]here the concept of service area most requires flexibility and case-by-case examination is for wireless services, particularly fixed wireless, since it is point-to-point (i.e., a distribution antenna to a particular end user)."); Public Knowledge et al. Comments at 4, 48 (reiterating "that for those ISPs already subject to a franchise area or license area for a non-broadband services, the franchise or license area is the appropriate 'service area' for the statute. Where the ISP does not have a license or franchise area, the Commission should consider (in the case of large providers) using the Metropolitan Statistical Area (MSA) where appropriate. The Commission should be cautious when addressing complaints against smaller providers or providers restricted to a particular service area by law.").

[512] National Digital Inclusion Alliance and Common Sense Media Comments at 9-10 (suggesting we consider a "[p]roviders' legally defined service area, be it a franchise area, service area or license area; [m]etropolitan/micropolitan statistical area in which the provider offers service (collectively referred to as core-based statistical area (CBSA)) where they exist, and in given county for areas outside of CBSAs; [a]rea in which providers suggests they offer (or could offer) service, as evidenced by marketing material, service area attestations to federal, state or local agencies (e.g. FCC BDC), grant applications, and other documented information; [i]nput from local stakeholders which is vital to closing the digital divide; [and] [g]eographic continuity, i.e. providers should offer an economic or technical rationale for any "holes" in their coverage that leave some households with worse service than those in the surrounding area"); NCTA Comments at 11 (arguing that "the Commission should compare similarly situated areas within the same general geographic area when analyzing broadband deployment, with greater analytical weight given to a comparison of areas that are in close proximity", and that we should not compare a provider's offerings in different cities or states if there are differences in terrain, costs of deployment, or other importance differences).

economic barriers to providing broadband service.[513]

166. We agree with Verizon that those filing digital discrimination of access complaints should, if possible, identify the given area where the alleged digital discrimination of access occurs.[514] But given that many informal complaints may be filed by members of the public based on their own experiences with broadband access and have little or no information as to how widely their experiences might be shared by others, we will not require precision in this regard. If the informal complaint gives the Commission enough information to determine the nature of the alleged violation and where the alleged violation occurred, that may be sufficient for the Commission to determine whether further inquiry is warranted. Moreover, we will not, as some have suggested, limit our investigations to the four corners of the informal complaint, examining only the policies and practices and the geographic areas identified therein. Rather, the informal complaint will be used as a starting point, a basis for determining whether to seek further information from the complainant, require a response from the covered entity involved, determine whether there are similar complaints forming a pattern, or take some other appropriate action. We understand that many of the comments suggesting that we apply strict "pleading" standards to complaints of digital discrimination of access are premised on the assumption (or possibility) that the Commission would adopt a formal complaint process akin to section 208 of the Communications Act and our rules implementing that section. As we have elected not to adopt such a formal complaint procedure at this time, we will provide maximum flexibility to persons filing informal complaints and will review such informal complaints as liberally and generously as possible to achieve the purposes of the statute as expeditiously as possible.

4. Data to Analyze Differential Impact

167. We will avail ourselves of all relevant Commission and external data collections to help us evaluate when access to broadband has been differentially impacted based on a protected characteristic. As in the record compiled in response to the *Notice of Inquiry*, commenters to the *Notice* highlighted various studies and provided a robust debate as to whether the studies were well grounded and whether they agreed with their conclusions.[515] For example, though some commenters continue to argue that certain studies remain convincing examples of digital discrimination of access,[516] others argue that they downplay or ignore important facts or have been successfully rebutted.[517] Commenters also cite a

(Continued from previous page)

[513] *Supra* Part III.A.2; WISPA Reply at 17-20 (arguing that the Commission must be flexible in their analysis because "providers in different areas may face different considerations including topography, population density, permitting, supply chain challenges, skilled labor availability limitations, and access issues, all of which go into buildout decisions"); CTIA Comments at 18 (providing that "certain service areas are subject to unreasonable state or local permitting, historical preservation laws, or other unreasonable barriers to entry"); USTelecom Reply at 19 ("In any evaluation of complaints, the Commission should take care to evaluate claims in the full context of a provider's plans and broadly examine the challenged deployment policy, rather than cherry-picking individual localities."); Asian American Advancing Justice Comments at 4 (discussing the unique challenges that American Samoa faces to connectivity because it requires undersea cable).

[514] Verizon Comments at 19; Verizon Reply at 8.

[515] *Notice* at 30, para. 51.

[516] *See, e.g.*, National Digital Inclusion Alliance and Common Sense Media Comments at 13 (continuing to encourage the Commission to review *The Markup* article); Common Sense et al. at 3-6 (refuting AT&T's claims regarding *The Markup* article); Joint Advocates at 35 (providing that *The Markup* article is evidence that the copper and fiber in AT&T's network is segregated by income and race).

[517] *See, e.g.*, AT&T Comments at 28-29, 31-32 (stating that *The Markup* article is flawed because it ignores cable providers and can be refuted with information from the Commission's mapping fabric and finding that studies from the NDIA, USC Annenberg, Free Press, CWA, and Greenlining Institute are flawed); ACA Connects Reply at 7-8 (agreeing with AT&T's criticism of *The Markup* article); Free State Foundation at 6-7 (finding that *The Markup*, USC Annenberg, and NDIA Cleveland Redlining studies have major shortcomings); NDIA Comments at 11 (refuting the ITIF study "Broadband Myths: Do ISPs Engage in Digital Redlining?").

variety of other studies or sources of data as evidence that may help demonstrate or refute that digital discrimination of access actually exists.[518] As the record is mixed and does not conclusively indicate that some sources of data are more robust or helpful than others, we will evaluate all data relevant to a claim of digital discrimination of access on a case-by-case basis, including all Commission and external data sources and studies.[519]

168. With particular respect to Commission data collections, the record reflects there could be many productive ways for us to use them both individually and in conjunction with other sources of data. Commenters suggest, for example, that we could analyze data from Commission broadband maps, broadband consumer labels, the Affordable Connectivity Program, the Lifeline program, or the Consumer Complaint Center to identify possible violations of our rules, identify possible subjects of investigation, or highlight existing disparities in deployment.[520] Commission data collections coupled with data collected outside the Commission could also provide helpful insight. For example, comments advise that cross referencing and overlaying various data sets,[521] using state broadband maps or Census Bureau

[518] *See, e.g.*, California Public Utilities Commission Comments at 12, 17, Appx. A (providing analysis that it purports to demonstrate a disparate impact amongst the two largest broadband providers in California); NCTA Comments at 33 ("In fact, according to a 2022 NTIA survey, a leading reason provided by Americans who have not adopted broadband is that they 'don't need' or are 'not interested' in subscribing to available broadband service."); R Street Institute Comments at 4 (discussing a GAO report that found nearly a third of households with access to broadband do not subscribe to it); Greenlining Institute at 4 (referencing a 2014 GAO study on usage-based pricing that show the particular burdens such an approach causes for low income consumers); NDIA Comments at 11, 13 (refuting an ITIF study believing that research from Consumer Reports, the California Community Foundation, and *The Markup* article could be helpful to the Commission).

[519] Leadership Conference on Civil and Human Rights et al. Comments at 7 (suggesting that we should "look to external data sources and studies to evaluate claims of digital discrimination and inform Commission's efforts"); NTIA *Ex Parte* at 16-17 (recommending "that the Commission remain open to evaluating all evidence, including external academic studies, on the merits" and that commenters asking that we "preemptively rule out the use of outside research in digital discrimination inquiries seem to misunderstand the nature of these studies and how they might be used in practice"). Moreover, as to the existence (or not) of digital discrimination of access, we simply note that Congress directed the Commission to adopt rules on a short deadline to "prevent" and identify steps to "eliminate" digital discrimination of access. Arguments that such discrimination does not occur or does not exist should have been directed to Congress. The Commission's charge is to execute on the mandate we were given by Congress, and we intend to do that.

[520] *See, e.g.*, Leadership Conference on Civil and Human Rights et al. Comments at 7; CTIA Comments at 17 (suggesting that the Commission should take into account technical and economic feasibility, in part, by relying on new broadband maps and other existing sources of data); NCTA Comments at 33 (suggesting that "[t]he Broadband DATA map, coupled with the Broadband Deployment Locations map, will provide the key authoritative and objective basis with which to assess broadband deployment" and that the Commission could leverage Form 477 data and information from the broadband consumer labels proceeding); U.S. Chamber of Commerce at 6 (arguing that the Commission should use the "informal consumer complaints [and]. . . the Broadband Data Collection Program to highlight any broadband deployment disparities"); USTelecom Comments at 15-16 (suggesting we track where federal subsidies are being used to deploy broadband, which is required section 60105 of the Infrastructure Act and we could use it in Commission maps to identify low-income or racially diverse areas lacking access to broadband); Benefits Data Trust Comments at 2 (offering the suggestion that we "conduct [our] own data analysis of discriminatory broadband pricing"); California Emerging Technology Fund Comments at 6 (suggesting we not rely on mapping data but performance based metrics instead); Verizon Comments at 31 (suggesting the BDC and broadband consumer labels provide enough information to analyze claims of digital discrimination of access).

[521] *See, e.g.*, National Urban League et al. Reply at 5-6 (arguing that the Commission should use many data sets and that "[t]his will require not only collecting and utilizing the data in enforcement, but also cross-referencing and overlaying the different data sets."; Leadership Conference on Civil and Human Rights et al. Comments at 7 (suggesting that studies that follow the rulemaking could be "overlayed with internal FCC data"); NCTA Comments at 33 (suggesting we cross reference Form 477 data and information from broadband consumer labels with Census data).

information in conjunction with Commission maps,[522] or comparing information submitted to the Commission, state, or local agencies with information a covered entity publishes regarding their service, could also help the Commission assess digital discrimination of access claims.[523]

169. The Commission may also require new data collection in the future that could be helpful to analyzing comparability. As explained in the accompanying *Further Notice*, we propose to make new data available through an annual supplement to the BDC.[524] Our proposed annual supplement would report (on a state-by-state basis) all major deployment, upgrade and maintenance projects completed or substantially completed in the preceding calendar year, including the nature and size of the project and identification of the communities served by the project, and could be useful to our comparability analysis if adopted.[525] We also propose requiring covered entities to implement internal compliance programs that would require covered entities to identify the communities served by recently completed, pending and planned major projects, conduct comparability analysis, and identify whether relevant policies and practices are differentially impacting consumers' access to broadband.[526] This would require covered entities to conduct project evaluations, analyze their policies and practices, and conduct other internal monitoring and auditing that could help remove "invisible" impediments to equal broadband access.[527]

170. We decline at this time to modify current Commission data collections or undertake new data collections. Various commenters suggest that we modify Commission data collections to aid our analysis of possible digital discrimination of access, such as by undertaking a new data collection under the Affordable Connectivity Program to allow for disaggregation of program participants by demographic group, or modifying broadband maps so consumers could more easily determine if they have "comparable" broadband service at their street address.[528] Commenters also suggest we should collect

[522] Leadership Conference on Civil and Human Rights et al. Comments at 7 (arguing that we should use state and federal resources and that "[s]tate broadband maps used in combination with the FCC's maps can help the [C]ommission find areas of particular concern when there are discrepancies in federal and state data").

[523] National Digital Inclusion Alliance and Common Sense Media Comments at 10 (suggesting that factor the Commission should consider to determine the geographic area to analyze an alleged claim of digital discrimination of access should be "[t]he area in which the provider suggests they offer (or could offer) service, as evidenced by marketing material; service area attestations to federal, state, or local agencies (e.g., FCC BDC); grant applications; and other documented information").

[524] *Notice* at 30, para. 51 ("What steps can the Commission take, including making new data available, to enable individuals and communities to identify digital discrimination of access?").

[525] *Infra* Part IV.A.1.

[526] *Infra* Part IV.A.2.

[527] *Id.*

[528] *See, e.g.*, Benefits Data Trust Comments at 2, 7-8 (suggesting we consider following data collection guidance from the Office of Management and Budget when collecting this data to identify trends and inform our analysis of digital discrimination of access and how to address it); NMHC and NAA Comments at vi, 19 ("[M]ore work needs to be done to improve the broadband maps, so that potential subscribers can readily determine which provider or providers deliver "comparable" service[] not just [in] the general area in which they live[.]"); Asian Americans Advancing Justice Comments at 2 ("There are very few digital divide studies that include AAPIs in their analysis, and the few that do fail to address the needs and challenges that lower income and non-English speaking groups face,[.]"); Greenlining Institute Comments at 7 (recommending we collect additional consumer level data providers with the goal of having increased granularity in the data collected to identify instances of digital discrimination of access); Joint Advocates at 29 (arguing that the Commission should collect more varied sets of data from a greater variety of sources, as well as collect information on pricing and contractual terms and conditions and overlay it with US Census data, as we cannot do this with the information currently collected); WISPA Comments at 23-24 (arguing that we "should add layers to the Broadband Serviceable Location Fabric that will help [the Commission's] [b]roadband [m]aps readily identify areas where the digital divide persists").

new data to compare advertised and charged pricing.[529] Since the Commission currently has at its disposal a number of data collections and potential data sources that may assist in our analysis of digital discrimination of access claims, it is unclear whether a new data collection's burdens would outweigh its potential benefits.[530] As we gain greater experience investigating digital discrimination of access claims, we will evaluate the adequacy of current data collections and other data sources and will determine whether new data collections or modifications of existing data collections might be warranted.[531]

G. Other Issues

171. At this time, we decline to take action in the other policy areas identified in the record where there is possible intersection with the issues we address in this proceeding. In the *Notice*, we invited comment on various record proposals, including potential action in different Commission proceedings, which could potentially help the Commission fulfill our statutory mandate.[532] We received numerous proposals that address action we can take on Tribal lands, possible outreach efforts, and organizational changes we should make to promote our efforts to combat digital discrimination of access.[533] In addition, commenters suggested further action related to broadband service in multiple tenant environments (MTEs),[534] spectrum availability,[535] spectrum policy,[536] the Affordable Connectivity

[529] *See, e.g.*, Free Press Comments at 17-18 (arguing that collecting data on advertised prices and the prices actually charged to consumers could reveal discriminatory conduct).

[530] *See, e.g.*, NCTA Comments at 33 ("To assess the state of broadband access, the Commission should rely on existing data collections and not impose duplicative and burdensome new data collections for the purposes of this proceeding. The Commission already has numerous tools for determining the availability and quality of service of broadband offerings."); CTIA Comments at 17 (suggesting that we rely on the BDC and other current data collections because a new data collection "would be premature and impose unnecessary economic burdens"); USTelecom Reply at 22 (agreeing with NCTA that "the Commission already has numerous tools for determining the availability and quality of service of broadband offerings" and arguing that we should not collecting pricing data); Verizon Reply at 24-25 (arguing we should not impose a new data collection because the Commission has sufficient information between the BDC and broadband consumer labels to conduct comparability analysis to assess claims of digital discrimination of access).

[531] *See* Americans for Tax Reform and Digital Liberty Comments at 4-5 (providing that it could not find data to indicate that adoption rates are lower due to income and that the Commission should consider collecting information on adoption, but that this data should be available to us by analyzing mapping data in conjunction with US Census data); TURN Reply at 14-15 (explaining that current information collections are helpful but have reliability issues). We note that commenters disagree as to the authority that broadband consumer labels provide for imposing a new BDC. *See* USTelecom Comments at 33 (arguing that we cannot rely on broadband consumer labels as a source of authority); Free Press Reply at 14 (disagreeing with USTelecom's reasoning and explaining that broadband consumer labels does not preclude the Commission from collecting new data to uncover and understand instances of digital discrimination of access).

[532] *Notice* at 45-47, paras. 83-86.

[533] *See* Public Knowledge et al. Comments at 77-79 (recommending several steps that can be taken to eliminate digital discrimination on Tribal lands); WISPA Reply at 33 (suggesting the Commission "make its Enhanced Competition Incentive Program ("ECIP") mandatory," to help address digital discrimination on Tribal lands).

[534] *See* INCOMPAS Reply at 7-9 (arguing that the Commission "must continue to address provisions and practices that have erected market entry barriers in MTEs" that prevent competition); WISPA Comments at 25-29; City and County of San Francisco Reply at 1-2; TechFreedom Comments at 47-48; Lumen Reply at 14-15; Public Knowledge et al. Comments at 72-73; National Urban League et al. Reply at 3-4. *But see* NMHC and NAA Comments at 22-24 (writing that further action on MTE's is not required nor advisable).

[535] CTIA Comments at 14-15 (suggesting that the replenish spectrum pipeline and improve federal spectrum coordination); TechFreedom Comments at 47-48; T-Mobile Comments at 21-23.

[536] Public Knowledge et al. Comments at 66-72 (suggesting various spectrum-related policies for the Commission to address digital discrimination of access).

Program,[537] other Commission funding programs,[538] the Commission's broadband speed benchmark,[539] the BDC maps,[540] and various suggestions that commenters argue would aid infrastructure deployment,[541] such as revising the Commission's rules for small wireless facilities,[542] pole attachments,[543] section 214 discontinuances,[544] and cable franchising,[545] and addressing other local and federal regulatory barriers.[546]

[537] U.S. Chamber of Commerce Comments at 8 ("[T]he Commission should focus on the fact that the Affordable Connectivity Program ('ACP') is expected to run out of funds sometime in the next year, and should prioritize working with Congress to ensure that the ACP is extended."); American Association of People with Disabilities Comments at 4 (encouraging Commission to "examine ways that the ACP could be used to cover devices, particularly assistive technology for disabled people."); R Street Institute Comments at 3; National Urban League et al. Reply at 5.

[538] *See* CTIA Comments at 14-15 (suggesting that under existing authority the Commission prioritize USF support to "areas within the categories identified by section 60506 where market forces alone have proven insufficient."); Public Knowledge et al. Comments at 73-77 (suggesting the Commission use the E-Rate and High-Cost programs to combat digital discrimination); ACA Connects Comments at 7-8; TechFreedom Comments at 47-48; R Street Institute Comments at 3; ACLU Reply at 17-18; California Public Utilities Commission Comments at 15; Free Press Comments at 34-35; American Association of People with Disabilities Reply at 10-12 (rec. Apr. 20, 2023).

[539] National League of Cities Comments at 3 (suggesting that the Commission "revisit its broadband speed definition"); American Association of People with Disabilities Reply at 7-8.

[540] USTelecom Comments at 14-15 (suggesting that the Commission can remove barriers to deployment by "[c]ontinuing to improve the Broadband Data Collection . . . maps regarding broadband availability"); NMHC and NAA Comments at 19-22.

[541] *See* Joint Advocates Comments at 33-35 (asking that the Commission revisit its copper requirement policies and also reverse the elimination of certain unbundling requirements related to fiber deployments in the *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Report and Order, 35 FCC Rcd 12425 (2020)).

[542] *See* National League of Cities Comments at 4 (suggesting the Commission revisit the September 2018 *Declaratory Ruling and Third Report and Order* on small wireless facilities because the Commission "encroach[ed] on local governments' leverage to require or incentivize broadband infrastructure deployment by inappropriately limiting local franchises and permitting processes."); Local Governments Comments at 4; North Suburban Communications Commission Reply at 2-3; *see also* TechFreedom Comments at 47-48 (recommending that the Commission "mak[e] 5G deployment easier")*; but see* INCOMPAS Reply at 9-12 ("If the FCC were to repeal or revise the Declaratory Ruling, it would erect new barriers to deployment, which would conflict with the Commission's goal of increasing digital access.").

[543] INCOMPAS Reply at 6 (identifying pole attachments as a "significant barrier to deployment" for is members); TechFreedom Comments at 47-48; T-Mobile Comments at 22-23.

[544] USTelecom Comments at 14-15 (suggesting the Commission "[revise] the [s]ection 214 discontinuance process in locations where there are government funded competitors to better reflect current network and market conditions and working with states to remove carrier of last resort ('COLR'), eligible telecommunications carrier, and other similar obligations in similar circumstances").

[545] *See* National League of Cities Comments at 4 (suggesting that the Commission revisit *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Third Report and Order, 34 FCC Rcd 6844 (2019)); Local Governments Comments at 4; North Suburban Communications Commission Reply at 2-3.

[546] CTIA Comments at 15 ("Eas[e] infrastructure deployment, including through streamlining permitting"); Lumen Reply at 15 (suggesting that the Commission consider "targeted preemption and other potential reforms to legacy state laws and practices that hinder deployment."); T-Mobile Comments at 22-23; U.S. Chamber of Commerce Comments at 8; USTelecom Comments at 14-15; Block Communications, Inc. Reply at 5; INCOMPAS Reply at 6-7; TechFreedom Comments at 47-48; ACA Connects Comments at 7-8. *But see* National League of Cities Comments at 4 (urging the Commission to "to preserve and strengthen local governments' permitting, rights of way management, and franchise processes").

The Commission's primary focus at this time is to implement effective rules to address digital discrimination of access within the deadline set by Congress. However, we will continue to consider the thoughtful proposals on the record that are not addressed in other sections of this *Report and Order* or in the accompanying *Further Notice*. Our decision to refrain from taking further steps today in those proposals does not reflect any policy or legal conclusions regarding these matters.[547]

172. Although we are not adopting any other record proposals at this time, we note that states and localities can rely on several resources made available to them to address digital equity, such as the Infrastructure Act's broadband funding for states, the National Broadband Map, and the Broadband Funding Map. First, we recommend that states and localities tap in fully to the funding allocated to states and localities to address broadband equity. On June 26, 2023, NTIA announced how it allocated funding to all 50 states, the District of Columbia, and five U.S. territories to deploy affordable, reliable high-speed internet service to everyone in America.[548] States and other jurisdictions will use funding from the Infrastructure Act's $42.45 billion Broadband Equity, Access, and Deployment (BEAD) program to administer grant programs within their borders.[549] We strongly encourage states and other jurisdictions to make full use of the available BEAD funding in order to expand broadband access in hard-to-build areas, increase broadband affordability, and strengthen digital literacy within their respective borders. While these issues are distinct from digital discrimination of access as we have defined it, full utilization of BEAD funding might reduce the instances in which consumers believe they are experiencing digital discrimination of access and thus reduce the burdens on industry participants and the Commission in addressing digital discrimination of access claims.

173. Second, in addition to the CEDC recommendations discussed below,[550] we recommend that states and localities utilize the National Broadband Map to identify unserved and underserved communities. We find, based on the record, that states and localities could benefit from available resources to help them identify unserved and underserved communities and develop solutions to address digital discrimination of access.[551] The National Broadband Map displays where broadband internet

[547] Some commenters, in addition to advocating for the Commission to expand upon the listed characteristics Congress included in section 60506(b), ask that the Commission more broadly address concerns over exposure to radiofrequency energy. *See, e.g.*, Advocates for the EMS Disabled Comments at 2-10. This topic is outside the scope of the current proceeding, and we refer commenters to the Commission's website for more information. Federal Communications Commission, *Radio Frequency Safety*, https://www.fcc.gov/general/radio-frequency-safety-0 (last visited Nov. 14, 2023); *Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields; Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies, Targeted Changes to the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, ET Docket Nos. 03-137, 13-84, and 19-226, Resolution of Notice of Inquiry, Second Report and Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 34 FCC Rcd 11687 (2019).

[548] *See* Biden-Harris Administration Announces State Allocations for $42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda, https://broadbandusa.ntia.doc.gov/news/latest-news/biden-harris-administration-announces-state-allocations-4245-billion-high-speed.

[549] The BEAD funding will be used to deploy or upgrade broadband networks to ensure that everyone has access to reliable, affordable, high-speed internet service. Once deployment goals are met, any remaining funding can be used to pursue eligible access-, adoption-, and equity-related uses. *See* Biden-Harris Administration Announces State Allocations for $42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda, https://broadbandusa.ntia.doc.gov/news/latest-news/biden-harris-administration-announces-state-allocations-4245-billion-high-speed.

[550] *See infra* Part III.H.

[551] *See* Free State Foundation Comments at 23-24 (recommending that the Commission holds regular meetings by and among ISPs with stakeholders such as community leaders, labor organizations, and faith-based organizations to identify unserved and underserved areas and households as well as to develop solutions to overcome barriers to access); Next Century Cities Reply at 5.

services are and are not available across the country.[552] The map is one step in an ongoing, iterative process that will involve the submission of data by providers, challenges from third parties and the public, and verifications and audits by the Commission. The maps produced through this process will continually improve and refine the broadband availability data relied upon by the Commission, other government agencies, and the public, as required by the Broadband DATA Act. An accurate map will help identify the unserved and underserved communities most in need of expanded access to broadband internet access service.

174. Third, we recommend that states and localities use the Broadband Funding Map to gain insight into the broadband infrastructure deployment projects funded by the Federal government throughout the United States and Territories. The Broadband Funding Map overlays the availability data reported on the National Broadband Map with the funding data to show locations receiving federal program support. Finally, we decline at this time to establish an Office of Civil Rights within the Commission, as several commenters have urged us to do.[553] We recognize the potential benefits of establishing such an office, however, and therefore seek further focused comment in the accompanying *Further Notice of Proposed Rulemaking*.[554]

H. State and Local Model Policies and Best Practices

175. As proposed in the *Notice*, we adopt as guidelines for states and localities the best practices to prevent digital discrimination and promote digital equity recommended by the Communications Equity and Diversity Council (CEDC).[555] Section 60506(d) of the Infrastructure Act directs the Commission to "develop model policies and best practices that can be adopted by states and localities to ensure that broadband internet access service providers do not engage in digital discrimination."[556] To help fulfill this direction, in December 2021, Chairwoman Rosenworcel tasked the CEDC with issuing recommendations on the subjects specified in section 60506(d).[557] In furtherance of that mission, the CEDC "took the lead in facilitating interviews, public events, and town hall meetings with multiple stakeholders, from community leaders to industry experts, state broadband directors, foundations, school district leaders, HBCUs, faith-based organizations, small-, minority-, and women-business owners, concerned citizens, and representatives of historically marginalized groups."[558] The CEDC members "actively sought out the perspectives of the aforementioned groups and listened attentively to their experiences, challenges and aspirations."[559] More specifically, the CEDC's Digital Empowerment and Inclusion (DEI) Working Group issued a report (the CEDC report) recommending both (1) model policies and best practices to prevent digital discrimination by broadband providers, and (2) best practices to advance digital equity for states and localities. On November 7, 2022, the members

[552] *See* Free State Foundation Comments at 23-24 (recommending that the Commission holds regular meetings by and among ISPs with stakeholders such as community leaders, labor organizations, and faith-based organizations to identify unserved and underserved areas and households as well as to develop solutions to overcome barriers to access).

[553] Lawyers' Committee for Civil Rights Under Law Comments at 40; Leadership Conference on Civil and Human Rights et al. Comments at 8; National Urban League et al. Comments at 9; Public Knowledge et al. Comments at 4.

[554] *See infra* section IV.B.

[555] The report is attached as Appendix D.

[556] 47 U.S.C. § 1754(d).

[557] *See* Appx. D at 63; *see also Agenda Released For February 23, 2022 Virtual Meeting Of The Communications Equity And Diversity Council*, Public Notice, DA 22-164 (MB Feb. 16, 2022).

[558] *See* Letter from Heather Gate, Chair, Communications Equity and Diversity Council, to Chairwoman Jessica Rosenworcel at 1 (June 21, 2023) (on file at https://www.fcc.gov/sites/default/files/cedc-chair-to-fcc-chair-transmittal-letter-report-06152023.pdf) (CEDC Chair Letter).

[559] *See id.*

of the full CEDC voted unanimously in favor of adopting the report for submission to the Commission.[560] We now adopt both sets of recommendations as guidelines for states and localities, in fulfillment of section 60506(d), while emphasizing that our action does not limit states and localities from taking additional steps to prevent and eliminate digital discrimination of access beyond those set forth in the CEDC report and adopted in this *Report and Order*.

176. As we explained in the *Notice*, the six CEDC recommendations in its report "Model Policies and Best Practices to Prevent Digital Discrimination by ISPs" reflect the perspective of the industry, public interest stakeholders, local government representatives, and others. We conclude that adopting these consensus recommendations will be effective in addressing digital discrimination of access at the state and local level.[561] Additionally, the thirteen recommendations in the report's "Best Practices to Advance Digital Equity for State and Localities" reflect the consensus of industry and public interest stakeholders, and we find that they can serve as an effective framework for states and localities to advance digital equity.[562]

177. We strongly encourage states and localities to implement these recommendations as a starting point, as we find that they can serve as an effective framework to advance digital equity. The record reflects widespread support for adopting both sets of recommendations.[563] We agree with the Texas Coalition of Cities that the CEDC report's "Best Practices to Advance Digital Equity for State and Localities" recommendations appropriately focus on broadband and device programs, disseminate information and increase participation in federal broadband affordability programs, integrate existing social service supports with broadband services and create digital navigator programs where feasible.[564] And as the U.S. Chamber of Commerce highlights, states and localities can adopt these model policies and practices at their discretion.[565] Local Governments cautioned that while we should adopt the CEDC Report recommendations, we should also recognize the potential limits of states and local authorities to adopt those policies, in-part due to a lack of resources.[566] While states and localities may still face potential limitations in implementing these recommendations, we envision that the aforementioned funding will be a good starting point for jurisdictions to begin taking the necessary steps to prevent and eliminate digital discrimination of access. Lastly, as noted by USTelecom, our approach affords us the opportunity to study the effects of implementation of those best practices by states and localities and determine whether further action on this front is warranted.[567]

178. We disagree with arguments submitted by several commenters that we should refrain

[560] *See* Appx. D at 12.

[561] *See Notice* at 50, para. 94.

[562] *See id.* at 51, para. 95.

[563] *See* NCTA Comments at 4; North Suburban Communications Commission Reply at 3; Benefits Data Trust Comments at 4, 10-11; Competitive Enterprise Institute Reply at 6 (encourages the adoption of the recommendations to "clear[] away state and local regulatory underbrush that impedes deployment"); Local Governments Comments at 25.

[564] *See* Texas Coalition of Cities et al. Reply at 9-10.

[565] *See* U.S. Chamber of Commerce Comments at 3.

[566] *See* Local Governments Comments at 25-26 (urging the Commission to recognize that many local governments will lack the resources and/or authority to implement the Model Policies and to take steps to address those potential limitations).

[567] We acknowledge that some states and localities may currently lack the necessary resources or authority to adopt and implement the CEDC report recommendations, but we note that the recommendations can be adopted and implemented at any time at the discretion of the governmental entity involved, such as when additional authority is provided or when additional resources are made available. *See* USTelecom Comments at 15; *see also* Local Government Comments at 25; Public Knowledge Reply at 5.

from adopting the recommendations in the CEDC report at this time in part due to the limited representation of local and state officials in the CEDC.[568] We note that the CEDC's working group members did include some state and local representation and its Report was unanimously adopted.[569] In addition, the CEDC members were diligent in their research, and they interviewed several local and state officials to develop their recommendations.[570] The members conducted more than 30 virtual interviews and relied upon data and research by scholars, organizations, and state and local governments that have driven digital equity and inclusion scholarship.[571] The members also analyzed research publications and other publicly available documents issued by a variety of government agencies, academics and think tanks, and advocacy organizations to help inform their development of best practices and model policies to prevent digital discrimination and to promote digital equity.[572] Among other sources, members reviewed federal guidance programs and broadband adoption initiatives, including partnerships between state and local governments and internet service providers in response to the pandemic.[573] While we understand the concerns with the limited representation from state and local governments, we find unpersuasive assertions from some commenters that the recommendations from the CEDC report therefore should not be adopted on this basis. The methodology used to develop both sets of recommendations took into consideration the input and expertise from states and localities to better understand their experiences and lessons learned so that other jurisdictions might adopt and implement their successful strategies and methodologies and avoid their mistakes. We encourage state and local officials responsible for broadband expansion efforts to monitor the proceeding and engage with the rechartered CEDC.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Affirmative Obligations

179. Today we take additional steps in this *Further Notice* to fulfill our statutory mandate to facilitate equal access to broadband internet access service by preventing digital discrimination of access. We seek further, focused comments on affirmative obligations that might be undertaken by broadband service access providers (providers)[574] to expand broadband access and address possible digital discrimination of access. The proposals in this *Further Notice* complement rules we adopt today by focusing on providers' day-to-day business practices that might, in some instances, differentially impact consumers' access to broadband on prohibited bases. Our proposals are intended to make fully transparent to the public what communities are served, and what communities are not served, by large-scale broadband deployment, upgrade, and maintenance projects completed or substantially completed by

[568] *See, e.g.*, Public Knowledge Reply at 4 (agreeing with other commenters that the Commission should not adopt the CEDC recommendations because it lacked formal coordination with state and local officials); Next Century Cities Comments at 16-17 (arguing that state and local model codes and best practices can only be created in consultation with those who are intended to adopt them); TURN Comments at 26-28 (suggesting that the Commission should incorporate more state and local perspectives to generate the complementary and dual role that Congress set out in section 60506); California Public Utilities Commission Reply at 13 (recommending that the Commission should look to the knowledge and local conditions and expertise of state and local agencies to collaborate on enforcement efforts).

[569] *See* Appx. D at 3-8.

[570] *See* CEDC Chair Letter at 1.

[571] *See* Appx. D at 24.

[572] *See id.* at 25.

[573] *See id.*

[574] Our digital discrimination of access rules apply to "covered entities" which is broader than broadband providers, but at this time our proposed annual report and compliance program are limited to broadband providers as defined in 47 CFR § 54.1600(b).

each provider over the preceding calendar year. We propose to require the reporting of this information on a state-by-state or territory-by-territory basis in a yearly supplement to the BDC so the public can see not only where broadband service is available, but where and how providers are currently investing in their broadband networks and what communities are benefiting from those investments. Our proposals would also require providers to establish formal compliance programs related to digital discrimination of access and to conduct regular, internal assessments of what communities are served (and not served) by recently completed, pending, and planned large-scale broadband projects and whether their relevant policies and practices might differentially impact consumers' access to broadband service. Such regular assessments, we believe, will help "smoke out" policies and practices that might impede equal access to broadband service without sufficient technical or economic justification as providers pressure test the asserted justifications for policies and practices producing such effects. Affirmative obligations such as these are not foreign to the Commission. Most recently, for example, the Commission has adopted affirmative obligations for voice service providers to better police their own networks against illegal robocalls and protect consumers from widespread fraud,[575] and we believe that targeted affirmative and effective measures can similarly combat discriminatory practices in the context of our duty under section 60506 to prevent and identify steps to eliminate digital discrimination of access.

180. In this *Further Notice*, we propose two sets of affirmative obligations for broadband providers in furtherance of our mandate to facilitate equal access to broadband internet access service, including by preventing digital discrimination of access. Under our proposal, each broadband provider would be required to: (1) submit an annual, publicly-available supplement to the BDC describing, on a state-by-state or territory-by-territory basis, any large-scale broadband deployment, upgrade, and maintenance projects that were completed or substantially completed during the preceding calendar year and the communities served by such projects; and (2) establish a mandatory internal compliance program requiring regular internal assessment of (a) what communities are served by recent, pending, and planned large-scale projects and (b) whether the provider's broadband-related policies and practices might differentially impact consumers' access to broadband based on a listed characteristic and without adequate technical or economic justification.

181. *Legal Authority.* We seek general comment on our authority to require providers to implement affirmative obligations. Section 60506 directs the Commission to adopt rules to prevent digital discrimination of access and identify necessary steps to eliminate such discrimination. Does section 60506 authorize the Commission to impose affirmative obligations on providers? Does the Communications Act provide the Commission such authority, irrespective of whether section 60506 is part of the Communications Act? Does section 4(i) of the Communications Act provide the Commission either direct or ancillary authority to do so? Besides these legal authorities, are there other sources for our authority to implement affirmative obligations of the types set forth below?

1. Annual Report

182. We propose requiring that providers submit an annual, publicly-available supplement to the BDC describing their recent broadband investments in each state and territory. This supplemental report would identify and describe, on a state-by-state or territory-by-territory basis, all fixed or mobile broadband deployment, upgrade, and maintenance projects completed or substantially completed in the preceding calendar year, that are expected to affect the availability or quality of broadband service at 500 or more housing units.[576] The report would categorize each such project as a deployment, upgrade, or maintenance project (or some combination thereof) and would identify the number of housing units affected by the project through numerical bands (such as 500-999, 1000-4999, 5000-9999, etc.). The

[575] *See* 47 CFR § 64.1200(n).

[576] A "housing unit" is defined as a single family house, townhome, mobile home or trailer, apartment, group of rooms, or single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters. *See* 31 CFR § 802.223.

report would identify through the census tract affected by the project, and would provide a brief narrative description of the project and the geographic area served by the project to provide greater precision and clarity regarding what the project is designed to accomplish and what communities are served by the project. The primary goal of requiring this report would be to increase transparency regarding what substantial investments providers are currently making in their networks, what communities are being served—or not served—by those investments, and how they are being served. The information provided in the annual supplement to the BDC would allow the Commission, state and local broadband regulators, public interest organizations, and other stakeholders to review on a jurisdiction-by-jurisdiction basis what major deployment, upgrade, and maintenance projects covered entities have completed or substantially completed within the states and territories of their footprint and what communities are and are not served by those projects. We believe this information would assist in the development of broadband policy, in the strengthening of advocacy for broadband expansion, and in the targeting of our efforts to enforce our digital discrimination of access rules.

183. In the *Notice*, we sought comment on what self-assessment or reporting obligations we should require of providers.[577] In response, the Leadership Conference on Civil and Human Rights suggested that we look to other sources of civil rights law to develop affirmative obligations,[578] Microsoft recommended that providers use Commission data to formulate plans to address digital discrimination of access,[579] and several commenters recommended self-reporting requirements.[580] Based on the comments received in the record, we believe our steps in this *Further Notice* are consistent with recommendations for self-reporting and will result in useful data to stakeholders. We seek comment on this approach.

a. Components of Report

184. We propose that each annual report must address the following components to provide a comprehensive picture of each major deployment, maintenance, and upgrade project completed or substantially completed for each state and territory within its service area or footprint: (1) the nature of each project completed or substantially completed in the calendar year immediately preceding the submission of the report (i.e., deployment, upgrade, maintenance, or a combination thereof); (2) the number of housing units affected by the project (i.e., the number of housing units whose broadband availability or quality is positively impacted by the project) by census tract (utilizing the system presently used in the BDC); and (3) a narrative description of the project and of the areas served by the project, to allow for greater precision and clarity regarding what the project is designed to accomplish and what communities are served by the project

185. We seek general comment on the pros and cons of an annual report in the context of this proceeding. What are the short-term and long-term benefits of this proposal? Is there a more appropriate way to collect this information other than an annual report? Is there a way we can utilize existing data in connection with or in place of the proposed annual report to promote transparency regarding broadband investments? How could regulators leverage these reports to address potential disparities in broadband

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[577] *Notice* at 45, para. 82.

[578] Leadership Conference on Civil and Human Rights et al. Comments at 3 (suggesting we look at other agencies civil rights laws, such as the Affirmatively Furthering Fair Housing (AFFH) provision of the FHA).

[579] *Notice* at 43, para. 79; Microsoft May 16, 2022 Comments at 6-7.

[580] Lawyers' Committee for Civil Rights Under Law Comments at 28 (stating that the Commission should study a provider's operations or require them to share their practices for accountability purposes); Local Governments Comments at 22 (urging us to adopt affirmative obligations that encourage build-out of broadband infrastructure); TURN Reply at 13. *See also* National Urban League Oct. 5, 2023 *Ex Parte* at 3 (stating that "[internet service providers] should file an annual certification with the FCC, signed by an executive of the company with responsibility for the provider's compliance with the FCC's digital discrimination rules confirming that the provider has established policies and operating procedures designed to facilitate compliance with [the digital discrimination of access] rules.").

access? Are there other stakeholders that would benefit from such a report? Are there other uses for such a report that would foster the equal access policy of section 60506? Are there other potential benefits or challenges in implementing an annual reporting requirement?

186. We also invite comment on the proposed components of the annual report, discussed in turn below. Are they sufficient? Are there other components that are necessary to meet our transparency goal. Are any of the proposed components in conflict or tension with the equal access goal of section 60506? What other reasons or justifications might exist for excluding one or more of the proposed components of the report? Would there be challenges in implementing this proposal and if so, how can the challenges be addressed? We seek comment on how to strike the right balance between gathering sufficient information and avoiding undue burdens on reporting entities when implementing this annual report requirement.

187. *Nature of the projects*. In identifying the nature of the projects completed or substantially completed in the report, our proposal would require that providers identify any broadband deployment, upgrade, or maintenance projects undertaken within the specified period and affecting 500 or more housing units. We believe that deployment, maintenance, and upgrade projects are the type of investments that most broadly and directly affect consumer access to broadband service and, thus, should be reported in order to facilitate greater transparency regarding where such investments are being made. We seek comment on this proposal. We propose to deem a project *completed* when all the tasks and objectives have been successfully completed, all deliverables have been produced, all milestones have been met, and there is no outstanding work or tasks to be done. We also seek comment on what should be considered a substantially completed project. For example, should we define substantially completed as being a project for which, at the providers' discretion, either 85% of the impacted locations are covered, or for which 85% of the most recent budget with commercial approval has been spent? Should the difference between the definitions of substantially completed and completed be based on providers expected timeline for a project?

188. *Housing units affected*. We propose that the reporting requirement apply to projects affecting 500 or more housing units. We propose to use the definition of a "housing unit" in Commission rule 802.223, which defines the term as "a single family house, townhome, mobile home or trailer, apartment, group of rooms, or single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters."[581] We seek comment on this definition. Based on this proposed definition, we seek comment on what number of housing units should trigger the requirement to report on a particular project. Is the number 500 reasonable in light of our transparency goal? Should the same threshold number of housing units apply to deployment, upgrade, and maintenance projects? Should different thresholds be applied to each category? Once the 500 housing unit threshold is met, is categorizing housing units in metric bands (e.g., 500-999, 1000-4999, 5000-9999) an effective method to report the scope of the deployment, maintenance, or upgrade projects? We specifically seek comment on the potential impacts on rural and Tribal areas. Should there be special considerations for rural and Tribal areas? If so, how can we ensure that these areas are being considered?

189. *Geographic area of the project.* We seek comment on requiring providers to report the geographic area of each major deployment, upgrade, and maintenance project by census tract. Would reporting projects at the level of the census tract be appropriate? What benefits and burdens would be associated with reporting data at the census tract level? Would census block be too granular? Should providers be required or permitted to report impacted locations in the same manner as they report deployed locations in the BDC? Since the BDC allows providers to report availability data in the form of polygon shapefiles, or as broadband serviceable location fabric (fabric),[582] would adopting either one of

[581] *See* 47 CFR § 54.1600(l). An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household.

these metrics reduce the burden on filers? In what format do covered entities routinely store data on deployments, upgrades, and maintenance projects? To the extent covered entities do not routinely collect and store such information, we seek comment on how to specify a single methodology for doing so.

190. We also seek comment on whether there are more precise metrics to identify the location of projects in rural and Tribal areas than the proposed census tract metric.[583] Are there any additional issues specific to rural and Tribal areas that we should consider in completion of these annual reports? Would a census block requirement be workable? Would it encompass rural and Tribal areas more efficiently? Should providers be required to identify whether the impacted area is rural or Tribal and, if so, how should they do that? Should covered entities be required to specifically describe their projects in Tribal areas, irrespective of the number of housing units served by the project?

191. *Narrative description of project.* We propose that providers use the narrative description to provide information regarding each project sufficient to determine what the project was designed to accomplish, why it was undertaken, and what communities within the designed census tracts it was intended to serve. In particular, the designation of a project as a deployment, upgrade, or maintenance project may not sufficiently explain what the project was intended to accomplish (e.g., upgrade service from DSL to fiber) or the specific communities within the designated census tracts that will be served by the project (e.g., naming the neighborhoods served or providing the geographic boundaries of the project). By requiring the narrative description of the project, we intend to allow greater precision and clarity about the nature of the project and the communities served, without being overly prescriptive. We seek comment on this proposal. Should we be more prescriptive about the narrative descriptions required? Should we require, for example, that providers describe the demographics of the communities served by these projects and/or the dates the projects were completed or substantially completed? Is there other narrative information we should require in order for the reporting requirement to serve its intended purpose of providing greater transparency regarding recent broadband investments? More generally, is a report of the type we propose necessary or helpful in light of the data already being collected through the BDC?

b. Annual Report Filing Timeline

192. We propose to require providers to file their annual report as a supplement to the BDC report due in March of each year and that it cover projects completed or substantially completed in the calendar year immediately preceding the submission of the report. We seek comment on this proposal. We seek comment on this filing timetable and whether it provides sufficient time for providers to gather and review the information required in the report. We also seek comment on whether submitting the annual report as a supplement to the year-end BDC filing is the most reasonable and efficient approach. Should these deadlines be staggered? If so, how much time should be allotted between the filing of the year-end BDC report and the annual, major projects report?

c. Availability of Annual Reports

193. We propose to make the results of these annual reports available to the public.[584] As discussed above, we tentatively conclude that significant benefits would flow from making these reports public, such as increasing transparency regarding substantial investments by providers, informing

(Continued from previous page)

[582] *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 (2020) (*Second Order and Third Further Notice).*

[583] *See Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329, para. 37 (2017) ("For example, census blocks in rural areas can be quite large and providers may only deploy service throughout a portion of a census block.").

[584] *See* 47 CFR §§ 0.457, 0.459(d)(3), 19.735-203(a).

broadband policy at the federal, state and local level, strengthening advocacy for expanded broadband access, and targeting the Commission's efforts to enforce the rules we adopt today. We seek comment on our proposal to make these reports public. What is the best method for releasing these reports to the public? Should these reports be easily accessible on the provider's website or should they be made available by another means? We also seek comment on the benefits or burdens of making the reports available to the public. Are there confidentiality concerns we need to consider with respect to the information in question? If so, what measures would be necessary to protect the legitimate confidentiality interests of providers?

d. Supplements to Existing Commission-Issued Reports

194. We also seek comment on whether the Commission should publish certain data from the proposed annual reports in the Commission's existing reports, such as the Communications Marketplace Report or the Section 706 Report.[585] Although we propose that the annual reports be publicly available, as supplements to the annual BDC filings, would including certain data in either of these existing Commission reports provide greater transparency to consumers and communities? If so, what data should be included? Should we include the entirety of the proposed annual reports, or limit the data to a more narrow set of data points? [586] Should we expand the information published in the Communications Marketplace Report or the Section 706 Report beyond the proposed annual reports to include summaries of filed digital discrimination of access informal complaints, any findings of digital discrimination of access, or steps the Commission has taken to address equal access?[587] Would including this additional information in either these Commission-issued reports enhance transparency and make the proposed annual reports fully available and accessible to more stakeholders?

e. Intersection with Other Broadband Data

195. We seek comment on how providers can leverage existing data sources, such as the existing BDC, in compiling these reports. To the extent we can model the requirements for this report off the BDC, how would that be helpful to providers? We assume that providers would prefer to use the same criteria and data fields that are used in the BDC to the extent possible. We seek comment on whether this is true.

196. Are the relevant criteria and data fields used in the BDC too broad or narrow for our present purposes? Is there a need for additional data to be collected or for different metrics to be used? Given that providers are aware of their deployment and report the impact of deployments as part of the BDC, what would be the additional burden of providing annual reports? Are there policies or procedures we can adopt to reduce the burden on providers?

197. We tentatively conclude that the annual reports proposed above should be certified by the provider as true and correct, just as occurs with respect to BDC submissions. We propose that the same

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[585] We note that the Commission is already initiated the inquiry for the next Section 706 Report. *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion Section 706*, GN Docket No. 22-270, Seventeenth Section 706 Report Notice of Inquiry, FCC 23-89 (Nov. 1, 2023). Comments on the current inquiry, as opposed to future inquiries, should be filed in GN Docket No. 22-270.

[586] *See* Letter from Angela Siefer, Executive Director, National Digital Inclusion Alliance, to Marlene H. Dortch, Secretary, FCC, Docket No. 22-69 at 3 (filed Nov. 7, 2023) (recommending that the Commission make de-identified data available to the public annually).

[587] *See* National Urban League et al. Comments at 8-9; *see also* Letter from National Urban League, et al. to Marlene H. Dortch, Secretary, FCC, Docket No. 22-69 at 2 (filed Nov. 4, 2023); Letter from Cheryl A. Leanza, Co-Chair Media/Telecommunications Task Force of the Leadership Conference, United Church of Christ Media Justice Ministry, to Marlene H. Dortch, Secretary, FCC, Docket No. 22-69 at 4 (filed Nov. 8, 2023); Letter from Leo Fitzpatrick, Telecommunications Policy Analyst, The Utility Reform Network, to Marlene H. Dortch, Secretary, FCC, Docket No. 22-69 at 3 (filed Nov. 8, 2023).

experts who certify the BDC submissions also be required to certify the proposed annual report: (1) a corporate officer, and (2) an engineer.[588] We seek comment on this proposal. Should we consider a different certification process? Is it necessary that both a corporate officer and an engineer certify reports containing the elements we have outlined above? Might other officers or employees of the provider be better informed to certify the contents of this annual report? We seek detailed comment on these matters.

f. Exemptions

198. We seek comment on whether any providers should be exempted from the requirement to submit an annual report based on their size, footprint, or service area.[589] Should we exempt providers that primarily serve consumers at the rural and Tribal level and, if so, why? What other providers should be exempted from submitting an annual report and why?

g. Record Retention

199. It is important that records sufficient to determine the veracity of the proposed annual reports be retained for some period of time following submission of the reports. We seek comment on what records should be retained and for how long they should be retained in order to accomplish this verification purpose. We also seek comment on whether records related to the proposed annual reports should be retained for any purpose other than verification of the information contained in such reports.

2. Compliance Program

200. In addition to the annual report, we propose to require each provider to adopt and maintain a formal internal compliance program designed to ensure regular assessment of whether and how the provider's policies and practices advance and impede equal access to broadband internet access service in its service area. In proposing to require such compliance programs, our goals are to ensure close internal scrutiny of policies and practices that might impede equal access to broadband and to promote accountability with regard to such policies and practices. In order to facilitate candid internal evaluation and assessment of a provider's policies and practices affecting broadband access, we do *not* propose to require providers to make publicly available any reports or other documentation of such internal evaluations and assessments. However, in order to ensure compliance with the requirement to conduct such evaluations and assessments, and/or in connection with a Commission investigation into alleged digital discrimination of access, the Commission reserves the right to require production of such reports and documentation subject to the Commission's existing confidentiality rules.[590] We seek comment on this proposal.

a. Components of Compliance Program

201. *Effective Compliance Program*. We propose to model our mandatory internal compliance program on previously established effective compliance programs, while not being overly prescriptive regarding how the compliance program is designed.[591] Such models teach us that effective compliance programs should include, at a minimum: (1) development and implementation of written policies and procedures; (2) designation of a compliance officer and/or compliance committee; (3)

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[588] *See generally 2019 Form 477 Order and Second Further Notice,* 35 FCC Rcd 7460, 7486, para. 61 (2020) (citing 47 U.S.C. § 642(b)(4)); *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, 1144, para. 43 (2021) (*Third Report and Order*).

[589] 47 USC § 1705(a)(7) (defines the term "eligible service area" as a census block in which broadband service is not available at 1 or more households or businesses in the census block).

[590] *See* 47 CFR §§ 0.457, 0.459(d)(3), 19.735-203(a).

[591] *See, e.g.*, United States Sentencing Commission, *An Overview of the Organizational Guidelines*, https://www.ussc.gov/sites/default/files/pdf/training/organizational-guidelines/ORGOVERVIEW.pdf (last visited Nov. 14, 2023)(explaining that one of the key purposes of these guidelines is deterrence).

conducting effective training and education regarding the purposes and operation of the compliance program; (4) developing effective lines of reporting and communication; (5) conducting internal monitoring and auditing; (6) enforcing standards through well-publicized disciplinary guidelines; and (7) responding promptly to detected problems through corrective action. We seek comment on whether these should be mandatory components of the compliance programs we propose to require. Which of these elements of an effective compliance programs should we require? Which elements should we not require, if any? Are there additional elements we should consider adding in order to ensure that the compliance programs effectively advance their intended purpose of facilitating equal access to broadband? Although we seek comment on each of these elements, we note that our goal is to grant each broadband provider the flexibility to develop and maintain a plan that contains the required elements and serves our intended purposes without prescribing a particular formula as to how each required element should be implemented. We seek comment on whether such flexibility will be beneficial or detrimental to the implementation of effective internal compliance programs by providers.

202. *Implementing Written Policies and Procedures*. We seek comment on requiring providers to implement internal written policies and procedures with the goal of preventing digital discrimination of access and promoting equal access to broadband internet access service. In the compliance program, are written policies and procedures necessary? What should those internal written policies and procedures include? Who should be knowledgeable about the rules and practices within the organization? How often should these written rules and procedures be reviewed, revised, and updated? Are there any available models that providers can look to when devising their internal policies and procedures to prevent digital discrimination of access and promote equal access?

203. *Designating a Compliance Officer and/or Compliance Committee*. We seek comment on requiring service providers to appoint a designated compliance officer or establish a compliance committee to ensure compliance with the program's requirements and timely cooperation with the Commission upon request. Is it necessary to designate a compliance officer or establish a compliance committee for the successful implementation of the compliance program? What should the qualifications of the selected compliance officer and compliance committee members be? What should the structure of a compliance committee be, how often should it meet, and what should be its functions? Should the designated compliance officer be required to provide that certification?

204. *Conducting Effective Training on Commission Rules*. We seek comment on requiring service providers to conduct periodic training for relevant employees on the Commission's digital discrimination of access rules. Who should conduct the training, who should be required to take the training, and how often should they be required to do so? How should the substantive content of the training be developed and what should it cover? Should the content of the training be certified or approved by the Commission in some manner? If so, how often should such certification or approval take place? Providers likely already have compliance programs and employee trainings to maintain compliance with regulatory requirements at many levels. What would be the additional burden for providers to incorporate compliance with digital discrimination of access rules into their existing compliance programs?

205. *Developing Effective Lines of Reporting and Communication*. We propose requiring broadband providers to put in place mechanisms and processes that: (1) encourage the internal reporting of matters that may constitute, or lead to, digital discrimination of access or otherwise impede equal access to broadband service; (2) channel those concerns to the compliance officer and/or compliance committee for evaluation and response, if warranted; and (3) ensure effective "up the chain" reporting by compliance officers and committees so senior officers are made aware of these matters and can take appropriate action to prevent their recurrence. We seek comment on this proposal. What system(s) can providers implement to encourage employees to raise concerns about potentially problematic conduct? What should be the reporting chain above the compliance officer and compliance committee to ensure that equal access concerns are given the highest possible priority by the provider? Are there other mechanisms and processes that we should require to achieve effective lines of reporting and communication regarding equal-access-related matters?

206. *Conducting Internal Monitoring and Auditing*. We seek comment on requiring broadband providers to perform periodic reviews of the compliance program and respond quickly to correct problems when they are detected. Who should conduct such periodic reviews and how often should they be conducted? What systems can providers put in place to evaluate the overall effectiveness of the program and its compliance with the requirements we ultimately adopt for such programs?

207. *Responding Promptly to Detected Problems and Undertaking Corrective Action*. We seek comment on what requirements we should adopt regarding the handling of problems reported by the compliance officer or committee to senior management, especially when no corrective action has been taken. What obligations would a compliance officer or committee have under those circumstances? What recourse would a compliance officer or committee have if a provider routinely fails to address reported violations of our rules? Should we require, in such instances, that the compliance officer report the matter to the Commission? Could a compliance officer truthfully certify that a compliance program consistent with our rules has been maintained throughout the certification period if reported violations of our rules are routinely ignored by the provider? We seek comment on these matters.

b. Evaluations of Recently Completed, Pending, and Planned Projects

208. We seek comment on requiring providers to conduct annually an internal evaluation of recently completed, pending, and planned deployment, upgrade, and maintenance projects affecting 500 or more housing units. With respect to each such project, the internal evaluation should consist of a comparison of the demographics of the communities served by that project with the demographics of the Metropolitan Statistical Area (MSA) encompassing those served communities.[592] While the purpose of our proposal to require submission of annual reports to the Commission is to promote greater transparency regarding what communities are served by recently completed projects, the goal of our proposal to require periodic internal evaluation of large-scale projects is to facilitate close internal scrutiny of the provider's policies and practices affecting broadband access, determine whether those policies and practices advance or impede equal access to broadband service, and promote accountability regarding policies and practices that impede (or threaten to impede) equal access without adequate justification. Moreover, while our proposal regarding annual reporting would apply only to recently completed (or substantially completed) projects of a certain size, our proposal with respect to periodic internal evaluations would also apply to pending and planned projects. We seek comment on this proposal, and we specifically seek comment on: (1) how we should define "pending" projects and "planned" projects under this proposal; and (2) whether MSAs are the appropriate geographic comparator for the internal evaluation of covered projects.

209. We do not propose to prescribe the manner in which providers compare the demographics of served communities with the demographics of the MSAs encompassing those communities. We would require only that such comparisons be conducted with analytical rigor and in good faith using official data and reports of the U.S. Census Bureau,[593] and that they be reasonably designed to uncover meaningful disparities between the reported demographics of served communities and the reported demographics of the MSAs encompassing those served communities. While we would never expect precise numerical alignment with respect to any single project, we believe that routinely

[592] *See* Centers for Disease Control and Prevention, *Metropolitan statistical area (MSA)* (Aug. 12, 2022), https://www.cdc.gov/nchs/hus/sources-definitions/msa.htm#:~:text=A%20geographic%20entity%20based%20on,ties%20to%20the%20central%20area. (defining metropolitan statistical area as a geographic entity based on a county or a group of counties with at least one urbanized area with a population of at least 50,000 and adjacent counties with economic ties to the central area).

[593] *See supra* para. 199. According to the Census Bureau, an MSA consists of one or more counties that contain a city of 50,000 or more inhabitants, or contain a Census Bureau-defined urbanized area (UA) and have a total population of at least 100,000 (75,000 in New England). *See* Office of Management and Budget, Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 Fed. Reg. 249 (Dec. 27, 2000) (adopting the Office of Management and Budget's standards for defining metropolitan and micropolitan statistical areas).

conducting these comparisons will give providers a better sense of what communities are being served (and not served) by their projects over time, and will help to "smoke out" policies and practices that discriminate without adequate justification. We seek comment on this proposal.

c. Evaluations of Policies and Practices

210. *Evaluation and Assessment of Policies and Practices*. We seek comment on requiring providers to: (1) periodically evaluate their policies and practices affecting broadband access to determine whether they differentially impact consumers' access to broadband internet access service based on income level, race, ethnicity, color, religion, or national origin, or otherwise impede equal access to broadband internet access service; and (2) report to senior management annually, and in writing, regarding the results of such evaluation. As noted above, the proposed requirement that providers periodically determine the demographics of communities served by designated broadband projects is intended to permit an assessment, over time, of whether the provider's broadband-related policies are effectively impeding equal access to broadband service. Those assessments should lead to critical examination of whether any policies and practices impeding such equal access are necessary and justified by legitimate business considerations and whether alternative policies and practices might reasonably be adopted and implemented in their place. We propose that compliance officers and/or committees be required to conduct such annual assessments and report annually to senior management, in writing, the results of such evaluations and assessments. This process will require providers to closely scrutinize policies and practices producing disparate impacts on prohibited bases or otherwise impeding equal access to broadband service. We believe these requirements are necessary to ensure that equal access to broadband service remains a top priority for providers, in fulfillment of Congress's instruction that the Commission "take steps to ensure that *all people of the United States* benefit from equal access to broadband internet access service."[594] We seek comment on this proposal.

d. Certification

211. *Certification of Completion*. We propose requiring providers to submit, in conjunction with the annual report proposed above, a certification that a compliance program satisfying all requirements finally adopted by the Commission was in place during the calendar year covered by the annual report. We propose that the certification be attested to by an officer and engineer as occurs with respect to the BDC, and that the provider's designated compliance officer (or the chair of the compliance committee) certify the same to the certifying officer and engineer. We seek comment on this proposal, including whether the designated compliance officer (or chair of the compliance committee) should be required to provide a certification directly to the Commission.

e. Exemptions

212. We also seek comment on whether any providers should be exempted from the proposed requirement to implement and maintain an internal compliance program meeting specified standards based on their size, footprint, or niche service area. Should we exempt providers that primarily serve consumers at the rural and Tribal level and, if so, why? What other providers should be exempted from these requirements, under what circumstances, and why? We seek comment on requiring providers who are entitled to an exemption under our rules to file a certification of exemption in lieu of a certification of compliance in conjunction with the annual report.

f. Recording and Retention Requirements

213. We seek comment on what records providers should be required to retain, and for how long, relating to the internal assessments of the projects described in the preceding paragraphs. Once a summary report of the internal assessment for a specific project is completed, should the provider be required to retain the underlying documents for some period of time? Should there be different retention

[594] 47 U.S.C. §1754(a)(3) (emphasis added).

periods for the summary reports than for the underlying documents?

B. Office of Civil Rights

214. We seek further, focused comment on establishing an Office of Civil Rights, as both advocates and broadband service providers have urged.[595] In particular, we seek comment on the potential benefits establishing such an office. For example, would such an office be helpful in developing and maintaining the expertise to evaluate the effects of Commission policy initiatives on historically marginalized communities? Could it assist in determining when prohibited discrimination has occurred and aid in developing remedies for such discrimination? Might it help in evaluating claims and possible patterns of digital discrimination of access? And could it aid in monitoring informal complaints alleging digital discrimination of access and other forms of prohibited discrimination, as well as in the mediation process we have outlined in the Order?[596] Why or why not? What other benefits might be associated with establishing an Office of Civil Rights? For example, could it work with broadband service providers to proactively mitigate potential instances of prohibited discrimination? Could such an office collaborate with broadband service providers and federal and state governments to develop broadband adoption and digital literacy skills training that could be used on a nationwide basis?[597] Could such an office be employed to address other substantive Commission policy issues and processes beyond matters arising under section 60506? If so, what other issues might an Office of Civil Rights oversee or how could it support other bureaus and offices in the Commission? Finally, what are the potential challenges associated with establishing an Office of Civil Rights? How should the Commission address these challenges? What are the costs associated with establishing an Office of Civil Rights? How should the Commission structure and staff such an office? What other structural and organizational changes would be required to establish such an office?

C. Other Efforts to Promote Digital Equity and Inclusion

215. *Digital Equity*. The Commission, as part of its continuing effort to advance digital equity for all,[598] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comments on any equity-related considerations[599] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how

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[595] Lawyers' Committee for Civil Rights Under Law Comments at 40; Leadership Conference on Civil and Human Rights et al. Comments at 8; National Urban League et al. Comments at 9; Public Knowledge et al. Comments at 4; Letter from Randy Clarke, Verizon, to Marlene H. Dortch, Secretary, FCC, at 1 (filed July 31, 2023) (Verizon July 31 *Ex Parte*).

[596] *See supra* para. 145.

[597] *See* Communications Equity and Diversity Council, Digital Empowerment and Inclusion Working Group, *Connecting Opportunity Communities to Broadband During the COVID-19 Pandemic: Lessons Learned and Recommendations*, at 5-6 (June 15, 2023).

[598] 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.

[599] We define the term "equity" consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

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

216. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[600] 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."[601] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order*. The FRFA is set forth in Appendix B.

217. 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 C. 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.

218. *Paperwork Reduction Act*. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. 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.[602]

219. The *Further Notice of Proposed Rulemaking* 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.

220. *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, 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).

221. *Providing Accountability Through Transparency Act*: The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[603] Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking on

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[600] 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).

[601] 5 U.S.C. § 605(b).

[602] *See infra* Appx. B at paras. 24-27.

[603] 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

https://www.fcc.gov/proposed-rulemakings.

222. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Further Notice of Proposed Rulemaking* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[604] 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.[605]

223. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: https://www.fcc.gov/ecfs.
- 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.

[604] 47 CFR §§ 1.1200 *et seq.*

[605] *Id.* § 1.49(f).

224. 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.

225. *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).

226. *Contact Person.* For additional information on this proceeding, contact the Wireline Competition Bureau.

VI. ORDERING CLAUSES

227. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i)-(j), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 303(r), and section 60506 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1245-46 (2021), codified at 47 U.S.C. § 1754, that this *Report and Order* IS ADOPTED and Parts 0, 1 and 16 of the Commission's Rules, 47 CFR Parts 0, 1, and 16 ARE AMENDED as set forth in Appendix A. The *Report and Order* shall become effective 60 days after publication in the Federal Register, except that the amendments to 47 CFR § 1.717, as amended in Appendix A, will not become effective until the Office of Management and Budget completes review of any information collection requirements in this *Report and Order* that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for 47 CFR § 1.717 by subsequent Public Notice.

228. IT IS FURTHER ORDERED, pursuant to sections 1, 2, 4(i)-(j), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 303(r), and section 60506 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1245-46 (2021), codified at 47 U.S.C. § 1754, that this *Further Notice of Proposed Rulemaking* IS ADOPTED.

229. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of this *Report and Order* and *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.

230. 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, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

The Federal Communications Commission amends Chapter I — Federal Communications Commission, Subchapter A — General of Title 47 of the Code of Federal Regulations as follows:

Subchapter A — General

1. Add Part 16 to Subchapter A as follows:

PART 16: DIGITAL DISCRIMINATION OF ACCESS

16.1 Purpose
16.2 Definitions
16.3 Digital discrimination of access prohibited
16.4 Findings of discrimination
16.5 Technical and economic feasibility
16.6 Enforcement
16.7 Advisory Opinions

Authority: 47 U.S.C. § 1754

§ 16.1 Purpose. The purpose of this part is to implement section 60506 of the Infrastructure Investment and Jobs Act, 135 Stat. 429 (2021) that requires the Commission to adopt rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including

(a) Preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin, and
(b) Identifying necessary steps for the Commission to take to eliminate discrimination described in these rules.

§16.2 Definitions – As used in this part:

(a) *Broadband internet access service* is defined by § 8.1(b) of part 8 of this subchapter.
(b) *Broadband provider* is defined by § 54.1600(b) of part 54 of this chapter.
(c) *Consumer* includes current and potential subscribers, individual persons, groups of persons, individual organizations, and groups of organizations having the capacity to subscribe to and receive broadband internet access service.
(d) *Covered entity* includes broadband internet access service providers and entities that provide services that facilitate and affect consumer access to broadband internet access service, including but not limited to:

1. Broadband internet access service providers;
2. Contractors retained by, or entities working through partnership agreements or other business arrangements with, broadband internet access service providers;
3. Entities facilitating or involved in the provision of broadband internet access service;
4. Entities maintaining and upgrading network infrastructure; and,
5. Entities that otherwise affect consumer access to broadband internet access service.

(e) *Covered services* is defined as broadband internet access service by § 8.1(b) of part 8 of this subchapter.

(f) *Covered elements of service* is defined as any components of service quality or terms and conditions on which broadband internet access service is provided. The definition includes, but is not limited to:

1. Deployment of broadband infrastructure, network upgrades, and network maintenance;
2. Service quality components and the terms and conditions on which broadband internet access service is provided, including but not limited to speeds, capacities, latency, data caps, throttling, pricing, promotional rates, imposition of late fees, opportunity for equipment rental, installation time, contract renewal terms, service termination terms, and use of customer credit and account history;
3. Marketing, advertisement, and outreach; and
4. Technical service, onsite service, and other provision of customer service.

(g) *Digital discrimination of access* means policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or are intended to have such differential impact.

(h) *Economically feasible* means reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.

(i) *Equal access* means the opportunity to subscribe to an offered service that provides comparable speeds, capacity, latency, and other quality of service metrics in a given area, for comparable terms and conditions.

(j) *Subscriber* is defined as a subscriber to broadband internet access service as defined as in § 8.1(b) of part 8 of this subchapter.

(k) *Technically feasible* means reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.

§ 16.3 Digital discrimination of access prohibited.

(a) This section provides the Commission's interpretation of actions that constitute digital discrimination of access under 47 U.S.C. § 1754.

(b) It shall be unlawful for any broadband provider, or covered entity as described in this part, to adopt, implement or utilize policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or are intended to have such differential impact.

§16.4 Findings of discrimination.

(a) *Discriminatory treatment***.** The Commission may find that a covered entity engaged in intentional discrimination by direct evidence or circumstantial evidence that the covered entity's policy or practice was adopted, implemented, or utilized with the intent to differentially impact consumers' access to covered services or covered elements of service on one or more of the bases listed in section 60506(b).

(b) *Discriminatory effect***.** The Commission may find that a covered entity adopted, implemented, or utilized a policy or practice that had a discriminatory effect on one or more of the bases listed in section 60506(b). A discriminatory effect occurs when a facially neutral policy or practice differentially impacts consumers' access to covered services or covered elements of service.

§ 16.5 Technical and Economic Feasibility

(a) Where the Commission determines that a covered entity's policy or practice is motivated by discriminatory intent on the basis of income level, race, ethnicity, color, religion, or national origin, the entity will not be found liable for digital discrimination of access if the policy or practice is justified by genuine issues of technical or economic feasibility.

(b) Where the Commission determines that a covered entity's policy or practice has discriminatory effects on the basis of income level, race, ethnicity, color, religion, or national origin, the entity will not be found liable for digital discrimination of access if the policy or practice is justified by genuine issues of technical or economic feasibility.

(c) Covered entities have the burden of proving to the Commission that a policy or practice under investigation is justified by genuine issues of technical or economic feasibility. This may include proof that available, less discriminatory alternatives were not reasonably achievable at the time the policy or practice was adopted, implemented, or utilized because of genuine technical or economic constraints.

(d) Genuine issues of technical or economic feasibility must be demonstrated by a preponderance of the evidence, with the covered entity providing the Commission all of the empirical evidence and documentation needed to substantiate the technical or economic justifications for the policy or practice under investigation.

(e) The Commission will determine on a case-by-case basis whether genuine issues of technical or economic feasibility justified the adoption, implementation, or utilization of a policy or practice that was motivated by discriminatory intent on the basis of income level, race, ethnicity, color, religion, or national origin, or that caused discriminatory effects on one or more of these bases.

§ 16.6 Enforcement. Any allegation that a covered entity has violated these rules may be referred to the Commission's Enforcement Bureau.

§ 16.7 Advisory Opinions

(a) Procedures

1. Any entity that is subject to the Commission's rules implementing section 60506 may request an advisory opinion from the Enforcement Bureau regarding the permissibility of its own policies and practices affecting access to broadband internet access service. Requests for advisory opinions may be filed via the Commission's website or with the Office of the Secretary and must be copied to the Chief of the Enforcement Bureau and the Chief of the Investigations and Hearings Division of the Enforcement Bureau.

2. The Enforcement Bureau may, in its discretion, determine whether to issue an advisory opinion in response to a particular request or group of requests and will inform each requesting entity, in writing, whether the Bureau plans to issue an advisory opinion regarding the matter in question.

3. Requests for advisory opinions must relate to a current or proposed policy or practice that the requesting party intends to pursue. The Enforcement Bureau will not respond to requests if the same or substantially the same conduct is the subject of a current

government investigation or proceeding, including any ongoing litigation or open rulemaking at the Commission.

4. Requests for advisory opinions must be accompanied by all material information sufficient for Enforcement Bureau staff to make a determination on the proposed conduct for which review is requested. Requesters must certify that factual representations made to the Bureau are truthful and accurate, and that they have not intentionally omitted any information from the request. A request for an advisory opinion that is submitted by a business entity or an organization must be executed by an individual who is authorized to act on behalf of that entity or organization.

5. Enforcement Bureau staff will have discretion to ask parties requesting opinions, as well as other parties that may have information relevant to the request or that may be impacted by the proposed conduct, for additional information that the staff deems necessary to respond to the request. Such additional information, if furnished orally or during an in-person conference with Bureau staff, shall be promptly confirmed in writing. Parties are not obligated to respond to staff inquiries related to advisory opinions. If a requesting party fails to respond to a staff inquiry, then the Bureau may dismiss that party's request for an advisory opinion. If a party voluntarily responds to a staff inquiry for additional information, then it must do so by a deadline to be specified by Bureau staff. Advisory opinions will expressly state that they rely on the representations made by the requesting party, and that they are premised on the specific facts and representations in the request and any supplemental submissions.

(b) After review of a request submitted hereunder, the Enforcement Bureau will: (1) issue an advisory opinion that will state the Bureau's determination as to whether or not the policy or practice detailed in the request complies with the Commission's rules implementing section 60506; (2) issue a written statement declining to respond to the request; or (3) take such other position or action as it considers appropriate. An advisory opinion states only the enforcement intention of the Enforcement Bureau as of the date of the opinion, and it is not binding on any party. Advisory opinions will be issued without prejudice to the Enforcement Bureau or the Commission to reconsider the questions involved, or to rescind or revoke the opinion. Advisory opinions will not be subject to appeal or further review.

(c) The Enforcement Bureau will have discretion to indicate the Bureau's lack of enforcement intent in an advisory opinion based on the facts, representations, and warranties made by the requesting party. If the Bureau determines that a policy or practice currently in effect violates Commission rules, it may provide in the opinion that it will not take enforcement action within a designated time period if the policy or practice is promptly corrected. The requesting party may rely on the opinion only to the extent that the request fully and accurately contains all the material facts and circumstances. Should the Bureau or Commission rescind a previously-issued advisory opinion, the requesting party must promptly discontinue use of the relevant policy or practice in order to remain in compliance with our rules.

(d) Public disclosure. The Enforcement Bureau will make advisory opinions available to the public on the Commission's website. The Bureau will also publish the initial request for guidance and any associated materials. Parties soliciting advisory opinions may request confidential treatment of information submitted in connection with a request for an advisory opinion pursuant to § 0.459.

(e) Withdrawal of request. Any requesting party may withdraw a request for review at any time prior to receipt of notice that the Enforcement Bureau intends to issue an adverse opinion, or the

issuance of an opinion. The Enforcement Bureau remains free, however, to submit comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information, whether submitted pursuant to this procedure or otherwise, does not in any way limit or stop the Bureau from taking such action at such time thereafter as it deems appropriate. The Bureau reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all governmental purposes.

Authority: 47 USC 1754; ___ Fed. Reg. ___; Executive Order 13985

PART 0 – COMMISSION ORGANIZATION

2. Revise the authority citation for Subpart A – Organization to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 409, and 1754, unless otherwise noted.

3. Amend Subchapter A, Part 0 to add section (a)(30) to § 0.111 as follows:

§0.111 Functions of the Bureau.

* * * * *

(a)(30) Resolve complaints alleging violations of digital discrimination of access pursuant to Part 16 of Subchapter A of these rules.

PART 1 – PRACTICE AND PROCEDURE

4. Revise the authority citation for Subchapter A, Part 1 – Practice and Procedure to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

5. Amend Subchapter A, Part 1, Subpart E as follows:

§ 1.717 Procedure

The Commission will forward informal complaints to the appropriate carrier for investigation and may set a due date for the carrier to provide a written response to the informal complaint to the Commission, with a copy to the complainant. The response will advise the Commission of the carrier's satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's response or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed. In other cases, the Commission may notify the complainant that if the complainant is not satisfied by the carrier's response, or if the carrier has failed to submit a response by the due date, the complainant may file a formal complaint in accordance with § 1.721, except for digital discrimination of access informal complaints filed pursuant to Part 16 of Subchapter A of these rules. In addition, for the purpose of informal complaints submitted under Part 16 of Subchapter A of these rules, the Commission's informal complaint procedures will apply to all covered entities as defined in § 16.2.

6. Amend Subchapter A, Part 1 to add (a)(8) to § 1.80 as follows:

§ 1.80 under "Forfeiture proceedings"

* * * * *

(a)(8) Violated section 60506 of the Infrastructure and Jobs Act of 2021 or Part 16 of Subchapter A of these rules.

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 *Implementing the Infrastructure Investment and Jobs Act Prevention and Elimination of Digital Discrimination Notice of Purposed Rulemaking* (*Digital Discrimination Notice*), released in December 2022.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Digital Discrimination 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. The Report and Order takes an important step to promote equal access to broadband for all people in the United States by adopting rules pursuant to section 60506 of the Infrastructure Investment and Jobs Act (Infrastructure Act)[4] that establish a balanced framework to facilitate equal access to broadband internet service by preventing digital discrimination of access. Many households in the United States lack equal access to broadband, with disparities that cross income, demographic, and geographic lines, including rural and tribal areas.[5] Among households with broadband access, mid-sized communities, urban, and rural areas are all impacted by inferior service offerings. The *Report and Order* establishes that a policy or practice will violate the Commission's prohibition on digital discrimination of access if it discriminates based on one of section 60506's listed characteristics (either by intent or in effect), and creates a process to report incidents of digital discrimination and determine whether a violation has occurred.

3. First, the *Report and Order* defines "digital discrimination of access" as "Policies or practices, not justified by genuine issues of technical or economic feasibility, that (1) differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion or national origin, or (2) are intended to have such differential impact."[6] Second, the *Report and Order*, prohibits "digital discrimination of access."[7] Third, it establishes the scope of covered entities, consumers, and services subject to the prohibition.[8] Fourth, the *Report and Order* revises the Commission's informal consumer complaint process to: (1) add a dedicated pathway for digital discrimination of access complaints; (2) collect voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establish a clear pathway for organizations to submit digital discrimination of access complaints.[9] Fifth, it amends certain existing Commission

[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98, at Appx. A (Dec. 22, 2022) (*Digital Discrimination Notice*)

[3] *See* 5 U.S.C. § 604.

[4] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60506 (2021) (codified at 47 U.S.C. §1754) (Infrastructure Act).

[5] *Report and Order* Part II.A.2-3, paras. 10-15.

[6] *Report and Order* Part III.A.1.

[7] *Report and Order* Part III.B.

[8] *Report and Order* Part III.

[9] *Report and Order* Part III.D.

enforcement rules: Rule 1.80, to reference the provisions of section 60506 in addition to those of the Communications Act and other statutes, and Rule 0.111 to reflect the Enforcement Bureau's direction to investigate claims of digital discrimination of access and make recommendations as to potential violations and penalties.[10] Finally, the *Report and Order* adopts, as guidelines, the Communications Equity and Diversity Council's (CEDC's) model policies and best practices to prevent digital discrimination by broadband providers, and best practices to advance digital equity for states, localities, Tribal governments, and United States territories.[11]

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 or otherwise raised issues addressing the specific concerns of, and impact on small entities. 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

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.[12] 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

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[13] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[14] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[15] 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.[16]

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.[17] First, while there

[10] *Report and Order* Part III.E (3).

[11] *Report and Order* Part I.

[12] 5 U.S.C. § 604(a)(3).

[13] *See id.* § 604(a)(4).

[14] *Id.* § 601(6).

[15] *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.*

[16] *See* 15 U.S.C. § 632.

[17] *See* 5 U.S.C. § 601(3)-(6).

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.[18] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[19]

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."[20] 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.[21] 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.[22]

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."[23] U.S. Census Bureau data from the 2017 Census of Governments[24] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[25] Of this number there were 36,931 general purpose governments (county[26], municipal and town or township[27]) with populations of

[18] *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.

[19] *Id*.

[20] *See* 5 U.S.C. § 601(4).

[21] 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.

[22] *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.

[23] *See* 5 U.S.C. § 601(5).

[24] *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).

[25] *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.

[26] *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.

less than 50,000 and 12,040 special purpose governments - independent school districts[28] with enrollment populations of less than 50,000.[29] 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."[30]

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.[31] 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.[32] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[33] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[34]

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[35] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[36] Of this number, 2,964 firms operated

(Continued from previous page)

[27] *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.

[28] *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.

[29] 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.

[30] 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.

[31] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[32] *Id.*

[33] *Id.*

[34] 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.

[35] *See* 13 CFR § 121.201, NAICS Code 517311.

[36] *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.

with fewer than 250 employees.[37] 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.[38] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[39] 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[40] is the closest industry with an SBA small business size standard.[41] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[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 that operated in this industry 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 4,590 providers that reported they were fixed local exchange service providers.[46] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[47] Consequently, using the SBA's small business size standard, most of these providers 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.[48]

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[37] *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.

[38] 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.

[39] *Id.*

[40] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[41] *See* 13 CFR § 121.201, NAICS Code 517311.

[42] 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.

[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.*

[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.

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.

14. *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 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.

15. *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

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[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.

[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.

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.

16. *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 a 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] Of this number, 2,964 firms operated with fewer than 250 employees.[69] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were

[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 be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

[63] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited Nov. 29, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 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.

[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.

115 providers that reported they were engaged in the provision of other toll services.[70] Of these providers, the Commission estimates that 113 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.

17. *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.

18. *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 $38.5 million or less in annual receipts as small.[80] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[81] Of this number, 242 firms had revenue of less than

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[70] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[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.

[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.

$25 million.[82] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.[83] Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.[84] Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

19. *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 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.

20. *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

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[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* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[83] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[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.

[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.

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.

21. *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.[102] 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.[103] 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.[104] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[105] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[106] Of those firms, 1,039 had revenue of less than $25 million.[107] Based

[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. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[101] *Id.*

[102] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications*," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[103] *Id.*

[104] *Id*.

[105] *See* 13 CFR § 121.201, NAICS Code 517919.

[106] *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.

[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. We also note that according to the U.S. Census Bureau glossary, the terms receipts and

(continued….)

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

22. The *Report and Order* adopts rules defining digital discrimination making it unlawful for any broadband provider or covered entity to adopt, implement or utilize policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or are intended to have such differential impact. When investigating claims of digital discrimination, small entities will need to gather and provide information needed by the Commission to assess claims of technical or economic feasibility, and prove by a preponderance of the evidence that the policy or practice in question is justified by genuine issues of technical or economic feasibility. This may involve additional staff time, possibly by engineering and accounting professionals that can speak to technical or economic issues.

23. In reviewing the record, commenters expressed concern about obstacles faced by small providers. However, we adopt a flexible approach to assessing the technical and economic feasibility of a covered entity's practices, and will review alleged digital discrimination of access on a case-by-case basis. The Commission does not have sufficient information on the record 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 implications because its approach to investigations accounts for variations among provider types and industry, and will tailor its interactions with such small entities to account for these burdens.

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."[108]

25. The *Report and Order* establishes a balanced framework to facilitate equal access to broadband internet service by preventing digital discrimination of access to that service. These rules adopted in the *Report and Order* address business practices and policies that impede equal access to broadband, take into account issues of technical and economic feasibility that pose serious challenges to full achievement of the equal access objective, and consider impacts on small entities. The Commission considered small business interests in including "genuine issues of technical or economic feasibility" in the definition of "digital discrimination of access." The Commission also acknowledged that the technical and economic challenges that providers face in deploying and serving rural and urban areas can vary greatly. The Commission's approach to technical and economic feasibility accounts for variations among provider types and industries. Moreover, the CEDC conducted outreach to small-, minority-, and women- businesses in developing the model policies and best practices to prevent digital discrimination of access adopted by the *Report and Order*.

26. In reaching its final conclusions in this proceeding, the Commission considered a number of alternatives, such as addressing digital discrimination of access issues raised either in other

(Continued from previous page)
revenues are used interchangeably. *See* U.S. Census Bureau, *Glossary*, https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[108] 5 U.S.C. § 604(a)(6).

proceedings, or in the current record, that could potentially impact small businesses. For example, we considered whether to establish an Office of Civil Rights within the Commission, as several commenters have urged us to do, however we will make this assessment outside the scope of this proceeding as a matter of internal structure, organization, and staffing. Additionally, the Commission determined that, at this time, its primary focus is to implement effective rules to address digital discrimination of access by the statutory deadline set by Congress, but will continue to consider the thoughtful proposals not addressed in other sections of the *Report and Order*. We also considered proposals to modify current Commission data collections to accept new data or otherwise undertake new data collections. However, it is currently unclear whether a new data collection's burdens would outweigh its potential benefits, because the Commission has access to a number of data collections and potential data sources that may assist in our analysis of digital discrimination of access claims.

27. We considered additional alternatives that may impact small entities, including how we define terms used in our digital discrimination analysis. For example, we declined to adopt specific standards or definitions for different types of providers because we want these rules to maintain the flexibility needed to address providers of various sizes, difference technologies, and the unique circumstances of each covered entity, including small businesses. We also declined proposals to define digital discrimination in a manner that considers differences in the profitability of serving one area over another, because we weigh profitability separately from technical or economic feasibility. We did not include issues pertaining to personal data that is processed by an algorithm in the definition of digital discrimination because section 60506 is not directly related to those concerns. To eliminate potential loopholes in complying with these rules, we retain the term "genuine" as part of our definition of digital discrimination to ensure that covered entities cannot rely upon unsupported assertions of technical or economic feasibility to refute claims of digital discrimination of access.

G. Report to Congress

28. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[109] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[110]

[109] *Id.* § 801(a)(1)(A).

[110] *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 Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (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 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 IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Further Notice*, the Commission takes additional steps to advance its efforts to fulfill the congressional direction in section 60506 of the Infrastructure Act to facilitate equal access to broadband internet access service by preventing digital discrimination of access, proposing rules that will address disparities in broadband availability and service offerings. Specifically, the *Further Notice* seeks comment on affirmative obligations that might be undertaken by broadband providers by complementing proposed rules adopted in the *Report and Order* with a focus on broadband providers' day-to-day business practices that might, in some instances, differentially impact consumers' access to broadband on prohibited bases.[4] The *Further Notice* also proposes to require the reporting of this information on a state-by-state or territory-by-territory basis in a yearly supplement to the BDC so the public can see not only where broadband coverage is provided, but where and how providers are currently investing in their broadband networks and what communities are benefiting from those investments.[5] Additionally, the *Further Notice* proposes to require providers to establish formal compliance programs related to digital discrimination of access and to conduct regular, internal assessments of what communities are served (and not served) by recently completed, pending, and planned large-scale broadband projects and whether their relevant policies and practices might differentially impact consumers' access to broadband service.[6]

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1, 2, 4(i)-(j), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 303(r), and section 60506 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1245-46 (2021), codified at 47 U.S.C. § 1754.

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 by the rule revisions on which the *Further Notice* seeks comment, if adopted.[7] The RFA generally defines the term "small entity" as

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] *See Further Notice* Part IV.A.

[5] *Id.*

[6] *Id.*

[7] *See* 5 U.S.C. § 603(b)(3).

having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[8] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[9] 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.[10]

5. *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.[11] 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.[12] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[13]

6. 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."[14] 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.[15] 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.[16]

7. 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

[8] *See id*. § 601(6).

[9] *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."

[10] *See* 15 U.S.C. § 632.

[11] *See* 5 U.S.C. § 601(3)-(6).

[12] *See* SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf. (Nov 2021).

[13] *Id*.

[14] *See* 5 U.S.C. § 601(4).

[15] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[16] *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.

districts, with a population of less than fifty thousand."[17] U.S. Census Bureau data from the 2017 Census of Governments[18] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[19] Of this number, there were 36,931 general purpose governments (county,[20] municipal, and town or township[21]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[22] with enrollment populations of less than 50,000.[23] 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."[24]

D. Wireline Carriers

8. *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.[25] 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.[26] By exception, establishments providing satellite television distribution services using facilities

[17] *See* 5 U.S.C. § 601(5).

[18] *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.

[19] *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.

[20] *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.

[21] *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.

[22] *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.

[23] 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.

[24] 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.

[25] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[26] *Id.*

and infrastructure that they operate are included in this industry.[27] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[28] [29]

9. 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.[33] Of these providers, the Commission estimates that 4,737 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.

10. *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

[27] *Id.*

[28] 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.

[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] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[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.*

that operated in this industry for the entire year.[39] Of this number, 2,964 firms operated with fewer than 250 employees.[40] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.[41] Of these providers, the Commission estimates that 4,737 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.

11. *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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.[48] Of these providers, the Commission estimates that 929 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.

12. *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]

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[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.

[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] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[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] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[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.

Wired Telecommunications Carriers[51] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.[55] Of these providers, the Commission estimates that 3,808 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.

13. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small-business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation."[57] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[58] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[59] is the closest industry with a SBA small business size standard.[60] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[61] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[62] Of this number, 2,964 firms operated with fewer than 250 employees.[63]

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[51] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[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] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[56] *Id.*

[57] 5 U.S.C. § 601(3).

[58] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a National basis. 13 CFR § 121.102(b).

[59] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[60] *See* 13 CFR § 121.201, NAICS Code 517311.

[61] *Id.*

[62] *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,

(continued….)

Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.[64] 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. *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."[65] 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.[66] Based on industry data, only six cable system operators have more than 677,000 subscribers.[67] 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.[68] 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.

16. *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[69] is the closest industry with a SBA small business size standard.[70] The SBA small business size standard for Wired

(Continued from previous page)
https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[63] *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.

[64] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[65] 47 U.S.C. § 543(m)(2).

[66] *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 be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

[67] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[68] 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).

[69] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[70] *See* 13 CFR § 121.201, NAICS Code 517311.

Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[71] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[72] Of this number, 2,964 firms operated with fewer than 250 employees.[73] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.[74] Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.[75] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

E. Wireless Carriers

17. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[76] 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.[77] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[78] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[79] Of that number, 2,837 firms employed fewer than 250 employees.[80] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.[81] Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.[82] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and

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[71] *Id.*

[72] *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.

[73] *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.

[74] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[75] *Id.*

[76] *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.

[77] *Id.*

[78] *See* 13 CFR § 121.201, NAICS Code 517312.

[79] *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.

[80] *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.

[81] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021),

https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[82] *Id.*

broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[83] 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.[84] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[85] Of this number, 242 firms had revenue of less than $25 million.[86] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.[87] Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.[88] Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

F. Resellers

19. *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.[89] 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.[90] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[91] Mobile virtual network operators (MVNOs) are included in this industry.[92] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[93] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[94] Of that number, 1,375

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[83] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[84] *See* 13 CFR § 121.201, NAICS Code 517410.

[85] *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.

[86] *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.

[87] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021),

https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[88] *Id.*

[89] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[90] *Id.*

[91] *Id*.

[92] *Id*.

[93] *See* 13 CFR § 121.201, NAICS Code 517911.

[94] *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.

firms operated with fewer than 250 employees.[95] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.[96] Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.[97] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[98] 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.[99] Mobile virtual network operators (MVNOs) are included in this industry.[100] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[101] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[102] Of that number, 1,375 firms operated with fewer than 250 employees.[103] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.[104] Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.[105] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *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.[106] 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,

[95] *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.

[96] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[97] *Id.*

[98] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[99] *Id.*

[100] *Id.*

[101] *See* 13 CFR § 121.201, NAICS Code 517911.

[102] *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.

[103] *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.

[104] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[105] *Id.*

[106] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

satellite systems.[107] 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.[108] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[109] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[110] Of those firms, 1,039 had revenue of less than $25 million.[111] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

22. The *Further Notice* proposes two sets of affirmative obligations for broadband providers in furtherance of our mandate to facilitate equal access to broadband internet access service, including by preventing digital discrimination of access by requiring broadband providers to: (1) submit an annual, publicly available supplement to the Broadband Data Collection (BDC) describing, on a state-by-state or territory-by-territory basis, any large-scale broadband deployment, upgrade, and maintenance projects that were completed or substantially completed during the preceding calendar year and the communities served by such projects; and (2) establish a mandatory internal compliance program requiring regular internal assessment of (a) what communities are served by recent, pending and planned large-scale projects and (b) whether the provider's broadband-related policies and practices might differentially impact consumers' access to broadband without adequate technical or economic justification.[112]

23. The *Further Notice* proposes to require the annual report as a supplement to the year-end BDC, and we assume that broadband providers would use the same criteria and data fields that are used in the BDC. The Commission seeks comment on whether the experts who certify the BDC submissions should also be required to certify the proposed annual report. The Commission also proposes that each provider adopt and maintain a formal internal compliance program that includes, at a minimum, elements from previously effective compliance programs: (1) developing and implementing written policies and procedures; (2) designating a compliance officer and/or compliance committee; (3) conducting effective training and education regarding the purposes and operation of the compliance program; (4) developing effective lines of reporting and communication; and (5) conducting internal monitoring and auditing. We propose to grant each broadband provider the flexibility to develop and maintain a plan that contains the required elements and serves our intended purposes without prescribing a particular formula as to how each required element should be implemented.

H. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. 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

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[107] *Id*.

[108] *Id.*

[109] *See* 13 CFR § 121.201, NAICS Code 517919.

[110] *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.

[111] *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.

[112] *See Further Notice* Part IV.A.

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."[113]

25. The *Further Notice* seeks comment on whether any of the proposed filing, recordkeeping and reporting requirements can be minimized for small entities. For example, we request comment on whether existing data may be used with or in place of the proposed annual report to promote transparency in broadband investments. We also seeks comment on whether any broadband providers should be exempted from the requirement to submit an annual report or to implement and maintain an internal compliance program based on their size, footprint, or service area, including rural and Tribal areas.[114] . Finally, the Commission seeks comment on whether any of the costs associated with our digital discrimination of access compliance requirements can be alleviated for small entities.

I. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

[113] 5 U.S.C. § 603(c)(1)-(4).

[114] *See Further Notice* Part IV.A.1-2

APPENDIX D

Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity

Submitted to the Federal Communications Commission
by the Working Groups of the Communications Equity and Diversity Council
Adopted: November 7, 2022

Recommendations and Best Practices to Prevent Digital Discrimination

and

Promote Digital Equity

Submitted to the
Federal Communications Commission

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Communications Equity and Diversity Council

Adopted: November 7, 2022

Communications Equity and Diversity Council
Federal Communications Commission

November 7, 2022

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ACKNOWLEDGEMENTS

The Digital Empowerment and Inclusion, Innovation and Access, and Diversity and Equity Working Groups would like to extend their sincere appreciation to all of the interviewees that agreed to meet with the respective working groups to examine issues of broadband deployment, entrepreneurship, education, housing, economics, and diversity and equity. Thank you also to former FCC Chairman Michael Powell for meeting with the DEI Working Group to share his unique and keen insights. We appreciate everyone's willingness to engage in this timely and important dialogue.

The CEDC expresses its most sincere appreciation to CEDC Chair Heather Gate who shepherded this important project from its inception on behalf of the Council. She brought her deep knowledge and experience on broadband issues to the report's development – attending interviews, drafting portions of the report, reviewing, and editing drafts – all with good humor and collegiality. CEDC Vice Chair Dr. Nicol Turner Lee contributed her immense expertise as a scholar of the digital divide to this work, both as a reviewer and editor. We are very grateful. CEDC Vice Chair Susan Au Allen, a highly regarded expert in diverse entrepreneurship, was very generous with her time and energy by conducting interviews, as well as reviewing and editing numerous drafts of the report.

The CEDC thanks Dr. Dominique Harrison, Chair, DEI Working Group and Dr. Jon Gant, Independent Subject Matter Expert, for their diligent efforts in coordinating the drafting of the DEI Working Group section of the overall report. They each spent countless hours reviewing the interview and research records, formatting the report, and developing, drafting, and editing the final report. Their contributions were invaluable to the final production of the CEDC's report. Our deep appreciation is also extended to Joi Chaney, National Urban League, for her leadership in conducting interviews and developing the research for the report.

Anna Gomez, ACDDE Chair *Emeritus*, led the work on Part Two of the report addressing the need for engagement of diverse subcontractors and suppliers in IIJA-funded projects. We are indebted to Anna and her subcommittee colleagues for their public service on this report. Thanks and gratitude are also extended to Jill Houghton, Randi Parker and Joon Bang for their efforts to highlight the intersectionality of digital discrimination. Their report in Part Three brings a much-needed focus to diverse Americans also deserving of digital equity. Working Group Chairs Robert Brooks and Chris Wood supported their colleagues in assembling the interviews and conducting research. Our appreciation is extended to each of them as well.

We also thank Marlene Jackson, Consumer and Government Affairs Bureau and Scott Smith (Solo Creative) on behalf of Connected Nation for the design and layout of the report. Finally, thank you to FCC CEDC staff Jamila Bess Johnson, Rashann Duvall, Keyla Hernandez-Ulloa and Aurélie Mathieu for their support of the work of the Council.

EXECUTIVE SUMMARY

Under the leadership of Federal Communications Commission (FCC or Commission) Chairwoman Jessica Rosenworcel, the Communications Equity and Diversity Council (CEDC), a federal advisory committee, was chartered on June 29, 2021. Under the charter of the CEDC's formation, the Commission appointed members from public interest groups, think tanks, and industry organizations to the federal advisory committee, and divided such members into three Working Groups, which include the Digital Empowerment and Inclusion Working Group ("DEI Working Group"), Innovation and Access Working Group ("I&A Working Group"), and the Diversity and Equity Working Group ("D&E Working Group").[1]

One of the inaugural and urgent tasks of the CEDC was to present recommendations to the Commission on the public policies, programs, and other strategic initiatives to "advance[e] equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability."[2] The particular request of the Commission in December 2021 was to: (a) examine issues around lack of access to broadband services and products; (b) help better understand the reasons and causes for such lack of access; and (c) offer recommendations for addressing digital discrimination and other barriers that impact equitable access to emerging technology in the U.S., including its territories, particularly in communities that remain unserved, underserved or "under-connected."[3] Such call to action was explicitly legislated by the Congress's Infrastructure Investment and Jobs Act (IIJA), or Bipartisan Infrastructure Law (BIL), that was enacted on November 15, 2021.[4] The legislation directed the Commission to "adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility…."[5]

This document, or the "Report," compiles the findings from the three CEDC Working Groups, and particularly offers guidance to States and localities[6] seeking to prohibit "digital discrimination" in broadband deployment, adoption, and use, as well as in the contracting and grants processes for funds related to forthcoming broadband infrastructure. This Report was developed with the input of the Working Group Members, and a range of interview respondents (See Appendix A). While all CEDC members may not agree on every detail included in the report, the report is an accurate representation of the work conducted.

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[1] Federal Communications Commission, "Working Group Members Announced for FCC Diversity Council," January 13, 2022, https://www.fcc.gov/document/working-group-members-announced-fcc-diversity-council. See also, Federal Communications Commission, "FCC Announces Working Group Members of the Communications Equity and Diversity Council," Public Notice, DA 22-41, January 13, 2022, https://docs.fcc.gov/public/attachments/DA-22-41A1.pdf.

[2] Federal Communications Commission, "Communications Equity and Diversity Council (2021)", https://www.fcc.gov/communications-equity-and-diversity-council.

[3] Federal Communications Commission, "Working Group Members Announced for FCC Diversity Council," January 13, 2022, https://www.fcc.gov/document/working-group-members-announced-fcc-diversity-council. See also, Federal Communications Commission, "FCC Announces Working Group Members of the Communications Equity and Diversity Council," Public Notice, DA 22-41, January 13, 2022, https://docs.fcc.gov/public/attachments/DA-22-41A1.pdf.

[4] Congress.gov. "H.R.3684 - 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," Div. F, Tit. I, Sec. 60506 et seq., Pub. L. 117-58 (Nov. 15, 2021), https://www.congress.gov/bill/117th-congress/house-bill/3684/text. Section 60506 of the Infrastructure Act is codified at 47 U.S.C. § 1754, Digital Discrimination.

[5] *Id.* § 1754(b).

[6] Since localities were not defined in the Infrastructure Investment and Jobs Act or in the charge to the CEDC, for purposes of this report, includes within the term "localities" Native communities and Tribal lands through government-to-government coordination and collaboration, as well as, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the United States Virgin Islands.

The Report is organized by Working Group into three sections:

1. The DEI Working Group presents in Part One model policies and best practices for States and localities to adopt to ensure that broadband internet access service providers do not engage in digital discrimination.

2. Part Two expresses the findings and recommendations of the I&A Working Group that includes a roadmap for inclusive participation among diverse, small, and medium-sized businesses to prevent discrimination in the awarding of IIJA loans and grants.

3. Part Three reflects the findings from the D&E Working Group that promotes universal access among intersectional groups and encourages the Commission to be more inclusive and protective of other vulnerable populations, including those from older, disabled, non-gender conforming, and rural areas.

In accordance with the Commission's request for the CEDC to investigate, compile, and present findings about what States and localities can implement to prevent discriminatory behaviors and activities, the Report provides a starting point for further deliberations and actions that promote increased deployment, adoption, and use of high-speed broadband that not only make it easier for populations to engage in daily activities of remote work, learning, and health care, but also encourage affordable and widely deployed connectivity.

The Report aligns with the statutory language of the IIJA, which in Section 60506(d) requires the agency to "develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination." [7] Further, Section 60506(c) requires the Commission and the Attorney General to ensure that "federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination based on — (1) the income level of an area; (2) the predominant race or ethnicity composition of an area; or (3) other factors the Commission determines to be relevant . . . ." [8] The IIJA statute also directs the Commission to "revise its public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination." [9]

Various other requirements regarding the prevention and elimination of digital discrimination are further considered in the statute, including the requirement of the Commission to adopt rules "to facilitate equal access to broadband internet access service."[10] In satisfying that obligation, the Commission must consider "the issues of technical and economic feasibility presented by that objective."[11] The Commission's rules must be aimed at "(1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion or national origin; and (2) identifying necessary steps for the Commission to take to eliminate discrimination."[12]

[7] 47 U.S.C. § 1754(d). See also, Agenda Released for February 23, 2022, Virtual Meeting of the Communications Equity and Diversity Council, Public Notice, DA 22-164 (WCB Feb. 16, 2022).

[8] 47 U.S.C. § 1754(d).

[9] *Id.* § 1754(e).

[10] *Id.* § 1754(b).

[11] Federal Communications Commission, "FCC Initiates Inquiry on Preventing Digital Discrimination," March 17, 2022, https://www.fcc.gov/document/fcc-initiates-inquiry-preventing-digital-discrimination.

[12] 47 U.S.C. § 1754(b)(1) - (2).

The three combined draft reports and recommendations from each of the Working Groups present a series of critical and distinguishable next steps for the Commission to consider with findings largely extracted from structured interviews with subject matter experts and secondary research. Among the three Working Groups, numerous individuals were interviewed, and various documents and research reports were further analyzed and discussed for inclusion in each part.

The tireless work of CEDC Members presents to the Commission recommendations for a series of model policies and best practices that can be adopted by States, localities, and Internet Service Providers (ISPs) working to promote equitable broadband deployment while preventing digital discrimination. The Report also includes a series of other considerations to advance digital equity, including increased community engagement and K-12 digital skilling, among other action items. Notwithstanding, States and localities should seek to prevent "digital discrimination" based on income level, race, ethnicity, color, religion, or national origin to the extent they have the authority to do so. ISPs should ensure that they will not discriminate between or among any individuals in the availability of broadband. Respectively, the three Working Groups also offer the following recommendations as model polices and best practices for States and localities looking to close the digital divide and other economic opportunity gaps.

DEI Working Group Recommendations for Model Policies and Best Practices That Can Be Adopted for States and Localities to Prevent Digital Discrimination by ISPs:

The DEI Working Group presents a series of recommendations for consideration to prevent digital discrimination by ISPs:

1. **Develop, implement, and make publicly available periodic broadband equity assessments in partnership with ISPs, the community, and other local stakeholders.**

2. **Facilitate greater awareness and information sharing among multi-dwelling unit owners regarding tenant choice and competition considering broadband service agreements.**

3. **Identify local opportunities that could be used to incentivize equitable deployment.**

4. **Engage, where permissible under state and federal law, in the management of public property, such as public rights-of-way, to avert discriminatory behaviors that result in or sustain digital discrimination and redlining.**

5. **Convene regular meetings of broadband providers and other stakeholders, including community anchor institutions, public interest groups, community advocates, labor organizations, and faith-based institutions, to evaluate areas and households unserved or underserved with competitive and quality broadband options.**

6. **Encourage fair competition and choice.**

DEI Working Group Recommendations to Support Digital Equity:

In addition to fulfilling the FCC's charge to the DEI working group to provide recommendations to address digital discrimination, the Working Group also provides recommendations to support digital equity more generally. The Working Group seeks to help the FCC remove barriers to equal opportunity and deliver resources and benefits equitably to all Americans to access and use digital communication and

technologies.[13] Our interviews shed light on many factors, including possible digital discrimination, that may contribute to the lack of digital equity in the United States.

The recommendations presented in this section go beyond the goal to address digital discrimination. The DEI Working Group recognizes the importance of increasing affordability and digital navigation services for historically disadvantaged and other vulnerable populations. The Working Group does not put these recommendations forward to diminish or conflate the distinctly different effort needed to address "digital discrimination" based on income level, race, ethnicity, color, religion, or national origin presented above.[14] The Working Group encourages the FCC to work with States and localities to seek, develop and deepen resources and capabilities to:

1. **Make low-cost broadband available to low-income households through government benefit programs, in combination with internet service providers' low-income programs.**

2. **Build on the success of existing benefit programs that allow low-income households to apply a credit to an internet service of their choice**.

3. **Raise awareness about connectivity programs for programs among eligible households.**

4. **Strengthen marketing and communications about available federal and state connectivity programs and other programs that target low-income or other unconnected members of a community.**

5. **Streamline the application process for government benefit programs referred to above.**

6. **Increase support and funding for organizations such as schools, nonprofits, and faith-based organizations to provide digital navigation assistance in communities they serve.**

7. **Fund, promote and leverage the use of digital navigators**.

8. **Stakeholders should encourage Congress to create a digital public service and engagement program (e.g., digital navigators), which could conduct trainings and outreach in non-adopting communities.**

9. **Increase device access and participation.**

10. **Use public-private partnerships to facilitate remote learning and close the homework gap.**

11. **Ensure that members of the community have safe spaces to access the internet.**

12. **Strengthen digital skilling efforts in underserved communities.**

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[13] Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Pub. L. No. 13985 (2021). https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/. See also, Federal Communications Commission, " Federal Communications Commission Equity Action Plan," April 14, 2022, https://www.fcc.gov/document/federal-communications-commission-equity-action-plan.

[14] 47 U.S.C. § 1754.

13. **Encourage the creation of workforce development/training opportunities, focusing on historically underrepresented communities.**

I&A Working Group Recommendations (Part Two):

The I&A Working Group presents a series of recommendations for consideration to close the opportunity gaps for diverse, and predominantly minority- and women-owned businesses by encouraging States and localities to:

1. **Adopt definitions of small minority- and women-owned (SMW) businesses.**

2. **Designate a government-wide office to oversee supplier diversity initiatives, including the creation of an annual plan to increase supplier diversity.**

3. **Adopt an accountable goal of no less than 30% participation of SMW businesses in state and local infrastructure grant and contract opportunities and provide incentives to first-tier contractors to partner with SMW businesses.**

4. **Include auditing and in-progress reporting in the contracts/subgrants; implement thoughtful auditing, in-progress reporting, real-time accountability, and enforcement to ensure that SMW goals are met.**

5. **The grantees, working in conjunction with the supplier diversity office, should proactively identify contracting and procurement forecasts and needs.**

6. **Ensure diverse participation in task forces or committees that advise grantees on their broadband plans, including broadband supplier diversity.**

7. **Promote certifications prior to disbursement of funds so that SMW businesses are prepared to participate in the funding opportunities.**

8. **Grantees, subgrantees, and contractors should be required to reach out to SMW businesses.**

D&E Working Group Recommendations (Part Three):

The D&E Working Group presents a series of recommendations for consideration by States and localities to ensure the diversity and inclusion of the range of marginalized populations in the U.S. who should benefit from the economic and social benefits of increased broadband access, as well as the digital skills – whether postsecondary or adult workforce training – to compete in the digital economy.

1. **The Commission needs to examine and expand the definition of "equal access" to facilitate greater adoption and use of high-speed broadband, especially among populations experiencing a range of inequalities resulting from a protected characteristic, or an intersection of various attributes or social determinants that limit their full digital engagement.**

2. **The Commission should play a more active role in promoting the relevance of high-speed broadband among populations where broadband can improve quality of lives and increase consumer demand for more equitably deployed broadband services.**

In conclusion, this Report presents findings from the three Working Groups and responds to the Commission's request for recommendations to inform its work in developing model policies and best

practices for States and localities to prevent digital discrimination by ISPs and advance digital equity.

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PART ONE: REPORT AND RECOMMENDATIONS FROM THE DEI WORKING GROUP

Introduction

All communities deserve to have equal access to high-speed broadband, which should embolden "[an] equal opportunity to subscribe to an offered [internet access] service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions."[15] At least, this is the language in the recently enacted Infrastructure Investment and Jobs Act (IIJA) that is poised to accelerate high-speed broadband as one of its core pillars. According to a recent study from BroadbandNow, 42 million Americans lack affordable, high-speed, quality internet with actual download speeds of at least 25 megabits per second (Mbps) and upload speeds of at least 3 Mbps.[16] The Federal Communications Commission reports that 14.5 million Americans lack access to broadband internet, including wired and fixed wireless connections.[17] Microsoft's data usage suggests as many as 120.4 million people in the U.S. do not use the internet at broadband speeds 25/3 Mbps.[18] This data reflects digital access before the pandemic, and not necessarily the millions of Americans who were left digitally disconnected during the beginning of the COVID-19 pandemic.

As many jobs, schools, healthcare, and government services shifted to online environments over the last two years, the need to deliver high-speed broadband connectivity across the U.S. has been amplified. The COVID-19 pandemic exposed the challenges Americans from unserved and underserved communities face in accessing high-speed internet access to meet their basic needs from working at home, participating in distance learning, or taking part in many other important activities for which internet access is crucial. One research study found that nearly half of all adults said that internet access has been essential during the COVID-19 pandemic.[19] School-aged children from low-income households were at an acute disadvantage as schools shut down, with one survey finding that nearly a quarter of those students used public WI-FI to complete homework assignments due to lack of home internet access.[20] The use of telehealth—some of which utilized video services—also expanded rapidly in some communities during this time, accommodating those who could not see their doctors in person but had broadband access.[21] In earnest, the COVID-19 pandemic brought into focus the gap between those who could easily transition to

[15] 47 U.S.C. § 1754(a)(2).

[16] John Busby, Julia Tanberk, and BroadbandNow Team, "FCC Reports Broadband Unavailable to 21.3 Million Americans, BroadbandNow Study Indicates 42 Million Do Not Have Access," February 3, 2020. https://broadbandnow.com/research/fcc-underestimates-unserved-by-50-percent.

[17] Federal Communications Commission, "Fourteenth Broadband Deployment Report," January 19, 2021, https://www.fcc.gov/reports-research/reports/broadband-progress-reports/fourteenth-broadband-deployment-report

[18] Microsoft Airband Initiative, "Maps showing FCC fixed broadband availability and broadband usage based on Microsoft data updated as of October 2020," October 2020, https://app.powerbi.com/view?r=eyJrIjoiYzlhZWIyNWEtMDlkOS00MWJkLWExZGYtOWQ3NTNjNzJiNDIwIiwidCI6ImMxMzZlZWMwLWZlOTItNDVlMC1iZWFlLTQ2OTg0OTczZTIzMiIsImMiOjF9.

[19] Emily A. Vogels, Andrew Perrin, Lee Rainie, and Monica Anderson, "53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak," Pew Research Center, April 30, 2020, https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.

[20] Katherine Schaeffer, "What we know about online learning and the homework gap amid the pandemic," Pew Research Center, October 1, 2021, https://www.pewresearch.org/fact-tank/2021/10/01/what-we-know-about-online-learning-and-the-homework-gap-amid-the-pandemic/.

[21] New York University, "Telemedicine During COVID-19: Video vs. Phone Visits and the Digital Divide," November 15, 2021, https://www.nyu.edu/about/news-publications/news/2021/november/telemedicine-during-covid-19.html.

conducting important activities at home—and those who could not.

Race, Income, Geography and Broadband

For some communities, COVID-19 exacerbated economic disparities for those who did not already have access to broadband services, especially in communities of color, where a lack of broadband access can reinforce systemic inequality.[22] Black and Hispanic adults in the United States remain less likely than white adults to say they have high-speed internet at home, according to data from the Pew Research Center.[23] While studies have shown that 78% of English-speaking Asian Americans use the Internet, these analyses are often limited in scope and obscure key inequities within API communities.[24] The American Indian Policy Institute (AIPI) found that 18% of indigenous, tribal residents lack broadband internet access and have the highest poverty rate (25.4%) among all communities of color.[25] Similar concerns abound among U.S. territories, including Puerto Rico where some residents still have limited or no internet access, especially those living in rural areas.[26] In Hawaii, roughly 13% of residents do not have a broadband internet subscription.[27] More data on broadband connections for communities of color is needed to provide a more accurate and wholistic examination of the inequities and opportunities for internet connectivity for these groups.

Research also shows that income is correlated to the availability and adoption of the internet.[28] Many low-income households are not connected to high-speed broadband because they cannot afford the service.[29] Four-in-ten adults with households earning less than $30,000 do not have broadband services (43%).[30]

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[22] Nicol Turner Lee, Kaya Henderson, Marc Morial, Andre M. Perry, "Can we alleviate racism and systemic inequality by expanding broadband during COVID-19?", (panel, The Brookings Institution, Washington, DC, August 25, 2020), https://www.brookings.edu/events/can-we-alleviate-racism-and-systemic-inequality-by-expanding-broadband-during-covid-19/.

[23] Sara Atske and Andrew Perrin, "Home Broadband Adoption, Computer Ownership Vary By Race, Ethnicity In the U.S.," July 16, 2021, https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/.

[24] National Telecommunications and Information Administration, "NTIA Data Reveal Shifts in Technology Use, Persistent Digital Divide," June 10, 2020, https://www.ntia.gov/blog/2020/ntia-data-reveal-shifts-technology-use-persistent-digital-divide. See also, Emily Chi and Nicole Morgenstern, "Broadband: What Is The Digital Divide And What Does It Look Like?," May 24, 2021, Medium, https://medium.com/advancing-justice-aajc/broadband-what-is-the-digital-divide-and-what-does-it-look-like-6c414656361d.

[25] Poverty USA, "The Population of Poverty USA," https://www.povertyusa.org/facts.

[26] Next Century Cities, "Puerto Rico," https://nextcenturycities.org/wp-content/uploads/Puerto-Rico.pdf.

[27] United States Census, "QuickFacts Hawaii: Computer and Internet Use," July 1, 2021, https://www.census.gov/quickfacts/fact/table/HI#.

[28] Arizona State University American Indian Policy Institute, "Tribal Digital Divide Policy Brief and Recommendations," April 3, 2020, https://aipi.asu.edu/sites/default/files/tribal_digital_divide_stimulus_bill_advocacy_04032020.pdf.

[29] John Horrigan, "Focusing on Affordability: What Broadband Adoption Rates in Cities Tell Us About Getting More People Online," Benton Institute for Broadband and Society, April 19, 2021, https://www.benton.org/blog/focusing-affordability. *See also*, Dominique Harrison, "Affordability & Availability: Expanding Broadband in the Black Rural South," Joint Center for Political and Economic Studies, October 2021, https://jointcenter.org/wp-content/uploads/2021/10/Affordability-Availability-Expanding-Broadband-in-the-Black-Rural-South.pdf.

[30] Emily A Vogels, "Digital Divide Persists Even As Americans With Lower Incomes Make Gains in Tech Adoption," Pew Research Center, June 21, 2022, https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/.

Beyond income disparities, geographic differences in broadband deployment across communities may also limit full participation in the digital economy. Some studies indicate that disparities are exacerbated by the combination of neighborhood and income effects.[31] For example, neighborhoods with high poverty rates are sometimes found to have slower download speeds.[32] At the same time, significant advancements in the delivery of high-speed broadband have been made.

The Congressional Research Service found that incentivizing sustained private-sector investment in more isolated and sparsely populated communities, including rural and urban areas, has been difficult.[33] The same report also concluded that broadband "[m]arkets tend to be highly localized. Those with favorable geography and demographic profiles often have higher demand, and thus present relatively attractive investment opportunities for broadband providers."[34] While access to high-speed broadband has been increasing[35], undoubtedly the intersection between income, race, geography, and broadband access needs to be better understood to provide more equitable deployment and access to the internet. Where the traditional conversations on discrimination tend to happen around the interconnection of networks and interoperability with devices, more discussion is needed that examines broadband deployment and the actual reach of the physical infrastructure itself in unserved and underserved communities.

Some members of Congress have also asserted the need to examine the practices, decisions, and outcomes facilitated by ISPs that may be related to the deployment and upgrade of broadband in medium and low-income communities. In July 2021, Representative Yvette D. Clarke, [D-NY-9] first introduced H.R.4875 - Anti Digital Redlining Act of 2021 to require the FCC to issue a notice of inquiry related to digital redlining, to prohibit digital redlining, and for other purposes, to evaluate decisions made by ISPs regarding deployment. Clarke's bill, which did not pass, sought to:

> "ensure…that all Americans, especially those in traditionally underserved or marginalized communities, have access to competing broadband networks at the same quality of service, at reasonable prices, as available in other similarly situated communities with higher median incomes or different demographic makeup…"[36]

The development of Clarke's bill was in response to what some communities experienced in their neighborhoods.[37] In the last decade, there have been allegations of what some characterize as digital redlining[38] of broadband availability in various parts of the country.

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[31] Kendall Swenson and Robin Ghertner, "People in Low-Income Households Have Less Access to Internet Services," Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, April 2020. https://aspe.hhs.gov/sites/default/files/private/pdf/26301/Internet_Access_Among_Low_Income.pdf.

[32] *Ibid*.

[33] Brian E. Humphreys, "Demand for Broadband in Rural Areas: Implications for Universal Access," Congressional Research Service, December 9, 2019, https://sgp.fas.org/crs/misc/R46108.pdf;

[34] *See* Humphreys, 2019.

[35] Andrew, and Sara Ataske, "7% of Americans Don't Use the Internet. Who Are They?" Pew Research Center, April 2, 2021. https://pewrsr.ch/2GrhLUj.

[36] Congress.gov. "H.R.4875 - 117th Congress (2021-2022): Anti Digital Redlining Act of 2021." August 2, 2021, https://www.congress.gov/bill/117th-congress/house-bill/4875/. Rep Clarke's bill was not adopted, but did help secure bipartisan support for the digital discrimination inquiry in the subsequent passing of the IIJA.

[37] Stephen Babcock, "With help from Baltimore leaders, US Rep. Yvette Clarke is introducing the Anti-Digital Redlining Act of 2021," August 9, 2021, https://technical.ly/civic-news/anti-digital-redlining-act/

[38] The Committee did not define digital discrimination or digital redlining. Rather, the Committee asked the interviewees to share a definition if they chose. The Committee used the definitions to try to understand what digital

(continued….)

In 2014, the then New York City Mayor accused an ISP of not fulfilling its commitments under a cable franchise agreement.[39] In Cleveland, Ohio in 2017, three Black residents accused an ISP serving the city of not bringing published broadband speeds to their individual households or surrounding communities.[40] While the complaint was dismissed by the FCC in response to a joint motion filed by both parties, it made allegations that the ISP did not equally invest in their wireline broadband infrastructure and did not provide comparable service between middle- and low-income neighborhoods in the city of Cleveland.[41]

While what constitutes digital redlining will require further exploration by the Commission, these allegations suggest the importance of addressing and prohibiting digital discrimination as part of the deployment of IIJA resources. With digital technologies and services evolving, States and localities play a critical role in ensuring equitable broadband access in the U.S. and the FCC has been tasked under the IIJA to develop guidance that can be adopted by States and localities to prevent digital discrimination by ISPs. That is why having a solid set of recommended model policies and best practices to prevent digital discrimination based on income level, race, ethnicity, color, religion, or national origin by ISPs can facilitate greater online engagement amongst all communities.

Digital Discrimination In The Infrastructure Investment And Jobs Act (IIJA))

On November 15, 2021, President Biden signed Public Law No: 117-58, the Infrastructure Investment and Jobs Act – which includes the largest federal investment in universal broadband since the American Recovery and Reinvestment Act under the Obama administration. The IIJA instructed the investment of $65 billion into the provision of reliably deployed, affordable, and widely available high-speed broadband for everyone in the U.S. by the end of the decade.[42] Coined the "Internet for All" program, the goals are to build affordable, reliable high-speed internet infrastructure, teach digital skills, and provide necessary technology (e.g., internet-enabled hardware) that enables full participation in today's society and economy, especially for communities of color, rural residents, and older populations.[43]

(Continued from previous page)
discrimination and digital redlining are from various perspectives of the interviewees.

[39] The dispute arose under the cable franchise agreement for alleged failure to meet certain deployment commitments which would provide service to residents of varying demographics and income levels across the entire city of New York. See also, The Official Website of the City of New York, "De Blasio Administration Releases Audit Report of Verizon's Citywide FiOS Implementation," June 18, 2015, https://www1.nyc.gov/office-of-the-mayor/news/415-15/de-blasio-administration-releases-audit-report-verizon-s-citywide-fios-implementation. The lawsuit filed by the City of New York in 2017 did not advance any claims of discrimination under the cable franchise agreement or otherwise. *See* Complaint, *City of New York v. Verizon New York et al.*, Index NO 45066-2-17 (filed Mar. 13, 2017).

[40] Federal Communications Commission, "In the matter of Joanne Elkins, Hattie Lanfair, Rachelle Lee Complainants, v. AT&T Corp. Defendant," August 24, 2017, https://digitalinclusion.org/wp-content/uploads/2017/08/ATT-Final-Complaint.08.24.2017.pdf.

[41] Taylor, et al. v. AT&T | Federal Communications Commission (fcc.gov), www.fcc.gov/document.taylor-et-al-v-att.

[42] Congress.gov. "H.R.3684 - 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," Div. F, Pub. L. 117-58 (Nov. 15, 2021), https://www.congress.gov/bill/117th-congress/house-bill/3684/text. See also, National Telecommunications and Information Administration, "NTIA's Role in Implementing the Broadband Provisions of the 2021 Infrastructure Investment and Jobs Act," https://broadbandusa.ntia.doc.gov/news/latest-news/ntias-role-implementing-broadband-provisions-2021-infrastructure-investment-and.

[43] Biden-Harris Administration Launches $45 Billion 'Internet for All' Initiative to Bring Affordable, Reliable High-Speed Internet to Everyone in America." May 13, 2022. https://broadbandusa.ntia.doc.gov/news/latest-news/biden-harris-administration-launches-45-billion-internet-all-initiative-bring.

Section 60506(d) of the IIJA[44] requires the FCC to "develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination."[45] Section 60506 also appears to draw upon the language in the Anti-Digital Redlining Act of 2021 (H.R.4875) introduced by Representative Yvette Clarke. In contrast to the Clarke bill, the language of the IIJA requires that the FCC, the federal agency with oversight over the nation's communications infrastructure, "take steps to ensure that all people of the United States benefit from equal access to broadband internet service. Not later than two years after the date of the enactment of this Act, the Commission shall adopt final rules to facilitate greater access to broadband internet access, considering the issues of technical and economic feasibility presented by that objective, including:

1. Preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and
2. Identifying necessary steps for the Commission to take to eliminate discrimination described in paragraph." [46]

The Charge of the DEI Working Group

In December 2021, the DEI Working Group, one of three CEDC working groups, was charged with the task from FCC Chairwoman Jessica Rosenworcel to recommend model policies and best practices that could be adopted by States and localities to prevent digital discrimination by ISPs. Members of the DEI Working Group worked alongside other CEDC working groups to identify and interview a diverse set of experts within the telecommunications and civil society sectors, including local government officials, non-profit leaders, internet service providers, economists, executive departments of the U.S. federal government, academics, and digital inclusion advocates.

Over 30 virtual interviews were conducted by the DEI Working Group, and the Working Group developed a questionnaire that explored several issues with respondents:

1. Proposed definitions of "digital discrimination" and "digital redlining,"
2. How States and localities have and can identify and address digital discrimination,
3. The business models and decisions of ISPs and how they can support or contribute to "digital discrimination," and
4. Recommendations of best practices from the public and private sectors to prevent digital discrimination.

The DEI Working Group also relied upon data and research by scholars, organizations, and local governments that have driven digital equity and inclusion scholarship. In all, the Working Group learned during the interviews that ensuring equitable technology access is a very complex endeavor, and there is some variation in how stakeholders define digital discrimination. In the end, these interviews exposed that there may be little to no agreement on what constitutes digital discrimination.

[44] 47 U.S.C. § 1754(d).

[45] Federal Communications Commission, "Agenda Released for February 23, 2022, Virtual Meeting of the Communications Equity and Diversity Council," Public Notice, DA 22-164 (WCB Feb. 16, 2022); 47 U.S.C. § 1754(d), https://docs.fcc.gov/public/attachments/DA-22-164A1.pdf.

[46] 47 U.S.C. § 1754(b)(1) - (2).

METHODOLOGY

The DEI Working Group engaged in multiple methodologies to meet the Commission's charge.

Interviews. The Working Group identified experts from government, industry, academia, and advocacy groups who could discuss digital equity challenges and propose solutions to help inform its recommendations. A full list of interviewees is included in Appendix A.

Sample questions included:

- How to define digital discrimination?
- How to define digital redlining?
- How are constituents experiencing and impacted by digital discrimination?
- What efforts they and their employers/organizations have undertaken to address digital discrimination?
- What equal access looks like?
- What would make the biggest difference in advancing equal access?
- What are the economic and regulatory considerations that incentivize private investment?
- What data or research should be considered?

Interviewees also had the option to provide a formal presentation in addition to the questions that were also shared with the DEI Working Group for further analysis.

Research. The DEI Working Group also reviewed research publications and other publicly available documents issued by a variety of government agencies, academics and think tanks, and advocacy organizations to help inform its development of best practices and model policies to prevent digital discrimination and to promote digital equity. Among other sources, Working Group members reviewed:

- Federal guidance and programs, including the Affordable Connectivity Program and its predecessor the Emergency Broadband Benefit Program.
- Prior reports and recommendations to the FCC, including from the Broadband Deployment Advisory Committee Increasing Broadband Investment in Low-Income Communities Working Group.
- Broadband adoption initiatives and digital skills programs, including partnerships between state and local governments and internet service providers in response to the COVID-19 pandemic.
- Advocacy group guidance and programs, including from the Electronic Frontier Foundation and the National Digital Inclusion Alliance.
- Academic and think tank publications, including from the and Pew Research Center.
- Civil Rights Organization publications, including from the National Urban League.

Working Group Meetings. The DEI Working Group also participated in weekly meetings to prepare before interviews, debrief post interviews, and write the report. Those meetings also enabled the entire group to be able to contribute to the writing of the report in a transparent manner.

FINDINGS FROM INTERVIEWS

Several themes emerged from the interviews to advise the deliverables of the Working Group, particularly the recommendations for state and local leaders. The findings are organized into themes and summarized below. In accordance with the Chatham House rule[47], the names of respondents are not attributed to their specific input, but their scope of work may be described.

- ***Tackling the digital divide is both urgent and imperative.***

The DEI Working Group learned from the interviews that while great progress has been made to connect each person to reliable broadband, there is a sense of the "fierce urgency" to accelerate the rate at which the United States accomplishes this goal. Some snippets from respondents on this topic align with the rationale for the Infrastructure Investment and Jobs Act, where Congress finds namely[48]:

- *"Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States."*
- *The persistent ''digital divide'' in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education."*
- *"The digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all."*
- *"In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service."*
- *"The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing."*

- ***Digital discrimination can appear in multiple contexts.***

The DEI Working Group learned from respondents that digital discrimination continues to be defined based on communal experiences in different contexts that describes instances where discrimination occurs in various frameworks moderated through the deployment and use of computers, applications, algorithms, and computer networks. Forms of digital discrimination, for example, have been a point of enforcement by the U.S. Department of Justice in cases over the past decade when access to consumer-facing websites violated the American with Disabilities Act.[49] In addition, advances in the use of digital technologies for financial services, Friedline and Chen find:

[47] Under the Chatham House Rule, anyone who comes to a meeting is free to use information from the discussion but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. It is designed to increase openness of discussion. *See also*, https://www.chathamhouse.org/about-us/chatham-house-rule.

[48] Congress.gov. "H.R.3684 - 117th Congress (2021-2022): Infrastructure Investment and Jobs Act," Div. F, Tit. I, Sec. 60101, Pub. L. 117-58 (Nov. 15, 2021), https://www.congress.gov/bill/117th-congress/house-bill/3684/.

[49] Jonathon Hensley, "The High Cost of Digital Discrimination: Why Companies Should Care about Web Accessibility", *The Guardian*, December 31, 2015, https://www.theguardian.com/sustainable-business/2015/dec/31/digital-discrimination-netflix-disney-target-web-accessibility-doj.

> "poor black and brown communities experience a form of digital redlining by having the lowest fintech rates. Every percentage increase in a community's black population was associated with an 18% decrease in their rate of high-speed internet access, 1% decrease in smartphone ownership, 12% decrease in online banking, and 3% decrease in mobile banking. Relationships were opposite for communities with increasing white populations where whiteness attracts higher rates of fintech, even amidst high poverty."[50]

Today, algorithms are also under scrutiny for their potential to contribute to discriminatory outcomes. In 2021, a Facebook user "filed a class-action lawsuit against nine companies that manage various apartment buildings in the D.C. area, alleging that they engaged in "digital housing discrimination" by excluding older people — like her — from viewing advertisements on Facebook".[51]

The sense of urgency to confront systemic and structural discrimination is not new to U.S. society. But there has been very little consensus on what constitutes "digital discrimination." Generally, discrimination can be described as the policies, practices, rules, or other systems that deny equal opportunity and outcomes for some groups of people. Legally, the term refers to:

> "…the treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit. Discrimination can be the effect of some law or established practice that confers privileges on a certain class or denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap."[52]

The meaning and impact of discrimination in the digital context are very complex and are being defined as our society lives increasingly in the ever-growing digital information ecosystem that is used for most parts of our lives. However, within the IIJA statute, the Commission is charged with adopting rules to facilitate equal access to high-speed broadband, considering issues of technical and economic feasibility presented by that objective, including preventing digital discrimination of access, and identifying necessary steps for the Commission to take to eliminate discrimination. This reflects the policy that "subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service…with equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions."[53] It is within this specific context that the DEI Working Group focused its efforts and that the recommendations in this report are offered.

- ***Available definitions to understand digital discrimination and digital redlining.***

The Working Group also considered published definitions of digital redlining, which interviewed parties described as a form of digital discrimination. For example, former FCC Chairman, Ajit Pai used the term

[50] Terri Friedline and Zibei Chen, "Digital Redlining and the Fintech Marketplace: Evidence from US Zip Codes," *Journal of Consumer Affairs* 55, no. 2 (June 1, 2021): 366–88, https://doi.org/10.1111/joca.12297.

[51] Christianna Silva, "Facebook Ads Have A Problem. It's Called Digital Redlining. How Legal Are The Ads On Facebook?" *Mashable*, May 3, 2022, https://mashable.com/article/facebook-digital-redlining-ads-protected-traits-section-230.

[52] USlegal.com, "Discrimination Law and Legal Definition," accessed June 21, 2022, https://definitions.uslegal.com/d/discrimination/#:~:text=Discrimination%20refers%20to%20the%20treatment,rather%20than%20on%20individual%20merit.

[53] 47 U.S.C. § 1754(a)(2).

"digitally redlined" to describe the "under-investment in broadband networks —in the low-income communities in our cities, in rural areas, and on Tribal lands."[54] In 2019, the previously chartered Advisory Committee on Diversity and Digital Empowerment (ACDDE) submitted to the FCC its own recommendation on digital redlining.[55] Further, the National Digital Inclusion Alliance (NDIA) has defined digital redlining as:

> "...discrimination by internet service providers in the deployment, maintenance, or upgrade of infrastructure or delivery of services. The denial of services has disparate impacts on people in certain areas of cities or regions, most frequently on the basis of income, race, and ethnicity."[56]

In the Working Group's interviews, respondents shared how they define digital discrimination and related terms from their perspective. See Appendix B for respondents' definitions of terms. Overall, widespread agreement among the interview participants suggested that getting to more equitable broadband must be handled with great care, and sufficient data – especially complete, or near complete broadband maps. Digital discrimination must also consider the presence of racialized and poverty differentiation of access to broadband internet services. Many respondents also shared that income and where one lives are connected to access to broadband services and the business decisions that companies make regarding deployment. In these instances, discussions on specific digital redlining cases were deliberated.

As many of the respondents observed, digital redlining as a term evolved from perspectives on redlining in housing and financial services. Interviewees also agreed that the term "redlining" is a part of housing discrimination and can be understood as the practices and decisions that excluded borrowers based on race from the mortgage lending market by denying or discouraging their use and purchase of physical property in specific communities across the United States.[57]

Finally, interviewees commonly agreed that while redlining has its roots in housing and financial services, the results of this kind of discrimination have led to disparate outcomes and decisions for certain communities, including digital redlining which affects the availability and quality of broadband service in different parts of the country and among U.S. territories, the denial of equitable access to information services, and lack of access to broadband services.

- ***Intent for digital discrimination should be further examined.***

Interviewees and DEI working group members offered diverging perspectives on the foundational matter of whether "discriminatory impact" as opposed to "discriminatory intent" should be the evaluation method by which digital discrimination can be ascertained. The report and the recommendations put forth do not adopt either framework. However, a definition of digital discrimination is critical to executing any best practices to prevent it. The recommendations offered in this Report are also intended to help inform

[54] Federal Communications Commission FCC 17-155, "Statement of Chairman Ajit Pai Re: *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197," https://docs.fcc.gov/public/attachments/FCC-17-155A2.pdf.

[55] Submission by the Advisory Committee on Diversity and Digital Empowerment, FCC, June 24, 2019, available at acdde-06242019-access-subgroup-recommendation.docx (live.com).

[56] Caitlin Kvammen, "NDIA Adds to Digital Inclusion Definitions!" National Digital Inclusion Alliance, July 23, 2021, https://www.digitalinclusion.org/blog/2021/07/23/ndia-adds-to-digital-inclusion-definitions/.

[57] Keeanga-Yamahtta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership, University of North Carolina Press, (2019).

the FCC as it explores the complex issue of digital discrimination, and this discussion must continue for the recommendations to be implemented.

Some interviewees focused on the concept of discrimination as related to intent. On the one hand, respondents indicated that intent can be somewhat difficult to define. One respondent, who was from an ISP, felt that impact should not be part of the conversations given the fact that focusing on impact could chill innovation, and thwart demand, cost, and technical feasibility. Conversely, respondents from the public interest community and others in the working group felt that intent is often hard to define and that focusing on intent preserves the status quo while undermining the experiences of those who are subject to discrimination. They also proposed that shifting the focus to outcomes appropriately centers the discussion on adversely affected communities. Interviewees also suggested greater transparency on technical and economic feasibility among ISPs to remove barriers to deployment in unserved and underserved communities.

- ***Broadband adoption may drive outcome differences for vulnerable populations.***

Some respondents stated that digital discrimination may contribute to the disparities in broadband adoption and the use of digital technologies that drive the digital divide. However, one subject matter expert observed that it is not accurate to simply look at differences in broadband and computer adoption data and assume that the disparities based on race, gender, income, or other attributes are digital discrimination. The overriding concern among several interview participants was to not focus on the intent as much as the outcomes. That is, among some respondents, if individuals are impacted in a negative way, there is a need to address that and figure out how to avoid it.

- ***Broadband deployment decisions may have unintended negative outcomes.***

The Working Group asked interview participants to share their insight into how business decisions and other factors may shape the extent to which it is economically and technically feasible to connect everyone to broadband. As noted in the IIJA, "subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service… with equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions." Some interviewees shared that if issues of economic and technical feasibility have different outcomes for specific communities, there may be concerns about discrimination. Other interviewees mentioned that where economic and technical feasibility exists, ISPs should ensure that their services are also widely available, affordable, and have high bandwidth for all people within their service area, including investing in network upgrades. This has implications for both home use of internet services as well as local businesses.

From the beginning, the Working Group sought to understand how the business decisions of ISPs, if at all, connected to the digital divide that certain communities were experiencing. The Working Group wanted to know how ISPs decided where to deploy their services and what if any specific factors incentivized investment in specific communities. The Working Group learned that, in general, building a network includes steps to plan and design the network, construct the network, connect users, and to operate and maintain the network. The internet delivers service to consumers through a complex network of fiber, cable, copper wire technology, fixed-wireless or mobile, or satellite. ISPs configure the network in various ways to optimize the delivery of services on top of the network to offer voice and video in addition to upgrading to next generation of technologies for access to the Internet to consumers. This creates tradeoffs of meeting the basic access needs with prices that are affordable for consumers with bearing critical investment needs for innovation and market growth strategies for ISPs.

There is uncertainty about the economics of broadband investments based on multiple factors such as the geography and typology of the service area, market demand, and expectations to future-proof the network. Several interviewees identified that the predominant approach to building broadband networks in the U.S. uses a facilities-based approach. In this approach, the ISPs bear the costs to access certain public rights of way and assets such as telephone poles if it serves a subscriber using their own network facilities.

According to some interviewees, the central concern for States and localities should be to consider how to encourage expanded coverage to narrow the digital divide for access to next-generation networks to enable high-bandwidth data transfer using fiber-to-the-premises (FTTP), Data Over Cable Service Interface Specification (DOCSIS), or other technologies without discrimination in deployment and the delivery of broadband quality. The Working Group observed that the goal for ISPs is to build a network where the customer has a sufficient quality of service for their computing needs. Quality of service starts with having enough capacity to perform the functions that are needed such as running a business, completing homework online, or working remotely.

An interview with a broadband consulting firm shared some of the quality-of-service concerns in rural America that may lead to disparate outcomes. While most of the respondents saw equity and inclusion in the adoption of broadband as the main reason to address digital discrimination, some respondents addressed the delivery of broadband to the home. For example, one respondent stated:

> "Latency and jitter are a second concern. Latency is the time it takes for a message to make the trip from one end of a channel to the other. Jitter describes variations in latency; it occurs when portions of a signal arrive out of sync from their expected schedule. Think of a video call over the internet. Latency is responsible for the constant small delay between you speaking and the other person registering your voice, while jitter is responsible for glitches, freezes, and other distortions in the stream. Jitter measures the variability of the broadband connection – is it steady from one second to the next. Latency matters a lot to gamers, folks making real time stock trades, and other highly time sensitive transactions."

- ***The consideration of franchise agreements.***

Some of the respondents brought up the consideration of franchise agreements to reduce the potential of digital redlining. Franchise agreements generally are agreements that allow an entity to construct, maintain and operate facilities, such as utility and communications networks, in the publicly owned rights of way. The rights of way include the streets, sidewalks and often beyond the sidewalk, which have been dedicated for transportation and other purposes. Generally, ISPs must get permission to access rights of way from the State and/or locality that is responsible for managing the rights of way.

For example, the franchising model is the framework for cable networks under the federal Cable Act. The Cable Act requires cable companies to obtain franchise agreements from state or local franchising authorities, and franchising authorities have an obligation to make sure that "access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides."[58] Now that cable providers are also broadband providers, the build-out provisions included in cable franchises have impacted broadband deployment as well.[59]

[58] 47 U.S.C. § 541(a)(3).

[59] *See, e.g.*, Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable TV Consumer Protection and Competition Act of 1992, Third Report and Order, 34 FCC Rcd 6844 (2019) (aff'd in relevant part by City of Eugene v. FCC, 998 F.3d 701, 706 (6th Cir. 2021)).

During the Working Groups interviews, franchise agreements were seen to hold cable companies accountable for service quality, tracking of customer complaints, and build-out requirements to serve specific communities. A utility official stated that franchise agreements can require service in all communities and determine whether it is equal. One expert in the telecommunications sector stated that communities should ask: who is accessing their communities' rights of way and why and what are they doing when they get there? Are they deploying in an equitable fashion?

Another interviewee suggested the Working Group review California's non-discrimination provisions in the state's video franchising law. California's Public Utilities Commission (CPUC) Assembly Bill (AB) 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) seeks to "[p]romote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner, regardless of their socioeconomic status."[60] California's legislation is one example of how franchise agreements have been used to protect against discrimination.

The Working Group heard from some interviewees that franchising or other conditions on access to rights-of-way could delay broadband deployment and increase costs for consumers. While other interviewees mentioned that as franchise agreements have been utilized, States and localities can sometimes make trade-offs through negotiations to ensure that providers are offering service to all communities and/or addressing digital equity needs.

[60] California Public Utilities Code, "General Order 169. Digital Infrastructure and Video Competition Act of 2006," accessed July 11, 2022, https://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/85773.pdf.

MODEL POLICIES AND BEST PRACTICES TO PREVENT DIGITAL DISCRIMINATION BY ISPS

The findings and summarized takeaways from the structured interviews provided the necessary input to construct how States and localities can prohibit digital discrimination by an ISP. More specifically, this Report outlines a series of recommended model policies and best practices that may be pertinent to States, localities, and Internet Service Providers (ISPs) working to promote equitable broadband deployment, while preventing explicit digital discrimination and potential digital redlining. States and localities should prevent "digital discrimination" based on income level, race, ethnicity, color, religion, or national origin. Where economic and technical feasibility exists, ISPs should ensure that their services are widely available to people within their service areas. To prevent any possible regression toward such goals, the DEI Working Group offers in the Report the following model policies and best practices for potential implementation by States and localities.

1. **Develop, implement, and make publicly available periodic broadband equity assessments in partnership with ISPs, the community, and other local stakeholders.**

Through the assessment process, State and local leaders should seek to identify the current broadband needs of their community to ensure equitable deployment of broadband services by ISPs and routinely assess the availability of broadband. The broadband equity assessment could consider what broadband service is currently available, who has reliable and consistent high-speed broadband service at home (e.g., via ongoing review of publicly available data and updating of broadband maps), and the cost needs of broadband services for their community. State and local leaders can use broadband equity assessment data to help identify unserved, underserved, and served areas and effectively direct funds and infrastructure towards areas that need the most support for the deployment of broadband services. Recognizing that timely and accurate data is necessary to produce a useful broadband equity assessment, States and localities should identify key data inputs and consider mechanisms to facilitate reporting by ISPs.

Using broadband equity assessment data, State and local leaders should develop broadband action plans in a way that invites collaboration from relevant stakeholders, including ISPs to better assess and identify where deployment needs to occur, and better target districts and communities for which deployment is required. Such an approach will help ensure greater feedback by ISPs and other interviewees and lead to more participation in addressing the needs identified in the assessment, including considering these needs in infrastructure build-out and upgrade of plans. Further, local broadband action plans, specifically, should include local assessments of broadband deployment efforts and where challenges still exist. This assessment would also include a review of digital adoption programs available in a local community and whether gaps exist to adequately meet the needs of communities.

In addition, ISPs should partner with communities to assess the opportunity and challenges for ISPs to meet unmet needs. ISPs should make this this assessment data publicly available which could help to prevent digital discrimination and ensure product and service delivery is not impacted or driven by such practices.

2. **Facilitate greater awareness and information sharing among multi-dwelling unit owners regarding tenant choice and competition considering broadband service agreements.**

States and localities should raise awareness of FCC rules regarding access to Multiple Tenant Environments (MTEs) or Multiple Dwelling Units (MDUs) and consider new ways to facilitate information sharing with MTE property owners can help inform their decision-making process when considering entering into agreements with ISPs. The FCC has rules in place that prohibit cable and

telecom providers from entering into exclusive property/building access agreements with landlords.[61] However, these regulations may leave room for other types of deals that can lead to lack of choice, slower speeds, higher prices, and low-quality services for communities.[62]

States and localities should consider laws or policies that are designed to eliminate these unintended consequences and ensure expanded access to MTEs. For example, some States, such as Illinois, New Jersey, and Nevada require MTE owners to give competing providers access to their properties. Additionally, localities, like San Francisco, California, have adopted policies that discourage property owners from unreasonably interfering with residents' ability to obtain service, which may be another tool to promote the availability and deployment of broadband to MTEs.[63] States and localities should make efforts to ensure that property owners, cable providers, and ISPs are aware of and comply with these new obligations.

3. Identify local opportunities that could be used to incentivize equitable deployment.

State, and localities should, in collaboration with ISPs, community organizations, consumer advocates, and others, identify and pursue opportunities to incentivize collaborative approaches to deployment. Leaders should examine as necessary, how State and local rules, such as dig once policies, permitting requirements, among other activities, can facilitate equitable broadband deployment.

4. Engage, where permissible under state and federal law, in the management of public property, such as public rights-of-way, to avert discriminatory behaviors that result in or sustain digital discrimination and redlining.

Agreements to use the rights-of-way should reflect that the privilege of using public assets comes with an obligation to provide a benefit to the public, which includes ensuring that all members of the community have equal access to broadband, subject to economic and technological feasibility. The appropriate public benefit(s) should be discussed by community organizations, consumer advocates, and others, and be determined by local governments based on the potential for digital discrimination in the community.

States should also consider whether statutes preempting or creating barriers to the deployment of broadband services or construction of broadband facilities by non-traditional providers such as electric service providers and municipalities are equally subjected to non-discrimination model policies and best practices. States should examine their statutes and policies to ensure broadband providers benefitting from

[61] Recently, the FCC released an order that prohibits exclusive and graduated revenue sharing agreements with cable and telecom providers, requires the disclosure of exclusive marketing arrangements, and clarifies that its existing inside wiring rules prohibit sale-and-leaseback arrangements with cable providers. In adopting this order, the FCC noted that its actions "promote tenant choice and competition in the provision of communication services to the benefit of those who live and work in MTEs." Federal Communications Commission, "FCC Acts to Increase Broadband Competition in Apartment Buildings," February 15, 2022, https://www.fcc.gov/document/fcc-acts-increase-broadband-competition-apartment-buildings.

[62] Federal Communications Commission, "FCC Bans Exclusive Contracts For Telecommunications Services in Apartment Buildings," March 19, 2008, https://www.fcc.gov/document/fcc-bans-exclusive-contracts-telecommunications-services-apartment. *See also*, Sydney Price, "Small, large broadband providers battle over access to multitenant buildings," S&P Global Market Intelligence, October 6, 2021, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/small-large-broadband-providers-battle-over-access-to-multitenant-buildings-66751037.

[63] San Francisco Police Code § 5201. *See also*, Community Contributor, "San Francisco's Communications Choice Ordinance is Working," February 21, 2020 Updated June 16, 2022, accessed June 24, 2022, https://www.sfexaminer.com/our_sections/forum/san-francisco-s-communications-choice-ordinance-is-working/article_d0d54312-9a69-53a7-b36c-988cf49c69cb.html.

public assets provide appropriate public benefits to address potential digital discrimination.

5. Convene regular meetings of broadband providers and other stakeholders, including community anchor institutions, public interest groups, community advocates, labor organizations, and faith-based institutions, to evaluate areas and households unserved or underserved with competitive and quality broadband options.

Local organizations, including community anchor institutions, public interest groups, community advocates, labor organizations, and faith-based institutions can help States and localities evaluate areas and households that are unserved or underserved with competitive and quality broadband options, and work collaboratively to develop best practices and solutions for overcoming such barriers to equitable broadband deployment and adoption. State and local leaders should also seek to uncover and address areas experiencing digital redlining and strategies to prevent such discrimination.

6. Encourage fair competition and choice.

States and localities should continue to explore the role of competition and choice in not only accelerating consumer options but also as a commitment to more regular, seamless engagement with online resources that improve the quality of life for community members through activities such as online education, telehealth, civic engagement, employment, among other activities. Competition among ISPs may lower costs for consumers and improve the quality of service by both new and incumbent ISPs.

BEST PRACTICES TO ADVANCE DIGITAL EQUITY FOR STATE AND LOCALITIES

1. **Make low-cost broadband available to low-income households through government benefit programs, in combination with internet service providers' low-income programs.**

The FCC should continue to coordinate with State and localities to maximize the impact of programs to make low-cost broadband available. For example, the Emergency Broadband Benefit Program's (EBB) success ushered in the creation of the Affordable Connectivity Program (ACP) reflecting Congress's recognition that this targeted subsidy should not be limited to a short-term pandemic program.[64] EBB/ACP are available to a wide range of low-income households (including those receiving benefits from Medicaid, Federal Public Housing Assistance, and the National School Lunch Program) and the IIJA avoided requirements, such as the eligible telecommunications carrier requirement that could have limited service provider participation.[65]

As of July 2022, more than 1,500 service providers participate in ACP,[66] and more than 12 million low-income households participate in ACP.[67] Many internet service providers also offer low-cost broadband plans for low-income families. These service offerings can be free to consumers once the ACP benefit is applied.[68] While funding exists currently, the legislation does not provide long-term support. Also, additional guidelines are needed to set standards for quality of service as well as marketing and communication to reach the target audiences more effectively based on lessons learned from the implementation of EBB and ACP to date.

It is also essential for the FCC to improve the USF programs' ability to meet the goals of universal deployment, affordability, adoption, availability, and equitable access to broadband. While the Infrastructure Act provides critical investments, it does not eliminate the need for a robust Lifeline program, continued support for educational and rural healthcare connectivity, and, in all probability, some form of ongoing high-cost support. To ensure these vital programs truly meet the Commission's mandate, it will be critical the Commission to carry out its plan to evaluate the scope of its authority under section 254(d), consider further actions on that basis, and for Congress to provide the Commission with any additional legislative tools needed to make changes to the contributions methodology, as the Commission

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[64] Federal Communications Commission, "Affordable Connectivity Program Providers, FCC," accessed May 9, 2022, https://www.fcc.gov/sites/default/files/acp_provider_list.xlsx.

[65] Universal Service Administrative Co., "ACP Enrollment and Claims Tracker," accessed July 11, 2022, https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/; Affordable Connectivity Program Providers, FCC, accessed July 11, 2022, https://www.fcc.gov/affordable-connectivity-program-providers (providing participating providers by state and territory).

[66] Federal Communications Commission, "Affordable Connectivity Program Providers, FCC," accessed July 11, 2022, https://www.fcc.gov/sites/default/files/acp_provider_list.xlsx.

[67] ACP Enrollment and Claims Tracker; Affordable Connectivity Program Providers (providing participating providers by state and territory).

[68] T-Mobile, "T-Mobile Brings the Federal Affordable Connectivity Program to More Customers," January 26, 2022, https://www.t-mobile.com/news/offers/t-mobile-brings-the-federal-affordable-connectivity-program-to-more-customers-with-free-wireless-service-at-metro-by-t-mobile; Comcast, "Comcast Expands Affordable Connectivity Program Offers with Faster Internet Essentials Service and Xfinity Mobile," March 1, 2022, https://corporate.comcast.com/press/releases/comcast-affordable-connectivity-program-internet-essentials-service-xfinity-mobile; Verizon, "Verizon Program Helps Bridge Digital Divide," March 15, 2022, https://www.verizon.com/about/news/verizon-program-helps-bridge-digital-divide; Charter Communications, "Charter is Advancing Access to Affordable, Reliable High-Speed Internet Service,", April 28, 2022, https://policy.charter.com/advancing-access-to-affordable-reliable-internet.

recommended in its recent report to Congress on the future of the universal service fund.[69]

2. Build on the success of existing benefit programs that allow low-income households to apply a credit to an internet service of their choice.

States and localities should use available funds to supplement federal broadband benefits for low-income households. For example, Maryland's Emergency Broadband Benefit Subsidy Program offers those approved for EBB or ACP an additional $15 a month on top of the federal discount for up to one year.[70] ISPs, States and localities, and community organizations should have intentional strategies to make sure broadband benefit programs are easily accessible and available to anyone that meets the criteria for the programs.

3. Raise awareness about connectivity programs for programs among eligible households.

States and localities administering low-income benefit programs (such as SNAP and Medicaid) should inform consumers about broadband benefits such as ACP and Lifeline while they are applying for the benefit qualifying program.[71] For example, during the COVID-19 pandemic, the National Association of Regulatory Utility Commissioners ("NARUC") and FCC partnered to increase awareness about Lifeline in this manner.[72]

4. Strengthen marketing and communications about available federal and state connectivity programs and other programs that target low-income or other unconnected members of a community.

Program materials should explain offerings or programs in clear, nontechnical language.[73] Program materials and support should be shared in multiple languages. State and local leaders should also explore providing translation services for consumers seeking to sign up for service. ISPs' customer service teams

[69] Federal Communications Commission, "FCC Reports to Congress on Future of the Universal Service Fund," August 15, 2022, https://www.fcc.gov/document/fcc-reports-congress-future-universal-service-fund

[70] The Office of Governor Larry Hogan, "Governor Hogan Announces $400 Million Initiative to Ensure Universal Broadband For Maryland, "August 20, 2021, https://governor.maryland.gov/2021/08/20/governor-hogan-announces-400-million-initiative-to-ensure-universal-broadband-for-maryland/. See also, Montgomery County, "Maryland, Affordable Connectivity Program," accessed May 4, 2022, https://montgomerycountymd.gov/obp/emergency-broadband-benefit.html. (Highlighting that a household eligible for EBB/ACP can receive up to an additional $15 per month toward their monthly internet service bill).

[71] Connect 313, "Bridging the Digital Divide in Detroit," accessed June 14, 2022, https://connect313.org/about-us/. In Detroit, Connect 313 brings together a coalition of companies and organizations seeking to ensure that all residents have internet connections, access to relevant devices, and digital resources/technical support by 2024. Connect 313 efforts have contributed to 67.5% of Detroit households becoming "digitally included," compared with only 30% who were digitally included three years ago. Connect 313 spearheaded an awareness campaign, "EBB 313," which included a call center where consumers could receive guidance about reduced cost internet and device options, information about EBB eligibility and plans, and connection with nonprofit partners to assist in applying. The campaign helped connect more than 82,500 such households.

[72] Brandon Presley, "Helping Low-Income Consumers Stay Connected During the COVID-19 Pandemic Through the Federal Lifeline Program," June 1, 2020, https://bit.ly/LifelineFCCNARUC. Among other recommendations, the FCC and NARUC urged state commissions to circulate a toolkit of Lifeline materials to state agency partners administering various government benefits programs.

[73] For example, Comcast has expanded the number of languages its Internet Essentials call center agents can speak to more than 240, plus American Sign Language, to help break down language barriers that can prevent people from applying or getting online.

should be aware of available programs and be able to redirect a potential customer to the targeted support team. ISPs can also help by having call center teams that are assigned to sponsored-service programs and staffing them to ensure fast, reliable, and effective support with minimal hold times. About 40% of respondents to the national survey ranked "having someone walk me through the process step by step" as one of their top three suggestions for how to make applying easier.[74] Installation instructions could be made clearer with step-by-step illustrations of the installation process that are easy to follow for adults with limited technical experience. ISPs could offer options across their tiers of service offerings, and regularly evaluate ACP program to further increase internet adoption. ISPs should be transparent about any future fees or costs, explain them clearly, and ensure that enrollees consent to any future costs when signing up for a no-cost program.

5. Streamline the application process for government benefit programs referred to above.

Multiple steps requiring a consumer to coordinate with a community organization, school, and/or provider can confuse consumers and discourage signups. The complexity of State, localities, and ISP applications for low-income broadband programs—and the time it takes to complete them—often deter potential applicants. Also, programs could allow applicants to confirm their identity using their phone number or another form of official identification, rather than a Social Security Number (SSN), to minimize challenges and hesitancy around personal information sharing and to be more inclusive of those with differing documentation and employment statuses.

6. Increase support and funding for organizations such as schools, nonprofits, and faith-based organizations to provide digital navigation assistance in communities they serve.

It is not enough to establish broadband programs to close the digital divide. There is also a need for "boots on the ground" to help drive awareness about these programs, help potential program participants navigate the application and enrollment process, and work with participants to build the digital skills necessary to get the most out of their broadband service.[75] Research has shown that trusted voices in a community can play a pivotal role in these adoption efforts. Trusted voices can include high touch community-based organizations, volunteers or cross-trained staff that already work in education or other fields with close ties to the community and a familiarity with working one-on-one with residents.[76]

For example, one study conducted through a partnership with the Boston Consulting Group and Comcast, shows how local school districts can help boost broadband adoption among their students. [77] Arlington Public Schools in Virginia used school-based "connectivity teams," comprised of teachers, counselors, and administrators, to make students and the adults in their household aware of the sponsored-service programs. The district also relied on the trusted relationship between parents and community leaders to disseminate information. These efforts helped connect more than 900 of the 1,000 students originally

[74] Chris Goodchild, Hannah Hill, Matt Kalmus, et al., "Boosting Broadband Adoption and Remote K-12 Education in Low-Income Households," Boston Consulting Group, May 12, 2021.

[75] DigitalUS, Digital Navigators: Connect to Opportunity (last visited July 20, 2022), https://digitalus.org/digital-navigator-playbook/. See also, National Urban League, The Lewis Latimer Plan for Digital Equity and Inclusion at 53-68 ("Closing the Adoption Gap") (Apr. 2021), https://nul.org/sites/default/files/2021-04/NUL%20LL%20DEIA%20041421%20Latimer%20Plan_vFINAL_1136AM.pdf.

[76] Nat'l Digital Inclusion Alliance, The Digital Navigator Model (last visited July 20, 2022), https://www.digitalinclusion.org/digital-navigator-model/.

[77] Goodchild, Chris, Hannah Hill, Matt Kalmus, Jean Lee, and David Webb. Boosting Broadband Adoption and Remote K– 12 Education in Low-Income Households, Boston Consulting Group (May 21, 2021) (last visited July 20, 2022), https://www.bcg.com/publications/2021/accelerating-broadband-adoption-for-remote-education-low-income-households.

identified as lacking internet access at home. As a result of these efforts, the district had a 99% participation rate in distance learning.[78] There are numerous other examples of schools and other community-based organizations meeting the adoption needs of their residents.[79]

Communications should also explain a program in clear, nontechnical language. Trusted sources (such as educators, faith leaders, and community organizations) should share program information with students and others and encourage them to enroll. Program materials and support should be shared in multiple languages. Internet service providers should make sure consumers can contact them about questions or issues and speak with a representative in their preferred language and adopt accessibility best practices across providers.

In addition to schools, other trusted voices, including community partners, educators, and faith leaders, should be encouraged to assist in raising program awareness in historically underserved and marginalized communities.[80] Community anchor institutions including community organizations, faith-based institutions, and others can reinforce program marketing. Because they tend to be highly trusted, they can help recruit and support applicants, and help participants build their digital and technical skills. These organizations can also serve as the voice for applicants and households. For example, Black Churches 4 Digital Equity is training 25 national Black church leaders to support ACP sign-up and digital equity in Black communities in the US.

7. Fund, promote and leverage the use of digital navigators.[81]

Digital navigators are typically hired volunteers from libraries, social service agencies, community-based organizations, and philanthropies, who already have local knowledge and experience interacting with people of different backgrounds, including non-native English speakers. Given longstanding feelings of mistrust among those who have not adopted broadband, digital navigators can help bridge gaps that exist in communities.[82] Digital navigators can help address barriers to getting online through one-on-one interactions or in the classroom setting, both virtually and in person:[83]

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[78] *Id.*

[79] Philadelphia Office of Innovation & Tech., Digital Navigator Report at 7 (2021), https://www.phila.gov/media/20211206155728/DigitalNavigatorReport.pdf.

[80] *Ibid*.

[81] National Urban League, The Lewis Latimer Plan For Digital Equity and Inclusion, (Washington, D.C.: April 2021), 62-63, https://nul.org/program/lewis-latimer-plan; DEI Working Group Meeting, Interview with Zeke Cohen, Baltimore City Council, Mar. 28, 2022; The Digital Navigator Model, NDIA, accessed June 15, 2022, https://www.digitalinclusion.org/digital-navigator-model/.

[82] Nicol Turner Lee, "Bridging digital divides between schools and communities," The Brookings Institution, March 2, 2020, https://www.brookings.edu/research/bridging-digital-divides-between-schools-and-communities/.

[83] About Byte Back – Our Issues, Byte Back, accessed June 14, 2022, https://byteback.org/about-us/our-issues/#digital-equality; Byte Back, a D.C.-based nonprofit, empowers digital navigators as part of its digital equity work. Program Profiles, Digital US, accessed May 14, 2022, https://digitalus.org/digital-navigator-playbook/program-profiles/; Launching its Digital Navigator program in late 2020, students and alumni from Byte Back's certification program assist new adopters with technical issues and software troubleshooting and provide digital literacy training for seniors. Digital Navigation, SEAMAAC, accessed June 14, 2022, https://www.seamaac.org/digital-navigation/; Southeast Asian Mutual Assistance Association Coalition ("SEAMAAC"), based in Philadelphia, has a Digital navigation program to help new immigrants and refugees, including assistance on how to get connected, use a device, use a phone as a hotspot, and use email, as well as assistance for parents register their kids for school and other essential services. NDIA Launches National Digital Navigator Corps, NDIA, accessed June 14, 2022, https://www.digitalinclusion.org/digital-navigator-corps/; The National Digital Inclusion Alliance ("NDIA") is launching the National Digital Navigator Corps, which will involve (continued….)

- *Encourage Digital Empowerment*: They can emphasize and demonstrate the benefits of broadband, including access to government services, searching and applying for jobs, education, and telehealth. All stakeholders, including leaders in the business community, elected officials, school districts, and grassroots organizations should coordinate to address this barrier to adoption.
- *Affordability*: Navigators can provide information regarding low-cost options and help users select an option.
- *Application/Installation Process*: Navigators can walk consumers through the step-by-step sign-up process and send trained staff to help with using internet self-install kits.
- *Digital Uses and Skills*: Navigators can explain basic concepts, help build comfort with basic activities, and assist consumers in connecting to the Internet.

8. **Stakeholders should encourage Congress to create a digital public service and engagement program (e.g., digital navigators), which could conduct trainings and outreach in non-adopting communities**.[84]

Allocate funding for digital navigators to ensure equity for those doing the high touch work of onboarding communities in most need. It is a time-consuming effort that should not be left to volunteers as that places an undue burden on community-based organizations already involved.[85]

9. **Increase device access and participation.**

Concerns about the adoption of broadband service must also account for computer or tablet access and the fact that many consumers do not have regular access to a broadband enabled device beyond their smartphones. Evaluate the use of ACP benefit for devices to enable more federal investments to reach those in need through ACP and other federal programs.[86]

10. **Use public-private partnerships to facilitate remote learning and close the homework gap.**

States and localities should consider public-private partnerships with schools, libraries, and higher

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partnership with 18 sites, including at least six sites in Tribal communities. Digital navigation services will include help with accessing affordable internet access, obtaining devices, acquiring technical skills, and getting application assistance.

[84] National Urban League, "The Lewis Latimer Plan For Digital Equity and Inclusion," 62-63, https://nul.org/sites/default/files/2021-04/NUL%20LL%20DEIA%20041421%20Latimer%20Plan_vFINAL_1136AM.pdf. See also, Nicol Turner-Lee, "Why America Needs A "Tech New Deal" To Build Back Better," January 12, 2021, https://www.brookings.edu/blog/techtank/2021/01/12/why-america-needs-a-tech-new-deal-to-build-back-better/ and Nicol Turner Lee, Brookings TechTank Podcast. TechTank Podcast Episode 15: To build back better, the U.S. Needs a Digital Service Corp., https://www.brookings.edu/blog/techtank/2021/03/22/techtank-podcast-episode-15-to-build-back-better-the-u-s-needs-a-digital-service-corps/.

[85] Nicol Turner Lee, Brookings TechTank Podcast. TechTank Podcast Episode 15: To build back better, the U.S. Needs a Digital Service Corp., https://www.brookings.edu/blog/techtank/2021/03/22/techtank-podcast-episode-15-to-build-back-better-the-u-s-needs-a-digital-service-corps/.

[86] PCs For People, "Get Computers & Low-Cost Internet," accessed June 14, 2022, https://www.pcsforpeople.org/get-technology/. For example, PCs for People offers refurbished desktop and laptop computers to people enrolled in an income-based government assistance program, including Medicaid, Supplemental Security Income, National School Lunch Program, Federal Public Housing Assistance, or those who provide government-issued documentation that their income is below 200% of the federal poverty level based on their household size.

education institutions to help spur broadband adoption, particularly among low-income students.[87] The American Rescue Plan Act ("ARPA") created multiple sources of funding for broadband adoption initiatives, including to benefit students. For example, the FCC is administering a $7.17 billion Emergency Connectivity Fund that allows eligible schools and libraries to purchase broadband service and connected devices for students and patrons to use for remote learning.[88] Such funding sources can be used to subsidize programs that seek to close the homework gap.

11. Ensure that members of the community have safe spaces to access the internet.

A safe space for residents to get online can enable them to engage in remote learning, create resumes, apply for jobs, register for government services, and more.[89] Libraries and community centers are integral institutions for addressing connectivity gaps, including the provision of free skills training.[90]

12. Strengthen digital skilling efforts in underserved communities.

While cost can be a factor in broadband adoption, affordability is only one piece of the puzzle in facilitating equal access to broadband.[91] States and localities should work with nonprofits, community organizations, and the private sector to promote digital skilling—a lack of digital literacy and skills can be the greatest barrier to adoption.[92] Digital literacy efforts[93] should also focus on reaching and addressing the needs of older Americans.[94]

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[87] EducationSuperHighway, "K-12 Bridge to Broadband – Leveraging Data to Identify Unconnected Households," accessed June 14, 2022, https://www.educationsuperhighway.org/bridge-to-broadband. For example, NCTA and EducationSuperHighway partnered to create the K-12 Bridge to Broadband program, which enables cable broadband providers to work with school districts to confidentiality exchange information to identify students without home broadband access and enable the school districts to purchase internet service for low-income families through sponsored service agreements.

[88] *See* Federal Communications Commission, "Establishing Emergency Connectivity Fund to Close the Homework Gap," May 11, 2021, https://www.fcc.gov/document/fcc-launch-717-billion-connectivity-fund-program-0.

[89] In partnership with nonprofit organizations and city leaders, Comcast has also created more than 1,000 Lift Zones in community centers nationwide to provide students and families access to free, high-capacity Wi-Fi along with educational and digital skills content to help families and site coordinators navigate online learning.

[90] AT&T, "AT&T, Los Angeles Unified and AT&T Deliver High-Speed Internet to Students' Homes to Bridge the Digital Divide," Press Release, May 3, 2022, https://about.att.com/story/2022/los-angeles-unified-digital-divide.html; AT&T SCREENREADY, "Digital Literacy," accessed May 5, 2022, https://screenready.att.com/digital-literacy/ (highlighting AT&T's offering of free digital literacy courses and workshops in collaboration with the Public Library Association).

[91] Doug Brake & Alexandra Bruer, "Broadband Myths: Are High Broadband Prices Holding Back Adoption?," *ITIF*, February 8, 2021, https://itif.org/publications/2021/02/08/broadband-myths-are-high-broadband-prices-holding-back-adoption.

[92] Collective impact models such as the Town Link and Oakland Undivided are working to leverage local operations (device distribution, digital upskilling resources) in K-12, community colleges, and community-based organizations.

Greenlining, "Oakland Digital Inclusion Program – The Greenlining Institute Launches 'The Town Link,'" accessed June 14, 2022, https://greenlining.org/oakland-digital-inclusion/; OaklandUndivided, "#OaklandUndivided," accessed June 14, 2022, https://www.oaklandundivided.org. See also, Tech Goes Home, "Our Impact," accessed June 14, 2022, https://www.techgoeshome.org/impact. Tech Goes Home, a nonprofit that seeks to help individuals learn to navigate and use the internet, finds that adoption involves access to a (1) computer/tablet, (2) stable and affordable home internet connection, (3) enrollment in digital skills training courses, and (4) lasting access to the digital world and its available resources and opportunities. In 2021, with more than 100 partner sites, more than 360 courses, and more than 4,200 graduates, Tech Goes Home graduates demonstrated success in internet access and skills (2,277 graduates communicated via email and 1,569 graduates managed finances online); education and

(continued….)

13. Encourage the creation of workforce development/training opportunities, focusing on historically underrepresented communities.

Per Scholas, Reboot Representation, CodePath, Year UP, and NPower enable adults and students to develop marketable digital skills that can be leveraged for future careers in media and technology.[95] Broadband deployment and adoption investments can also create nontraditional paths into tech enabled careers. As an example, violence intervention job program models such as Blocpower's NY New York programs show upward economic mobility opportunities for populations at most risk[96].

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learning (1,973 graduates reported using their skills to help their children with school and 474 caregivers with school-aged children reported their children's grades improved); and economic opportunity (1,720 graduates reported using their new skills to access job search resources and 1,265 graduates got a new job, a pay raise, entered a work training program, or started a business).

[93] For example, Older Adults Technology Services ("OATS") develops digital skilling curricula for older adults. In addition to offering in-person programming at Senior Planet Centers in New York City, Plattsburgh, Denver, and Palo Alto, OATS offers educational programming online at Seniorplanet.org and through its online learning platform, Senior Planet U.

[94] Older Adults Technology Services, "Older Adults Technology Services," accessed June 14, 2022, https://oats.org/.

[95] Per Scholas, "Mission: Tuition-Free IT Training - About Per Scholas,", accessed May 5, 2022, https://perscholas.org/about-per-scholas/; Reboot Representation, "Reboot Representation: Home," accessed May 5, 2022, https://www.rebootrepresentation.org/; Codepath, "CodePath | Tech Excellence for All Computer Science Students," accessed May 5, 2022, https://www.codepath.org/; Year Up, "About | Year Up,", accessed May 5, 2022, https://www.yearup.org/about; NPower, "NPower: Home," accessed May 5, 2022, https://www.npower.org/.

[96] Bradley-Smith, Anna. "Climate Tech Startup Creates Hundreds of Jobs for Youth in Brownsville." *BKReader* (blog). Accessed July 18, 2022. https://bkreader.com/2021/09/16/climate-tech-startup-creates-hundreds-of-jobs-for-youth-in-brownsville/.

Conclusion

The insights gleaned from the DEI Working Group interviews and research revealed invaluable insights that can lead to equal access to broadband service for all communities. The Working Group sought to focus on the lived experiences and inequities faced by specific communities across the U.S. This was paramount to the work that was undertaken.

The CEDC appreciates the opportunity to investigate, compile, and offer recommendations to the FCC to prevent digital discrimination and promote digital equity. Considering the unprecedented investment in broadband via the IIJA and the urgency of the request from Chairwoman Rosenworcel, CEDC members were able to meet the challenge on a very aggressive schedule of four months with the diligence and focus that the process deserved. With the diverse membership – both as individuals and institutions represented – the Council is committed to ensuring equal access and digital equity for all people as the work of all three working groups indicate. The recommendations provided are indicative of an understanding that being intentional about addressing barriers to equal access to broadband is imperative for the success of IIJA broadband programs. Therefore, it is critical that the FCC and other agencies ensure that States and localities are empowered to successfully plan, implement, and manage the equitable broadband programs funded via the IIJA. Additionally, they should ensure that diverse stakeholders can participate in IIJA-funded programs as business owners and trusted community partners.

In closing, while this Report represents a direct response to a request from the Chairwoman's office, the Council recognizes that there remains more work to be done by the Council over the next eleven months of its term. The CEDC was able to recognize other issues that require further attention and examination from the CEDC, FCC, and other relevant stakeholders. These include data transparency, addressing issues of intent and disparate impact, and the urgent issue of the Tribal Digital Divide. Thus, more work remains.

Thank you to Chairwoman Rosenworcel for trusting the CEDC with this important task

APPENDIX A – LIST OF DEI WORKING GROUP INTERVIEWS

Interviewees included:

- **Virginia Lam Abrams,** Co-Founder and SVP, Government Affairs and Strategic Advancement, Starry, Inc.
- **Donnel Baird**, CEO, BlocPower
- **Elizabeth Bowles**, President and CEO, Aristotle United Communications LLC
- **Bill Callahan**, Research and Policy Advisor, National Digital Inclusion Alliance, and President and Director, Connect Your Community
- **Zeke Cohen**, Councilman, Baltimore City Council
- **Doug Dawson**, Owner and President, CCG Consulting
- **Diana Eisner**, Vice President of Policy and Advocacy, USTelecom
- **Ernesto Falcon**, Senior Legislative Counsel, Electronic Frontier Foundation
- **Amina Fazlullah**, Senior Director of Equity Policy, Common Sense Media
- **Dr. Tyrone Grandison**, Director, Global Partner Technology Strategy – Public Sector, Microsoft
- **Dr. Tracie Hall**, CEO, American Library Association
- **JoAnne Hovis**, CEO, CTC Technologies
- **Broderick Johnson,** Executive Vice President of Public Policy and Digital Equity, Comcast Corporation
- **Rahman Khan,** Vice President of Community Impact, Charter Communications, Inc.
- **Blair Levin**, Nonresident Senior Fellow, Brookings Metro
- **Anthony Lewis**, Vice President, State Government Affairs and Public Policy, Verizon
- **Dr. Nishal Mohan**, Founder and President, mohuman
- **Dr. Tracy Morris**, Executive Director, American Indian Policy Institute at Arizona State University
- **Francella Ochillo**, Executive Director, Next Century Cities
- **Joe Paul**, CEO, Byte Back
- **Karen Charles Peterson**, Commissioner, Massachusetts Department of Telecommunications and Cable
- **Former FCC Chairman Michael K. Powell,** President and CEO, NCTA
- **Matthew Rantanen**, Co-Chair of Technology Task Force and Co-Chair of Technology and Telecom Subcommittee, National Congress of American Indians **Angela Siefer**, Executive Director, National Digital Inclusion Alliance
- **Deb Socia**, President and CEO, The Enterprise Center
- **Dr. Rikkin Thakker**, CTO, Wireless Infrastructure Association
- **S. Jenell Trigg**, Director of Diversity, Equity & Inclusion, Partner, Lerman Senter PLLC
- **Brenda Villanueva**, Managing Director and Lead Counsel, Telecom, The Utility Reform Network
- **Gino Villarini,** Founder and President, AeroNet
- **Joe Webster**, Chief Broadband Officer, Office of Broadband Programs, Montgomery County, Maryland Government
- **Nancy Werner**, General Counsel, National Association of Telecommunications Officers and Advisors
- **Christopher Yoo**, Founding Director, Center for Technology, Innovation and Competition, Professor, University of Pennsylvania Carey Law School
- **Erich Yost**, Senior Community Planning and Development Specialist, U.S. Department of Housing and Urban Development

Note: *A wider interviewee list was generated by the DEI Working Group; however, there were some*

interviewees on the wider list that were not able to make meetings based on scheduling by the time this document was finalized. At least one party declined the interview request and a few people recommended that the WG speak to someone else at their organization. The FCC team scheduled interviews based on availability and clearance procedures.

APPENDIX B – SUMMARY OF DEFINITIONS OF DIGITAL DISCRIMINATION FROM INTERVIEWS

Definition of Digital Discrimination (from interviews)

- Split between Digital Discrimination and Redlining is political. The term is often used to reflect urban versus other areas. However, there are a number of different communities that are redlined. (non-profit leader)
- Assumptions that household in certain low-income brackets would not be able to afford the service or would not be interested in adopting broadband service. (entrepreneur)
- Unjust or prejudicial treatment, unequal digital opportunities and outcomes like other forms of discrimination (non-profit leader)
- Different quality of service in different parts of the territory (industry consultant).
- Lack of competition and choice in ISPs. (academic)
- Discrimination falls into multiple categories (telecom industry consultant/expert within the telecommunications sector):
    - Deployment Discrimination – ISPs installing where costs of deployment are lower
    - Maintenance/Upgrade Discrimination – maintenance and upgrade discrimination where cable service is not the same all-around town.
    - Greenfield Discrimination – every ISP builds in fiber in new places as they are being built. As a result, richer, new subdivisions get fiber and money is not poured into older neighborhoods.
    - Regional Discrimination – smaller cities are not upgraded and are stuck with older versions of technology (industry consultant)
- Form of discrimination where automated decisions treat digital users unfairly, unethically, and differently based on algorithms that can be found online. Both an indirect and direct form of discrimination. Decisions made more so by machines than individuals, but the machines are programmed by individuals. (government official)
- It's the fact that typically low-income people and people of color and rural residents do not have the same access to broadband structure and services that wealthier and non-poc people have access to. This cuts across all sorts of geographies and population densities. It is the result of underinvestment by broadband companies. (non-profit leader)
- Digital redlining is underinvestment by broadband companies that result in lower speeds and often less affordable service than in wealthier, whiter areas. (government official, citing Vinhcent Le, Greenlining Institute). The fact that typically low-income people, people of color, and rural residents do not have the same access to broadband structure and services that wealthier and non-people of color people have access to. This cuts across all sorts of geographies and population densities. (government official)
- The lack of access to high quality telecommunications service (used as a broad term) and/or have infrastructure that is not being upgraded on par with wealthier communities. (non-profit leader)
- Digital discrimination is any of the following: (expert within the telecommunications sector)
    - a place where there are no adequate networks that allows someone to do what the majority of people are using it for into the foreseeable future;
    - where the service is not affordable to all;
    - where everyone does not have tools to be on it;
    - where using the tools doesn't provide equitable access to services – healthcare, education, etc.
- Examine who has 21st century access and who does not; who has fiber and who does not. (non-profit leader)
- Defines digital discrimination to include digital redlining and both terms are relatively new but based on analogies for historical dissemination in housing and financial services, such as banking and mortgage lending. (attorney)

- Digital discrimination hard to define; states do not have data about who does not have access. (government official)
- Digital redlining is a subset or form of digital discrimination. The definition of redlining adopted by the previous FCC DEI working group is suggested: "the term most commonly refers to activity consistent with the definition offered by the NDIA. The NDIA has defined "digital redlining" as "the denial, to certain communities or neighborhoods, of equal access to the terms, conditions and level of service of advanced information or telecommunications technologies, on the basis of race, ethnicity, income, or wealth." (attorney, citing prior DEI Working Group Report.)
- "[E]conomic cherry picking" because return on investment is what animates companies' economic planning. (industry consultant)

Intent vs. Disparate Treatment

- Disparate treatment (intentional based on race, gender, ability, economic status) and disparate impact (not motivated intentionally). Communities use technology in different ways, so some discriminatory effects are artifacts of the different ways tech is used. (academic)
- Guiding principle is to focus on outcomes, not intent. If individuals are impacted in a negative way, there is a need to address that and figure out how to avoid it. (public interest)
- Intent and market forces do not matter if your community is disconnected. (attorney public interest)
- Policies are created that intentionally or unintentionally result in some people being underserved. When access is provided to resources and the ability to exploit those resources in a way that is not distributed across all groups. (public interest)
- Policies put together today that lead to disparate impacts. (non-profit leader)
- The original drafts of the Infrastructure Act appeared to adopt a disparate impact interpretation – if people of color have a different digital/broadband outcome, then its discrimination. If economics or the technology can determine the different outcomes for people of color, then its discrimination. Then the language shifted to a more de jure approach rather than a disparate impact approach. (expert within the telecommunications sector)

Workforce

- Disparities in access to broadband resulting in the Inability of workforce to research available jobs, etc. (academic)
- Consideration of why digital discrimination is happening and for whom information access is considered essential and for whom nonessential. Digital discrimination occurs geographically and in terms of employee and economic hierarchy. (public interest)

Information Redlining

- Redlining is intentional and unintentional "practice of arbitrarily denying or limiting financial services to specific neighborhoods, generally because its residents are people of color or are poor." (public interest)
- Information redlining is the systemic denial of equitable access to information, information services, and information retrieval methods. (public interest)
- The role of information and digital access in closing the widening health and socioeconomic divide. (public interest)
- Information poverty is further defined by the lack of visible access points to critical information and the absence of well-coordinated and appropriately scaled information infrastructure. (public interest)
- A "situation in which individuals and communities within a given context, do not have the requisite skills, abilities, or material means to obtain efficient access to information, interpret it and apply it appropriately. (public interest)

PART TWO: REPORT AND RECOMMENDATIONS FROM THE INNOVATION AND ACCESS WORKING GROUP – IIJA CONTRACTING AND GRANTS FOR SMALL AND DIVERSE BUSINESSES

I. INTRODUCTION

Diversity and Inclusion is a core principle and foundational to the telecommunication industry's obligation to break down long-standing and well-known barriers to entry for diverse suppliers in the supply chain ecosystem. Removing historical barriers to entry allows for the development and implementation of innovative and sustainable pathways to growing diverse businesses to scale and profitability. Mentoring, entrepreneurship training, clearinghouses, and corporate partnerships are examples of pathways that could lead to the codification of procurement best practices and industry acceptable standards.

Increasing federal spending on underserved businesses will help more Americans realize their entrepreneurial dreams and narrow persistent wealth disparities. According to new analysis from the White House Council of Economic Advisers, based on data provided by the U.S. Small Business Administration (SBA), by merely closing the gap in small business ownership rates, the average net worth of Hispanic/Latino or Black households could increase by 17-22 percent or $138,800 or $185,900 respectively.[97]

The Innovation and Access (I&A) Working Group is tasked with advancing these principles by:

- Recommending solutions to reduce entry barriers and encourage ownership and management of media, digital, communications services, and next-generation technology properties and start-ups to encourage viewpoint diversity by a broad range of voices, including people of color, women, LGBTQ+, and persons with disabilities, among others.
- Studying successful approaches to fostering diversity, equity, and non-discrimination in video, media, and technology ownership, management, and distribution; making recommendations on how to accelerate the entry of small businesses, including those owned by women and people of color, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees.
- Examining issues surrounding access to capital, financing, and participation of small, diverse businesses in the media and technology sectors; and evaluating the impact of new technologies, including algorithms, on diverse consumers.

The FCC, therefore, tasked the I&A Working Group with providing recommendations to ensure inclusive practices for identifying and selecting participating entrepreneurs in IIJA contracting and grants processes. Specifically, the Working Group was directed to recommend a framework for federal and state grant administrators and procurement processes to promote access to opportunities for small and diverse businesses. The Working Group goals for this immediate request were to:

1. increase the participation of small minority- and women-owned (SMW) businesses in state/local infrastructure grant and contract opportunities; and

[97] The White House, "The Benefits of Increased Equity in Federal Contracting," *The White House*. December 1, 2021, https://www.whitehouse.gov/cea/written-materials/2021/12/01/the-benefits-of-increased-equity-in-federal-contracting/; The White House, "FACT SHEET: Biden-Harris Administration Announces Reforms to Increase Equity and Level the Playing Field for Underserved Small Business Owners," *The White House.* December 2, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/fact-sheet-biden-harris-administration-announces-reforms-to-increase-equity-and-level-the-playing-field-for-underserved-small-business-owners/.

2. provide best practices guidance to state/local officials on performing successful outreach to SMW businesses about funding and contract opportunities, and how such businesses can apply, partner as subcontractors, and assist in efforts to widely deploy and increase the take-up rate of broadband in diverse communities.[98]

The I&A Working Group offers these recommendations for best practices to increase the participation of SMW businesses in state and local infrastructure grant and contract opportunities:

1. **Adopt Definitions of Small Minority- and Women-Owned (SMW) Businesses that are inclusive of intersectional groups, such as LGBT+ and People With Disabilities.**

2. **Designate a Government-Wide Office to Oversee Supplier Diversity Initiatives, Including the Creation of an Annual Plan to Increase Supplier Diversity.**

3. **Strongly Encourage an Accountable Goal of No Less Than 30% Participation to the Maximum Extent Practicable of SMW Businesses in State and Local Infrastructure Grant and Contract Opportunities and Provide Incentives to First Tier Contractors to Partner with SMW Businesses.**

4. **Include Purposeful Auditing and In-Progress Reporting in the Contracts/Subgrants for Real-Time Accountability and Compliance as Committed that Ensures that SMW Goals Are Met.**

5. **The Grantees, Working in Conjunction with the Supplier Diversity Office, Should Proactively Identify Contracting and Procurement Forecasts and Needs.**

6. **Require Visible Leadership.**

7. **Streamline Procurement Processes for All Businesses.**

8. **Ensure Diverse Participation in Task Forces or Committees that Advise Grantees on Their Broadband Plans, Including Broadband Supplier Diversity.**

9. **Promote Certifications Prior to Disbursement of Funds so that SMW Businesses are Prepared to Participate in the Funding Opportunities.**

10. **Grantees, Subgrantees, and Contractors Should be Required to Reach out to SMW Businesses.**

11. **Promote Local Business Opportunities.**

12. **NTIA Should Collect and Disseminate North Star Best Practices.**

II. METHODOLOGY

[98] "Communications Equity and Diversity Council Meeting - February 2022," *Federal Communications Commission*. February 23, 2022, https://www.fcc.gov/news-events/events/2022/02/communications-equity-and-diversity-council-meeting-february-2022.

The I&A Working Group followed two paths to identify best practices for increasing participation of small minority- and women-owned businesses in state and local infrastructure grant and contract opportunities—research and interviews.

Research. The Research Team reviewed:[99]

- Federal guidance and programs, including from White House Executive Orders and the President's Management Agenda; the U.S. Department of Transportation's and Environmental Protection Agency's Disadvantaged Business Enterprise (DBE) Programs; the U.S. Department of Commerce's Minority Business Development Agency, and its Office of Small and Disadvantaged Business Utilization; and the U.S. Small Business Administration.
- State guidance and programs, including from the California Department of Transportation, the Washington State Office of Minority and Women's Business Enterprises, the Missouri Department of Transportation, the Florida Department of Management Services Office of Supplier Diversity, the Illinois Commission on Equity and Inclusion, and the Michigan Department of Technology, Management, & Budget.
- Local guidance and programs, including Broward County; Florida; City of Coconut Creek, Florida; Chicago, Illinois; and Detroit, Michigan.
- Academic and Think Tank publications, including the Harvard Kennedy School Government Performance Lab, the Milken Institute, and PolicyLink.
- Responses to an Innovation and Access Workstream Members' Survey.[100] The survey requested feedback from organization representatives with various levels of involvement regarding supplier diversity. The inquiries centered around insights on best practices, model codes, and known initiatives that support supplier diversity initiatives that could potentially be used to support the diversity goals of the infrastructure Investment and Jobs Act (IIJA) Contracting and Grant Processes.
- Prior FCC Advisory Committee on Diversity and Digital Empowerment Reports, including the Tech Diversity Best Practices Report (June 24, 2019),[101] the Diversity in the Tech Sector Working Group Report (June 24, 2021),[102] and the Digital Empowerment Subgroup Report (June 24, 2021).[103]
- Other Guidance and Programs, including from Disability: IN, LBGT Tech, Multicultural Media Telecommunications and Internet Council, National Center for American Indian Enterprise Development, National Minority Supplier Development Council, US Black Chambers, Inc./ByBlack.us, US Hispanic Chamber of Commerce, US Pan Asian American Chamber of Commerce Education Foundation, Women's Business Enterprise National Council; and Asian Business Association Los Angeles, California Asian Pacific Chamber of Commerce, and District of Columbia Washington Metropolitan Area Transit Authority.

[99] *See* Appendix A to Pat II for a full summary of the resources reviewed.

[100] *See* Appendix B to Part II for the survey sample.

[101] FCC Advisory Committee on Diversity and Digital Empowerment, *Tech Diversity Best Practices Report.* (FCC, June 24, 2019), https://www.fcc.gov/sites/default/files/acdde-tech-diversity-best-practices-report-06242019.pdf.

[102] FCC Advisory Committee on Diversity and Digital Empowerment, *Diversity in the Tech Sector Working Group Report.* (FCC, June 24, 2021), https://www.fcc.gov/sites/default/files/acdde-diversity-in-tech-wg-workforce-diversity-report-06242021.pdf.

[103] FCC Advisory Committee on Diversity and Digital Empowerment, *Digital Empowerment Subgroup Report*. (FCC, June 24, 2021), https://www.fcc.gov/sites/default/files/acdde-digital-empowerment-wg-digital-empowerment-report-06242021.pdf.

Interviews. The Working Group identified experts who could discuss procurement or grant administration policies or practices that promote access to opportunities for SMW businesses - and how providing opportunities to SMW businesses helps address digital discrimination. The interviews provided practical advice and guidance to the Working Group. Summaries of the interviews as well as a list of the experts interviewed were compiled.[104] The information the Working Group gleaned from its interviews, as well as its research, are the bases for the recommendations contained herein.

III. BEST PRACTICES ON INCREASING PARTICIPATION OF SMALL MINORITY- AND WOMEN-OWNED BUSINESSES IN STATE AND LOCAL INFRASTRUCTURE GRANT AND CONTRACT OPPORTUNITIES

The IIJA's $65 billion investment into broadband deployment and equity presents a historic opportunity in the U.S. to close the digital divide, to eliminate historic inequities that have led to either a lack of meaningful access to high-speed broadband or to utilize broadband due to a lack of digital readiness, and to ensure that SMW businesses are able to tap into the opportunities presented by these funding programs.

Therefore, the FCC should adopt and forward the below best practice recommendations to the National Telecommunications and Information Administration (NTIA)[105] to utilize in its review of State Equity plans and to develop its technical assistance for grantees.[106]

1. Adopt Definitions of Small Minority- and Women-Owned (SMW) Businesses that are Inclusive of Intersectional Groups, such as LGBT+ and People with Disabilities.

The grantee should adopt definitions of SMW businesses, as follows:[107]

Minority-Owned Business: The Small Business Administration defines a minority-owned business as a business that meets the small business size standard for primary NAISC code which includes the majority (at least 51%) of the company is owned, controlled, and run on a daily basis by a member (or collection of members) of four ethnic or racial groups: African American, Asian American,[108] Hispanic American, and Native American.[109]

Women-Owned Business: A women-owned business is a small business according to SBA size

[104] *See* Appendix C of Part II for the list of experts and interview summaries.

[105] These recommended best practices can also be provided to other U.S. agencies that provide broadband funding, such as the U.S. Department of Treasury.

[106] Although the Council does not have a recommendation in this regard, the Commission should consider whether *Adarand* studies are necessary to support any race-based recommendations to NTIA. See FCC Advisory Committee on Diversity for Communications in the Digital Age Constitutional Issues Subcommittee, *Recommendation for Renewed Adarand Studies* (Washington D.C., United States: September 11, 2009), https://transition.fcc.gov/DiversityFAC/adopted-recommendations/constitutional-sub-rec-adarand.pdf.

[107] This recommendation is not meant to alter prior Committee recommendations and Commission decisions as expressed in other contexts dealing with minority and female ownership.

[108] "Asian American" includes Native Hawaiian and Pacific Islanders.

[109] *See* generally 13 CFR Part 124 – 8(a), Subparts A and B, specifically § 124.105 nuanced ownership requirements, and specifically § 124.105 for Small Disadvantaged Businesses; *see also* "8(a) Business Development Program - Federal Contracting," U.S. Small Business Administration, n.d., accessed July 8, 2022, https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program.

standards, has at least 51% owned and controlled by one or more women who are U.S. citizens, and has women manage day-to-day operations who also make long-term decisions.[110]

Factors to determine whether a business qualifies as SMW include: ownership, control, and day-to-day management. Although it is important to be clear about what qualifies as an SMW business, grantees should not assume that minority- and women-owned businesses are only small and disadvantaged for outreach purposes. Rather, they should include large minority- and women-owned businesses, which could help SMW businesses, in outreach activities. Although the majority of SMW businesses are small, they could grow into larger businesses. Large minority- and women-owned businesses tend to contract with members of their own communities and could also help provide technical assistance to SMW businesses.

2. Designate a Government-Wide Office to Oversee Supplier Diversity Initiatives, Including the Creation of an Annual Plan to Increase Supplier Diversity.

State and local grantees should establish a government-wide office in charge of supplier diversity (hereinafter referred to as "Supplier Diversity Office" or "Office"), which should be involved from the beginning of the grant process. The Office should be separate from a civil rights division. It should have broader responsibilities and be at the same level as the Grants or Procurement Office. Furthermore, the Office should work hand-in-hand with the Grants or Procurement Office.[111]

The Office staff should participate in and sponsor supplier diversity training, as well as review all procurement practices on a government-wide basis.[112] For example, grantees should be required to route for review the grant publication or formal solicitation through an employee of its internal Supplier Diversity Office before advertising it to the public. Any selection/awarding panel should have meaningful diverse representation or should have at least one (1) member of the panel representing the Supplier Diversity Office.

The Office should avoid an overly lax[113] approach because SMW businesses and other supplier diversity issues could "be overlooked or marginalized when the Supplier Diversity Office is not involved from project inception."[114] Thus, smaller issues could quickly turn into bigger issues.[115]

The Office should include dedicated staff for outreach and technical assistance.[116] The staff members

[110] *See* generally 13 CFR Part 127, specifically § 127.201 for Women-owned small business (WOSB) and Economically Disadvantaged WSOB; *see also* "Women-Owned Small Business Federal Contracting Program," U.S. Small Business Administration. n.d., accessed July 8, 2022, https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program.

[111] U.S. Department of Transportation, *Disadvantaged Business Enterprise Program* (Washington D.C., United States: U.S. Department of Transportation, Federal Highway Administration, August 20, 2018), https://www.fhwa.dot.gov/civilrights/programs/dbe_acm_handbook_20180820.pdf.

[112] *Supplier Diversity Best Practices* Tools for Equity in Public Spending - Internal Processes (Washington, United States: Washington State Office of Minority Women's Business Enterprises, n.d.), accessed July 8, 2022, https://omwbe.wa.gov/sites/default/files/public/tools-for-equity/Supplier-Diversity-Best-Practices.pdf, p. 1.

[113] U.S. Department of Transportation, *Disadvantaged Business Enterprise Program,* p. 43.

[114] *Ibid*.

[115] *Ibid*.

[116] Improving Government Vendor Diversity, Harvard Kennedy School, Government Performance Lab, September 2017, https://hwpi.harvard.edu/files/govlabs/files/strategies_for_improving_vendor_diversity_brief.pdf, p. 3.

should build strong relationships with SMW businesses and Chambers of Commerce throughout the areas/region/state it serves, to ensure that they are properly invited to participate as potential sources for suppliers information and connection to the suppliers' community, and to help and encourage them to participate in the grant's opportunities.[117] The staff members should also maintain a regularly updated list of SMW businesses, Chambers of Commerce, and other supporting community-based, business, and educational organizations throughout the area/region/state it serves.[118] In addition, proof of the manner of solicitation should be provided to show compliance with NTIA's[119] requirements that grantees use the resources of organizations such as the Small Business Administration, and the Minority Business Development Agency at the U.S. Department of Commerce, in addition to diverse, minority, and women business organizations, etc.[120]

For example, the City of Boston's Department of Neighborhood Development and Office of Small Business Development builds strong relationships with SMW suppliers and supports their participation in the City's business opportunities. Throughout the procurement process, they provide outreach and technical assistance to small businesses, which are disproportionately SMWs.[121]

The Office should follow up on initial solicitations by contacting SMWs to determine if they are interested or need technical assistance.[122] Ultimately, the staff should use all reasonable and available means to effectively solicit and assist interested SMWs.[123] For example, the Office should be tasked with helping SMW businesses recruit employees capable of executing the contract tasks.

3. Strongly Encourage an Accountable Goal of No Less Than 30% Participation to the Maximum Extent Practicable of SMW Businesses in State and Local Infrastructure Grant and Contract Opportunities and Provide Incentives to First Tier Contractors to Partner with SMW Businesses.

Consistent with applicable State and local government regulations, the Office should develop and aim for a documented commitment to achieve a goal of no less than 30% SMW business participation.[124] The goal however, should consider economic factors, such as SMW businesses' ability to meet requirements in a timely and cost-efficient manner. Efforts should be publicly announced at the highest leadership

[117] NTIA, *Broadband Equity Access and Deployment Program, Notice Of Funding Opportunity ("BEAD NOFO"),* p. 88 (Washington D.C., United States: DOC, May 2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (requiring that grantees ensure that "small and minority businesses, and women's business enterprises are solicited whenever there are potential sources.").

[118] NTIA, *BEAD NOFO*, p. 88.

[119] These recommendations reference NTIA because as noted, *infra*, the Working recommends that the FCC forward these recommendations to NTIA.

[120] *Ibid*., p. 89.

[121] *Improving Government Vendor Diversity*, p. 3. Assistance includes one-on-one support and guidance, certification, bidding, contracting, and payment processes; conducting workshops in predominantly low-income or minority neighborhoods; partnering with nongovernmental organizations to increase access to capital and pro bono legal services for smaller vendors; attending community group meetings; and contacting publicly listed businesses to inform them of new bidding opportunities.

[122] Illinois Commission on Equity & Inclusion, *Guidance for Documenting Good Faith Efforts to Meet BEP Participation Goals* (Illinois, United States: Business Enterprise Program (BEP), n.d.), accessed July 8, 2022, https://cei.illinois.gov/content/dam/soi/en/web/cei/documents/GOOD_FAITH_EFFORTS_GUIDANCE.pdf., p. 3.

[123] Illinois Commission on Equity & Inclusion, *Guidance for Documenting Good Faith Efforts to Meet BEP Participation Goals.*

[124] U.S. Department of Transportation, *Disadvantaged Business Enterprise Program*, p. 44.

level, i.e., the Governor of a state or the Mayor of a county, city, or town.[125] Making a public commitment to the goal elevates the priority of the effort internally and promotes the program to potential SMW businesses, thereby encouraging them to participate.[126] For example, the White House recently announced that its goal for government-wide spending is 11% SMW business participation, which is, up from the statutory goal of 5%, with the ultimate goal of 15% by 2025.[127] And in 2016, Boston Mayor Marty Walsh signed an Executive Order that sets targets for utilizing SMW businesses in City contracts, as part of Boston's Economic Inclusion and Equity Agenda to address racial and economic disparities.[128]

The participation goal should not only quantify the dollar amount of awards alone. Where possible, it should also quantify the number of minority-, women-owned businesses, and/or diverse supplier organizations. For example, the NTIA BEAD and Middle Mile Notices of Funding Opportunities (NOFOs) require that grantees, where feasible, permit the maximum participation by SMWs by dividing total requirements into smaller tasks.[129] Additionally, the number of businesses signed up for a database should not be the main measure of success, but rather, how many of these businesses received contracts and how many were approved.

Incentives for first tier grantees or contractors could be helpful and when proven successful, they could include awards, recognition, and score cards to ensure that SMWs "pay it forward." If the grantee or contractor exceeds the 30% SMW businesses participation goal, they might be incentivized with access to additional funds. One example discussed during the interviews included a pension program that helped minority broker dealers enter the industry of international trade by requiring financial firms to use minority managers in order to keep the pension account.

4. Include Purposeful Auditing and In-Progress Reporting in the Contracts/Subgrants for Real-Time Accountability and Compliance as Committed that Ensures that SMW Goals Are Met.

The Supplier Diversity Office should report directly to senior leadership, who should ultimately be held responsible for meeting SMW contracting/subcontracting goals. The Supplier Diversity Office should evaluate progress towards the goal. The Office should make publicly available its methods of review, data collection, and documentation.

The Office should check supplier certifications to ensure the accuracy of SMW business status and participation. That could help to inform the Supplier Diversity Office of the absence of certified SMW businesses and/or their potential participation.[130] In addition, the Office should collect and report its data by specific minority and diverse group (e.g., African American, Asian American, Hispanic American,

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[125] *See, e.g.*, participation goal of 30%, Illinois General Assembly, Public Act 101-0657 SB1608, https://www.ilga.gov/legislation/publicacts/101/101-0657.htm; participation goal of 35%, OCC, City of Atlanta's Small Business Opportunity Program, https://www.atlantaga.gov/home/showpublisheddocument/53769/637774047143000000.

[126] *Improving Government Vendor Diversity*.

[127] The White House, "FACT SHEET: Biden-Harris Administration Announces Reforms to Increase Equity."

[128] Mayor's Office, "Mayor Walsh Signs Executive Order to Expand Opportunities for Women and Minority Owned Businesses," City of Boston. July 13, 2016, https://www.boston.gov/news/mayor-walsh-signs-executive-order-expand-opportunities-women-and-minority-owned-businesses.

[129] NTIA, *BEAD NOFO*, p. 89.

[130] U.S. Department of Transportation, *Obtaining [DBE] Certification*, Disadvantaged Business Enterprise. February 3, 2020, https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/obtaining-certification.

Native American, LGBT+, or people with disabilities). In its revisions to the federal procurement process to increase the share of federal contracts to small, disadvantaged businesses, the White House included federal contracting spending data by the race or ethnic origin of the business owner.[131] These data points will allow comparison at the community level, such as by county or zip code, rather than at a broad level, such as statewide or nationwide. They include data on the contract dollar amount and diversity status of subcontractors.[132] These grassroots data comparisons are invaluable for assessing the success of Supplier Diversity initiatives at the community level, and for determining whether there is an imbalance unfavorable to particular SMW businesses, such as African or Asian or Hispanic or Native American or women-owned businesses.[133] In addition, these data should help the Office and grantee to make sure there is no double-counting of SMW businesses hired or awarded contracts. For example, an African American woman-owned business should only be counted once, not twice, as a minority- and a woman-owned business.

The grantee should be specific regarding the scope of work to be performed pursuant to the grant. The Supplier Diversity Office should ensure the SMW business participation goal is met only through direct and meaningful participation, and not incidental or ad hoc or de minimis participation. For example, for a SMW subcontractor that caters a worksite on a sporadic basis, or does irregular office trash collection, although the nature of work may be within the scope of work under a grant, these sporadic and small jobs standing alone should not be considered as within the scope of work of a grant and should not be used to count for meeting SMW business participation goals.

The NTIA BEAD and Middle Mile NOFOs require grantees to apply the same supplier diversity requirements in the NOFO to their subgrantees and their subcontractors.[134] Therefore, subgrantees or subcontractors should also report to their grantee or contractor and be held accountable for their own hiring of SMW businesses.

To achieve the necessary accountability, the Office should have a simple, universal form that can be used for all reporting. Grantees, subgrantees, or contractors should include this report in their quarterly performance and financial reports, and contractors should provide the same reports when they request payment. The grantees or contractors' report should be kept in a public file, such as on their website, and their Chief Procurement Officers should receive and review this information to ascertain compliance. This information could be used to determine whether grantees are meeting their goals on a progressive and timely basis.

A universal form allows the Supplier diversity Office to cross-analyze data. It also reduces incentives for individual grantees or contractors to report the data that would put them in the best light.[135] Making the

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[131] The White House, "FACT SHEET: Biden-Harris Administration Announces Reforms to Increase Equity."

[132] *See Improving Government Vendor Diversity*.

[133] Denise Fairchild, Kalima Rose, *Inclusive Procurement And Contracting: Building a Field of Policy and Practice* eds. Brian Tell, p.32 (PolicyLink, March 5, 2018), available at https://www.policylink.org/sites/default/files/InclusiveProcurement_final-3-5-18.pdf; Supporting Economic Inclusion in Disadvantaged Communities: A Case for Inclusive Procurement Policies (2018), available at https://www.lisc.org/media/filer_public/64/16/64165a54-93d5-47fc-9011-74c8873d2d7b/a_case_for_inclusive_public_procurement_practices.pdf; Nutua Thrash-Ntuk, *Supporting Economic Inclusion in Disadvantaged* Communities. (LISC, 2018), https://www.lisc.org/media/filer_public/64/16/64165a54-93d5-47fc-9011-74c8873d2d7b/a_case_for_inclusive_public_procurement_practices.pdf.

[134] NTIA, *BEAD NOFO*, p. 88.

[135] *See, e.g.*, State of California Department of Transportation*, DBE Business Enterprises Utilization report,* https://app.box.com/file/947850163254.

reporting process simple will make it easier for grantees or contractors to submit their information. These processes will likewise ease the auditing process.

In sum, a successful supplier diversity program should have a well-defined scope of work and real-time accountability by the grantee or contractor for their commitment to their supplier diversity goals. To that end, the diversity goal commitment must be included in the contract between the federal government and the grantee, accompanied by compliance oversight and audit procedures. If compliance fails, taking into account reasons for non-compliance, measures could be considered to address non-compliance. For example, cancellation of options to renew the contract, financial penalty, or – if appropriate – the loss of opportunity to bid on future opportunities for a period of time.

5. The Grantees, Working in Conjunction with the Supplier Diversity Office, Should Proactively Identify Contracting and Procurement Forecasts and Needs.

The EPA has found that, "[e]arly planning and advanced notice support supplier diversity."[136] The grantees therefore should work with the Supplier Diversity Office to identify all contracting and procurement forecasts. A lot could be achieved by focusing on the following objectives: (1) make information on forthcoming opportunities available to SMWs businesses early, (2) arrange time frames for specific deliverables on specific delivery schedules on contracts, and (3) wherever possible, describe the scope of work in a manner that facilitates participation by SMWs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30-calendar days before the bid or proposal closing date.[137]

***6.* Require Visible Leadership.**

As noted above, the supplier diversity goals should be adopted by the highest level of leadership of the grantee's organization, i.e., a Governor or a Mayor. Similarly, subgrantees and contractors' highest level of leadership should certify their own compliance with supplier diversity requirements and make transparent their goals, objectives, and achievements. This could be attained by requiring social media campaigns that highlight the goals and achievements, as well as publishing commitments on the official website of the grantees and subgrantees.

7. Streamline Procurement Processes for All Businesses.

Grantees should streamline their procurement processes. For example, the Supplier Diversity Office should limit administrative burdens for suppliers by creating a single website with program information and resources, including certification and reciprocity, contract opportunities, and bidding information. It is insufficient just to point companies to the program authorization language, application processes, and acquisition regulations.[138] Administrative burdens may also be reduced by eliminating paper filing requirements and by writing solicitations and contracts in plain language, which helps all bidders and makes contract opportunities more readily accessible.[139] In addition, grantees, subgrantees, and contractors should ensure prompt payment upon receipt of a properly issued invoice for work completed according to agreement and goods delivered. Finally, grantees and subgrantees should provide

[136] *Supplier Diversity Best Practices* Tools for Equity in Public Spending - Internal Processes, p. 1.

[137] "Frequently Asked Questions for Disadvantaged Business Enterprises," EPA. April 29, 2022, https://www.epa.gov/grants/frequently-asked-questions-disadvantaged-business-enterprises.

[138] *Improving Government Vendor Diversity,* p. 4.

[139] *Supplier Diversity Best Practices* Tools for Equity in Public Spending - Internal Processes, p. 1.

constructive feedback to SMWs and all businesses that are not selected, to help them strengthen future applications.

8. Ensure Diverse Participation in Task Forces or Committees that Advise Grantees on Their Broadband Plans, Including Broadband Supplier Diversity.

NTIA specifically underscores the importance of stakeholder engagement in its NOFO: "NTIA envisions and welcomes extensive coordination and cooperation with all relevant interviewees. . . . Localities and groups representing historically excluded communities can and must make their voices heard to ensure that longstanding equity gaps are finally closed. Existing broadband providers and new entrants must communicate well with Federal, State, Territorial, Local, and Tribal partners to ensure that deployments proceed as expected and that non-deployment activities are designed and implemented in ways that most benefit the communities they are designed to serve."[140]

The grantees should take full use of the knowledge and connections of people in the community who are familiar with the social and economic interests and concerns of the stakeholders in their areas/regions/states. As a diverse Task Force or Advisory Committee for grantees, they could serve as the grantee's goodwill ambassadors, and interpreters of the plans, hopes, aspirations, anxiety, and disappointment that the grantees' broadband plan may bring. They could help to ensure that the grantee's plan and deployment activities will be carried out to bring the most benefits, including supplier diversity, to the communities that the IIJA intended to serve. The grantees should ensure they specifically seek feedback from the Task Force, Advisory Committee, or similar bodies on how to embed supplier diversity in their broadband plans.

9. Promote Certifications Prior to Disbursement of Funds so that SMW Businesses are Prepared to Participate in the Funding Opportunities.

Transparency and regular review require a means to identify bona fide SMW businesses to ensure the accuracy of data on the SMW businesses reached and utilized under the IIJA. To be qualified as an SMW business, the entity must be at least 51% owned, controlled, and operated on a day-to-day basis by one or more minorities (African American, Asian American, Hispanic American, and Native American) or by women who are U.S. citizens. The Certification will give SMW businesses access to opportunities to grow revenue, build capacity, and enhance credentials. Certification services are provided for free by governmental entities such as the U.S. Small Business Administration, or for a fee in the private sector. There are numerous federal, state, and local entities that provide free certification services for SMW and disadvantaged businesses owned by U.S. citizens. Eight (8) national nonprofit organizations provide certification services for a fee for SMW, people with disabilities, veteran, and LGBT+ businesses located in the United States. Their requirements are substantially the same, i.e., 51% ownership, control, and day-to-day management of the business.

In order to make it easy for SMW businesses to be certified in various areas/regions/states of the country, we recommend reciprocity of certification among the public and private certification entities.[141] Organizations with cultural and linguistic competence could provide for communities with particular cultural sensitivities. The Supplier Diversity Office should be thoughtful of the SMW businesses' desire for choice of association with whom personal, proprietary and financial information would be divulged during the certification process. Grantees could either adopt existing certification programs or create their own certification programs. However, reciprocity is key to avoiding duplication of efforts and expenses to the SMW businesses, as long as the existing certification organizations and programs have an established

[140] NTIA, *BEAD NOFO,* p. 8.

[141] *See Improving Government Vendor Diversity.*

track record of operating a bona fide certification program. Grantees should not adopt one certification program over another, which could create confusion and the appearance of preferential treatment. Additionally, supplier diversity officers should make available toolkits and educational opportunities to ensure SMW businesses are prepared to participate in the certification process.

If a grantee creates its own certification program, it should be streamlined, and the grantee should provide toolkits and training on completing the application form and submitting the required documentation, as well as guidelines for site visits which is an important final step in the certification process. Regardless, however, the grantee should accept reciprocity of certifications issued by similar certification organizations.

Recognizing SMW certifications granted by other entities with similar missions, a bona fide certification program, and a proven track record of integrity, is one way to improve supplier diversity data. The benefit of reciprocity is streamlining certification requirements – if an entity is already certified through one program, it should not have to jump through duplicate or multiple efforts and expense hoops, to get the same certification. There are national trade associations with a track record of certifying minority- and women-owned businesses. The Supplier Diversity Office should consider credentialing these trade associations as certification clearing houses. The more bona fide certification organizations there are, the more minority- and women-owned businesses could be certified, thereby increasing the number of SMW businesses available in the marketplace to access and bid for the opportunities the IIJA provides. To the best of our estimation, IIJA offers more opportunities than ever and there is no better time than now for SMW businesses to get certified. This will further fulfill the intent of the law.

10. Grantees, Subgrantees, and Contractors Should be Required to Reach out to SMW Businesses.

Outreach and education are key to increasing SMW business participation on projects such as under the IIJA. The grantees or contractors therefore should require their subgrantees and subcontractors to engage in meaningful outreach to and education of SMW businesses. These efforts should be documented so that SMW businesses can better tailor their supporting program activities to meet the opportunities.[142] The grantees should not condone "window-dressing outreach" designed solely to establish or document good faith implementation.[143] Rather, the grantee should encourage partnership and collaboration. For example, the grantee should encourage subgrantees or contractors to contract with an SMW business consortium when a contract is too large for smaller firms to handle on their own.

In addition, a subgrantee or contractor should make reasonable efforts to assist interested SMW businesses in obtaining bonding, lines of credit, or insurance required by the procuring agency or the bidder/offeror;[144] and necessary equipment, supplies, materials, or related assistance or services.[145]

11. Promote Local Business Opportunities.

To ensure that SMW businesses are more likely to participate, grantees and subgrantees should promote local business opportunities early, continuously, and aggressively.[146] Furthermore, grantees and

[142] *Ibid*.

[143] *Ibid*.

[144] Illinois Commission on Equity & Inclusion, *Guidance for Documenting Good Faith Efforts to Meet BEP Participation Goals*, p.3.

[145] *Ibid*.

[146] *Ibid*.

subgrantees should publicize contract awards to promote partnerships as early as such opportunities are made known.[147]

12. NTIA Should Collect and Disseminate North Star Best Practices.

As NTIA continues its federal, state, and local broadband coordination efforts, it should develop and maintain a ***North Star***[148] of best practices across federal agencies and state and local governments for collaboration among each other to serve the best interests of the SMW businesses, close the digital divide, eliminate historic inequities, and open access to meaningful highspeed broadband service and equipment so that SMW businesses could tap with ease into the opportunities presented by the IIJA.

NTIA should disseminate ***North Star*** guidance among grantees through its powerful s oversight and technical assistance programs. Top-down guidance will be the critical starting point for grantees to dial into sharp focus the goals at hand--to ensure that SMW businesses are included, welcomed, encouraged, and able to participate individually or in collaboration with all Americans in the unprecedented funding and contracting opportunities flowing out of the IIJA.

IV. CONCLUSION

The Commission tasked the I&A Working Group with recommending ways to increase the participation of SMW businesses in State/local infrastructure grant and contract opportunities, and to provide insightful guidance on successful outreach to SMW businesses regarding funding and contract opportunities, including how to apply directly or partner as subcontractors, to increase deployment of broadband in diverse communities. The Working Group recommends that the Commission adopt and forward the above best practice recommendations to NTIA to utilize in its review of State Equity plans and to develop its technical assistance for grantees.

[147] *Ibid*.

[148] The North Star is the star that lies above the Earths' Northern Pole. See NASA, "What is the North Star and How Do You Find It?" July 28, 2021, available at https://solarsystem.nasa.gov/news/1944/what-is-the-north-star-and-how-do-you-find-it/. Metaphorically speaking, North Star refers to an overall strategy to reach a named goal. See Maximilian Schroeck, Jon Kawamura, and Anne Kwan, "Setting the North Star: Staying Focused and On Track" (2019), available at https://www2.deloitte.com/content/dam/insights/us/articles/5186_setting-the-north-star/DI_setting-the-north-star.pdf.

APPENDIX A

Summary of Resources for Best Practices to Promote Supplier Diversity

I. FEDERAL GUIDANCE & PROGRAMS

A. The White House[149]

i. In December 2021, the White House released "Reforms to Increase Equity and Level the Playing Field for Underserved Small Business Owners." Background: On June 1, 2021, President Biden announced a goal to increase the share of contracts going to small, disadvantaged businesses by 50% by 2025. The announcement built on the President's Day One Executive Order 13985, which directed agencies to work to make contracting opportunities more readily available to all eligible firms and to remove barriers faced by underserved individuals and communities.

ii. Prior to that, on November 18, 2021, the White House launched its President's Management Agenda vision. The third PMA priority—*managing the business of government to build back better*—recognizes that fostering lasting improvements in the Federal acquisition system can create opportunities for underserved communities.

iii. Reforms to the federal procurement process to increase the share of federal contracts to SDBs include:
   1. Asking agencies to increase their goals so that government-wide spending results in 11% of contracting dollars being awarded to small, disadvantaged businesses, up from the current statutory goal of 5%.
   2. Releasing disaggregated data on federal contracting spending by race/ethnicity of business owners, a powerful transparency and management tool.
   3. Implementing changes to the federal government's use of "category management" to boost contracting opportunities for underserved small businesses.
   4. Adopting management practices to drive accountability and institutionalize the achievement of small business contracting goals, with key takeaways such as: holding leaders accountable for meeting small business contracting goals; ensuring agency small business contracting offices have direct reporting lines to senior leadership; increasing the number of new entrants to the federal marketplace; and reversing declines in the small business supplier base.

B. United States Department of Transportation[150]

[149] The White House, "FACT SHEET: Biden-Harris Administration Announces Reforms to Increase Equity and Level the Playing Field for Underserved Small Business Owners," *The White House.* December 2, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/fact-sheet-biden-harris-administration-announces-reforms-to-increase-equity-and-level-the-playing-field-for-underserved-small-business-owners/.

[150] U.S. Department of Transportation, "Disadvantaged Business Enterprise (DBE) Program," accessed July 12, 2022, https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise; U.S. Department of

(continued….)

i. Created a DBE program to remedy ongoing discrimination and the continuing effects of past discrimination in federally assisted highway, transit, airport, and highway safety financial assistance transportation contracting markets nationwide. The goal is to provide small businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally funded transportation contracts. Background: The original Congressional Mandate that started the DBE Program focused on minority/women's business enterprises in the 1980s by regulation under the authority of Title VI of the Civil Rights Act of 1964 and other nondiscrimination statutes that apply to DOT financial assistance programs. Since then, Congress has codified and repeatedly reauthorized the program—most recently in Section 1101(b) of the "Fixing America's Surface Transportation Act" or "FAST-ACT" (P.L. 114-94). The statute provides that, "Except to the extent that the Secretary [of Transportation] determines otherwise, not less than 10% of the amounts made available for any program under [this Act and Section 403, Title 23 of the U.S. Code] shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals." FAST-Act, § 1101(b)(3) (emphasis added).

ii. Implementing Regulations: The DOT's implementing rules are available at 49 C.F.R. Part 26 (and, for airport concessionaires, at 49 CFR Part 23). Definitions include:

1. "Disadvantaged business enterprise" or "DBE" means "a for-profit small business concern – (1) That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it." 49 C.F.R. § 26.5.
2. "African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis."
3. Others that may qualify as economically disadvantaged include an individual who has "a personal net worth that does not exceed $1.32 million. To be seen as a small business, a firm must meet SBA size criteria and have average annual gross receipts not to exceed $23.98 million. Size limits for the airport concessions DBE program are higher."

iii. Program Overview: DOT DBE regulations require state and local transportation agencies that receive DOT financial assistance to establish annual goals as well as contract-specific goals for the participation of DBEs. State and local recipients also certify the eligibility of DBE firms to participate in DOT-assisted

(Continued from previous page)
Transportation, "DBE Laws, Policy, and Guidance," accessed July 12, 2022, https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-laws-policy-and-guidance; U.S. Department of Transportation, "DBE Program Best Practices," accessed July 12, 2022, https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-program-best-practices.

projects. To participate in the DBE program, a small business owned and controlled by socially and economically disadvantaged individuals must receive DBE certification from the relevant State, which is generally obtained through the state Uniform Certification Program ("UCP"). Certifiers make determinations based upon on-site visits, personal interviews, reviews of licenses, stock ownership, equipment, bonding capacity, work completed, resume of principal owners, and financial capacity.

iv. State and Local Transportation Agency Responsibilities (*State and local agencies are not penalized for falling short of their overall goal unless they fail to administer their program in good faith. See 49 C.F.R. § 26.47):
    1. Certify the eligibility of DBE firms to participate in their DOT-assisted contracts;
    2. Establish narrowly tailored goals for the participation of disadvantaged entrepreneurs; and
    3. Evaluate their DOT-assisted contracts throughout the year and establish contract-specific DBE subcontracting goals as necessary to achieve the overall goal of the agency.

v. U.S. Dept. of Transportation Responsibilities:
    1. Developing the rules and regulations for the national DBE Program;
    2. Providing guidance and conducting oversight to make sure that these rules and regulations are followed by the recipients of DOT funds; and
    3. Considering appeals from state/local certification decisions.
    4. DBE Certification Appeals: Entities that have applied for and were denied DBE certification may file an administrative appeal with DOT's Departmental Office of Civil Rights (DOCR) within 90 days from the date of denial. Appeals may be submitted via email and must state why the recipient's decision should be reversed and other essentials. A decision to reverse, affirm, or remand will be made within 180 days upon receipt of the appeal. All DOCR decisions are administratively final.

vi. Fraud: If fraud or any other criminal violation is suspected, the case will be referred to DOT's Office of the Inspector General for investigation.

C. United States Environmental Protection Agency[151]

i. The two relevant statutes are known as the EPA's 8% Statute (Public Law 102-389, 42 U.S.C. 4370d) and the EPA's 10% Statute (Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note), which require an entity to establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. Entities that meet the certification criteria under either authorizing statute qualify for the EPA's DBE program. The 8% Statute presumes women to be socially and economically disadvantaged individuals and the 10% Statute presumes Historically Black Colleges and Universities, Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women, and Disabled Americans are socially and economically disadvantaged individuals.

[151] U.S. Environmental Protection Agency, "Frequently Asked Questions for Disadvantaged Business Enterprises," accessed July 12, 2022, https://www.epa.gov/grants/frequently-asked-questions-disadvantaged-business-enterprises.

ii. Requirement: Six Good Faith Efforts. Funding recipients are required to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs, arrange time frames for contracts, and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State, and Local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in items 1 through 5.

D. United States Department of Commerce

i. Minority Business Development Agency (MBDA).[152] The MBDA is the federal agency dedicated to the growth and global competitiveness of minority business enterprises. In 2016, it issued "Contracting Barriers and Factors Affecting Minority Businesses Enterprises," and the MBDA underscores the most frequently cited contracting barriers:

1. Prime level discriminatory barriers: timely bid notification, explicit discrimination (stereotypes, higher and double standards), MBE/DBE stigma;
2. Prime level non-discriminatory barriers: large project sizes, bonding/insurance, bid requirements, timely payment;
3. Subcontractor level discriminatory barriers: timely bid notification, bid shopping, held bid, lack of good faith effort, only using an MBE if required, explicit discrimination (stereotypes, higher and double standards), MBE/DBE stigma; and

[152] U.S. Department of Commerce Minority Business Development Agency, "Minority Business Development Agency," accessed July 12, 2022, https://www.mbda.gov/; Noteworthy items include U.S. Department of Commerce Minority Business Development Agency, *Contracting Barriers and Factors Affecting Minority Business Enterprises- A Review of Existing Disparity Studies*, (Orlando, Florida, Premier Quantitative Consulting, Inc.), https://www.mbda.gov/sites/default/files/migrated/files-attachments/ContractingBarriers_AReviewofExistingDisparityStudies.pdf.

4. Pervasive barriers: access to capital, network access, marketplace discrimination

The Report suggests several areas to explore and research with respect to lessening barriers faced by MBEs in public contracting. Most relevant here include:

1. To reduce informational asymmetries resulting from established and often exclusive networks, governments can create a centralized bidding notification hub for all city/related agencies where bid posting is mandatory. This will ensure equal access to information as well as timely and equal notification.
2. The federal government should be a model for state and local governments in addressing and understanding the public contracting process. New technology or innovative tools may be used to educate and inform government contracting officers with respect to barriers faced by MBEs. Identify tools that are transferable to local contracting agencies. By standardizing tools at the federal level, it may help standardize and assist all agencies in the collection and management of procurement data at the prime and subcontractor level. Organizations like the MBDA can push for ways to standardize data collection procedures and elements.
3. Agencies can generate disparity study fact sheets and distribute them to buyers and office staff. This allows staff to see exactly what issues the disparity study identified with respect to discrimination and should advance the discussion towards finding solutions. An ongoing education process could focus on understanding specific problems and using teamwork to solve them. It could also encourage buy-in across the organization by starting with a thorough understanding of the problem.
4. Contractors who did not win a bid require objective and accurate feedback to improve in subsequent bidding opportunities. Although not cited as a major barrier, multiple minority business owners reported that they lack feedback on failed proposals.
5. States and municipalities should evaluate the feasibility and implementation of completely anonymous incident reporting systems. Staff members involved in issues should be

apprised of the situation and if found that they contributed to the problem, should face monitored corrective action or other sanctions.

ii. **Office of Small and Disadvantaged Business Utilization (OSDBU).**[153] This Office features Commerce Small Business Program Manual (CSBPM), which includes a chapter on Procurement Mechanisms. The CSBPM provides guidance to procurement offices to ensure that consistent Small Business Program management procedures and practices conform to the Small Business Act (SBA), Federal Acquisition Regulation (FAR), and DOC Small Business Program policies, which require agencies to ensure that a fair proportion of contracts are awarded to small businesses, including socioeconomic small businesses. The manual is very detailed, and topics addressed include:

1. When planning an acquisition, the contracting officer shall first consider socioeconomic small business concerns for award of a prime contract before small business concerns and consider small business for award prior to seeking alternative suppliers. Socioeconomic and small business concerns must also be given first consideration as a member of a team arrangement, including joint ventures and prime contractor/subcontractor relationships.
2. A focus on maximizing small business utilization by encouraging a set-aside for small businesses including socioeconomic set-asides, the Small Business 8(A) Program, multiple award contracts, the North American industry classification system, similarly situated entities and limitations on subcontracting, the non-manufacturer rule, trade agreements, bundled, consolidation, in-sourcing small business contract requirements, undue restriction, unsolicited proposals, rejecting SBA recommendations, the Small Business Subcontracting Program, small business payment assistances, and administrative responsibilities.

E. United States Small Business Administration[154]

i. Regulations dealing with government contracting programs for small businesses are outlined in Title 13 Part 125 of the Code of Federal Regulations (CFR). The government's purchasing process is governed by the Federal Acquisition Regulation (FAR). Some government agencies are authorized to have their own supplement to the FAR. As a government contractor, you also must comply with labor standards statutes (Service Contract Act, Contract Work Hours, Safety Standards Act, and more), as well as other statutes, unless the contract states that a particular statute isn't applicable. There are mandatory contract provisions that

[153] U.S. Department of Commerce, "Department of Commerce Office of Small and Disadvantaged Business Utilization (OSDBU)," accessed July 12, 2022, https://www.osec.doc.gov/osdbu/; U.S. Department of Commerce, "U.S. Department of Commerce Small Business Program Manual, Procurement Mechanisms, Chapter One," https://www.osec.doc.gov/osdbu/CSBPM-Chpt%201%20Nov%2001%202018.pdf.

[154] U.S. Small Business Administration, "Governing rules and responsibilities," accessed July 12, 2022, https://www.sba.gov/federal-contracting/contracting-guide/governing-rules-responsibilities; U.S. Small Business Administration, "Small Disadvantaged Business," accessed July 12, 2022, https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business.

protect the integrity of the government procurement process. These provisions include the "officials not to benefit" clause, the "anti-kickback" provisions, organizational conflict of interest provisions, the "gratuities" clause, and more.

II. STATE AND LOCAL GUIDANCE & PROGRAMS

A. California Department of Transportation (Caltrans)[155]

i. Within Caltrans, there is an Office of Business and Economic Opportunity (OBEO) that tracks DBE contract goals, as well as reviews and approves subrecipient DBE contract goals for Caltrans' Division of Local Assistance (DLA). Per DLA-OB 14-06, subrecipients submit their DBE contract goals for construction contracts over $2 million and consultant contracts over $500,000 for Caltrans' review. Caltrans will either approve the DBE goal or recommend an adjustment. Generally, California State Law mandates public contract provisions for M/WBEs and creates definitions for minority, minority business enterprise, women business enterprise, and adopts "disadvantaged business enterprise: as used in Section 23.62 of Title 49 of the CFRs. Caltrans requires specific reporting form utilization and boilerplate language in every contract as follows: "*Contractor shall maintain records of all subcontracts entered into with certified DBE Subcontractor(s) and records of materiel purchased from certified DBE supplier(s). The records shall show the name and business address of each DBE Subcontractor or vendor and the total dollar amount actually paid to each DBE Subcontractor or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE (prime) Contractor shall also show the date of work performed by its own forces along with the corresponding dollar value of the work. Contractor shall prepare and submit the Disadvantaged Business Enterprises Utilization Report (ADM-3069) form (Attachment ___) to the Contract Manager with every invoice (refer to Exhibit B, Budget Detail and Payment Provisions).*"

1. The only critique of this program is the manner of certifying as Small Business Enterprise (SBE) or a Disadvantaged Business Enterprise (DBE). The entity seeking certification must apply with the individual reviewing entities for the specific region where they are located; and can only certify through those "Unified Certifying Partners." Firms must certify their location as either: Imperial, Riverside & San Diego Area, Los Angeles Area, Central Valley/Bay Area, or Northern California Area. It is not clear how a certification issued by one area is recognized in the other areas. In addition, several different toolkits are offered for each area. It would be more streamlined to have one centralized clearinghouse for certification administration state-wide.

B. Washington State Office of Minority and Women's Business Enterprises[156]

[155] California Department of Transportation, "Disadvantaged Business Enterprises," accessed July 12, 2022, https://dot.ca.gov/programs/civil-rights/dbe; California Department of Transportation, "Procurement and Contracts (DPAC)," accessed July 12, 2022, https://dot.ca.gov/programs/procurement-and-contracts.

[156] Washington State Office of Minority & Women's Business Enterprises, "Supplier Diversity Best Practices," accessed July 12, 2022, https://omwbe.wa.gov/state-supplier-diversity-reporting/supplier-diversity-best-practices; Washington State Office of Minority and Women's Business Enterprises, "Tools for Equity in Public Spending," accessed July 12, 2022, https://omwbe.wa.gov/state-supplier-diversity-reporting/tools-equity-public-spending.

(continued)

i. This Office offer Tools for Equity in Public Spending (e.g., toolkit workshops, outreach, inclusion plan guides, templates, and more), and Supplier Diversity Best Practices. Key Recommendations include:

1. Proactively identify contracting and procurement needs. Early planning and advanced notice support supplier diversity. Biannually assess needs or review past spending data to identify general categories of goods and services regularly purchased. Also, examine the procurement type: Master contracts using the master contract sales database, Internal contracts, Direct buy purchases, etc.
2. Review your procurement practices by identifying how purchases are bundled/consolidated and whether unbundling these contracts will create more inclusion opportunities. Understand direct buy purchasing authority and delegated procurement authority. If it is likely that bidders will subcontract some of the work, consider requiring bidders to submit an inclusion plan as part of their bid package where the contractor sets goals, identifies small and diverse vendors, and reports on subcontractor spending with diverse vendors. Make solicitations and contracts simple, written in plain talk, which assists all bidders and makes the contract more accessible. Reevaluate standard contract language and any requirements that may be barriers for small and diverse businesses. This includes providing ample advanced notice and directed publication to encouraging small and diverse businesses' participation.
3. Identify diverse options for each category of spending. The State provides a search tool on its website to identify master contracts with small and diverse vendors. There is a centralized portal for this with a tutorial on how to use it. includes all certified veteran owned businesses and self-registered small businesses
4. Conduct other market research and outreach. In addition, to direct contact with certified small and diverse businesses to make them aware of bid opportunities, the State Offices can be contacted directly to identify currently certified, as well as provide options for utilization of small and diverse businesses that are not currently certified. By developing a communication strategy to engage with small and diverse businesses, more effective outreach may be achieved.
5. Monitor spending with small and diverse businesses throughout the year. Determine what is working and adjust strategies as needed. The State provides access to several government agencies' current small and diverse business spending data reported via the State's Enterprise Reporting Guidelines.

C. Missouri Department of Transportation (MoDOT)[157]

i. MoDOT submits its a DBE Program to the U.S. Department of Transportation that documents the specific policies and adopts its general definitions for

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[157] Missouri Department of Transportation, "DBE Program," accessed July 12, 2022, https://www.modot.org/dbe-program; Missouri Department of Transportation, "Disadvantaged Business Enterprise Program Submittal," August 1, 2020, https://www.modot.org/sites/default/files/documents/DBE%20Program%20Submittal%20FFY20.pdf.

classifications. The State has a unified certification process, known as Missouri Regional Certification Committee, which was approved by USDOT in January 2005. Overall administration goals and statewide goals are updated every three (3) years. Emphasis is placed on data collection with the following in place:

1. All contractors, subcontractors, suppliers, and truckers will be required to be registered and obtain a vendor number prior to authorization to commence work on a project.
2. The registration form will gather the name, address, DBE/non-DBE status, age of firm, annual gross receipts, geographical preference, and type of work performed, for each firm.
3. The registration will be mailed to all contractors, subcontractors, DBE firms, material suppliers, and any other firm contained in MoDOT records. The firms will receive a vendor number and the information will be entered into a database. The firms will be required to update their filing on a yearly basis.
4. MoDOT will compile a listing of all registered firms and forms will be mailed at least semiannually to all firms, requesting that they provide the names of any firms they received quotes from that may not be listed. The listing will be available on the MoDOT internet site. Project office personnel will check all subcontractors, suppliers, and haulers on a project to verify they have been registered. If a firm is not registered, it must do so prior to commencement of work.

D. Florida Department of Management Services Office of Supplier Diversity[158]

i. Like many of the states already summarized, this State Office hosts a website that includes an Agency Resources page with documents, presentations, and templates that Florida agencies and universities can use to demonstrate compliance with supplier diversity requirements. It also offers Sample State Agency Small Business Participation Plans and assistance with applicable state certification and recertification. All forms are readily available. There is also a comprehensive vendor database and interactive calendar for current bidding opportunities. A unique aspect of this State Office is its work with The Florida Advisory Council on Small and Minority Business Development (Council). The Council was established in Section 287.0947, Fla. Stat. The State Office works with the Council to keep citizens of the State of Florida and various stakeholder groups informed on issues relating to minority enterprise procurement and other diversity issues. Membership of the Council includes practitioners, laypersons, financiers, and others with business development experience who can provide invaluable insight and expertise for this state in the diversification of its markets and networking of business opportunities. Responsibilities of the Council include:

1. Research and review the roles of small and minority businesses in the state's economy.
2. Review the issues and emerging topics relating to small and minority business economic development.

[158] Florida Department of Management Services, "Office of Supplier Diversity," accessed July 12, 2022, https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd.

3. Study and understand financial markets' and institutions' abilities to meet small business credit needs and determine the impact of government demands on credit for small businesses.
4. Evaluate the execution of Section 287.09451, Fla. Stat., requiring a state economic development comprehensive plan, as it relates to small and minority businesses.
5. Assess the efforts by any state agency or by all state agencies collectively, to assist minority business enterprises.
6. Advise the Florida Governor, the Secretary of the Department of Management Services and the Legislature on matters relating to small and minority business development that are important to the international strategic planning and activities of this state.

a. Broward County, Florida – Also has a similar advisory board and other requirements within its Code of Ordinances and Administrative Code that advance supplier diversity and public procurement opportunities to small and minority businesses.[159]

b. City of Coconut Creek, Florida – Also, recently created a grant offering targeted toward small local businesses having 25 or fewer employees: Butterfly Small Business Relief Program.[160]

E. Illinois Commission on Equity and Inclusion[161]

i. The Commission on Equity and Inclusion (CEI) was created through the passage of 30 ILCS 574/40-10. CEI was created to expand access to state contracts for minorities, women, persons with disabilities, and veterans, and assist the state in enhancing the equity and inclusion throughout its workforce. Among several programs, the CEI created the Business Enterprise Program (BEP) for businesses owned by minorities, women, and persons with disabilities. The program is committed to fostering an inclusive, equitable and competitive business environment that will support underrepresented businesses and enhance their increase their capacity, grow revenue, and enhance credentials. Generally, the CEI focuses on:

1. All State and university procurement;
2. Standardizing scoring evaluations for State agency directors, public university presidents and chancellors, and public community college

[159] Broward County Government, "Broward County, FL, Administrative Code, Part VII. – Certification of Small Disadvantaged Business Enterprises," https://library.municode.com/fl/broward_county/codes/administrative_code?nodeId=CH19OPPOCOADGE_PTVIICESMDIBUEN; Broward County Government, "Broward County, FL, Administrative Code, Part XXIII. – Small Business Development Advisory Board," https://library.municode.com/fl/broward_county/codes/administrative_code?nodeId=CH12ORCOBOCO_PTXXIIISMBUDEADBO.

[160] Coconut Creek News, "City Establishes Unprecedented Business Relief Fund," April 14, 2022, https://coconutcreeknews.net/city-establishes-unprecedented-business-relief-fund-p1986-186.htm.

[161] State of Illinois Commission on Equity and Inclusion, "Welcome to the Business Enterprise Program Website," accessed July 12, 2022, https://www2.illinois.gov/cms/business/sell2/bep/Pages/default.aspx; see also https://cei.illinois.gov/about-the-commission.html.

presidents that shall be based on the following three principles: (i) increasing capacity; (ii) growing revenue; and (iii) enhancing credentials;
3. Fulfill duties provided to it under the Illinois Procurement Code 30 ILCS 500/5-7 and 500/45-57;
4. Work with State agencies to provide support for diversity in State hiring and oversee the implementation of diversity training of the State workforce;
5. Propose and submit to the Governor and the General Assembly legislative changes to increase inclusion and diversity in State government;
6. Exercise oversight over several other entities and adopt rules necessary for the implementation and administration of the requirements of the Commission on Equity and Inclusion Act.

a. City of Chicago, Illinois[162] - Chicago has a specific Minority and Women-owned Business (M/WBE) Procurement Program. Through hosting quarterly Workshops and other outreach efforts, the City promotes contracting opportunities to M/WBEs. The City has established its own certification process, and the Official City of Chicago certification is accepted by other government agencies and some private agencies.

F. Michigan Department of Technology, Management, & Budget[163]

i. The Michigan Supplier Community (MiSC) was established in 2019 to encourage expanded business opportunities within low-income communities and underutilized business areas. To be eligible for certification under MiSC, the vendor must have its principal place of business in Michigan; be a small business with less than 500 employees and annual revenues equal to or less than $25 million; be classified as a Michigan Geographically Disadvantaged Business Enterprise; and meet one of the following criteria as defined in Executive Directive 2019-08:

1. Certified HUBZone Small Business Concern by the United States Small Business Administration; or
2. Have a majority of their employees maintain a Principal Residence within a Qualified Opportunity Zone; or
3. Michigan-based Business with its Principal Place of Business within a Qualified Opportunity Zone; or
4. Community Rehabilitation Organization (CRO); or
5. Veteran-Owned or Service-Disabled Veteran-Owned (SDVOB) business.

[162] City of Chicago, "MBE/ WBE/ DBE," accessed July 12, 2022, https://www.chicago.gov/city/en/ofinterest/bus/mwdbe.html.

[163] Michigan.gov, "Michigan Supplier Community (MiSC)," accessed July 12, 2022, https://www.michigan.gov/dtmb/procurement/contractconnect/programs-and-policies/programs/misc; State of Michigran, "State of Michigan Procurement," February 2020, https://www.michigan.gov/dtmb/-/media/Project/Websites/dtmb/Procurement/training/contracting101.pdf?rev=8e139d9ed3464c649d15ee3d5250b16e&hash=D0D3F7246C5170C97515E01536164549.

a. City of Detroit, Michigan[164] - Detroit has The Detroit Business Opportunity Program (DBOP), which processes applications and maintains an online register of annually certified and recertifies Detroit Based Businesses (DBB), Detroit Headquartered Businesses (DHB), Detroit Resident Businesses (DRB), Detroit Small Businesses (DSB), Detroit Based Micro Businesses (DBMB), Detroit Start-Ups (DSU), Minority-Owned Business Enterprises (MBE), and Woman-Owned Business Enterprises (WBE). The Program offers appreciation events, networking and capacity building opportunities, equalization credits and visibility on the City's register.

III. EDUCATIONAL AND THINK TANK GUIDANCE & PROGRAMS

A. Harvard University, Kennedy School, Government Performance Lab – 2017 Publication: *Improving Government Vendor Diversity*," (2017).[165]

B. Milken Institute, Local Initiatives Support Corporation (LISC) Publications:
- i. *Supporting Economic Inclusion in Disadvantaged Communities: A Case for Inclusive Procurement Policies* (2018)[166]
- ii. *Tactical Guide Tactical Guide: Inclusive Small Business Support* (2020)[167]

C. PolicyLink Publication: *Inclusive Procurement and Contacting: Building a Field of Policy and Practice* (2018)[168]

D. Key Points (synthesized from all of the above publications) include:
- i. *Publicly establish* concrete goals, and hold departments and vendors accountable for meeting them by tracking performance;
- ii. *Develop* specific goals and performance targets for vendor diversity.
- iii. Senior executive (*e.g.* Secretary-level) should *make a public commitment* to those goals, which elevates the priority for staff and helps reach potential vendors.
- iv. *Evaluate progress* towards the goals—collect data and use it to improve the program.
- v. Check vendor certifications to ensure accuracy and identify potential missing vendors or groups.

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[164] City of Detroit, "Detroit Business Opportunity Program," accessed July 12, 2022, https://detroitmi.gov/departments/civil-rights-inclusion-opportunity-department/detroit-business-opportunity-program;, Mayor Michael E. Duggan, "Executive Order No. 2014-3," City of Detroit Mayor's Office, https://detroitmi.gov/sites/detroitmi.localhost/files/2018-02/EO%202014-3%20Certification%20of%20Businesses%20-%20Mayor%20Duggan.pdf.

[165] Improving Government Vendor Diversity.

[166] Milken Institute, *Supporting Economic Inclusion in Disadvantaged Communities, A Case for Inclusive Public Procurement Policies*, (Santa Monica, CA, 2018), https://www.lisc.org/media/filer_public/64/16/64165a54-93d5-47fc-9011-74c8873d2d7b/a_case_for_inclusive_public_procurement_practices.pdf.

[167] Bloomberg Philanthropies COVID-19 Response, Bloomberg Associates, Local Initiatives Support Corporation (LISC), *Tactical Guide: Inclusive Small Business Support* (2020), https://www.lisc.org/media/filer_public/7b/a6/7ba61381-119d-4452-abfb-5c7c4b767eed/12082020_resource_ba-inclusive-small-business-support.pdf.

[168] Denise Fairchild and Kalima Rose, Inclusive Procurement and Contracting: Building a Field of Policy and Practice (Oakland, CA, 2018), https://www.policylink.org/sites/default/files/InclusiveProcurement_final-3-5-18.pdf.

vi. Data should enable comparisons at a granular level such as by county or zip code—not just nationwide or statewide.
vii. Data should include outputs: for example, contractors should report out subcontracts, and the dollar amount and diversity status of subcontractors
viii. Where programs use prime contractors with subcontractor diversity goals, track and *hold primes accountable* for meeting the goals.
ix. *Dedicate staff resources* for outreach and technical assistance to small businesses.
x. Use the data collected for goal tracking to help target technical assistance and outreach.
xi. Support businesses that do not have the resources or experience to navigate the federal procurement process.
xii. *Streamline procurement processes* for all businesses.
xiii. *Develop and maintain a community* of practice across Federal agencies, and state and local governments to collaborate on guidance, best practices, and simplifying processes for businesses.
xiv. *Limit administrative burdens* for vendors, such as:
    1. Single website with program information and resources, including certification, contract opportunities, and bidding; it is not enough to just point companies to the program authorization language, application process, and the FAR.
    2. Enable certifications to work across multiple programs, agencies within the department, and federal departments where possible.
    3. Eliminate paper filing requirements, if any;
    4. *Publicize RFI responses* and winners to promote partnerships.
    5. *Provide feedback* to contractors who did not win to help them strengthen future applications.
    6. *Make prompt payments* to vendors.

IV. OTHER GUIDANCE & PROGRAMS

A. Asian Business Association Los Angeles
B. District of Columbia; Washington Metropolitan Area Transit Authority (WMATA)152
C. Multicultural Media Telecommunications and Internet Council
D. National Center for American Indian Enterprise Development
E. National Minority Supplier Development Council153
F. US Black Chambers, Inc. / ByBlack.us
G. US Hispanic Chamber of Commerce
H. US Pan Asian American Chamber of Commerce Education Foundation
I. Women's Business Enterprise National Council

Appendix B

INNOVATION AND ACCESS WORKING GROUP
Workstream #1

Survey for Workstream #1 Members in April 2022

For Recommendations to Ensure Inclusive Practices in Identifying and Selecting Entrepreneurs to Participate in Infrastructure Investment and Jobs Act (IIJA).

Contracting and Grants Processes

1. Identify your organization:
   a. Media -- Audio/Video/News/Information – Including start-ups
   b. Digital Communications Services – Including start-ups
   c. Technology Development – Including start-ups
   d. Other – please list: _____.

3. Is your organization a:
   a. Small business – Yes or No.
   b. Minority-owned business– Yes or No.
   c. Woman/Women-Owned – Yes or No.
   d. Start-up– Yes or No.
   e. Other– Please list: _____.

4. What policies or practices does your organization use specifically in the context of procurement (goods/services) and/or grant administration to promote access to opportunities for small minority- and women-owned (SMW) businesses?

5. What policies or practices does your organization use to foster diversity, equity and non-discrimination in procurement of goods/services and/or grant administration?

6. What procurement or grant administration policies or practices does your organization use to accelerate the entry of SMW businesses?

7. Are you aware of any best practices or model codes on increasing grant/contract opportunities for SMW businesses?

APPENDIX C

Innovation and Access Working Group, Workstream #1
Conducted 10 Interviews with the Following Experts

- Robert Branson, President and CEO

Multicultural Media Telecommunications and Internet Council

- Ron Busby, President and CEO

US Black Chambers, Inc. / Buy Black.us

- Ramiro Cavazos, President and CEO

US Hispanic Chamber of Commerce

- James Clayborne (Former Illinois State Senator), Founding Partner

Clayborne & Wagner, LLP

- Dennis Huang, Executive Director and CEO

Asian Business Association

- Ronald Johnson, Ph.D., Senior Advisor and Chief Strategist for Diversity, Equity and Inclusion

Wireless Infrastructure Association

- Chris James, President and CEO

National Center for American Indian Enterprise Development

- Pat Fong Kushida, President and CEO, Founder

California Asian Pacific Chamber of Commerce

- Leticia Latino-Van Spluteren, CEO

Neptuno USA

- Ralph Moore, President

Ralph G. Moore & Associates

Below is a summary of the interviewees' responses to the Working Group's questions.

2. What procurement or grant administration policies or practices promote access to opportunities for small, minority- and women-owned (SMW) businesses?

The procurement or grant administration policies or practices that promote access and accelerate opportunities for small minority-, and women-owned (SMW) businesses should consider:

- The FCC Cable Procurement rules, Business Enterprise Program (BEP) in the State of Illinois, and the Disadvantaged Business Enterprise (DBE) Program at the US Department of Transportation.
- Embedding supplier diversity policy as to how States will access this money through infrastructure funding.
- Create a scorecard to track infrastructure spending to ensure SMW businesses are included.

- *See* Public Policy Rule 955507.
- SBA 8A - Personal Net Worth Analysis and increasing 8A Certification caps.
- Corporation commitments to SMW firms.

Important actions for continued access and accelerations of Contracts include goal-setting for grantor and grantee, accountability for providing accurate spend on SMW businesses, transparency of published data, stakeholder input from SMW businesses, and creation of a small business utilization department/division at the federal level that assists with truthful feedback on gaps and pitfalls, training preparation, access to accurate databases, clear methods of communication about opportunities, and relationship-building support.

3. What procurement or grant administration policies or practices can accelerate the entry of SMW businesses?

See responses to Question 1. above.

4. What procurement incentives and penalties do you recommend to the federal grantor and local government grantee as it relates to federal contracts and grants received by grantee?

The incentives and penalties recommendations to the federal government should include:

- Internal Audit Controls with due diligence reporting with incentives tied to supplier diversity goals. For example, adopt an incentive-driven scorecard process that tracks agency/prime and subcontractor progress; the percentage of diverse board of directors; the percentage of total contracts spent with diverse suppliers; and the percentage of total number diverse suppliers and employees. An example of an incentive is to have a utility company's annual rate increase granted when the utility meets or exceeds its committed supplier diversity goal.

- Transparency, accountability, and publicized misconduct for not meeting SMW requirements. In terms of penalties, the State of Illinois Investment Act provides for felony charges for certain illegitimate or other actions that violate the law.
  Hold federal, state, and local governments and the business sector accountable for meeting agreed-upon targets and goals works. Recipients of major government contracts need to be held accountable for including SMW subcontractors in their projects. It is also important to conduct due diligence to verify that companies are utilizing SMW businesses, are not just putting up a front and/or that opportunities do not just go to White women business owners.

5. What methods would you recommend grantees implement and execute to retain SMW businesses that ensure compliance with model codes/best practices?

Methods for grantees to implement and execute to ensure SMW compliance with model codes/best practices include intentionality, transparency, accountability, and enforcement. More specifically,

- **Intentionality** of the inclusion of SMW businesses: Require SMW Certification and identify qualified SMW businesses (More consistent reviews) - Make sure SMW firms are certified as truly minority-owned and/or woman-owned firms. They shouldn't just be White women. Need a procedure that eliminates the possibility of using minority firms as "fronts," such as by conducting monthly or quarterly meetings with prime contractors. This eliminates the risk of not finding SMW firms. Solidify partnerships with minority chambers across the country and with the SBA. Conduct stakeholder engagement, including Black churches and other faith organizations, Minority Serving Institutions, and other community-based groups, to prepare and

train diverse community representatives to work with local and state governments in the distribution of the federal funding. Provide **capital and technical training** to ensure vendor success. For example, banks partner with diverse firms at the front end so access to capital is not a problem in the middle of the process.

a. Provide training and technical assistance for present and future workforce talents. Marketing, business development and equipment investments are areas where diverse businesses often lack the necessary resources to compete effectively for the plethora of procurement opportunities that fall within their core competencies and business growth strategies. This problem is exacerbated by the payment terms offered in second and third tier procurements, where most diverse companies are relegated to in the communications supply chain. Most often, sixty-to-ninety-day payment terms are deleterious to the cashflow of diverse companies and thus create the need to acquire additional funding at higher interest rates for capital projects.
b. Ensure **transparency** of SMW business data reported by and to the government and other agencies/organizations.
c. Ensure **accountability** of grantees or recipients of major contracts, such as via score card tracking.
d. **Adopt enforcement** procedures. Have a policy to incentivize and/or penalize grantees or recipients for the proper or improper use of funds from grantors.

6. What steps should state, and local grantees take to monitor and assess these practices?

The steps that state and local grantees should take to monitor and access practices include:

- **Intentionality**
  a. Undertake a business strategy analysis
  b. Provide consistent reviews on a monthly or quarterly basis to assist firms
  c. Engage with interviewees

- **Accountability and Transparency**
  a. Require certifications
  b. Track progress via a scorecard
  c. Create timely guidelines for inclusion of SMW businesses
  d. Federal government must adopt policies to manage the expectations of state administrators.

Change and leadership occur top down, and engaging SMW businesses should be a top priority for funding and contracting. Some companies call working with minority firms a diversity tax, saying they have to pay more and get less. It requires a shift in the mindset because SMW businesses and CEOs can deliver if given the opportunity. The narrative is around partnership and collaboration as opposed to only compliance and mandates. Examples of implementation and best practices by other companies, organizations, and governing bodies include:

- Disadvantaged Business Enterprise Program at the Department of Transportation.

  i. The Wireless Infrastructure Association (WIA) is an organization of 127 wireless carriers, infrastructure providers, and professional services firms, WIA

encourages its members to understand the importance of diversity in their procurement practices and workforces. Its annual conference invites participation by SMW women- and minority-owned businesses to build partnerships between WIA members and diverse businesses. WIA also sponsors an apprenticeship program with the Department of Labor that creates pathways for disadvantaged and underrepresented communities to access employment opportunities within the wireless industry.

ii. The Tollway Contract monitors the contract from start to finish, reviews invoices, reports, on-site inspections, and takes enforcement action if the firm does not meet the benchmarks. Remedies upon discovery of non-compliance include to suspend payment, call them in for correction, or terminate the contract.

iii. The California Public Utility Commission requires that any public utility seeking a rate increase must demonstrate that they have met their supplier diversity goal, and that supplier diversity is 25% of their total spend.

7. How do you define a successful procurement program for small, minority- and women-based (SMW) business inclusion and how do you measure its success?

A successful diverse supplier procurement program should include:

- Capital Access. SMW businesses cannot assume carrying costs. Grantees or contractors should partner with firms at front end so there are no complications during the process.
- Require certification of the SMW business. Include reciprocity with other certification programs.
- Accountability and Equity. Agencies should ensure opportunities are for SMW businesses. In addition, grantees and contractors should track and meet targets and goals for bids, including through scorecard measurements and compliance review.
    - Furthermore, grantees should publish accurate, current data on the recipients of federal contracts including race, sex/gender, ethnicity, type of contract (competing or sole source). For example, while there is a goal to appoint 20% Hispanic Americans to the current Administration, only 10% of positions are currently held by Hispanic Americans. In addition, the U.S. Government currently awards 1.67% of contracts to Black-owned companies; the US Black Chamber goal is to increase this number to 4%.
- Stakeholder Awareness. Share information and access for SMW businesses. Include partnerships with minority organizations, such as the National Black Broadcasters, US Black Chambers, Inc./ByBlack.us, Hispanic American organizations, and Asian Pacific American organizations. Ensure database accuracy and clear communication for measurement and access to information.

Measurement defines success. Ensure accountability and transparency through scorecards and compliance review by the Federal Government for assessment and methodology to reach success goals. If the scorecards are not being assessed accurately, then equity and opportunities for SMW business goals will not be achieved. The Federal Government could provide a blueprint plan to the states. Achievement of contract goals includes educating the parties controlling the grant and contract opportunities. For example, contract administrators must understand the scope of work and how to provide opportunities to SMW businesses.

8. What policies or practices specific to federal dollars distributed to state and local government foster diversity, equity, and non-discrimination in procurement of goods/services and/or grant administration?

The policies or practices specific to federal dollars distributed to state and local government that foster diversity, equity, and non-discrimination in procurement of goods/services and/or grant administration should include those listed in response to questions 1. above. The President signed an Executive Order to increase the goal from 5% to 11%, but a champion is needed to open those opportunities to get to the 15% goal.

9. How can state and local grantees (the service providers and other applicants for the infrastructure funds) ensure that SMW businesses have meaningful and robust opportunities to partner and compete for funding under grant programs?

State and local grantees should consider:

- A process similar to the FCC's cable procurement rule.
- Requesting that the FCC issue a fast-track Notice of Proposed Rulemaking to adopt a ubiquitous equal procurement opportunity rule.
- Requiring agencies to communicate with unsuccessful bidders/contractors to explain why and how they can improve their bids.
- Ensuring that information and data sharing methods are clear and accessible.
- Ensuring that businesses are receiving invitations for opportunities.
- Tracking progress, such as by requiring contractors to meet quarterly with reviewers to ensure they are delivering on the targets and goals in their bids, providing consistent reviews, adopting a methodology for accurate and current tracking model, and auditing and identifying granular details in management of opportunities.
- Maintaining a directory of SMW contractors and SMW organizations and communities.
- Including the goals in meetings, policy-setting, and discussions.
- Provide training for SMW businesses to navigate complex Federal contracting.

The Federal government must set out the expectations for the State administrators, and the State must sign-off on what is expected. For example, in the State of Illinois:

- The RFP sets out prime contractor goals.
- A Letter of Intent lists the scope of work and pricing accompanied by a utilization plan (describing how the contractor would meet the goals of utilizing SMW businesses). The Letter of Intent becomes part of the contract, and the prime and subcontractors will enter into a contract with those terms included.
- The Legislature is considering modifying its scoring for evaluating SMW contracting.

The State should be required to enter into a contract with the Federal government. The State should create

a utilization Plan, which is sent to the Federal Government for incorporation into the Federal and State contract. The Federal government should conduct an evaluation, utilizing a scoring procedure, of how the State implemented the program and met its goals, The higher the State's score, the more likely that state will be eligible for more federal dollars. Senators and Congresspersons may have to answer to constituents on why that state is not eligible for federal funding. Conversely, each contractor's score will dictate eligibility.

It needs to come from the top that SMW businesses are top priorities for this funding and contracting. The Working Group and the CEDC needs to develop guidelines in a timely manner to ensure all communities are including diverse community organizations and SMW businesses in their processes.

10. Are you aware of any best practices or model codes (i.e., rules or regulations) on increasing grant/contract opportunities for SMW businesses?

See responses to Question 1. above. In addition, the grantees should partner with SMW Chambers and continue conversations with the Office of Diversity and Economic Development at the U.S. Department of Treasury.

11. Do you have examples of successful programs for ensuring robust participation by SMW businesses at federal, state, and local levels and what characteristics do they have to make them successful?

See responses to question 6. above. In addition:

- San Antonio created a Small Business Department for minority businesses and increased accepted opportunities by 40%.

- ABC Telecom provides all telecom services to the government entity. It is important to understand the scope of work for any particular contract and how to separate the various components for SMW companies to participate. ABC Telecom uses an Application Programming Interface that allows access to internal purchasing, rather than the company making those orders, so that subcontractors can fill those orders.

- Contract caps negatively impact SMW businesses. Caps typically are set at $4 million for black-owned firms, which can participate in the Small Business Administration's 8A Certification program for minority-owned businesses for no more than 9 years. Those caps disallow black-owned contractors from participating in major sole-source contracts and from building intergenerational wealth. USBC is asking for a $20 million cap on contracts and 20 years on 8A Certification. There should be reciprocity between the certification programs of the USBC and the SBA; all programs should be held accountable for ensuring opportunities for all SMW businesses.

- Provide examples of programs that have established contractors work with SMW businesses and help develop their business plans. Have collective reports by the center of excellence and have information synthesized for review and accountability.

12. Are there examples in the private sector and what characteristics make them successful?

Examples in the private sector include:

- The City of Atlanta ensured that SMW businesses benefited from public dollars for the Atlanta Airport.

- Corporations committed to spending $6 billion with Black firms after the murder of George Floyd, although less than $250 million has been spent.

- The Wireless Infrastructure Association (see above).

- Replevin, which oversaw a three-year contract to replace utility meters with smart meters. The company was able to hire three more workers to monitor this contract. It met with utility companies to create sustainability and to provide ongoing work based upon the current relationship, which gives opportunities to SMW businesses.

13. Any other recommendations or thoughts for us?

- Sole sourcing and the general nine-year time limit for contracts is a problem for minority firms. Generally, those inhibit the opportunity for Black firms to create generational wealth.

- The processes for contracting need more transparency. It is not straightforward if minority firms are participating with prime contractors and there is no accountability.

- Having reasonable conditions is important, which may require a revision on how things are currently approached.

- Providers of telecommunication services often bundle procurements into multi-million dollar bid opportunities, which mostly puts these procurement opportunities out of the reach of diverse prime and second tier suppliers. Ironically, prime company winners of these large grants and contracts subsequently unbundle the procurements and subcontract to second tier companies, and they often outsource to third tier diverse suppliers. The economic disadvantages of this practice to second and particularly third tier diverse contractors are obvious and must be addressed.

    a. With respect to broadband funding to grantees under present federal programs, this type of bundling procurement process is a serious impediment to extending broadband to underserved and rural minority communities. Additionally, it could slow down the development of a well-trained telecommunications workforce that this broadband funding is mandated to reach. And most certainly, it will not enhance the utilization level of diverse suppliers.

PART THREE: REPORT AND RECOMMENDATIONS FROM THE DIVERSITY AND EQUITY WORKING GROUP – DIGITAL DISCRIMINATION AND INCLUSIVE POPULATIONS

Introduction: While the Commission requested the CEDC offer recommendations to the Commission on model policies and best practices for States and localities to prevent digital discrimination by Internet Service Providers (ISPs), the Diversity and Equity (D&E) Working Group was specifically charged with

exploring the issue of digital discrimination from a broad and complex perspective that impacts marginalized communities across the country. The Working Group delved into interviewing a diverse group of subject matter experts to determine what populations are most affected by the lack of sufficient and widely available online access. Given the D&E Working Group's mission to affirmatively advance equity, civil rights, racial justice and equal opportunity in the telecommunications industry, the Working Group concluded that the CEDC's efforts to respond to the request from the Commission, and subsequently the Infrastructure Investment and Jobs Act (IIJA),[169] may not truly cover all potential marginalized communities.

The Working Group found through interviews with subject matter experts that the Commission should view the concept of "digital discrimination" more broadly and with guidance from the Communications Act of 1934 and the Telecommunications Act of 1996, which clearly states that the agency is charged with creating and encouraging access for all residents of the United States.

Under this framework for advancing equity and inclusion, populations that extend beyond normal and prescribed federally protected categories will be covered by any statutory suggestion of the reverse of "digital discrimination," including those bound by age, economic limitations, access to local digital upskilling tools, language proficiency, sexual orientation, gender, gender-identification, and disability, among other potentially intersectional categories.

Thus, the Working Group offers both broad and specific recommendations that assist the Commission to promote greater inclusivity of populations who experience singular, multiple, and other vulnerabilities not necessarily defined or clear in the limited language of the IIJA statute around what constitutes discrimination in broadband service, adoption, and use.

Furthermore, the current charge by the Commission to the CEDC to define "digital discrimination" - pursuant to the effort to recommend model policies and best practices for ISPs to avoid it - may lead to a definition that may conflict with other congressional and previously substantiated definitions of the problem. While not addressed in Part One of this report, the D & & E Working Group found in its research a definition of digital discrimination that is unrelated to deployment by ISPs. Karen Yeung and Martin Lodge**,** co-authors of Algorithmic Regulation in 2019 define digital discrimination a**s** unfair, unethical, or just differential treatment based on access to personal data that is automatically processed by an algorithm. They further underscore that instances of discrimination often found in digital formats are often reproductions of discrimination in the offline world, either inheriting the biases of prior decision-makers, or simply reflecting widespread prejudices in society.[170] While the specific IIJA charge is not directly related to how emerging technologies facilitate greater precision of structural discrimination, it is worth pointing to the inferences that are extracted that contribute to multiple layers of the types of inequalities imposed on vulnerable populations.

Key conclusions of the D&E Working Group's efforts are that:

Equal access may not necessarily result in equal treatment and outcomes

Having equal access to connectivity does not guarantee all demographic groups can adopt or fully utilize broadband and technology services available to them. The main reasons for lack of uptake include

[169] Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, 117th Cong. (2021), https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf ("Infrastructure Act").

[170] Natalia Criado and Jose M Such. "Digital Discrimination." In Algorithmic Regulation, edited by Karen Yeung, and Martin Lodge. Oxford: Oxford University Press, 2019. Oxford Scholarship Online, 2019. doi: 10.1093/oso/9780198838494.003.0004.

affordability, lack of education, lack of digital skills, lack of accommodations for accessibility, lack of meaningful language access, and useability needs, lack of role models, and lack of trust. Such findings were gleaned from a series of interviews conducted with various subject matter experts and local stakeholders. Select findings from some of the interviews are presented below:

Equal access does not result in equality

- *Broadband Research Firm* - In a survey of 10,000 consumers from one ISP's footprint, the firm found that 22% of respondents said that their broadband service was too expensive, 8% of respondents were not interested in using the service, and 3% were concerned about data collection efforts and thought higher speeds made them more susceptible to hackers. The survey also found that promotions about affordability programs like the Emergency Broadband Benefit (EBB) were less likely to reach older populations.

- *Advocacy Organization for the hearing-impaired* - When there is equal access to communications, access alone is not enough to close the digital divide. Fortunately, there are a wide variety of digital solutions available to support the total life experience of deaf and hard of hearing people. Currently, hearing-impaired communities rely heavily on video-based communication, but the cost of high-speed broadband services necessary to support video is a barrier for some people. A lack of accommodations in the workplace also can prevent deaf and hard of hearing people from taking full advantage of employment opportunities. It's imperative for workplaces to identify a person's communications preferences (Do they sign? Do they wear a hearing aid? Are they reliant on captioning?) and implement best practices to accommodate those preferences.

- *Smart city initiative in major metropolitan area* - Affordability and digital literacy are major barriers to adoption of broadband services for many residents of this large metropolitan area. While many of the large metropolitan residents are aware of subsidies available to them, their lack of trust in institutions and the lack of educational programs prevent them from taking advantage of affordable options as we see an example of in the report Achieving Digital Equity in Baltimore.[171] This study by the Johns Hopkins 21st Century Cities Initiative found that affordability and digital literacy are major barriers to adoption of broadband services.

- *Foundation* - The leader of a distinguished foundation focused on leveling the playing field when it comes to technology investments among diverse start-ups shared that "Very few people understand the algorithms of technology – even within the companies creating them – and the impact they have on communities of color and employment. Artificial intelligence can filter out applicants and can impact the entire application process. This can impact access to high wage and growth jobs for marginalized communities." A recent study found that 80% of Black loan applicants were denied based on algorithms. Furthermore, online platforms are also associated with the increase in misinformation and disinformation, disproportionately impacting vulnerable populations who cannot decipher through the accelerated sophistication of emerging technologies. The inability to decipher misinformation decipher misinformation, which can lead to confusion, can create a chilling effect preventing marginalized communities from accessing resources, applying for jobs, and developing digital literacy.

[171] Mary Miller and Mac McCormas, *Achieving Digital Equity in Baltimore* (Baltimore, MD, Johns Hopkins University's 21st Century Cities Initiative, January 2021), https://21cc.jhu.edu/research/current-baltimore-research/achieving-digital-equity-in-baltimore/.

- *Veterans Association* - Digital discrimination is compounded by a range of other social and economic challenges, especially among veterans and military families. On average, 200,000 individuals transition out of service into civilian life annually with most going directly into the civilian workforce or higher education. Twenty five percent of veterans live in rural communities, compared to 17% of non-veterans meaning our veterans might have less access online and face higher rates of digital discrimination just because of their geographic location.

These snippets from a wide range of stakeholders suggest that when defining and developing solutions around digital discrimination, it is imperative to first identify the various populations explicitly and implicitly impacted by the lack of sufficient, equal access and opportunity to connect to high-speed broadband, and to recognize that these populations may not cohesively show up or be covered by the statutory aspirations of the IIJA when it comes to protections against "digital discrimination."

As it stands, the Working Group believes how the IIJA defines equal access in Section 60506 does not fully align with prior statutory language that clearly states that clearly states, "the Commission should take steps to ensure that all people in the United States benefit from equal access to broadband internet access service;" and the provisions of the Communications Act of 1934 and the Telecommunications Act of 1996 that clearly charge the Commission with ensuring ALL citizens have equal access. The IIJA excludes discrimination around age, sexual orientation, gender, gender identity, geographic location, or disabilities.

Thus, we strongly urge the commission to expand the definition under which they approach digital discrimination to comply with the original Communications Act of 1934. The D&E Working Group also finds that definitions around who is impacted by "digital discrimination" needs to be further explored, and the intersectionality of singular, and multiple circumstances and identities be further incorporated into the IIJA's statutory goals.

RECOMMENDATIONS

To proactively address these perceived discrepancies among covered populations by the statute, the D&E Working Group proposes the following recommendations:

1. **The Commission needs to examine and expand the definition of "equal access" to facilitate greater adoption and use of high-speed broadband, especially among populations experiencing a range of inequalities resulting from a protected characteristic, or an intersection of various attributes or social determinants that limit their full digital engagement.**

Based upon the feedback heard during interviews, there is not a one-size fits-all approach to ensuring equal access since diverse groups have different needs and confront different barriers. In addition to equal access broadband infrastructure, we must also ensure access to resources such as digital skills training programs and the promotion of affordability programs. Technology should be made accessible and useable for individuals with disabilities, the aging population, people who are limited in language capacity, and made available to fit the needs of all individuals and communities.

2. **The Commission should play a more active role in promoting the relevance of high-speed broadband among populations where broadband can improve quality of lives and increase consumer demand for more equitably deployed broadband services.**

Here, the D&E Working Group espouses that as a complement to efforts to define "digital discrimination," the Commission also encourages the following best practices among States and localities to make their work more inclusive and equitable:

A. Increase outreach and awareness about existing affordability programs that address broadband access among various populations, including veterans, the limited English-proficient LGBTQ+, the disabled, and older populations.

States and localities should leverage existing affordability programs like the Affordable Connectivity Program (ACP) to increase broadband adoption rates. They also should encourage local organizations to promote affordability options and digital skills programs to their communities. Partnerships between these local organizations and industry stakeholders can help ensure a viable pathway toward hiring and retention among underrepresented groups.

B. Encourage community engagement in digital skilling and adoption activities.

Partnerships between community organizations and industry stakeholders also can help highlight the unique ways connectivity can provide workforce development opportunities and workplace accommodations to marginalized groups. Some examples of these levels of engagement include:

- Comcast's Lift Zones are centers throughout the nation developed in partnership with local community-based organizations to help connect low-income families to the internet so that they can fully participate in educational opportunities and the digital economy. Lift Zones are designed to supplement the Internet Essentials program to help students as well as older people get online.[172]

- AT&T is building 20 AT&T Connected Learning Centers in under-resourced communities across the U.S. to provide students and families free access to AT&T Fiber internet, Wi-Fi, and computers, as well as education, tutoring and mentoring resources.[173]

- CompTIA partnered with Dallas-based Girls Embracing Mothers to provide a 12- week training course, vouchers for the CompTIA A+ certification exam, and a financial stipend to 10 formerly incarcerated mothers in the fall of 2021. None of the program participants had any experience or background in technology but were given the opportunity to learn new skills to further their professional development through this pilot training program.[174]

- Microsoft launched an initiative to help more people acquire digital skills[175] as well as its AI for Accessibility Initiative[176] in partnership with Georgia Tech to accelerate the development of accessible AI solutions for people with disabilities.

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[172] Comcast, "Lift Zones," accessed July 12, 2022, https://corporate.comcast.com/impact/digital-equity/lift-zones.

[173] AT&T, "AT&T Connected Learning," accessed May 18, 2022, https://about.att.com/csr/home/society/education.html.

[174] CompTIA, "New Hopes, New Opportunities: Girls Embracing Mothers and CompTIA Helping Dallas Area Women Build Futures for Themselves and Their Children", accessed July 15, 2022. https://www.comptia.org/newsroom/2021/10/27/new-hopes-new-opportunities-girls-embracing-mothers-and-comptia-helping-dallas-area-women-build-futures-for-themselves-and-their-children#:~:text=CompTIA%20Press%20Releases&text=DALLAS%20%E2%80%93%20Ten%20Dallas%20area%20mothers,based%20Girls%20Embracing%20Mothers%2C%20Inc.

[175] Microsoft, "Microsoft launches initiative to help 25 million people worldwide acquire the digital skills needed in a COVID-19 economy", accessed May 18, 2022, https://blogs.microsoft.com/blog/2020/06/30/microsoft-launches-initiative-to-help-25-million-people-worldwide-acquire-the-digital-skills-needed-in-a-covid-19-economy/

- Verizon Innovative Learning supports Verizon's digital inclusion goal to help provide ten million youths with digital skills training by 2030, providing students free technology, access, and a next generation, tech-infused curriculum. In addition, Verizon has programs that provide digital skills training to adults in rural communities with a specific focus on people of color and partnerships with 11 historically black colleges and universities to provide 15,000 adults with basic digital skills.[177]

- Charter offers support to community organizations through Spectrum Digital Education grants, which provide computers, digital education classes, and technology labs for thousands across the country.[178] In 2021, Charter launched Spectrum Community Assist ("SCA"), a $30 million, 5-year commitment to improve community centers and enhance jobs skills for communities across Charter's footprint. Through SCA, Charter is revitalizing community centers with physical improvements, gig internet service, and job skills training across underserved, rural, and urban communities.[179]

C. *Promote digital skilling in K-12 education*

To advance equal access to job opportunities in the tech sectors, broadband infrastructure and technology education must be available to all communities from an early age. States and localities should support starting digital education as early as Kindergarten to empower students to become deeply engaged digital citizens with fundamental digital literacy skills. In addition to expanding access to home broadband, states should look at how they are investing in teachers and school resources to provide connectivity and the education needed around that connectivity in K-12 education.

D. Support for training programs for groups transitioning into civilian life, especially among veterans and ex-offenders.

During structured interviews, some experts described the technology and workforce challenges people face when re-entering civilian life. While veterans are educated about how to attain a job or healthcare benefits upon leaving the military, they typically are not made aware of options for gaining access to connectivity. States and localities can help by promoting connectivity options to the veteran community. Formerly incarcerated citizens are also further marginalized upon re-entering society due to lack of digital skills. This problem can be addressed by providing justice- impacted populations with access to technology and digital literacy courses while they are incarcerated. Access to technology must also expand to halfway houses and other institutions that house and assist justice-impacted individuals while they transition out of the prison system.

E. Removal of technical and economic barriers to accelerate broadband deployment, including regulatory overreach.

(Continued from previous page)

[176] Microsoft, "AI for Accessibility," accessed May 18, 2022, https://www.microsoft.com/en-us/ai/ai-for-accessibility.

[177] Verizon, "Verizon Innovative Learning," accessed May 18, 2022, https://www.verizon.com/about/responsibility/digital-inclusion/verizon-innovativelearning.

[178] Charter, Spectrum Digital Education, https://corporate.charter.com/digital-education/grants.

[179] Charter, Spectrum Community Assist, https://corporate.charter.com/community-assist.

While the IIJA's $65 billion commitment to broadband deployment is a landmark investment in the goal of universal connectivity, States and localities can take further steps to prepare their communities to receive broadband service. In addition to promoting funding programs, policies should aim to remove technical and economic barriers that slow down deployment. Broadband providers and community partners can face several delays and obstacles along the deployment journey. This can include supply chain issues, topographical challenges, acquiring access rights for infrastructure (railroad tracks, highways, bridges) and private property (landlord permissions, HOA rules, wiring inside buildings), negotiating utility pole attachments, and navigating rules that seek to protect and preserve historic districts.[180] States and localities should take the necessary actions to remove these regulatory barriers to accelerate and encourage continued investment in broadband infrastructure deployment.

F. Develop, fund, and promote digital skilling programs and access to technology for mature workers and the aging population

a. Support for Mature Workers

According to the Indeed Hiring Lab, "unretirement" is on the rise in the United States as older workers are returning to the labor market. Analysis suggests an estimated 1.5 million retirees have returned over the past year, citing rising cost of living against their fixed incomes. Over the course of the past 50 years, mature workers have significantly increased and played an important role in the labor market. However, mature workers are being left behind from digital skilling programs and opportunities.

b. Support for the Aging Population

The digital divide is worsening for the aging population and not enough resources exist to help older adults overcome barriers to digital access. Information and communication technologies can enable an older adult to access healthcare safely and can often be the key to overcoming isolation. An investment to bridge the digital divide experienced by older people should be made to develop programs to help them not only learn but gain access to the technology is needed now more than ever.

The proposed resolution from the D&E Working Group to expand the covered entities under the IIJA's charge to the Commission around the definition of "digital discrimination" should be further explored, and States and localities can support such inclusivity by advancing policies and engaging in collaborative outreach that encompass the wide range of historically disadvantaged and other marginalized populations.

[180] Diana Eisner, "Broadband Deployment: Smoothing the Nation's Path to 100 Percent Connectivity," USTelecom, May 12, 2022, https://ustelecom.org/broadband-deployment-smoothing-the-nations-path-to-100-percent-connectivity/.

APPENDIX A – LIST OF DIVERSITY AND EQUITY WORKING GROUP INTERVIEWEES AND SURVEY RESPONDENTS

Interviewees

- **Michael Adams**, CEO, Sage
- **Brittany Barnett, Founder**, Girls Embracing Mothers; Founder, Buried Alive Project
- **Faith Bautista**, CEO, National Diversity Coalition
- **Paula Boyd,** Senior Director, Government and Regulatory Affairs, Microsoft
- **Dr. Iva Carruthers**, General Secretary, Samuel DeWitt Proctor Conference
- **Jonathan Chaplin**, Wall Street Analyst
- **Shelbi Doyeto**, Operations Manager, United Keetoowah Bank (UKB) of Cherokee Indians, Oklahoma
- **Charles Eaton**, CEO, Creating IT Futures
- **Roger Entner**, Founder, Recon Analytics
- **J. Michael Haney**, Ph.D., Vice Chancellor for Strategic Initiatives and Innovation, IVMF Founder and Executive Director, Institute for Veterans and Military Families, Syracuse University
- **Victoria Holland**, Esq., Devol Law
- **Dr. Nicol Howard**, University of the Redlands
- **Dr. Nicol Pinkard**, Founder, Digital Youth Network
- **Mac McComas**, Senior Program Manager, 21st Century Cities Initiative
- Johns Hopkins University
- **Travis Noland**, Government Relations, Cherokee Nation
- **Dr. Allison Scott**, CEO, Kapor Foundation
- **Chris Soukup**, CEO, Communications Services for the Deaf

Survey Respondents

- **Joon Bang**, CEO, Iona Senior Services
- **Karyne Jones**, CEO, National Council on Black Aging
- **Christopher Wood**, Executive Director, LGBT Technology Partnership & Institute

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking (November 15, 2023)

Two years ago today, Congress passed the Bipartisan Infrastructure Law. This law is a big deal. It made a $65 billion investment to ensure that everyone, everywhere in the United States has access to broadband. Nothing in our history has come close to the commitment this legislation makes to address equitable access to the opportunities of the digital age. This unprecedented investment in broadband features both deployment initiatives like the Broadband Equity Access and Deployment program at the Department of Commerce and affordability efforts like the Affordable Connectivity Program here at the Federal Communications Commission that has helped more than 21 million low-income households get online and stay online. But Congress knew that more than just this set of deployment and affordability initiatives was needed. That is why in Section 60506 of the Bipartisan Infrastructure Law Congress directed this agency to prevent and eliminate digital discrimination.

This section is the most definitive statement in the law that our work to close the digital divide is not done until we reach those who are unconnected, underserved, and overlooked. It reads: "It is the policy of the United States that, insofar as technically and economically feasible, subscribers should benefit from equal access to broadband."

To ensure this happens, Congress directed the FCC to "adopt rules to facilitate equal access to broadband internet access service." What should these rules involve? Again, Congress was clear. The law directs us to develop rules "preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and identifying necessary steps for the Commission to take to eliminate discrimination."

This statutory language is powerful. It is also remarkable because it represents the consensus of a bipartisan majority of Congress. Today we give these words meaning.

But before we get into the details, let me tell you what we have done over the last two years that lead us to this moment here today. We built an extensive record through our rulemaking process. We created the Task Force to Prevent Digital Discrimination that conducted eight listening sessions in places far and wide, including Baltimore, Maryland; Los Angeles, California; and Topeka, Kansas. At each, we were able to hear from the community, listen to people fighting digital discrimination on the ground, and learn about experiences with industry.

We also rechartered the Communications Equity and Diversity Council and broadened its lens, looking beyond media to explore diversity and equity across the broader technology and communications sector. Because the only way we were going to create rules that prevent and eliminate digital discrimination is by hearing from everyone who has a role to play, including state, local, and Tribal governments, public interest advocates, and providers.

We took this it all in. We listened to communities across the country. We read the record from front to back. It demonstrated that there are gaps in access for low-income, rural, Tribal, and minority communities. It showed that the digital divide often tracks the residential redlining that came into existence under the National Housing Act of 1934. It showed that many of the communities that lack adequate access to broadband today are the same areas that suffer from longstanding patterns of residential segregation and economic disadvantage.

Back to the statute. The language is broad. But Congress was explicit—these rules have to "facilitate equal access to broadband." As part of this goal, Congress also told us we need to prevent and eliminate digital discrimination of access. That means our rules would miss the mark if they cover just discriminatory intent because we would fall short of meeting our statutory obligation to "facilitate equal access" to broadband. As a result, we define digital discrimination to include disparate treatment and

disparate impact. I believe this approach puts us both on the right side of history and the right side of the law.

These rules are strong. When you consider Congress explicitly directed us to "prevent" and "eliminate" digital discrimination of access, they had better be. But I would also argue that they are fair and reasonable.

Let me explain why. We do more than just define digital discrimination. As the law directs, we create a new, dedicated pathway for digital discrimination complaints. But we have created a process that is aimed at finding solutions that work for all parties. And if that is not feasible, our Enforcement Bureau will step in with the entire enforcement toolkit at its disposal to seek remedies.

As the law requires, we accept genuine reasons of technical and economic feasibility as valid reasons why it may not be possible for equal access to a provider's network. We will review those defenses carefully and thoughtfully on a case-by-case basis.

But that is not all. We are standing up a process by which providers can request guidance from us to make sure they stay on the right side of the law. On top of this, we also offer guidance to help solve these problems before they even get to the FCC. This is because the law directed us develop model policies and best practices for preventing digital discrimination that can be adopted by states and localities. So we had our Communications Equity and Diversity Council take the lead developing these best practices and they are included in what we adopt today.

Like I said at the start, Section 60506 is a big deal. It is the first bipartisan civil rights law focused on the digital age. I am grateful to so many in the civil rights community who have helped us give it meaning and the companies that worked with us to improve our process. I am also grateful to my colleagues Commissioner Starks for his input on developing an Office of Civil Rights, and Commissioner Gomez for her input on creating a point person in the agency on these matters and identifying reporting mechanisms going forward.

In addition, I want to thank the staff across the agency who worked on this effort, including Bradford Berry, Emily Caditz, Callie Coker, Lisa Edwards, CJ Ferraro, Jesse Goodwin, Trent Harkrader, Heather Hendrickson, Ed Krachmer, Aurelie Mathieu, Jodie May, Jaime McCoy, and Kiara Ortiz from the Wireline Competition Bureau; Alejandro Roark, Samantha Steen, D'wana Terry, and Sanford Williams from the Task Force to Prevent Digital Discrimination; Diane Burstein, Darryl Cooper, Aaron Garza, Suzy Rosen Singleton, and Kimberly Wild from the Consumer and Governmental Affairs Bureau; Pamela Gallant, Rosemary McEnery, Patrick McGrath, and Keith Morgan from the Enforcement Bureau; Hillary DeNigro from the Media Bureau; John Blumenschein, David Furth, Nicole McGinnis, and James Wiley from the Public Safety and Homeland Security Bureau; Susannah Larson and John Lockwood from the Wireless Telecommunications Bureau; Chin Yoo, Malena Barzilai, Michael Janson, Andrea Kearney, Jacob Lewis, Rick Mallen, William Scher, Anjali Singh, and Michele Ellison from the Office of General Counsel; Joycelyn James from the Office of Communications Business Opportunities; Mark Azic, Stacy Jordan, Eugene Kiselev, Kenneth Lynch, Eric Ralph, and Maciej Wachala from the Office of Economics and Analytics; Edward Bartholme, Chelsea Fallon, Jean Kiddoo, Kimia Nikseresht, and Steven Rosenberg from the Broadband Data Task Force; and Edward Carlson from the Office of International Affairs.

DISSENTING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking.

The Biden Administration's entire approach to the Internet—its broadband agenda, if you will—can be boiled down to one word: control. You can see it with the Biden Administration's call for Title II utility-style regulation of the Internet—a move that two of President Obama's former Solicitors General described as an enormous and transformative expansion of the government's authority over the Internet. You can see it in the Biden Administration's campaign to pressure Internet companies into censoring Americans' protected political speech—a coordinated effort that is now on appeal to the Supreme Court. And you can see it in the Biden Administration's demand that the FCC adopt these "digital equity" rules today—a framework that gives the FCC a nearly limitless power to veto private sector decisions.

None of these are isolated decisions—they share and advance the same goal of increasing government control. But it is never enough. Consider this: Democrats have been in control of the FCC and administrative agencies in DC for approaching 12 out of the last 16 years. They have had the opportunity, over that stretch of time, to put in place nearly any federal telecom policy of their choosing. In fact, the federal government has allocated hundreds of billions of taxpayer dollars for the purpose of ending the digital divide while Democrats have run the Administrative State. After all of that time and after all of that spending, the Biden Administration has concluded that the Democrats' policies are not working.

I agree with President Biden on this point. The Administration's broadband policies are failing. The costs of building Internet infrastructure in this country have skyrocketed thanks to the Biden Administration's inflationary policies. The Administration has needlessly blocked and delayed new broadband infrastructure builds. Fiber and cell site components are laying fallow in warehouses and laydown yards across the country due to the government's failure to remove regulatory red tape. Permitting reform has gone nowhere. The Biden Administration is preparing to waste additional taxpayer dollars through its multi-billion dollar "Internet for All" initiative by pursuing extraneous political goals at the expense of connecting Americans. And just this week, the Administration confirmed that it has no plan for filling a now empty spectrum pipeline—one that is vital to America's economy and geopolitical leadership. Meanwhile, the FCC is just sitting on spectrum that could connect millions of Americans to new, 5G services.

But the Biden Administration is taking away all the wrong lessons from its failed broadband policies. Rather than righting the ship, the Biden Administration is going hard left. It is now blaming the private sector and free market capitalism itself for the Administration's own policy shortfalls. The problem, the Administration has apparently concluded, is that up to now the FCC has failed to exercise enough authority—it has never tried real command and control regulation when it comes to the Internet.

So last month, President Biden gave the FCC its marching orders.[1] The President called on the FCC to implement a one-page section of the 2021 Infrastructure Investment and Jobs Act (Infrastructure Act) by adopting new rules of breathtaking scope, all in the name of "digital equity." For the first time

[1] U.S. National Telecommunications and Information Administration, Ex Parte Comments, GN Docket No. 22-69, (Oct. 6, 2023) (Biden Administration Comments), https://www.ntia.gov/sites/default/files/publications/ntia_digital_discrimination_ex_parte_comment_10.6.23.pdf.

ever, those rules would give the federal government a roving mandate to micromanage nearly every aspect of how the Internet functions—from how ISPs allocate capital and where they build, to the services that consumers can purchase; from the profits that ISPs can realize and how they market and advertise services, to the discounts and promotions that consumers can receive. Talk about central planning.

Needless to say, Congress never contemplated the sweeping regulatory regime that President Biden asked the FCC to adopt—let alone authorized the agency to implement it. Nonetheless, the FCC is voting to put President Biden's plan in place. I oppose the plan for several reasons.

First off, President Biden's plan effectively hands the Administrative State veto power over every decision about the provision of Internet service in the country. Never before, in the roughly 40-year history of the public Internet, has the FCC (or any federal agency for that matter) claimed this degree of control over the Internet. Indeed, President Biden's plan calls for the FCC to apply a far-reaching set of government controls that the agency has not applied to any technology in the modern era, including to Title II common carriers. The closest analog would be the heavy-handed rules the FCC applied to the Ma Bell telephone monopoly during the height of the New Deal era—a copper wire period of time when it was hard to distinguish between government regulator and telephone provider.

But do not take my word for it. The text of the order expressly provides that the FCC would be empowered, for the first time, to regulate each and every ISP's:

- "network infrastructure deployment, network reliability, network upgrades, network maintenance, customer-premises equipment, and installation";

- "speeds, capacities, latency, data caps, throttling, pricing, promotional rates, imposition of late fees, opportunity for equipment rental, installation time, contract renewal terms, service termination terms, and use of customer credit and account history";

- "mandatory arbitration clauses, pricing, deposits, discounts, customer service, language options, credit checks, marketing or advertising, contract renewal, upgrades, account termination, transfers to another covered entity, and service suspension."

As exhausting as it is to read that list, the FCC says it is not an exhaustive list. The Biden Administration's plan empowers the FCC to regulate every aspect of the Internet sector for the first time ever. The plan is motivated by an ideology of government control that is not compatible with the fundamental precepts of free market capitalism.

But it gets worse. The FCC reserves the right under this plan to regulate both "actions and omissions, whether recurring or a single instance." In other words, if you take any action, you may be liable, and if you do nothing, you may be liable. There is no path to complying with this standardless regime. It hangs together like an M.C. Escher drawing does—on paper only.

President Biden's plan also sweeps entire industries within the FCC's jurisdiction for the first time in the agency's 90-year history. It would be one thing if the FCC cabined its intrusive new regime to ISPs or even businesses within the communications sector. It does not. The Order says that "we are not explicitly tasked with regulating entities outside the communications industry" (a rare moment of regulatory humility) but it then goes on to say that the FCC will do so in this case nonetheless (the moment passed). Landlords are now covered, construction crews are now covered, unions are now covered, marketing agencies are now covered, banks are now covered, the government itself is now covered—all newly subject to these FCC rules and liable under them for both acts and omissions. Congress never authorized the FCC to regulate all of these industries or entities. So, to everyone that will be subject to FCC regulation for the first time ever, welcome, I hope you have good lawyers.

One reason those lawyers will be needed is because President Biden's plan allows the FCC to impose unfunded build mandates and unlimited monetary fines on every covered entity. Section 60506 does not authorize the Commission to create or enforce new punitive liability rules or compel builds. Instead, it directs the FCC to "facilitate equal access to broadband internet access service." Nonetheless, the item determines that the agency will apply the full suite of the Communications Act's enforcement powers to any act or omission that violates its new regime. This means that ISPs could very well be compelled to build out Internet infrastructure without any compensation. And every decision from the C-Suite to the call center will be subject to FCC second-guessing.

In this regard, the Order's approach runs afoul of several limits Congress imposed on the FCC's enforcement authority. For one, Congress did not codify Section 60506 in the Communications Act or otherwise indicate that the FCC's Title V enforcement provisions apply here. Indeed, the FCC's Title V authority is limited by Congress to violations of the Communications Act (except in limited cases where Congress has expressly provided otherwise). For another, Congress imposed several meaningful restrictions on the FCC's Title V enforcement powers that the agency simply ignores as it transplants that authority into this new context. For instance, Congress included ceilings on forfeitures, which the agency does not carry over here. Congress also included restraints on the Commission's authority to fine people and businesses that do not hold FCC licenses or authorizations,[2] which the agency ignores here.

But these are not the only lines that the FCC crosses today. Despite the repeated refrain that the agency has no interest in regulating broadband rates, the Commission votes today to regulate broadband rates. This comes on the heels of last month's meeting where, at the eleventh hour, the FCC slightly softened its proposal to use its Title II proceeding to impose price controls. Now we know why. The order before us today expressly states that the FCC can regulate broadband pricing and even an ISP's profitability. Title II is no longer necessary to achieve that end.[3]

But as a legal matter, the statute is clear. Congress did not include the word "price" or the term "rate regulation" in the text of Section 60506. Nor does it reference "affordability." Instead, Congress chose to use the phrase "terms and conditions." In context, it is clear that Congress used that phrase—as opposed to "rates, terms, and conditions"—because Congress decided not to give the FCC rate regulation authority in Section 60506. This is confirmed by other Infrastructure Act provisions that do use the phrase "rates, terms, and conditions" and, similarly, the Infrastructure Act's multiple references to the phrase "terms and conditions," all of which focus on non-price details or components of a service.

The Communications Act and the FCC's own rules and precedent confirm this point. In the Communications Act, Congress routinely distinguished between "rates" on the one hand and "terms and conditions" on the other. In the limited set of circumstances in which Congress wanted the FCC to exercise rate regulation authority, it stated so clearly. Here's just one example. In the 1992 Cable Act, Congress expressly directed the Commission to regulate the rates of cable service tiers.[4] Seeing the results that flowed from that express delegation, Congress thought better of it in the 1996 Act and stripped the FCC of this rate regulation authority.[5] Given that Congress raked back an earlier, narrower,

[2] *See* 47 U.S.C. § 503(b)(5) (codifying Congress's decision to prohibit the FCC from proceeding directly to a proposed fine against persons or business that, among other things, do not hold an FCC license or authorization).

[3] The FCC's Section 60506 rules do more than this, too. The FCC gives itself the power to review and determine the lawfulness of promotional pricing and discounts. It even puts the use of credit checks squarely in the cross hairs. Of course, Congress did not give the FCC the power to do any of this—the agency just creates it out of whole cloth.

[4] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992 Cable Act). Section 3 of the 1992 Cable Act was helpfully titled "Regulation of Rates."

and express delegation of rate regulation authority, the FCC has no basis for concluding that Congress chose to give us more expansive rate regulation authority through an implicit delegation.

In other words, the FCC's conclusion that Congress provided the FCC with the strong medicine of rate regulation authority not only sub silentio but through a phrase that is ordinarily read as denying rate regulation authority stretches any reasonable theory of statutory interpretation well past its breaking point.

The legal errors only compound from there. For instance, the Order rolls back decades of considered Commission precedent without so much as acknowledging those decisions—let alone providing a reasoned explanation for the departure as required by the APA. *Orloff* is just one example.[6] In that case, Jacqueline Orloff challenged a Title II cellular telephone provider's practice of offering prospective new customers special deals or sales concessions as an inducement to sign up with the carrier. She argued that the practice (which could include discounted phones, monetary credits, or fee waivers—in other words, the types of practices regulated by the FCC in this decision) constituted unlawful discrimination. The FCC disagreed. In doing so, it recounted the agency's intentional shift over the years from intrusive regulation to reliance on market forces to protect consumers in the case of non-dominant providers, which the FCC enshrined in a series of deregulatory precedents.

Today's FCC order cannot be squared with either the *Orloff* precedents or the outcome in that case. Take haggling over rates. The D.C. Circuit found that "Haggling is a normal feature of many competitive markets. It allows consumers to get the full benefit of competition by playing competitors against each other."[7] As a result, the D.C. Circuit stated, "Rates are determined by the market, not the Commission, as are the level of profits."[8] Not so under today's decision—the agency will no longer leave those determinations to the market. Or take concessions. The D.C. Circuit stated in *Orloff* that providers were free to "offer concessions to some customers and not others, even though there is no discernible difference between the two groups."[9] Not so under today's decision—the agency targets decisions to offer concessions to some customers and not others. Or take advertising. The D.C. Circuit stated in *Orloff* that a provider may "run a commercial in the morning offering prospective customers a free cell phone, revoke the offer that afternoon, and then offer a cell phone for half price on the following day."[10] Not so under today's decision—all of those actions are now subject to regulatory second-guessing. There is simply no way to reconcile *Orloff* and its underlying precedents with the FCC's decision today. In fact, the Order does not even try. There is no analysis at all, let alone substantial evidence, to support the FCC's determination that any ISP or covered entity has the market power necessary to justify this type of prescriptive regime.

Stepping back—many of the Order's flaws flow from a single, fundamental error. They can be traced back to President Biden's call for the FCC to adopt an expansive and disfavored theory of liability (disparate impact) that Congress neither directed nor authorized the FCC to adopt.[11] Section 60506 of the Infrastructure Act speaks in brief and straightforward terms: it states that it is the policy of the United

(Continued from previous page)

[5] Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996). In a subsection titled "Rate Deregulation," the FCC's rate-making authority was terminated for services provided after March 31, 1999.

[6] *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003).

[7] *Id.* at 421.

[8] *Id.* at 420.

[9] *Id.* at 420-21.

[10] *Id.* at 420.

[11] Biden Administration Comments at 4-8.

States that, insofar as technically and economically feasible, subscribers should benefit from equal access to broadband. Section 60506 then directs the FCC to adopt rules that facilitate equal access to broadband (again, to the extent technically and economically feasible) and to prevent and eliminate "digital discrimination" based on income level, race, ethnicity, color, religion, or national origin.

After nearly two years and several rounds of comments, the FCC concludes that "there is little or no evidence" in the agency's record to even indicate that there has been any intentional discrimination in the broadband market within the meaning of the statute. But instead of proceeding with forward-looking rules on that basis, the FCC—at President Biden's direction—reads this extraordinary theory of liability into the law that exists nowhere in the statutory text. Even in the absence of any evidence of intentional discrimination, the Biden plan states the FCC can impose potentially unbounded liability if the agency finds that some act or even failure to act happened to result in a disparate impact based on the FCC's own judgment.

Reading this theory of liability into the law conflicts with the Supreme Court's civil rights precedent and the terms of the statute itself. The plain language of Section 60506 shows that Congress codified a disparate treatment standard—not a disparate impact one. Notably, Congress expressly stated that the FCC shall adopt rules preventing discrimination "based on" certain specific characteristics. As Congress was well aware when it drafted Section 60506, the "based on" formulation has been interpreted by the courts as codifying a disparate treatment standard. Indeed, this reading of the statute is reinforced by the other terms included in Section 60506. For instance, Congress decided to include income level as an express and protected characteristic. But that decision does not make sense in the context of disparate impact statute because it would effectively prohibit ISPs from charging a uniform price to all consumers or running credit checks because those actions would necessarily have a disparate impact on low-income consumers. In other words, many of the most anomalous outcomes produced by the FCC's reading of the statute are a product of the FCC's erroneous decision to read a disparate impact standard into a disparate treatment statute.

Even if disparate impact was appropriate under the statute, the item inexplicably fails to follow established Supreme Court precedent for how to structure such a process. While the Order acknowledges the controlling Supreme Court precedent in *Inclusive Communities*, it fails to adhere to the Court's holding in multiple respects.

Broadly speaking, the Supreme Court observed "that disparate-impact liability must be limited so . . . regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system."[12] The process set forth by the Commission fails spectacularly in this regard. Instead of sustaining the free-enterprise system, the order supplants the business judgement of essentially the entire Internet delivery ecosystem, relying instead on a standardless process of post hoc second guessing by the Administrative State.

But more specifically, the item fails to adhere to *Inclusive Communities*' three-part process for evaluating disparate impact claims. First, to establish a prima facie case, a plaintiff must demonstrate that the disparate impact was caused by a policy of the defendant. In fact, the Court in *Inclusive Communities* rejected the idea that a single decision that was not the result of a corporate policy could satisfy this test. But the item ignores the Court's guidance and instead adopts an enforcement regime that covers all "actions and omissions, whether recurring or a single instance." Furthermore, the order sets the threshold showing necessary for establishing a prima facie case far lower than required by Supreme Court law—namely, it does not require the requisite causation, statistical significance, or comparators.

[12] *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 533 (2015).

Under Supreme Court precedent, if the plaintiff can establish a prima facie case, the burden then shifts to the defendant to show that the "challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests."[13] The FCC's process, in contrast, artificially limits this defense to "genuine issues of technical or economic feasibility."[14] While Section 60506 specifically mandates that the Commission take technical and economic feasibility into consideration, there is no indication that Congress intended to deviate from standard practice by rendering those two considerations the only relevant ones. Under *Inclusive Communities*, businesses must remain free to make valid business decisions, some of which will have nothing to do with technical or economic feasibility. Disparate-impact requirements are about eliminating "artificial, arbitrary, and unnecessary barriers," after all, not second-guessing any and all valid business decisions that do not relate specifically to technical and economic feasibility.

Turning from the second to the third step in the analysis, Supreme Court precedent is clear. If a defendant satisfies its burden at the second step, the burden shifts back to the plaintiff to establish that the "substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect." This is important. The burden here is on the plaintiff, not the defendant. But the FCC collapsed the final two steps in the original draft of the Order and required the ISP or other covered entity to show that "there is not a reasonably available and achievable alternative policy or practice that would serve the entity's legitimate business objectives with less discriminatory effect." The FCC has attempted address this shortcoming through a series of pre-adoption edits, but those changes do not fix the fundamental error.[15] In other words, the FCC is still requiring the defendant to prove a negative. This falls well short of the *Inclusive Communities* standard.

Importantly, these failures are not simply interesting questions for a future law school exam. As the Supreme Court stated in *Inclusive Communities*, "were standards for proceeding with disparate-impact suits not to incorporate at least the safeguards discussed here, then disparate-impact liability might displace valid governmental and private priorities."[16] The Supreme Court views these safeguards as the bare minimum that must be done to uphold disparate impact liability. The FCC's failure to adhere to them not only undermines the agency's case on appeal—it raises questions about the application of disparate impact theory more broadly.

Now, sticking with the Supreme Court for the moment, the FCC's adoption of President Biden's plan sets up another headlong run in with the major questions doctrine. The Supreme Court has rooted this doctrine in the Constitution's separation of powers. It reflects the Framer's decision to vest a democratically accountable Congress with the legislative power. That is why the Supreme Court has held that administrative agencies cannot enact new rules on matters of great economic and political significance unless Congress has provided "clear congressional authorization."

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[13] *Inclusive Communities*, 576 U.S. at 527.

[14] The Commission purports to address this legal infirmity through a set of late round edits, but the Order continues to miss the mark. In particular, while the Commission now states that it will allow consideration of some additional legitimate business considerations, the Order does so in a way that fails to line up with *Inclusive Communities*. For instance, the FCC purports to allow those additional business considerations only to the extent that they are viewed through the lens of technical and economic feasibility.

[15] As noted in the text above, the FCC has not really solved the fundamental issue—it has only shifted the problem to a different point in the analysis. The FCC now says it will consider any "legitimate business impediment to the use of less discriminatory alternatives." So a defendant is once again in the position of proving the existence—or not—of less discriminatory alternatives and that their policy is animated by a legitimate business impediment, whatever the FCC determines that means.

[16] *Inclusive Communities*, 576 U.S. at 544.

First, there is no doubt that the rules adopted by the FCC address matters of great economic and political significance. As noted earlier, they allow the FCC to exert unprecedented control over Internet services and infrastructure. And they sweep entire industries into the FCC's jurisdiction for the first time ever.

Second, Congress did not include in Section 60506 any clear congressional authorization for a regime like this. Nowhere in the statute's one page of text does it provide unambiguous authority for rules that mimic the common carrier regime codified in Title II of the Communications Act. Indeed, a number of Senators that voted in favor of the Infrastructure Act recently wrote the FCC to make this clear: they stated that the FCC's digital equity rules are not the types of rules authorized by the statutory text passed by Congress.[17] As the saying goes, Congress does not hide an elephant in a mousehole. Yet the FCC finds a whole herd of them in Section 60506.

But even assuming that the FCC's implementation of Section 60506 were to satisfy the major questions doctrine, the agency's decision would not be clear of all constitutional hurdles. There's still the nondelegation doctrine in the way. As noted recently by Justice Gorsuch, "[t]he nondelegation doctrine ensures democratic accountability by preventing Congress from intentionally delegating its legislative powers to unelected officials."[18] To avoid an unconstitutional delegation of legislative authority, Congress must provide sufficient guardrails and direction to restrict an agency's power. Even a light skimming of this item shows that the FCC can find no such limitation on its power in Section 60506. And if the FCC's reading of Section 60506 is correct—a big if—then Congress has effectively given the FCC the authority to create a new Communications Act from a one-page section of the Infrastructure Act. This would make a mockery of the separation of powers.

On top of this, there is due process. The vague regime the FCC adopts today does not provide anyone with the type of fair notice required by the Constitution.

In a set of late round edits, the FCC attempts to fix some of the problems with today's Order. But those changes only highlight the arbitrary and capricious nature of the decision-making. One example? The Order now exempts the Biden Administration's signature "Internet for all" initiative (BEAD) and the FCC's own Universal Service Fund high-cost programs from these new rules through a presumption of compliance. Well surprise, surprise. The Biden Administration does not want to live by the same anti-discrimination standard it applies to everyone else. Is this because the Biden Administration wants to engage in digital discrimination? Is it because they don't want to promote digital equity? Or is it because the Biden Administration is worried that applying these burdensome rules would sink its highest profile Internet initiative? Hard to say because the Order does not explain the exemption. Nor does it explain why it makes any sense to draw the line where it has. Why single out those two initiatives but not one or more of the 100 plus other broadband initiatives that are being administered by more than a dozen separate federal agencies.[19] It may remain a riddle wrapped in a mystery inside an enigma.

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[17] Letter from Sen. Ted Cruz, Ranking Member, Senate Committee on Commerce, Science, and Technology, *et al.*, to Hon. Jessica Rosenworcel, Chair, FCC (Nov. 10, 2023) (urging the FCC "to adhere to the will of Congress and conform to the plain meaning of section 60506 to avoid causing serious damage to the competitive and innovative U.S. broadband industry" on behalf of 28 U.S. Senators).

[18] *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 124 (2022) (Gorsuch, J., concurring).

[19] U.S. Government Accountability Office, Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide, GAO-22-104611 (May 31, 2022), https://www.gao.gov/assets/gao-22-104611.pdf.

But regardless, the Biden Administration has given away the game. It cannot claim that these rules are necessary to prohibit discrimination, and then exempt its preferred programs. It cannot claim that these rules will not harm investment and buildout, and then exempt the two broadband initiatives whose success matters the most, politically, to the Biden Administration. It is obvious to everyone what is going on here. It is not about discrimination; it is about control.

Another telling last minute addition is a new advisory opinion process. This is the very definition of swapping out permissionless innovation for a mother-may-I pre-approval process. What's more? The FCC undermines whatever value that type of process could provide because, to the extent the FCC does—at some point in the future—authorize your conduct, the Order says that the agency reserves the right to rescind an advisory opinion at any time and on a moment's notice. At that time, the covered provider "must promptly discontinue" the practice or policy. That does not provide the confidence necessary to invest and innovate.

Now, I have talked a lot about what is in today's Order. But I would remiss if I did not mention something that is not in it: a cost-benefit analysis. And that may be because the Order before us would not fare very well under that type of scrutiny. In its stead, the Order just asserts that the disparate impact standard will not chill investment. But nowhere is there any analysis of the actual costs imposed by and through the various new legal requirements associated with this Order. That does not reflect the type of reasoned decision-making required by the APA.

What's also missing? An appropriate recognition of the government's own decisions. When one looks at a broadband map today, you are looking at an outcome that is inextricably intertwined with choices that the government itself has made. The government awards cable franchises that delineate the contours of service territories—and it can also deny those franchises. The government issues spectrum licenses that delineate geographic areas and the percentage of Americans that must be served—and it can also deny those licenses. The government grants permits that authorize cell sites and infrastructure builds to be constructed—and it can also deny those permits. The government offers subsidies to extend broadband to certain communities on specific terms—and, yes, it can also deny those subsidies. There simply is no administrable way to look at the current broadband landscape and the government's own role in producing it and then assign liability to a covered business. Not even attempting to account for the complex role that the government itself plays, as the Order before us does, certainly provides no such path forward.

Of course, it didn't have to be this way. Instead of creating multiple vectors of unnecessary litigation risk, the FCC could have adopted an order that lawfully and faithfully implemented Congress's bipartisan decisions in the Infrastructure Act. And the FCC could have focused on broadband infrastructure deployment—on ensuring that every American has a fair shot at affordable, next-generation connectivity. But as I indicated at the outset of this statement, the theme running through the Biden Administration's Internet policies is not one of connectivity or capacity—it is control.

Finally, an unsolicited word of advice for industry. I understand that the Infrastructure Act included some $65 billion in subsidies for broadband. I understand that lobbyists read Section 60506 before it passed and satisfied themselves that it was a limited and narrow provision. But I also understand how Washington works. There is no such thing as free money in this town. Or as the *Wall Street Journal* Editorial Board put it just last week: "Industry made a Faustian bargain by supporting the bill . . . . The FCC is now seeking Faust's payment." So, for my part, I would urge far greater caution going forward.

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In closing, I remain hopeful that the FCC will correct course (sooner or later). I remain hopeful that the Commission will move beyond these ideological decisions and towards common sense policies

that deliver wins in the real world. And I look forward to voting in favor of those decisions.

But that is not the decision the agency chooses today. Accordingly, I dissent.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking.

If you've listened to music at all this past year, you've probably heard the song, "Fast Car." The song was first released a whopping 35 years ago by singer-songwriter Tracy Chapman, but was recently covered by country star Luke Combs. Just last week, "Fast Car" won song of the year at the Country Music Association awards. It is, of course, a beautiful song, but one of the most powerful messages—and a line that in particular stands out to me—comes in the refrain: "I had a feeling that I could be someone." And I truly believe that's a message that we deliver here today – eradicating digital discrimination anywhere will empower individuals everywhere. This is a proceeding that will impact generations of Americans, and work to ensure a more just and equitable future for tomorrow. I'm proud to approve.

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In the Infrastructure Investment and Jobs Act, a bipartisan Congress recognized that the trajectory of digital progress hasn't always been even – a result that has held back our collective achievements as a Nation. It focused on broadband access as an essential aspect of the remedy. Congress found that "[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States,"[1029] and that the "persistent 'digital divide' in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education."[1030] It continued, finding that "[t]he digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all."[1031]

With those findings well established, Congress told the FCC to get to work. It told us that "subscribers should benefit from equal access to broadband internet access service" which includes the opportunity to subscribe to an offered service of comparable speeds and other quality of service metrics, for comparable terms and service.[1032] To achieve that result, it directed us to prevent and eliminate digital discrimination of access.

This is a large and complex item, so I highlight just a few of the many policy issues covered in this proceeding. **First**, by including both disparate impact and intent in our definition of digital discrimination, we recognize the multifaceted nature of digital discrimination and take the right steps under the law to eliminate it. Our disparate impact analysis is consistent with recent Supreme Court precedent. In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Court in 2015 stated that a disparate impact legal standard is authorized where the statutory text is "results based" and the standard is "consistent with statutory purpose."[1033] I believe we have such authority under section 60506, and furthermore, that we hew closely to the criteria of *Inclusive Communities* by limiting potential liability to "where the challenge is shown to cause the disparity

[1029] 47 U.S.C. § 1701.

[1030] *Id.*

[1031] *Id.*

[1032] 47 U.S.C. § 1754(a).

[1033] *Texas Dep't of Housing and Comm'ty Affairs v. Inclusive Communities Project*, 576 U.S. 519, 533 (2015).

complained about" and "business owners are permitted to explain the valid interests served by the challenged policy or practice."[1034]

The alternative—ignoring disparate impact—would have denied Congress's directive to the agency. It is simply implausible that we could prevent and eliminate digital discrimination by solely addressing intentional discrimination.

Second, the rules we adopt today are not the end of our work here. I support the item's various proposals to help guide and support ISP decisionmakers as they work to implement our rules. Annual reporting will illuminate the many competing factors that broadband providers weigh in providing service. Our ISPs lead the world thanks to the investment in their networks, and that is about to be supercharged by BEAD and other federal programs. Now is the ideal time to ensure transparency into how broadband providers utilize these federal dollars.

Internal compliance is equally important. ISP executives must understand the basis for deployment, maintenance, upgrade, and other decisions. These are the individuals who can ensure that nondiscrimination of access is a core business goal, built in by design from day one, just like accessibility, privacy, and security. This information will rightly not be public, but creating an internal process is vital to seeing through the goal of what so many stakeholders told me personally in meetings about this item: that they believe in the purpose of this proceeding and want it to succeed.

Third, I want to thank the Chairwoman for accepting my request to seek further comment on forming an Office of Civil Rights within the FCC. The record is clear—advocates and industry alike think this is a strong idea, and I'm eager to develop a record on how best to structure and deploy such an Office, as many other agencies, from the Department of State to the Department of Homeland Security, have done.

Finally, I'm glad the draft now reflects my additional edits to create a presumption of compliance for ISPs and others that participate in and have adopted policies and procedures consistent with NTIA's BEAD program and our Universal Service Fund high-cost programs. Numerous industry associations and advocates,[1035] as well as NTIA,[1036] requested these edits. These broadband programs are consistent

[1034] *Id.* at 541-542.

[1035] *See e.g.*, Letter from Pamela Arluk, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 4 (filed Oct. 25, 2023) (advocating for "[a] safe harbor for broadband providers that are bound by existing nondiscrimination standards and comply with those standards, such as BEAD and [RDOF] requirements"); Letter from Diana Eisner, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69 at 6-7 (filed Nov. 8, 2023) (stating that the Commission should adopt rebuttable presumptions of compliance where "a provider fulfills deployment obligations pursuant to funding programs such as BEAD"); Letter from Amy E. Bender, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69 at 3, fn. 15 (filed Oct. 13, 2023) (asserting that the Commission should establish a safe harbor for compliance with license build-out obligations, which conforms with NTIA's call for clarification that actions consistent with BEAD requirements are presumptively lawful); Letter from Louis Peraertz, Vice President of Policy, WISPA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69 at 7 (filed Nov. 8, 2023) ("[t]he Commission must be more definitive, and establish a 'safe harbor' for recipients of federal or state program that imposes deployment obligations across a defined geographic area"); Letter from Randolph J. May, President, Free State Foundation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69 at 3 (filed Oct. 20, 2023) (asserting for a "safe harbor" when "broadband providers offer service based on guidelines for participating in federal and state-administered broadband deployment subsidy programs, including universal service, the ACP program, and the BEAD Program").

[1036] Letter from Stephanie Weiner, Chief Counsel, National Telecommunications and Information Administration, to the Federal Communications Commission, GN Docket No. 22-69, at 4-5 (filed Oct. 6, 2023) (urging the Commission to "recognize the consistency between BEAD and the mandate against digital discrimination of access, and accordingly to treat actions taken in strict compliance with BEAD program requirements as presumptively also compliant with digital discrimination rules").

with section 60506, and stating this loud and clear will support ISP participation in the many programs across the FCC and the Biden Administration that are helping to close the digital divide and reach unserved and underserved communities.

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As I've long said, it is our responsibility to ensure that the internet reaches all Americans everywhere. Today, we fulfill our explicit Congressional directive to enact rules to prevent and eliminate digital discrimination of access. And in doing so, we take a huge step toward fulfilling that mission.

Thank you to the Chairwoman for her leadership, and the Commission staff for their dedicated work. I'm proud to support this item.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking.

I have no choice but to dissent from this order. It will have the Commission run a permanent inquisition against the broadband industry, creating a climate of fear and uncertainty when we should instead be encouraging greater investment and innovation. Under the digital equity rules we are adopting today, every business practice or decision, by any company remotely connected to the provision of broadband, is prohibited unless any disparate impact is unavoidable due to "technical or economic infeasibility." This is an impossible standard to meet, and the only way for a company to even attempt to comply is to practice racial, ethnic, and religious discrimination in every business decision.

Surely, Congress would not have authorized, in a less than one page section of a thousand-page bill, the most open-ended liability regime that the FCC has ever seen—indeed, one broader than any civil rights law Congress has ever passed. And in fact, it did not. Nowhere does Section 60506 authorize the Commission to issue fines, forfeitures, or injunctions. My colleagues' primary argument to the contrary is that by ordering the FCC to adopt rules "preventing digital discrimination," Section 60506 allows the FCC to use its Titles IV and V enforcement powers toward that end. But the enforcement provisions in Titles IV and V of the Communications Act could not be clearer: they only apply to rules deriving from that Act, not from totally separate laws like Section 60506. When Congress has wished to give the FCC new authority, enforceable through those provisions, it has done so by explicitly amending the Communications Act, which it took care to avoid here. This refusal by Congress to grant new powers is consistent with the facial interpretation of Section 60506: that it directs the FCC to use its existing authority, such as by modifying Universal Service Fund programs, to achieve the goals of the statute.

Aware of these difficulties with their primary argument, my colleagues turn to the ancillary authority provision in Section 4(i) of the Communications Act. Reliance on ancillary authority is usually a sign that the Commission is overreaching, and so it is here. Invoking it here raises troubling questions about the Commission's deference to Congress. If Section 4(i) on its own authorizes fines, forfeitures, and other remedies for any rule adopted by the Commission, then ninety years of precedent and understanding of Titles IV and V of the Communications Act are wrong. By the logic of this rule, the *grants* of enforcement powers under those titles are actually *limitations* on those powers, which would otherwise be unlimited under Section 4(i).

This cannot possibly be correct. The provisions of Titles IV and V are written as grants of authority, not limitations on Section 4(i), and the Commission has always interpreted them this way. A fallback to Section 4(i) would also require us to believe that by mere silence on the question of enforcement in Section 60506, Congress intended to give us enforcement powers greater than those we have in any other area we regulate. Section 4(i) has none of the limitations on fines, for example, that Title V does. In short, this order suggests that the Commission's powers are greatest when Congress is silent.

I cannot agree with this. The obvious meaning of Section 60506, in line with decades of Commission precedent, is that Congress intended for the FCC to adopt rules directing our own conduct and using our previously existing authority to address disparities in connectivity.

I am further concerned that the disparate impact standard adopted by this order, which makes "technical or economic infeasibility" the only defense, is impossible to comply with. Like any business, ISPs and their partners have to decide how to invest limited capital in a way that maximizes their returns.

When choosing between investing the same amount into serving an area where they stand to make more money or an area where they stand to make less money, they should choose to deploy to the area where they will make the most profit. When the FCC believes that the public interest will be served by build-outs to less profitable areas, we sweeten the pot by offering subsidies through our high-cost USF programs. Under established disparate impact law, this profit maximization—the pursuit of a "legitimate, nondiscriminatory interest"— insulates broadband providers, like any other businesses, from liability. But, breaking with established law, this order explicitly rejects the idea that profit maximization should be a defense to disparate impact liability.

Instead of protecting the pursuit of "legitimate, nondiscriminatory interests", this rule only allows a defense of "technical or economic infeasibility." How much profitability, then, is a company supposed to sacrifice in pursuit of digital equity goals? The rule provides neither guidance nor safe harbors. After all, every dollar of profit is a dollar that feasibly could have been invested in serving other areas. And why stop at profits? Companies routinely make losses for decades in pursuit of longer-term goals, so why not in service of digital equity? In a competitive market for investment dollars, projects under the shadow of these digital equity rules will be disfavored. Therefore, the liability regime under this rule, both as to standards and penalties, cannot help but have a chilling effect out of all proportion to its stated benefits. No amount of diligence in complying with this order can prevent the FCC from reasonably arguing that a company violated it anyway, that it could have made less money in better pursuit of digital equity. No business decision can be known to be defensible or safe to make. When everyone is guilty, and enforcement is discretionary, the only real rule is to stay on the good side of the prosecutor, in this case, whoever controls the FCC. It is no exaggeration to say that this order establishes an inquisition against the broadband industry. The Commission will sit not merely as judge, jury, and executioner, but also police and legislature.

Beyond being indeterminate and impossible to reliably comply with, a disparate impact standard limited only by technical or economic feasibility is an unconstitutional requirement for companies to engage in racial, ethnic, and religious discrimination. Rather than looking only to their own self-interest when planning investments, companies will have to consider the racial, ethnic, and religious effects of their decisions. They will have to disregard their own profitability in pursuit of FCC-desired racial, ethnic, and religious outcomes. When a company makes business decisions on the basis of race, that is called racial discrimination, and that is exactly what we are requiring here.

The Supreme Court anticipated exactly this difficulty in *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), when it upheld a disparate impact liability regime only because it had safeguards that included a defense for decisions motivated by "legitimate, nondiscriminatory interests," such that disparate impact liability would only attach to "artificial, arbitrary, and unnecessary barriers." It said:

> Difficult questions might arise if disparate-impact liability … caused race to be used and considered in a pervasive and explicit manner … Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision … Were standards for proceeding with disparate-impact suits not to incorporate at least the safeguards discussed here, then disparate-impact liability might displace valid governmental and private priorities, rather than solely removing artificial, arbitrary, and unnecessary barriers. And that, in turn, would set our Nation back in its quest to reduce the salience of race in our social and economic system.

Id. at 544 (cleaned up). Today, the Commission ignores this warning and creates a regime that requires the pervasive and explicit consideration of race, ethnicity, and religion for every business decision, however grand or picayune. More recent caselaw should give the Commission further pause, especially the Supreme Court's rejection of affirmative consideration of race even for remedial purposes. *Students*

for Fair Admissions v. Harvard, 600 U.S. 181 (2023). This Order is on the wrong side of the Constitution.

My colleagues have also failed to justify the necessity of this expansive regulatory scheme. Not even the majority interprets the statute to *require* such a draconian liability regime, so one would expect them to justify taking such a maximalist position by showing the existence of pervasive discrimination and inequality in access to broadband. But they have made no such showing. The order does not even deny that whatever disparities do exist are best attributed to the difficulty and unprofitability of serving certain geographic areas, which are best addressed by reductions in cost or the provision of subsidies, not by a punitive civil rights regime. Even if all other legal difficulties were overcome, the complete lack of factual justification makes this order arbitrary and capricious, and invalid under the Administrative Procedures Act.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 22-69 (Nov. 15, 2023).

We are the rule, not the exception. A friend shared this saying with me last week, and it resonated with me, especially as I had the opportunity to reflect about what we are doing here today. Two years ago, Congress came together, and passed the Bipartisan Infrastructure Law, investing $65 billion to ensure that everyone in America has access to affordable, reliable, high-speed Internet.

In making this historic investment in our country and our future, Congress recognized two things that many of us have long known. First, high-speed broadband is essential to full participation in modern life in the United States and we must invest to ensure that everyone has affordable, reliable access. And second, we must ensure that equal access to broadband is enjoyed by all, particularly communities that have been historically underserved.

In other words, Congress recognized that connectivity for all—is the rule, not the exception. And Congress recognized that access for historically underserved communities—communities of color, low-income communities, rural communities, Tribal, and Latino communities— needs to be the rule, not the exception. As we make historic investments in our nation's infrastructure that will impact generations to come, we must prioritize digital equity, along with our other guiding policy principles—promoting economic opportunity, competition and innovation, and protecting consumers. In recognition of this moment, Congress understood that money alone was not enough to close the digital divide, and directed the Commission to adopt rules to prevent and eliminate digital discrimination.

And that is exactly what we do here today. This *Report and Order* is the culmination of two years of tremendous thought and work. We are implementing a bipartisan directive from Congress to facilitate equal access to broadband and prevent digital discrimination of access to communities based on income level, race, ethnicity, color, religion, or national origin. While there are details to sort out, the most important thing is that we start. We are committed to working with consumers and providers to ensure that we accomplish the ultimate goal of this statute—facilitating equal access to broadband.

I want to thank the Chairwoman for her leadership in proposing these rules, establishing the Task Force to Prevent Digital Discrimination, and recognizing the need to bring in experts such as Brad Berry and Lisa Edwards to ensure that we are getting this right. I also would like to thank the Chairwoman, Commissioner Starks and Bureau staff for the collaborative efforts to implement changes to Commission processes and reflect such changes in the draft to address stakeholder concerns about how the rules adopted today will be implemented. Last but certainly not least, I thank the FCC staff throughout the agency that worked on this item.

DECLARACIÓN DE LA COMISIONADA ANNA M. GOMEZ

"Somos la regla, no la excepción." Una amiga compartió conmigo este significativo dicho la semana pasada, y eso me ayudó a reflexionar sobre lo que estamos haciendo hoy aquí. Hace dos años, el Congreso se reunió y aprobó la ley bipartidista de infraestructura (Bipartisan Infrastructure Law) invirtiendo 65 mil millones de dólares para garantizar que todos en Estados Unidos tengan acceso a una internet asequible, confiable y de alta velocidad.

Al realizar esta inversión histórica en nuestro país y en nuestro futuro, el Congreso reconoció dos cosas que muchos de nosotros sabemos desde hace mucho tiempo. Primero, la banda ancha de alta velocidad es esencial para la plena participación en la vida moderna en los Estados Unidos y debemos invertir para garantizar que todos tengan un acceso asequible y confiable. Y, en segundo lugar, debemos garantizar que todos gocen de un acceso igualitario a la banda ancha, en particular las comunidades que históricamente han estado desatendidas.

En otras palabras, el Congreso reconoció que la conectividad para todos es la regla, no la excepción. Y el Congreso reconoció que el acceso de las comunidades históricamente desatendidas (comunidades étnicamente diversas, comunidades de bajos ingresos, comunidades rurales, comunidades nativo-americanas y latinas) debe ser la regla, no la excepción. A medida que realizamos inversiones históricas en la infraestructura de nuestra nación que influirán en las vidas de las generaciones venideras, debemos priorizar la equidad de acceso a las tecnologías digitales, junto con nuestros otros principios rectores de políticas: promover las oportunidades económicas, la competencia y la innovación, y proteger a los consumidores. En reconocimiento de este momento, el Congreso entendió que el dinero por sí solo no era suficiente para cerrar la brecha digital y ordenó a la Comisión adoptar reglas para prevenir y eliminar la discriminación en el acceso a las tecnologías digitales.

Y eso es exactamente lo que hacemos hoy aquí. Este Informe y Orden es la culminación de dos años de enorme reflexión y trabajo. Estamos implementando una directiva bipartidista del Congreso para facilitar el acceso igualitario a internet de banda ancha y prevenir la discriminación de las comunidades en su acceso a las tecnologías digitales según su nivel de ingresos, raza, etnia, color, religión u origen nacional. Si bien hay detalles que resolver, lo más importante es que comencemos. Estamos comprometidos a trabajar con los consumidores y proveedores para garantizar el logro del objetivo final de este estatuto: facilitar el acceso equitativo de todos a la internet de banda ancha.

Quiero agradecer a la presidenta de la FCC por su liderazgo al proponer estas reglas, al establecer el Grupo de Trabajo para Prevenir la Discriminación Digital y al reconocer la necesidad de incorporar expertos como Brad Berry y Lisa Edwards para garantizar que estemos haciendo esto bien. También me gustaría agradecer a la presidenta de la Comisión, al Comisionado Starks y al personal de las Oficinas, por los esfuerzos de colaboración destinados a implementar cambios en los procesos de la Comisión. Y por reflejar dichos cambios en el borrador, para abordar las preocupaciones de las partes interesadas sobre cómo se implementarán las reglas adoptadas hoy. Por último, pero no menos importante, agradezco a todos los funcionarios de la FCC que trabajaron en este tema.

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

In the Matter of	)	
	)	
Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts	)	CG Docket No. 23-362
	)	
	)	

NOTICE OF INQUIRY

Adopted: November 15, 2023 **Released: November 16, 2023**

Comment Date: December 18, 2023
Reply Comment Date: January 16, 2024

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

I. INTRODUCTION

1. In this *Notice of Inquiry* (*NOI*), we seek to better understand the implications of emerging artificial intelligence (AI) technologies as part of our ongoing efforts to protect consumers from unwanted and illegal telephone calls and text messages under the Telephone Consumer Protection Act (TCPA).[1] Complaints regarding unwanted and illegal robocalls and robotexts are consistently the top category of consumer complaints that we receive.[2] As a result, it is critical that the Commission stay abreast of new technologies that may impact the privacy protections afforded to consumers under the TCPA.

2. In the spirit of our longstanding efforts to protect consumers from unwanted robocalls, this *NOI* represents an opportunity to gather information and prepare for changes in calling and texting practices that may result from new AI-influenced technologies.[3] Specifically, we seek to understand how these technologies might affect the existing regulatory landscape that protects consumers from unwanted and illegal robocalls and robotexts. In this context, we seek information that could inform policies that anticipate how AI could help protect consumers against unwanted communications and how it could do the opposite. Our inquiry includes defining AI in this context, the current state of AI use in calling and texting, the impact of emerging AI technologies on consumer privacy rights under the TCPA, and, if appropriate, the Commission's next steps to address these issues.

II. BACKGROUND

3. The TCPA protects consumers from unwanted calls made using an artificial or prerecorded voice.[4] The legislative history of the TCPA suggests that Congress considered calls

[1] *See* Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

[2] The Commission received approximately 157,000 TCPA-related complaints in 2020, 164,000 in 2021, 119,000 in 2022, and 77,420 in 2023 as of Oct. 23, 2023. FCC, *Consumer Complaint Data Center*, www.fcc.gov/consumer-help-center-data (last visited Oct. 23, 2023).

[3] As discussed in more detail below, the TCPA regulates any call made using an "automatic telephone dialing system" or containing an artificial or prerecorded voice. Any such call is considered a "robocall" or "robotext" for purposes of this proceeding. *See* 47 U.S.C. § 227(b)(1).

[4] *See* 47 U.S.C. § 227(b)(1).

containing artificial and prerecorded voices to be a greater nuisance and invasion of privacy than calls using "live" persons.[5] As a result, the TCPA prohibits initiating "any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party" unless a statutory exception applies or the call is "exempted by rule or order by the Commission under [section 227(b)(2)(B)]."[6] The TCPA also prohibits, without the prior express consent of the called party, any non-emergency call made using an automatic telephone dialing system or an artificial or prerecorded voice to certain specified categories of telephone numbers including emergency lines and wireless numbers.[7] The Commission has confirmed that a text message is a "call" subject to the TCPA.[8]

4. The TCPA also authorizes the Commission to "prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone."[9] In addition, the legislative history of the TCPA supports the understanding that Congress anticipated that the Commission would have the flexibility to apply the TCPA's privacy protections from unwanted robocalls to future technologies as well as existing technologies.[10] In recent years, the federal government has begun to address emerging AI technologies, including a recent Executive Order.[11] These initiatives are designed to prepare for and manage the risks to society associated with these evolving technologies.[12]

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[5] *See, e.g. Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 17 FCC Rcd 17459 at 17473-74, para. 24 (citing S. REP. No. 102-178, at 2 (1991)) (2002).

[6] 47 U.S.C. § 227(b)(1)(B). The TCPA does not define the terms "artificial" or "prerecorded voice."

[7] *See* 47 U.S.C. § 227(b)(1)(A).

[8] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (*2003 TCPA Order*); *see also Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a "call").

[9] 47 U.S.C. § 227(d)(3).

[10] *See* 137 Cong. Rec. S18784 (1991) (statement of Sen. Hollings) ("The FCC is given the flexibility to consider what rules should apply to future technologies as well as existing technologies"). The Commission's interpretation of the TCPA has accounted for new technologies that fell within its scope. *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act*, *Westfax Inc. Petition for Consideration and Clarification*, CG Docket Nos. 02-278, 05-338, Declaratory Ruling, 30 FCC Rcd 8620 (2015) (confirming that an "efax," a document sent as a conventional fax but then converted and delivered as an electronic email attachment was covered by the TCPA's consumer protections from unwanted junk faxes).

[11] *See, e.g.,* The White House, U.S. Office of Science and Technology, Blueprint for an AI Bill of Rights, Making Automated Systems Work for the American People, https://www.whitehouse.gov/ostp/ai-bill-of-rights/ (discussing "five principles that should guide the design, use, and deployment of automated systems to protect the American public" and citing "From Principles to Practice—a handbook . . .[that includes] detailed steps toward actualizing these principles in the technological design process") https://www.whitehouse.gov/ostp/ai-bill-of-rights/#applying ("This framework describes protections that should be applied with respect to all automated systems that have the potential to meaningfully impact individuals' or communities' exercise of: Rights, Opportunities, or Access."); U.S. Department of Commerce, National Institute of Standards and Technology, AI Risk Management Framework, https://www.nist.gov/itl/ai-risk-management-framework ("In collaboration with the private and public sectors, NIST has developed a framework to better manage risks to individuals, organizations, and society associated with artificial intelligence (AI). The NIST AI Risk Management Framework (AI RMF) is intended for voluntary use and to improve the ability to incorporate trustworthiness considerations into the design, development, use, and evaluation of AI products, services, and systems"); Executive Order No. 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, 88 Fed. Reg. 75191 (Oct. 30, 2023).

[12] *See, e.g.*, AI RMF.

III. DISCUSSION

5. As AI technologies that can generate content become increasingly prevalent, they have the potential to perform tasks that would ordinarily require human participation. These include interactive communications by voice calls and texts with consumers that can be beneficial. These technologies, however, can also pose new privacy and safety challenges. In this *NOI*, we explore the potential implications of emerging AI technologies on the privacy rights afforded to consumers under the TCPA.

6. Specifically, we seek comment on how AI technologies can be defined in the context of robocalls and robotexts, request information on how AI technologies may impact consumers including any potential benefits and risks that these emerging technologies may create, and ask what next steps we should take to ensure that the Commission can fulfill its statutory obligation under the TCPA to protect consumers from unwanted and often illegal robocalls and robotexts. We believe this inquiry is necessary to better understand and prepare for changes in calling and texting practices that may result from new AI-influenced technologies.

A. Artificial Intelligence – Defined For TCPA Purposes

7. We seek comment on whether, and if so how, we should define "Artificial Intelligence" for purposes of our inquiry including the particular uses of AI technologies that are relevant to fulfilling the Commission's statutory responsibilities under the TCPA. In general, AI technologies can include any program which emulates any aspect of human intelligence, such as a human voice. As a result, the term AI can encompass a wide range of technologies and functions that may extend beyond the scope of this proceeding.[13] We seek to more precisely define that term as it would bear on the Commission's responsibilities under the TCPA.

8. AI has a lengthy history that dates back for many decades.[14] Various organizations have defined AI. More recently, for example, the National Defense Authorization Act of 2019 provides several definitions of AI including "[a]n artificial system designed to think or act like a human, including cognitive architectures and neural networks."[15] The National Artificial Intelligence Initiative Act of 2020

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[13] *See, e.g.*, National Conference of State Legislatures, *Artificial Intelligence Legislation 2023*, https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation (noting that "companies are developing AI to help consumers run their homes and allow the elderly to stay in their homes longer. AI is used in health care technologies, self-driving cars, digital assistants and many other areas of daily life") (last visited Aug. 21, 2023).

[14] *See e.g.*, Rockwell Anyoha, *The History of Artificial Intelligence* (Aug. 28, 2017), https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/; Dartmouth University, *Artificial Intelligence Coined at Dartmouth 1956* https://home.dartmouth.edu/about/artificial-intelligence-ai-coined-dartmouth (last visited Sept. 26, 2023).

[15] *See* John S. McCain National Defense Authorization for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636, 1695 (Aug. 13, 2018) 10 U.S.C. § 2358; *see also* Advancing American AI Act § 7223(3), Pub. L. No. 117-263, 136 Stat. 2395, 3669 (Dec. 23, 2022), 40 U.S.C. § 11301. The term "artificial intelligence" is defined as the following:

> (1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.
>
> (2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.
>
> (3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks.
>
> (4) A set of techniques, including machine learning, that is designed to approximate a cognitive task.

(continued….)

defines AI as "a machine-based system that can for a given set of human-defined objectives, make predictions, recommendations, or decisions."[16] The National Institute of Standards and Technology (NIST) defines AI as "the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement."[17] The European Union has defined AI technologies as "software that is developed with one or more of the techniques and approaches . . . for a given set of human-defined objectives, [and that] generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with."[18] The Kansas Office of Information Technology Services recently defined "Generative artificial intelligence" as "advanced technologies such as predictive algorithms, machine learning, and large language models to process natural language and produce content in the form of text, images, or other types of media."[19] An executive order from the governor of Pennsylvania defines generative AI as "technology or tools that use predictive algorithms to create new content including audio, code, images, text, simulations, and videos."[20]

9. The Commission's authority under the TCPA encompasses current uses of AI in robocalling and robotexting as we understand them, e.g., emulating human speech and interacting with consumers as though they were live human callers when generating voice and text messages. We seek comment on whether one or more of the above examples provides a basis to define AI technologies as used in the context of making robocalls and robotexts in a manner that is consistent with the TCPA's consumer protections.

10. Are there any other definitions that we should consider for this purpose? Do specific AI technologies provide some insight as to how to define the term AI in the context of the TCPA? Voice cloning, for example, is a type of generative AI technology which attempts to emulate a human voice to generate speech using a recording of that voice.[21] "Large Language Models" seek to interpret and generate speech with the same level of proficiency as a human.[22] In particular, does the ability of AI technologies to emulate a human voice and interact with consumers through telephone calls and text messages as though they were a live person provide a basis to define these technologies under the TCPA?

11. As discussed further below, AI technologies may also enhance the analytics that allow consumers and networks to detect and block unwanted and fraudulent calls and text messages via AI generated algorithms and software. Should that factor into the definition of AI technologies in this

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(5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.

[16] *See* National Artificial Intelligence Initiative Act of 2020. Pub. L. 116-283 (2020) (codified at 15 U.S.C. § 9401(3)).

[17] National Institute of Standards and Technology, *Computer Security Resource Center* https://csrc.nist.gov/Topics/technologies/artificial-intelligence (last visited Aug. 15, 2023) (citing ANSI INCITS 172-220 https://www.incits.org/html/ext/ANSDIT/a3.htm (R2007)).

[18] European Union Artificial Intelligence Act, Title I Art. 3(1).

[19] *See* Kansas Office of Information Technology Services, Generative Artificial Intelligence Policy, https://governor.kansas.gov/wp-content/uploads/2023/08/P8200.00-Generative-Artificial-Intelligence-Signed.pdf (July 25, 2023) (noting that "[g]enerated content is typically remarkably similar to what a human creator might produce, such as text consisting of entire narratives of naturally reading sentences").

[20] *See* Executive Order 2023-19, Expanding and Governing the Use of Generative Artificial Intelligence Technologies Within the Commonwealth of Pennsylvania, https://www.governor.pa.gov/wp-content/uploads/2023/09/20230920_EO-2023-19_AI_Final_Executed.pdf (Sept. 20, 2023).

[21] *See, e.g.*, Anisha Kohli, *From Scams to Music, AI Voice Cloning is on the Rise* (Apr. 29, 2023) https://time.com/6275794/ai-voice-cloning-scams-music/.

[22] *See* Mariusz Flasiński, Introduction to Artificial Intelligence 229 (2016).

context? AI technologies can provide important access to individuals with disabilities or speech limitations. Are there accessibility considerations that the Commission should be aware of in defining AI technologies in this context to avoid discouraging the development of such beneficial AI tools? Should any such definition take into consideration whether the AI technology is being used for some malicious purpose such as to defraud, cause harm or wrongly obtain anything of value?[23]

12. As discussed above, the TCPA's existing prohibition on "artificial" voice messages encompasses current AI technologies that generate human voices. We note, for example, that the Commission addressed "soundboard technology" which was described as allowing a live agent to interact with consumers via the use of prerecorded voice messages selected by the agent monitoring the call.[24] In relevant part, the Soundboard petitioners argued that soundboard technology produces the functional equivalent of a conversation between the consumer and another human rather than the use of an artificial or prerecorded voice message. In rejecting that argument, the Commission noted that the "TCPA does not carve such functional equivalents out from its dictates" and determined that petitioners had not demonstrated that the technology at issue performed in the same manner as a live agent in interacting with consumers.[25]

13. Nevertheless, would it be helpful to define AI technologies in a more specific way to take into consideration the potential ability of AI technologies to function as the equivalent to a live agent when interacting with consumers? Can and should generative AI technologies be defined in ways that differ from existing technologies such as Interactive Voice Response (IVR) systems that can use artificial or prerecorded voice messages to communicate with consumers without the presence of a live agent? In addition, the TCPA defines and regulates the use of "automatic telephone dialing systems."[26] Can AI technologies function in a way that qualifies as an autodialer under the TCPA's definition? If so, should that factor into how we define any such technology? We seek comment on these and any other issues that will assist us in understanding whether and how it might be useful to define AI technologies in the context of the regulatory framework that governs robocalls and robotexts under the TCPA.

B. Benefits and Risks of AI Technologies Used to Make Robocalls and Robotexts

14. We seek information on how AI technologies may impact consumers who receive robocalls and robotexts including any potential benefits and risks that these emerging technologies may create. In seeking comment, we recognize the need to understand how these technologies may alter the functioning of the existing regulatory framework so that we may formulate policies that benefit consumers by ensuring that they continue to receive the privacy protections afforded under the TCPA from unwanted and illegal robocalls and robotexts.

15. *Benefits*. We seek comment on how AI technologies may be used to protect consumers from unwanted and illegal robocalls and robotexts. Specifically, we seek comment on how AI technologies can be used to target information to specific groups of consumers, protect consumers from unwanted robocalls and robotexts, improve the agency's ability to enforce the TCPA, and promote accessibility to individuals with disabilities. For example, are there ways that AI technologies can be used to tailor messages to individual recipients in ways that they will find more useful but that are consistent with the consumer protections afforded by the TCPA? Can AI technologies also benefit the

[23] Under the Truth-in-Caller ID Act, the Commission's rules prohibit anyone from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm or wrongly obtain anything of value. *See* 47 CFR § 64.1604(a).

[24] *See Rules and Regulations Implementing the Telephone Protection Act of 1991, NorthStar Alarm Services LLC's Petition for Expedited Declaratory Ruling, Yodel Technologies Petition for Expedited Declaratory Ruling or in the Alternative Retroactive Waiver*, CG Docket No. 02-278, Declaratory Ruling and Order, 35 FCC Rcd 14640 (2020).

[25] *Id*. at 14654, para. 16.

[26] *See* 47 U.S.C. § 227(a)(1) (defining an autodialer as "equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers").

calling party by enabling them to target demographics that are most interested in the subject matter of the communication? We note that some platforms already incorporate algorithms in their call blocking services by identifying patterns of robocalls across a network as well as analyzing the content of robocalls using natural language processing technology.[27] By analyzing the content of such calls, AI technology may assist consumers in recognizing scam calls or other types of calls that they do not wish to receive, thereby allowing consumers to block such calls before they reach the consumer.[28] Are there independent resources or means available to substantiate claims made by AI-based companies regarding any alleged benefits of specific AI technologies to ensure they function as described?

16. Does AI technology have the potential to improve the ability of consumers and networks to detect unwanted or fraudulent traffic and block any such communication before it reaches the consumer?[29] Would this help to restore consumer confidence in the telephone network that has been eroded by the large number of unwanted and fraudulent calls and messages? Do AI technologies also have the potential to reduce burdens associated with TCPA compliance measures? If so, might this provide an opportunity to adopt enhanced measures to better protect consumers from unwanted calls and texts? To what extent are voice service providers and third-party analytics companies already making use of AI to accomplish this?[30] To the extent that these blocking services analyze call content, are there any privacy concerns we should be aware of and, if so, how should we address those concerns? For example, we seek comment on how the use of AI technologies in this manner, whether by the provider itself or by a third party analytics company, could implicate statutory privacy regimes such as the Electronic Communications Privacy Act (ECPA),[31] section 222 of the Communications Act,[32] section 705 of the

[27] *See, e.g.*, YouMail, *The Role of Artificial Intelligence in Combatting Robocalls* (April 17, 2023) https://blog.youmail.com/2023/04/the-role-of-artificial-intelligence-in-combating-robocalls/#1. Many voice service providers make use of analytics to identify, label, and potentially block unwanted and illegal calls. *See generally* FCC, Call Blocking Tools Available to Consumers: Second Report on Call Blocking, CG Docket No. 17-59 (2021), https://docs.fcc.gov/public/attachments/DA-21-772A1_Rcd.pdf.

[28] *See, e.g.*, Remarks of FCC Chairwoman Jessica Rosenworcel, "The Opportunities and Challenges of Artificial Intelligence for Communications Networks and Consumers" ("AI has tremendous potential to expand and refine the analytics tools we have to block unwanted robocalls and robotexts. It could help restore trust in our networks. Because using these systems we can enhance our ability to see fraudulent traffic before it reaches you and stop it in its tracks.") (July 13, 2023) https://docs.fcc.gov/public/attachments/DOC-395095A1.pdf.

[29] As noted below, we also seek comment on the potential of AI technologies to block legitimate calls that the consumer might wish to receive.

[30] The Commission is aware of, and has encouraged, voice service providers' use of "reasonable analytics" for blocking, but here we are particularly interested in how AI utilizes those analytics or other tools. *See, e.g.*, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4884-88, paras. 26-35 (2019); *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, 7625-27, paras. 25-34 (2020); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15211, 15234-38, paras. 39-47 (2020).

[31] ECPA generally prohibits a provider of "electronic communication service" from disclosing the contents of any communication carried on that service, subject to certain exceptions, such "as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service." 18 U.S.C. § 2702(a), (c)(3).

[32] For example, carriers must "protect the confidentiality of proprietary information of, and relating to, . . . customers" under section 222(a), and section 222(c) imposes additional restrictions in the case of customer proprietary network information. 47 U.S.C. § 222(a), (c).

Communications Act,[33] and section 631 of the Cable Communications Policy Act of 1984 (Cable Act),[34] which limit the extent to which providers may disclose information about subscribers. Is AI technology also useful in improving content-neutral analytics?

17. In addition, does AI technology have the potential to assist callers in ensuring they are in compliance with the various regulatory requirements under the TCPA and delivering to consumers more complete and accurate information from callers? For example, is there a potential for emerging AI technology to improve the ability of callers to respond to inquiries from consumers, ensure that only parties who have provided consent to the called party are called, process do-not-call requests, keep track of any numerical limits on calls to specific telephone numbers, and avoid calling any emergency lines or wireless telephone numbers when prohibited under the TCPA? How might the Commission confirm and measure the provision of such benefits? In 1991, when Congress enacted the TCPA, it concluded that artificial and prerecorded voice messages constituted a greater nuisance to consumers than calls with live persons. We seek comment on whether AI technology can minimize the nuisances associated with the use of artificial or prerecorded voice messages by acting as the functional equivalent to calls with live agents. For example, AI technologies have the potential to interact with consumers allowing for such technologies to be responsive to questions and process requests to stop calling. To what extent are any such benefits offset by AI technology potentially allowing callers to place even higher volumes of unwanted robocalls and robotexts?

18. We seek comment on whether AI technologies may improve the ability of persons with disabilities to communicate with a called party. For example, might AI be useful in ensuring that persons with disabilities are better able to exercise their right to revoke consent to future calls and messages? Could AI work effectively with telecommunications relay services (TRS)? For example, could it do so by allowing a TRS Communications Assistant (CA) to pause the contents of an AI-generated automated call until the CA successfully connects with the intended TRS user?[35] We further seek comment on how AI systems, either currently in use or in development, relate to accessibility tools that may generate or translate speech. These tools can provide important access to individuals with disabilities or speech limitations, and generally require direct human input. If so, are there ways to implement the TCPA's consumer privacy protections in ways that do not deter the development of such beneficial uses of AI technologies? Are there other potential benefits to consumers that will ensure better compliance with the TCPA's consumer protections? In addition, are there ways that the Commission can utilize AI technologies to improve our ability to monitor and enforce compliance with our TCPA-related rules? If so, how? Are there any current examples of how AI technologies are being used for these beneficial purposes? We seek comment on these and any other potential benefits of AI technology in the context of this inquiry.

19. *Risks*. We also seek comment on ways that AI is used or potentially could be used to make illegal, fraudulent, or otherwise unwanted robocalls and robotexts. For example, can bad actors use

[33] Section 705(a) generally prohibits unauthorized parties from receiving or intercepting communications and using or disclosing such communications. 47 U.S.C. § 605(a).

[34] Among other things, section 631 prohibits any cable operator from disclosing "personally identifiable information" without the prior consent of the subscriber. 47 U.S.C. § 551(c)(1).

[35] *See, e.g.*, Letter from Christian Vogler, Technology Access Program, Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University, to Marlene Dortch, FCC, CG Docket Nos. 10-51 and 03-123, Attach. at 26, 57 (filed July 5, 2017) https://www.fcc.gov/ecfs/document/10705144575070/2 (VRS Survey Public Results noting prerecorded messages begin before interpreter answers the receiving call). Consumer complaints filed with the Commission also detail issues with automated calls being inaccessible to TRS users since the automated message plays as soon as the TRS call agent answers the call but before the intended TRS user is connected, resulting in loss of content and missed options for the TRS user before the automated call terminates itself. An example is a reminder of a medical appointment with options to confirm or cancel the appointment.

AI technologies to avoid detection by analytic systems designed to protect consumers by blocking certain types of calls? Is there a risk that AI technologies might be used in such a way as to inadvertently block legitimate calls and messages? If so, are there steps the Commission or industry could take to prevent this? Does AI technology reduce the potential costs to make or send high volumes of robocalls and robotexts by eliminating the need to hire and train any human agents? Would AI technology add to the costs of those industry stakeholders proactively attempting to detect and reduce high volumes of robocalls and robotexts in their networks? Should the Commission be concerned about these potential harms?

20. Is there a risk that AI technology can be used in ways to make the public more susceptible to fraudulent calls by appearing to be from someone the consumer knows or trusts, or otherwise tailored to convince the recipient that the call is from a legitimate source? Similarly, is there a risk that increased use of AI could make it easier for bad actors to place a higher volume of calls that appear to be from a real person, making call recipients more likely to trust the caller? For example, are bad actors cloning the voices of specific persons to persuade consumers of call legitimacy-and will bad actors do so with increasing frequency and impact as the quality of voice cloning increases and the cost decreases?[36] What is the effect? As discussed below, should the Commission consider ways to verify the authenticity of legitimately generated AI voice or text content from trusted sources, such as through the use of watermarks, certificates, labels, signatures or other forms of labels? Is there a potential for AI technologies to be used in ways that defraud consumers, introduce harmful bias, disrupt elections, perpetuate the commission of crimes, or induce widespread panic such as by making false emergency robocalls mimicking the voices of public officials or other trusted sources in ways that violate the TCPA or other consumer protection statutes?[37]

21. Are there current examples of how AI technologies are used in such disruptive ways that might inform our future policy decisions as we attempt to protect the public from such callers via our authority under the TCPA and Communications Act? Are there any examples of AI being used to generate content for robocalls and text messages and to make calls and send messages for the purpose discussed above? What are the risks of such calls? Is the use of this technology particularly pernicious such that we should treat AI-assisted robocalls and robotexts differently than traditional robocalls and robotexts? Are there any benefits of using AI technology in this way that we should seek to preserve or encourage?

22. As noted above, unwanted calls and text messages are already the top source of consumer complaints with the Commission. By some estimates, consumers are scammed by fraudulent robocalls that cost them billions of dollars each year.[38] Does AI technology have the potential to make these unwanted and often fraudulent communications more effective by targeting specific demographics that are more susceptible to scams, such as the elderly? Similarly, does the use of AI technology have the potential to increase the risk of unwanted and fraudulent calls and texts to individuals for whom English

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[36] *See, e.g.*, Federal Trade Commission, *Scammers Use AI to Enhance Their Family Emergency Schemes*, Consumer Alert (Mar. 20, 2023), https://consumer.ftc.gov/consumer-alerts/2023/03/scammers-use-ai-enhance-their-family-emergency-schemes ("All [a scammer] needs is a short audio clip of your family member's voice—which he [or she] could get from content posted online—and a voice-cloning program."); Joe Hernandez, *That Panicky Call from a Relative? It Could Be a Thief Using a Voice Clone, FTC Warns*, NPR Technology (Mar. 22, 2023), https://www.npr.org/2023/03/22/1165448073/voice-clones-ai-scams-ftc.

[37] *See, e.g.*, See Faith Karimi, *'Mom, these bad men have me.': She believes scammers cloned her voice in a fake kidnapping* (April 29, 2023), https://www.cnn.com/2023/04/29/us/ai-scam-calls-kidnapping-cec/index.html; Keep Your AI Claims in Check, FTC Business Blog, https://www.ftc.gov/business-guidance/blog/2023/02/keep-your-ai-claims-check (Feb. 27, 2023); Michael Atleson, Chatbots, Deepfakes, and Voice Clones: AI Deception for Sale, FTC Business Blog, March 20, 2023, https://www.ftc.gov/business-guidance/blog/2023/03/chatbots-deepfakes-voice-clones-ai-deception-sale (Mar. 20, 2023).

[38] Yudhijit Bhathacharee, *Who's Making All These Scam Calls?* (Jan. 27, 2021) (estimating that Americans lose from $3.5 billion to $20 billion every year from fraudulent call scams): https://www.nytimes.com/2021/01/27/magazine/scam-call-centers.html.

is a second language? Is there evidence that the use of generative AI technology has already increased the number of unwanted calls and text messages?

23. Are there potential negative consequences for other consumer protection statutes enforced under the Commission's rules such as the CAN-SPAM Act which protects consumers from unwanted mobile service electronic mail messages?[39] Are there other potential negative consequences to consumers from AI technologies that will allow callers to evade the TCPA's consumer protections? What is the estimated timeframe before AI technologies begin to have a substantial impact on the TCPA and other consumer protections?

C. Future Steps to Address AI Technologies

24. We seek comment on what steps, if any, the Commission should consider to further this inquiry. As noted above, the TCPA specifically authorizes the Commission to make "technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone."[40] In addition, the legislative history contemplated the Commission's need for the flexibility to address future technologies that impact the TCPA's consumer privacy protections from unwanted robocalls.[41] The TCPA also prohibits the use of an "artificial" voice message in calls to a residential or wireless telephone number absent the prior express consent of the called party or a recognized exemption.[42] Is there any reason to conclude that these existing legal authorities do not provide the Commission with sufficient statutory authority to ensure that the use of emerging AI technologies does not erode consumer protections under the TCPA or other consumer protection statutes when used to communicate via robocall or robotexts? Are there consumer education or outreach initiatives that the Commission could conduct to raise awareness of the risks posed by emerging AI technologies including the targeting of elderly and non-English speaking populations?

25. We believe that certain AI technologies such as "voice cloning" appear to fall within the TCPA's existing prohibition on artificial or prerecorded voice messages because this technology artificially simulates a human voice. We seek comment on whether it is necessary or even possible to determine at this point whether future types of current AI technologies fall within the TCPA's existing prohibitions on artificial or prerecorded voice messages. As noted above, "voice cloning" and other similar technologies involve emulating human voices for telephone calls to consumers, but such calls may not involve actual direct interaction with a live person. What factors, if any, other than the participation of a live person on the call should we take into consideration in reaching any conclusions? For example, should we consider the extent to which such technology provides the functional equivalent to interacting with a live person? What factors would be included in any such analysis to determine if a particular technology is providing the functional equivalent of an interaction with a live person? Should, or may, we consider the character of the voice clone—*e.g.*, a clone of a call recipient's personal contact, a public official, a celebrity, etc.—as relevant to our analyses under the TCPA? To what extent does the potential liability for substantial regulatory fines and private rights of action encourage AI user compliance with the TCPA's consumer protections?[43]

26. Alternatively, as the Commission suggested in the Soundboard ruling, does the TCPA not allow any carve out for functional equivalency of a live person for any technology if the call uses an artificial or prerecorded voice? Should voice alteration technologies that can alter a live speaker's voice

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[39] *See* Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (2003) (*CAN-SPAM Act*), *codified at* 15 U.S.C. § 7701-7713, 18 U.S.C. 1037 and 28 U.S.C. § 994. *See also* 47 CFR § 64.3100.

[40] *See* 47 U.S.C. § 227(d)(3).

[41] 137 Cong. Rec. S18784 (1991) (statement of Sen. Hollings) ("The FCC is given the flexibility to consider what rules should apply to future technologies as well as existing technologies").

[42] *See* 47 U.S.C. § 227(b)(1).

[43] *See* 47 U.S.C. § 227(b)(3) (authorizing private rights of action for TCPA violations); 47 CFR § 1.80.

using AI so that it sounds like a different person always constitute an artificial or prerecorded voice under the TCPA? What factors should we consider in that context? For example, are there steps we can take to ensure that important accessibility tools for individuals with disabilities are not negatively impacted? Are there additional steps to take to ensure the accessibility of such automated calls?[44]

27. How would consumers ever realize that they are interacting with an AI generated voice if such technology becomes functionally equivalent to a human? Should the Commission require "digital watermarks" that can indicate whether a voice on a robocall is generated by AI?[45] Could the Commission use its authority under section 227(d)(3), or any other authority, to require the use of such watermarks? Should the Commission require callers that are using AI technologies that emulate a human voice to make that disclosure on the call? We note that the TCPA requires that all artificial or prerecorded voice messages must at the beginning of the message state the identity of the party initiating the call.[46] Should this disclosure include an additional declaration that AI technologies are being used on the call? Similarly, should we require AI-generated robocalls to include a specific contact for complaints about factually false or otherwise unlawful AI-generated communications?[47] Could and should the developers of AI technology and not just the robocallers using that technology be held accountable if their systems are designed to operate in a way that is inconsistent with the TCPA or other related consumer protection statutes, or do not contain adequate safeguards to prevent them from being used in illegal ways?[48] Are there specific issues or measures that we should consider to ensure that the TCPA's protections afforded to emergency lines including 911 lines, any emergency line of a hospital, medical physician, health care facility, poison control center, or fire protection or law enforcement agency are not undermined by AI technologies?[49]

28. What other steps can we take to identify the root causes of AI-driven robocall or robotext scams? For example, should we solicit information from industry regarding the type of AI technologies used in particular scams, either on a regular basis or in connection with investigations? Should we inquire as to whether the AI technology used was developed for general legal uses, and misused, or whether it was purpose-built for unlawful applications? If the AI technology was developed for general use, were there safeguards in place to ensure it was not misused? If so, how were they disabled? And how best can we share the information that we gather about fraudulent uses of AI within our purview with our sister agencies, who are charged with addressing malicious uses of AI in other contexts?

29. Further to that point, we seek comment on what steps the Commission might take with respect to third parties to further this inquiry. How might we consider ongoing means to stay informed of relevant emerging AI technologies? For example, should we consider a joint effort with other federal and state agencies, universities, and private industry entities to remain informed of emerging AI technologies and related practices that might impact consumer protections from unwanted and illegal robocalls and

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[44] *See supra* para. 18.

[45] Digital watermarks can be inserted in various digital data such as audio or images allowing authentication of the data. *See, e.g.*, Bill Rosenblatt, *Google and OpenAI Plan Technology to Track AI-Generated Content* (July 22, 2023), Google And OpenAI Plan Technology To Track AI-Generated Content (forbes.com); Digital Watermarking. https://www.sciencedirect.com/topics/engineering/digital-watermarking.

[46] *See* 47 U.S.C. § 227(d)(3)(A).

[47] *Id.*

[48] The Commission has clarified that an entity may be found to have made or initiated a call under the TCPA in one of two ways: first, by "tak[ing] the steps necessary to physically place a telephone call"; and second, by being "so involved in the placing of a specific telephone call as to be directly liable for initiating it." *See DISH Declaratory Ruling*, 28 FCC Rcd at 6583, paras. 26-27 (2013).

[49] *See* 47 U.S.C. § 227(b)(1)(A)(i); *see also* 47 CFR § 64.1202 (affording protections to Public Safety Answering Points (PSAP) from non-emergency robocalls).

robotext schemes?[50] What have other federal and state agencies done to address the use of AI systems that might be relevant to this inquiry?[51] Are there ways that the Commission might facilitate voluntary compliance with the TCPA through the cooperation of AI developers to ensure that they are aware of these obligations and can direct their development process in ways that are consistent with the TCPA, and contain safeguards to protect against uses violative of the TCPA?[52] If so, what is the best way to facilitate these voluntary efforts? We seek comment on these and any other next steps that would further the objectives of this inquiry.

IV. PROCEDURAL MATTERS

30. *Ex Parte Rules*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[53] 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* 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 filing 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.

31. *Comment Filing Procedures*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at https://www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any

[50] We note that the Technical Advisory Council (TAC) provides technical advice to the Commission, https://www.fcc.gov/general/technological-advisory-council.

[51] *See, e.g.*, Claudia Grisales, *Schumer meets with bipartisan group of senators to build a coalition for AI law* (May 18, 2023) https://www.npr.org/2023/05/18/1176894731/schumer-meets-with-bipartisan-group-of-senators-to-build-a-coalition-for-ai-law.

[52] *See, e.g.*, Serena Marshall, *Tech giants commit to Biden administration-brokered AI safety rules* (July 21, 2023) https://www.abc15.com/tech-giants-commit-to-biden-administration-brokered-ai-safety-rules.

[53] 47 CFR §§ 1.1200 *et seq*. *See* 47 CFR § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice").

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.[54]

- 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.

32. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

33. *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).

34. *Further Information*. For additional information on this proceeding, contact Richard D. Smith of the Consumer and Governmental Affairs Bureau, at Richard.Smith@fcc.gov or (717) 338-2797.

V. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 227, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227, and 403, this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Inquiry (November 15, 2023)

If Tom Hanks called, I would pick up the phone. If he spoke in a familiar way during that call, I would definitely listen. To be clear, the star of Big and Saving Private Ryan is not dialing me anytime soon. But a video using his voice is on the internet hawking dental plans. None of this is happening with his permission. This is happening because scam artists are playing with artificial intelligence and testing our ability to separate vocal fact from fiction in order to commit fraud.

Now imagine instead a call from a friend or family member. Of course you pick up. But maybe that voice sounds off and something feels wrong. Maybe it is because the individual you think is on the other end of the line is telling you about an imminent emergency and pleading with you to send money. Like the hard sell from Tom Hanks, it is also a scam. Because you are not actually talking to who you think you are, you are speaking with a con artist using artificial intelligence to clone the voice of someone you know.

If this future sounds far off, think again. We see on the internet how fraudsters are already playing with this technology. We know that scam artists want to explore ways to use this technology over the phone.

I recently had the opportunity to sit down with AARP and talk about what the combination of unwanted robocalls and robotexts and artificial intelligence will mean for consumers. I learned about how voice cloning scams are growing and how they can cause special harm for older adults. Imagine, for instance, a grandparent fearing they will get a call from their grandchild, only to learn it was fraudster on the other end of the line, preying on their willingness to forward money to family.

The anxiety about these technology developments is real. Rightfully so. But I think we make a mistake if we only focus on the potential for harm. We need to equally focus on how artificial intelligence can radically improve the tools we have today to block unwanted robocalls and robotexts. We are talking about technology that can see patterns in our network traffic unlike anything we have today. This can lead to the development of analytic tools that are exponentially better at finding fraud before it ever reaches us at home. Used at scale, we can not only stop this junk, we can help restore trust in our networks.

That is why today we are launching an inquiry to ask how artificial intelligence is being used right now to recognize patterns in our network traffic and how they could be used in the future. We know the risks that this technology involves, but we also want to harness the benefits—just like the recently released Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence recommends.

That is not to say this will be easy. Like Tom Hanks said as the ragtag coach Jimmy Dugan in A League of Their Own, "the hard . . . is what makes it great." We have work to do to harness artificial intelligence for good. But I am an optimist and I believe this is possible. So let's get to it. Let's see how we can use artificial intelligence to get this junk off the line.

I want to thank the staff responsible for our efforts today, including Jerusha Burnett, Zac Champ, Aaron Garza, Josh Mendelsohn, Michael Scott, Suzy Rosen Singleton, Richard Smith, Mark Stone, Kristi Thornton, and George Phelan from the Consumer and Governmental Affairs Bureau; Kristi Thompson from the Enforcement Bureau; Richard Mallen, Marcus Maher, Michele Ellison, Jeff Steinberg, Royce Sherlock, and Wade Lindsay from the Office of General Counsel; Michelle Schaefer and Andrew Wise from the Office of Economics and Analytics; Martin Doczkat and Dana Shaffer from the Office of Engineering and Technology; Michael Antonino, Maureen Bizhko, Kenneth Carlberg, Shawn Cochran, Gerald English, John Evanoff, David Furth, David Sieradzki, Austin Randazzo, and James Wiley from

the Public Safety and Homeland Security Bureau; Jonathan Lechter from the Wireline Competition Bureau; and Arpan Sura and Paul Powell from the Wireless Telecommunications Bureau.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Notice of Inquiry (November 15, 2023)

Over the last few months, I've been proud to see our government convene quickly and effectively to explore the implications of artificial intelligence ("AI"). Congress is deeply engaged on this issue, convening hearings and introducing bills on the implications of AI for sectors from healthcare to homeland security. The White House is as well, with President Biden issuing a landmark executive order ("EO") aimed at seizing the promise and managing the risks of AI for the American people. Our miliary is engaged. Our scientists are engaged. And so are our agencies.

This intersectionality is critical. Because while the future of AI remains uncertain, one thing is clear: it has the potential to impact, if not transform, nearly every aspect of American life. Because of that potential, each part of our government bears a responsibility to better understand the risks and opportunities presented within its mandate, while being mindful of the limits of its experience and its authority. And in this era of rapid technological change, we must collaborate, lending our learnings and sharing our expertise across agencies to better serve our citizens and consumers.

That is what the Biden EO charges us with doing, and what the Chairwoman has done by circulating the item before us today.

Specifically, the EO charges the FCC with examining the impact of AI on unwanted robocalls and robotexts. As the EO – and today's notice of inquiry ("NOI") – acknowledges, AI holds both promise and risk when it comes to our ongoing efforts against spam calls. AI technologies can be leveraged to block unwanted robocalls and robotexts. In fact, wireless carriers use various algorithms for this purpose today, and we ask them for more information about that usage in the NOI. But AI can also facilitate or exacerbate spam – and scam – calls.

The clearest example of this to date is voice cloning – generative AI technology that uses a recording of a human voice to generate speech sounding like that voice. In one recent news story, a mom in Arizona believes bad actors cloned her daughter's voice in what was ultimately a fake kidnapping phone scam.[1] White House Deputy Chief of Staff Bruce Reed, charged with developing the administration's AI strategy, says "[v]oice cloning is one thing that keeps me up at night."[2] The NOI asks about the frequency and impact of voice cloning in robotexts and robocalls, and how the Commission might address it, such as by verifying the authenticity of legitimately-generated AI voice or text content from trusted sources.

Of course, voice cloning is an already-known issue, and one that falls within our existing statutory authority (i.e., the Telephone Consumer Protection Act's ("TCPA") prohibition on calls using artificial or prerecorded voices without consent).[3] AI is a powerful, and evolving, technology. We do not know all of the issues that it may trigger – or all the benefits it may hold. So this item seeks to explore and find out. It poses some questions that will be best answered by our regulatees, such as whether AI technology can be used to reduce burdens associated with TCPA compliance measures, and how AI can work effectively within telecommunications relay services. But it also seeks information from AI developers and others who may be less familiar with our regulations, yet may still find themselves within them. For example, the NOI asks how the FCC might cooperate with AI developers to ensure they are aware of the TCPA's obligations so they can develop their products in ways consistent with the statute, and with safeguards in place to

[1] *See* Faith Karimi, "'Mom, these bad men have me': She believes scammers cloned her daughter's voice in a fake kidnapping," CNN (Apr. 29, 2023), https://www.cnn.com/2023/04/29/us/ai-scam-calls-kidnapping-cec/index.html.

[2] Nancy Scola, "Biden's Elusive AI Whisperer Finally Goes on the Record. Here's His Warning." Politico (Nov. 2, 2023), https://www.politico.com/news/magazine/2023/11/02/bruce-reed-ai-biden-tech-00124375.

[3] *See* 47 U.S.C. § 227(b)(1)(A)-(B).

protect against bad actors using their products in ways violative of the TCPA.

I want to thank my colleagues for agreeing to my additions to the item. At a time when scammers can use tools like WormGPT and FraudGPT to facilitate their crimes,[4] it is critical that the FCC use its enforcement authority to identify what we can about the root causes of AI-driven robocall and robotext scams, and share that information with our sister agencies charged with addressing malicious uses of AI within their domains. Under the Chairwoman's leadership, our anti-robocall work has been characterized by coordination and cooperation, including with state attorneys general and the Industry Traceback Group. I see this collaboration as following in that same vein, and hope it will be similarly successful.

I also want to thank the FCC staff who worked on this item – you are a key part of this whole-of-government effort around AI, and this item has my full support.

[4] *See, e.g.* Matt Burgess, "Criminals Have Created Their Own ChatGPT Clones," WIRED (Aug. 7, 2023), https://www.wired.com/story/chatgpt-scams-fraudgpt-wormgpt-crime/; Michael Kan, "After WormGPT, FraudGPT Emerges to Help Scammers Steal Your Data," PCMag (July 25, 2023), https://www.pcmag.com/news/after-wormgpt-fraudgpt-emerges-to-help-scammers-steal-your-data.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Bloomingdale Telephone Company Application for Review	)	
	)	
State Telephone Company Application for Review	)	

ORDER ON REVIEW

Adopted: November 27, 2023 **Released: November 28, 2023**

By the Commission:

I. INTRODUCTION

1. One of the Commission's central missions is to make "available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."[1] This principle of "universal service" ensures affordable telecommunications services across America, including to consumers living in high-cost areas. The Commission's High-Cost program—one of four Universal Service Fund programs—authorizes universal service support to Eligible Telecommunications Carriers to bring broadband capable voice networks to consumers living in rural, insular and high-cost areas. Receipt of support is conditioned on, in part, carriers satisfying deployment obligations and annually reporting their deployment through the High-Cost Universal Broadband (HUBB) portal. Our reporting requirements are necessary for the Commission to monitor carriers' progress and significantly aid in deterring waste, fraud, and abuse of federal funds. Carriers that fail to comply with our reporting obligations are subject to support reductions.[2]

2. As carriers participating in the Commission's High-Cost program, Bloomingdale Telephone Company (Bloomingdale) and State Telephone Company (State) (collectively, Petitioners) are subject to these requirements. In 2018, State timely filed its annual report but did not fully understand the reporting time period, which led to an incorrect filing. In 2019, both State and Bloomingdale failed to timely file their annual report, which resulted in a support reduction assessed in January 2020. The Petitioners separately sought relief from the Wireline Competition Bureau (Bureau). State sought relief to correct its 2018 filing after the deadline to report locations it was required to report, and it sought relief of the 2019 filing deadline. Bloomingdale, jointly with ComSouth Corporation (ComSouth) sought relief of the 2019 deadline. The Bureau denied both requests, and the Petitioners seek reversal of the Bureau's

[1] 47 U.S.C. § 151.

[2] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3166, para. 214 (2016) (directing the Bureau to work with USAC to develop an online portal) (*Rate-of-Return Reform Order*).

denials.[3] For the reasons set forth below, we reverse the Bureau's decision and grant the waiver requests of Petitioners and ComSouth.

II. BACKGROUND

3. *Applicable Rules*. The 2016 *Rate-of-Return Reform Order* adopted new annual reporting requirements for rate-of-return eligible telecommunications carriers (ETCs).[4] The Order directed these ETCs "to submit to the Universal Service Administrative Company (USAC) the geocoded locations to which they have newly deployed broadband" on a recurring basis.[5] ETCs must provide annual certifications with this geocoded location information data to demonstrate the ETC is on track to meet its deployment obligations.[6]

4. The *Rate-of-Return Reform Order* further directed USAC to develop an online system to accept the geocoded location information data and related certifications.[7] In response, USAC developed the HUBB portal. ETCs receiving high-cost support must file their geocoded location information data and related certifications through the HUBB portal.[8] Section 54.316 of the Commission's rules establishes the reporting and certification requirements for these ETCs.[9] Specifically, subsection (a) sets out the broadband reporting requirements, subsection (b) outlines the certification requirements, and subsection (c) establishes the filing deadlines and penalties if an ETC fails to properly report and certify its geocoded location information data.[10] Carriers' reports are due annually, by March 1 of a given year for the previous year's data.[11] Any carrier that does not deploy broadband service in the prior year must nonetheless certify via the HUBB portal that it has no new locations to report; otherwise, it will have failed to meet the Commission's annual reporting and certification requirement.[12]

5. On December 2, 2019, the Bureau adopted an Order granting several petitions for waiver of the March 1, 2018 deadline in part because of confusion relating to the filing requirements for the newly created HUBB portal.[13] In that Order, the Bureau acknowledged the potential confusion about the filing and certification requirements for ETCs that did not deploy any locations in the reporting year,[14] and it stated that, with the release of its Order, it expected ETCs to be familiar with all relevant reporting requirements in the future.[15]

6. *Bloomingdale and ComSouth's Waiver Request*. On April 21, 2020, Bloomingdale and

[3] *Connect America Fund, et al.*, WC Docket No. 10-90, et al., CC Docket No. 01-92, Order, 35 FCC Rcd 8205, 8208-10, paras. 8-11 (WCB 2020) (*2020 Denial Order*).

[4] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3163-64, para. 209.

[5] *Id.* at 3164, para. 210.

[6] *Id.* at 3166, para. 215.

[7] *Id.* at 3166, para. 214 (directing the Bureau to work with USAC to develop an online portal).

[8] *See, e.g., id.* at 3177, para. 79, n.156 (describing portal filing obligations for recipients of Phase II model-based support); *id.* at 3167, para. 219 (describing portal filing obligation for rate-of-return ETCs).

[9] *See* 47 CFR § 54.316.

[10] *Id.*

[11] *Id.*

[12] *See* 47 CFR §§ 54.316(a)(1), (c)(1)*, and see, e.g.*, USAC, Connect America Fund Filing with the HUBB Portal at 12-14 (2019), https://www.usac.org/wp-content/uploads/high-cost/documents/training/2019-Filing-with-the-HUBB-Portal-Webinar.pdf.

[13] *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71 et al., Order, 34 FCC Rcd 11139, 11144, para. 14 (WCB 2019) (*2019 HUBB Waiver Order*).

[14] *Id.* at 11145, para. 17.

[15] *Id.* at 11146, para. 20.

ComSouth requested a waiver of the March 1, 2019 filing deadline established by section 54.316(c)(1) and the support reductions established by section 54.316(c)(1)(i) of the Commission's rules.[16] According to its petition, Bloomingdale did not have new geocoded location data information to report in the HUBB for 2018 because it did not deploy broadband service to any new locations during that year.[17] Bloomingdale claims it was not aware of the requirement to certify that it had no locations to report for 2018.[18] Bloomingdale and ComSouth alleged that the missed deadline resulted in a significant reduction in support.[19] They argued that granting the petition was in the public interest because the "financial penalty that [petitioners] incurred was a drastic adjustment and will directly and negatively impact the rural communities [it] serve[s] . . ." by "directly affect[ing] [petitioners'] ability to fund broadband deployment, as well as the day-to-day operations and maintenance of [their] current networks and infrastructure."[20]

7. On August 5, 2020, the Bureau denied Bloomingdale and ComSouth's petition, finding that "ComSouth and Bloomingdale should have been familiar with the filing requirements by March 1, 2019."[21] The Bureau found, for example, that USAC had made "consistent and repeated efforts to inform ETCs of the reporting and certification deadline" as well as the underlying reporting requirement.[22] The Bureau was also unpersuaded by ComSouth and Bloomingdale's argument that it was not aware of the severity of the penalty. The Bureau concluded that ComSouth and Bloomingdale "should have known what the reduction of support would be" because the calculation is contained in the same rule that set the reporting deadline.[23]

8. On September 1, 2020, Bloomingdale filed the instant Application for Review alleging that the Bureau's Order: (1) involves a question of law or policy which has not been previously resolved by the Commission; (2) made an erroneous finding in concluding that Bloomingdale should have known what the reduction of support would be, based on the number of days it filed after the March 1, 2019 deadline; and (3) was inconsistent with Bureau precedent waiving the March 1 deadline for HUBB filings.[24] On December 28, 2020, Bloomingdale filed a supplement to its Application for Review,[25] seeking, as an alternative to a complete waiver of its support reduction, a partial waiver of its support reductions. In support for its request for partial waiver, Bloomingdale noted the effects of the COVID-19 pandemic and its efforts to aid consumers.[26]

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[16] *See* ComSouth Corporation and Bloomingdale Telephone Company Emergency Request for Expedited Treatment Petition for Waiver, WC Docket No. 10-90, et al., CC Docket No. 01-92 (filed Apr. 21, 2020), https://www.fcc.gov/ecfs/document/10421291844371 (Bloomingdale and ComSouth Petition).

[17] Bloomingdale and ComSouth Petition at 4-5.

[18] *Id.*

[19] *Id.* at 5-6.

[20] *Id.* at 11.

[21] *2020 Denial Order*, 35 FCC Rcd at 8209, para. 10.

[22] *Id.* at 8208-8209, para. 9.

[23] *Id.* at 8209, para. 10.

[24] Application for Review of Bloomingdale Telephone Company, WC Docket No. 10-90, et al., at 2 (filed Sept. 1, 2020) (Bloomingdale AFR), https://www.fcc.gov/ecfs/document/109011532002978/1. ComSouth did not jointly file the AFR, despite jointly filing the original petition for waiver.

[25] *See* Supplement to Bloomingdale Telephone Company's Application for Review WC Docket No. 10-90, et al., CC Docket No. 01-92 (filed Dec. 28, 2020), https://www.fcc.gov/ecfs/document/1228028267428/1 (Bloomingdale Supplement).

[26] *Id.* at 2.

9. *State's Application for Review*. On June 12, 2020, State requested a waiver of both the March 1, 2018 and March 1, 2019 filing deadlines established by section 54.316(c) of the Commission's rules.[27] In 2017, the Bureau had waived the March 1, 2017 HUBB filing deadline for Connect America Fund-Broadband Loop Support (CAF BLS) and other high-cost support recipients,[28] essentially extending it so that the deadline for CAF BLS recipients to make their first HUBB filing would be March 1, 2018.[29] In the waiver order, the Bureau said that by March 1, 2018, CAF BLS carriers must report all locations deployed to between May 25, 2016 and December 31, 2017. State, however, "erroneously believed that its March 2018 HUBB filing was limited to locations newly deployed during 2017 . . .," so it did not report and certify the locations State had deployed broadband service to in prior years, which would have originally been reported by March 1, 2017.[30] State sought waiver of the March 1, 2018 deadline so that it could report locations deployed to between May 25, 2016 to December 31, 2016.

10. State says that it never certified its March 1, 2019 HUBB filing because it did not have the "geocoded information necessary to make a complete HUBB filing."[31] State asserts that it had contracted with a third party to provide the geocoded location information for the areas it newly deployed to in 2018 but the third party was ultimately unable to provide this information.[32] State claims it has since fixed any errors with its filings and completed its March 1, 2020 HUBB filing on time.[33] State argued that granting the waiver was in the public interest because no entity was harmed by its faulty HUBB filings and it ultimately corrected its filing.[34]

11. In the same August 5, 2020 Order, the Bureau denied State's petition for reasons identical to those on which it denied Bloomingdale and ComSouth's petition.[35]

12. On September 3, 2020, State filed the instant Application for Review alleging that the Bureau's Order: (1) is in conflict with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law or policy which has not previously been resolved by the Commission; and (3) presents an erroneous finding as to an important or material question of fact.[36]

13. *Standard of Review*. Section 1.115 of the Commission's rules specifies the factors that warrant Commission consideration of the issues presented in an application for review of action taken pursuant to delegated authority.[37] The Commission considers, among other things, whether the action

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[27] Petition for Expedited Waiver by State Telephone Company of Section 54.316 of the Commission's Rules, WC Docket No. 10-90, et al. (filed Jun. 12, 2020), https://www.fcc.gov/ecfs/document/10612087429875/1 (State Petition).

[28] *Connect America Fund*, WC Docket No. 10-90, Order, 32 FCC Rcd 1445, 1445 para. 1 (WCB 2017) (*HUBB Extension Order*).

[29] *Id*. at 1445, para. 2.

[30] State Petition at 3.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 4.

[34] *Id.* at 10.

[35] *2020 Denial Order*, 35 FCC Rcd at 8209, para. 10. The Bureau held that State should have been aware of its reporting and certifications obligations in part because of the repeated efforts USAC took to inform all carriers of these requirements. *Id.* at 8209-10, para. 11. Further, the Bureau had provided "clear guidance regarding the need for 'a list – in the format required by USAC's data specification – of the residential and business locations to which they have made broadband service commercially available . . ." in the *2016 HUBB Guidance Public Notice*. *Id.*

[36] *See* Application for Review of State Telephone Company, WC Docket No. 10-90, et al., at 5 (filed Sept. 3, 2020), https://www.fcc.gov/ecfs/document/10903270410510/1.

[37] 47 CFR § 1.115. *See also* 47 U.S.C. § 155(c)(4)-(7).

taken is in conflict with case precedent or established Commission policy, whether it was based on an erroneous finding as to an important or material question of fact, or whether there was prejudicial procedural error.[38]

III. DISCUSSION

14. *Bloomingdale and ComSouth*. We grant Bloomingdale's Application for Review because we find that confusion about filing obligations was reasonable until the Bureau's December 2, 2019 waiver order,[39] and that Bureau precedent supports waiving Bloomingdale's support reductions. In the *2019 HUBB Waiver Order*, the Bureau concluded that carriers had "reasonable confusion" about their filing obligations.[40] That confusion, specifically about carriers' requirement to certify when there was no deployment in the prior year, was not obviated until the December 2, 2019 waiver order under these circumstances. While the Bureau in the *2019 HUBB Waiver Order* stated that it did not anticipate granting "future petitions with similar facts,"[41] Bloomingdale missed the March 1, 2019 HUBB filing prior to the release of the *2019 HUBB Waiver Order*. Thus, Bloomingdale's confusion that it was not aware of the requirement to certify that it had no locations to report for 2018 was reasonable. Accordingly, we reverse the Bureau's decision in the *August 2020 Waiver Order* to deny Bloomingdale's waiver, and we direct USAC to restore support consistent with our decision. For the same reasons, on our own motion, we reverse the Bureau's decision in the *August 2020 Waiver Order* to deny ComSouth's waiver, and we direct USAC to restore support consistent with this decision.[42]

15. *State Telephone*. State contends that it "erroneously believed that its March 2018 HUBB filing was limited to locations newly deployed during 2017 . . .," so it did not report and certify the locations State had deployed broadband service to in prior years, which would have originally been reported by March 1, 2017.[43] Our locations reporting rule requires carriers to report all locations deployed to in the prior year.[44] While the Bureau announced that the March 1, 2018 HUBB filing needed to include 2017 locations and 2016 locations back to May 25, 2016, State's belief that only 2017 locations were needed was reasonable as the Bureau's announcement deviated from the usual requirement. Accordingly, we reverse the Bureau's decision to deny State relief from the March 1, 2018 HUBB deadline.

16. State failed to make its HUBB certification due March 1, 2019 and was consequently subject to a support reduction of over $1 million. Based on the record before us, State has shown that even though it never actually made the certification, State had reason to believe that it did not need to file given it did not yet have geocoding for its deployed locations. As is customary and happened here, USAC contacted carriers that failed to make their HUBB certifications and, therefore, contacted State shortly after March 1, 2019. State responded promptly, candidly described the situation about its delays and struggles with geocoding its served locations for the first time, and assured USAC that it was "working diligently" to obtain the necessary information.[45]

17. By the time of that correspondence, the HUBB system was closed for filing locations deployed to in 2018. While State would not file locations until March 2020, it was reasonable for State to

[38] 47 CFR § 1.115(b)(2).

[39] Bloomingdale AFR at 12.

[40] *2019 HUBB Waiver Order*, 34 FCC Rcd at 11145-46, para. 19.

[41] *Id.* at 11146, para. 20.

[42] We do this *sua sponte* because ComSouth is similarly situated to Bloomingdale but, unlike Bloomingdale, did not file an Application for Review of the Bureau's denial of its petition for waiver.

[43] State Petition at 3.

[44] 47 CFR § 54.316.

[45] *See* State Petition at Attachment B.

believe that it did not need to file its deployed locations until it had the necessary geocoding for those locations. Accordingly, we reverse the Bureau's decision in the *August 2020 Waiver Order* to deny State from any relief from the March 1, 2019 HUBB deadline, and we direct USAC to restore support consistent with our decision.

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(1), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 1.3 and 1.115 of the Commission's rules, 47 CFR §§ 1.3 and 1.115, that this order IS ADOPTED.

19. IT IS FURTHER ORDERED that the Application for Review, filed by Bloomingdale Telephone Company, IS GRANTED, and 47 CFR § 54.316(c)(1) is waived, as indicated herein.

20. IT IS FURTHER ORDERED that the Application for Review, filed by State Telephone Company, IS GRANTED, and 47 CFR § 54.316(c)(1) is waived, as indicated herein.

21. IT IS FURTHER ORDERED that, as applied to ComSouth Corporation, 47 CFR § 54.316(c)(1) is waived, to the extent indicated herein.

22. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a) this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

In the Matter of	)	
	)	
Application for Review of	)	WC Docket No. 10-90
	)	
LTD Broadband, LLC	)	WC Docket No. 20-34
	)	
Denial of Application for Rural Digital Opportunity Fund/Auction 904	)	WC Docket No. 19-126
	)	

ORDER ON REVIEW

Adopted: December 1, 2023 **Released: December 4, 2023**

By the Commission:

I. INTRODUCTION

1. By this Order on Review, we deny an application for review submitted by LTD Broadband, LLC (LTD).[1] LTD seeks review of a decision by the Wireline Competition Bureau (WCB or Bureau) that denied its application to be authorized to receive broadband deployment support from the Rural Digital Opportunity Fund (RDOF) Auction 904.[2]

II. BACKGROUND

2. In January 2020, the Commission announced the Rural Digital Opportunity Fund auction, a multi-round, reverse, descending-clock auction that favored faster services with lower latency to ensure that the greatest possible number of Americans would be connected to the best possible networks, all at a competitive cost.[3] Providers who could offer service at higher speeds and low latency could receive more funding to provide service in a given area.[4] To reduce the burden on prospective auction participants while still ensuring that the providers who ultimately received support in a given area were able to provide the service they committed to offering, the Commission required auction participants to undergo a two-phased application process of a pre-auction "short-form application" and a post-auction "long-form application" for all winning bidders.[5]

[1] *See* Application for Review of LTD Broadband, LLC, WC Docket No. 10-90 (filed Sept. 8, 2022) (Application for Review). We review applications for review of action taken on delegated authority pursuant to section 5(c)(4) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. § 155(c)(4).

[2] *See Rural Digital Opportunity Fund Auction Support for 80 Winning Bids Ready to Be Authorized, Bid Defaults Announced*, AU Docket No. 20-34 et al., DA 22-848, at 8-11 (WCB/OEA Aug. 10, 2022) (*11th RDOF Ready to Authorize/Defaults Public Notice*). See also Letter from Trent Harkrader, Chief, Wireline Competition Bureau, to Corey Hauer, CEO, LTD Broadband, LLC (Aug. 10, 2022) (Bureau Letter). The August 10th Letter provided an in-depth explanation of the Bureau's decision.

[3] *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 *et al*., Report and Order, 35 FCC Rcd 686 (2020) (*Rural Digital Opportunity Fund Order*).

[4] *Id.* at 688, para. 5.

[5] *Id.* at 717-18, paras. 67-68.

3. Before the auction began, all potential bidders were required to submit a "short-form application," which required the potential bidder "to establish its eligibility to participate in the auction by providing, among other things, basic ownership information and certifying to its qualifications to receive support."[6] The review of short-form applications was meant to determine whether "the applicant has the legal, technical, and financial qualifications to participate in the" auction,[7] but the information required in the short-form application was "high-level," in recognition of the need to "balance[] the objectives of determining whether an applicant is expected to be reasonably capable of meeting the relevant performance requirements in the areas where it plans to bid with minimizing the burdens on applicants and Commission staff."[8] For example, when submitting its short-form application, a prospective bidder was required to identify the states in which it intended to bid, but not the total number of locations within each state where it intended to bid.[9]

4. After the completion of the auction, winning bidders were required to submit "long-form applications," which provided "extensive information detailing their respective qualifications…, allowing for a further in-depth review of their qualifications prior to authorization of support."[10] Additionally, as part of the long-form application, winning bidders were required to demonstrate how they would provide the required service in the specific areas covered by their winning bids,[11] as opposed to the more general, high-level showing on the short-form application.[12] Winning bidders were required to show that they were both financially and technically qualified; a failure to establish qualifications on either of those factors was grounds for denial of the long-form application.[13]

5. Bureau staff conducted an in-depth review of long-form applications both for completeness and compliance with the Commission's rules *and* to determine whether an applicant was financially and technically qualified for support.[14] If the Bureau could not make such a determination

[6] *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, 6098, para. 63 (2020) (*Auction 904 Procedures Public Notice*).

[7] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6088, para. 27 ("The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, eligibility to participate in the auction is based on an applicant's short-form application and certifications.").

[8] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, 6101, paras. 66, 71. *See also id.* at 6124, para. 123 ("the information we collect at the short-form application stage is designed to determine at a high level, and based on the totality of circumstances and the information submitted in the application that the applicant has developed a reasonable preliminary design or business case for meeting the public interest obligations for its selected performance tier and latency combinations and is thus expected to be reasonably capable of meeting those public interest obligations").

[9] *Id.* at 6091, para. 41.

[10] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 725, para. 86.

[11] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 301.

[12] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 66. *See also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6100, para. 68 ("We expect it would be burdensome for applicants to provide enough detail at the short-form application stage and for Commission staff to review the information and make eligibility decisions for smaller areas than a state, particularly when the applicant may not know exactly where in a state it will bid, much less win support. Such a review is better suited for the long-form application, where a long-form applicant is required to provide detailed network information *for the areas covered by its winning bids*.") (emphasis added).

[13] *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 720-21, para. 77.

[14] *Id.* at 722, 725, paras. 79, 86 (noting that the long-form application process "will provide an in-depth extensive review of the winning bidders' qualifications" and that long-form applicants "are required to submit extensive information detailing their respective qualifications in their long-form applications, allowing for a further in-depth (continued….)

after reviewing a long-form application, the Bureau notified the long-form applicant that additional information was required.[15] If a long-form applicant was found ineligible or unqualified to receive support, the application was denied and the applicant was announced in default and subject to forfeiture.[16]

6. An applicant was deemed technically and financially qualified for support if the Bureau determined, after evaluating the information submitted with the long-form application, that the "applicant [was] reasonably capable of meeting its RDOF auction obligations,"[17] with a particular focus on meeting the public interest obligations in the "specific areas" covered by the applicant's winning bids.[18] The Commission also emphasized the importance of having "more information about exactly where [an] applicant will win support and how many locations it will serve" in making a determination regarding an applicant's ability to meet the public interest obligations.[19] The Commission defined reasonably capable to mean meeting the Commission staff's "reasonable expectation" that the applicant would be able to meet the relevant public interest obligations in the areas where the applicant won support.[20]

7. As in all Universal Service Fund (USF) auctions, the Commission made clear that the short-form and long-form applications would receive different levels of review relevant to the differing purposes of each application. The Commission has been clear that in contrast to the more generalized, high-level review it gives to an applicant's qualifications in the short-form application, a long-form application review focuses specifically on whether a winning bidder has made a sufficient showing of its technical and financial ability to serve the specific areas where it won support. Moreover, the

(Continued from previous page)
review of their qualifications prior to authorization of support"). *See also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6112, para. 97 (explaining the Commission's expectation that "the more in-depth long-form application process will further minimize the risk of authorizing an unqualified applicant"); *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888, 13895, para. 18 (2020) (*Auction 904 Closing Public Notice*) ("Timely submitted applications will be reviewed by Commission staff for completeness and compliance with the Commission's rules and to determine if the long-form applicant has demonstrated that it is technically and financially qualified to fulfill its Rural Digital Opportunity Fund public interest obligations if authorized to receive support.").

[15] *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13895, para. 18 (explaining that the Commission "will notify a long-form applicant if additional information is required"). *See also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6168, para. 303 ("If a long-form applicant submits a technology and system design description that lacks sufficient detail to demonstrate that the long-form applicant has the technical qualifications to meet the relevant Rural Digital Opportunity Fund obligations, the long-form applicant will be asked to provide further details about its proposed network."); 47 CFR § 54.804(b)(viii) (requiring long-form applicants to submit "[s]uch additional information as the Commission may require").

[16] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321. *See also id.* at 6116, para. 108 (noting "an applicant will be deemed in default if at the long-form application stage, Commission staff determines the applicant is not reasonably capable of meeting the public interest obligations associated with its winning bids"); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 114; *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13895, para. 18 (explaining that "[i]f a long-form applicant ultimately fails to provide all the required information or demonstrate that it is technically and financially qualified, [the Bureau] will release a public notice identifying the applicant and the winning bids that are considered in default").

[17] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, para. 64.

[18] *Id. See also id.* at 6124, para. 125 (noting the importance of having "more information about exactly where [an] applicant will win support and how many locations it will serve" in making a determination regarding an applicant's ability to meet the public interest obligations). A long-form applicant is also required to certify it is "financially and technically qualified to meet the public interest obligations for Rural Digital Opportunity Fund support *in each area for which it seeks support*." 47 CFR § 54.804(b)(2)(ii) (emphasis added).

[19] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6124, para. 125.

[20] *Id.* at 6099, para. 64.

Commission has specifically explained that a "determination at the short-form stage that an applicant is eligible to bid for a performance tier and latency combination would not preclude a determination at the long-form application stage that an applicant does not meet the technical qualifications for the performance tier and latency combination and thus will not be authorized to receive Rural Digital Opportunity Fund support."[21]

8. LTD timely submitted a short-form application and was announced as one of 386 bidders approved to participate in Auction 904.[22] Auction 904 commenced on October 29, 2020. In the first round of the auction, LTD bid to deploy gigabit service to 2,223,682 locations in 16 states, seeking $13,326,751,930 in 10-year support despite an existing small deployment footprint and subscriber base of approximately 15,000 customers. At the conclusion of the auction after 19 rounds of bidding, LTD was the largest winning bidder in the auction, with winning bids to deploy gigabit speed low-latency service to 528,088 locations in 15 states with $1,320,920,719 in 10-year support.

9. On December 7, 2020, WCB and the Office of Economics and Analytics (OEA) announced that there were 180 winning bidders in the RDOF auction and established the deadlines for winning bidders to submit their "long-form applications" for support.[23] Winning bidders had the opportunity assign some or all of their winning bids to related entities by December 22, 2020.[24] All winning bidders that retained their winning bids and all related entities that were assigned winning bids were required to submit long-form applications by January 29, 2021.[25] LTD filed its timely long-form application for support on January 29, 2021, and submitted, among other items, an attachment with its detailed technology and system design description as required of all applicants by February 15, 2021. On February 18, 2021, staff announced that there were 417 long-form applicants.[26]

10. Auction 904 long-form applicants were required to certify that they are eligible telecommunications carriers (ETCs) in all bid areas and to submit appropriate documentation supporting such certification on or before June 7, 2021.[27] LTD timely sought and received ETC designation in eight states (Colorado, Illinois, Indiana, Minnesota, Missouri, Ohio, Texas, and Wisconsin). In the remaining seven states in which it had winning bids (California, Iowa, Kansas, Oklahoma, Nebraska, North Dakota, South Dakota), LTD filed a request for waiver of the June 7, 2021 deadline to submit ETC certifications

[21] *Id. See also id.* at 6174-75, para. 312 ("A long-form applicant must also describe how the required construction will be funded in each state. The description should include the estimated project costs for all facilities that are required to complete the project, including the costs of upgrading, replacing, or otherwise modifying existing facilities to expand coverage or meet performance requirements. The estimated costs must be broken down to indicate the costs associated with each proposed service area at the state level and must specify how Rural Digital Opportunity Fund support and other funds, if applicable, will be used to complete the project. The description must include financial projections demonstrating that the long-form applicant can cover the necessary debt service payments over the life of any loans."); *see also id*. at 6100, para. 68.

[22] *386 Applicants Qualified to Bid in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 11356 (WCB and OEA 2020).

[23] *Auction 904 Closing Public Notice*, 35 FCC Rcd 13888.

[24] *Id.* at 13890-91, paras. 9-14.

[25] *Id.* at 13892-93, para. 16.

[26] *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, Public Notice, DA 21-170 (WCB and OEA Feb. 18, 2021) (*Auction 904 Long-Form Applicants Public Notice*).

[27] 47 CFR § 54.804(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *see also Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 727-28, para. 92.

to the FCC.[28] In two separate orders, the Bureau denied LTD's request for waiver of the ETC certification deadline for California, Kansas, Oklahoma, Iowa, Nebraska, and North Dakota.[29] LTD subsequently defaulted on all winning bids in Kansas and Oklahoma and sought reconsideration of the waiver denials regarding California, Iowa, Nebraska, and North Dakota.[30] Later, LTD withdrew its petition for reconsideration of the waiver denials in California and Iowa, thus defaulting on all bids in those two states.[31]

11. In March 2021, June 2021, September 2021, and multiple times in March 2022, staff spoke with LTD about the financial and technical deficiencies that staff identified in LTD's long form application. In these calls, staff explained the insufficiencies to LTD and answered LTD's questions regarding program requirements. LTD did not submit revised financial information after its initial filings at the long-form application deadline. On August 5, 2021, LTD submitted a revised technical description purporting to cover Arkansas, Louisiana, and Mississippi (states in which it did not place winning bids). Even if assumed to apply to the fifteen states in which LTD did place winning bids, the revised documents did not sufficiently address the application technical deficiencies. After the September 2021 staff call, LTD submitted another revised technical description in November 2021, but that revised version still indicated that it applied to Arkansas, Louisiana, and Mississippi, and it was still insufficient to show that LTD could meet the obligations associated with its winning bids. Repeated contacts with LTD through March 2022 did not elicit additional financial or technical filings. To conclude this process, staff sent a formal letter to LTD on May 26, 2022, extensively detailing the application's deficiencies and providing LTD a final opportunity to demonstrate its qualifications for support. LTD's response was due by June 27, 2022.

12. In response to that letter, on June 27, 2022, LTD submitted revised financial and technical attachments to explain its network deployment plans in 10 states (Colorado, Illinois, Indiana, Minnesota, Missouri, North Dakota, Ohio, South Dakota, Texas, and Wisconsin). Furthermore, LTD identified that it had entered into two financial agreements on that same day to obtain additional funding and a source for future loaned funds, ostensibly to enhance its financial position and operational capabilities. Subsequently, staff sought clarification from LTD as to why a technical or financial plan for Nebraska was not included in these revised materials. LTD responded that it was still seeking RDOF support in Nebraska despite not including this state in its final financial and technical submissions.[32] In sum, LTD proposed to deploy fiber to 475,616 estimated locations in 11 states.[33]

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[28] Petition for Limited Waiver of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 7, 2021).

[29] *Rural Digital Opportunity Fund (Auction 904)*, Order, DA 21-1311, AU Docket No. 20-34, WC Docket No. 19-126 (Oct. 20, 2021); *Rural Digital Opportunity Fund (Auction 904)*, Order, DA 21-908, AU Docket No. 20-34, WC Docket No. 19-126 (July 26, 2021). The Bureau later dismissed LTD's ETC Designation Waiver Request as to South Dakota. *See Rural Digital Opportunity Fund Bid Defaults Announced*, AU Docket No. 20-34 *et al*., DA 23-616 (WCB/OEA July 18, 2023).

[30] Petition for Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, WC Docket No. 19-126 (filed Nov. 19, 2021) (requesting reconsideration for the states of Iowa, Nebraska and North Dakota); Petition for Partial Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed Aug. 21, 2021) (requesting reconsideration for the state of California).

[31] *See* Supplement to Petition for Reconsideration, AU Docket No. 20-34, WC Docket No. 19-126 (filed July 21, 2022) (request to withdraw reconsideration petition for state of Iowa) (*LTD July 2022 Petition for Reconsideration Supplement*); Request for Withdrawal of Petition for Partial Reconsideration, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 21, 2022) (request to withdraw reconsideration petition for the state of California).

[32] In its last supplement to its petition for reconsideration of the October 2021 ETC deadline waiver denial order for Iowa, Nebraska, and North Dakota, LTD indicated that it was requesting to withdraw its petition with regard to Iowa, but was not seeking to withdraw its petition for Nebraska and North Dakota. *LTD July 2022 Petition for Reconsideration Supplement* at 2. LTD stated that if its appeal of the Nebraska Public Service Commission's denial (continued….)

13. The Bureau concluded its review of LTD's long-form application in each remaining state in which LTD had placed winning bids to determine whether it met all legal, financial, and technical requirements. The Bureau determined that LTD was not reasonably capable of complying with the Commission's public interest requirements established for the RDOF program for a number of both financial and technical reasons. It therefore denied LTD's application and announced LTD in default in all of its remaining winning bids.[34] The Bureau also dismissed LTD's remaining Petition for Reconsideration regarding its ETC Designation Waiver Requests as to Nebraska and North Dakota.[35] Having inadvertently failed to dismiss LTD's ETC Designation Waiver Request in South Dakota when it denied LTD's long-form application, the Bureau subsequently dismissed that waiver request in a Public Notice.[36]

14. LTD now seeks review of the Bureau's decision to deny its Auction 904 application for support.

III. DISCUSSION

15. LTD makes several arguments in support of its Application for Review. *First*, LTD maintains that denial of its application is fundamentally inconsistent with the Commission's rules governing the RDOF program, in that the Bureau applied an incorrect standard of review, extended the scope of its review beyond the discretion afforded by the Commission's rules, and ignored specific instructions provided by the Commission in the *Auction Procedures PN* with respect to the processing of long-form applications filed by winning bidders.[37] *Second*, it argues that even if the Commission's rules do permit a review of this scope, it does not establish standards or guidelines to govern such an exercise of discretion, and there is no precedent for denying a complete long-form application or for not relying on provision of a Letter of Credit and bankruptcy opinion letter as all necessary proof of financial capability.[38] *Third*, LTD argues that the scope of the Staff's action is overbroad in that it denies LTD the opportunity to proceed in any of its winning bid areas.[39] *Fourth*, LTD argues that the denial of its requests for waiver of the Eligible Telecommunications Carrier ("ETC") designation deadline was disparate treatment when compared to similar waiver requests.[40] LTD asks that we reverse the Bureau's denial of its application for support in Auction 904 and authorize it to receive support in its remaining winning bids.[41] We address each argument in turn, and for the reasons explained below, we affirm the Bureau's decision to deny LTD's long-form application.

(Continued from previous page)
of ETC designation was successful, it would seek to supplement its long-form application to include financial and technical information for the designated census blocks in Nebraska. *Id*. The Commission did not receive a supplement from LTD on this issue.

[33] In addition to its defaults in Kansas and Oklahoma, LTD also defaulted on all of its bids in California and Iowa.

[34] *See 11th RDOF Ready to Authorize/Defaults Public Notice* at 8-11.

[35] *See id.*

[36] *See Rural Digital Opportunity Fund Bid Defaults Announced*, AU Docket No. 20-34 et al., DA 23-616 (WCB/OEA July 18, 2023).

[37] Application for Review at 2.

[38] *Id.*

[39] *Id.* at 2-3.

[40] *Id.* at 3.

[41] *See id*. at 19 (seeking authorization of support in 11 states in which LTD had placed winning bids. Prior to the Bureau's denial of its application in its remaining winning bid areas, LTD had defaulted on all of its winning bids in Kansas, Oklahoma, California, and Iowa.)

16. Awarding USF support requires a balancing of potentially competing interests, and that balance is achieved by the Bureau following the specific guidelines the Commission has previously issued. We are also mindful that our limited USF funding ultimately comes from individual ratepayers, and when evaluating "a proper balancing inquiry," we "must take into account our generally applicable responsibility to be a prudent guardian of the public's resources"[42] by ensuring that USF funding is used efficiently to provide much-needed, reliable service throughout the nation. After careful review, we find that the Bureau followed Commission guidance as adopted for the RDOF program and correctly concluded that LTD is not reasonably capable of offering the required gigabit-speed, low-latency service throughout the broad areas where it won auction support.

A. The Bureau Applied the Correct Standard of Review

17. LTD first contends that the Bureau applied an incorrect standard of review and exceeded its discretion when denying LTD's application. Contrary to LTD's arguments, the Commission established procedures for the review of long-form applications in the *Auction 904 Procedures Public Notice.* Specifically, the Commission delegated authority to the Bureau to determine whether winning auction bidders should be authorized to receive universal service support based on a review of their post-auction long-form applications. The Bureau's role in reviewing long-form applications is more than a ministerial, box-checking exercise. Long-form applicants were obligated to file "more extensive information" than was required in their short-form applications in order to "demonstrat[e] to the Commission that they are legally, technically, and financially qualified to receive support."[43] This process compelled staff to conduct an in-depth review of timely submitted applications both for completeness and compliance with the Commission's rules *and* to determine whether an applicant was financially and technically qualified for support.[44] If staff decided after reviewing a long-form application that there was insufficient information to make a determination, a long-form applicant was notified that additional information was required.[45] If a long-form applicant was found ineligible or

[42] *High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29 (2010).

[43] *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 717, para. 68 (2020) (*Rural Digital Opportunity Fund Order*); 47 CFR § 54.804(b) (describing the information that must be submitted with a long-form application).

[44] *Id.* at 722, 725 paras. 79, 86 (noting that the long-form application process "will provide an in-depth extensive review of the winning bidders' qualifications" and that long-form applicants "are required to submit extensive information detailing their respective qualifications in their long-form applications, allowing for a further in-depth review of their qualifications prior to authorization of support"). *See also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6112, para. 97 (explaining the Commission's expectation that "the more in-depth long-form application process will further minimize the risk of authorizing an unqualified applicant"); *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888, 13895, para. 18 (2020) (*Auction 904 Closing Public Notice*) ("Timely submitted applications will be reviewed by Commission staff for completeness and compliance with the Commission's rules and to determine if the long-form applicant has demonstrated that it is technically and financially qualified to fulfill its Rural Digital Opportunity Fund public interest obligations if authorized to receive support.").

[45] *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13895, para. 18 (explaining that the Commission "will notify a long-form applicant if additional information is required"). *See also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6168, para. 303 ("If a long-form applicant submits a technology and system design description that lacks sufficient detail to demonstrate that the long-form applicant has the technical qualifications to meet the relevant Rural Digital Opportunity Fund obligations, the long-form applicant will be asked to provide further details about its proposed network."); 47 CFR § 54.804(b)(viii) (requiring long-form applicants to submit "[s]uch additional information as the Commission may require").

unqualified to receive support, the application would be denied, the applicant would be announced in default, and the winning bids would be subject to forfeiture.[46]

18. An applicant would be deemed technically and financially qualified for support if the Bureau determined, after evaluating the information submitted with the long-form application, that the "applicant is reasonably capable of meeting its RDOF auction obligations,"[47] with a particular focus on meeting the public interest obligations in the "specific areas" covered by the applicant's winning bids.[48] The Commission defined "reasonably capable" to mean the Commission staff's "reasonable expectation" that the applicant would be able to meet the relevant public interest obligations.[49] When evaluating an application, "Commission staff will also review the information provided in the short-form and long-form applications to verify that the applicant has the plans and capability to scale the network if necessary."[50] In its review of LTD's long-form application, the Bureau closely followed these announced procedures.

19. LTD argues that the Bureau applied "objectively the wrong standard of review" by reviewing LTD's long-form application to determine whether it is reasonably capable of meeting its RDOF auction obligations.[51] This standard of review is wrong, according to LTD, because it stems from language in the *Auction 904 Procedures Public Notice* section addressing the pre-auction short-form application.[52]

20. In the language cited, the Commission made clear that the review of the long-form application is more intensive than the short-form application review. Although LTD asserts that no such long-form application review should even exist,[53] the paragraphs LTD cites *contrast* the more in-depth information and review required at the long-form application stage with the relatively lesser burden of information and review required at the pre-auction short-form application stage.[54] LTD's argument also ignores the express warning in the *Auction 904 Procedures Public Notice* that a "determination at the

[46] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321. *See also id.* at 6116, para. 108 (noting "an applicant will be deemed in default if at the long-form application stage, Commission staff determines the applicant is not reasonably capable of meeting the public interest obligations associated with its winning bids"); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 114; *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13895 para. 18 (explaining that "[i]f a long-form applicant ultimately fails to provide all the required information or demonstrate that it is technically and financially qualified, [the Bureau] will release a public notice identifying the applicant and the winning bids that are considered in default").

[47] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, para. 64. The Commission defined reasonably capable as referring "to the Commission staff's reasonable expectation that the applicant can meet those obligations." *Id.*

[48] *Id. See also id.* at 6124, para. 125 (noting the importance of having "more information about exactly where [an] applicant will win support and how many locations it will serve" in making a determination regarding an applicant's ability to meet the public interest obligations). A long-form applicant is also required to certify it is "financially and technically qualified to meet the public interest obligations for Rural Digital Opportunity Fund support *in each area for which it seeks support*." 47 CFR § 54.804(b)(2)(ii) (emphasis added).

[49] *Id.* at 6099, para. 64.

[50] *Id*. at 6103, para. 76 (citations omitted).

[51] Application for Review at 7.

[52] See Application for Review at 7; *see also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, paras. 64, 125.

[53] Application for Review at 7. Indeed, LTD's position cannot be aligned with its certification in its long-form application "that it is aware that if it is not authorized to receive support *based on its application*, the application may be dismissed without further consideration and penalties may apply." *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6166, para. 296 (emphasis added); 47 CFR § 54.804(b)(6).

[54] *See id*.

short-form stage that an applicant is eligible to bid for a performance tier and latency combination would not preclude a determination at the long-form application stage that an applicant does not meet the technical qualifications for the performance tier and latency combination and thus will not be authorized to receive Rural Digital Opportunity Fund support."[55]

21. Moreover, in the *Auctions 904 Procedures Public Notice*, the Commission explained that its short-form application review "approach of requiring high-level information that is sufficient for determining eligibility to bid in a state, requiring applicants to make certifications regarding their due diligence and ability to meet the performance requirements, requiring a more thorough long-form application technical showing for the areas where support is won, and imposing a forfeiture for defaults if an applicant is not deemed qualified to be authorized, more appropriately balances the objectives of determining whether an applicant is expected to be reasonably capable of meeting the relevant performance requirements in the areas where it plans to bid with minimizing burdens on applicants and Commission staff."[56]

22. The long-form application review process, in contrast to the high-level short-form application review process, required a more thorough examination of all relevant material to determine whether LTD could provide the required service in the "specific areas" where it won support.[57] Put differently, rather than a generalized assessment of whether a short-form applicant could theoretically provide the required service, at some level, in each state where it wished to bid, the long-form application review determined whether the applicant demonstrated through a detailed financial and technical plan that it could provide that service "associated with its winning bids," i.e., in each of the areas where it ultimately won support.[58]

23. Despite this clearly described and established review process, LTD argues that the Commission considered the review of a long-form applicant's application relative to its winning bids to be "unduly burdensome and potentially irrelevant" and thus the Bureau cannot make a finding that an applicant is not reasonably capable of meeting program requirements.[59] But LTD makes no argument with respect to the burden placed on it by the long-form review process and only challenges relevance by citing the Commission's broad statement that "conditions on the ground may change," but not by identifying any such conditions in its situation.[60] While review might be *potentially* irrelevant in some circumstances, LTD's long-form application is not one of them. We find that the extensive scope of LTD's winning bids—hundreds of thousands of locations in 11 states—when LTD's existing footprint, subscriber base, and experience operating a large network was quite limited—required further inquiry into whether LTD should be authorized for support. Even though the Commission recognizes that conditions for authorized applicants may change at some point in the future, the Bureau properly considered the areas at issue and used its predictive judgment when assessing the risks of awarding support to LTD.

24. In sum, LTD makes no compelling argument why we should consider the Commission's clear direction for review of long-form applications to be meaningless. Because of the more thorough review required by the long-form application review process, the Bureau appropriately assessed LTD's long-form application and gave LTD multiple opportunities to sufficiently address the Bureau's detailed inquiries. Accordingly, the Bureau's ultimate denial of LTD's long-form application is not inconsistent with the prior approval of LTD's short-form application. On review, we uphold the Bureau's decision.

[55] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 64.

[56] *Id*. at 6101, para. 71.

[57] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 64.

[58] *Id.* at 6116, para. 108.

[59] Application for Review at 9-10.

[60] Application for Review at 10.

B. Review Did Not Lack Standards and Guidelines

25. LTD next argues that even if the Commission's rules do permit a review of the scope followed here, it does not establish standards or guidelines to govern such an exercise of discretion, and there is no precedent for denying a complete long-form application or for not relying on provision of a Letter of Credit and bankruptcy opinion letter as all necessary proof of financial capability.[61] We find that the Bureau's review of LTD's financial qualifications was reasonable, that a merely complete application is not a guarantee of authorization, and that a bank's commitment to issue an LOC and the provision of a bankruptcy opinion letter are necessary but not sufficient steps for successfully completing the financial review process. Moreover, as explained below, we further agree with the Bureau's determination that LTD's financial submissions do not demonstrate that LTD is reasonably capable of fulfilling the RDOF financial performance obligations.

26. In its Application for Review, LTD argues that the only proof it was required to provide of its financial ability to build out high-speed service to hundreds of thousands of locations across the eleven states in which it did not previously default was the required application certifications and the Letter of Credit and bankruptcy opinion letter required after an applicant is announced as ready to authorize.[62] LTD incorrectly conflates the certifications required as part of the long-form application with the review delegated to the Bureau to determine if the financial plans submitted fulfill the obligations of the RDOF program. At no point in the extensive explanations of the post-auction application process provided in the RDOF *Report and Order* and the *Auction 904 Procedures Public Notice* did the Commission indicate that long-form applications are self-authenticating through certifications, or that certifications somehow render the rest of the application—which includes audited financial statements (if they were not submitted at the short-form stage) and a detailed project funding description—unnecessary. In light of the long-form application's other evidentiary requirements with respect to financial qualifications, LTD's argument that the required application certifications are dispositive because they ensure that what the applicant certifies to is accurate, complete, and sufficient must fail.[63] Otherwise, we would be left with the incongruous result that the Bureau could only consider whether a document submitted with the long-form application had the title of a project funding description, but could not analyze its contents. That cannot be—and is not—what the Commission intended.

27. Likewise, we cannot ignore these requirements and look solely at an eligible bank's willingness to issue a letter of credit as sufficient evidence of an applicant's financial qualifications. Quoting paragraph 64 of the *Auction 904 Procedures Public Notice*, LTD states that "Commission staff will evaluate the information submitted in the long-form application and will rely on an eligible bank's willingness to issue the applicant a letter of credit to determine whether an applicant is reasonably capable of meeting its [RDOF] auction obligations in the specific areas where it has winning bids."[64] Ignoring the first clause of that passage, LTD asserts that staff should rely on an eligible bank's willingness to issue an LOC to determine whether an applicant is reasonably capable of meeting its auction obligations *without* "Commission staff … evaluat[ing] the information submitted in the long-form application."[65] The plain language of the passage LTD cited makes clear that LTD's interpretation cannot be correct. Evaluating the submitted financial information regarding the applicant's financial health and sustainability and the reasonableness and thoroughness of its financial planning and projections made in preparing to build out the required service in the required time period is an essential part of determining whether or not to authorize an applicant to receive USF support.

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[61] *Id.*

[62] Application for Review at 8-10.

[63] Id.

[64] *Auction 904 Procedures Public Notice,* 35 FCC Rcd at 6099, para. 64.

[65] *Id.*

28. LTD further incorrectly asserts that the post-review provision of a Letter of Credit (LOC) and a bankruptcy opinion letter, requirements for authorization that are only necessary after the Bureau's review and publication of the Ready-to-Authorize Public Notice,[66] negate the requirement that the Bureau first reach a determination that an applicant is reasonably capable of fulfilling the terms of the program and is financially qualified to receive support prior to authorization.[67] If the Commission intended an LOC and a bankruptcy opinion letter to substitute for review of an applicant's financial qualifications, the financial review portion of application processing would merely consist of checking certifications and confirming the accurate provision of an LOC and bankruptcy opinion letter. While long-form applicants were required to submit an LOC commitment letter (a letter from an eligible bank indicating that it was willing to provide the applicant with an LOC), the very provision of a letter indicating willingness to provide an LOC at a later date after staff review and announcement as ready to authorize in a public notice also confirms that review and approval of the application by staff must occur before an LOC is issued, not that a bank's expressed willingness to issue an LOC negates the need for staff to review an applicant's financial qualifications.

29. LTD additionally asserts that the authority delegated to the Bureau extends only as far as the ability to deny an incomplete application or an application lacking an LOC because the Commission failed to define what "ineligible" or "unqualified" meant in this context.[68] We disagree. The Commission has explicitly stated what information is required to be submitted by long-form applicants and how it will rely on the Bureau to determine whether an applicant is reasonably capable of meeting program requirements. While the Commission defined "reasonably capable," it was under no obligation to enumerate specific financial parameters for that determination as LTD appears to suggest. As with the review of short-form applications, for which it was appropriate "to tailor the review to each applicant's circumstances and . . . determine [qualifications] based on the totality of information,"[69] it is also appropriate to tailor review to the circumstances at the long-form stage.

30. In any event, we agree with the Bureau's determination that the financial information LTD submitted does not support a finding that LTD is financially qualified. Notably, LTD's arguments in its Application for Review are procedural, and LTD does not challenge any of these specific findings and thus waives all arguments pertaining to them.

31. *Financial Qualifications*. A long-form applicant must both demonstrate and certify that it will have available funds for all project costs that exceed the amount of support to be received for the first two years of its support term.[70] Likewise, it must certify that it will comply with all program requirements, including service milestones, and demonstrate that it is reasonably capable of doing so.[71] As detailed in our May 26, 2022, letter, the Bureau identified significant concerns with LTD's financial ability to complete a project of this size in the time required, even as reduced by the removal from consideration of the states in which LTD had failed to obtain ETC designation. {[[redacted]

[66] *See* 47 CFR § 54.804(b)(6)(v); *Auction 904 Procedures Public Notice,* 35 FCC Rcd at 6177, para. 319-20 (2020) (*Auction 904 Procedures Public Notice*) ("No later than 10 business days after the release of the public notice, a long-form applicant must obtain one irrevocable standby letter of credit at the value specified in section 54.804(c)(1) from a bank acceptable to the Commission as set forth in section 54.804(c)(2) for each state where the long-form applicant is seeking to be authorized") and explaining the bankruptcy opinion letter requirement.

[67] Application for Review at 8-10.

[68] Application for Review at 13.

[69] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6096, para. 60; see also *id*. at para. 61, noting further review required at the long-form application stage.

[70] 47 CFR § 54.804(b)(2)(v); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, 6174-75, paras. 64, 312.

[71] *Id*.

[redacted] To complete the RDOF program requirements, LTD asserted that it would scale up its operation dramatically, with a projected asset growth of {[ ]}[73] and would somehow spend {[ ]} on Cap-Ex in program Year Two alone. To achieve this pace of growth, LTD would need capital far in excess of its current assets.

32. In its first financial proposal, LTD projected that it could complete the project without financing. To address staff's concern that LTD did not have access to sufficient capital to deploy the extensive network required for its winning bid areas in the time required by the RDOF program, LTD substantially changed its financial proposal between LTD's initial long-form application submission and its response to the final demand letter. LTD's final financial plan included a new term sheet that purported to show that it could draw upon a {[ ]} This term sheet thus tacitly admits that LTD's 2021 projections were unrealistic and that LTD would require an enormous infusion of capital to deploy as required. Indeed, in its last revised submissions, LTD estimated that it would need{[ ]} for the first two years of the RDOF program, while RDOF support would only provide $198,534,000 during the same period. Because the most recent projections left a gap of {[,]} LTD stated that it planned to draw upon the loan {[ ]} to provide LTD with working capital to overcome this shortfall.

33. Staff's analysis of LTD's submitted information revealed that it appeared that LTD would be unable to meet the loan's initial prerequisites specified in the term sheet it submitted, though the term sheet was dated the same day it was submitted. {[ ]} And LTD did not submit a revised or corrected term sheet—as required by section 1.65

[72] {[ ]}

[73] {[ ]}

[74] {[ ]}

[75] {[ ]}

of the Commission's rules[76]—or offer any explanation to suggest that this default term was no longer applicable. {[ ]} It was unclear and appeared doubtful to staff whether LTD would be able to leverage itself to this degree in such a short period, and importantly LTD offered no explanation of how it would accomplish this presumably substantial raising of funds. Nor did LTD clarify what an "acceptable" capital raise would be {[ ]} These conditions involved significant risks that LTD would not be able to execute the loan {[ ]} as described, and/or would default on the loan within the first year, upending LTD's financial plan. Accordingly, the Bureau correctly determined that it could not rely upon this new term sheet to demonstrate that LTD would be able to have the funds to cover the first two years of support, as required.

34. A long-form applicant must describe how the required construction will be funded in each state. The description should include the estimated project costs for all facilities that are required to complete the project, including the costs of upgrading, replacing, or otherwise modifying existing facilities to expand coverage or meet the performance requirements.[77] The estimated costs must be broken down to indicate the costs associated with each proposed service area at the state level.[78] We agree with the Bureau that LTD has not met these requirements, as its project funding description does not provide differentiated anticipated costs and related funding for each of the areas for which LTD is seeking support. We can only infer from the numbers provided that LTD is presuming that deployment costs are equal across all states and rural regions within each state, but that presumption seems unreasonable in light of the many different environments in different states in which LTD had winning bids. If there were a reason why that presumption was accurate, LTD should have, but did not, include that information in its final application filings.

35. We further observe that LTD attempted to demonstrate its financial qualifications based upon numerous assumptions that belie both the Bureau's experience evaluating other applications and common sense. For example, LTD relied upon unrealistic assumptions in its last submission that are too low compared to industry averages for cost-per-mile for fiber deployment but too high for average revenue per user (ARPU).[79] In its submissions, LTD further assumed no CapEx allocation after the sixth year of RDOF funding, even though LTD's projections included further growth of locations and connections that would necessarily require CapEx, and LTD projected that its operating expenditures (OpEx) would decline as a percentage of revenue from its legacy network in the first year of its RDOF financial projection, though typically OpEx would increase as a percentage of revenue in the first program year because rapid new network deployment would require significantly higher operating expenses. To be clear, an applicant could project financial assumptions different from industry norms and give sufficient explanation of its assumptions to establish that they were reasonable under its specific circumstances. However, LTD gave no explanation as to why its unusual assumptions were reasonable.

36. Also, a long-form applicant must also include financial projections that demonstrate that it can cover the necessary debt service payments over the life of its loans. Although, as noted previously, the Bureau determined that it could not confidently rely on LTD's term sheet {[ ]} as a source of funds, the term sheet did provide insight into LTD's plans. It appeared that LTD planned to

[76] 47 CFR § 1.65. Each auction applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application.

[77] 47 CFR § 54.804(b)(2)(vi), *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6174-75, para. 312.

[78] *Id*.

[79] {[.]} We requested that LTD provide its ARPU for the past five years to validate this assumption, but LTD did not provide the requested information.

rely upon high interest debt financing and an additional undefined "acceptable public or private equity raise" to be completed within a year. These plans created significant additional leverage for a company already proposing to rapidly expand its business and entailed a high risk that LTD would not be able to cover all necessary debt payments over the life of any loans, thus jeopardizing its ability to fulfill the RDOF performance requirements.[80]

37. Taken together, the Bureau's review of LTD's financial submissions indicated that it was not reasonably capable of meeting the relevant public interest obligations for the RDOF program. We affirm that decision and deny the Application for Review as to the financial qualifications.

38. *Technical qualifications*. As it does with its financial qualifications, LTD conflates the required certifications with the Bureau's review of the submitted application regarding technical qualifications. LTD argues that the Commission's rules require only "certification" and "description," asserting that beyond requiring a professional engineer to certify that the network proposed by the application is capable of delivering the required service to the required locations, the Bureau may make no further investigation of the applicant's technical ability to fulfill the program requirements.[81] Further, LTD claims that because the Commission provided no criteria for the review of long-form applications, the Bureau could not deny the application for substantive technical reasons. For the same reasons as set forth above, these procedural arguments fail. And as noted above, LTD does not challenge any of the Bureau's specific technical findings and has thus waived its arguments in that regard.

39. In particular, the Commission required that as part of a long-form application, an applicant for RDOF support provide a detailed technology and system design description that demonstrates that the applicant is reasonably capable of meeting program requirements.[82] During 2021 and 2022, staff communicated to LTD deficiencies in its technical submissions and asked LTD for more specificity on how it would engineer, deploy, and operate its proposed network, observing that the system design and plans submitted appeared too generalized, cursory, and simplistic to address the vast array of differing conditions to be met throughout a multi-state winning bid area. The Bureau's May 26, 2022, letter detailed numerous outstanding questions regarding LTD's deployment and operations plans. To address these concerns, LTD relied upon a third-party consultant to assist with its final response.[83] However, although that filing did provide a somewhat more detailed technical response, staff found that LTD still failed to demonstrate that it was reasonably capable of meeting program requirements and we affirm that finding.

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[80] We further note that in its financial projections, LTD had not accounted for potential default payments to the Commission for bids defaulted prior to the submission of its final financial projections: $2,304,000 apparent liability that LTD faces for defaulting on all its bids in Kansas and Oklahoma and the potential additional penalty for defaulting on all bids in California and Iowa. While not yet finalized, these apparent liabilities were known to LTD, were straightforwardly calculable, and were significant for a company the size of LTD, thus further increasing the financial risks involved with this application.

[81] Application for Review at 11-12.

[82] 47 CFR § 54.804(b)(2)(iv) (requiring submission of "A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements for Rural Digital Opportunity Fund support."); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, 6167-74, paras. 64, 301-11.

[83] To be clear, by noting this, we are not criticizing LTD for hiring a third-party consultant as LTD infers. Application for Review at 12. But the engagement of a consultant so late in the long-form application process may suggest a last-ditch effort to obtain necessary technical expertise for the sole purpose of the Bureau's authorization of support despite the absence of such expertise in-house at LTD. There is no guarantee that the consultant would be retained throughout the deployment when LTD would be required to provide service across the vast area of its winning bids.

40. For example, LTD failed to provide required specific and localized project designs; instead, LTD applied an unrealistic one-size-fits-all approach for the vast areas where it would be required to deploy last-mile fiber to every serviceable location and the supporting middle-mile and core infrastructures, such as providing a brief template labeled for one state that presumably was intended to outline last mile connectivity for all of its winning bid areas, and failing after specific inquiry to detail a comprehensive network operations and customer support infrastructure. Issues such as these in LTD's submissions indicate that LTD is not reasonably capable of supporting a network of considerable size and complexity that meets the RDOF performance requirements.

41. The fact that the *Auction 904 Procedures Public Notice* does not specify each technical criterion does not somehow foreclose staff's consideration of all relevant information when determining whether an applicant is technically qualified to receive support. The Commission established an iterative process for application review precisely so that lacking information could be discussed and resubmitted, and numerous applicants in this and previous USF support auctions took advantage of the opportunity to resubmit information as requested by the reviewers to successfully complete their applications for support. LTD's resubmitted technical filings reasonably caused the Bureau to be concerned that LTD had not adequately taken account of how significantly LTD's business needs to scale up to achieve equipment purchases, hiring, construction, deployment, maintenance, operations, and customer service for the sizeable network of LTD's remaining winning bids. Despite repeated requests from staff over a year and a half, LTD did not provide specific and detailed operational infrastructure information that sufficiently mitigates or otherwise addresses the technical and engineering risks involved in a rapid expansion in the scope of LTD's operations into multiple states. As such, the Bureau could not conclude that LTD was reasonably capable of meeting the technical requirements to deploy and operate gigabit service to all the proposed locations in the time required and within the RDOF performance standards. We uphold that determination and deny the Application for Review as to LTD's technical filings as well.

C. The Bureau Had No Obligation to Tailor LTD's Winning Bids to an Area That LTD Could Potentially Serve

42. LTD's argument that the decision to deny its application in all remaining areas was overbroad must also fail.[84] Nowhere in the *Auction 904 Procedures Public Notice* does the Commission state—or even imply—that the Bureau's eligibility determinations were to be made on a census block group (CBG) by-CBG basis. Even though well apprised of staff's substantial concerns with its long-form application, LTD did not submit any proposal to the Bureau to narrow the scope of its winning bids by selectively defaulting on certain CBGs. Nonetheless, LTD suggests—for the first time in its Application for Review—that it would accept a partial authorization and asserts that the Bureau erred because it did not pick and choose those CBGs where LTD might actually be able to meet the RDOF requirements to authorize. In any event, the Bureau had no basis to do so from LTD's submissions. Specifically, LTD did not differentiate between areas in its application filings regarding financial preparedness to complete the program requirements, nor did it differentiate between the technical requirements necessary to serve the disparate areas in its winning bid areas. The Bureau's decision, therefore, that LTD's application must fail in all remaining, un-defaulted areas was the only logical conclusion when faced with the numerous unexplained or problematic aspects of its application. Reducing the size of LTD's overall project by denying its application in certain states while allowing it to continue working to improve its application in the remaining states was also not required under the RDOF program rules, and LTD's application gave the Bureau no way to differentiate in which states LTD could potentially offer a better application than it had succeeded in doing after an extensive iterative process of revision. While certain other winning bidders in Auction 904 were announced as ready-to-authorize in some states but not in others (or in certain states before others), those partial authorizations were dependent on the timing of obtaining ETC designations, rather than on the assessed quality of the application.

[84] Application for Review at 17-19.

D. The Bureau Appropriately Denied LTD's Waiver Requests

43. LTD argues that the denial of its requests for waiver of the Eligible Telecommunications Carrier (ETC) designation deadline constituted disparate treatment when compared to the treatment of similar waiver requests.[85] While LTD notes certain similarities between its circumstances and those of another applicant whose ETC designation waiver requests were granted, it fails to recognize a key difference. That is, the other entity's waiver request was granted after a finding that it served the public interest because its application had been otherwise reviewed and approved and was thus ready to be authorized, unlike LTD's circumstances.[86] LTD also fails to acknowledge that, in its initial ETC Designation Waiver Request, it admitted that it delayed filing for certain ETC designations for strategic business reasons.[87] This admission clearly distinguishes LTD's circumstances, as addressed in the initial Order denying the first three LTD ETC Designation Waiver Requests.[88] Moreover, this decision to delay seeking designations for strategic reasons has consequences and places LTD's conduct outside the realm of good faith reliance on outside counsel, even if we were to agree that this rationale would be sufficient grounds to grant a waiver. As noted in the Denial Order, "[w]e do not consider an entity's specific corporate strategy or business considerations for delaying the satisfaction of a Commission requirement to constitute special circumstances that would justify a waiver," and the Bureau also determined that LTD did not support its argument that its "strategic reasons" were good cause for its failure to pursue obtaining its ETC designations in the relevant states, and noted that it did not appear in the public interest to grant the waiver as it would be inconsistent with the goal of expeditiously providing service to rural communities.[89]

44. LTD further asserts that the Bureau's denial of its waiver requests, and/or dismissing as moot its Petition for Reconsideration of the denial of its ETC designation waiver requests, was a circular rationale for denying its application in certain states.[90] Regardless of whether certain states took into

[85] Application for Review at 3, 17-19.

[86] *See 11th RDOF Ready to Authorize/Defaults Public Notice* at 3-6.

[87] LTD ETC Designation Waiver Request at 8, (filed June 7, 2021).

[88] See *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-908 (July 26, 2021).

[89] See *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-908 at 4-5 (July 26, 2021).

[90] Application for Review at 19-20. See also Petition for Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, WC Docket No. 19-126 (filed Nov. 19, 2021) (LTD Nov. Petition) (requesting reconsideration for the states of Iowa, Nebraska and North Dakota). On June 7, 2021, LTD submitted requests for waiver of the ETC requirement to submit, within 180 days of being announced as a winning bidder, appropriate documentation of ETC designation in multiple states, which the Bureau eventually denied in six states (California, Kansas, Oklahoma, Iowa, Nebraska, and North Dakota). On July 26, 2021, the Bureau addressed a portion of LTD's requests, denying its requests in three of those states: California, Kansas, and Oklahoma. *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-908 (July 26, 2021). LTD subsequently defaulted on all bids in Kansas and Oklahoma and filed a Petition for Partial Reconsideration of the ETC waiver denial order for California, but then later withdrew that request. *See* Request for Withdrawal of Petition for Partial Reconsideration, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed June 21, 2022) (request to withdraw reconsideration petition for the state of California); Petition for Partial Reconsideration of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (filed Aug. 21, 2021) (requesting reconsideration for the state of California). On October 20, 2021, the Bureau denied LTD's request for waiver of the ETC documentation deadline regarding Iowa, Nebraska, and North Dakota. *Rural Digital Opportunity Fund*, AU Docket No. 20-34, WC Docket No. 19-126, Order, DA 21-1311 (Oct. 20, 2021). Similarly, LTD filed a Petition for Reconsideration of the ETC waiver denial order for Iowa, Nebraska, and North Dakota, and then withdrew that request for Iowa. *See* Supplement to Petition for Reconsideration, AU Docket No. 20-34, WC Docket No. 19-126 (filed July 21, 2022) (request to withdraw reconsideration petition for the state of Iowa); LTD Nov. Petition. Thus, the Commission's announcement of LTD's ETC requirement waiver denials in California and Iowa remains in place.

account the denial of LTD's waiver requests pertaining to other states—a decision that we find to be proper—support cannot be authorized in areas for which an applicant has not obtained an ETC designation.[91] But in LTD's case, any adverse decisions on ETC designations are immaterial: they did not preclude LTD from receiving support. Rather, the deficiencies in LTD's application required denial of authorization in all states in which LTD had not already defaulted, even those states in which it had obtained an ETC designation. While the failure to obtain ETC status in certain states would have prevented authorization in those states, it was ultimately the failure of LTD to demonstrate in its long-form application that it was reasonably likely to meet program requirements that prevented LTD's authorization in any state.[92]

IV. ORDERING CLAUSES

45. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 4(i), 4(j), 5(c), and 254(h) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and 254(h), and sections 1.3, 1.115, and 54.722 of the Commission's rules, 47 CFR §§ 1.3, 1.115, and 54.722, and the rules set forth in the *Auction 904 Procedures Public Notice*, that the Application for Review filed by LTD Broadband, LLC on September 8, 2022 is **DENIED**.

46. **IT IS FURTHER ORDERED**, that the Opposition and Motion to Hold Proceedings in Abeyance filed by Ensuring RDOF Integrity Coalition on September 26, 2022 is **DISMISSED AS MOOT**.

47. **IT IS FURTHER ORDERED** that this Order on Review **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[91] 47 CFR § 54.804(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6176, para. 316; *see also Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 727-28, para. 92 (2020) (*Rural Digital Opportunity Fund Order*).

[92] LTD's remaining Petition for Reconsideration is hereby dismissed as moot. Furthermore, the Motion to Hold Proceedings in Abeyance filed by Ensuring RDOF Integrity Coalition in the Auction 904 Docket on September 26, 2022 is also dismissed as moot in that the proceedings to which that Motion pertained are resolved in this document.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
Two Applicants for Rural Digital Opportunity Fund in Default	)	File No. [Provided in Appendix A]
	)	FRN No. [Provided in Appendix A]
	)	NAL/Acct. No. [Provided in Appendix A]

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 1, 2023 **Released: December 5, 2023**

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), the Federal Communications Commission (FCC or Commission) identifies two Rural Digital Opportunity Fund (RDOF) Phase I Auction (Auction 904) applicants that defaulted on their bids for support on August 10, 2022, and May 23, 2023, in apparent violation of the Commission's rules.[1] In light of the applicants' defaults spanning 7,482 Census Block Groups (CBGs), this NAL proposes forfeitures for each of the two Auction 904 defaulters. The proposed forfeitures assessed here total $22,446,000. As detailed below, each of these applicants defaulted on its respective bids for support by its failure to meet deadlines and requirements to which it agreed when it participated in Auction 904. This NAL relates only to those areas, deadlines, and requirements for which the Commission did not determine, in a prior release, that waiver was appropriate. By defaulting on their bids, these applicants hindered the disbursement of funds that could have otherwise been expended for the advancement of broadband access across primarily rural areas in the United States. The objective of Auction 904 was to facilitate the provision of broadband service to Americans in wholly unserved areas.[2] The Commission took steps to protect the integrity, mission, and functionality of Auction 904 by advising auction participants to adhere strictly to all auction requirements and by providing for forfeitures for violations of those procedures.[3]

[1] This NAL is limited to Auction 904 defaults as determined by the Commission on August 10, 2022, and May 23, 2023. *See Rural Digital Opportunity Fund Support for 80 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-848, 22 WL 3339591, at *Attach. B: Bids in Default (WCB/OEA Aug. 10, 2022) (*August 10, 2022 Default Public Notice*); *Rural Digital Opportunity Fund Support Bid Defaults Announced; Wavelength LLC's Petition for Waiver of the June 7, 2021 Eligible Telecomms. Carrier Documentation Deadline Denied*, AU Docket No. 20-34 et al., Public Notice, DA 23-434, 23 WL 3686087, at *Attach. A: Bids in Default (WCB/OEA May 23, 2023) (*May 23, 2023 Default Public Notice*).

[2] *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 688-89, paras. 5-6 (2020) (*Rural Digital Opportunity Fund Order*).

[3] *See id*. at 735, para. 114.

II. BACKGROUND

2. The Commission conducted competitive bidding for Auction 904 between October 29, 2020, and November 25, 2020, to assign Universal Service Fund (USF) support to winning bidders seeking to serve eligible areas.[4] Auction 904 made available up to $16 billion in financial support over the span of 10 years to winning bidders that deploy high-speed broadband and voice services to eligible areas.[5] The Commission opted to leverage a multi-round reverse auction to assign and disseminate the funds[6] and established clear filing deadlines for companies applying for support.[7]

3. The Commission explicitly warned Auction 904 applicants that failure to conform to the auction's deadlines and procedures would produce consequences, including but not limited to forfeiture penalties for default.[8] Companies interested in bidding in Auction 904 were required to file an FCC Form 183 (Short-Form Application) no later than July 15, 2020.[9] This Short-Form Application was the first phase of a two-phase application process in Auction 904.[10] Bidders were required to provide information in the Short-Form Application that demonstrated their baseline legal, financial, and technical capabilities in order to establish eligibility to participate in a Commission auction for USF support.[11] The second application phase required winning bidders or their assignees to file an FCC Form 683 (Long-Form Application), which the Commission reviews to "determine if the application should be authorized to receive support for winning bids."[12] The Long-Form Application was due no later than January 29, 2021.[13]

4. The minimum geographic areas established by the Commission for bidding in Auction 904 were CBGs that contained one or more eligible census blocks, which were identified in a list released by the Commission's Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) in coordination with the Rural Broadband Auctions Task Force (RBATF) in October 2020.[14] Auction 904 included nearly 787,000 eligible census blocks located in nearly 62,000 CBGs.[15] WCB and

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[4] *See 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, 6079, para. 1 (2020) (*Auction 904 Procedures Public Notice*).

[5] *See id*. at 6079, paras. 1-2.

[6] *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 688, para. 5.

[7] *See Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082, paras. 12-13.

[8] *See, e.g.*, *Rural Digital Opportunity Fund Order*, *supra* note 2, at 735, para. 114 (explaining that a winning bidder will be "considered in default and will be subject to forfeiture if it fails to timely file a Long-Form Application, fails to meet the document submission deadlines outlined above, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support" and "subject to forfeiture" for the default.).

[9] *See Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082, para. 12.

[10] *Id.* at 6088, para. 27.

[11] *Id.* at 6088, para. 30.

[12] *Id*. at 6082, para. 27.

[13] *See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., 35 FCC Rcd 13888, 13888, para. 2 (WCB/OEA 2020) (*Winning Bidders Public Notice*).

[14] *See Wireline Competition Bureau and Office of Economics and Analytics Release Final List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 11283, 11283-87 (WCB/OEA 2020) (*Eligible Census Block List Public Notice*) (referencing lists and map available at https://www.fcc.gov/auction/904).

[15] *See* Fed. Commc'ns Comm'n, *Auction 904: Rural Digital Opportunity Fund,* https://www.fcc.gov/auction/904 (lists and map available at this webpage).

OEA identified 386 applicants that were qualified to bid for support in those CBGs on October 13, 2020, and declared that bidding would start on October 29, 2020.[16]

5. On December 7, 2020, the RBATF, WCB, and OEA released a Public Notice announcing the 180 winning bidders, geographically spanning 99.7 percent of the eligible CBGs, who won approximately $9.23 billion in support over a 10-year period.[17] Winning bidders or their assignees were required to file a Long-Form Application, which the Commission reviewed to determine if the application should be authorized to receive support for winning bids.[18] The Long-Form Application was due no later than January 29, 2021.[19] Winning bidders were also given until December 22, 2020, to assign any or all of their winning bids to related entities.[20] A winning bidder that assigned a winning bid to a related entity was required to certify and acknowledge in its application that it would inform each related entity "of its filing obligation and cause each entity to submit a timely" Long-Form Application, and that the winning bidder would be "at risk for default" if any related entity did not "submit a timely" Long-Form Application.[21] All long-form applicants also had to submit additional information to their Long-Form Applications by certain deadlines. For example, by June 7, 2021, a long-form applicant was required to submit with its Long-Form Application certain documentation demonstrating that it had been designated as an eligible telecommunications carrier (ETC) in each of the geographic areas for which it sought to be authorized for Auction 904 support.[22]

6. Commission staff conducted an in-depth review of timely submitted Long-Form Applications for both completeness and compliance with the Commission's rules and to determine whether an applicant was financially and technically qualified for support.[23] If Commission staff decided after reviewing a Long-Form Application that it needed more information to make such a determination, they would notify the long-form applicant that additional information was required.[24] If a long-form applicant was found ineligible or unqualified to receive support, the applicant would be announced as in default and subject to forfeiture.[25]

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[16] *See 386 Applicants Qualified to Bid In the Rural Digital Opportunity Fund Phase I Auction (Auction 904); Bidding to Begin on October 29, 2020*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 11356, 11356, paras. 1-2 (WCB/OEA 2020) (*Qualified Bidders Public Notice*).

[17] *See Winning Bidders Public Notice*, 35 FCC Rcd at 13888, para. 1.

[18] *See id*. at 13889, para. 7; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6163-64, paras. 286-87. If a winning bidder assigns some or all of its winning bids to a related entity, the assignee has an obligation to file a Long-Form Application, and if it fails to meet that obligation, it would be in default. *See Rural Digital Opportunity Fund Default Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 11651, 11651, n.1 (WCB/OEA July 26, 2021) (identifying assignees that did not file a long-form application).

[19] *See Winning Bidders Public Notice*, *supra* note 13, at 13891, para. 15.

[20] *See id*. at 13888, para. 2.

[21] *See Auction 904 Procedures Public Notice*, *supra* note 4, at 6165, para. 293.

[22] 47 CFR § 54.804(b)(5); *Winning Bidders Public Notice*, *supra* note 13, at 13894. Only eligible telecommunications carriers designated pursuant to 47 U.S.C. § 214(e) "shall be eligible to receive specific Federal universal service support." 47 U.S.C. § 254(e).

[23] *See Rural Digital Opportunity Fund Order*, *supra* note 2, at 725, para. 86; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6112, para. 97 (technical requirements); *Winning Bidders Public Notice*, *supra* note 13, at 13895, para. 18.

[24] *See Winning Bidders Public Notice*, *supra* note 13, at 13895, para. 18; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6168, para. 303; 47 CFR § 54.804(b)(2)(viii) (requiring long-form applicants to submit "[s]uch additional information as the Commission may require").

[25] *See Rural Digital Opportunity Fund Order*, *supra* note 2, at 735, para. 114; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6116, 6178, paras. 108, 321; *Winning Bidders Public Notice*, *supra* note 13, at 13895, para. 18.

7. On July 26, 2021, the RBATF, WCB, and OEA sent a letter to certain long-form applicants identifying census blocks where there were concerns about whether funding those areas would be the best use of universal service funds, in most cases because such areas may already be served by 25/3 Mbps broadband service.[26]

8. In response to the letter, some applicants informed the Commission that they wished to default on the census blocks identified by the Commission. WCB, in conjunction with the RBATF and OEA, found good cause to waive the forfeiture penalties that would otherwise be associated with the default on the specific census blocks that were identified in the letter, *i.e.*, "letter-identified census blocks."[27] The July 26, 2021 letter identified only urban census blocks as areas of concern.[28] Certain non-urban census blocks appeared similar to Commission staff. WCB, in conjunction with the RBATF and OEA, also found good cause to waive the forfeiture penalties for these specific census blocks.[29] For simplicity, we refer to these census blocks and the letter-identified census blocks collectively as "waiver census blocks."

9. Appendix A, below, sets forth the relevant, unique facts pertaining to each entity identified in the caption of this item, and describes with specificity each entity's conduct in relation to Auction 904.[30] This includes such facts as the dates of their Short and Long-Form Application filings, the amount of monetary support won (and for how many CBGs), and any default-related correspondence between the entity and the Commission. WCB referred the entities listed in Appendix A to the Enforcement Bureau (Bureau) on August 10, 2022, and May 23, 2023.[31] Appendix B, below, identifies the specific CBGs in default that are subject to forfeiture and the attendant assigned USF support. Appendix C below, identifies mailing addresses for the entities.

III. DISCUSSION

10. The Commission established requirements that each Auction 904 bidder must meet and gave warning that failure to meet such requirements would result in consequences:

> Any Auction 904 winning bidder or long-form applicant will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support. A winning bidder or long-form applicant will be considered in default and will be subject to forfeiture if it

[26] *See* Fed. Commc'ns Comm'n, *Letters to Long-Form Applicants about Identified Census Blocks*, https://www.fcc.gov/auction/904 (last visited Oct. 11, 2023) (providing letters under "Releases" tab and "Letters" sub-tab) (*Identified Census Block Letter*).

[27] *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 17198, 17206 (WCB/OEA Dec. 14, 2021) (*Fourth Auction 904 Authorization Public Notice*). WCB, in conjunction with the RBATF and OEA, waived the Commission's rules to the extent they define a default with respect to any area covered by a winning bid as a default on that entire winning bid, effectively permitting applicants to default only on the letter-identified census blocks within a CBG and become authorized in the remaining eligible census blocks within that CBG. *Id.* at 17203-05.

[28] *Identified Census Block Letter* at 1, n.4.

[29] *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 4897, at 5, n.38 (WCB/OEA Apr. 15, 2022) (*Eighth Auction 904 Authorization Public Notice*).

[30] In the *Ninth Auction 904 Ready to Authorize Public Notice*, WCB, in conjunction with the RBATF and OEA, dismissed petitions filed by applicants seeking waiver of the default forfeiture and other non-compliance measures filed. WCB, in conjunction with RBATF and OEA, also denied petitions from applicants requesting waiver of the default penalty framework to be relieved from the obligation of all winning bidders (or their assignees) to apply for Auction 904 support. *See Rural Digital Opportunity Fund Support for 2,061 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 5748, 5755 n.51 (WCB/OEA May 3, 2022).

[31] *See August 10, 2022 Default Public Notice*, *supra* note 1, at *Attach. B: Bids in Default; *May 23, 2023 Default Public Notice*, *supra* note 1, at *2 & Attach. A.

> fails to timely file a long-form application, fails to meet the document submission deadlines, is found ineligible or unqualified to receive Rural Digital Opportunity Fund support by the Bureau on delegated authority, and/or otherwise defaults on its winning bids or is disqualified for any reason prior to the authorization of support. Any such determination by the Bureau shall be final, and a winning bidder or long-form applicant shall have no opportunity to cure through additional submissions, negotiations, or otherwise. Agreeing to such payment in the event of a default is a condition for participating in bidding in Auction 904.[32]

Because each entity listed in Appendix A failed to meet at least one of these requirements, we find that these two entities apparently willfully violated the Commission's rules and orders governing Auction 904.

11. A long-form applicant that is found ineligible or unqualified to receive support, or fails to meet a document submission deadline, has defaulted on its winning bids for Auction 904 in apparent violation of section 1.21004(a) of the Commission's rules and the requirements established specifically for Auction 904.[33] In general, under the rules in effect at the time Auction 904 was conducted, a winning bidder of a Commission auction that, for any reason, is not subsequently authorized to receive support has defaulted on its bid and is liable for a default payment.[34] For Auction 904, the Commission determined that a defaulting bidder would be subject to a forfeiture payment under section 503 of the Communications Act of 1934, as amended (the Act), in lieu of a default payment.[35] The forfeiture penalties for default were clearly stated in both the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice* before bidding ever began.[36]

12. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[37] In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received by the person against whom the notice has been issued or be sent to the last known address of the person by certified mail, and the person must have an opportunity to show, in writing, within a reasonable amount of time, why no such forfeiture penalty should be imposed.[38] The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.[39]

13. The Commission's *Forfeiture Policy Statement*[40] specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act, *i.e.*, such as "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

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[32] *Auction 904 Procedures Public Notice*, *supra* note 4, at 6178, para. 321.

[33] 47 CFR § 1.21004(a); *Rural Digital Opportunity Fund Order*, *supra* note 2, at 735, para. 114; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6178, para. 321.

[34] 47 CFR § 1.21004(a), (b) (2020) (para. (b) has since been redesignated as para. (c)); *Auction 904 Procedures Public Notice*, *supra* note 4, at 6178, para. 321.

[35] *Rural Digital Opportunity Fund Order*, *supra* note 2, at 735, para. 114 & n.314.

[36] *Id*. at 735-36, paras. 115, 117; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6178, para. 322.

[37] *See* 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(a)(2).

[38] *See* 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(g).

[39] *See, e.g.*, *SBC Commc'ns, Inc.,* Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

[40] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100-01, para. 27 (1997), *recons. denied* 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); *see also* 47 CFR § 1.80(b)(11).

justice may require."[41] Moreover, section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of such act, *irrespective of any intent* to violate . . . any rule or regulation of the Commission."[42]

14. A monetary forfeiture is warranted against each entity listed in Appendix A for apparently willful violations of section 1.21004(a) of the Commission's rules and the procedures established for Auction 904.[43] Each applicant agreed, prior to participating in Auction 904, to be subject to a forfeiture in the event of default or upon its failure to satisfy the requirements of the *Auction 904 Procedures Public Notice*.[44] Additionally, each applicant was cautioned to craft its plans carefully to meet all auction requirements and to prepare for any complications that could occur.[45] In considering these factors, as well as the requirement under section 1.21004 of the Commission's rules establishing liability for payment in the event of default, the procedures established for Auction 904, and the *Forfeiture Policy Statement,* we believe that a forfeiture is warranted against each entity cited in Appendix A for apparently willful violations of section 1.21004(a) of the Commission's rules and the procedures established for Auction 904.

15. In Auction 904, the Commission established a base forfeiture of $3,000 per violation in the event of an auction default, meaning there would be a separate violation for each geographic unit subject to a bid.[46] Consistent with the approach taken in previous universal service support auctions, the Commission deemed a $3,000 base forfeiture appropriate, explaining that $3,000 is equivalent to the base forfeiture usually imposed for failing to file required forms or information with the Commission.[47] To prevent the base forfeiture amount from being disproportionate to the amount of a winning bidder's bid, however, the Commission limits the total base forfeiture for Auction 904 to 15 percent of the bidder's total assigned support for the CBGs in which it is defaulting.[48] The Commission regarded 15 percent of the total bid amount as not unduly punitive, while providing sufficient incentive for auction participants to inform themselves of the obligations associated with participation in the auction.[49] This constituted an

[41] 47 U.S.C. § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(11); *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

[42] 47 U.S.C. § 312(f)(1) (emphasis added). 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, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g.*, *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991).

[43] 47 CFR § 1.21004; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6178, para. 321.

[44] *Auction 904 Procedures Public Notice*, supra note 4, at 6178, para. 321.

[45] *See, e.g.*, *id.* at 6125-27, paras. 128-134.

[46] *Rural Digital Opportunity Fund Order, supra* note 2, at 735-36, para. 115. In other words, there is a separate violation for each CBG assigned in a bid. *Id.*; *see also Auction 904 Procedures Public Notice*, *supra* note 4, at 6178, para. 322.

[47] *See Rural Digital Opportunity Fund Order, supra* note 2, at 736, para. 115, n.317 (citing *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, WC Docket No. 10-90 et al., Report & Order & Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6000, para. 143 (2016)).

[48] *Id*. at 736, para. 117. A disproportionate forfeiture would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A bids to serve 100 CBGs for $100,000 over the support term. We may impose a total base forfeiture of $15,000 (15 percent of $100,000) because otherwise the base forfeiture would be $300,000, which represents $3,000 for each of the 100 CBGs. In contrast, if Bidder B bids to serve 50 CBGs for $1,000,000 over the support term, we may impose a total base forfeiture of $150,000 ($3,000 multiplied by 50 CBGs), which is 15 percent of the total bid. *See id*. at 736, para. 117 & n.322.

[49] *Id*. at 736, para. 117.

increase from the five percent base forfeiture cap adopted for Auction 903, in order to satisfy commenters who worried that the total forfeitures for defaults lacked a sufficient deterrent effect.[50]

16. WCB's decision, in coordination with the RBATF and OEA, to waive forfeiture penalties for defaulting on the waiver census blocks has the following effect on the calculation of the total base forfeiture.[51] If an applicant defaulted on a CBG for which all the eligible census blocks are waiver census blocks, that CBG is not subject to the $3,000 base forfeiture. Similarly, if an applicant defaulted on only the letter-identified census blocks within a CBG but is pursuing support in the remaining eligible census blocks covered by that CBG, the CBG is not subject to the $3,000 base forfeiture.[52] In contrast, if an applicant defaulted on a CBG that contains both waiver census blocks and non-waiver eligible census blocks, the CBG is subject to the $3,000 base forfeiture.[53] However, when calculating the 15 percent cap on the base forfeiture for such CBGs, the defaulted support subject to forfeiture is calculated by subtracting the support associated with the waiver census blocks from the total support associated with the CBG so that only the support associated with the non-waiver eligible census blocks within the CBG remains. The 15 percent is then applied to the non-waiver defaulted support, subject to forfeiture, associated with all CBGs subject to forfeiture, to calculate the 15 percent cap.

17. This item proposes a cumulative forfeiture of $22,446,000 apportioned amongst the two defaulting Auction 904 applicants listed in Appendix A, which explains in specific detail the proposed forfeiture amount for each defaulter and the relevant factual background pertaining to its individual circumstances of default. In accordance with the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*, neither of the proposed forfeitures exceeds 15 percent of the bidder's total bid amount for CBGs subject to forfeiture.[54]

18. Finally, after considering all the circumstances presented in the instant case, we conclude that a departure from the base forfeiture is not warranted for either of the Auction 904 applicants identified in Appendix A. For Auction 904 defaults, the Commission allows adjustment of the total base forfeiture, upward or downward, based on the criteria set forth in section 503(b)(2)(E) of the Act, notwithstanding the 15 percent cap on base forfeitures as discussed above.[55] However, on balance, we find that there are no factors present in the instant case that justify a departure from the established base forfeiture for either of the defaulters identified in Appendix A. Accordingly, we find the proposed forfeiture amounts listed in Appendix A are appropriate here.

IV. ORDERING CLAUSES

19. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, that all entities identified in Appendix A are hereby **NOTIFIED** of their **APPARENT LIABILITY FOR FORFEITURE** in the amount specified in Appendix A for their willful violations of section 1.21004(a) of the Commission's rules, 47 CFR § 1.21004(a), and the orders specifically prescribing

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[50] *Id*. at 736, paras. 116-17.

[51] See Fourth Auction 904 Authorization Public Notice, supra note 27, at 17206; Eighth Auction 904 Authorization Public Notice, supra note 29, at 5, n.38.

[52] *See Fourth Auction 904 Authorization Public Notice*, *supra* note 27, at 17203-05 (permitting applicants to partially default on a CBG by defaulting on letter-identified census blocks within the CBG and becoming authorized on the remaining eligible census blocks within the CBG).

[53] *See id*. at 17206 (granting a waiver of forfeiture penalties only for "the specific census blocks that we identified in our [July 26, 2021] letter").

[54] *See Rural Digital Opportunity Fund Order*, *supra* note 2, at 736, para. 117; *Auction 904 Procedures Public Notice*, *supra* note 4, at 6178, para. 322.

[55] *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11), note 2 to paragraph (b)(11); *Rural Digital Opportunity Fund Order*, *supra* note 2, at 736, paras. 115.

procedures for Auction 904 (the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*).

20. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, that within thirty (30) calendar days of the release date of this Notice, each recipient of this Notice of Apparent Liability **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 23 below.

21. In order for each defaulter to pay the proposed forfeiture, it shall notify Patrick 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 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, each defaulter shall send electronic notification of payment to the Enforcement Bureau of the Federal Communications Commission at EnforcementBureauIHD@fcc.gov, Patrick 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 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:[56]

- 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[57] or printed CORES form[58] 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).[59] 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.

[56] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

[57] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[58] 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.

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

- 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.

22. 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.[60] 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.

23. 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 or unsworn declarations under penalty of perjury pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.[61] The written statement must be mailed to Patrick McGrath, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, and must include the NAL account number referenced in the caption. The statement must also be e-mailed to the Enforcement Bureau at EnforcementBureauIHD@fcc.gov, Patrick 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. Until further notice, the Commission will not accept any hand or messenger delivered filings.

24. 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. 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.[62]

[60] *See* 47 CFR § 1.1914.

[61] *Id.* §§ 1.16, 1.80(g)(3).

[62] *See, e.g.*, *Ocean Adrian Hinson,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington & Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, 778-79, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido & Veronise Sido*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-23 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Commc'ns, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc. & Broadband Ventures Six, LLC*, Forfeiture Order, 29 FCC Rcd 8648, 8660-61, para. 25 (2014).

25. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested to each entity at the address listed in Appendix C below.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

As described below, each bidder was affirmatively defaulted by the Commission for its inability to fulfill the requirements of Auction 904 and therefore, is in apparent violation of section 1.21004(a) of the Commission's rules and the requirements established specifically for Auction 904 in the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*.[1]

1. **Etheric Communications LLC (Etheric); FRN: 0013358395; File No.: EB-IHD-23-00035840; NAL/Acct No.: 202432080005**. Etheric is a wholly-owned subsidiary of Etheric Networks Incorporated, which provides custom broadband services through a combination of fixed wireless and fiber technologies to residential and business customers across 10 counties in the San Francisco Bay Area.[2] Etheric timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.[3] WCB declared Etheric to be in default on May 23, 2023, and referred the company to the Bureau for enforcement action,[4] after WCB denied Etheric's petition for reconsideration of the Bureau's decision to dismiss as moot and alternatively, denied Etheric's petition seeking waiver of the deadline for demonstrating, with appropriate documentation, that it had been designated as an eligible telecommunications carrier in each of the geographic areas for which it sought to be authorized for Auction 904 support.[5] The Commission finds that Etheric apparently committed 244 violations by defaulting on 244 CBGs subject to forfeiture, which places the company's base forfeiture at $732,000.[6] Etheric's total assigned support for the CBGs in default subject to forfeiture amounted to $218,641,793.80, thereby capping the maximum possible forfeiture at $32,796,269.07, which is 15 percent of Etheric's defaulted support subject to forfeiture in Auction 904.[7] Because the base forfeiture is

[1] 47 CFR § 1.21004(a); *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 735, paras. 114-115 (2020) (*Rural Digital Opportunity Fund Order*); *See 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, 6178, paras. 321-22 (2020) (*Auction 904 Procedures Public Notice*).

[2] Etheric Networks, *Company*, *About Etheric,* https://ethericnetworks.com/about-etheric-networks (last visited Jul. 5, 2023).

[3] *See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., 35 FCC Rcd 13888, 13914 (WCB/OEA 2020) (*Winning Bidders Public Notice*).

[4] *Rural Digital Opportunity Fund Support Bid Defaults Announced; Wavelength LLC's Petition for Waiver of the June 7, 2021 Eligible Telecomms. Carrier Documentation Deadline Denied*, AU Docket No. 20-34 et al., Public Notice, DA 23-434, 23 WL 3686087, at *1-2 & Attach. A. (WCB/OEA May 23, 2023) (*May 23, 2023 Default Public Notice*).

[5] *See May 23, 2023 Default Public Notice*, at *1 n.6; *Rural Digital Opportunity Fund Auction (Auction 904); Rural Digital Opportunity Fund*, AU Docket No. 20-34 et al., Order on Reconsideration, DA 23-430, 2023 WL 3685855, at *1, para. 1 (WCB May 23, 2023); *Rural Digital Opportunity Fund Support Authorized for 1,764 Winning Bids; Etheric Commc'ns LLC's Petition for Waiver of the June 7, 2021 Eligible Telecomms. Carrier Documentation Deadline Denied*, AU Docket No. 20-34 et al., Public Notice, DA 23-33, 2023 WL 195695, at *1 & n.1 (WCB/OEA Jan. 13, 2023) (dismissing as moot and alternatively denying Etheric's petition for waiver of ETC deadline); *see also* 47 CFR § 54.804(b)(5) (requiring a long-form applicant to certify that it is an eligible telecommunications carrier and submit the relevant documentation supporting that certification by the deadline).

[6] *See Rural Digital Opportunity Fund Order*, *supra* note 1, at 735-36, para. 115 (establishing a $3,000 base forfeiture per violation); *see also* Appendix B (listing CBGs assigned to Etheric that are in default).

[7] *See id*. at 736, para. 117 (establishing the 15 percent cap on forfeitures); *see also May 23, 2023 Default Public Notice*, *supra* note 5, at Attach. A (describing the total amount of Etheric's won support that is in default for the identified CBGs).

less than the 15 percent cap established in the *Rural Digital Opportunity Fund Order*,[8] the Commission finds that the forfeiture amount of $732,000 against Etheric is appropriate here.

2. **LTD Broadband LLC (LTD); FRN: 0020926788; File No.: EB-IHD-23-00035839; NAL/Acct No.: 202432080004**. LTD is a broadband service provider operating in the Midwest United States.[9] LTD timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.[10] WCB declared LTD to be in default on August 10, 2022, and referred the company to EB for enforcement action.[11]

3. LTD's application was lacking in a number of ways. First, LTD failed to provide proof of Eligible Telecommunications Carrier (ETC) designation, a requirement to receive universal service funds, in three of the states in which it had winning bids.[12] Second, LTD did not show that it had available funds for all project costs that exceed the amount of support to be received for the first two years of its support term.[13] In particular, WCB determined that LTD would not be able to meet the initial prerequisites of a new term sheet for a loan and equity fundraising round submitted with its final financial plan. Third, LTD did not, as required, differentiate between anticipated project costs and related funding for each of the areas for which LTD was seeking support, nor did LTD explain why its apparent assumption that all deployment costs are equal across all of its winning bids states and rural regions within each state might be reasonable.[14] Fourth, a number of the cost assumptions on which LTD based its deployment costs were unrealistic, raising concerns that the overall determination of deployment costs was too low. Fifth, LTD did not provide evidence that it could cover the necessary debt service payments over the life of its loans. Sixth, LTD failed to provide specific and localized project designs; instead, LTD applied an unrealistic one-size-fits-all approach for the vast areas where it would be required to deploy last-mile fiber to every serviceable location and the supporting middle-mile and core infrastructures. LTD's technical submissions reflect a lack of understanding of how significantly their business needs to scale up to achieve equipment purchases, hiring, construction, deployment, maintenance, operations, and customer service for the sizeable network of LTD's remaining winning bids. For these reasons and "based on the totality of the long-form [application], the expansive service areas reflected in [its] winning bids, and [its] inadequate responses to the Bureau's follow-up questions," WCB concluded that LTD was "not reasonably capable of complying with the Commission's requirements."[15]

4. Accordingly, the Commission finds that LTD apparently committed 7,238 violations by defaulting on 7,238 CBGs subject to forfeiture, which places the company's base forfeiture at $21,714,000.[16] LTD's total assigned support for the CBGs in default subject to forfeiture amounted to

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[8] *Rural Digital Opportunity Fund Order*, *supra* note 1, at 736, para. 117.

[9] LTD, *About Us*, https://ltdbroadband.com/about (last visited Oct.11, 2023). LTD Broadband is now known as GigFire.

[10] *See Rural Digital Opportunity Fund Phase I Auction Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., 35 FCC Rcd 13888, 13917-18, Attach. A: Winning Bidder Summary (WCB/OEA 2020).

[11] *See Rural Digital Opportunity Fund Auction Support for 80 Winning Bids Ready to Be Authorized, Bid Defaults Announced*, Public Notice, DA 22-848, 2022 WL 3339591, at *9 (WCB/OEA Aug. 10, 2022) (*Aug. 10, 2022 Authorization and Default Public Notice*).

[12] 47 U.S.C. § 254(e) ("[O]nly an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support.").

[13] 47 CFR § 54.804(b)(2)(v); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, 6174-75, paras. 64, 312.

[14] 47 CFR § 54.804(b)(2)(vi), *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6174-75, para. 312.

[15] *Aug. 10, 2022 Authorization and Default Public Notice* at 9.

[16] *Rural Digital Opportunity Fund Order*, *supra* note 1, at 735-36, para. 115.

$1,130,106,773.40, thereby capping the maximum possible forfeiture at $169,516,016.01, which is 15 percent of LTD's defaulted support subject to forfeiture in Auction 904.[17] Because the base forfeiture is less than the 15 percent cap established in the *Rural Digital Opportunity Fund Order*,[18] the Commission finds that the forfeiture amount of $21,714,000 against LTD is appropriate here.

5. Additionally, we propose to hold GigFire LLC (GigFire) jointly and severally liable for the total amount of LTD's forfeiture. LTD and GigFire, a new entity that apparently was recently created by the owner of LTD, appear to share so many operational traits that they share a substantial identity and, as such, we propose to hold them jointly and severally liable for the auction default violations. When analyzing two companies "the factors that enter into a determination of alter ego status are substantial identity of management, business purpose, operation, equipment, customers, supervision and ownership between the old entity and its successor."[19]

6. Holding GigFire jointly and severally liable is appropriate here because the same individual—Mr. Corey Hauer—appears to control both LTD and GigFire. In the long-form application LTD submitted to be authorized for RDOF support (FCC Form 683), Mr. Hauer, as CEO, certified on behalf of LTD that he fully owned the entity.[20] Mr. Hauer is presently the CEO of GigFire according to its website,[21] though we do not know whether Mr. Hauer is the sole owner of this entity as well. According to the Nevada Secretary of State's website, Mr. Hauer is the sole manager of LTD and the sole managing member of GigFire.[22] Both companies list only one corporate officer—Mr. Hauer.[23] Further, according to the Illinois Secretary of State's website, both companies have the same principal address in Las Vegas.[24]

7. Further, we have evidence suggesting that Mr. Hauer has transferred most of LTD's assets to GigFire. According to an article dated March 22, 2023, Mr. Hauer stated in an interview that

[17] *See id*. at 736, para. 117 (establishing the 15% cap on forfeitures); *see also August 10, 2022 Default Public Notice*, *supra* note 11, at 9, Attach. B: Bids in Default (describing the total amount of LTD's won support that is in default for the identified CBGs).

[18] *Rural Digital Opportunity Fund Order*, *supra* note 1, at 736, para. 117.

[19] *Fugazy Continental Corp. v. NLRB*, 725 F.2d 1416, 1419 (D.C. Cir. 1984); *see also Flynn v. R.C. Tile*, 353 F.3d 953, 958-60 (D.C. Cir. 2004) (adopting an alter ego test for purposes of determining liability for a successor company); *Greater Kansas City Laborers Pension Fund v. Superior Gen. Contractors, Inc.*, 104 F.3d 1050, 1055 (8th Cir. 1997) (articulating an alter ego test); *Flynn v. Ohio Bldg. Restoration, Inc*., 317 F. Supp. 2d 22, 28 (D.D.C. 2004) ("While 'the alter ego doctrine is primarily applied to situations involving successor companies, where the successor is merely a disguised continuance of the old employer, . . . it also applies to situations where the companies are parallel operations." (quoting *Massachusetts Carpenters Central Collection Agency v. Belmont Concrete*, 139 F.3d 304, 307 (1st Cir. 1998)); *In the Matter of Gregory Robbins; Interstate Brokers of Am. LLC; Nat'l Health Agents LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 2591, 2603-04, paras. 35-37 (2022) (finding that the two companies were alter egos after applying the test in *Fugazy*).

[20] This is consistent with LTD's short-form application to participate in the auction (FCC Form 183). *See* https://auctionfiling.fcc.gov/form175/search175/index.htm (search Auction 904 and LTD). There, Mr. Hauer was named as the sole authorized bidder for LTD, even though an applicant could name up to three persons. *See id.*

[21] GigFire, About, https://gigfire.com/leadership.html#senior-management. (last visited Nov. 3, 2023).

[22] *See* https://esos.nv.gov/EntitySearch/OnlineEntitySearch (Nevada Sec'y of State Business Entity Search – compare search results for "LTD Broadband LLC" and "GigFire LLC") (last visited Nov. 3, 2023).

[23] *Id.*

[24] *See* https://apps.ilsos.gov/businessentitysearch/businessentitysearch (Illinois Sec'y of State Business Entity Search – compare search results for "LTD Broadband LLC" and "GigFire LLC") (last visited Nov. 3, 2023).

most of LTD's assets—outside of those in Minnesota, Iowa, and Illinois—will be transferred to GigFire.[25] This transfer appears to have occurred as LTD's website states, "LTD Broadband has become GigFire!" and viewers are automatically redirected to a website at GigFire.com.[26] The Nevada Secretary of State's website identifies the formation date for GigFire as February 25, 2023.[27] The website also shows LTD's entity status as, "Default,"[28] which means that the company "did not file an Initial or Annual List of Officers/State Business License by the due date."[29]

8. To the extent that LTD continues to exist and in fact has retained assets, LTD and GigFire are not easily distinguishable as they apparently share the same owner, manager, business purpose (i.e., broadband services), and address. Notably, GigFire was apparently created only *after* penalties were proposed for LTD's conduct during the RDOF Phase I auction[30] and after penalties were proposed for LTD's default on its winning bids in that same auction.[31] Therefore, it appears that Mr. Hauer created GigFire to carry on the work of LTD (using LTD's former assets), rather than for a distinct business purpose. This raises the possibility that GigFire may have been founded for the purpose of evading liability for LTD's actions.

9. Accordingly, out of an abundance of caution, we find that LTD and GigFire are apparently alter egos for purposes of liability and thus jointly and severally liable for the proposed penalty.

[25] *See* Diana Goovaerts, "LTD Broadband – now GigFire – puts RDOF on a shelf, targets 1M new passings," Fierce Telecom (Mar. 22, 2023), https://www.fiercetelecom.com/broadband/ltd-broadband-now-gigfire-puts-rdof-shelf-targets-1m-new-passings.

[26] LTD Broadband, LTD Has Become GigiFire https://ltdbroadband.com/. (last visited Nov. 3, 2023).

[27] *See* https://esos.nv.gov/EntitySearch/BusinessInformation (Nevada Sec'y of State Business Entity Search – search result for "GigFire LLC") (last visited Nov. 3, 2023).

[28] *See id*.

[29] *See* https://www.nvsilverflume.gov/questions?q=179 (last visited Nov. 3, 2023).

[30] *See LTD Broadband LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 5736 (EB 2022).

[31] *See Applicants for Rural Digital Opportunity Fund in Default*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 9009 (2022).

APPENDIX B
[SPREADSHEET OF CBGS]

APPENDIX C
[SPREADSHEET OF ADDRESSES]

APPENDIX A

As described below, each bidder was affirmatively defaulted by the Commission for its inability to fulfill the requirements of Auction 904 and therefore, is in apparent violation of section 1.21004(a) of the Commission's rules and the requirements established specifically for Auction 904 in the *Rural Digital Opportunity Fund Order* and the *Auction 904 Procedures Public Notice*.[1]

1. **Etheric Communications LLC (Etheric); FRN: 0013358395; File No.: EB-IHD-23-00035840; NAL/Acct No.: 202432080005**. Etheric is a wholly-owned subsidiary of Etheric Networks Incorporated, which provides custom broadband services through a combination of fixed wireless and fiber technologies to residential and business customers across 10 counties in the San Francisco Bay Area.[2] Etheric timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.[3] WCB declared Etheric to be in default on May 23, 2023, and referred the company to the Bureau for enforcement action,[4] after WCB denied Etheric's petition for reconsideration of the Bureau's decision to dismiss as moot and alternatively, denied Etheric's petition seeking waiver of the deadline for demonstrating, with appropriate documentation, that it had been designated as an eligible telecommunications carrier in each of the geographic areas for which it sought to be authorized for Auction 904 support.[5] The Commission finds that Etheric apparently committed 244 violations by defaulting on 244 CBGs subject to forfeiture, which places the company's base forfeiture at $732,000.[6] Etheric's total assigned support for the CBGs in default subject to forfeiture amounted to $218,641,793.80, thereby capping the maximum possible forfeiture at $32,796,269.07, which is 15 percent of Etheric's defaulted support subject to forfeiture in Auction 904.[7] Because the base forfeiture is

[1] 47 CFR § 1.21004(a); *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 735, paras. 114-115 (2020) (*Rural Digital Opportunity Fund Order*); *See 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, 6178, paras. 321-22 (2020) (*Auction 904 Procedures Public Notice*).

[2] Etheric Networks, *Company*, *About Etheric,* https://ethericnetworks.com/about-etheric-networks (last visited Jul. 5, 2023).

[3] *See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., 35 FCC Rcd 13888, 13914 (WCB/OEA 2020) (*Winning Bidders Public Notice*).

[4] *Rural Digital Opportunity Fund Support Bid Defaults Announced; Wavelength LLC's Petition for Waiver of the June 7, 2021 Eligible Telecomms. Carrier Documentation Deadline Denied*, AU Docket No. 20-34 et al., Public Notice, DA 23-434, 23 WL 3686087, at *1-2 & Attach. A. (WCB/OEA May 23, 2023) (*May 23, 2023 Default Public Notice*).

[5] *See May 23, 2023 Default Public Notice*, at *1 n.6; *Rural Digital Opportunity Fund Auction (Auction 904); Rural Digital Opportunity Fund*, AU Docket No. 20-34 et al., Order on Reconsideration, DA 23-430, 2023 WL 3685855, at *1, para. 1 (WCB May 23, 2023); *Rural Digital Opportunity Fund Support Authorized for 1,764 Winning Bids; Etheric Commc'ns LLC's Petition for Waiver of the June 7, 2021 Eligible Telecomms. Carrier Documentation Deadline Denied*, AU Docket No. 20-34 et al., Public Notice, DA 23-33, 2023 WL 195695, at *1 & n.1 (WCB/OEA Jan. 13, 2023) (dismissing as moot and alternatively denying Etheric's petition for waiver of ETC deadline); *see also* 47 CFR § 54.804(b)(5) (requiring a long-form applicant to certify that it is an eligible telecommunications carrier and submit the relevant documentation supporting that certification by the deadline).

[6] *See Rural Digital Opportunity Fund Order*, *supra* note 1, at 735-36, para. 115 (establishing a $3,000 base forfeiture per violation); *see also* Appendix B (listing CBGs assigned to Etheric that are in default).

[7] *See id*. at 736, para. 117 (establishing the 15 percent cap on forfeitures); *see also May 23, 2023 Default Public Notice*, *supra* note 5, at Attach. A (describing the total amount of Etheric's won support that is in default for the identified CBGs).

less than the 15 percent cap established in the *Rural Digital Opportunity Fund Order*,[8] the Commission finds that the forfeiture amount of $732,000 against Etheric is appropriate here.

2. **LTD Broadband LLC (LTD); FRN: 0020926788; File No.: EB-IHD-23-00035839; NAL/Acct No.: 202432080004**. LTD is a broadband service provider operating in the Midwest United States.[9] LTD timely submitted its Short-Form Application to participate in Auction 904 and was a successful bidder.[10] WCB declared LTD to be in default on August 10, 2022, and referred the company to EB for enforcement action.[11]

3. LTD's application was lacking in a number of ways. First, LTD failed to provide proof of Eligible Telecommunications Carrier (ETC) designation, a requirement to receive universal service funds, in three of the states in which it had winning bids.[12] Second, LTD did not show that it had available funds for all project costs that exceed the amount of support to be received for the first two years of its support term.[13] In particular, WCB determined that LTD would not be able to meet the initial prerequisites of a new term sheet for a loan and equity fundraising round submitted with its final financial plan. Third, LTD did not, as required, differentiate between anticipated project costs and related funding for each of the areas for which LTD was seeking support, nor did LTD explain why its apparent assumption that all deployment costs are equal across all of its winning bids states and rural regions within each state might be reasonable.[14] Fourth, a number of the cost assumptions on which LTD based its deployment costs were unrealistic, raising concerns that the overall determination of deployment costs was too low. Fifth, LTD did not provide evidence that it could cover the necessary debt service payments over the life of its loans. Sixth, LTD failed to provide specific and localized project designs; instead, LTD applied an unrealistic one-size-fits-all approach for the vast areas where it would be required to deploy last-mile fiber to every serviceable location and the supporting middle-mile and core infrastructures. LTD's technical submissions reflect a lack of understanding of how significantly their business needs to scale up to achieve equipment purchases, hiring, construction, deployment, maintenance, operations, and customer service for the sizeable network of LTD's remaining winning bids. For these reasons and "based on the totality of the long-form [application], the expansive service areas reflected in [its] winning bids, and [its] inadequate responses to the Bureau's follow-up questions," WCB concluded that LTD was "not reasonably capable of complying with the Commission's requirements."[15]

4. Accordingly, the Commission finds that LTD apparently committed 7,238 violations by defaulting on 7,238 CBGs subject to forfeiture, which places the company's base forfeiture at

[8] *Rural Digital Opportunity Fund Order*, *supra* note 1, at 736, para. 117.

[9] LTD, *About Us*, https://ltdbroadband.com/about (last visited Oct.11, 2023). LTD Broadband is now known as GigFire.

[10] *See Rural Digital Opportunity Fund Phase I Auction Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., 35 FCC Rcd 13888, 13917-18, Attach. A: Winning Bidder Summary (WCB/OEA 2020).

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[15] Aug. 10, 2022 Authorization and Default Public Notice at 9.

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5. Additionally, we propose to hold GigFire LLC (GigFire) jointly and severally liable for the total amount of LTD's forfeiture. LTD and GigFire, a new entity that apparently was recently created by the owner of LTD, appear to share so many operational traits that they share a substantial identity and, as such, we propose to hold them jointly and severally liable for the auction default violations. When analyzing two companies "the factors that enter into a determination of alter ego status are substantial identity of management, business purpose, operation, equipment, customers, supervision and ownership between the old entity and its successor."[19]

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[18] *Rural Digital Opportunity Fund Order*, *supra* note 1, at 736, para. 117.

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[22] *See* https://esos.nv.gov/EntitySearch/OnlineEntitySearch (Nevada Sec'y of State Business Entity Search – compare search results for "LTD Broadband LLC" and "GigFire LLC*")* (last visited Nov. 3, 2023).

[23] *Id.*

[24] *See* https://apps.ilsos.gov/businessentitysearch/businessentitysearch (Illinois Sec'y of State Business Entity Search – compare search results for "LTD Broadband LLC" and "GigFire LLC") (last visited Nov. 3, 2023).

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[26] LTD Broadband, LTD Has Become GigiFire https://ltdbroadband.com/. (last visited Nov. 3, 2023).

[27] *See* https://esos.nv.gov/EntitySearch/BusinessInformation (Nevada Sec'y of State Business Entity Search – search result for "GigFire LLC") (last visited Nov. 3, 2023).

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[29] *See* https://www.nvsilverflume.gov/questions?q=179 (last visited Nov. 3, 2023).

[30] *See LTD Broadband LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 5736 (EB 2022).

[31] *See Applicants for Rural Digital Opportunity Fund in Default*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 9009 (2022).

Appendix B

Defaulted Census Block Groups Subject to Forfeiture

Applicant	FRN	Bidder Name	Bidder FRN	State Name	CBG GEOID
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014017001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014017003
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014090002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014090003
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014283014
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014287002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014301013
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014301021
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014302001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014332004
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014334001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014351031
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014359003
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014401001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014506012
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014506034
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014507013
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014507423
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014507431
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014507452
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014507521
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014511011
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014511013
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014511014
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014511015
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014511022
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014512021
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014513001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014513003
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060014514012
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060090005042
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133010002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133031031
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133032052
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133040011
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133452031
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133522021
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133551071
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133551083
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133551121
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133553061
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133560022
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060133560024
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060150002031
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060210103001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060210103003
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230012002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230101021
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230101022
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230101023
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230102001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230102002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230103001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230103005
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230106001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230107002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230108001
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230108002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230109021
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230111003
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230111004
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230112002
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230112003
Etheric Communications LLC	0013358395	Etheric Communications LLC	0013358395	California	060230115002
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LTD Broadband LLC	0020926788	LTD Broadband LLC	0020926788	Wisconsin	551410107003
LTD Broadband LLC	0020926788	LTD Broadband LLC	0020926788	Wisconsin	551410109005

Appendix C

Applicant Name	Contact Name	Address	City	State	Zip Code
Etheric Communications LLC	William A Hagen	1007 South Claremont Street	San Mateo	CA	94402
LTD Broadband LLC	Corey Hauer	69 Teahouse Street	Las Vegas	NV	89138