Volume 38, No. 14, Pages 11841 to 12882,
December 11 – December 31, 2023

FCC Record

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

FCC Record Volume 38, No. 14, Pages 11841 to 12882, December 11 – December 31, 2023

FEDERAL COMMUNICATIONS COMMISSION

Jessica Rosenworcel, Chairwoman
Brendan Carr
Geoffrey Starks
Nathan Simington
Anna M. Gomez

The contents of this document are subject to correction by means of an erratum appearing at a future date in the FCC Record. Users should notify the Secretary of errors so that an erratum can be inserted in a later publication.

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

Citation Form: 38 FCC Rcd 1 (2023)

United States Government Printing Office * Washington, D.C.
For Sale by the Superintendent of Documents U.S. Government Printing Office on a subscription basis

Federal Communications Commission Record

Table of Contents
Volume 38
Issue 14

Table of Cases
Volume 38
Issue 14

Table of FCC and Delegated Authority Numbers
Volume 38
Issue 14

Table of Docket Numbers
Volume 38
Issue 14

Table of Rulemaking Numbers
Volume 38
Issue 14

Table of Localities
Volume 38
Issue 14

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 23-1146
Released: December 13, 2023

THE OFFICE OF INTERNATIONAL AFFAIRS ANNOUNCES THE OPENING OF THE ONE-TIME INFORMATION COLLECTION FILING WINDOW FOR INTERNATIONAL SECTION 214 AUTHORIZATION HOLDERS TO PROVIDE FOREIGN OWNERSHIP INFORMATION

The Electronic Filing Window Opens on December 8, 2023 and Closes on January 22, 2024

IB Docket No. 23-119; MD Docket No. 23-134

On April 20, 2023, the Federal Communications Commission (Commission) adopted the *Evolving Risks Order and NPRM* that, among other things, requires all international section 214 authorization holders (Authorization Holders) to respond to a one-time collection (One-Time Information Collection) to update the Commission's records regarding their foreign ownership.[1] By this Public Notice, the Office of International Affairs (OIA) announces the deadline of the One-Time Information Collection.[2] Starting today, Authorization Holders can file responses to the One-Time Information Collection.[3] All Authorization Holders are required to file their responses in the One-Time Information Collection Online Filing System no later than **11:59 pm Eastern Time (ET) on January 22, 2024.**[4]

[1] *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks*; *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119, MD Docket No. 23-134, Order and Notice of Proposed Rulemaking, FCC 23-28, 2023 WL 3152050, at *1, 9-12, paras. 1, 16-23 (Apr. 20, 2023) (*Evolving Risks Order and NPRM*); Federal Communications Commission, Review of International Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees, 88 Fed. Reg. 85514 (Dec. 8, 2023) (*Evolving Risks Order Federal Register*). Pursuant to the Commission's directive, on August 22, 2023, OIA adopted an exemption (Exemption) for Authorization Holders whose applications were granted within three years prior to the deadline of the One-Time Information Collection. *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks*; *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119, MD Docket No. 23-134, Order, DA 23-745, 2023 WL 5443923, at *2-3, paras. 6-8 (OIA Aug. 22, 2023) (*Exemption Order*); Federal Communications Commission, Review of International Authorizations To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees, 88 Fed. Reg. 50486 (Aug. 1, 2023).

[2] This Public Notice will be published in the FCC Record. On December 8, 2023, the Commission published in the Federal Register an announcement that the Office of Management and Budget approved the information collection associated with the *Evolving Risks Order*, and an announcement of the filing deadline for the information collection requirements in that Order. *See Evolving Risks Order Federal Register*.

[3] *Id.*

[4] OIA will attempt to provide this Public Notice to carriers' D.C. agents by email or U.S. mail. Entities represented by the agent are expected to respond only if they hold international section 214 authorizations.

Order Mandating the One-Time Information Collection and Order Adopting Exemption. Below are links to the Commission's *Evolving Risks Order* and OIA's *Exemption Order*.[5]

- ***Evolving Risks Order* –** The *Evolving Risks Order* is available at https://www.fcc.gov/document/fcc-proposes-periodic-reviews-international-telecom-authorizations-0.
- ***Exemption Order* –** The *Exemption Order* is available at https://www.fcc.gov/document/deny-motion-extension-and-adopt-exemption-one-time-collection.

One-Time Information Collection Online Filing System. Below are the links to the FCC's One-Time Information Collection webpage, the One-Time Information Collection Online Filing System, and other important documents and instructions to assist Authorization Holders in completing the submission.

- **One-Time Information Collection Webpage –** The One-Time Information Collection Webpage is available at https://www.fcc.gov/one-time-information-collection-international-section-214-authorization-holders.
- **One-Time Information Collection Online Filing System –** The One-Time Information Collection Online Filing System is available at https://fccgov.gov1.qualtrics.com/jfe/form/SV_8pRWfOK9suOxy86.
- **Instructions –** The Instructions are available in Attachment 1.
- **Frequently Asked Questions (FAQs)** – The FAQs are available at https://www.fcc.gov/faq-one-time-information-collection-international-section-214-authorization-holders.
- **Privacy Act Statement** – The Privacy Act Statement is available in Attachment 2.
- **FCC Notice Required by the Paperwork Reduction Act** – The FCC Notice Required by the Paperwork Reduction Act is available in Attachment 3.
- **Requesting a Retake Link to Correct Errors Prior to Submission**. If an Authorization Holder needs to correct an error on any question before it certifies and submits its responses to the One-Time Information Collection, the Authorization Holder can send an email to Evolving.Risks_RetakeLink@fcc.gov to request a new link to retake the One-Time Information Collection.

Failure to Timely Respond to the One-Time Information Collection. The Commission is currently considering in a Notice of Proposed Rulemaking in IB Docket No. 23-119 whether to cancel the authorizations of carriers that fail to timely respond to the One-Time Information Collection and to impose forfeitures or other measures where a carrier fails to respond in a timely or complete manner.[6]

Requirement for an FCC Registration Number (FRN). We remind all Authorization Holders that they must have an FRN to file their responses in the One-Time Information Collection Online Filing System.[7] An FRN is the 10-digit number assigned to all individuals and entities that transact business

[5] *See supra* note 1.

[6] *Evolving Risks Order and NPRM* at *10, 12, paras. 18, 25-26.

[7] *Id*. at *11, para. 22.

with the Commission,[8] and it must be provided any time an Authorization Holder submits an application in the International Communications Filing System (ICFS).[9]

- **Authorization Holder Does Not Have an FRN**. If an Authorization Holder does not have an FRN, the Authorization Holder must obtain an FRN through the Commission Registration System (CORES) webpage at https://apps.fcc.gov/cores/userLogin.do.
  - An entity that holds an International Section 214 Authorization should identify itself as an "Entity" in CORES.
  - For additional assistance, submit a help request at https://www.fcc.gov/wireless/available-support-services or call the FRN Help Desk at (877) 480-3201 (Monday-Friday, 8 a.m.-6 p.m. ET).
  - After obtaining its FRN, the Authorization Holder should complete the following steps:
    1. The Authorization Holder must send an email to ICFSInfo@fcc.gov to request that FCC staff add the FRN to its current Authorization File Number(s) in ICFS.
    2. The Authorization Holder will need to provide its FRN, current Authorization File Number(s), and telephone number in the email to FCC staff.
    3. Once FCC staff update the information in ICFS, FCC staff will inform the Authorization Holder by email that it can complete the One-Time Information Collection.
    4. The Authorization Holder can also check whether its FRN is associated with its current Authorization File Number(s) in ICFS at: https://www.fcc.gov/icfs.
  - If the Authorization Holder has further questions, it can send an email to ICFSInfo@fcc.gov.

- **FRN is Associated with Current Authorization File Number(s).** If an Authorization Holder has an FRN associated with a current Authorization File Number(s) in ICFS, the Authorization Holder must submit a response to the One-Time Information Collection using that specific FRN.
  - The Authorization Holder should not obtain a new FRN.
  - An Authorization Holder can determine the FRN associated with its current Authorization File Number(s) by accessing records associated with the Authorization File Number(s) in ICFS at: https://www.fcc.gov/icfs.

- **FRN is Not Associated with Current Authorization File Number(s).** If an Authorization Holder has an FRN, but the FRN is not associated with a current Authorization File Number(s) in ICFS, the Authorization Holder must contact FCC staff to add the FRN to its current Authorization File Number(s) in ICFS. Below are the steps:

  1. The Authorization Holder must send an email to ICFSInfo@fcc.gov to request that FCC staff add the FRN to its current Authorization File Number(s) in ICFS.

[8] 47 CFR § 1.8002(a) ("The FRN must be obtained by anyone doing business with the Commission, see 31 U.S.C. 7701(c)(2) . . . .").

[9] *Evolving Risks Order and NPRM* at *11, para. 22. As the Commission stated in the *Evolving Risks Order,* many international section 214 authorizations were granted to entities prior to the Commission requiring an FRN in 2001. *Id.* Such entities will need to obtain an FRN prior to filing their response to the information collection. *Id*.

2. The Authorization Holder will need to provide its FRN, current Authorization File Number(s), and telephone number in the email to FCC staff.
3. Once FCC staff update the information in ICFS, FCC staff will inform the Authorization Holder by email that it can complete the One-Time Information Collection.
4. The Authorization Holder can also check whether its FRN is associated with its current Authorization File Number(s) in ICFS at: https://www.fcc.gov/icfs.
    - If the Authorization Holder has further questions, it can send an email to ICFSInfo@fcc.gov.

Exemption. All Authorization Holders are required to file a response to the One-Time Information Collection even if the Authorization Holder qualifies for the Exemption. Under the Exemption, qualifying Authorization Holders are exempt from answering questions in the One-Time Information Collection regarding the identities, specific equity and voting interests, and description of controlling interests, of their Reportable Foreign Interest Holders.[10] Instead, Authorization Holders that qualify for the Exemption will be required to identify, on an aggregated basis, all of the citizenship(s) or place(s) of organization of their Reportable Foreign Interest Holders.[11] Specifically, to qualify for the Exemption:

(1) The Authorization Holder must have filed an application for an initial International Section 214 Authorization, modification, or *substantial* (not a *pro forma* filing) assignment or transfer of control of the authorization that was reviewed by the Executive Branch agencies **and was granted by the Commission on or after January 22, 2021**; and

(2) There are no Reportable Foreign Interest Holders of the Authorization Holder other than those disclosed in the application (including any amendment), and there are no changes to the Reportable Foreign Interest Holders disclosed in the application (including any amendment) **as of December 23, 2023**.[12]

To qualify for the Exemption, Authorization Holders will also need to supply the File Number of the application that fulfills all of these requirements.

Surrender of International Section 214 Authorizations. If an Authorization Holder files a surrender letter before the filing deadline, the Authorization Holder **does not** need to respond to the One-Time Information Collection. An Authorization Holder that no longer needs or uses its authorization(s) is strongly encouraged to surrender its International Section 214 Authorization(s) **before** the filing deadline.

- **Filing a Surrender Letter in ICFS.** An Authorization Holder may file a surrender letter in ICFS. The Commission does not have a specific rule on surrender letters but it is customary for the Authorization Holder to upload a letter surrendering the International Section 214 Authorization in ICFS for its Authorization File Number(s).

[10] *Exemption Order* at *2, para. 7.

[11] *Id*.

[12] *Id*. at *2-3, para. 7. To qualify for the Exemption, there must be no changes to the Reportable Foreign Interest Holders disclosed in the application (including any amendment), including but not limited to: no change in the reported citizenship(s), including dual or multiple citizenships, and/or place(s) of organization of any Reportable Foreign Interest Holder; no removal of any Reportable Foreign Interest Holder from an Authorization Holder's chain of ownership; and no change in a Reportable Foreign Interest Holder's ownership interests to less than 10% equity and/or voting interests or less than a controlling interest. *See Evolving Risks Order and NPRM* at *10-11, paras. 18-20 & nn.72-74, 78-80.

- **Link to ICFS.** To file a surrender letter, the Authorization Holder may visit the ICFS homepage at https://www.fcc.gov/icfs.
  - The Authorization Holder should file the surrender letter in ICFS as a "Letter" under "Pleadings and Comments."
- **Information in the Surrender Letter.** In the surrender letter, it is customary for the Authorization Holder to provide:
  - The Authorization File Number(s) that the Authorization Holder is surrendering;
  - Information as to whether the Authorization Holder has existing customers;
  - An explanation as to what is happening and/or will happen to the customers.
    - For example, whether the carrier has filed a notification of discontinuance pursuant to Section 63.19 of the Commission's rules, or whether the carrier has other International Section 214 Authorizations that it will use to continue providing service to its customers.
- An Authorization Holder that **does not** file a surrender letter before the filing deadline **must respond** to the One-Time Information Collection, even if the Authorization Holder no longer needs or uses its International Section 214 Authorization.

Additional FCC Assistance on the One-Time Information Collection. Authorization Holders are encouraged to complete the One-Time Information Collection as early as possible prior to the filing deadline of January 22, 2024. This will give Authorization Holders an opportunity to address any questions regarding the One-Time Information Collection and the Online Filing System in advance of the deadline.

- **One-Time Information Collection.** For questions about the One-Time Information Collection, email the FCC's Office of International Affairs, Telecommunications & Analysis Division at fcc-evolving-risks@fcc.gov.
- **FCC Registration Numbers (FRNs).** For questions relating to FRNs, submit a help request at https://www.fcc.gov/wireless/available-support-services or call the FRN Help Desk at (877) 480-3201 (Monday-Friday, 8 a.m.-6 p.m. Eastern time (ET)). Additional information regarding FRNs can be found on the Commission Registration System (CORES) webpage at https://apps.fcc.gov/cores/userLogin.do.
- **ICFS.** Additional information regarding ICFS can be found on the ICFS homepage at https://www.fcc.gov/icfs. For questions relating to ICFS, email ICFSInfo@fcc.gov or call ICFS Help Line at (202) 418-2222 (Monday-Friday, 8:30 a.m.-4:30 p.m. ET).

– FCC –

Approved by OMB
OMB Control Number 3060-1308
December 2023
Estimated Time per Response – 6 hours

FEDERAL COMMUNICATIONS COMMISSION

Instructions

One-Time Information Collection for International Section 214 Authorization Holders

TABLE OF CONTENTS

PRIVACY ACT STATEMENT

Authority: The FCC is authorized to collect the information that is requested in this one-time collection pursuant to the authority contained in 47 U.S.C. 214, 307, 309, 310, 319, and 332, as well as 151, 152, 154(i)–(j) & (o), 155, 251(e)(3), 254, 257, 301, 303, 332, 402, 1302; and 5 U.S.C. 602(c) and 609(a)(3), as well as 47 CFR 1.10000–1.10018, 1.5000–1.5004, and 63.09–63.702.

Purpose: The information collected in this One-Time Information Collection is utilized by the FCC to regulate and process applications and other filings involving, among others, International Section 214 Authorizations, as well as to enforce FCC regulations and the Communications Act of 1934.

Routine Uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the FCC may disclose information provided in this collection, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3), including: to the public, except for material that is afforded confidential treatment, in accordance with section 0.459 of the FCC's rules; to an FCC Bureau or Office or another government agency, or representative thereof, for purposes of obtaining information so long as it is relevant to the regulation of a license, authorization, or permit or a pending transaction of an FCC-issued license, authorization, or permit; to the Department of Treasury, State government, or a debt collection agency to collect a claim owed to the FCC; for law enforcement and investigation; and to non-federal personnel, including contractors, who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

A full, detailed list of the routine uses is published in the system of records notices associated with this collection, IB–1, International Bureau Filing System, which is available at https://www.fcc.gov/sites/default/files/sor-fcc-ib-1.pdf, and FCC-2, which is available at https://www.fcc.gov/sites/default/files/sor-fcc-2.pdf.

Disclosure: This information collection is mandatory. The FCC's Evolving Risks Order & NPRM (*Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 Through 1.1109 of the Commission's Rules*, No. FCC 23-28) requires all International Section 214 Authorization Holders to respond to a one-time collection to update the Commission's records regarding the foreign ownership of International Section 214 Authorization Holders. The Commission is currently considering in this NPRM whether to cancel the authorizations of carriers that fail to timely respond to the One-Time Information Collection and to impose forfeitures or other measures where a carrier fails to respond in a timely or complete manner.

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD−PERM, Paperwork Reduction Project (3060−1308), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember − You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-1308.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104−13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

I. GENERAL INFORMATION AND REQUIREMENTS

A. What is the purpose of the One-Time Information Collection?

On April 20, 2023, the Federal Communications Commission (Commission) adopted an *Order* (FCC 23-28) requiring all International Section 214 Authorization Holders (Authorization Holders) to provide foreign ownership information in a one-time collection (One-Time Information Collection).

- The *Order* directed each Authorization Holder to identify its 10% or greater direct or indirect Foreign Interest Holders that hold such equity and/or voting interests, or a controlling interest, in the Authorization Holder (Reportable Foreign Ownership) as of thirty (30) days prior to the filing deadline.
- The *Order* required each Authorization Holder to certify as to the accuracy of the information provided.

B. Who must respond to the One-Time Information Collection?

The entity or individual that currently holds the International Section 214 Authorization must respond to the One-Time Information Collection before the filing deadline. Below are examples of who is responsible for responding to the One-Time Information Collection if an assignment or transfer of control occurred.

- **Assignment** - If Company A assigned its International Section 214 Authorization to Company B, Company B now holds the Authorization.
    - Company B is required to respond to the One-Time Information Collection.
- **Transfer of Control** – If Company Y, the owner of Authorization Holder X, sells its interest in Authorization Holder X to Company Z, Authorization Holder X continues to hold the Authorization.
    - Authorization Holder X is required to respond to the One-Time Information Collection.

C. Can an Authorization Holder review the questions in the One-Time Information Collection before starting the form?

Yes, the Authorization Holder can review the questions before starting the form at the following link: https://www.fcc.gov/one-time-information-collection-international-section-214-authorization-holders.

D. If an Authorization Holder no longer needs or uses its International Section 214 Authorization, does it need to respond to the One-Time Information Collection?

If an Authorization Holder files a surrender letter before the filing deadline, the Authorization Holder **does not** need to respond to the One-Time Information Collection. An Authorization Holder that no longer needs or uses its authorization(s) is strongly encouraged to surrender its International Section 214 Authorization(s) **before** the filing deadline.

- **Filing a Surrender Letter in ICFS.** An Authorization Holder may file a surrender letter in the International Communications Filing System (ICFS). The Commission does not have a specific rule on surrender letters but it is customary for the Authorization Holder to upload a letter surrendering the International Section 214 Authorization in ICFS for its Authorization File Number(s).

    - **Link to ICFS.** To file a surrender letter, the Authorization Holder may visit the ICFS homepage at https://www.fcc.gov/icfs.

        - The Authorization Holder should file the surrender letter in ICFS as a "Letter" under "Pleadings and Comments."
    - **Information in the Surrender Letter.** In the surrender letter, it is customary for the Authorization Holder to provide:
        - The Authorization File Number(s) that the Authorization Holder is surrendering;
        - Information as to whether the Authorization Holder has existing customers;
        - An explanation as to what is happening and/or will happen to the customers.
            - For example, whether the carrier has filed a notification of discontinuance pursuant to Section 63.19 of the Commission's rules, or whether the carrier has other International Section 214 Authorizations that it will use to continue providing service to its customers.

- An Authorization Holder that **does not** file a surrender letter before the filing deadline **must respond** to the One-Time Information Collection, even if the Authorization Holder no longer needs or uses its International Section 214 Authorization.

E. How can an Authorization Holder access the online filing system for the One-Time Information Collection?

Each Authorization Holder must complete and submit the form online at https://fccgov.gov1.qualtrics.com/jfe/form/SV_8pRWfOK9suOxy86.

Each Authorization Holder must log into the online filing system with its username and password for the FCC User Registration System (see page 11 below).

F. What is an FCC Registration Number (FRN) and how can an Authorization Holder obtain an FCC Registration Number (FRN)?

All Authorization Holders must have an FRN to file their responses to the One-Time Information Collection.

An FRN is the 10-digit number assigned to all individuals and entities that transact business with the Commission. An FRN must be provided any time an Authorization Holder submits an application in ICFS.

- **Authorization Holder Does Not Have an FRN**. If an Authorization Holder does not have an FRN, the Authorization Holder must obtain an FRN through the Commission Registration System (CORES) webpage at https://apps.fcc.gov/cores/userLogin.do.
    - An entity that holds an International Section 214 Authorization should identify itself as an "Entity" in CORES.
    - For additional assistance, submit a help request at https://www.fcc.gov/wireless/available-support-services or call the FRN Help Desk at (877) 480-3201 (Monday-Friday, 8 a.m.-6 p.m. ET).
    - After obtaining its FRN, the Authorization Holder should complete the following steps:
        1. The Authorization Holder must send an email to ICFSInfo@fcc.gov to request that FCC staff add the FRN to its current Authorization File Number(s) in ICFS.
        2. The Authorization Holder will need to provide its FRN, current Authorization File Number(s), and telephone number in the email to FCC staff.

3. Once FCC staff update the information in ICFS, FCC staff will inform the Authorization Holder by email that it can complete the One-Time Information Collection.
4. The Authorization Holder can also check whether its FRN is associated with its current Authorization File Number(s) in ICFS at: https://www.fcc.gov/icfs.

- If the Authorization Holder has further questions, it can send an email to ICFSInfo@fcc.gov.

G. How can an Authorization Holder determine that its FRN is associated with its Authorization File Number(s)?

- **FRN is Associated with Current Authorization File Number(s).** If an Authorization Holder has an FRN associated with a current Authorization File Number(s) in ICFS, the Authorization Holder must submit a response to the One-Time Information Collection using that specific FRN.
  - The Authorization Holder should not obtain a new FRN.
  - An Authorization Holder can determine the FRN associated with its current Authorization File Number(s) by accessing records associated with the Authorization File Number(s) in ICFS at: https://www.fcc.gov/icfs.

- **FRN is Not Associated with Current Authorization File Number(s).** If an Authorization Holder has an FRN, but the FRN is not associated with a current Authorization File Number(s) in ICFS, the Authorization Holder must contact FCC staff to add the FRN to its current Authorization File Number(s) in ICFS. Below, are the steps:

1. The Authorization Holder must send an email to ICFSInfo@fcc.gov to request that FCC staff add the FRN to its current Authorization File Number(s) in ICFS.
2. The Authorization Holder will need to provide its FRN, current Authorization File Number(s), and telephone number in the email to FCC staff.
3. Once FCC staff update the information in ICFS, FCC staff will inform the Authorization Holder by email that it can complete the One-Time Information Collection.
4. The Authorization Holder can also check whether its FRN is associated with its current Authorization File Number(s) in ICFS at: https://www.fcc.gov/icfs.
   - If the Authorization Holder has further questions, it can send an email to ICFSInfo@fcc.gov.

H. Will the FCC publish the results of the One-Time Information Collection?

All responses, including any personally identifiable information (PII) provided, will be made publicly available in IB Docket No. 23-119 and associated with the Authorization Holder's International Section 214 Authorization(s) in ICFS, except to the extent that any material or information is afforded confidential treatment. For more information about the Commission's uses and disclosures of such information, see https://www.fcc.gov/sites/default/files/sor-fcc-ib-1.pdf.

I. What are the consequences for failure to file a timely response?

The Commission is currently considering in a Notice of Proposed Rulemaking in IB Docket No. 23-119 whether to cancel the authorizations of carriers that fail to timely respond to the One-Time Information Collection and to impose forfeitures or other measures where a carrier fails to respond in a timely or complete manner.

J. What are the consequences for false statements?

Willful false statements on this form are punishable by fine and/or imprisonment (U.S. Code, Title 18, Section 1001), and/or revocation of any station license or construction permit (U.S. Code, Title 47, Section 312(a)(1)), and/or forfeiture (U.S. Code, Title 47, Section 503).

II. PREPARING FOR THE ONE-TIME INFORMATION COLLECTION

A. What does an Authorization Holder need to do before starting the One-Time Information Collection?

Authorization Holders should prepare for the form and review the technical information below before answering the questions in the One-Time Information Collection.

The Authorization Holder should:

1. Ensure it knows its FRN(s) and current International Section 214 Authorization File Number(s) associated with each FRN.
    - To determine its FRN, the Authorization Holder should visit the Commission Registration System (CORES) webpage at https://apps.fcc.gov/cores/userLogin.do, and search for the Authorization Holder's FRN using other identifying information specified in the CORES search functions.

2. Review the Commission's *Order and Notice of Proposed Rulemaking* (FCC 23-28) and the Office of International Affairs' Order (DA 23-745) and Public Notice (DA 23-746) addressing an Exemption (as discussed below).

3. Review these Instructions and the FAQs.
    - The FAQs are available at https://www.fcc.gov/faq-one-time-information-collection-international-section-214-authorization-holders.

4. Review and understand the technical information, as discussed below.

5. Compile all of the information required by the One-Time Information Collection before starting the form.

6. Have all of the information required by the collection in front of it before starting the form.

III. IMPORTANT TECHNICAL INFORMATION

A. What technical information does an Authorization Holder need to know before starting the One-Time Information Collection?

The Authorization Holder should review and understand the following technical information before starting the One-Time Information Collection.

- **The Filer is Unable to Go Back to Previously Answered Questions.** The filer cannot go back and review earlier responses after moving to the next question.

- **The System Will Provide A Copy of the Filer's Answers to the Questions Only After the Filer Submits the Completed Form.** A PDF document with the Authorization Holder's answers will be available only after the filer completes and submits the survey.

- **Carefully Review Answers Before Continuing to the Next Question.** Because an officer of the Authorization Holder must certify to the truth and accuracy of its responses at the end of the form, we encourage the filer to carefully review the answer to each question before moving to the next question.

- **Copies of Questions and Responses.** The Authorization Holder may save a copy of each response before continuing to the next question.
    - For example, the Authorization Holder may print a copy of each response or take a screen shot of each answer before moving to the next question.

- **Timing Out After One Hour of Inactivity.** The One-Time Information Collection will time out after one hour of inactivity. If this occurs, an email containing a link will be sent to the Authorization Holder that will allow it to complete the One-Time Information Collection.
    - An email containing the link will be sent to the email address that the Authorization Holder used to log into the online system.
    - If the email address of the Authorization Holder's Certifying Official was entered in response to Question 3.b. beforehand, an email containing the link will also be sent to the Certifying Official's email address.

- **Do Not Use the Back Button on the Browser.** If the Authorization Holder clicks on the "Back" button of the browser or directly opens an embedded link, the Authorization Holder will be directed out of the form, and automatically will time out of the system after one hour of inactivity. The Authorization Holder will need to either:
    - Use the link that will be provided in an email to complete the One-Time Information Collection (see "Timing Out After One Hour of Inactivity"), or
    - Use the link provided on the One-Time Information Collection webpage to log into the system and respond to each question again starting at the beginning of the form.

- **How to Open Embedded Links.** To open embedded links in any part of the form, "right click" on a link and select "Open Link in New Tab." If the Authorization Holder instead directly clicks on and opens an embedded link, the Authorization Holder will be directed out of the form, and automatically will time out of the system after one hour of inactivity. The Authorization Holder will need to either:
    - Use the link that will be provided in an email to complete the One-Time Information Collection (see "Timing Out After One Hour of Inactivity"), or
    - Use the link provided on the One-Time Information Collection webpage to log into the system and respond to each question again starting at the beginning of the form.

B. Should an Authorization Holder enable cookies on its browser before it begins the One-Time Information Collection?

The Authorization Holder should enable cookies on its browser to save its progress. To save its progress if the Authorization Holder needs to exit the One-Time Information Collection before submitting its responses, the Authorization Holder should ensure that cookies are enabled on its browser before beginning the One-Time Information Collection.

- **An Authorization Holder's progress will not be saved if, for example:**

- Cookies are disabled and the Authorization Holder exits the One-Time Information Collection before submitting its responses, or
- The Authorization Holder exits the One-Time Information Collection before submitting its responses and then clears cookies in its browser.

IV. AUTHORIZATION HOLDERS WITH MULTIPLE FCC REGISTRATION NUMBERS (FRNS)

A. If an Authorization Holder has multiple FRNs, how should it fill out the form?

If an Authorization Holder has multiple FRNs, the Authorization Holder must file separate responses to the One-Time Information Collection for each FRN and the Authorization File Number(s) associated with that FRN.

- The Authorization Holder must use the link to the online form that is provided on the One-Time Information Collection webpage to file a separate response for each FRN.

- The link to the online form is: https://fccgov.gov1.qualtrics.com/jfe/form/SV_8pRWfOK9suOxy86.

B. If an Authorization Holder has multiple FRNs that are associated with different FCC Username Accounts (i.e., different usernames/email addresses) in the FCC User Registration System, how should it fill out the form for each FRN?

To start a new form for an FRN(s) with a different FCC Username Account(s), the Authorization Holder must:

- Clear the browsing data and cookies in its web browser each time before it clicks on the link on the One-Time Information Collection webpage. By doing this, the Authorization Holder will be back at the log-in page.

- The Authorization Holder can then enter its username/email address to start a new form with a different email address and for a different FRN.

- The Authorization Holder should follow these instructions for each respective FRN.

- If the Authorization Holder is not able to get back to the log-in page, email the FCC's Office of International Affairs, Telecommunications & Analysis Division with your telephone number at fcc-evolving-risks@fcc.gov. A staff member will call you to troubleshoot any issues.

V. CORRECTING RESPONSES PRIOR TO OR AFTER A SUBMISSION

A. How should an Authorization Holder correct an error in its response PRIOR to submission?

Because an officer of the Authorization Holder must certify to the truth and accuracy of its responses at the end of the form, we encourage the Authorization Holder to carefully review its answer to each question before moving to the next question. Below are the steps if an Authorization Holder needs to correct an error on any question before it certifies and submits its responses to the One-Time Information Collection:

- The Authorization Holder should send an email to Evolving.Risks_RetakeLink@fcc.gov and request a new link to retake the One-Time Information Collection (retake link).
- The Authorization Holder will need to provide its FRN in the email.
- Once FCC staff close the Authorization Holder's One-Time Information Collection session associated with the FRN, the Authorization Holder will receive an automated email that contains a retake link that the Authorization should use to complete the One-Time Information Collection.
- The Authorization Holder will have the ability to view and modify its current responses through the retake link.
    - An email containing the retake link will be sent to the email address that the Authorization Holder used to log into the online system.
    - If the email address of the Authorization Holder's Certifying Official was entered in response to Question 3.b., an email containing the retake link will also be sent to the Certifying Official's email address.
- The Commission will consider only a filer's most recent submission of the One-Time Information Collection before the deadline.

B. How should an Authorization Holder correct an error AFTER submission?

If the Authorization Holder needs to correct its response to the One-Time Information Collection after submission, the Authorization Holder can submit new responses **before the deadline on January 22, 2024 by 11:59 pm Eastern Time (ET)**.

- If the Authorization Holder needs to correct its response after submission, **IT MUST** use the link:
    - On the confirmation webpage at the end of the One-Time Information Collection or
    - In the email from the most recent submission.
- An email containing the retake link will be sent to:
    - (1) the email address that the Authorization Holder used to log into the online system, and
    - (2) the email address of the Authorization Holder's Certifying Official.
- The email will include a PDF copy of the answers that the Authorization Holder submitted in response to the questions in the One-Time Information Collection.
- An Authorization Holder may find it helpful to retain the PDF copy of the responses if the Authorization Holder needs to correct its previous responses to the One-Time Information Collection.
    - An officer of the Authorization Holder must certify to the truth and accuracy of all information in the corrected submission provided in response to the One-Time Information Collection.
    - Such corrected submission will replace the Authorization Holder's previous erroneous submission.
- The Commission will consider only a filer's most recent submission of the One-Time Information Collection before the deadline.

IMPORTANT NOTE: After submitting the form, if the Authorization Holder needs to correct its response, it must use the retake link provided in the email from the most recent submission. It should not use the original link provided on the One-Time Information Collection webpage, which would generate a new response.

VI. FCC ASSISTANCE ON THE ONE-TIME INFORMATION COLLECTION

A. Who can assist the Authorization Holder with questions on the One-Time Information Collection?

- ***One-Time Information Collection***. For questions about the One-Time Information Collection, email the FCC's Office of International Affairs, Telecommunications & Analysis Division at fcc-evolving-risks@fcc.gov.
- ***FCC Registration Numbers (FRNs)***. For questions relating to FRNs, submit a help request at https://www.fcc.gov/wireless/available-support-services or call the FRN Help Desk at (877) 480-3201 (Monday-Friday, 8 a.m.-6 p.m. Eastern time (ET)). Additional information regarding FRNs can be found on the Commission Registration System (CORES) webpage at https://apps.fcc.gov/cores/userLogin.do.
- ***ICFS***. Additional information regarding ICFS can be found on the ICFS homepage at https://www.fcc.gov/icfs. For questions relating to ICFS, email ICFSInfo@fcc.gov or call ICFS Help Line at (202) 418-2222 (Monday-Friday, 8:30 a.m.-4:30 p.m. ET).
- ***Requesting a Retake Link to Correct Errors Prior to Submission***. If an Authorization Holder needs to correct an error on any question before it certifies and submits its responses to the One-Time Information Collection, the Authorization Holder can send an email to Evolving.Risks_RetakeLink@fcc.gov to request a new link to retake the One-Time Information Collection.

B. Where can the Authorization Holder find other Frequently Asked Questions?

- Frequently Asked Questions (FAQs) are available at the following link: https://www.fcc.gov/faq-one-time-information-collection-international-section-214-authorization-holders.

VII. COMPLETING EACH QUESTION IN THE ONE-TIME INFORMATION COLLECTION

IMPORTANT INFORMATION PRIOR TO STARTING THE FORM

- We encourage all filers to read the instructions fully, including the Important Technical Information at pages 9-11 and how to correct responses prior to and after a submission at pages 11-12.
- The Authorization Holder cannot go back and review its earlier responses after it moves to the next question.
- Because an officer of the Authorization Holder must certify to the truth and accuracy of its responses at the end of the form, we encourage the Authorization Holder to carefully review its answer to each question **BEFORE** moving to the next question. It may save a copy of each response before continuing to the next question. For example, it may:
  - Print a copy of each answer,
  - Save each answer as a PDF, or
  - Take a screen shot of each answer before moving to the next question.
- To correct an error PRIOR to submission, the Authorization Holder should send an email to Evolving.Risks_RetakeLink@fcc.gov and request a retake link, or wait for the form to time out after one hour to automatically receive a retake link via email.
- To correct an error AFTER submission, the Authorization Holder must use either the link:
  - On the confirmation webpage at the end of the One-Time Information Collection or
  - In the email from the most recent submission.
  - The Commission will consider only a filer's most recent submission of the One-Time Information Collection before the deadline.

IMPORTANT NOTE: After submitting the form, if the Authorization Holder needs to correct its response, it must use the retake link provided in the email from the most recent submission. It should not use the original link provided on the One-Time Information Collection webpage, which would generate a new response.

A. Log In & Entity (or Registrant) Verification (Questions 1 – 1.a)

1. QUESTION 1

Enter the 10-digit FCC Registration Number (FRN) of the Authorization Holder. The Authorization Holder must enter the FRN associated with the username that it used to log into the online system for the One-Time Information Collection.

- See pages 7-8 for further requirements regarding FRNs.
- Include all leading zeros when entering the FRN.
- For example, enter: 0012345678

2. QUESTION 1.a

Question 1.a will populate the following information associated with the FRN in CORES. The Authorization Holder must review this information for accuracy.

- Registration Date
- Last Updated
- Entity/Registrant Name
- Entity/Registrant Type

- If the Entity Name or Entity Type (or Registrant Name or Registrant Type) is incorrect or blank, the Authorization Holder must correct the information by following these steps:

  (1) Close the online filing system for the One-Time Information Collection;
  (2) Log into CORES and update the information; and
  (3) Restart the One-Time Information Collection by clicking on the link provided on the One-Time Information Collection webpage and logging back into the online filing system.
- After these steps have been taken, the updates that the Authorization Holder implemented in CORES should be populated in Question 1.a.

Inaccurate CORES Information. If the Entity Name or Entity Type (or Registrant Name or Registrant Type) is incorrect or blank, the Authorization Holder must log into CORES and update the information before continuing the One-Time Information Collection. The Authorization Holder may submit a help request at https://www.fcc.gov/wireless/available-support-services or call the FRN Help Desk at (877) 480-3201 (Monday-Friday, 8 a.m.-6 p.m. Eastern time (ET)). Additional information regarding FRNs can be found on the Commission Registration System (CORES) webpage at https://apps.fcc.gov/cores/userLogin.do.

B. Identify All Current Authorization File Numbers Associated with FRN (Questions 2 – 2.b)

1. QUESTION 2

Enter all of the Authorization Holder's current International Section 214 Authorization File Numbers associated with this FRN. If an Authorization Holder has more than one FRN associated with its current International Section 214 Authorization File Number(s), it will need to file separate responses to the One-Time Information Collection for each FRN and the current Authorization File Number(s) associated with that FRN.

- The Authorization Holder must only report all of the current Authorization File Numbers associated with the FRN identified in response to Question 1.
- See pages 7-8 for further requirements regarding FRNs.

The Authorization Holder may enter up to a maximum of **49 Authorization File Numbers in this question.**

- Leave blank any fields that are not applicable.
- Do not use dashes or spaces when entering the Authorization File Numbers.
- For example, enter: ITC2142023073100001 or ITCMOD2023073100001

More Than 49 Authorization File Numbers: If the Authorization Holder has more than **49 current Authorization File Numbers** associated with the FRN, the Authorization Holder must identify all of the remaining Authorization File Numbers in a text box provided in Question 2.b.

Error Message: Entering an Authorization File Number that is not associated with the Authorization Holder's FRN will result in an error message and prevent the Authorization Holder from advancing to the next question. If the Authorization Holder receives an error message, the Authorization Holder must use the link provided in the error message and restart the One-Time Information Collection from the beginning of the form.

Additional Assistance: If the Authorization Holder does not know the Authorization File Number(s) associated with its FRN, the Authorization Holder should visit the ICFS homepage at https://fcc.gov/icfs. For questions relating to ICFS, email ICFSinfo@fcc.gov or call ICFS Help Line at (202) 418-2222 (Monday-Friday, 8:30 a.m.-4:30 p.m. ET).

2. QUESTION 2.a

Respond with "Yes" or "No" as to whether the Authorization Holder has any additional Authorization File Numbers associated with this FRN.

3. QUESTION 2.b

Enter all of the remaining Authorization File Numbers associated with this FRN.

- If the Authorization Holder has more than **49 current Authorization File Numbers** associated with the FRN, the Authorization Holder must identify all of the remaining Authorization File Numbers **in a text box** provided in Question 2.b.
  - Do not use dashes or spaces when entering the Authorization File Numbers.
  - Separate the Authorization File Numbers with commas, and do not add a space after each comma.
  - For example, enter: ITC2142023073100001,ITCMOD2023073100001

C. Authorization Holder's Contact Information (Questions 3 – 3.b)

1. QUESTION 3

Enter the Authorization Holder's Contact Information. The contact person should be an officer of the Authorization Holder who will also certify to the truth and accuracy of the information in the form.

- Enter the requested information for the Authorization Holder's Certifying Official who should receive any follow-up questions about the information submitted in the filing.
- Enter the Certifying Official's first name, last name, company or organization, position/title, address, city, U.S. state/territory (two letter abbreviation or "OU" for an international address), and zip code/postal code. For an international address, enter the international state/province.

2. QUESTION 3.a

Select the country associated with the Certifying Official's address.

3. QUESTION 3.b

Enter the Certifying Official's telephone number, telephone country code (if outside of the United States) (optional), email address, fax number (optional), and fax country code (if outside of the United States) (optional).

D. Authorizations Subject to a Mitigation Agreement (Questions 4 – 5.b)

1. QUESTION 4

Respond with "Yes" or "No" as to whether or not the Authorization Holder's International Section 214 Authorization(s) is subject to a mitigation agreement (e.g., national security agreement, letter of agreement/assurance) entered into by the Authorization Holder with the Executive Branch agencies.

2. QUESTION 5

Enter all of the ICFS File Numbers that contain a copy of the mitigation agreement.

- The Authorization Holder may enter up to a maximum of **15 File Numbers in this question**.
- Do not use dashes or spaces when entering the File Number.
  - For example, enter:
    - ITC2142023073100001
    - ITCMOD2023073100001
    - ITCT/C2023073100001
    - ITCASG2023073100001
    - ITCAMD2023073100001
- Leave blank any fields that are not applicable.
- If the Authorization Holder's International Section 214 Authorization(s) is subject to a mitigation agreement in an ISP-PDR File Number(s) in ICFS (in addition to or instead of an ITC File Number), the Authorization Holder must identify the ISP-PDR file number(s).

3. QUESTION 5.a

Respond with "Yes" or "No" as to whether the Authorization Holder has any additional File Numbers that are subject to the mitigation agreement.

4. QUESTION 5.b

Enter all of the remaining File Numbers that are subject to the mitigation agreement.

- If the Authorization Holder has more than **15 File Numbers** that are subject to the mitigation agreement, the Authorization Holder must enter all of the remaining File Numbers in a text box provided in Question 5.b.

  - Do not use dashes or spaces when entering the File Numbers.
  - Separate the File Numbers with commas, and do not add a space after each comma.
  - For example, enter:
    ITC2142023073100001,ITCMOD2023073100001,ITCT/C2023073100001,ITCASG2023073100001,ITCAMD2023073100001

E. Qualification for FCC's Exemption from Completing Questions 9-14 of the Form (Questions 6 – 8)

Authorization Holder Qualifies for an Exemption

If the Authorization Holder qualifies for the Exemption from completing Questions 9-14 of the form, answer "yes" to Question 6 and then answer Questions 7-8, and Questions 15-16. For further information, refer to the FCC, Office of International Affairs' Order with respect to the Exemption requirements (DA 23-745).

Authorization Holder Does Not Qualify for an Exemption

If the Authorization Holder DOES NOT qualify for the Exemption, it must answer "no" in Question 6, and then answer Question 9 concerning Reportable Foreign Ownership, and Questions 9.a-16.

1. QUESTION 6

The FCC has allowed an exemption from completing the latter portion (Questions 9-14) of this form if certain requirements are met. Respond with "Yes" or "No" as to whether the Authorization Holder qualifies for the Exemption from completing Questions 9-14 of this form.

To qualify for the Exemption:

(1) The Authorization Holder must have filed an application for an initial International Section 214 Authorization, modification, or ***substantial*** (not a *pro forma* filing) assignment or transfer of control of the authorization that was reviewed by the Executive Branch agencies and was granted by the Commission on or after January 22, 2021; and

(2) There are no reportable Foreign Interest Holders of the Authorization Holder other than those disclosed in the application (including any amendment), and there are no changes to the reportable Foreign Interest Holders disclosed in the application (including any amendment) as of December 23, 2023.

- **Type of Application(s)**. The type of applications that fulfill the Exemption are applications for:
  - An initial International Section 214 Authorization;
  - Modification of the Authorization;
  - **Substantial** Assignment of the Authorization;
  - **Substantial** Transfer of Control of the Authorization

NOTE: *Pro forma* assignment and transfer of control notifications do not fulfill the requirements for the Exemption. Section 63.24 of the Commission's rules provides information with regard to substantial transactions and *pro forma* transactions.

- **Three Year Timeframe.** The application was reviewed by the Executive Branch agencies and was granted by the Commission on or after January 22, 2021.
- **No New Reportable Foreign Interest Holders or Other Changes.** For purposes of this One-Time Information Collection, a "reportable Foreign Interest Holder" is a foreign individual(s) and/or entity(ies) (including a government organization) that directly and/or indirectly holds 10% or greater equity and/or voting interests, or a controlling interest, in an Authorization Holder (Reportable Foreign Ownership).

- To qualify for the Exemption, there must not be reportable Foreign Interest Holders other than those disclosed in the application (including any amendment).

- To qualify for the Exemption, there must be no changes to the reportable Foreign Interest Holders disclosed in the application (including any amendment), including but not limited to:

    - No change in the reported citizenship(s), including dual or multiple citizenships, and/or place(s) of organization of any reportable Foreign Interest Holder;
    - No removal of any reportable Foreign Interest Holder from an Authorization Holder's chain of ownership; and
    - No change in a reportable Foreign Interest Holder's ownership interests to less than 10% equity and/or voting interests or less than a controlling interest.

2. QUESTION 7

Identify the File Number of the application that fulfills all of the requirements for the Exemption. If more than one application fulfills all of these requirements, provide the most recent File Number.

- If the Authorization Holder qualifies for the Exemption, the Authorization Holder must enter the ICFS File Number of the application that fulfills all of the requirements for the Exemption.
    - Do not use dashes or spaces when entering the File Number.
    - For example, enter: ITC2142023073100001, ITCMOD2023073100001, ITCT/C2023073100001, or ITCASG2023073100001

3. QUESTION 8

Aggregate and identify all of the citizenship(s) or place(s) of organization for every foreign individual and/or entity (including a government organization) that directly and/or indirectly holds 10% or greater equity and/or voting interests, or a controlling interest, in the Authorization Holder (Reportable Foreign Ownership).

- If the Authorization Holder qualifies for the Exemption, the Authorization Holder must identify the citizenship(s) or place(s) of organization for each of its reportable Foreign Interest Holders.

- The Authorization Holder must select **all such countries of citizenships and/or places of organization from the list presented in Question 8.** If there is more than one individual/entity that has a citizenship or place of organization from a given country, the country only needs to be selected once.

- Each Authorization Holder is required to identify Reportable Foreign Ownership where any interest holder (including a government organization) has a place of organization in or is a citizen of a country that meets the Department of Commerce's definition of a "foreign adversary." (FCC 23-28)

- **Foreign Adversary.** A "foreign adversary" is defined in the Department of Commerce's rule, 15 CFR § 7.4. These are: (1) The People's Republic of China, including the Hong Kong

Special Administrative Region (China), (2) Republic of Cuba (Cuba), (3) Islamic Republic of Iran (Iran), (4) Democratic People's Republic of Korea (North Korea), (5) Russian Federation (Russia), and (6) Venezuelan politician Nicolás Maduro (Maduro Regime).

  - To identify Reportable Foreign Ownership that meets the Department of Commerce's definition of "Venezuelan politician Nicolás Maduro (Maduro Regime)," an Authorization Holder can select "Maduro Regime" as a separate, additional response to "Country of Citizenship or Place of Organization."

- **Non-Foreign Adversary.** An Authorization Holder must also identify Reportable Foreign Ownership from non-"foreign adversary" countries.

F. Identify Whether the Authorization Holder Has Reportable Foreign Ownership (Question 9)

1. QUESTION 9

Respond with "Yes" or "No" as to whether the Authorization Holder has any 10% or greater direct or indirect Foreign Interest Holders that hold such equity and/or voting interests or any controlling interest (Reportable Foreign Ownership) as of December 23, 2023 (i.e., thirty (30) days prior to the filing deadline for this One-Time Information Collection).

- *See* 47 CFR § 63.18(h); *Order* at para. 18 & n.73; *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10985, Appx. B, para. 11 (2020); *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Erratum, 35 FCC Rcd 13164, 13173, para. 11 (2020).

- All Authorization Holders that do not qualify for the Exemption must respond to Question 9.

- If the Authorization Holder responds "No" in Question 9, the Authorization Holder must then complete Questions 14-16.

G. Reportable Foreign Ownership (Questions 9.a – 13)

1. QUESTION 9.a

Select the number of Foreign Interest Holders that directly and/or indirectly hold 10% or greater equity and/or voting interests, or a controlling interest, in the Authorization Holder.

IMPORTANT NOTE: Questions 10-11 can collect only **up to 41 reportable Foreign Interest Holders.** If the Authorization Holder **has 42 or more reportable Foreign Interest Holders**, the Authorization Holder must provide the information about all of its remaining Foreign Interest Holders in response to Question 13.

- If the Authorization Holder has one or more foreign individual(s) and/or entity(ies) (including a government organization) that directly and/or indirectly hold a Reportable Foreign Ownership interest, the Authorization Holder must complete Questions 10-11 for each reportable Foreign Interest Holder.
- Questions 10 and 11 will repeat for the number of Foreign Interest Holders that are specified in the response to Question 9.a.

- For example, if Company A has two reportable Foreign Interest Holders (i.e., "Foreign Interest Holder 1" and "Foreign Interest Holder 2"), the Authorization Holder would select "2" in response to Question 9.a.
- Based on Company A's response, Questions 10 and 11 would automatically repeat two times. The Authorization Holder should enter the required information for Foreign Interest Holder 1 in Questions 10 and 11, and then enter the required information for Foreign Interest Holder 2 when Questions 10 and 11 are displayed again.
- The top of the webpage for both Questions 10 and 11 would state:
  - "Foreign Interest Holder 1 of 2" and
  - "Foreign Interest Holder 2 of 2."

If the Authorization Holder **has 42 or more reportable Foreign Interest Holders**, it must provide the information about all of its remaining Foreign Interest Holders in response to Question 13.

- In Question 12, the Authorization Holder must affirm it has 42 or more reportable Foreign Interest Holders.
- In Question 13, the Authorization Holder must download the .csv attachment available at the link provided in Question 13 or at the enclosed link, respond to all of the questions in the .csv attachment (based on Questions 10 and 11) for each of the remaining Foreign Interest Holders, and upload the completed attachment in response to this question in the online filing system for the One-Time Information Collection.

2. QUESTION 10

Identify each foreign individual and/or entity (including a government organization) that directly and/or indirectly holds 10% or greater equity and/or voting interests, or a controlling interest, in the Authorization Holder (Reportable Foreign Ownership) as of December 23, 2023 (i.e., thirty (30) days prior to the filing deadline).

- Enter the Legal Name of Foreign Interest Holder, Percentage of Equity Interests Held (to the nearest one percent), Percentage of Voting Interests Held (to the nearest one percent), and Description of Controlling Interests (if applicable, or enter "None").
  - The Authorization Holder must complete each field.
  - If the Foreign Interest Holder holds no equity or voting interest, the Authorization Holder should enter "0" for "Percentage of Equity Interests Held (to the nearest one percent)" or "Percentage of Voting Interests Held (to the nearest one percent)."
  - If the Foreign Interest Holder does not hold a controlling interest, the Authorization Holder should enter "None" for "Description of Controlling Interests."

- Each Authorization Holder is required to identify Reportable Foreign Ownership where any interest holder (including a government organization) has a place of organization in (for entities) or is a citizen of (for individuals) a country that meets the Department of Commerce's definition of a "foreign adversary." (FCC 23-28)

- **Foreign Adversary.** A "foreign adversary" is defined in the Department of Commerce's rule, 15 CFR § 7.4. These are: (1) The People's Republic of China, including the Hong Kong Special Administrative Region (China), (2) Republic of Cuba (Cuba), (3) Islamic Republic of Iran (Iran), (4) Democratic People's Republic of Korea (North Korea), (5) Russian Federation (Russia), and (6) Venezuelan politician Nicolás Maduro (Maduro Regime).

- To identify Reportable Foreign Ownership that meets the Department of Commerce's definition of "Venezuelan politician Nicolás Maduro (Maduro Regime)," an Authorization Holder can select "Maduro Regime" as a separate, additional response to "Country of Citizenship or Place of Organization" in Question 11.

- **Non-Foreign Adversary.** An Authorization Holder must also identify Reportable Foreign Ownership from non-"foreign adversary" countries.

3. QUESTION 11

Identify all of the Countries of Citizenship or Places of Organization of the Foreign Interest Holder, including the United States.

- For each reportable Foreign Interest Holder, the Authorization Holder must select all of the countries of citizenship and/or places of organization of the Foreign Interest Holder from the list presented in Question 11.

- **Dual or More Citizenships.** The Authorization Holder must disclose whether any interest holder has dual or more citizenships and identify all countries where citizenship is held. This requirement applies to United States citizens who hold dual citizenship or multiple citizenships and foreign persons who are citizens of two or more countries. If the interest holder does not hold citizenship or place of organization in the United States or U.S. territories, the Authorization Holder must also select "No Citizenship or Place of Organization in the United States or its Territories."

- To identify Reportable Foreign Ownership that meets the Department of Commerce's definition of "Venezuelan politician Nicolás Maduro (Maduro Regime)," an Authorization Holder can select "Maduro Regime" as a separate, additional response to "Country of Citizenship or Place of Organization."

4. QUESTION 12

If an Authorization Holder selected "42 or more" in response to Question 9.a, the Authorization Holder will need to respond to Questions 10 and 11 a total of 41 times, and then will be directed to Question 12. The Authorization Holder must select "Continue" to confirm that the Authorization Holder has 42 or more Foreign Interest Holders that directly and/or indirectly hold 10% or greater equity and/or voting interests, or a controlling interest, in the Authorization Holder.

- If the Authorization Holder has **42 or more reportable Foreign Interest Holders**, the Authorization Holder must provide the information about all of its remaining Foreign Interest Holders in response to Question 13.

5. QUESTION 13

Identify all of the remaining foreign individual(s) and/or entity(ies) (including a government organization) that directly and/or indirectly hold 10% or greater equity and/or voting interests, or a controlling interest, in the Authorization Holder (Reportable Foreign Ownership) as of December 23, 2023 (i.e., thirty (30) days prior to the filing deadline), beyond the 41 Foreign Interest Holders identified by the Authorization Holder in its response to Questions 10-11.

- If an Authorization Holder has **42 or more reportable Foreign Interest Holders**, the Authorization Holder must provide the information required in Questions 10 and 11 for all of

the remaining Foreign Interest Holders by utilizing the .csv attachment available at a link provided in Question 13 or at the enclosed link.

- The Authorization Holder must download the .csv attachment available at a link provided in Question 13 or from the above link, respond to all of the questions in the .csv attachment (based on Questions 10 and 11) for each of the remaining Foreign Interest Holders, and upload the completed attachment in response to this question in the online filing system for the One-Time Information Collection.

H. No Reportable Foreign Ownership Certification (Question 14)

1. QUESTION 14

If applicable, the Authorization Holder must certify that it does not have 10% or greater direct or indirect Foreign Interest Holders that hold such equity and/or voting interests or any controlling interest (Reportable Foreign Ownership) in the Authorization Holder as of December 23, 2023 (i.e., thirty (30) days prior to the filing deadline).

- An Authorization Holder that has no Reportable Foreign Ownership must certify to the truth and accuracy of this information.

I. Certification (Questions 15 – 16)

1. QUESTION 15

An officer of the Authorization Holder must certify to the truth and accuracy of all information provided in response to the One-Time Information Collection.

- An officer of the Authorization Holder is, for example, a corporate officer, managing partner, or sole proprietor.

2. QUESTION 16

Type the Certifying Official's full name in the box.

- For purposes of this filing, the entry of the official's name shall constitute that official's electronic signature to this certification.
- The signature certifies that he/she has examined the filing and that, to the best of his/her knowledge, information and belief, all statements of fact contained in the filing are true and correct.
- Persons making willful false statements can be punished by fine or imprisonment under the Communications Act. 47 U.S.C. § 220(e).

J. After Submission of the One-Time Information Collection

Confirmation Webpage and Email. After submission, the Authorization Holder will view a confirmation webpage and will receive two automated emails that contain a PDF copy of its responses to the One-Time Information Collection. An automated email will be sent to:

- The email address of the Authorization Holder used to log into the online system, and
- The email address of the Authorization Holder's Certifying Official.

Retake the One-Time Information Collection. If the Authorization Holder needs to correct its response to the One-Time Information Collection after submission, the Authorization Holder can submit a new response **before the deadline on January 22, 2024 by 11:59 pm Eastern Time (ET)**.

- The Authorization Holder should review page 12 for complete instructions on correcting a submission.

- If the Authorization Holder needs to correct its response, **IT MUST** use either the link:
  - On the confirmation webpage at the end of the One-Time Information Collection or
  - In the email from the most recent submission.

- The Commission will consider only a filer's most recent submission of the One-Time Information Collection before the deadline.

IMPORTANT NOTE: After submitting the form, if the Authorization Holder needs to correct its response, it must use the retake link provided in the email from the most recent submission. It should not use the original link provided on the One-Time Information Collection webpage, which would generate a new response.

Approved by OMB
OMB Control Number 3060-1308
December 2023
Estimated Time per Response – 6 hours

PRIVACY ACT STATEMENT

Authority: The FCC is authorized to collect the information that is requested in this one-time collection pursuant to the authority contained in 47 U.S.C. 214, 307, 309, 310, 319, and 332, as well as 151, 152, 154(i)–(j) & (o), 155, 251(e)(3), 254, 257, 301, 303, 332, 402, 1302; and 5 U.S.C. 602(c) and 609(a)(3), as well as 47 CFR 1.10000–1.10018, 1.5000–1.5004, and 63.09–63.702.

Purpose: The information collected in this One-Time Information Collection is utilized by the FCC to regulate and process applications and other filings involving, among others, International Section 214 Authorizations, as well as to enforce FCC regulations and the Communications Act of 1934.

Routine Uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the FCC may disclose information provided in this collection, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3), including: to the public, except for material that is afforded confidential treatment, in accordance with section 0.459 of the FCC's rules; to an FCC Bureau or Office or another government agency, or representative thereof, for purposes of obtaining information so long as it is relevant to the regulation of a license, authorization, or permit or a pending transaction of an FCC-issued license, authorization, or permit; to the Department of Treasury, State government, or a debt collection agency to collect a claim owed to the FCC; for law enforcement and investigation; and to non-federal personnel, including contractors, who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

A full, detailed list of the routine uses is published in the system of records notices associated with this collection, IB–1, International Bureau Filing System, which is available at https://www.fcc.gov/sites/default/files/sor-fcc-ib-1.pdf, and FCC-2, which is available at https://www.fcc.gov/sites/default/files/sor-fcc-2.pdf.

Disclosure: This information collection is mandatory. The FCC's Evolving Risks Order & NPRM (*Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 Through 1.1109 of the Commission's Rules*, No. FCC 23-28) requires all International Section 214 Authorization Holders to respond to a one-time collection to update the Commission's records regarding the foreign ownership of International Section 214 Authorization Holders. The Commission is currently considering in this NPRM whether to cancel the authorizations of carriers that fail to timely respond to the One-Time Information Collection and to impose forfeitures or other measures where a carrier fails to respond in a timely or complete manner.

Approved by OMB
OMB Control Number 3060-1308
December 2023
Estimated Time per Response – 6 hours

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD−PERM, Paperwork Reduction Project (3060−1308), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember − You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-1308.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104−13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

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 23-1148
Enforcement Advisory No. 2023-03
Released: December 11, 2023

FCC ENFORCEMENT ADVISORY

TELECOMMUNICATIONS CARRIERS MUST PROTECT CONSUMERS' PRIVACY AND SENSITIVE DATA BY TAKING REASONABLE STEPS TO PREVENT SIM FRAUD SCHEMES

Threat Actors Increasingly Target Telecommunications Carriers and Consumers Through Fraudulent SIM Swapping

American consumers rely upon their mobile phones and the networks on which they operate in order to live, work, and play. These technologies are uniquely critical because of the ways in which they facilitate consumers' access to additional opportunities and services. Consumers frequently use their mobile phones, and rely on carriers, to authenticate their identities in order to access third-party accounts and platforms via multi-factor authentication—i.e., by requesting one-time passcodes ("OTPs") through Short Message Service ("SMS") and voice calls.[1] Unfortunately, threat actors are increasingly targeting this convenience by finding ways to intercept authentication texts and calls through fraudulent subscriber identity module ("SIM") swapping schemes. The Department of Homeland Security's Cyber Safety Review Board ("CSRB") issued a report outlining how threat actors compromised access to telecommunications providers' infrastructure to intercept these authentication passcodes to carry out data breaches in furtherance of ransom and extortion schemes.[2] Telecommunications service providers should familiarize themselves with the threats and vulnerabilities described in the CSRB report so as to fulfill their duties to protect their customers' sensitive information.

Section 222 of the Communications Act of 1934, as amended (the "Act"), confers upon "[e]very telecommunications carrier" a "duty to protect the confidentiality of proprietary information" of "customers." In particular, it limits the circumstances under which a carrier may "use, disclose, or permit access to" certain types of customer proprietary information, referred to as "customer

[1] U.S. Dep't of Homeland Security, Cyber Safety Review Board, *Review of the Attacks Associated with Lapsus$ and Related Threat Groups*, 5 (July 24, 2023), https://www.cisa.gov/sites/default/files/2023-08/CSRB_Lapsus%24_508c.pdf (*Cyber Safety Review Board Report*).

[2] *Id.* at 5, 12-16 (describing how threat actors stole customer information, source code, and other sensitive information through SIM swap fraud and other attacks).

proprietary network information" ("CPNI").[3] The Federal Communications Commission, the agency tasked with implementing and enforcing section 222, does so as informed by its mission of "promoting safety of life and property."[4] To advance that mission, the Commission recently adopted updates to its rules to further protect consumers from threats of SIM fraud schemes.[5]

The FCC's Enforcement Bureau ("Bureau"), in coordination with the Privacy and Data Protection Task Force,[6] issues this Enforcement Advisory to advise consumers and telecommunications service providers of the increased threat of fraudulent SIM swapping. We also remind telecommunications carriers of their duties and obligations to protect customer information generally, and specifically in order to combat fraudulent SIM swapping schemes that harm consumers and the broader public safety.

A telecommunications carrier's failure to reasonably protect customer information, including through allowing fraudulent SIM swap schemes, can independently violate the Act and Commission rules.[7] These failures may result in monetary forfeiture, additional reporting obligations, and/or other administrative remedies.

Risks Associated with SIM Fraud

Threat actors are increasingly engaging in SIM swap and port-out fraud (collectively, "SIM Fraud") schemes to gain control of consumers' mobile phone accounts and wreak havoc on people's financial and digital lives without ever needing to gain physical control of a device. This fraudulent activity primarily occurs through two means. In the first type of scheme, a threat actor convinces a victim's wireless provider to transfer the victim's mobile service and telephone number from the victim's cell phone to a cell phone in the threat actor's possession. This type of fraud is also known as "SIM swapping" because it involves an account being fraudulently transferred (or swapped) from a device associated with one SIM to a device associated with a different SIM.

In the second type of scheme, the threat actor, posing as the victim, opens an account with a wireless provider other than the victim's current provider. The threat actor then arranges for the

[3] 47 U.S.C. § 222(a), (c). *See also id.* § 222(h)(1) (defining 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 by a customer of a carrier; except that such term does not include subscriber list information."). CPNI includes, but is not limited to, the phone numbers called by a consumer; the frequency, duration, and timing of such calls; any services purchased by the consumer, such as call waiting; and location information related to the telecommunications service. In addition, for purposes of the CPNI rules (47 CFR § 64.2001, *et seq*.), the term "carrier" is defined to include interconnected VoIP providers. *See* 47 CFR § 64.2003(o).

[4] 47 U.S.C. § 151.

[5] *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 (WCB Nov. 16, 2023) (*SIM Fraud Report and Order and FNPRM*).

[6] *See* Press Release, Fed. Commc'ns Comm'n, Chairwoman Rosenworcel Launches New 'Privacy and Data Protection Task Force,' (June 14, 2023), https://docs.fcc.gov/public/attachments/DOC-394384A1.pdf.

[7] *See* 47 U.S.C. §§ 201(b), 222(a), (c), (h)(1); 47 CFR § 64.2010.

victim's phone number to be transferred (or "ported out") to the account with the new wireless provider controlled by the threat actor.

The CSRB report described above found that threat actors used various techniques, including emergency disclosure requests from telecommunications carriers, to obtain access to victims' CPNI and other personal information to facilitate these fraudulent schemes.[8]

Consumers use cell phone numbers to authenticate their identities across a variety of accounts, including with wireless providers, financial institutions, healthcare providers, and retail websites. SIM Fraud threatens consumers' privacy across these platforms by enabling threat actors to intercept authentication calls and texts. Once intercepted, the threat actors can take control of these accounts, which could result in illicit access to private health information, theft from financial accounts, or the sale or ransoming of information housed in social media accounts.[9] This fraudulent activity threatens public safety as well. These schemes may impact a consumer's ability to access important services, including emergency services, that are keyed to a consumer's mobile account or ability to make a call.[10]

SIM Fraud can have national security consequences as well. In at least one instance, threat actors targeted telecommunications service providers of U.S. government employees in an unsuccessful attempt to compromise mobile phone accounts associated with Federal Bureau of Investigation and Department of Defense personnel.[11] Illicit access to accounts held by U.S. government or military personnel may provide threat actors with sensitive personal information that could be used to target U.S. national security interests.[12]

Telecommunications Carriers' Obligations to Protect Customer Privacy Helps Combat SIM Fraud Schemes

Telecommunications carriers have an obligation to protect the privacy and security of information about their customers to which they have access as a result of their unique position

[8] *Cyber Safety Review Board Report*, *supra* note 1, at 7.

[9] *See, e.g.*, Press Release, U.S. Dep't of Justice, 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; Press Release, U.S. Dep't of Justice, 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*, NBC MIAMI (Aug. 26, 2022), https://www.nbcmiami.com/responds/woman-loses-life-savings-in-sim-swap-scam/2845044/; Press Release, U.S. Dep't of Justice, 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; Press Release, U.S. Dep't of Justice, 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; Lorenzo Franceschi-Bicchierai, *Hacker Who Stole $5 Million By SIM Swapping Gets 10 Years in Prison*, VICE (Feb. 1, 2019), https://www.vice.com/en/article/gyaqnb/hacker-joel-ortiz-sim-swapping-10-years-in-prison.

[10] *See e.g., SIM Fraud Report and Order and FNPRM*, *supra* note 5, at para. 7.

[11] *Cyber Safety Review Board Report*, *supra* note 1, at 8.

[12] *See id., e.g.*, at 8.

as network operators and as the gatekeeper to their customers' access to the network.[13] The Act specifically limits the manner and circumstances under which a carrier may disclose CPNI that it has received or obtained by virtue of its provision of a telecommunications service.[14] Together, these obligations require telecommunications carriers to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI, as well as properly authenticating customers prior to disclosing CPNI when a customer contacts a carrier via phone, online, or in a store.[15]

In order to protect customers from unauthorized account changes, carriers must notify customers immediately of certain account changes.[16] Notifications are required whenever a password, customer response to a carrier-designed back-up means of authentication, online account, or address of record is created or changed.[17] These specific notification requirements are critical, but they are only part of the general obligation to protect customers' information, which must take into consideration the nature of the vulnerabilities and what is known about threat actors.[18]

Where a carrier fails to meet these legal obligations, the FCC Enforcement Bureau is charged with investigating and enforcing all violations of the Act, including violations of sections 201 and 222 of the Act, or the Commission's regulations adopted under the Act.

What's Next for Carriers and Consumers

To strengthen protections against SIM Fraud, the Commission adopted a *Report and Order and Further Notice of Proposed Rulemaking* that revises the Commission's CPNI and Local Number Portability (LNP) rules to protect against SIM swap and port-out fraud.[19] These new rules will require wireless providers to:

---

[13] 47 U.S.C. § 222(a). *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (*2007 CPNI Order*); Declaratory Ruling, 28 FCC Rcd 9609 (2013) (*2013 Declaratory Ruling*).

[14] 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.

[15] *See* 47 CFR § 64.2010(a).

[16] *See id.* § 64.2010(f)

[17] *Id.*

[18] *See 2007 CPNI Order*, 22 FCC Rcd at 6959-6960, paras. 63-65; *2013 Declaratory Ruling*, 28 FCC Rcd at 6910-11, 9619-6921, paras. 5-7, 29-34; *see also, e.g.*, *AT&T Inc.*, Notice of Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743, 1763-64, para. 60 (2020) (stating that AT&T was on notice that its safeguards were inadequate after disclosure of a breach and finding it was unreasonable for AT&T to continue to rely on faulty safeguards after discovery of the incident).

[19] *SIM Fraud Report and Order and FNPRM*, *supra* note 5. The *SIM Fraud Report and Order and FNPRM* follows from a Notice of Proposed Rulemaking adopted by the Commission in September 2021. *See Protecting Consumers*

(continued….)

- adopt secure methods of authenticating a customer before redirecting a customer's phone number to a new device or provider;
- 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 from accessing CPNI in the course of that interaction until after the customer has 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 wireless providers to:

- 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.

The *Report and Order* also 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.[20]

In addition to consumer benefits, strengthening SIM Fraud safeguards provides national security benefits and helps protect survivors of domestic violence. Such safeguards strengthen national security by ensuring that threat actors cannot fraudulently access government mobile accounts to use them for nefarious purposes. Further, improvements to the CPNI Rules related to SIM swapping can act as a shield for domestic violence survivors by preventing bad actors, such as abusers, from taking control of a survivor's phone or phone number. The proceeding to protect consumers from SIM swap and port-out fraud is part of the Commission's continuing commitment to protecting consumers, improving carrier privacy and data protections, and making sure those carriers meet their obligations – thus defending consumers and the nation.

Recent Enforcement Action Involving CPNI

The Commission is aggressively investigating potential violations of section 222 of the Act and the CPNI rules. Service providers should track threat actor behavior in the market, as well as the Commission's enforcement actions for guidance that may be relevant to addressing SIM Fraud.

from SIM Swap and Port-Out Fraud, WC Docket No. 21-341, Notice of Proposed Rulemaking, 36 FCC Rcd 14120 (2021) (*SIM Fraud NPRM* or *NPRM*).

[20] While the rule changes adopted in the *Report and Order* are not yet in effect, carriers should continue to meet their obligations under the existing requirements of the Act and the CPNI rules.

Q Link and Hello Mobile. In July 2023, the Commission proposed a $20 million fine against Q Link Wireless LLC ("Q Link") and Hello Mobile Telecom LLC ("Hello Mobile" and with Q Link, the "Companies") for apparently failing to protect the privacy and security of subscribers' CPNI. The investigation revealed apparent violations of section 222 of the Act and three provisions of section 64.2010 of the Commission's rules. The Companies relied on readily available biographical information and account information to control online access to CPNI, which apparently violated the CPNI rules and placed customers' sensitive personal data at risk. The investigation also found that the companies apparently violated the Commission's rules by failing to employ reasonable data security standards, placing customers at increased risk for privacy violations and threat actors' potential misuse of their sensitive personal data. In addition, Q Link apparently violated the FCC rule that prohibits the use of readily available biographical information or account information for back-up authentication and password reset purposes.

About the Task Force

The FCC's Privacy and Data Protection Task Force is an FCC staff working group created by Chairwoman Rosenworcel. The Task Force is led by the Chief of the Enforcement Bureau, Loyaan A. Egal, and coordinates across the agency on the rulemaking, enforcement, and public awareness needs in the privacy and data protection sectors, including data breaches (such as those involving telecommunications providers) and vulnerabilities involving third-party vendors that service regulated communications providers.

Media inquiries should be directed to 202-418-0500 or MediaRelations@fcc.gov.

Issued by: Chief, Enforcement Bureau

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

In the Matter of	)	
	)	
Safeguarding and Securing the Open Internet	)	WC Docket No. 23-320
	)	
	)	

ORDER

Adopted: December 11, 2023 **Released: December 11, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (Bureau) denies a request filed by the U.S. Chamber of Commerce, the National Association of Manufacturers, and the Information Technology Industry Council, seeking for the above-captioned proceeding: (1) an extension of the comment deadline from December 14, 2023 to January 17, 2024; and (2) an extension of the reply comment deadline from January 17, 2024 to March 18, 2024.[1]

II. BACKGROUND

2. On October 19, 2023, the Federal Communications Commission (Commission) adopted a *Notice of Proposed Rulemaking* (*NPRM*) that proposes to reestablish the Commission's authority over broadband Internet access service by classifying it as a telecommunications service under Title II of the Communications Act of 1934, as amended (Act), which would provide the Commission with authority necessary to safeguard the open Internet, advance national security, and protect public safety.[2] The *NPRM* also proposes to reinstate conduct rules for Internet service providers that would provide a national regulatory approach for safeguarding Internet openness. The Commission released the *NPRM* on October 20, 2023, setting a comment deadline of December 14, 2023, and a reply comment deadline of January 17, 2024.[3]

3. On December 1, 2023, the U.S. Chamber of Commerce, National Association of Manufacturers, and Information Technology Industry Council (U.S. Chamber) filed a joint request for an extension of time to submit comments and reply comments pursuant to section 1.46 of the Commission's rules.[4] The U.S. Chamber specifically requests that the comment deadline be extended by 34 days to January 17, 2023 (for a total of 89 days), and that the reply comment deadline be moved to March 18, 2024, resulting in an extension of 27 days (for 61 days total). The U.S. Chamber asserts five reasons that good cause exists for the extensions. First, it asserts that additional time is needed because of the

[1] U.S. Chamber of Commerce, the National Association of Manufacturers, and the Information Technology Industry Council Request for Extension of Time, WC Docket No. 23-320 (filed Dec. 1, 2023) (U.S. Chamber *et al.* Extension Request).

[2] *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Notice of Proposed Rulemaking, FCC 23-83 (rel. Oct. 20, 2023) (*2023 Open Internet NPRM*).

[3] The *NPRM* was published in the Federal Register on November 3, 2023. Safeguarding and Securing the Open Internet, 88 Fed. Reg. 76048 (Nov. 3, 2023).

[4] 47 CFR § 1.46.

substantial changes in the Internet marketplace and the judicial landscape since the Commission's *2015 Open Internet Order*.[5] Second, it argues that additional time is warranted due to the scope of the *NPRM* and its potential impact on the Internet, consumers, and businesses.[6] Third, the U.S. Chamber argues that the breadth of stakeholders affected by and interested in this proceeding warrants a robust comment period.[7] In addition, it notes the major holidays occurring during the comment and reply comment periods.[8] Fourth, the U.S. Chamber asserts that additional time is needed to evaluate the interplay between this proceeding and the Commission's Broadband Labels and Digital Discrimination proceedings.[9] And finally, it asserts that additional time will enable commenters to provide and adequately respond to robust information and analysis concerning the issues presented in the *NPRM*.[10]

4. On December 8, 2023, Public Knowledge, American Library Association, Benton Institute For Broadband & Society, Center for Rural Strategies, Common Cause, Communications Workers of America, Demand Progress Education Fund, Electronic Frontier Foundation, Electronic Privacy Information Center, Fight for the Future, Future of Music Coalition, New America's Open Technology Institute, and United Church of Jesus Christ Media Justice Ministry (Public Knowledge) filed an opposition to the request for extension of time.[11]

III. DISCUSSION

5. We deny the U.S. Chamber's request for a comment and reply comment extension. As set forth in section 1.46 of the Commission's rules, and as the U.S. Chamber notes,[12] it is the policy of the Commission that extensions of time shall not be routinely granted.[13] The Commission may consider an extension "to the extent that good cause for an extension is demonstrated."[14] The criteria for granting a request for extension of time "are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay."[15] We do not find that "good cause" to grant the requested extensions exists.

6. We find that the December 14, 2023 initial comment deadline provides interested parties with sufficient time to respond to the proposals and questions the Commission presented in the *NPRM*. The Commission released the final *NPRM* on October 20, 2023, giving commenters 55 days to address

[5] U.S. Chamber *et al.* Extension Request at 2.

[6] U.S. Chamber *et al.* Extension Request at 2-3.

[7] U.S. Chamber *et al.* Extension Request at 3.

[8] U.S. Chamber *et al.* Extension Request at 3 (noting that Hanukkah, Veterans Day, and Thanksgiving Day occurred during the initial comment period and that Christmas Day, New Year's Day, and the birthday of Martin Luther King, Jr. occur during the reply comment period).

[9] U.S. Chamber *et al.* Extension Request at 4-5.

[10] U.S. Chamber *et al.* Extension Request at 5.

[11] Public Knowledge, American Library Association, Benton Institute For Broadband & Society, Center for Rural Strategies, Common Cause, Communications Workers of America, Demand Progress Education Fund, Electronic Frontier Foundation, Electronic Privacy Information Center, Fight for the Future, Future of Music Coalition, New America's Open Technology Institute, and United Church of Jesus Christ Media Justice Ministry, WC Docket No. 23-320 (filed Dec. 8, 2023) (Public Knowledge Opposition).

[12] U.S. Chamber *et al.* Extension Request at 1.

[13] 47 CFR § 1.46(a).

[14] *See e.g.*, *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59 and WC Docket No. 17-97, Order, 36 FCC Rcd 15572, 15573, para. 4 (WCB & CGB 2021) (*Robocall Extension Order*); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Order, DA 23-13 (WCB 2022).

[15] *Robocall Extension Order*, 36 FCC Rcd at 15573, para. 4.

the *NPRM*.[16] Additionally, given that the Commission revealed both the comment deadlines and substantially all of the text of the *NPRM* to interested parties when it released the draft text of the *NPRM* on September 28, 2023, interested parties had an additional 22 days to begin preparing their submissions for a total of 77 days.[17]

7. Interested parties also had ample notice and time to consider and prepare support for their positions on the issues raised in the *NPRM* prior to the Commission's official announcement of proposed action. Specifically, they have been on notice since February 4, 2021, that the Commission might take further action on the issues raised in this proceeding in light of the pending petitions for reconsideration of the Commission's action in the *Restoring Internet Freedom* proceeding.[18] The Commission affirmed that likelihood when it informed the D.C. Circuit on April 7, 2021, that it intended to revisit the issues raised in that proceeding.[19] In addition, as Public Knowledge notes, the "matter was the subject of considerable debate at the confirmation hearings of Chairwoman Rosenworcel, Gigi Sohn, Anna Gomez and Geoffrey Starks."[20]

8. The scope of the *NPRM* does not present issues that are substantially novel or unanticipated as to warrant additional time. As Public Knowledge notes, "[d]ebates on the proper regulatory treatment [of broadband Internet access service] and the need for net neutrality rules have been ongoing for years," and parties, including the U.S. Chamber, have well-established views on the matter.[21] Much of the Commission's proposals and justification in the *NPRM* are substantially similar to those in the *2015 Open Internet Order*, and therefore do not constitute a "novel regulatory framework."[22] To the extent that an issue raised in the *NPRM* is novel or unexpected, we note that Commission proceedings often involve novel and important issues that do not overcome the norm of not granting extensions, particularly when, as here, the Commission provided parties with 77 days to consider those issues.[23]

---

[16] Commenters have 41 days for initial comments from the date of Federal Register publication. Safeguarding and Securing the Open Internet, 88 Fed. Reg. 76048 (Nov. 3, 2023). The comment period in this proceeding is commensurate with the 55 day comment period the Commission provided for interested parties to respond to the *Restoring Internet Freedom Notice of Proposed Rulemaking*, which raised many of the same issues as in this proceeding. *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking, 32 FCC Rcd 4434 (2017) (released on May 23, 2017, with a set comment date of July 17, 2017). And then, just as now, the comment period included national holidays—Memorial Day and Independence Day.

[17] *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Draft Notice of Proposed Rulemaking, FCC 23-83 (rel. Sept. 28, 2023); *see also* Public Knowledge Opposition at 2 ("[I]n this instance, the Commission's draft, released on September 28, 2023, specified that the Commission would establish a comment date of December 14, 2023. And, indeed, that is what the Commission did. As a consequence, all interested parties had more than 10 weeks [sic] notice that the comments were to be due on December 14, 2023.") (footnote omitted).

[18] Common Cause, *et al.*, Petition for Reconsideration, WC Docket Nos. 17-108, 17-287, and 11-42 (filed Feb. 8, 2021); INCOMPAS, Petition for Reconsideration, WC Docket Nos. 17-108, 17-287, and 11-42 (filed Feb. 4, 2021); Public Knowledge, Petition for Reconsideration, WC Docket Nos. 17-108, 17-287, and 11-42 (filed Feb. 8, 2021); County of Santa Clara, *et al.*, Petition for Reconsideration, WC Docket Nos. 17-108, 17-287, and 11-42 (filed Feb. 8, 2021).

[19] *See* Public Knowledge Opposition at 2 (*citing* Respondent Federal Communications Commission's Unopposed Motion for Abeyance, *CPUC v. FCC* , Docket No. 21-106 (filed April 7, 2021)).

[20] Public Knowledge Opposition at 3.

[21] Public Knowledge Opposition at 3.

[22] See *2023 Open Internet NPRM*, FCC 23-320; *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015); *see also* Public Knowledge Opposition at 3 ("The rules the Commission proposes to enact are the same as the 2015 Rules."); U.S. Chamber *et al.* Request for Extension at 2.

[23] Public Knowledge Opposition at 4-5.

Furthermore, overlapping issues across different proceedings is not uncommon given the press of Commission business and the importance of these matters to the industry and consumers.

9. For the foregoing reasons, we find that the initial comment deadline established in the *NPRM* affords interested parties with ample time to respond to the *NPRM*'s proposals, and the request for an extension of time is denied.

10. Furthermore, the Bureau denies the request for extension of the reply comment deadline as premature given that the request speculates on the size and complexity of the record the Commission will receive in the initial round of comments.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), sections 0.91, 0.204, 0.291, and 1.46 of the Commission's rules, 47 CFR §§ 0.91, 0.204, 0.291, 1.46, that the U.S. Chamber of Commerce, the National Association of Manufacturers, and the Information Technology Industry Council's Request for Extension of the Comment and Reply Comment deadline is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

PUBLIC NOTICE

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

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

DA 23-1150
December 11, 2023

Media Bureau Announces Extension of LPFM New Station Application Filing Window

Window Will Close at Noon on December 15, 2023

Existing LPFM and FM Translator Minor Modification Filing Freeze Extended to December 18, 2023

On July 31, 2023, the Media Bureau (Bureau) announced a filing window for applications for low power FM (LPFM) new station construction permits.[1] The filing window opened on Wednesday, December 6, 2023, and is scheduled to close on December 13, 2023. In conjunction with the filing window, the Bureau implemented a filing freeze on LPFM and FM translator station minor modification applications from September 1, 2023, through the close of the LPFM filing window.

On December 8, 2023, a group of low power FM advocates requested a further five day extension of the LPFM filing window in order to address issues they had encountered with the Commission's Licensing and Management System (LMS).[2] Although it is the Commission's general policy that extensions of time shall not be routinely granted, we find that it would serve the public interest to grant a brief extension of the LPFM filing window.

Based on the forgoing, the Bureau grants the request to extend the LPFM filing window. The window will now close at 12:00 pm EST on December 15, 2023. Applications must be filed by this time on December 15, 2023. The filing deadline will be strictly enforced. Applications submitted after the 12:00 pm EST December 15, 2023, application deadline will be dismissed by public notice without further consideration. In addition, the existing freeze on LPFM and FM translator minor modification applications is extended until 12:01 am on December 18, 2023.

---

[1] *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (July Public Notice). Based on an earlier request from certain outside parties, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023).

[2] *See Letter from Alan Korn to FCC Commissioners and Staff* (Dec. 8, 2023). The request was submitted on behalf of: Austin Airwaves; Common Frequency, Inc.; Community Media Assistance Project; CTone Media; Media Alliance; National Federation of Community Broadcasters; Pacifica Foundation; Prometheus Radio Project; and REC Networks.

The Bureau also notes the "snap shot" date for establishing points and comparing applications will match the revised LPFM window filing deadline of December 15, 2023. All of the remaining instructions and procedures included in the July Public Notice remain applicable to the LPFM filing window.

For additional information on the filing window, contact James Bradshaw, James.Bradshaw@fcc.gov; Alexander Sanjenis, Alexander.Sanjenis@fcc.gov; Lisa Scanlan, Lisa.Scanlan@fcc.gov; or Amy Van de Kerckhove, Amy.Vandekerckhove@fcc.gov; of the Media Bureau, Audio Division, (202) 418-2700. Direct press inquiries to Janice Wise, Janice.Wise@fcc.gov, (202) 418-8165.

- FCC -

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 12, 2023 Released: December 12, 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 GCI Communication Corp., on behalf of itself and its wholly-owned subsidiaries and affiliates and GCI Cable, Inc. ("GCI"), seeking an extension of certain December 12, 2023 Emergency Alert System ("EAS") compliance deadlines requiring changes to alert displays and code processing adopted by the FCC in the 2022 EAS Report and Order.[1] For the reasons discussed below, the Bureau 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

[1] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 37 FCC Rcd 11844 (2022) (*2022 Part 11 Report and Order*) *see also* PSHSB Announces Effective Date and Compliance Dates for Certain Emergency Alert System (EAS) Rules, PS Docket No. 15-94, Public Notice, DA 22-1189 (rel. Nov. 10, 2022). The FCC also adopted changes to the language associated with the national emergency code. The compliance deadline for cable systems to implement changes to this language is March 12, 2024, for certain set-top box software and hardware upgrades, and December 12, 2028, for certain set-top box hardware upgrades. GCI is not seeking an extension of these compliance deadlines at this time.

[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).

throughout a geographic area.[4] 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.[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

[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 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).

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. *GCI Request.* On December 1, 2023, GCI filed a request for a temporary waiver (i.e., extension) of the December 12, 2023, compliance date for the rules requiring EAS Participants to display the new text for the national alert originator code and the national test code, the rules requiring EAS Participants to display a standard script for national test code alerts issued in legacy format, and the rules requiring EAS Participants to deactivate National Information Center code alert processing..[13]

5. GCI states that it is an EAS Participant as a result of its providing cable television and Multichannel Video Programming Distributor (MVPD) service in the state of Alaska. GCI explains that it utilizes a total of 23 EAS encoder/decoders throughout its service area. While working to upgrade its existing EAS encoder/decoders in order to meet the FCC's new requirements, GCI and its vendor discovered that 17 of GCI's existing EAS encoder/decoders would be unable to process the software updates necessary to come into compliance with the requirements. As a consequence, GCI asserts that it must replace these EAS units with upgraded hardware, which is currently experiencing delivery delays directly impacting GCI's ability to meet the December 12, 2023, compliance deadline.

6. More specifically, GCI asserts that it reasonably believed it would be able to update its EAS encoders/decoders in a timely fashioned based on previous experience updating its EAS software and based on the Commission's own statements. GCI states that on August 8, 2022, it updated all of its EAS software after a FEMA advisory and encountered no problems with any of their encoders/decoders, which included all models of encoders/decoders.[14] Further, GCI refers to the Commission's own conclusion, in adopting a one year compliance deadline for the implementation of the new EAS rules, that the necessary changes to EAS participants' systems "could be implemented in that timeframe via software updates to EAS equipment in tandem with 'regularly scheduled maintenance activities' involving minimal cost and effort on the part of EAS manufacturers and participants" and used information from EAS equipment vendors to reach such a conclusion.[15] Instead, however, GCI finds itself in a situation where software updates are not sufficient and must "pursue an alternative path to compliance, which inherently takes more time to implement than a software update."[16]

7. GCI thus requests a Partial Temporary Waiver for the EAS units for which the required hardware upgrades will not be complete prior to December 12, 2023, and requests that it be granted an extension until March 11, 2024, to come into full compliance with the Commission's new EAS rules.

III. DISCUSSION

8. 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."[17] 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

[11] *2022 Part 11 Report and Order* at 5, para. 11.

[12] *See* 47 CFR § 11.55(c)(2).

[13] GCI Request for Temporary Waiver of December 12, 2023 Compliance Deadline, PS Docket No. 15-94, at fn. 8 (filed December 1, 2023), https://www.fcc.gov/ecfs/document/1201134417815/1 (Extension Request), *citing* 47 CFR §§ 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii).

[14] Extension Request at 3-4.

[15] *Id.* at 2.

[16] *Id.*at 6.

[17] 47 CFR § 1.3.

the public interest."[18] The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[19] Based on the circumstances described herein, we conclude there is good cause to provide an extension of time until March 11, 2024, to accommodate the anticipated hardware delivery and installation estimated by GCI.

9. Specifically, we find that GCI acted in a reasonable and timely fashion to comply with it obligations, but due to specific factual circumstances related to equipment availability it will be unable to comply with the Commission's implementation deadline. In furtherance of its waiver, GCI engaged with staff to provide a timetable by which it endeavored to make the necessary software updates but discovered they would instead need new hardware which was suffering from "supply chain shortages and an increase in demand" with "the typical delivery time … extended to a minimum of 45 days," creating the current situation in which it is unable to meet the FCC's compliance deadline.[20] According to GCI, in the first week of August, based on their previous software upgrade experience in 2022, GCI reached out to their vendor to implement the necessary work to meet the FCC rule updates discussed in this Extension Request. While working to implement the necessary changes to their EAS systems, GCI and its vendor discovered that many of GCI's existing EAS 32 bit encoder/decoders would be unable to process the software updates necessary to come into compliance with the requirements and would require hardware upgrades. On August 9, GCI asked its vendor for a quote to understand the extent of the hardware upgrades required. On or about September 22, GCI completed a final purchase order with the vendor. On October 3, GCI executed the purchase order. On October 4, GCI inquired about the possibility of an interim, temporary software patch to achieve compliance for the units requiring hardware upgrades but was informed by the vendor that a software patch was not possible. On December 8, GCI informed the Commission that it had received the first batch of hardware-upgraded units and installation efforts were underway. In summation of these efforts, GCI states that it is prioritizing all efforts to install the new encoder/decoders as quickly as possible once they are delivered to GCI.[21]

10. Finally, GCI states that it has an extensive track record of providing EAS service to Alaskans and ensuring that its network is ready and able to warn Alaska residents of critical emergencies and events. A grant of this waiver will further that effort by helping to ensure that GCI can safely install its new equipment, maintain service to its customers, and continue to provide the public with critical information in the event of an emergency.[22]

11. In light of the delays due to supply chain shortages and an increase in demand that GCI has experienced in the delivery of the necessary hardware to update its EAS encoders/decoders, and the diligence with which they acted in seeking to rectify this issue, we find it in the public interest to accommodate the small amount of extra time needed to obtain and install this equipment and grant a reasonable and narrowly-tailored extension of time to support GCI's receipt and installation of the new hardware. We agree with GCI that the supply chain shortages and increased demand for new hardware needed to comply with the Commission's CAP prioritization rules justifies waiver of our rules in this instance.[23]

12. Also, in order to ensure adequate service to its customers during the pendency of the upgrades, we condition our waiver on the requirement that the EAS equipment now in place will continue

[18] *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)).

[19] WAIT Radio v. FCC, 418 F.2d at 1157.

[20] *Id* at 7.

[21] *Id.*

[22] *Id.*

[23] *Id.*

to operate in all respects except for the requirements related to the rules waiver herein until the new equipment is installed, so there will be no interruption to alerting.

IV. ORDERING CLAUSES

13. 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, sections 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii)of the Commission's rules, 47 CFR §§ 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii), ARE WAIVED, for GCI's cable television and MVPD service in the State of Alaska, to comply with the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED to afford these GCI stations until March 11, 2024.

14. 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.[24]

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

[24] *See* 47 CFR §§ 0.191 and 0.392.

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

In the Matter of	)	
	)	
JOTRON AS	)	WT Docket No. 23-292
	)	
Request for Part 95 Waiver to Permit Authorization and Use of Personal Locator Beacon	)	

ORDER

Adopted: December 13, 2023 **Released: December 13, 2023**

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

1. *Introduction.* This *Order* grants a request filed by Jotron AS (Jotron) for waiver of the Commission's rules to permit the authorization and use of a personal locator beacon (PLB) that incorporates a functionality that is in compliance with the current Radio Technical Commission for Maritime Services (RTCM) standard for PLBs, but does not comply with the PLB standard currently incorporated by reference in the Commission's part 95 rules.[1] As indicated below, notwithstanding today's action, Jotron must obtain equipment certification for this device as required by sections 95.2961 and 95.2987 of the Commission's rules.[2]

2. *Background.* A PLB is a small portable transmitter that is intended to provide individuals in remote areas with a means to alert others of an emergency situation and to aid search and rescue personnel to locate those in distress.[3] PLBs transmit a distress signal on frequency 406 MHz for communication with the Cospas-Sarsat satellite system and a lower-powered signal on frequency 121.5 MHz that is used by search and rescue personnel as a homing beacon to help locate persons in distress.[4]

3. Jotron observes that the new RTCM standard "specifies the minimum requirements for the functional and technical performance of . . . PLBs operating in the 406.0 to 406.1 MHz band through polar-orbiting, medium earth orbiting and geostationary satellite systems."[5] Jotron claims that its PLB, the "Tron SA 20," complies with this new standard, but does not comply with the PLB standard currently

[1] *See* "Waiver Tron SA20 PLB" (filed Feb. 13, 2023) (Waiver Request). The Waiver Request and related filings can be accessed in the Commission's Electronic Comment Filing System (ECFS) under WT Docket No. 23-292.

[2] *See* 47 CFR §§ 95.2961, 95.2987.

[3] *See* 47 CFR §§ 95.2901–95.2933.

[4] *ACR Electronics, Inc.*, Order, 30 FCC Rcd 14038, 14038, para. 2 (WTB MD 2015). Cospas-Sarsat is an international satellite-based search and rescue system established by Canada, France, Russia, and the United States. Cospas is an acronym for a Russian phrase meaning space system for search and distress vessels; Sarsat stands for search and rescue satellite aided tracking. Background information on Cospas-Sarsat can found at https://www.gsc-europa.eu/sites/default/files/sites/all/files/Galileo-SAR-SDD.pdf and https://www.sarsat.noaa.gov/emergency-406-beacons/#:~:text=406%20MHz%20Emergency%20beacons%20are,can%20generate%20a%20false%20alert.

[5] RTCM 11010.4 Standard for 406 MHz Satellite Personal Locator Beacons (PLBs), June 1, 2022. On August 20, 2018, RTCM filed a petition for rulemaking proposing the incorporation by reference of a revised RTCM PLB standard that it had published earlier that year. Radio Technical Commission for Maritime Services Petition for Rulemaking to amend part 95 of the Commission's rules to provide for a new standard on Personal Locator Beacons, RM-11813 (filed Aug. 20, 2018), https://www.fcc.gov/ecfs/filing/1081900919860. The petition was placed on *Public Notice*, August 23, 2018 (Report No. 3100, RM-11813). Comments to the *Public Notice* support the petition.

incorporated by reference in part 95 because the latter makes no provision for Return Link Service (RLS) functionality.[6] Jotron therefore requests waiver relief.

4. On August 23, 2023, we requested comment on Jotron's waiver request.[7] On October 12, 2023, the Radio Technical Commission for Maritime Services (RTCM), acting through its Special Committee 110 on Emergency Beacons, filed a pleading supporting Jotron's waiver request.[8] RTCM notes that its newer standard for 406 MHz PLBs, the RTCM 11010.4 Standard, provides for improved capabilities such as RLS, automatic identification system (AIS) locating, and improved beacon performance over the previous RTCM 11010.2 Standard, which is currently incorporated in part 95.[9] RLS notifies a beacon user that the distress alert was received and relayed to a rescue coordination center, important information in a distress situation. In addition, AIS on a maritime PLB helps pinpoint the location of the person in distress to responding vessels or aircraft. These improved capabilities, RTCM says, "will aid those involved in search and rescue and provide those needing to use PLBs an extra margin of safety."[10] On November 28, 2023, the National Telecommunications and Information Administration (NTIA) likewise filed a pleading in support of Jotron's waiver request.[11] NTIA noted that granting Jotron's waiver request and thereby permitting deployment of the improved PLBs would have the potential to enhance the rapid search and rescue operations of several federal agencies, including the United States Coast Guard.[12]

5. *Discussion*. Section 1.925(b)(3) of the Commission's Rules provides that we may grant a waiver if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (ii) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[13]

6. Based on our review of the record, we conclude that Jotron has demonstrated that a

---

[6] Waiver Request at 1. RLS sends a signal back to a transmitting radiobeacon, such as a PLB, confirming through flashing lights on the PLB that the PLB user's 406 MHz distress alert has been received and that the user's location coordinates have been captured. The knowledge that search and rescue personnel are aware of the user's distress situation and location can reassure the user that help is on the way and can dissuade users from taking unnecessarily risky actions based on panic or feelings of hopelessness. *See, e.g.*, https://www.seasofsolutions.com/wp-content/uploads/2022/03/FAQ-RLS-v7-A4-6page-25-01-22.pdf.

[7] *Wireless Telecommunications Bureau Seeks Comment on Jotron Request for Part 95 PLB Waiver*, Public Notice, DA 23-751, 2023 WL 5444004 (WTB MD rel. Aug. 23, 2023) (*Public Notice*).

[8] *See* Comments and Motion to Accept Late Filed Comments of the Radio Technical Commission for Maritime Services (RTCM) (filed Oct. 12, 2023) (*RTCM Comments*). Although filed after the comment filing deadlines specified in the *Public Notice*, we grant RTCM's Motion to Accept Late Filed Comments, and we accept the *RTCM Comments* in the interest of having as complete a record as possible upon which to base our decision. The *RTCM Comments* are available in the Commission's Electronic Comment Filing System (ECFS) under WT Docket No. 23-292.

[9] *Id.* at 2. RTCM's comments also state that the comments were coordinated with the U.S. Coast Guard. *Id.* at 3.

[10] *Id*. at 2.

[11] *See* Comments of the National Telecommunications and Information Administration (filed Nov. 28, 2023) (*NTIA Comments*). The *NTIA Comments* are available in the Commission's Electronic Comment Filing System (ECFS) under WT Docket No. 23-292.

[12] *Id.* at 1–2 ("NTIA supports the Jotron Waiver Request to further the safety and rapid rescue of our nation's citizens, which is a top priority for the United States Government.").

[13] 47 CFR § 1.925(b)(3).

waiver of Commission rule section 95.2989[14] is warranted under the first prong of this waiver standard. Specifically, we find that it is in the public interest to grant a waiver that will allow Jotron to seek equipment certification for the Tron SA20 PLB, which, as RTCM confirms, meets state-of-the-art standards by incorporating RLS and other features that will enhance maritime safety. The record reflects that the inclusion of RLS functionality and the enhancement of location identification capabilities will improve the speed with which search and rescue personnel can reach stranded and lost individuals and will provide a greater measure of security to those in distress waiting for rescue. Further, we find that denial of the waiver would not serve the underlying purpose of the rule, which is to ensure that PLBs operate consistent with maritime standards to ensure reliable and safe communications with search and rescue organizations during a distress call or event. We are persuaded that the additional features in RTCM 11010.4 will improve search and rescue operations and have been vetted by the relevant standards organization.

7. We note that this waiver does not relieve Jotron of the testing and approval requirements of sections 95.2961 and 95.2987 of the Commission's rules, including to secure certifications from independent test facilities, including Cospas/Sarsat-recognized test facilities, and obtaining an approval letter from the U.S. Coast Guard that demonstrates compliance with applicable part 95 requirements before filing an application with the Commission for equipment certification.[15] Jotron must also include a copy of this Order with any application for equipment certification.

8. 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 Waiver Request filed by Jotron AS on February 13, 2023, IS GRANTED.

9. 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

- FCC -

[14] 47 CFR § 95.2989 (providing that PLB transmitter types must be designed to comply with technical standard RTCM 11010.2).

[15] *See, e.g.*, 47 CFR §§ 95.2961, 95.2987(a)(1).

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

In re Application of	)	
	)	
Elmira College	)	NAL/Acct. No. MB-202341410028
	)	FRN: 0008837932
For Renewal of License for	)	Facility ID No. 19446
Full-service FM Station WECW(FM)	)	Application File No. 0000188866
Elmira, New York	)	

ORDER

Adopted: December 14, 2023 **Released: December 14, 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 Elmira College (Licensee), licensee of Station WECW(FM), Elmira, New York (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station. In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with section 73.3539 of the Commission's Rules (Rules),[1] which sets forth the filing deadline for license renewal applications.

2. The Licensee has shown that, at the time of the violations, the Station was a student-run noncommercial educational (NCE) station licensed to an educational institution and that the violations at the Station are first-time documentation violations within the parameters of our policy concerning violations of documentation requirements of Rules by student-run NCE radio stations.[2] The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3539 of the Rules and provides that Licensee carry out a compliance plan and make a civil penalty payment to the United States Treasury in the amount of $500.

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

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

[1] *See* 47 CFR § 73.3539.

[2] *See William Penn University*, Policy Statement and Order, 28 FCC Rcd 6932, 6932, para. 2 (MB 2013) (in cases of "first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations . . . instead of issuing a Notice of Apparent Liability ("NAL"), the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee agree to a compliance plan and makes a voluntary contribution to the United States Treasury. In negotiating the amount of the voluntary contribution, the Bureau will consider the totality of circumstances, including giving appropriate consideration to the station's finances with respect to reducing the base forfeiture amount significantly.").

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,[3] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[4] the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

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

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Elmira College, c/o Ytzel Flores Christiansen, Assistant Director of Campus Life, 1 Park Place, Elmira, New York 14901.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[3] 47 U.S.C. § 4(i), 503(b).

[4] 47 CFR §§ 0.61, 0.283.

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

In re Application of	)	
	)	
Elmira College	)	NAL/Acct. No. MB-202341410028
	)	FRN: 0008837932
For Renewal of License for	)	Facility ID No. 19446
Full-service FM Station WECW(FM)	)	Application File No. 0000188866
Elmira, New York	)	

CONSENT DECREE

Adopted: December 14, 2023 **Released: December 14, 2023**

1. The Media Bureau of the Federal Communications Commission and Elmira College (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with section 73.3539 of the Commission's rules[1] relating to the timely filing of renewal applications. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3539.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:

(a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq*.

(b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.

(c) "Application" means application of Elmira College for renewal of the radio broadcast license for station WECW(FM), Application File No. 0000188866.

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

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

(f) "Covered Employees" means all employees, volunteers, and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the filing of timely renewal applications as required by the Filing Date Rule.

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

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

[1] 47 CFR § 73.3539.

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

(j) "Licensee" means Elmira College and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

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

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

II. BACKGROUND

3. Section 73.3539 of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[2] On April 5, 2022, the Licensee untimely filed the Application for the Station's current license term in violation of the Filing Date Rule.[3]

4. Because of the issues identified in the Bureau's investigation and the untimeliness of the Application, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

III. TERMS OF AGREEMENT

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

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

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

8. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to process the Application in the ordinary course. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

9. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the 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]

[2] 47 CFR § 73.3539(a).

[3] The Application was due on or before February 1, 2022. The Station's license term ended on June 1, 2022.

[4] *See* 47 CFR § 1.93(b).

10. The Bureau will grant the Application after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the payment referenced in paragraph 16 of this Consent Decree; and 2) there are no issues that would preclude the grant of the Application.

11. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it failed to timely file its application for renewal of license, in violation of section 73.3539 of the Rules.

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.[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.

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

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

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

- Licensee will conduct training for all Station employees on compliance with Commission Rules applicable to station operations. To augment this training, outside counsel, or other comparable professionals, will conduct an on-site workshop for all of the Station's employees. This workshop will be recorded and used as refresher training for staff and management at least once every twelve (12) months, and to train any new employee within five (5) days of commencement of his or her duties at the Station.
- Licensee will engage communications counsel on an ongoing basis to provide guidance on Commission compliance issues, to provide regular updates and notices on applicable developments in communications law, and to review its applications and reports prior to filing with the Commission. In regard to the last matter, the Station's licensee recognizes and acknowledges that any and all information provided to the Commission must completely and candidly set forth all relevant facts and circumstances, regardless of whether such a submission may disclose a violation of the Act or the Rules.

[5] *See* 47 U.S.C. § 503(b)(2)(E).

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

16. **Payment**. The Bureau has agreed to accept and Licensee has agreed to make a civil penalty payment to the United States Treasury in the amount of Five Hundred Dollars ($500) within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Alexander Sanjenis at Alexander.sanjenis@fcc.gov on the date said payment is made.

17. 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),[6] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[7]

- 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).[8] 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

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

[7] 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.

[8] 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.

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[9] 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.

[9] *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
Media Bureau

12/14/2023
Date

Ytzel Flores Christiansen
Assistant Director of Campus Life
Elmira College

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

Media Bureau

_____

Date

Ytzel Flores Cristiansen

Ytzel Flores Christiansen

Assistant Director of Campus Life

Elmira College

12/13/23

Date

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6614853
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: December 13, 2023 **Released: December 13, 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 (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We conclude that Clear Rate's actions violated the Commission's slamming rules, and we grant Complainant's complaint.

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

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

[1] *See* Informal Complaint No. 6614853 (filed Dec. 1, 2023); *see also* 47 CFR §§ 64.1100 – 64.1190.

[2] 47 U.S.C. § 258(a).

[3] *See* 47 CFR § 64.1120.

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

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

[6] *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.[7] The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.[8]

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without his authorization.[9] In the complaint, Complainant stated he received a call from a person who said they "represent[ed] our current phone company, Verizon, with offers to save money on land lines."[10] Complainant explained that he asked two representatives on the call if they worked for Verizon and each said "yes." He further stated that, after listening to an offer to discount his current charges, he asked if anything would change and he was told no. "Then everything changed, as it turned out that they were not Verizon but a completely different company, misrepresenting themselves as Verizon."[11] Finally, Complainant stated that when he realized what was happening he made numerous calls "to stop the scam before it began."[12] He also stated that "[i]t's been weeks now since this occurred and [we] received an invoice from CLEAR RATE resulting in additional calls to them to have all charges dismissed."[13]

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.[14] Clear Rate responded, stating that Complainant agreed to and authorized the carrier switch, and that the terms and conditions of service were described in detail for Complainant on the TPV call.[15] Clear Rate also provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call." Clear Rate did not address Complainant's misrepresentation claim and did not provide a recording of the sales call or any other evidence related to the sales call.[16]

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive

---

[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 6614853.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

[15] *See* Clear Rate Response to Informal Complaint No. 6614853 (filed Dec. 10, 2023) (*Clear Rate Response*); *see also* 47 CFR § 64.1160.

[16] Clear Rate stated in its response that "the account is still pending disconnect…and we will prorate the account back to the day the service ported away." *See Clear Rate Response* at 2. We caution Clear Rate that it must comply with the Commission's liability rules, which includes removing all charges incurred for service for the first 30 days after it switched Complainant's carrier. *See infra*, para. 7.

evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."[17] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.[18]

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.[19] We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.[20] Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.[21]

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

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

[17] *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

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

[19] *See id.* § 64.1160(b).

[20] *See id.* § 64.1160(d).

[21] *See id.* § 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6621639
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: December 13, 2023 **Released: December 13, 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 (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We conclude that Clear Rate's actions violated the Commission's slamming rules, and we grant Complainant's complaint.

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

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

[1] *See* Informal Complaint No. 6621639 (filed Dec. 5, 2023); *see also* 47 CFR §§ 64.1100 – 64.1190.

[2] 47 U.S.C. § 258(a).

[3] *See* 47 CFR § 64.1120.

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

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

[6] *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.[7] The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.[8]

4. We received Complainant's complaint alleging that her business's telecommunications service provider had been changed without her authorization.[9] In the complaint, Complainant stated that she "[r]eceived a phone call from a person claiming they were with Verizon (our current provider) and [that they] would reduce our bill." Complainant said the caller "[n]ever told me they were with a company other than Verizon, never told me they were terminating our service with Verizon, [and there was] no recording saying they were changing my provider."[10] Complainant also maintained that she "never would have changed providers and to do it without my permission should be illegal."[11]

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

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that

---

[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims.

[9] *See* Informal Complaint No. 6621639. Complainant also filed Informal Complaint No. 6621683 for a second business location. Other than the Clear Rate bills Complainant received at each location, the complaints were duplicates. The Division therefore merged the two complaints and served them as one on Clear Rate on December 6, 2023.

[10] Informal Complaint No. 6621639.

[11] *Id.*

[12] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

[13] *See* Clear Rate Response to Informal Complaint No. 6621639 (filed Dec. 10, 2023); *see also* 47 CFR § 64.1160.

[14] We note that on the "quality assurance call," the Clear Rate representative states that "[y]ou will not have any interruptions in your service. This is through a contract agreement between Verizon and Clear Rate. Clear Rate just provides the billing at a wholesale rate and manages your customer service needs in a more timely manner." The Clear Rate representative also states that Clear Rate "is one of the many rate carriers contracted by Verizon to give small businesses like yours a wholesale rate."

consumer's authorization to switch carriers can no longer be considered binding."[15] We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.[16]

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.[17] We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.[18] Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.[19]

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

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

[15] *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

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

[17] *See id.* § 64.1160(b).

[18] *See id.* § 64.1160(d).

[19] *See id.* § 64.1140, 64.1160.

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
TTY: 1-888-835-5322

DA 23-1156
Released: December 14, 2023

Proposed First Quarter 2024 Universal Service Contribution Factor

CC Docket No. 96-45

In this Public Notice, the Office of Managing Director (OMD) announces that the proposed universal service contribution factor for the first quarter of 2024 will be 0.346 or 34.6 percent.[1]

Rules for Calculating the Contribution Factor

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

USAC Projections of Demand and Administrative Expenses

Pursuant to section 54.709(a)(3) of the Commission's rules,[4] the Universal Service Administrative Company (USAC) submitted projections of demand and administrative expenses for the first quarter of 2024.[5] Accordingly, the projected demand and expenses are as follows:

[1] *See* 47 C.F.R. § 54.709(a).

[2] *See id.*

[3] *See* 47 C.F.R. § 54.709(a)(2).

[4] *See* 47 C.F.R. § 54.709(a)(3).

[5] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2024, available at <https://www.usac.org/fcc-filings> (filed November 2, 2023) (*USAC Filing for First Quarter 2024 Projections*; *See also* Federal Universal Service Support Mechanisms Quarterly Contribution Base for the First Quarter 2024, available at <https://www.usac.org/fcc-filings> (filed December 1, 2023) (*USAC Filing for First Quarter 2024 Contribution Base*).

($ millions)

Program Demand	Projected Program Support	Admin. Expenses	Application of True-Ups & Adjustments	Total Program Collection (Revenue Requirement)
Schools and Libraries	631.45	21.17	(17.66)	634.96
Rural Health Care	162.92	7.67	(1.99)	168.60
High-Cost	1,077.29	19.52	(6.60)	1,090.21
Lifeline	265.95	23.18	(63.66)	225.47
Connected Care	0	0	(0.51)	(0.51)
TOTAL	2,137.61	71.54	(90.42)	2,118.73

USAC Projections of Industry Revenues

USAC submitted projected collected end-user telecommunications revenues for January 2024 through March 2024 based on information contained in the First Quarter 2024 Telecommunications Reporting Worksheet (FCC Form 499-Q).[6] The amount is as follows:

Total Projected Collected Interstate and International End-User Telecommunications Revenues for First Quarter 2024: $8.313338 billion.

Adjusted Contribution Base

To determine the quarterly contribution base, we decrease the first quarter 2024 estimate of projected collected interstate and international end-user telecommunications revenues by the projected revenue requirement to account for circularity and decrease the result by one percent to account for uncollectible contributions. Accordingly, the quarterly contribution base for the first quarter of 2024 is as follows:

Adjusted Quarterly Contribution Base for Universal Service Support Mechanism

(First Quarter 2024 Revenues - Projected Revenue Requirement) * (100% - 1%)

= ($8.313338 billion – $2.118730 billion) * 0.99

[6] *USAC Filing for First Quarter 2024 Contribution Base* at 4.

=$6.132662 billion.

Unadjusted Contribution Factor

Using the above-described adjusted contribution base and the total program collection (revenue requirement) from the table above, the proposed unadjusted contribution factor for the first quarter of 2024 is as follows:

Contribution Factor for Universal Service Support Mechanisms

Total Program Collection / Adjusted Quarterly Contribution Base

=$2.118730 billion / $6.132662 billion

=0.345483

Unadjusted Circularity Factor

USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter. Accordingly, the proposed unadjusted circularity factor for the first quarter of 2024 is as follows:

Unadjusted Circularity Factor for Universal Service Support Mechanisms

= Total Program Collection / Projected First Quarter 2024 Revenues
= $2.118730 billion / $8.313338 billion
= 0.254859

Proposed Contribution Factor

The Commission has directed OMD to announce the contribution factor as a percentage rounded up to the nearest tenth of one percent.[7] Accordingly, the proposed contribution factor for the first quarter of 2024 is as follows:

---

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

34.6%

Proposed Circularity Discount Factor

The Commission also has directed OMD to account for contribution factor rounding when calculating the circularity discount factor.[8] Accordingly, the proposed circularity factor for the first quarter of 2024 is as follows:

0.255973[9]

Conclusion

If the Commission takes no action regarding the projections of demand and administrative expenses and the proposed contribution factor within the 14-day period following release of this Public Notice, they shall be deemed approved by the Commission.[10] USAC shall use the contribution factor to calculate universal service contributions for the first quarter of 2024. USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter.[11] USAC includes contribution obligations less the circularity discount in invoices sent to contributors. Contribution payments are due on the dates shown on the invoice. Contributors will pay interest for each day for which the payments are late. Contributors failing to pay contributions in a timely fashion may be subject to the enforcement provisions of the Communications Act of 1934, as amended, and any other applicable law. In addition, contributors may be billed by USAC for reasonable costs of collecting overdue contributions.[12]

We also emphasize that carriers may not mark up federal universal service line-item amounts above the contribution factor.[13] Thus, carriers may not, during the first quarter of 2024, recover through a federal universal service line item an amount that exceeds 34.6 percent of the interstate telecommunications charges on a customer's bill.

---

[8] *Id*.

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

[10] *See* 47 C.F.R. § 54.709(a)(3).

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

[12] *See* 47 C.F.R. § 54.713.

[13] *See* 47 C.F.R. § 54.712.

In addition, under the limited international revenues exception (LIRE) in section 54.706(c) of the Commission's rules, a contributor to the universal service fund whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on projected collected interstate end-user telecommunications revenues, net of projected contributions.[14] The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any entity whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user revenues.[15] The proposed contribution factor exceeds 12 percent, which we recognize could result in a contributor being required to contribute to the universal service fund an amount that exceeds its interstate end-user telecommunications revenue. Should a contributor face this situation, the contributor may petition the Commission for waiver of the LIRE threshold.[16]

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

---

[14] *See* 47 C.F.R. § 54.706.

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

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1157
Released: December 15, 2023

WIRELINE COMPETITION BUREAU PERFORMS REQUIRED EVALUATION PURSUANT TO SECTION 64.6304(F) OF THE COMMISSION'S RULES

WC Docket No. 17-97

Section 64.6304(f) of the Federal Communications Commission's (Commission) rules requires that the Wireline Competition Bureau (Bureau), "in conjunction with an assessment of burdens and barriers to implementation of caller identification authentication technology, annually review the scope" of all STIR/SHAKEN implementation extensions previously granted by the Commission pursuant to the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act.[1] In this Public Notice, the Bureau reevaluates the two remaining STIR/SHAKEN implementation extensions granted by the Commission on the basis of undue hardship—the extension for small voice service providers originating calls via satellite using U.S. North American Numbering Plan (NANP) numbers and the extension for providers that cannot obtain an Service Provider Code (SPC) token—and finds that they do not require revision. As discussed below, we find that these narrow extensions remain necessary to avoid undue hardship for the limited number of providers that require them, and that retaining them does not present a significant barrier to the Commission's goal of full participation in STIR/SHAKEN.

I. BACKGROUND

The STIR/SHAKEN caller ID authentication framework helps protect consumers against illegally spoofed robocalls by enabling providers to authenticate and verify caller ID information transmitted along the chain of a call.[2] The Commission, consistent with Congress's direction in the TRACED Act, adopted rules requiring voice service providers to fully implement STIR/SHAKEN in the Internet Protocol (IP) portions of their networks by June 30, 2021.[3] The TRACED Act also directed the Commission to assess burdens or barriers to the implementation of STIR/SHAKEN,[4] however, and granted the Commission

[1] 47 CFR § 64.6304(f); *see also* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 4(b)(5)(F), 133 Stat. 3274, 3279 (2019) (codified in 47 U.S.C. § 227b) (TRACED Act); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1896-97, paras. 71-73 (2020) (*Second Caller ID- Authentication Report and Order*).

[2] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1861-62, paras. 3, 6.

[3] TRACED Act § 4(b)(1)(A) (directing the Commission to require all voice service providers to implement STIR/SHAKEN in the IP portions of their networks no later than 18 months after the date of the enactment of the TRACED Act); 47 CFR § 64.6301; *Call Authentication Trust Anchor*, WC Docket No. 17-97, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 2352, para. 24 (2020) (*First Caller ID Authentication Report and Order and Further Notice*).

[4] TRACED Act § 4(b)(5)(A).

discretion to extend the implementation deadline for a "reasonable period of time" based upon a "public finding of undue hardship."[5]

In the *Second Caller ID Authentication Report and Order*, the Commission performed its initial assessment and granted three categorical STIR/SHAKEN implementation extensions on the basis of undue hardship to: (1) small voice service providers with 100,000 or fewer voice subscriber lines; (2) voice service providers unable to obtain the SPC token necessary to participate in STIR/SHAKEN; and (3) services scheduled for section 214 discontinuance.[6]

The TRACED Act further requires the Commission to assess the burdens and barriers to implementation "as appropriate" after its initial assessment,[7] and directs the Commission to, "not less frequently than annually after the first [extension] is granted," reevaluate and potentially revise any extension granted on the basis of undue hardship.[8] It requires the Commission to issue a public notice addressing "why such [extension] remains necessary" and "when the Commission expects to achieve the goal of full participation" in caller ID authentication.[9] To comply with these TRACED Act obligations, the Commission directed the Bureau to annually assess the barriers to implementation and reevaluate the extensions granted for undue hardship, and to revise or extend them as necessary.[10] In so doing, the Commission permitted the Bureau to lengthen the extensions to which voice service providers are already subject, but prohibited it from terminating an extension prior to the extension's originally set end date, or granting extensions for any providers or services that are not already subject to one.[11] If the Bureau decides to further lengthen a granted extension based on its assessments of burdens and barriers, it is permitted to decrease, but not expand, the scope of entities that are entitled to such an extension.[12]

In its previous annual reevaluations, the Bureau declined to modify the existing implementation extensions that were granted by the Commission on the basis of undue hardship.[13] The STIR/SHAKEN implementation extension for services scheduled for section 214 discontinuance ended on June 30, 2022,[14] and the implementation extensions for non-facilities-based and facilities-based small voice service providers ended on June 30, 2022 and June 30, 2023, respectively.[15]

---

[5] *Id.* § 4(b)(5)(A)(ii).

[6] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-83, paras. 39-51. Pursuant to Congress's direction in the TRACED Act, voice service providers also have a continuing extension for the portions of their networks that rely on technology that cannot initiate, maintain, or terminate SIP calls. *See* TRACED Act § 4(b)(5)(B); 47 CFR § 64.6304(d); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1892-96, paras. 66-70. Because this extension was not granted on the basis of undue hardship, we do not address it further in this Public Notice. *See* TRACED Act § 4(b)(5)(F).

[7] TRACED Act § 4(b)(5)(A)(i).

[8] *Id.* § 4(b)(5)(F)(i).

[9] *Id.* § 4(b)(5)(F)(iii).

[10] *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1896, paras. 71-72.

[11] *Id.* at 1896, para. 72.

[12] *Id*.

[13] *See Wireline Competition Bureau Reevaluates STIR/SHAKEN Extensions Pursuant to Section 4(b)(5) of the TRACED Act*, WC Docket No. 17-97, Public Notice, DA 21-1593 (WCB Dec. 16, 2021) (*First Reevaluation of STIR/SHAKEN Extensions Public Notice*); *Wireline Competition Bureau Performs Required Evaluation Pursuant to Section 64.6304(f) of the Commission's Rules*, WC Docket No. 17-97, Public Notice, DA 22-1342, at 3-6 (WCB Dec. 16, 2022) (*Second Reevaluation of STIR/SHAKEN Extensions Public Notice*).

[14] *See* 47 CFR § 64.6304(c) (providing a one-year implementation extension until June 30, 2022, for services scheduled for 214 discontinuance).

In the March 2023 *Sixth Caller ID Authentication Report and Order and Further Notice*, the Commission concluded that an indefinite STIR/SHAKEN implementation extension on the basis of undue hardship was warranted for small voice service providers that originate calls via satellite using NANP numbers.[16] The Commission also sought comment on whether to eliminate the previously granted implementation extension for providers that cannot obtain an SPC token.[17]

On September 28, 2023, the Bureau released a Public Notice seeking comment to inform this third annual reevaluation of the remaining STIR/SHAKEN implementation extensions—for small satellite voice service providers originating calls with NANP numbers and for providers unable to obtain the required token—granted on the basis of undue hardship.[18] In response to that Public Notice, we received two comments and one reply comment.

II. DISCUSSION

After reviewing the record for this third annual reevaluation, we conclude that the extensions for small satellite voice service providers originating calls with NANP numbers and for providers that cannot obtain the SPC token required to participate in STIR/SHAKEN remain necessary at this time, and that they do not serve as a significant impediment to the Commission's goal of full participation in the STIR/SHAKEN caller ID authentication framework.[19] Indeed, important progress has been made toward that goal. The STIR/SHAKEN implementation extensions previously granted by the Commission for service scheduled for section 214 and for non-facilities-based small voice service providers lapsed on June 30, 2022, and the extension for facilities-based small voice service providers lapsed on June 30, 2023.[20] The Commission has also adopted rules extending STIR/SHAKEN implementation obligations to

(Continued from previous page)

[15] *See* 47 CFR § 64.6304(a)(1)(i) (limiting the extension for non-facilities-based small voice service providers to June 30, 2022). The Commission initially granted a two-year extension until June 30, 2023, for all small voice service providers to implement STIR/SHAKEN. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-82, paras. 40-48. However, the Commission shortened the extension for non-facilities-based small service providers to June 30, 2022, based on overwhelming record support and available evidence showing that this subset of providers were originating a large and disproportionate amount of robocalls, while retaining the full two-year extension for facilities-based providers. *Call Authentication Trust Anchor*, WC Docket No. 17-97, Fourth Report and Order, 36 FCC Rcd 17840, 17844, para. 9 (2021) (*Small Provider Order*).

[16] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, at 42-43, paras. 79-82 (2023) (*Sixth Caller ID Authentication Order and Further Notice*). The Commission also concluded that satellite providers originating calls using non-NANP numbers are not "voice service providers" within the meaning of the TRACED Act, and therefore, it did not reach the question of whether a STIR/SHAKEN implementation extension was necessary for such providers. *Id.* at 41-42, para. 78.

[17] *Id.* at 51, paras. 107-108.

[18] *Wireline Competition Bureau Seeks Comment on Previously Granted STIR/SHAKEN Implementation Extensions Pursuant to Section 64.6304(f) of the Commission's Rules*, WC Docket No. 17-97, Public Notice, DA 23-910 (WCB Sept. 28, 2023) (*September 2023 Public Notice*).

[19] The TRACED Act directs the Commission to "enable as promptly as reasonable full participation of all classes of providers of voice service" in the STIR/SHAKEN framework, and to report on when it expects to achieve the goal of full participation. TRACED Act § 4(b)(5)(D), (F); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1880-81, para. 45 (noting that the Commission's "guiding principle" in setting the small voice service provider implementation deadline was to "achieve ubiquitous STIR/SHAKEN implementation . . . as quickly as possible").

[20] *See* 47 CFR § 64.6304(c) (providing a one-year implementation extension until June 30, 2022, for services scheduled for 214 discontinuance); *id.* § 64.6304(a)(1) (providing an extension for facilities-based small voice service providers until June 30, 2023, and limiting the extension for non-facilities-based small voice service providers to June 30, 2022). The Commission initially granted a two-year extension until June 30, 2023, for all small voice service providers to implement STIR/SHAKEN. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877-82, paras. 40-48. However, the Commission shortened the extension for non-facilities-based small service providers to June 30, 2022, based on overwhelming record support and available evidence showing

(continued….)

additional providers. Gateway providers were required to implement STIR/SHAKEN by June 30, 2023 and non-gateway intermediate providers that receive unauthenticated calls directly from domestic originating providers will be required to authenticate those calls using STIR/SHAKEN by December 31, 2023.[21] Accordingly, all voice service providers with control over the network infrastructure necessary to implement STIR/SHAKEN are now required to do so for session internet protocol (SIP) calls unless they are subject to one of the two implementation extensions discussed herein.[22] While we conclude that the extension for small satellite voice service providers originating calls with NANP numbers and the extension for providers unable to obtain an SPC token remain necessary at this time, the record demonstrates that the extensions are extremely limited in scope and do not create a significant barrier to achieving ubiquitous STIR/SHAKEN implementation.

A. Extension for Providers That Cannot Obtain an SPC Token

We find that the extension for providers that cannot obtain an SPC token remains necessary without modifications pending the resolution of questions presented in the *Sixth Caller ID Authentication Further Notice*. To participate in STIR/SHAKEN, a provider must obtain an SPC token issued through the STIR/SHAKEN governance system.[23] Accordingly, in the *Second Caller ID Authentication Report and Order*, the Commission granted providers that are incapable of obtaining an SPC token due to Governance Authority policy an implementation extension until they are capable of obtaining a token.[24] In May 2021, the Governance Authority revised the STI-GA Token Access Policy to enable token access by some voice service providers previously unable to receive a token.[25] In its previous annual

(Continued from previous page)
that this subset of providers were originating a large and disproportionate amount of robocalls, while retaining the full two-year extension for facilities-based providers. *Small Provider Order*, 36 FCC Rcd at 17844, para. 9.

[21] *See Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order, Fifth Report and Order, Order on Reconsideration, Order, Seventh Further Notice of Proposed Rulemaking, Fifth Further Notice of Proposed Rulemaking, 37 FCC Rcd. 6865, 6892, para. 59 (*Gateway Provider Order and Further Notice*); *Sixth Caller ID Authentication Order and Further Notice* at 8-16, paras. 15-27.

[22] *See* 47 CFR § 64.6304(a)(1)(iii), (b). Providers that lack control over the facilities necessary to implement STIR/SHAKEN do not have an implementation obligation. *See First Caller ID Authentication Report and Order*, 35 FCC Rcd at 3260, para. 40. Further, pursuant to section 4(b)(5)(B) of the TRACED Act, voice service providers have an ongoing extension for the parts their networks that rely on technology that cannot initiate, maintain, and terminate SIP calls. *See* TRACED Act § 4(b)(5)(B); 47 CFR § 64.6304(d); *see also Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1892-96, paras. 66-70.

[23] *Call Authentication Trust Anchor, Appeals of the STIR/SHAKEN Governance Authority Token Revocation Decisions*, WC Docket Nos. 17-97 and 21-291, Third Report and Order, 36 FCC Rcd 12878, 12879-81, paras. 4-6 (2021) (explaining the STIR/SHAKEN governance system and policy for obtaining SPC tokens). As the current Governance Authority, the Secure Telephone Identity Governance Authority defines the policies and procedures for the issuance and use of SPC tokens. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1864, para. 11 & n.37; *see also* Secure Telephone Governance Authority, STI Governance Authority, https://sti-ga.atis.org (last visited Nov. 8, 2023).

[24] 47 CFR § 64.6304(b); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1882-83, paras. 49-50. Recognizing that "a voice service provider may not be able to immediately come into compliance with its caller ID authentication obligations after it becomes eligible to receive" an SPC token, the Commission stated that it "will not consider a voice service provider that diligently pursues a certificate once it is able to receive on in violation of [its] rules." *Id.* at 1882-83, para. 50. *See also*, *Gateway Provider Order and Further Notice*, 37 FCC Rcd at 6893, para. 61.

[25] *Caller ID Authentication Governance Framework Revised to Enable Earlier Participation by Providers Without Direct Access to Telephone Numbers*, WC Docket Nos. 13-97, 17-97, Public Notice, DA 21-549 (WCB May 10, 2021). The Governance Authority's original SPC token access policy for STIR/SHAKEN required, in part, that an entity have "direct access to telephone numbers from the North American Number Plan Administrator (NANPA) and National Pooling Administrator (NPA)." STI-Governance Authority (GA), Policy Decision Binder, Policy
(continued….)

reevaluations, the Bureau concluded that the Governance Authority's revised policy resolved the main practical concerns underlying the extension, and found that token access no longer stood as a significant barrier to full participation in STIR/SHAKEN.[26] Nevertheless, the Bureau concluded that it was necessary to retain the extension for the relatively small number of voice service providers that are still unable to obtain an SPC token, without which they cannot participate in the STIR/SHAKEN framework.[27]

In the *Sixth Caller ID Authentication Further Notice*, the Commission sought comment on whether to eliminate the STIR/SHAKEN implementation extension for providers that cannot obtain an SPC token.[28] The Commission also sought comment on additional measures that may strengthen and expand the caller ID authentication regime, including a variety of issues related to third-party caller ID authentication, and "whether any changes should be made to the Commission's rules to permit, prohibit, or limit" the use of third party authentication solutions.[29] In so doing, the Commission asked whether it should prohibit providers from certifying to having implemented STIR/SHAKEN in the Robocall Mitigation Database unless they sign calls with their own SPC token.[30] Similarly, the Commission asked whether it should require third parties to sign calls using the provider's SPC token, if it were to explicitly authorize third-party authentication, and whether the ability to obtain SPC tokens was likely to present a barrier to providers' compliance with these requirements.[31] Notably, several parties filed comments in response to the *Sixth Caller ID Authentication Further Notice* addressing SPC token access in the context of third-party caller ID authentication practices.[32]

We conclude that the SPC token extension remains necessary without modifications until the Commission completes its consideration of these issues based on the record developed in response to *Sixth Caller ID Authentication Further Notice*. Retaining the extension will ensure that no provider is

(Continued from previous page)
Decision 001: SPC Token Access Policy Version 1.0, at 5. Under the current Governance Authority policy, to obtain a token, a provider must: "(1) [h]ave a current form 499A on file with the FCC . . . ; (2) [h]ave been assigned an Operating Company Number (OCN) . . . ; [and] (3) [h]ave certified with the FCC that they have implemented STIR/SHAKEN or comply with the [Commission's] Robocall Mitigation Program requirements and are listed in the FCC [Robocall Mitigation Database], or . . . has direct access to telephone numbers from the Toll-Free Number Administrator (TFNA)." *See* STI-GA, Policy Decision Binder Version 5.1, Policy Decision 001: SPC Token Access Policy Version 1.2, at 5 (Oct. 20, 2023), https://sti-ga.atis.org/wp-content/uploads/sites/14/2023/10/231020-STIGA-Board-Policy-Decision-Binder-FINAL.pdf.

[26] *See First Reevaluation of STIR/SHAKEN Extensions Public Notice* at 4; *Second Reevaluation of STIR/SHAKEN Extensions* at 5-6.

[27] *First Reevaluation of STIR/SHAKEN Extensions Public Notice* at 4; *Second Reevaluation of STIR/SHAKEN Extensions* at 6 (noting that "there may still be entities meeting the definition of a provider of 'voice service' that are unable to obtain a token, and thus unable to comply with the STIR/SHAKEN rules").

[28] *Sixth Caller ID Authentication Order and Further Notice* at 51, paras. 107-108.

[29] *Id.* at 47-51, paras. 97-106.

[30] *Id.* at 50, para. 103.

[31] *Id.*

[32] *See e.g.*, New York State Public Service Commission (NYPSC) Comments, WC Docket No. 17-97, at 2 (rec. June 5, 2023) (arguing that the Commission should eliminate the extension and require providers that cannot obtain an SPC token to use third-party authentication methods); NTCA Comments, WC Docket No. 17-97, at 3 (rec. June 6, 2023) (stating that "the low cost of obtaining tokens . . . is certainly outweighed by the benefit of closing a serious security vulnerability"); CTIA Reply, WC Docket No. 17-97, at 6 (rec. July 5, 2023) (arguing that requiring originating providers to obtain their own SPC tokens will encourage innovation in STIR/SHAKEN); ZipDX Reply, WC Docket No. 17-97, at 4 (rec. July 2, 2023) (arguing that "the cost to obtain and maintain a token is revenue-based and will be small for a small reseller"); *but see* INCOMPAS Reply, WC Docket No. 17-97, at 6 (rec. July 5, 2023) (arguing that requiring all providers to obtain a token will "necessitate changes with both the industry's token access policies and the Commission's current administration of voice service providers").

subjected to a regulatory obligation that it cannot fulfill in the interim. Given that the specific question of eliminating the extension is before the Commission for determination based on the separate and more robust record in that proceeding, we decline to act on NCTA's and ZipDX's request that the Bureau recommend the elimination of the extension at this time.[33] That said, we continue to believe that the Governance Authority's revised policy has resolved the main practical concern that originally created a need for the SPC token extension[34] and that token access does not stand as a significant barrier to full participation in STIR/SHAKEN.

B. Extension for Small Satellite Providers Originating Calls Using NANP Numbers

We find that the extension for small satellite providers originating calls using NANP numbers remains necessary for the reasons previously identified by the Commission and that no modifications are needed at this time. In the *Sixth Caller ID Authentication Report and Order*, the Commission concluded that an indefinite implementation extension was appropriate for such providers because "satellite service costs make the high-volume calling necessary for robocallers uneconomical," there was "little evidence that satellite providers or their users are responsible for illegal robocalls," and the number of satellite subscribers using NANP resources was "miniscule."[35] The Commission concluded that the balance of benefits and burdens counseled "against requiring such providers to implement" STIR/SHAKEN.[36]

We have been presented with no evidence to suggest that the burdens and barriers to implementation faced by small satellite providers originating calls using NANP numbers have changed since the Commission concluded that the extension was warranted, and no party filed comments arguing that the extension should be modified in any way.[37] To the contrary, the Satellite Industry Association (SIA) argues that the number of satellite voice service subscribers "remains negligible and unchanged," and subscribers use NANP resources "only in a handful of instances."[38] SIA further argues that there is no evidence to suggest that satellite providers or their users are responsible for illegal robocalls and that the satellite service costs that make the high-volume calling necessary for illegal robocalls uneconomical remains unchanged.[39] As the Commission found in the *Sixth Caller ID Authentication Report and Order*, the balance of the benefit to the public and the hardship of compliance due to the burdens and barriers to implementation faced by small satellite voice service providers originating calls using NANP numbers

---

[33] NCTA Comments at 1-2; ZipDX Reply at 1. NCTA and ZipDX argue that the Commission should require providers unable to obtain an SPC token to seek a waiver of the Commission's STIR/SHAKEN implementation rules rather than continue to grant them an implementation extension. NCTA Comments at 1-2; ZipDX Reply at 1. For the reasons stated above, we decline to address this argument in light of the questions pending before the Commission concerning the extension.

[34] *First Reevaluation of STIR/SHAKEN Extensions Public Notice* at 4; *Second Reevaluation of STIR/SHAKEN Extensions* at 6; NCTA Comments at 1 (agreeing with the Bureau's conclusion that "the main practical concern underlying the Commission's original grant of this extension was resolved when the [STI-GA] revised its SPC Token Access Policy in 2021"); ZipDX Reply at 1 (noting that "ZipDX concurs with NCTA's comments in their entirety").

[35] *See Sixth Caller ID Authentication Order and Further Notice* at 42-43, para. 81; Satellite Industry Association (SIA) Comments, CG Docket No. 17-59, WC Docket No. 17-97 at 8, 15-18 (rec. Aug. 17, 2022); YouMail, Inc. Comments, CG Docket No. 17-59, WC Docket No. 17-97 at 5, n.10 (rec. Aug. 16, 2022).

[36] *See Sixth Caller ID Authentication Order and Further Notice* at 42-43, paras. 80-82.

[37] *See* SIA Comments, WC Docket No. 17-97, at 2-5 (rec. Oct. 18, 2023) (supporting the small satellite provider extension); NCTA Comments, WC Docket No. 17-97, at 1, n.2 ("NCTA does not object to retention of the implementation extension for small voice service providers that originate calls via satellite using [NANP] numbers.").

[38] SIA Comments, WC Docket No. 17-97, at 3-4 (rec. Oct. 18, 2023).

[39] *Id.* at 3.

"counsels against requiring such providers to implement STIR/SHAKEN."[40]

Further, we do not believe that the extension stands as a significant barrier to full participation in STIR/SHAKEN. As SIA states, the extension has an "extremely limited impact on the Commission's goal of achieving ubiquitous deployment of the STIR/SHAKEN framework due to the de minimus number" of satellite voice service subscribers.[41] We will continue to annually reevaluate the extension to ensure that the Commission will be able to promptly act to prevent any "unforeseen abuses"[42] and take any reasonable measures to enable full participation in the STIR/SHAKEN framework by small satellite voice service providers as promptly as reasonable.[43]

C. Other Issues

Other Topics in Comments. As this Public Notice is limited to the reevaluation of the granted implementation extensions, we decline to address any issues or proposals contained in the comments and reply comment that are beyond the scope of this narrow obligation.[44]

Contact Information. For further information, please contact Merry Wulff, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at 202-418-1084 or by email at Merry.Wulff@fcc.gov.

- FCC -

[40] *See Sixth Caller ID Authentication Order and Further Notice* at 42-43, paras. 80-82.

[41] SIA Comments, WC Docket No. 17-97, at 4 (rec. Oct. 18, 2023).

[42] *Sixth Caller ID Authentication Order and Further Notice* at 43, para. 82.

[43] TRACED Act § 4(b)(5)(D), (F).

[44] *See, e.g.*, NCTA Comments at 2 (arguing that the Commission should require providers that are unable to obtain a SPC token "to seek waivers of the STIR/SHAKEN implementation obligation on an individual basis"); ZipDX Reply at 2 (arguing that the Commission should verify whether "any voice service provider that has certified to full STIR/SHAKEN implementation [in the Commission's Robocall Mitigation Database] either has their own token or does not originate . . . any calls"). These comments concern issues related to the Commission's evaluation of Robocall Mitigation Database filings and the potential application of the Commission's standard waiver provisions for providers that are unable to obtain an SPC token. As such, the proposals are outside the Bureau's charge of reevaluating the previously granted STIR/SHAKEN implementation extensions and the scope of this Public Notice.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1158
Released: December 15, 2023

WIRELINE COMPETITION BUREAU REMINDS NON-GATEWAY INTERMEDIATE PROVIDERS OF STIR/SHAKEN IMPLEMENTATION DEADLINE

WC Docket No. 17-97

This Public Notice reminds non-gateway intermediate providers not subject to an extension that they must use STIR/SHAKEN to authenticate caller ID information for all unauthenticated SIP calls received directly from an originating provider no later than **December 31, 2023**.[1]

In 2020, the Commission required intermediate providers to either authenticate any unauthenticated caller ID information for the SIP calls they receive or, alternatively, cooperate with the industry traceback consortium and fully and timely respond to all traceback requests received from the Commission, law enforcement, and the industry traceback consortium.[2] Subsequently, however, the Commission required all providers in the path of a SIP call—including intermediate providers—to respond fully and in a timely manner to traceback requests.[3] As a result, intermediate providers may not have been incentivized to authenticate caller ID information, given that compliance with the traceback alternative was mandatory.[4]

In March 2023, the Commission addressed that gap in the STIR/SHAKEN caller ID authentication regime by establishing a mandatory caller ID authentication obligation for certain intermediate providers. Specifically, the Commission required "any non-gateway intermediate provider that receives an unauthenticated SIP call directly from an originating provider to authenticate the call" using the STIR/SHAKEN caller ID authentication framework.[5] Under this rule, by **December 31, 2023**,[6]

---

[1] *See* 47 CFR § 64.6302(d) ("[A] non-gateway intermediate provider must, not later than December 31, 2023, authenticate caller identification information for all calls it receives directly from an originating provider and for which the caller identification information has not been authenticated and which it will exchange with another provider as a SIP call, unless that non-gateway intermediate provider is subject to an applicable extension in § 64.6304."); *Call Authentication Trust Anchor*, WC Docket No 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, at 9, para. 15 (Mar. 17, 2023) (*Sixth Caller ID Authentication Report and Order*).

[2] *See* 47 CFR § 64.6302(b)(1)-(2); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1926, para. 140 (2020).

[3] *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221, 15227-29, paras. 15-21 (2020); *see* 47 CFR § 64.1200(n)(1).

[4] *Sixth Caller ID Authentication Report and Order* at 9, para. 15.

[5] *Id.*

[6] *Id.* at 15, para. 27. Gateway providers were required to implement STIR/SHAKEN by June 30, 2023. *See* 47 CFR § 64.6302(c).

the first non-gateway intermediate provider in the call chain must implement STIR/SHAKEN and authenticate any unauthenticated SIP calls, unless subject to an applicable extension.[7]

Contact Information. For further information, please contact Erik Beith, Wireline Competition Bureau, Competition Policy Division, at (202) 418-0756 or by email at Erik.Beith@fcc.gov.

- FCC -

[7] *See* 47 CFR §§ 64.6302(d) (caller ID authentication by non-gateway intermediate providers); 64.6304 (extension of implementation deadline).

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

In the Matter of	)	
	)	
National Exchange Carrier Association, Inc.	)	WC Docket No. 05-337
	)	
2024 Modification of Average Schedule Universal Service Support Formula	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	
	)	

ORDER

Adopted: December 14, 2023 **Released: December 14, 2023**

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. Pursuant to section 69.606(b) of the Commission's rules, the National Exchange Carrier Association, Inc. (NECA) has submitted the annual average schedule company high-cost loop support (HCLS) formula modifications for Commission review.[1] The Commission's rules require that this formula "simulate the disbursements that would be received . . . by a company that is representative of average schedule companies."[2] For the reasons discussed below, we approve NECA's proposed HCLS formula for 2024.

II. BACKGROUND

2. Pursuant to Part 54 of the Commission's rules, HCLS, also known as the loop expense adjustment, provides universal service support to carriers with high loop costs based on the extent that an individual company's cost per loop (CPL) exceeds the national average cost per loop (NACPL).[3] Because average schedule companies are not required to perform company-specific cost studies—the basis upon which a carrier's expense adjustment is calculated—the Commission has permitted expense adjustments for average schedule companies to be calculated pursuant to a formula developed by NECA and approved annually by the Wireline Competition Bureau (Bureau).[4] This formula is developed by NECA using data from a sample group of average schedule carriers and similarly situated companies that file cost data (cost companies) in addition to data (access line and exchange information) obtained from the entire population

[1] 47 CFR § 69.606(b); *see also Federal-State Joint Board on Universal Service, National Exchange Carrier Association, Inc. 2005 Modification of Average Schedule Universal Service Formulas*, CC Docket No. 96-45, Order, 19 FCC Rcd 24998, 25002, para. 7 (WCB 2004) (*2005 Order*) (requiring NECA to file high-cost loop support formula and supporting data no later than September 1 annually).

[2] 47 CFR § 69.606.

[3] *See* 47 CFR Part 54, Subpart M.

[4] *See National Exchange Carrier Association, Inc. Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas*, ASD 98-96, Order, 15 FCC Rcd 1819, 1819-20, para. 2 (1999). Average schedule companies have been permitted by the Commission to estimate their access settlements and universal service support through the use of average schedules to avoid company-specific cost studies. *See*, *e.g.*, *ALLTEL Corp. v. FCC*, 838 F.2d 551, 553 (D.C. Cir. 1988).

of average schedule carriers. Average schedule companies that participate in the NECA pools are required to report access line count data to NECA each month based on their billing of End User Common Line (EUCL) charges associated with basic local exchange service.[5] Once approved, the newly derived formula is used to determine support amounts for all average schedule carriers.

3. In December 2014, the Commission adopted a Report and Order that modified the way HCLS expense adjustments are calculated starting July 1, 2015. The targeted change to the former HCLS rule was designed to provide a more equitable distribution of HCLS among carriers by reducing support proportionally among all HCLS recipients to remain within the shrinking HCLS cap, instead of eliminating support altogether for some companies while preserving support for other companies.[6]

4. In March 2016, the Commission adopted the *Rate-of-Return Reform Order*, which among other things, prescribed a new rate of return to be phased in over a six-year period, beginning July 1, 2016, and adopted limits on operating expenses to be recovered through high-cost support.[7]

5. On August 29, 2023, NECA filed proposed modifications to the current HCLS formula for average schedule companies and requested that they take effect on January 1, 2024 and remain in effect through December 31, 2024.[8] The Bureau issued a public notice seeking comment on NECA's proposed formula.[9] No comments were received.

III. DISCUSSION

6. Consistent with prior years, NECA proposes calculating 2024 HCLS payments for average schedule companies based on the relationship of CPL data of sample companies to values representing the number of loops per exchange (CPL calculations).[10] To estimate current year costs, NECA applies forecasted growth factors to data collected from sample average schedule carriers one and two years prior to the current year. NECA then applies cost allocation factors—developed from the cost studies of similarly situated cost companies—to the account balances of each sample average schedule company to estimate a CPL for each of the sample companies. Thereafter, NECA uses regression analyses to predict CPLs for all average schedule carriers. Each average schedule company's derived CPL is then used to calculate the HCLS support amount consistent with section 54.1310 of the Commission's rules, as revised in 2014.[11] The current HCLS formula approved on December 8, 2022 is expected to provide $6.88 million in payments to 69 average schedule study areas in 2023. NECA's

[5] *See* 2024 NECA Modification of the Average Schedule Universal Service High-Cost Loop Support Formula, WC Docket No. 05-337, at 7 (filed Aug. 29, 2023) (NECA 2024 Filing).

[6] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15680-84, paras. 102-114 (2014).

[7] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Order*).

[8] *See* NECA 2024 Filing.

[9] *See Comment Sought on the 2024 Modification of Average Schedule Company Universal Service High-Cost Loop Support Formula*, WC Docket Nos. 05-337 and 10-90, Public Notice, DA 23-810 (WCB 2023).

[10] *See* NECA 2024 Filing at 1-28; *see also, e.g.*, *National Exchange Carrier Association, Inc.; 2023 Modifications of Average Schedule Universal Service Support Formula; High-Cost Universal Service Support,* WC Docket No. 05-337, Order, DA 22-1273, Para. 6 (WCB 2022) (*2023 Order*); *National Exchange Carrier Association, Inc.; 2022 Modifications of Average Schedule Universal Service Support Formula; High-Cost Universal Service Support,* WC Docket No. 05- 337, Order, DA 21-1552, Para. 6 (WCB 2021) (*2022 Order*); *National Exchange Carrier Association, Inc.; 2021 Modifications of Average Schedule Universal Service Support Formula; High-Cost Universal Service Support,* WC Docket No. 05- 337, Order, 35 FCC Rcd 14019, 14021, Para. 6 (WCB 2020) (*2021 Order*); *2020 Modifications of Average Schedule Universal Service Support Formula; High-Cost Universal Service Support,* WC Docket No. 05- 337, Order, 34 FCC Rcd 11205, 11207, Para. 6 (WCB 2019) (*2020 Order*).

[11] *See* NECA 2024 Filing at 1-28.

proposed formula for 2024 projects approximately $6.19 million in payments to carriers serving 68 average schedule study areas, a decrease of 10.0% over the 2022 approved estimated payments.[12] While the decrease in support is significant relative to 2023 average schedule HCLS, average schedule HCLS is a small fraction – 1.9 percent – of all total HCLS,[13] and will therefore have minimal impact on the overall HCLS cap. We note that such fluctuations may be expected because, when an average schedule company's estimated CPL is close to the support threshold (as is the case with most average schedule companies), small changes in the CPL can have a relatively large effect on the company's HCLS support.[14]

7. We find that NECA's results and CPL calculations appear to be accurate and complete, and the proposed HCLS formula should reasonably approximate the CPL of the sample average schedule companies, and thereby allocate funds appropriately to average schedule companies.[15] Therefore, we approve the HCLS formula as provided in NECA's August 29, 2023 submission.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that the average schedule cost per loop formula proposed by the National Exchange Carrier Association, Inc. on August 29, 2023 for high-cost loop support IS ADOPTED, as described herein, effective as of January 1, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Jesse Jachman
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

[12] *See* NECA 2024 Filing at 1. At the time of NECA's 2024 filing, 81 average schedule carriers were eligible for HCLS, but 13 would receive no HCLS pursuant to the formula we adopt here. *Id. at 2*. However, 13 out of the 81 carriers elected Enhanced A-CAM and therefore will not receive HCLS in 2024. *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 rel. Oct. 30, 2023). The estimates in this Order do not reflect the election of Enhanced A-CAM by those carriers. In addition, 192 average schedule companies receive support pursuant the Alternative Connect America Model or Alaska Plan, and are not eligible for HCLS. *See* NECA 2024 Filing at 2 n.9.

[13] *Id.* at 2.

[14] For 2020, 2021, 2022, and 2023, approved high-cost loop average schedule formulas were estimated to result in total payments of $3.245 million, $4.022, $6.034 and $6.88 million, respectively. *See 2020 Order*, 34 FCC Rcd at 11207, para. 6 n.11; *2021 Order*, 35 FCC Rcd at 14020, para. 6 n. 11; *2022 Order*, DA 21-1552 at 3, para. 6 n.11; *2023 Order*, DA 22-1273 at 3 para. 6 n.11. We note that the current amount of support expected to be paid for 2023—$6.88 million—is less than the amount that was projected when NECA submitted its original average schedule formula for 2023. *See* 2023 NECA Modification of the Average Schedule Universal Service High-Cost Loop Support Formula, WC Docket No. 05-337 (filed Aug. 30, 2022). At that time, NECA estimated that the CPL formula would result in total payments of $6.975 million for 2023. *See id*. at 1; NECA 2024 Filing at 1.

[15] *See*, *e.g.*, *2020 Order*, 34 FCC Rcd at 11207, para. 7; *2021 Order*, 35 FCC Rcd at 14021, para. 7; *2022 Order*, DA 21-1552 at 3, para. 7; *2023 Order*, DA 22-1273 at 3, para. 7.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1160
Released: December 14, 2023

CHAIRWOMAN ROSENWORCEL NAMES SIX MEMBERS TO THE BOARD OF DIRECTORS OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

CC Docket Nos. 96-45, 97-21

Federal Communications Commission Chairwoman Jessica Rosenworcel hereby appoints six members to the Board of Directors of the Universal Service Administrative Company (USAC) pursuant to section 54.703(c)(3) of the Commission's rules.[1] Each appointee was nominated in response to two Public Notices issued earlier this year soliciting nominations for the Board position listed below,[2] including a Public Notice seeking nominations for the newly created Tribal board member position.[3] The three-year term for these positions begins on January 1, 2024.

Chairwoman Rosenworcel appoints the following individuals to the USAC Board of Directors:

- Mona L. Thompson, General Manager of the Cheyenne River Sioux Tribe Telephone Authority as the Representative for Tribal communities;
- Sheba Chacko, Chief Regulatory Counsel, British Telecoms in the Americas as the Representative for competitive local exchange carriers;
- Kara Semmler, General Counsel and Executive Director, South Dakota Telecommunications Association as the Representative for incumbent local exchange carriers (non-Bell Operating Companies) with $40 million or less in annual revenue;
- Angela Siefer, Executive Director, National Digital Inclusion Alliance as the Representative for low-income consumers;
- Joan H. Wade, Ed.D., Executive Director, Association of Educational Service Agencies as the Representative for schools that are eligible to receive discounts pursuant to section 54.501 of the Commission's rules; and
- Katherine Hsu Wibberly, Ph.D., Director, Mid-Atlantic Telehealth Resource Center as the Representative for rural health care providers that are eligible to receive supported services pursuant to section 54.601 of the Commission's rules.

[1] 47 CFR § 54.703(c)(3).

[2] *See Wireline Competition Bureau Seeks Nominations for Six Board Member Positions on the Universal Service Administrative Company Board of Directors*, CC Docket Nos. 96-45, 97-21, Public Notice, DA 23-753 (WCB 2023).

[3] *Wireline Competition Bureau Seeks Nominations for Tribal Board Member Position on the Universal Service Administrative Company Board of Directors,* CC Docket Nos. 96-45, 97-21, Public Notice, DA 23-903 (WCB 2023).

The Commission did not receive any nominations for the director representing interexchange carriers with annual operating revenues of $3 billion or less. Therefore, pursuant to section 54.703(c) of the Commission's rules and USAC Bylaws, the incumbent in that position, Michael Skrivan, will continue to serve on the Board of Directors until a replacement is selected.[4] The Commission will seek nominations for this position in 2024.

The USAC Board of Directors will hold its next meetings on January 29 and 30, 2024.[5] All Board of Directors quarterly meetings are open to the public.[6] For further information, please contact Sherry Ross (Sherry.Ross@fcc.gov), Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-1529.

- FCC -

[4] *See* 47 CFR § 54.703, in which the Commission establishes USAC's board. *See also* USAC Bylaws, https://www.usac.org/wp-content/uploads/about/documents/leadership/usacbylaws.pdf (last visited Dec. 14, 2023).

[5] *USAC, About, Leadership, Quarterly*, https://www.usac.org/about/leadership/quarterly-meeting-schedule/ (last visited Dec. 14, 2023).

[6] 47 CFR § 54.703(e).

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 14, 2023 Released: December 14, 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 CBS Broadcasting Inc., CBS Television Stations Inc., Los Angeles Television Station KCAL LLC, and Pittsburgh Television Station WPCW Inc. (collectively, "Petitioners" or "Paramount Global Licensees"), seeking an extension of certain December 12, 2023 Emergency Alert System ("EAS") compliance deadlines requiring changes to alert displays and code processing adopted by the FCC in the 2022 EAS Report and Order.[1] For the reasons discussed below, the Bureau 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

[1] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 37 FCC Rcd 11844 (2022) (*2022 Part 11 Report and Order*) *see also* PSHSB Announces Effective Date and Compliance Dates for Certain Emergency Alert System (EAS) Rules, PS Docket No. 15-94, Public Notice, DA 22-1189 (rel. Nov. 10, 2022). The FCC also adopted changes to the language associated with the national emergency code. The compliance deadline for cable systems to implement changes to this language is March 12, 2024, for certain set-top box software and hardware upgrades, and December 12, 2028, for certain set-top box hardware upgrades. Petitioners are not seeking an extension of these compliance deadlines.

[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).

throughout a geographic area.[4] 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.[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

[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 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).

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. *Paramount Global Licensees' Request.* On December 11, 2023, Petitioners filed a request for a 30-day temporary waiver of certain EAS compliance deadlines falling on December 12, 2023.[13] In support of its request, Petitioners state that, of the 29 stations operated by the Paramount Global Licensees, three stations are unable to comply with the Commission's deadline as its equipment cannot be modified by software update, and these stations have not completed hardware changes necessary to support compliance with the relevant EAS rules due to minor vendor delays.[14] Petitioners further state that a fourth station, having received updated equipment, subsequently discovered the equipment was improperly configured necessitating return of the hardware to the manufacturer.[15] They assert that when the Paramount Global Licensees determined their current equipment was incompatible with the software-update method of compliance, they promptly identified the required equipment replacements and worked with their vendors to ensure compliance using alternative procedures, but that unexpected complications in the procurement process resulted in a "minor delay in the receipt and installation of the new equipment."[16] They estimate compliance "in a matter of days."[17]

5. Petitioners thus seek a limited, temporary 30-day waiver for the EAS units for which the required hardware upgrades will not be complete prior to December 12, 2023, and request that it be granted an extension until January 10, 2024, to come into full compliance with the Commission's new EAS rules.

III. DISCUSSION

6. 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."[18] 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."[19] The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[20] Based on the circumstances described herein, we conclude there is good cause to provide an short, temporary extension of time until January 10, 2024, to accommodate the anticipated hardware delivery and installation time estimated by the Paramount Global Licensees.

7. In further support of its waiver, counsel to the Paramount Global Licensees represented to staff that KDKA-TV, Pittsburgh, Pennsylvania (FCC Facility ID No. 25454) and Station WPKD-TV, Jeannette, Pennsylvania (FCC Facility ID No. 69880) both finalized purchase orders for replacement equipment on September 8, 2023. While equipment for KDKA-TV has not yet been delivered as of the

[11] *2022 Part 11 Report and Order* at 5, para. 11.

[12] *See* 47 CFR § 11.55(c)(2).

[13] At the request of staff, counsel to Petitioners clarified that wavier is sought specifically at to sections 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii)of the Commission's rules, 47 CFR §§ 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii).

[14] Extension Request at 2. These stations include KCBS-TV, Los Angeles, California (FCC Facility ID No. 21422); KDKA-TV, Pittsburgh, Pennsylvania (FCC Facility ID No. 25454); and WFOR-TV (Miami, Florida) (FCC Facility ID No. 47902).

[15] *Id.* at 2-3. (Station WPKD-TV, Jeannette, Pennsylvania (FCC Facility ID No. 69880)).

[16] *Id.* at 4.

[17] *Id.* at 3.

[18] 47 CFR § 1.3.

[19] *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)).

[20] WAIT Radio v. FCC, 418 F.2d at 1157.

date of the waiver, with respect to WPKD-TV, counsel indicated that replacement equipment was received on December 4, 2023, but discovered to be faulty and promptly returned to the vendor. A further return of the equipment to the station from the vendor remains pending.

8. KCBS-TV, Los Angeles, California (FCC Facility ID No. 21422) finalized it purchase order for updated equipment on September 22, 2023, but was still pending receipt of the equipment as of the date of the waiver. As to WFOR-TV (Miami, Florida) (FCC Facility ID No. 47902), counsel indicated that the equipment purchase order was finalized in September 19, 2023, and shipment of the requisite equipment occurred on December 11, 2023.

9. We find that the limited nature of the extension to accommodate the unexpected delay from their vendor, coupled with the prompt action by the Licensees upon the discovery of the non-compatibility of the subject equipment, justifies a limited extension of time and will serve the public interest. Petitioners estimate receipt and installation of needed equipment in 7-10 days, seeking an additional 30-days for compliance in an abundance of caution.[21] We agree with Petitioners that a narrowly-tailored brief extension, responding to unforeseen circumstances, will permit the Paramount Global Licensees to provide critical emergency and public safety information to the public promptly in compliance with the Commission's updated technical standards.[22]

10. In order to ensure adequate service to its customers during the pendency of the upgrades, we condition our waiver on the requirement that the EAS equipment now in place will continue to operate in all respects except for the requirements related to the rules waiver herein until the new equipment is installed, so there will be no interruption to alerting.

IV. ORDERING CLAUSES

11. 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, sections 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii)of the Commission's rules, 47 CFR §§ 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii), ARE WAIVED, for Petitioners' stations KCBS-TV, Los Angeles, California (FCC Facility ID No. 21422); KDKA-TV, Pittsburgh, Pennsylvania (FCC Facility ID No. 25454); and WFOR-TV (Miami, Florida) (FCC Facility ID No. 47902) and WPKD-TV, Jeannette, Pennsylvania (FCC Facility ID No. 69880), to comply with the enumerated provisions of the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED to afford these Paramount Global Licensee stations until January 10, 2024.

12. 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.[23]

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

[21] Extension Request at 3.

[22] *See, e.g.,* Extension Request at 4

[23] *See* 47 CFR §§ 0.191 and 0.392.

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. 23-1163

Report No. SAT-01784 **Friday December 15, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-STA-20231023-00258 E S3092 Astranis Projects USA LLC
Special Temporary Authority
Withdrawn Effective Date: 12/13/2023

SAT-STA-20231031-00270 E S2423 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/13/2023

On December 13, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, for special temporary authority for a period of 180 days to operate Horizons 2 with a new bias of 0.65° E, 0.4° S and to operate one of its beams with the resulting new coverage area.

SAT-STA-20231122-00289 E S2423 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/13/2023

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

SAT-STA-20231130-00293 E S2912 Planet Labs PBC
Special Temporary Authority
Grant of Authority Effective Date: 12/14/2023

On December 14, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Planet Labs PBC for an additional period of up to 30 days to operate its Pelican-1 satellite in the 2025-2110 MHz band (Earth-to-space) using different duty cycles than specified in its license.

CORRECTIONS

SAT-STA-20231107-00277 S2912 Planet Labs PBC

The Actions Taken Public Notice, Report No. SAT-01776, dated November 17, 2023, for Planet Labs PBC that included the above captioned application is corrected to reflect that the frequency band listed with the updated duty cycle is the 2025-2110 MHz band (Earth-to-space).

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1164

Released: December 15, 2023

FCC ANNOUNCES JANUARY 30, 2024 MEETING OF THE DISABILITY ADVISORY COMMITTEE

By this Public Notice,[1] the Federal Communications Commission (FCC) announces the next meeting of the Disability Advisory Committee (DAC) to be held on Tuesday, January 30, 2024, at 9:00 a.m. until approximately 12 p.m. EST. The DAC meeting will be held in the Commission Meeting Room at FCC Headquarters, located at 45 L Street, NE, Washington, DC 20554, and live-streamed at www.fcc.gov/live.

At this meeting, DAC members are expected to (i) discuss a working group report and recommendation on the transmittal of audio description files to Internet Protocol programming; (ii) receive updates from the working groups on quality Telecommunications Relay Services for individuals with multiple disabilities, and best practices for the use of artificial intelligence to caption live video programming; and (iii) any other topics relevant to the DAC's work. The meeting agenda will be available at https://www.fcc.gov/news-events/events/2024/01/disability-advisory-committee-meeting and may be modified at the discretion of the DAC Co-Chairs and Designated Federal Officer (DFO).

The DAC meeting is open to the public. The FCC will accommodate as many attendees as possible; however, admittance will be limited to seating availability. During the meeting, members of the public may submit questions and comments to the DAC via email: livequestions@fcc.gov.

Open captioning and ASL sign language interpreting will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requesters of such accommodations may contact the Consumer and Governmental Affairs Bureau at fcc504@fcc.gov, or (202) 418-0530. Such requests should include a detailed description of the accommodation needed and how the requester can be contacted. Last-minute requests will be accepted but may not be possible to accommodate.

For general information about the DAC, visit www.fcc.gov/dac. For specific questions about the DAC, contact Joshua Mendelsohn, DFO, DAC@fcc.gov, or (202) 559-7304.

– FCC –

[1] This Public Notice is released consistent with the Federal Advisory Committee Act, 5 U.S.C. § 1001 *et seq*.

PUBLIC NOTICE

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

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

DA 23-1165
December 15, 2023

MEDIA BUREAU ANNOUNCES CLOSE OF LPFM NEW STATION FILING WINDOW AND TEMPORARY FILING FREEZE ON AMENDMENTS TO APPLICATIONS SUBMITTED IN THE DECEMBER 2023 FILING WINDOW

The filing window for applications for new low power FM (LPFM) station construction permits closed at 12:00 pm (noon) EST on Friday, December 15, 2023.[1] No further new LPFM station applications may be filed. Any application submitted after the 12:00 pm (noon) EST Friday, December 15, 2023, application deadline will be dismissed by public notice without further consideration.[2]

The Bureau also announces a temporary freeze on the filing of *any* amendments to new LPFM station applications submitted in the December 2023 filing window.[3] The freeze will take effect immediately and will continue in effect until 6:00 pm EST on Wednesday, January 31, 2024. During this time, the Bureau staff will review the applications to identify mutually exclusive (MX) groups of applications[4] and applications that are not mutually exclusive with any other application filed in the window (singletons).[5] Following this period, the Bureau expects to release forthcoming public notices to

[1] The filing window was initially scheduled to run from November 1, 2023, to November 8, 2023. *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*LPFM Procedures Public Notice*). Based on an earlier request from certain outside parties, the Media Bureau (Bureau) subsequently delayed the window to run from December 6, 2023 to December 13, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

[2] As the Bureau previously noted, new LPFM station applications filed outside of the LMS system, including paper filed applications, will be dismissed. *LPFM Procedures Public Notice* at 2. Accordingly, we will dismiss any applications submitted by email or that are paper filed after the 12:00 pm (noon) December 15, 2023, closing of the filing window.

[3] Any amendments that are submitted between the release of this public notice and the subsequent public notice allowing the filing of amendments will be dismissed without consideration. At no point will we accept amendments to correct violations of the spacing rules set forth in section 73.807 of the Commission's rules. *See* 47 CFR §§ 73.807, 73.870(c). Applicants with correctable defects, such as a defective TV6 protection showing, will be able to file curative amendments pursuant to our established procedures after the temporary amendment filing freeze is lifted on January 31, 2024. *See Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications,* Public Notice, 56 RR 2d 776 (1984); 47 CFR § 1.106. Additionally, applicants may not amend their applications to increase their comparative point total.

[4] Conflicting LPFM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. A MX group consists of all applications which are MX to at least one other application in the group.

[5] Rule compliant singleton applications will be accepted for filing. The acceptance for filing of these singletons will start the 30-day period for filing petitions to deny. *See* 47 CFR § 73.870(d).

identify the MX groups of applications and explain the procedures for filing settlement agreements and technical amendments.[6]

For additional information, please contact James Bradshaw, James.Bradshaw@fcc.gov; Alexander Sanjenis, Alexander.Sanjenis@fcc.gov; Lisa Scanlan, Lisa.Scanlan@fcc.gov; or Amy Van de Kerckhove, Amy.Vandekerckhove@fcc.gov; of the Media Bureau, Audio Division, (202) 418-2700. Direct press inquiries to Janice Wise, Janice.Wise@fcc.gov, (202) 418-8165.

- FCC-

[6] Before proceeding to a comparative analysis, MX applicants will have an opportunity to resolve conflicts through settlements or technical amendments.

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 23-1166
Released: December 15, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-373

The Wireline Competition Bureau (Bureau) grants the application listed in this Public Notice pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 CFR § 63.03. The Bureau determined that a grant of this application serves the public interest.[1] For the purposes of computation of time when filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this Public Notice.[2] Should no petition for reconsideration, application for review, or petition for judicial review be timely filed, the proceeding listed in this Public Notice shall be terminated, and the docket will be closed.

Domestic Section 214 Application Filed for Acquisition of Certain Assets of
Great Lakes Communications Corp. d/b/a IGL Teleconnect by
Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications,
WC Docket No. 23-373, Public Notice, DA 23-1080 (WCB 2023).

Effective Grant Date: December 15, 2023

For further information, please contact Tracey Wilson at (202) 418-1394 or Gregory Kwan at (202) 418-1191, Competition Policy Division, Wireline Competition Bureau.

-FCC-

[1] *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

[2] *Id.*; *see* 47 CFR § 1.4 (Computation of time).

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 23-1167
Released: December 15, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF THE AVAIL GROUP, LLC BY ELEMENT 78 PARTNERS, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-383

Comments Due: December 29, 2023
Reply Comment Due: January 5, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by The Avail Group, LLC (Avail) and Element 78 Partners, LLC (E78) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer certain assets from Avail to E78, including customer accounts.[2]

Avail, a New Jersey limited liability company, resells telecommunication circuits to its customers under resale arrangements with other carriers. Avail provides Multiprotocol Label Switching (MPLS) and other point-to-point services in Florida, Connecticut, Illinois, New Jersey, New York, and Utah.

E78, a Delaware limited liability company, provides a wide range of telecommunication expense management services, telecommunication consulting services, and other services. E78 does not currently hold any Commission licenses or authorizations. E78 is held by multiple intermediate domestic and foreign holding companies and investment funds, but is ultimately held and controlled by Pierre Olivier Sarkozy, a citizen of the United States and France.

Pursuant to the terms of the proposed transaction, the Applicants entered into a Letter of Intent for the purchase by E78 of substantially all of the assets of Avail, including its customer base. The assets to be acquired under the proposed transaction include the authorizations, customer contracts, intellectual property, vendor and software contracts, and other assets necessary to operate the business.

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

[2] Domestic Section 214 Application Filed for the Assignment of Certain Assets and Customer Base from The Avail Group, LLC to Element 78 Partners, LLC, WC Docket No. 23-383 (filed Nov. 7, 2023) (Application). Applicants also filed an application for the transfer of authorizations associated with international services (ITC-ASG-20231107-00140). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

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 filing under section 63.03(b)(1)(ii) of the Commission's rules.[3]

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."[4] The Commission, however, retains the discretion to refer such applications should it find that a particular application may raise national security, law enforcement, foreign policy, and trade policy concerns for which it would benefit from the advice of the Executive Branch.[5] The parties assert that the Application falls under this exclusion and that the Commission should not refer them to the Executive Branch agencies.[6] 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.[7]

Domestic Section 214 Application Filed for the Assignment of
Certain Assets and Customer Base from The Avail Group, LLC
to Element 78 Partners, LLC, WC Docket No. 23-383 (filed Nov.7, 2023).

GENERAL INFORMATION

The transfer of assets 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 29, 2023**, and reply comments **on or before January 5, 2024**. 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/.

[3] 47 CFR § 63.03(b)(1)(ii).

[4] *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*).

[5] *Id*.

[6] Application at 14-15.

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

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;
3) David Krech, Office of Internal Affairs, david.krech@fcc.gov; and
4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a 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.[8] 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 (202) 418-0809.

-FCC-

[8] *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 23-1168
Released: December 15, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF HORIZON ACQUISITION PARENT LLC AND ITS SUBSIDIARIES TO SHENANDOAH TELECOMMUNICATIONS COMPANY

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-384

Comments Due: December 29, 2023
Reply Comment Due: January 5, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Horizon Acquisition Parent LLC (HAP) and Shenandoah Telecommunications Company (Shentel), 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 for the transfer of control of The Chillicothe Telephone Company (CTC) and its affiliates Horizon Services, Inc. (Horizon Services), Infinity Fiber, LLC (Infinity Fiber), and Urban System, LLC (Urban Systems), (Horizon Services, Infinity Fiber and Urban Systems, together, the Horizon Licensees, and, together with CTC, the Licensees) (Licensees, together with HAP and Shentel, the Applicants) from HAP to Shentel.[2]

The Licensees provide telecommunications services and other services in Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and/or West Virginia.[3] CTC is authorized to provide service as an incumbent local exchange carrier (LEC) in Kentucky, as a competitive LEC throughout Ohio, and as a competitive access provider (CAP) in Michigan.[4] CTC provides

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

[2] Joint Application for Consent to Transfer Indirect Control of Domestic Section 214 Authorization Holders, WC Docket No. 23- 384 (filed on Nov. 7, 2023). Applicants filed a supplements to their application on November 29, 2023 and December 11, 2023. Letter from Michael P. Donahue, PLLC, Counsel to Transferor and Licensees, and K.C. Halm, Counsel to Transferee, to Marliene H. Dortch, Secretary, FCC, WC Docket No. 23-384 (filed Nov. 29, 2023) (Nov. 29 Supplement); Letter from Michael P. Donahue, PLLC, Counsel to Transferor and Licensees, and K.C. Halm, Counsel to Transferee, to Marliene H. Dortch, Secretary, FCC, WC Docket No. 23-384 (filed Dec. 11, 2023) (Dec. 11 Supplement). . Applicants also filed applications for the transfer of international authorizations and wireless radio licenses. Any action on this application is without prejudice to other pending applications before the Commission.

[3] Application at 3.

interstate exchange access and interstate interexchange services to customers in ten exchanges within portions of the counties of Hocking, Jackson, Pickaway, Pike, Ross, and Vinton in central Ohio.[5] While Horizon Services is authorized to provide competitive LEC services in Ohio, it does not currently provide any services.[6] Infinity Fiber and Urban Systems currently provide dark fiber services in Indiana.[7] HAP, a Delaware limited liability, operates as a holding company and parent to the Licensees and does not offer or provide telecommunications services.[8] HAP is "controlled by its majority shareholder, Novacap TMT, L.P., a limited partnership formed under the laws of the Province of Quebec, Canada, and an entity that is ultimately controlled by certain principals of Novacap Management Inc."[9]

Shentel, a publicly-traded Virginia corporation, is a holding company that provides residential and commercial communication services through its operating subsidiaries.[10] Shentel, through its affiliates, provides domestic telecommunications services in Kentucky, Maryland, Pennsylvania, Virginia, and West Virginia.[11] The following U.S. entities hold a ten percent or greater interest in Shentel: Black Rock, Inc. (and subsidiaries) (16.3%); and The Vanguard Group, Inc. (10.98%).[12]

Pursuant to the terms of the Agreement and Plan of Merger, the Applicants propose to transfer control of the Licensees through two steps, wherein a newly created Shentel subsidiary, Fox Merger Sub I, Inc., (Merger Sub I), a Delaware corporation, and another newly created Shentel subsidiary, Fox Merger Sub II, LLC (Merger Sub II), a Delaware limited liability company, will facilitate Shentel's acquisition and assumption of control of the Licensees.[13] Specifically, Applicants state that "Merger Sub I will merger into HAP, with HAP as the surviving entity, and then such surviving entity will be merged into Merger Sub II, with Merger Sub II as the surviving equity (the name of which will be Horizon Acquisition Parent LLC), such that the Licensees will become direct, wholly-owned subsidiaries of Shentel."[14] As a result, Shentel will acquire an indirect interest in 100% of the equity and voting interest in the Licensees, and will thus assume indirect

---

[4] CTC holds authorization to provide competitive LEC services in New Jersey; however, it intends to surrender that authorization pursuant to New Jersey Board of Public Utilities procedures prior to the proposed transaction's consummation. *Id*. at 3. CTC participates in the Rural Healthcare and E-rate programs in Ohio. *Id*. at 17.

[5] *Id*. at 3.

[6] *Id.*

[7] *Id*.

[8] *Id.* at 11, 12, 15.

[9] *Id.* at 3-4. Horizon All West Holdings, Inc., an indirect subsidiary of Novacap Management Inc., a Canadian company, filed an application for consent to transfer control of All West Communications, Inc. to another indirect subsidiary of Novacap Management Inc. Restated Joint Section 214 Application of All West Communications, Inc. and Novacap All West Holdings, Inc. for Consent to Transfer Control, WC Docket No. 22-410 (filed Apr. 25, 2023) (updating the initial application filed on Nov. 28, 2022).

[10] *Id.* at 4.

[11] *Id*. at 4-5, 15.

[12] *Id*. at Exhibit C (Post-Closing Ownership Structure Chart).

[13] *Id*. at 5.

[14] *Id.*

control of the Licensees.[15] Applicants state that Shentel will ultimately own and control the Licensees following consummation of the proposed transaction.[16]

Applicants assert that the proposed transaction is consistent with the public interest, convenience and necessity.[17] Applicants state that customers' rates, terms, and conditions of service will not change except in compliance with customers' contracts, the Licensees' tariffs, and applicable law.[18] Applicants contend that the transaction will not result in a loss of a competitive provider in the markets in which the Licensees currently operate.[19]

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.[20]

> Domestic Section 214 Application Filed for the Transfer of Control of Horizon Acquisition Parent LLC to Shenandoah Telecommunications Company, WC Docket No. 23-384 (filed Nov. 7, 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 29, 2023**, and reply comments **on or before January 5, 2024**. 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.[21] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

---

[15] *Id.*

[16] Nov. 29 Supplement at 2. The Board of Directors of Shentel are all U.S. citizens. Dec. 11 Supplement at 1.

[17] Application at 6.

[18] *Id*. at 9.

[19] *Id*.

[20] 47 CFR § 63.03(c)(1)(v).

[21] 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).

- 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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
3) David Krech, Office of Internal 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.[22] 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 Tracey Wilson at (202) 418-1394 or Dennis Johnson at dennis.johnson@fcc.gov.

-FCC-

[22] *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: https://www.fcc.gov

DA 23-1169
Released: December 15, 2023

INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY RGTN USA, INC. PURSUANT TO SECTION 52.15(g)(3) OF THE COMMISSION'S RULES

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-335[1]

Comments Due: January 14, 2024

RGTN USA, Inc., (RGTN) is an interconnected Voice over Internet Protocol (VoIP) provider with 10% or greater foreign ownership.[2] RGTN has filed a Numbering Authorization Application (Application), pursuant to section 52.15(g)(3) of the Commission's rules, seeking authorization to obtain North American Numbering Plan telephone numbers directly from the Numbering Administrator.[3] In its Application, RGTN indicates that it intends to initially request numbers in California, Florida, Georgia, Illinois, Iowa, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Texas.[4] We find that RGTN's application for authorization for direct access to telephone numbers requires further analysis to determine whether granting the Application will serve the public interest, and we hereby notify RGTN that the Application is being accepted on a non-streamlined basis and will not be granted automatically.[5]

In its Application, RGTN includes the contact information and acknowledgments required by section 52.15(g)(3)(i) of the Commission's rules.[6] RGTN provides evidence that it will be capable of providing service within 60 days of the numbering resources activation date.[7] RGTN also certifies that it

[1] We assign WC Docket No. 23-335 for this application and all related filings by the Applicant and interested parties. *See Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

[2] *See* Application of RGTN USA, Inc. for Authorization to Obtain Numbering Resources, WC Docket No. 23-335 (filed Nov. 17, 2023), https://www.fcc.gov/ecfs/document/111754529215/1 (Application): Supplement of RGTN USA, Inc. for Authorization to Obtain Numbering Resources, WC Docket No. 23-335 (filed Dec. 7, 2023), https://www.fcc.gov/ecfs/document/12072721728834/1 (Supplement).

[3] *See* Application at 1; 47 CFR § 52.15(g)(3).

[4] *See* Application at 5-6; *see also Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd 6839, 6850, para. 24 & n.74 (2015) (*VoIP Direct Access to Numbers Order*).

[5] 47 CFR § 52.15(g)(3)(iii)(D).

[6] Application at 1-5; *see* 47 CFR § 52.15(g)(3)(i)(A)-(C), (F).

[7] Application at 3, Exhs. A-B; Supplement, Exhs. A-B; *see* 47 CFR § 52.15(g)(3)(i)(D).

complies with the contribution, regulatory fee, and 911 obligations set forth in section 52.15(g)(3)(i)(E).[8] In addition, RGTN certifies that it has the financial, managerial, and technical expertise to provide reliable service.[9] RGTN further certifies that none of its key management and technical personnel are being or have been investigated by the Federal Communications Commission, or any law enforcement or regulatory agency, for failure to comply with any law, rule, or order.[10] Finally, RGTN certifies that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.[11]

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application is being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant.[12]

GENERAL INFORMATION

The Application identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any interconnected VoIP Numbering Authorization Application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 52.15(g)(3)(ii) of the Commission's rules,[13] interested parties may file comments in WC Docket No. 23-335 **on or before January 14, 2024**. Commenters must serve a copy of comments on RGTN no later than the above comment filing date.

- *Electronic Filers*: Comments may be filed electronically by accessing ECFS at https://apps.fcc.gov/ecfs.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
    - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority

[8] Application at 4; *see* 47 CFR § 52.15(g)(3)(i)(E); *see also id.* §§ 1.1154, 52.17, 52.32, 64.604(c)(5)(iii); *id.* pts. 9 and 54, subpt. H.

[9] Application at 4-5; *see* 47 CFR § 52.15(g)(3)(i)(F).

[10] Application at 5; *see* 47 CFR § 52.15(g)(3)(i)(F).

[11] Application at 5; *see* 47 CFR § 52.15(g)(3)(i)(G); *see also* 21 U.S.C. § 862.

[12] Application, Exh. D. (listing country of citizenship as the Netherlands, with 100% ownership via Leonardus Aldegonda Johannes Herps, CEO, and Katrin Herps-Oskomic, Shareholder). *See* 47 CFR § 1.40001; *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

[13] 47 CFR § 52.15(g)(3)(ii).

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

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

- *People with Disabilities*: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

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

1) DAA@fcc.gov;

2) Margoux Newman, Competition Policy Division, Wireline Competition Bureau, Margoux.Newman@fcc.gov;

3) Michaela Mastroianni, Competition Policy Division, Wireline Competition Bureau, Michaela.Mastroianni@fcc.gov;

4) Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, Michelle.Sclater@fcc.gov.

The proceeding in this Notice will be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).[14] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

- FCC -

[14] 47 CFR § 1.1206(b).

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 23-1170
Released: December 15, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF CAMPTI-PLEASANT HILL TELEPHONE CO., INC. AND CP-TEL NETWORKS SERVICES, INC. TO H.N.G. HOLDINGS, L.L.C.

WC Docket No. 23-346

By this Public Notice, the Wireline Competition Bureau grants the application filed by Epic Touch Co., Inc. (Epic Touch) and H.N.G. Holdings, L.L.C. (HNG Holdings) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of CP-TEL Holdings, Inc. (CP-TEL Holdings) and its wholly-owned subsidiaries Campti-Pleasant Hill Telephone Co., Inc. (Campti-Pleasant Hill) and CP-TEL Network Services, Inc. (CPTN) from Epic Touch to HNG Holdings.[2]

On November 8, 2022, the Bureau released a public notice seeking comment on the Application.[3] The Bureau did not receive comments or petitions in opposition to the Application.

Epic Touch, a holding company incorporated in Kansas, owns and operates the following entities: (1) the Elkhart Telephone Company, a Kansas corporation and rural incumbent local exchange carrier (LEC) that provides telecommunication services and broadband services in and around the community of Elkhart, Kansas; and (2) CP TEL Holdings, Inc., (CP TEL Holdings), a Louisiana corporation that serves as a holding company.[4] CP Tel Holdings, in turn, wholly owns the following entities: (a) Campi-Pleasant Hill, a Louisiana corporation and rural LEC that is an eligible telecommunications carrier (ETC) and

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

[2] Domestic Section 214 Application Filed for the Transfer of Control of Epic Touch Co., Inc., to H.N.G. Holdings, L.L.C., WC Docket No. 23-346 (filed Oct. 12, 2023) (Application). Applicants filed supplements to their application on October 18, 2023, November 22, 2023 and November 28, 2023. Letter from Gerard J. Duffy, Counsel for H.N.G. Holdings, L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 23-346 (filed on October 18, 2023) (Oct. 18 Supplement); Letter from Gerard J. Duffy, Counsel for H.N.G. Holdings, L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 23-346 (filed on October 18, 2023) (Nov. 22 Supplement); and Letter from Tony S. Lee, Counsel for Epic Touch Co., Inc., and Gerard J. Duffy, Counsel for H.N.G. Holdings, L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 23-346 (filed on November 28, 2023) (Nov. 28 Supplement). 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] *Domestic Section 214 Application Filed for the Transfer of Campti-Pleasant Hill Telephone Co., Inc. and CP-Tel Networks Services, Inc. to H.N.G. Holdings, L.L.C.*, WC Docket No. 23-346, Public Notice, DA 23-1057 (WCB 2023) (*Public Notice*).

[4] Application at 1.

provides local exchange and exchange access services in four exchanges (the Campti, Pleasant Hill, Pelican and Creston exchanges) in portions of the Natchitoches, Sabine, DeSoto, and Red River Parishes in northwestern Louisiana (approximately 1,500 access lines in its Louisiana service area);[5] and (b) CPTN, a Louisiana corporation that provides competitive LEC services (approximately 2,100 access lines) in portions of Natchitoches, Sabine, DeSoto, and Red River Parishes in northwestern Louisiana.[6]

HNG Holdings, a Louisiana limited liability company, is a holding company that owns 100% of the ownership and control of: (1) Northeast Louisiana Telephone Company, Inc. (Northeast Louisiana Telephone), a Louisiana corporation and rural LEC that provides local exchange and exchange access services in two exchanges (the Collinston and Bonita/Jones exchanges) in portions of Morehouse Parish in northeastern Louisiana (approximately 1,100 access lines); and (2) Northeast Long Distance, LLC (Northeast LD), a Louisiana limited liability company that provides long distance toll services in Morehouse and Ouachita Parishes.[7] Northeast Louisiana Telephone wholly owns Northeast Telephone Services, Inc. (Northeast Services), a Louisiana corporation that provides competitive LEC and other services in portions of Morehouse and Ouachita Parishes in northeastern Louisiana (less than 175 competitive LEC access lines).[8] HNG Holdings is held by the following U.S. citizens and trusts: William Michael George (72% voting and equity); Erin E. George Minority Trust (14% voting and equity interest); and the Douglas M. George Minority Trust (14% voting and equity interest).[9]

Pursuant to the terms of the proposed transaction, HNG Holdings would purchase from Epic Touch all of the issued and outstanding stock of CP TEL Holdings.[10] As a result, HNG Holdings will wholly own Campti-Pleasant Hill and CPTN.[11] Applicants state that both Campti-Pleasant Hill and CPTN will remain in existence post-transaction.[12]

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.[13] Pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a) and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, we grant the Application. Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-0809.

- FCC -

[5] *Id*. at 1-2; Oct. 18 Supplement at 1. Applicants state that Campti-Pleasant Hill participates in the Lifeline program and the Affordable Connectivity Program. Oct. 18 Supplement at 3.

[6] Application at 2.

[7] *Id.*

[8] *Id.*

[9] Michael William George will have *de jure* control of HNG and serves as the Trustee of the two trusts. Applicants updated the post-consummation ownership information in a supplement. Nov. 22 Supplement at 1-2.

[10] Application at 9.

[11] *Id.*

[12] *Id.*

[13] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03. Applicants attest that they will not close the transaction prior to January 1, 2024. Application at 3; Nov. 28 Supplement at 1.

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

In the Matter of	)	
	)	
Modernizing the E-Rate Program for Schools and Libraries	)	WC Docket No. 13-184
	)	
	)	

ORDER

Adopted: December 15, 2023 **Released: December 15, 2023**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) adopts the final eligible services list for funding year 2024 for the schools and libraries universal service support program (more commonly referred to as the E-Rate program).[1] Based on the record, we adopt the eligible services list for funding year 2024 as proposed in the Bureau's *Funding Year 2024 Eligible Services List Supplemental Public Notice* with minor modifications.[2] We also release the final eligible services list for funding year 2024 and authorize the Universal Service Administrative Company (USAC) to open the annual FCC Form 471 application filing window.[3] In doing so, we find good cause to waive the requirement in section 54.502(e) of the Commission's rules that the final eligible services list be released at least 60 days prior to the opening of the application filing window.[4] By waiving this administrative requirement, we open the application filing window with enough time for applicants to submit and USAC to process funding year 2024 FCC Form 471 applications.

II. FUNDING YEAR 2024 ELIGIBLE SERVICES LIST

A. Background

2. Sections 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Communications Act of 1934, as amended, collectively grant the Commission authority to specify the services that will be supported for eligible schools and libraries and to design the specific mechanisms for support.[5] Pursuant to this

[1] The Bureau annually updates the eligible services list, which specifies the services and products that are eligible for E-Rate funding each funding year. *See* 47 CFR § 54.502(a) ("All supported services are listed in the Eligible Services List as updated annually in accordance with paragraph (d) of this section."); *see also id.* § 54.502(e) (detailing the procedures for seeking comment on the draft eligible services list).

[2] *Wireline Competition Bureau Seeks Additional Comment on Adding Wi-Fi on School Buses to Proposed Eligible Services List for the E-Rate Program*, WC Docket No. 13-184, Public Notice, DA 23-1011 (WCB 2023) (*Funding Year 2024 Eligible Services List Supplemental Public Notice*).

[3] *See Schools and Libraries Universal Service Support Mechanism, Eligible Services List for Funding Year 2023* (*FY 2023 Eligible Services List*), *infra* Appendix B; 47 CFR § 54.502(e) (requiring the final eligible services list to be released at least 60 days prior to the opening of the application filing window).

[4] 47 CFR § 54.502(e).

[5] 47 U.S.C. §§ 254(c)(1), (c)(3), (h)(1)(B), (h)(2).

authority, the Commission delegated responsibility to the Bureau to annually seek public comment on the proposed eligible services list.[6]

3. On September 12, 2023, the Bureau issued a *Funding Year 2024 Eligible Services List Public Notice* and sought comment on several proposed minor clarifications to the draft eligible services list for funding year 2024.[7] In the "Data Transmission and/or Internet Access" section of the draft, we proposed to revise note (1) to clarify that the software necessary to operate or maintain Category One network equipment is eligible. In the same section, we also proposed to add a new note (5) to clarify that consulting fees not related to the installation and configuration of eligible components are ineligible.[8] We received one comment and two reply comments in response to the *Funding Year 2024 Eligible Services List Public Notice*.[9]

4. On October 19, 2023, the Commission adopted a Declaratory Ruling addressing the eligibility of Wi-Fi on school buses.[10] In the *Wi-Fi on School Buses Declaratory Ruling*, the Commission clarified that the use of Wi-Fi, or other similar access point technologies, on school buses is an educational purpose, and the provision of such service, including the equipment needed to provide such service, is eligible for E-Rate support.[11] The Declaratory Ruling directed the Bureau to fund these services and seek comment on, among other things, the specific services and equipment that would be eligible as part of the eligible services list proceeding for funding year 2024.[12]

5. Shortly after the release of the Declaratory Ruling on October 25, 2023, the Bureau issued a *Funding Year 2024 Eligible Services List Supplemental Public Notice* in which we proposed to modify the draft eligible services list for funding year 2024 by including mobile broadband connectivity for school buses.[13] We also sought comment on several aspects of making Wi-Fi on school buses eligible for E-Rate support. First, we sought comment on the equipment that would be needed to provide Wi-Fi on school buses and whether this equipment should be eligible as a Category One or Category Two service.[14] Second, we sought comment on how to ensure that the use of Wi-Fi equipment and services on school buses is consistent with E-Rate program rules and whether any restrictions or limitations should be imposed on its use.[15] Third, we sought comment on how to ensure that support is only provided primarily for educational purposes and the types of measures already being implemented by schools to limit access to student and school staff users, and on any concerns raised by the use of such measures.[16] Fourth, we sought comment on the Commission's assessment in the *Wi-Fi on School Buses Declaratory Ruling* that

---

[6] *See* 47 CFR § 54.502(e).

[7] *Wireline Competition Bureau Seeks Comment on Proposed Eligible Services List for the E-Rate Program*, WC Docket No. 13-184, Public Notice, DA 23-819 (WCB 2023) (*Funding Year 2024 Eligible Services List Public Notice*).

[8] *Funding Year 2024 Eligible Services List Public Notice* at 1, 5. In addition, in the "Wireless services and wireless Internet access" section, we proposed to clarify that off-campus use is "generally" ineligible for support. *Id.* at 9.

[9] *See* Appendix A. Appendix A contains a list of the commenters and the acronyms, if any, used herein to refer to these commenters.

[10] *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Declaratory Ruling, FCC 23-84 (rel. Oct. 25, 2023) (*Wi-Fi on School Buses Declaratory Ruling*).

[11] *Wi-Fi on School Buses Declaratory Ruling* at 6, para. 9.

[12] *See id*. at 8, para. 12.

[13] *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 1.

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

[15] *Id.* at 2.

[16] *Id.*

"any potential impact of [its] action on the E-Rate program budget and the Universal Service Fund would be nominal compared to the substantial benefit reaped by students," and on the estimated average cost of $1,840 per school bus per year.[17] Finally, we sought comment on whether any changes may be needed to the "Eligibility Explanations for Certain Category One and Category Two Services" for "Wireless services and wireless Internet access services" explanation in the draft eligible services list and on our tentative conclusion that applicants do not need to conduct a cost comparison to other technological approaches as part of their wireless service funding requests related to school buses.[18] We received 18 comments in response to these proposals and questions based on the *Funding Year 2024 Eligible Services List Supplemental Public Notice*.[19]

B. Discussion

6. As an initial matter, with respect to funding year 2024, we waive the requirement in section 54.502(e) of the Commission's rules that the eligible services list be released at least 60 days prior to the opening of the application filing window.[20] Section 1.3 of the Commission's rules allows the Commission to waive a rule on its own motion for good cause shown.[21] To ensure that the FCC Form 471 application filing window opens with enough time to allow applicants to submit and USAC to process applications for funding year 2024, we find a waiver of our rule is appropriate and in the public interest.[22] In waiving our rule, we are particularly cognizant of the need to ensure that both applicants and USAC have as much time as they had last year to submit and process applications. We therefore find special circumstances to waive section 54.502(e) of the Commission's rules.[23]

7. Having considered the record, we update the final eligible services list for funding year 2024, attached as Appendix B to this Order, by adopting each of our proposed changes from the *Funding Year 2024 Eligible Services Public Notice*.[24] Specifically, in the "Data Transmission and/or Internet Access" section of the draft, we revise note (1) to clarify that the software necessary to operate or maintain Category One network equipment is eligible. In the same section, we also add a new note (5) to clarify that consulting fees not related to the installation and configuration of eligible components are ineligible. We did not receive any comments regarding these two specific proposals.

---

[17] *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 2; *Wi-Fi on School Buses Declaratory Ruling* at 8-9, para 13.

[18] *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 2.

[19] *See* Appendix A.

[20] *See* 47 CFR § 54.502(e).

[21] *See* 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *Id*.

[22] *Northeast Cellular*, 897 F.2d at 1166 (stating that the Commission may waive a rule when strict compliance does not serve the public interest).

[23] *See, e.g.*, *Modernizing the E-Rate Program for Schools and Libraries*, 34 FCC Rcd at 11219, 11242-43, para. 62 (2019) (*Category Two Report and Order*) (finding good cause to waive the 60-day rule for opening the filing window after issuance of the eligible services list to allow USAC and applicants with sufficient time to submit and process funding applications for funding year 2020); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket 13-184, Order, 2022 WL 17886489, *2, para. 5 (WCB Dec. 14, 2022) (same).

[24] *Funding Year 2024 Eligible Services List Public Notice* at 1, Attachment.

8. Next, we address changes to the final eligible services list related to the proposals and questions included in the *Funding Year 2024 Eligible Services List Supplemental Notice*.[25] First, we adopt our proposal to make mobile broadband connectivity for school buses eligible for E-Rate support as a Category One service.[26] In doing so, we note that nearly all commenters support adopting this proposal.[27] In the *Funding Year 2024 Eligible Services List Supplemental Notice*, we proposed to modify the Wireless bullet to: "Wireless (e.g. fixed wireless, microwave, or mobile)."[28] Verizon, in its comments, stated that the language should further be modified to avoid confusion between school bus connectivity and data plans for mobile devices generally.[29] We agree with Verizon's suggestion, and accordingly modify the Eligible Service List's Wireless bullet to: "Wireless (e.g., fixed wireless; microwave; or mobile service for use on school buses)."[30] We further clarify that the equipment needed to make this service functional (e.g., antennas, routers, modems), as well as associated installation fees, are also eligible as a Category One service.[31] We find that this single-tier classification approach will ease administrative burdens for USAC and applicants in this developing technology area, while staying within the E-Rate program budget.[32] We decline to make maintenance and operation services eligible at

[25] Consistent with the Bureau's responsibility to annually seek public comment on the proposed eligible services list, our determinations regarding the eligibility of Wi-Fi service on school buses are subject to further modifications in future funding years, as we refine our understanding of the school bus Wi-Fi equipment and service options.

[26] *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 1.

[27] *See, e.g.*, E-Rate Central Comments at 2; Kajeet Comments at 2; Lea Bogle Comments at 1; Los Angeles USD Comments at 1-2; SHLB Comments at 7; SECA *Ex Parte* at 1; SECA Comments at 4; T-Mobile Comments at 2.

[28] *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 1.

[29] Verizon Comments at 2.

[30] SECA and E-Rate Central both suggest that we also delete the phrase "Off-campus use even if used for an educational purpose is generally ineligible for support, and must be cost allocated out of any funding request" in the FY 2024 Eligible Services List. SECA Comments at 7; E-Rate Central Comments at 4. While we reject this proposal, we have added another sentence to note that the use of off-campus wireless service on a school bus serves an educational purpose and, therefore, such service to a school bus is eligible for E-Rate support. However, we emphasize and remind applicants that, in general, off-campus use of E-Rate-funded services remains ineligible for E-Rate support and must be cost-allocated and removed from the funding request.

[31] *See Funding Year 2024 Eligible Services List Supplemental Public Notice* at 1 (seeking comment on whether equipment should be eligible as a Category One or Category Two service). We decline, however, to adopt E-Rate Central's proposal that annual Wi-Fi equipment service contracts, or other similar warranty contracts, be eligible for funding, as these types of contracts are ineligible for Category One support. *See, e.g.,* E-Rate Central Comments at 2; SECA Comments at 4; SHLB Comments at 11.

[32] We draw this conclusion based on the Commission's estimate that the cost of providing Wi-Fi for school buses is on average $1,840 per school bus per year, *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 2, and we note that commenters generally agree with this average cost. *See, e.g.*, E-Rate Central Comments at 3-4 (opining that the Commission's estimate is an accurate measure of the three-year average costs, but that first year costs will be higher than the Commission's estimate); KB & Associates Comments 3-4, SECA Comments at 6 (opining that while average first year costs would be approximately 50% higher than the Commission's estimate, overall costs would fall within the funding cap); Verizon Comments at 4 (not disputing the Commission's dollar estimate, but arguing that the Commission should use separate estimates for equipment costs and mobile broadband costs). Further, we agree with commenters that the costs for providing such service would fall within the program's funding cap. For example, we agree with E-Rate Central's estimate that, even if 500,000 school buses in the United States were to receive funding at an average cost of $1,840 per school bus per year, and at an average discount rate of 75%, the total demand to the E-Rate program would be approximately $3.5 billion, below the program's funding cap for FY2023 of $4.77 billion. *See* E-Rate Central Comments at 3-4; *see also Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2023*, CC Docket No. 02-6, Public Notice, DA 23-178 (WCB 2023). Other commenters estimate that the total E-Rate program demand, when accounting for the addition of bus Wi-Fi, would be closer to $3 billion. *See, e.g.*, E-Rate Provider Services Comments at 4; KB & Associates Comments at 3-4; SHLB Comments at 13-14; SECA Comments at 6.

this time.[33] Although we have determined that this equipment should be treated as a Category One service, maintenance and operation services are limited to network equipment for owned or leased dark fiber networks.[34] We note that we may revise these eligibility determinations in a future funding year upon further review of the costs associated with these services and equipment.

9. In the *2024 Eligible Services List Supplemental Public Notice*, we also sought comment on what restrictions or limitations are needed to ensure that funded equipment and services on school buses are used primarily for educational purposes and are otherwise consistent with E-Rate rules.[35] We expect applicants to implement content and user network restrictions consistent with the restrictions that they place on their building-based broadband network, as described in their Acceptable Use Policies (AUPs) and any other policies that limit a school's network access.[36] Schools have Children's Internet Protection Act (CIPA)-required content filtering capabilities in place for their school-based networks,[37] and we expect schools to implement the same filtering capability for a school's network provided through school bus Wi-Fi. We find that this approach provides reasonable limits to ensure that E-Rate-funded services are primarily used for educational purposes in accordance with the schools' existing AUPs and filtering requirements.[38]

[33] *See, e.g.*, Kajeet Comments at 2 (requesting support for "ongoing maintenance and support"); Los Angeles USD Comments at 2 (requesting support for "operational costs").

[34] *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923, para. 12 (WCB 2015) (finding that network equipment and maintenance and operation services of network equipment are eligible under Category One when purchased for self-provisioned networks and leased dark fiber networks that are lit by E-Rate applicants, in order to equalize the treatment of lit and dark fiber and to support self-provisioned broadband networks). Because bus Wi-Fi is not a self-provisioned network, nor dark fiber lit by an E-Rate applicant, maintenance and operation services of bus Wi-Fi equipment are ineligible for support.

[35] *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 2.

[36] *See, e.g.*, SHLB Comments at 10-11 (arguing against restricting use of bus Wi-Fi solely to students and staff); SECA Comments at 4-5 (same). Further, we agree with Wisconsin DPI's views that a school's existing AUPs typically define acceptable use and are focused on limiting access to that which serves an educational purpose. Wisconsin DPI Comments at 3-4. *See also* SHLB Comments at 8; Kajeet Comments at 2-3.

[37] *See* S. Rep. No. 106-141 (1999), https://www.congress.gov/106/crpt/srpt141/CRPT-106srpt141.pdf. Independent of this requirement, we remind applicants that the Commission previously determined that CIPA also applies to the use of school-owned computers if the school accepts E-Rate or Emergency Connectivity Fund support for Internet access, Internet services, or network equipment for Internet access or Internet services that will be used by any school- or library-owned computers, or E-Rate support for internal connections or network equipment for internal connections that will be used by any school- or library-owned computers, regardless of whether it is used off-campus. *See Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8746-49, paras. 108-14 (2021); *see also* FCC, *Emergency Connectivity Fund FAQs: FAQ 10.1*, https://www.fcc.gov/sites/default/files/ecf_faqs_printable_pdf.pdf (last visited Nov. 27, 2023); *See* E-Rate Central Comments at 6; NCTA Nov. 30, 2023, Comments at 2; SHLB Comments at 8-9. We also deny SHLB's request that E-Rate funds be used to pay for CIPA implementation costs. *See* SHLB Comments at 9. The Commission previously determined that E-Rate recipients are statutorily prohibited from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for CIPA compliance. *See Federal-State Joint Board on Universal Service*; *Children's Internet Protection Act,* CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8204, paras. 54-55 (2001) ("The statutory language is clear—no sources of funds other than those available under the Elementary and Secondary Act of 1965 or the Library Services and Technology Act are authorized for the purchase of acquisition of technology protection measures under CIPA.").

[38] SECA *Ex Parte* at 2; Advocates for the EMS Disabled Comments at 5; Lea Bogle Comments at 1.

10. We also clarify the scope of the Commission's prohibition on redundant or duplicative services[39] as it relates to school bus wireless services. First, a school may enter into service contracts with multiple service providers, to the extent that some buses are served by one provider, and other buses served by a different provider. Additionally, because we are concerned that buses in rural areas may be more likely to cross between service areas of multiple service providers along the same bus route, applicants with a rural designation may request funding for a solution that allows one bus to be served by multiple service providers.[40] We remind all applicants that, pursuant to E-Rate program rules, they must select the most cost-effective service offering(s), using price of the eligible equipment and services as the primary factor.[41]

11. We find that applicants may request E-Rate support for school bus Wi-Fi services and the necessary equipment to make it functional for installation on school-owned, as well as leased or contracted, school buses, provided that the school buses are used primarily to transport students to and from school and school-related activities for educational purposes as defined by our rules.[42] In doing so, we exclude, for example, occasionally-used chartered buses (e.g., used for school field trips), municipal and city buses generally used for the transport of non-students, and other types of school-owned, leased, or contracted vehicles (e.g., vans and cars). We decline to make chartered, municipal, or city buses eligible as requested by some commenters,[43] as we find that this approach strikes a reasonable balance by making wireless Internet access widely available to students for educational purposes, while also conserving limited E-Rate funds. We further find that this restriction would prevent the use of E-Rate funds to pay for the installation of equipment and devices on buses that are not used for educational purposes (e.g., transporting students to and from school and school-related activities). We also decline to expand eligibility to other types of school-owned vehicles (e.g., cars and vans) at this time, and limit eligibility to school-owned, leased, or contracted school buses.[44] We remind applicants that they will own the E-Rate-funded equipment and are expected to work with their leased or contracted school bus providers to maintain an accurate asset inventory of the E-Rate-funded equipment.[45] We also remind applicants of the prohibition on resale of E-Rate-supported equipment and services,[46] and the

[39] *See, e.g.*, *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9209-11, paras. 22-24 (2003) (declining to support duplicative services).

[40] *See, e.g.*, E-Rate Provider Services Comments at 8 ("Current E-Rate program rules contain a prohibition on duplicative services, which, if applied to Wi-Fi on school buses, would create difficulties for school districts in remote locations. For example, provider one may cover the eastern half of a district, and provider two may cover the western half. The ability to change from provider one to provider two automatically, while the bus is in motion, is essential to providing uninterrupted service."); E-Rate Central Comments at 2. As we gather additional data in future funding years about the use of multiple service providers to serve an applicant's school buses' wireless service needs, we may revisit this determination.

[41] 47 CFR § 54.511(a).

[42] *See*, *e.g.*, Los Angeles USD Comments at 1 (opining that "all equipment and services required to make the broadband service functional and available to users riding on a school bus" should be eligible); E-Rate Central Comments at 2, 4 (opining that Wi-Fi equipment and services for school buses should be considered Category One eligible); Kajeet Comments at 2 (opining that equipment "necessary to facilitate Wi-Fi on school buses . . . should be eligible as a Category One service."); Lea Bogle Comments at 1; SHLB Comments at 7; SECA *Ex Parte* at 1-2; SECA Comments at 4; T-Mobile Comments at 2. For purposes of this Order, a school-owned, leased or contracted school bus is one that a school or the school's district or state owns, leases or contracts for to provide transportation to students.

[43] SECA *Ex Parte* at 1-2.

[44] SECA Comments at 11-13.

[45] 47 CFR § 54.516(a).

[46] 47 CFR § 54.513.

Commission's recordkeeping and auditing rules.[47] These requirements apply to equipment and services on school-owned, as well as, leased or contracted school buses.

12. We find that making school bus Wi-Fi connections available to further students' educational needs must be balanced against the potential misuse of the connections for wasteful or improper purposes. Accordingly, we permit applicants to enable E-Rate-funded school bus Wi-Fi connections during a school bus's normal operating hours (i.e., when students are being transported to and from school or school-related activities) or when there is a clear educational purpose for enabling school bus Wi-Fi connections outside of these hours.[48] We also require that applicants disable school bus E-Rate-funded Wi-Fi connections outside of these permitted uses. We find that our departure from our traditional E-Rate community use standards[49] is justified in the school bus context given the increased potential for the use of school buses for private events, including for-profit events, that serve no role in closing the Homework Gap or in furthering students' education. While we decline to adopt a general community use provision in today's order and require that school bus Wi-Fi connections be disabled outside of permissible educational purposes, we will monitor the implementation of the Wi-Fi on school buses, and may revisit this determination in the future.[50]

13. Applicants will not be required to compare costs between a given service plan for providing school bus Wi-Fi and other technological approaches to deliver connectivity to end user devices at a school, thus adopting our tentative conclusion in *Funding Year 2024 Eligible Services List Supplemental Public Notice*.[51] No commenter objected to this action. Other than as described above,[52] funding for Wi-Fi on school buses remains subject to all existing E-Rate rules and requirements, including those related to competitive bidding,[53] cost allocation,[54] and discounting[55] rules.

---

[47] 47 CFR § 54.516.

[48] As illustrative and non-exhaustive examples, we find that a clear educational purpose would typically exist for enabling Wi-Fi outside of a school bus's normal operating hours when a school uses the Wi-Fi connections to allow parents to participate in virtual parent-teacher conferences or when a school bus is used to provide Internet service to students in the face of an unexpected network outage that would impact students' ability to complete school homework assignments. *See*, *e.g.*, SHLB Comments at 10 (proposing, in part, that Wi-Fi access be limited to times that "the school bus is actively transporting students" and "cases where parents . . . reasonably require access to the Internet" and noting that "because a school bus is mobile" it can be used to provide access "at a location other than on school grounds").

[49] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism*, Sixth Report and Order, WC Docket No. 02-6, 25 FCC Rcd 18762, 18775-77, paras. 24-27 (2010) (describing general E-Rate community use standards).

[50] We acknowledge the views of commenters who advocate for community use, either directly or by opining that use limitation for school bus Wi-Fi connections should be consistent with the E-Rate program's community use standards. *See*, *e.g.*, SECA Comments at 4; T-Mobile Comments at 6; Kajeet Comments at 3; SHLB Comments at 10-11. We also acknowledge SHLB's views that disabling school bus Wi-Fi equipment could affect its ability to operate properly, including because the equipment may not receive software updates or patches. SHLB Comments at 12. As described above, we will continue to monitor the implementation of the Wi-Fi on school buses for these and other related issues.

[51] *Funding Year 2024 Eligible Services List Supplemental Public Notice* at 2-3.

[52] *See, e.g.*, *supra* at paras. 10 (clarifying the requirements if multiple providers are needed for a school bus route); 12 (declining to adopt general E-Rate community use standards).

[53] To ensure the prudent use of E-Rate funds, we decline to exempt applicants from this requirement who previously entered into multi-year service contracts under the Emergency Connectivity Fund (ECF) program as those contracts were not subject to E-Rate's usual competitive bidding requirements. E-Rate Central Comments at 6. While participants in some cases were subject to state or local competitive bidding requirements, we decline to adopt those requirements as a substitute for our own. Consistent with existing E-Rate rules, we require applicants to consider equivalent options when seeking bids. *See* SECA *Ex Parte* at 2; E-Rate Central Comments at 5; NCTA Nov. 30, 2023, Comments at 3. We also decline to extend the existing exemption for certain low-cost, high-speed Internet

(continued….)

14. Commenters raise a number of requests related to administrative and related-processes for requesting support for Wi-Fi on school buses, which are better suited for USAC to address as the program administrator.[56] For administrative efficiency, USAC will issue further guidance and training on these administrative issues, including application and funding request requirements, submitting forms, and other related issues, at the direction of the Bureau.

15. We also remind parties that the eligible services list proceeding "is limited to determining what services are eligible under the Commission's current rules and is generally not intended to be a vehicle for changing any eligibility rules."[57] Accordingly, we decline to address requests that we reclassify Wi-Fi on school and library campuses from a Category Two to a Category One service and that we treat routing and switching equipment that enables Category One broadband service as Category One equipment.[58] Similarly, we decline to address requests that we add advanced or next-generation firewall

(Continued from previous page)
access services, otherwise known as Commercially Available Business class Internet Option (CABIO) services, to school buses, as that exemption only applies to funding for services delivered to a school or library building. *See Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8948-50, paras. 199-202 (2014) (*First 2014 E-Rate Order*); *but see, e.g.*, SECA Comments at 9 (requesting that the Commission extend the CABIO exemption for a school or library building to every school bus); SHLB Comments at 11.

[54] Consistent with our program rules, ineligible components are subject to existing E-Rate cost allocation rules, and must be cost-allocated from the request. 47 CFR § 54.504(e) (providing that a request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components). Ancillary ineligible components need not be cost-allocated. 47 CFR § 54.504(e)(2) (providing that an ineligible functionality may be considered "ancillary" if (1) a price for the ineligible component that is separate and independent from the price of the eligible components cannot be determined, and (2) the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 21927-28, paras. 36-39 (2003).

[55] Services may be reimbursed for all twelve months of the funding year with no discount or premium during the summer months. *See* SHLB *Ex Parte* at 2 (asking whether a discount will apply during the summer months); Kajeet Comments at 3. We recognize that there may be months with lower usage due to bus outages or vacations and we will not require a minimum usage per month. *See* SECA Comments at 13-14. However, applicants may not warehouse equipment or fail to turn on the service for student use during the twelve months. These actions would be subject to recovery of funds. In addition, portable school bus Wi-Fi equipment is only eligible when used on a school bus for educational purposes (e.g., transporting students to and from school and school-related activities). *See also supra* para. 12 (providing for use of E-Rate-funded school bus Wi-Fi connections for educational purposes outside of the school bus's operating hours).

[56] *See e.g.*, SECA *Ex Parte* at 1-2 (raising questions related to bidding processes, forms, and drop-down options on FCC Form 470 and opining that each bus that has E-Rate funded Wi-Fi equipment and service should not be required to obtain a separate entity number); SECA Comments at 13-14 (making suggestions regarding billed entity numbers, tracking of inventory, and the application process).

[57] *See*, *e.g.*, *Comment Sought on Draft Eligible Services List for Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Public Notice, 24 FCC Rcd 7422, 7423 (WCB 2009); *Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program*, CC Docket No. 02-6, Public Notice, 26 FCC Rcd 8714, 8718 (WCB 2011); *Schools and Libraries Universal Service Support Mechanism*, *A National Broadband Plan for our Future*, CC Docket No. 02-6, Order, 28 FCC Rcd 14583, 14588, para. 13 & n.37 (WCB 2013).

[58] *See* NCTA Oct. 12, 2023, Comments. We note that the Commission previously declined to make Wi-Fi a Category One service in the *First 2014 E-Rate Order*. *See 2014 First E-Rate Order*, 29 FCC Rcd at 8919, para. 126 ("We disagree with commenters who argue that managed Wi-Fi should be a category one service. Despite our recognition that virtualization and management may send some amount of information beyond the walls of the school or library building in order to manage the internal networks, we find that services used to distribute
(continued….)

and/or other network security services to the funding year 2024 eligible services list, and that we work with federal partners to address and prevent cyberattacks against K-12 schools and libraries, as outside the scope of this proceeding.[59] While we decline to address these requests here, we note that the Commission is seeking public comment regarding the eligibility of additional network security services, including advanced or next-generation firewalls and services, as part of the Commission's proposed Schools and Libraries Cybersecurity Pilot Program proceeding.[60]

III. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, 303(r), and 403, sections 0.91 and 54.502 of the Commission's rules, 47 CFR §§ 0.91 and 54.502, this Order IS ADOPTED.

17. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority in section 1.3 of the Commission's rules, 47 CFR § 1.3, that section 54.502(e), 47 CFR § 54.502(e), IS WAIVED and such waiver SHALL BECOME EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page)
bandwidth throughout the school are internal connections services."). We also further note that the FY 2024 Eligible Services List already provides that network equipment with mixed eligibility is eligible as Category One equipment and decline to provide further clarification as requested. *See* Appendix B at 18.

[59] ITI and The Cybersecurity Coalition Oct. 25, 2023 Comments; Tyler Moore Oct. 26, 2023 Comments.

[60] *Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Notice of Proposed Rulemaking, FCC 23-92 (rel. Nov. 13, 2023).

APPENDIX A

List of Commenters

Comments in Response
to the *Funding Year 2024 Eligible Services List*
Public Notices

WC Docket No. 13-184

Commenters responsive to 2024 Eligible Services List Public Notice

1. NCTA – The Internet & Television Association
   (NCTA Oct. 12, 2023, Comments)

Reply Commenters responsive to 2024 Eligible Services List Public Notice

1. Information Technology Industry Council jointly with The Cybersecurity Coalition
   (ITI/Coalition Reply)
2. Tyler Moore
   (Tyler Moore Reply)

Commenters responsive to 2024 Eligible Services List Supplemental Public Notice

1. Advocates for the EMS Disabled
   (Advocates for the EMS Disabled Comments)
2. Branson R. Rasko
   (Branson Rasko Comments)
3. E-Rate Central (as the New York State E-Rate Coordinator)
   (E-Rate Central Comments)
4. E-Rate Provider Services
   (E-Rate Provider Services Comments)
5. Fresno Unified School District
   (Fresno Comments)
6. Kajeet
   (Kajeet Comments)
7. Katherine Katzin
   (Katherine Katzin Comments)
8. KB & Associates
   (KB & Associates Comments)
9. Lea Bogle, Premier Wireless Business Technology Solutions, Inc.
   (Lea Bogle Comments)
10. Los Angeles Unified School District
    (Los Angeles USD Comments)
11. NCTA – The Internet & Television Association
    (NCTA Nov. 30, 2023, Comments)
12. Robert Frisby
    (Robert Frisby Comments)
13. Rollins & Sumrall Education Group, Inc.
    (REGroup Comments)
14. Schools, Health & Libraries Broadband Coalition
    (SHLB Comments)
15. State E-rate Coordinators' Alliance
    (SECA Comments)

16. T-Mobile USA, Inc.
    (T-Mobile Comments)
17. Wisconsin Department of Public Instruction
    (Wisconsin DPI Comments)
18. Verizon
    (Verizon Comments)

***Ex Parte* Commenters responsive to 2024 Eligible Services List Supplemental Public Notice**

1. Schools, Health & Libraries Broadband Coalition
   (SHLB *Ex Parte*)
2. State E-rate Coordinators' Alliance
   (SECA *Ex Parte*)
3. T-Mobile USA, Inc.
   (T-Mobile *Ex Parte*)

APPENDIX B

Eligible Services List for Funding Year 2024
Schools and Libraries Universal Service Support Mechanism

WC Docket No. 13-184

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

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

Category One

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

Data Transmission and/or Internet Access

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

- Asynchronous Transfer Mode (ATM)
- Broadband over Power Lines
- Cable Modem
- Digital Subscriber Line (DSL)
- DS-1 (T-1), DS-3 (T-3), and Fractional T-1 or T-3
- Ethernet
- Integrated Services Digital Network (ISDN)

Note: Dedicated voice channels on an ISDN circuit are no longer eligible.

- Leased Lit Fiber
- Leased Dark Fiber (including dark fiber indefeasible rights of use (IRUs) for a set term)
- Self-Provisioned Broadband Networks (applicant owned and operated networks)
- Frame Relay
- Multi-Protocol Label Switching (MPLS)
- OC-1, OC-3, OC-12, OC-n
- Satellite
- Switched Multimegabit Data Service
- Telephone dial-up
- Wireless (e.g., fixed wireless; microwave; or mobile service for use on school buses)

Notes:

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

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

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

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

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

Category Two

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

Eligible Broadband Internal Connections

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

Notes:

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

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

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

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

Eligible Managed Internal Broadband Services

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

Basic Maintenance of Eligible Broadband Internal Connections

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

The following basic maintenance services are eligible:

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

Eligibility Limitations for Category Two Services

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

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

Basic maintenance does not include:

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

Eligibility Explanations for Certain Category One and Category Two Services

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

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

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

As clarified in the *Wi-Fi on School Buses Declaratory Ruling* (FCC 23-84), the use of off-campus wireless service on a school bus serves an educational purpose and, therefore, such service to a school bus is eligible for E-Rate support. However, in general, off-campus use of E-Rate-funded services even if used for an educational purpose, is ineligible for support, and must be cost-allocated out of any funding request.

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

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

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

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

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

Miscellaneous

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

Fees

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

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

Installation, Activation, and Initial Configuration

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

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

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1172
Released: December 15, 2023

WIRELINE COMPETITION BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS ANNOUNCE RESULTS OF 2024 URBAN RATE SURVEY FOR FIXED VOICE AND BROADBAND SERVICES, POSTING OF SURVEY DATA AND EXPLANATORY NOTES, AND REQUIRED MINIMUM USAGE ALLOWANCE FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS

WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (Bureau) and the Office of Economics and Analytics (Office) announce the 2024 reasonable comparability benchmarks for fixed voice and broadband services for eligible telecommunications carriers (ETCs) that are subject to broadband public interest obligations. These ETCs include incumbent local exchange rate-of-return carriers, Rural Broadband Experiment providers, CAF Phase II Auction (Auction 903) winners, Rural Digital Opportunity Fund Auction (Auction 904) winners, and Enhanced A-CAM providers.[1] In addition, we announce the posting of the fixed voice and broadband services data collected in the most recent urban rate survey, and explanatory notes regarding the data, on the Commission's website at https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources. The Bureau and Office also announce the required minimum usage allowance for ETCs subject to public interest obligations for fixed broadband.

Voice Rates. Based on the survey results, the 2024 urban average monthly rate is $34.27.[2] Therefore, the reasonable comparability benchmark for voice services, two standard deviations above the urban average, is $55.13.[3] Under the Commission's rules, each ETC, including competitive ETCs

[1] *See 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 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom, In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *Rural Digital Opportunity Fund*, WC Docket No. 19-126, *Connect America Fund,* WC Docket No. 10-90, Report and Order, 35 FCC Rcd 686, 707, para. 42 (2020).

[2] The *USF/ICC Transformation Order* defined the average urban rate to include local end-user rates plus state regulated fees (specifically, state subscriber line charges (SLCs), state universal service, and mandatory extended area service charges). *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238. The reasonable comparability benchmark for voice services applies to mainland providers and those in Alaska.

[3] *Id.* at 17694, para. 84.

providing fixed voice services,[4] must certify in the FCC Form 481 filed no later than July 1, 2024, that the pricing of its basic residential voice services is no more than $55.13.[5]

Broadband Rates. Recipients of high-cost and/or Connect America Fund support that are subject to broadband performance obligations are required to offer broadband service at rates that are at or below the relevant reasonable comparability benchmark.[6] Carriers subject to the Alaska Plan are required to meet Alaska-specific benchmarks[7] and to certify that they are meeting the relevant reasonable comparability benchmark for their broadband service offering in the FCC Form 481 filed no later than July 1, 2024.[8]

Under the approach adopted by the Bureau in 2014, the reasonable comparability broadband benchmark varies, depending upon the supported service's download and upload bandwidths and usage allowance.[9] Alaska-specific benchmarks were developed in the same manner using data from Alaska carriers serving Alaska urban areas.

The following table provides the 2024 benchmark for several different broadband service offerings, though providers will need to determine the benchmark for services with characteristics not shown in the table:[10]

[4] The Bureau has adopted a benchmark only for fixed voice services because "the differences in rate plans and other attributes of fixed and mobile services would make it inordinately difficult to create a unified benchmark" that applied to both fixed and mobile services. *See Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 4242, para. 6 (WCB 2014).

[5] 47 CFR § 54.313(a)(10); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 18046-47, para. 1026. In the *USF/ICC Transformation Order*, the Commission required that as a condition of receiving high-cost support, ETCs must offer voice service in supported areas at rates that are reasonably comparable to rates for similar services in urban areas. *USF/Transformation Order*, 26 FCC Rcd at 17693, para. 81.

[6] *USF/Transformation Order*, 26 FCC Rcd at 17695, para. 86.

[7] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10149, para 28 (2016).

[8] 47 CFR § 54.313(a)(12). The Commission has directed the Bureau to develop an Alaska-specific reasonable comparability benchmark. *See Connect America Fund; Universal Service Reform–Mobility Fund; Connect America Fund–Alaska Plan*, WC Docket Nos. 10-90, 16-271, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10149, para. 28 (2016); *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086, 12092, para. 21 (2016).

[9] *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 13485 (WCB 2014).

[10] We emphasize that carriers subject to broadband public interest obligations may offer their customers services other than those meeting the defined benchmark and minimum usage allowance. As long as the carrier offers at least one broadband service plan that meets the relevant metrics, it is free to offer other plans and packages to meet the varying needs of consumers. We note that usage allowance requirements do not apply to those areas that rely exclusively on satellite backhaul. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101; *see also* 47 CFR § 54.313(g).

Download Bandwidth (Mbps)	Upload Bandwidth (Mbps)	Capacity Allowance (GB)	2024 U.S.	2024 Alaska
4	1	660	$89.76	$62.62
4	1	Unlimited	$89.94	$64.22
10	1	660	$89.17	$82.24
10	1	Unlimited	$89.35	$84.38
25	3	660	$87.83	$83.24
25	3	Unlimited	$87.83	$85.18
50	5	660	$88.38	$71.24
50	5	Unlimited	$88.38	$71.29
100	20	660	$92.26	$125.89
100	20	Unlimited	$92.26	$145.75
1000	500	660	$118.24	$240.58
1000	500	Unlimited	$118.24	$240.58
25	5	660	$87.93	$83.24
25	5	Unlimited	$87.93	$85.18
100	10	Unlimited	$88.07	$129.41
250	25	Unlimited	$89.98	$172.75
1000	100	Unlimited	$117.26	$167.09

*As noted below, the minimum usage allowance for carriers receiving support from the Rural Digital Opportunity Fund is 2 Terabytes (TB) for the Above-Baseline and Gigabit tiers.

To facilitate benchmark calculations, the Office will post an Excel file with a tool in which providers can enter the relevant variables to determine the benchmark for specific service characteristics at https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources.

Minimum Usage Allowance. Under the *USF/ICC Transformation Order* and subsequent orders, ETCs subject to broadband public interest obligations must provide broadband with usage allowances reasonably comparable to those available through comparable offerings in urban areas.[11] The Commission delegated to the Bureau the task of setting a specific minimum usage allowance and stated that the minimum should be adjusted over time.[12] For the reasons explained below, the Bureau adopts a minimum monthly usage allowance of 660 GB for 2024. However, the minimum usage allowance for carriers receiving support from the Rural Digital Opportunity Fund (RDOF) is the greater of 250 GB or the average usage calculated by the Bureau for the Minimum and Baseline tiers and 2 Terabytes (TB) for the Above-Baseline and Gigabit tiers.[13]

In the 2016 *Rate-of-Return Reform Order*, the Commission specified that the required minimum usage allowance for rate-of-return carriers receiving model-based support would be 150 GB per month, or a usage allowance reflecting the average usage of a majority of fixed broadband customers, using

[11] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17699, para. 99. *See* 47 CFR §§ 54.308(a), 54.309(a).

[12] *USF/ICC Transformation Order*, 26 FCC Rcd at 17699, para. 99.

[13] *Rural Digital Opportunity Fund*, WC Docket No. 19-126, Connect America Fund, WC Docket No. 10-90, Report and Order, 35 FCC Rcd 686, 702-03, para. 31 (2020).

Measuring Broadband America (MBA) data or a similar data source, whichever is higher.[14] With the exception of the RDOF program, the usage allowance adopted by the Commission for the baseline performance tier is: 150 GB per month, or a usage allowance that reflects the average usage of a majority of fixed broadband customers, using MBA data or a similar data source, whichever is higher.[15]

For ETCs not subject to the 2 TB minimum usage allowance, we rely on published quarterly data from OpenVault's Broadband Insights Reports as "a similar data source" of broadband usage because they are based on millions of users and are reliably published quarterly, consistent with our process last year.[16] To ensure an accurate estimate of usage in 2024, we use average broadband data usage amounts as reported from OpenVault and employ regression analysis to forecast average broadband usage for the four quarters of 2024 and then take the average value of those predictions.[17] Averaging the predicted broadband usage values for 2024 yields 660 GB per month after rounding. We therefore find that 660 GB is a reasonable minimum monthly usage allowance for 2024.

For further information, please contact Suzanne Yelen, Wireline Competition Bureau, at (202) 418-7400 or (202) 418-0484 (TTY), or at suzanne.yelen@fcc.gov.

- FCC -

[14] *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3099, para. 27 (2016). *See* 47 CFR § 54.308(a)(1).

[15] *Connect America et al*., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5959-60, para. 25 (2016). *See* 47 CFR § 54.309(a)(2)(ii).

[16] *See* OpenVault, Broadband Insights Report, OVBI (3Q21) available at https://openvault.com/wp-content/uploads/2021/11/OVBI_3Q21_Report.pdf (stating that the averages are based on millions of machines).

[17] *See generally* OpenVault, Uncover the Power of Data, Resources, OVBI, https://openvault.com/resources/ovbi/.

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 23-1173
Released: December 15, 2023

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

WC Docket No(s). 23-365 & 23-414

Comments Due: January 2, 2024

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 15, 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

[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 **January 2, 2024**.[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

[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*.

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).

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 Louisiana, LLC**
WC Docket No. 23-365, Comp. Pol. File No. 1871
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-365*%22))
Affected Service(s) – Basic Business Line Service, Channel 12, 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) – Baton Rouge, Lafayette, Lake Charles, Sulphur, and New Orleans, Louisiana
Authorized Date(s) – on or after January 16, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): XO Communications Services, LLC and XO Virginia, LLC (XO)**
WC Docket No. 23-414, Comp. Pol. File No. 1884
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-414*%22))
Affected Service(s) – XO Dedicated Transport Service; XO IP Virtual Private Network Service; XO Enterprise Session Initiation Protocol (XO ESIP); XO IP Flex; Long Distance and toll-free services offered in association with XO IP Flex and XO ESIP
Service Area(s) – in the contiguous 48 U.S. states and the District of Columbia
Authorized(s) – on or after January 15, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On January 15, 2024, XO plans to discontinue the following speeds of XO Dedicated Transport Service: DS-3 service, Local Loop Service, Ethernet access solutions delivered over TDM (EoTDM), and Metro Service. On May 31, 2024, XO plans to discontinue all other speeds of XO Dedicated Transport Service. On or after May 31, 2024, XO plans to discontinue XO IP Virtual Private Network Service, XO ESIP, XO IP Flex, and Long Distance and toll-free services offered in association with XO IP Flex and XO ESIP.

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	NAL/Acct. No. MB-202341410019
Northwest Rock N Roll Preservation Society	)	FRN: 0009515602
	)	
Application for License to Cover	)	Facility ID No. 150021
K266BM, Olympia, Washington	)	Application File No. 115909
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2023 **Released: December 18, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a pleading (Response) filed by Northwest Rock N Roll Preservation Society (NWR), licensee of K266BM, Olympia, Washington (NWR Translator).[1] The Response seeks cancellation of a *Notice of Apparent Liability for a Forfeiture* (*NAL*) that we issued together with a *Memorandum Opinion and Order* on August 25, 2023.[2] In the *NAL* portion of the decision, we found NWR had operated the NWR Translator at a variance from its licensed parameters in violation of section 301 of the Communications Act of 1934, as amended (Act),[3] and NWR had made false certifications to the Commission in violation of section 1.17(a)(1) of the Commission's Rules (Rules).[4] We proposed a $20,000 forfeiture in relation to those violations. By this action, we affirm our finding that the NWR violated section 301 of the Act. We reconsider and reverse our determination that NWR made false certifications to the Commission in violation of section 1.17(a)(1) of the Rules, concluding instead that NWR violated section 1.65 of the Rules by failing to ensure the continued accuracy of a certification it made to the Commission.[5] Finally, after determining that payment of the $20,000 forfeiture, or any reduction thereof, would pose a financial hardship, we cancel the *NAL* and instead admonish NWR for its violations of section 301 of the Act, and section 1.65 of the Rules.

II. BACKGROUND

2. Between April 25, 2013, and December 4, 2019, the NWR Translator was authorized to rebroadcast the signal of KGHO-LP, Hoquiam, Washington at an Effective Radiated Power (ERP) of 10 watts.[6]

3. On August 29, 2016, NWR obtained a construction permit (2016 Permit) to increase the NWR Translator's ERP to 70 watts and change its primary station from KGHO-LP to KGTK(AM),

[1] *See* Pleading File No. 221311 (filed Sept. 25, 2023) (Response).

[2] *Northwest Rock N Roll Preservation Society*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-763 (MB Aug. 25, 2023) (*MOO and NAL*).

[3] 47 U.S.C. § 301.

[4] 47 CFR § 1.17(a)(1).

[5] 47 CFR § 1.65.

[6] *See* Application File No. BLFT-20130402ACL (2013 License); *Broadcast Actions*, Public Notice, Report No. 47978, at 10 (MB April 30, 2013).

Olympia, Washington.[7] In 2017, at NWR's request, we modified the 2016 Permit to specify an increased ERP of 250 watts (2017 Permit).[8] On June 18, 2019, NWR filed an application (2019 Modification Application) to modify the 2017 Permit for a second time.[9]

4. As the 2017 Permit's expiration date of August 29, 2019, approached, and the 2019 Modification Application remained pending, NWR applied for a license to cover the facilities authorized in the 2017 Permit (2019 License Application).[10] We granted the 2019 License Application on December 4, 2019, and issued a license to cover the 2017 Permit (2019 License).[11]

5. On January 29, 2020, NWR filed a request for special temporary authority (STA) to operate with its previously licensed antenna at an ERP of 10 watts (January STA Request).[12] NWR reported that the directional antenna specified in the 2019 License did not work properly, and also stated that it was waiting for an audio line from KGTK(AM). We dismissed the January STA Request on February 6, 2020, because the 60 dBμ service contour of the facilities proposed therein extended "substantially beyond" the location of the NWR Translator's licensed and directional 60 dBμ service contour.[13]

6. NWR filed a second STA request on February 13, 2020 (February STA Request).[14] Therein, NWR sought authority to operate the NWR Translator with the antenna specified in the 2019 License but with an ERP of 10 watts. NWR also proposed to rebroadcast the signal of the NWR Translator's former primary station (KGHO-LP), noting that it was waiting for audio connection from its new primary station (KGTK(AM)).

7. On the same day as NWR filed the February STA Request, it amended the pending 2019 Modification Application.[15] Shortly thereafter, we granted that application and issued the 2020 Permit.

8. Then, on June 8, 2020, NWR filed the 2020 License Application, which seeks a license to cover the facilities authorized in the 2020 Permit.[16] A few days later, Bustos and Bicoastal filed informal

[7] *See* Application File No. BPFT-20160729AKW; *Broadcast Actions*, Public Notice, Report No. 48811, at 15 (MB Sept. 1, 2016).

[8] *See* Application File No. BMPFT-20170925ADX; *Broadcast Actions*, Public Notice, Report No. 49090, at 20 (MB Oct. 13, 2017).

[9] *See* Application File No. BMPFT-20190618ABI (2019 Modification Application).

[10] *See* Application File No. BLFT-20190904ABL (2019 License Application).

[11] *See Broadcast Actions*, Public Notice, Report No. 49629, at 2 (MB Dec. 9, 2019).

[12] *See* Application File No. BSTA-20200129AAJ.

[13] Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Brian Spencer, President, Northwest Rock N Roll Preservation Society (dated Feb. 6, 2020) (*STA Dismissal Letter*).

[14] *See* Application File No. BSTA-20200213ABI.

[15] The 2019 Modification Application originally sought to modify the 2017 Permit. *See supra* para. 2. However, grant of the license to cover the 2017 Permit on December 4, 2019, converted that application from a request to modify the 2017 Permit to a request to modify the 2019 License.

[16] *See* Application File No. 115909 (2020 License Application). Having received this application, we dismissed the February STA Request on June 11, 2020. Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Brian Spencer, President, Northwest Rock N Roll Preservation Society (dated June 11, 2020) (noting that NWR's filing of the 2020 License Application signaled that NWR had completed construction of the facilities specified in the 2020 Permit and was able to maintain sustained operations with those facilities, and thus that "the STA is no longer needed").

objections (Objections) to the 2020 License Application.[17] NWR filed oppositions to the Objections (Oppositions).[18]

9. After reviewing the Application, the Objections, and the Oppositions, we issued the *MOO and NAL*. NWR timely filed the Response.[19] Bustos opposed it,[20] and NWR replied.[21] We consider their pleadings herein.

III. DISCUSSION

A. Procedural Issue

10. At the outset, we dismiss as untimely an argument made by Bustos in the Opposition. Therein, Bustos reprises its argument that NWR violated section 73.860 of the Rules.[22] We considered and rejected this argument in the *Memorandum Opinion and Order* portion of the *MOO and NAL*.[23] Because this portion of that decision was not interlocutory in nature, Bustos needed to file a petition for reconsideration challenging that portion of the *MOO and NAL* no later than September 25, 2023.[24] Bustos

[17] Pleading File Nos. 116076 (Bustos Objection), 116061 (Bicoastal Objection)

[18] Pleading File Nos. 118217 (opposing Bicoastal Objection), 121197 (opposing Bustos Objection).

[19] NWR actually captioned the Response—which challenges only the *NAL* portion of the decision—as a Petition for Reconsideration of Notice of Apparent Liability for Forfeiture. However, petitions for reconsideration do not lie against interlocutory actions, such as notices of apparent liability for forfeiture. *See* 47 CFR § 1.106(a)(1). *See also South Seas Broad., Inc*., Forfeiture Order, 27 FCC Rcd 4151, 4152 n.7 (MB 2012) ("Because the NAL merely proposed rather than imposed a forfeiture, the Media Bureau's [ ] action was interlocutory in nature."), *recon. denied*, Memorandum Opinion and Order, 27 FCC Rcd 15049 (MB 2012). Accordingly, we will treat the pleading as the "written statement seeking reduction or cancellation of the proposed forfeiture" specifically authorized in the NAL. *See NAL,* DA 23-763*,* at para. 26.

[20] Pleading File No. 222168 (Opposition). The Opposition is a consolidated opposition filed in response to the Response and a petition for reconsideration filed by NWR on the same day. *See* Pleading File No. 221441. That petition for reconsideration challenges a decision in which we granted a petition for reconsideration filed by Bustos, dismissed the predicted interference claim that NWR had made in opposition to Bustos' application for a new FM translator station at Auburn, WA, and reinstated and granted that application. *Bustos Media Holdings, LLC*, Application File No. BNPFT-20180418ABI, Letter Order, (MB Aug. 25, 2023). Because the standing argument raised by Bustos in the Opposition relates only to NWR's standing to challenge our grant of the Bustos application, we do not address that argument herein. *See* Opposition at pages 2-5.

[21] Pleading File No. 222904.

[22] Opposition at 3-4, 5 (arguing that NWR holds an attributable interest in KGHO-LP, and that this interest—combined with NWR's attributable interests in the NWR Translator and other FM translators—violates the LPFM cross-ownership limits set forth in section 73.860 of the Rules).

[23] *MOO and NAL*, DA 23-763, at para. 12 (rejecting as unsubstantiated Bustos' argument that NWR has violated the LPFM cross-ownership limits set forth in section 73.860 of the Rules because NWR's President holds attributable interests in the NWR Translator, the other translators licensed to NWR, and KGHO-LP, and noting that, even if there was a violation of section 73.860, it would be KGHO-LP's licensee, not NWR, that would be sanctioned for the violation").

[24] 47 U.S.C. § 405(a) ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of."); 47 CFR § 1.106(f) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in §1.4(b) of these rules, and shall be served upon parties to the proceeding.").

filed the Opposition on October 5, 2020. We therefore dismiss Bustos' argument regarding NWR's compliance with section 73.860 of the Rules.[25]

B. Substantive Issues

1. Unauthorized Operations

11. We affirm our finding that the NWR Translator engaged in unauthorized operations in violation of section 301 of the Act. However, based on the information provided by NWR in the Response,[26] we have determined that the unauthorized operations occurred between December 4, 2019, and June 8, 2020, not December 4, 2019, and June 13, 2020, as stated in the *MOO and NAL*.[27]

12. We reject NWR's assertion that its liability for the unauthorized operations is mitigated by certain factors. For instance, although NWR explains that it was technically unable to operate with the facilities specified in the 2019 License between December 4, 2019, and June 8, 2020, the technical difficulties that NWR experienced did not excuse the unauthorized operations.[28] Not only was NWR aware of these difficulties months prior to grant of the 2019 License[29] but, as discussed below at paragraph 15, NWR could have acted in ways that would not have violated any provisions of the Act or the Rules.

13. Likewise, the fact that NWR requested STA to operate the NWR Translator at a variance from the 2019 License does not "substantially reduce[ ]" its culpability.[30] It is the grant of an STA—not the request for such STA—that authorizes a station to operate at a variance from its license.[31] That is the

[25] The Commission lacks authority to waive or extend the statutory 30-day filing period for petitions for reconsideration unless the petitioner shows that its failure to file in a timely manner resulted from "extraordinary circumstances." *See, e.g., Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976). We note that Bustos has not asserted that any such extraordinary circumstances exist.

[26] *See* Response at 4, and n.1. In the Response, NWR clarified that the NWR Translator has been operating with program test authority in accordance with the 2020 License Application since the application was filed on June 8, 2020. *Id*. at n.1. Prior to this clarification, it was unclear whether NWR had done so earlier than June 13, 2020.

[27] *MOO and NAL*, DA 23-763, at para. 10.

[28] NWR states that, when it commenced program tests after filing the 2019 License Application, it discovered that the facilities specified therein "suffered from [ ] excess reflective power which threatened to cause significant damage to the transmission facilities. Response at 2. Then, according to NWR, beginning in November 2019, the primary station specified in the 2019 License Application began failing to "broadcast more than a hum." *Id*. Given these issues, NWR chose to "revert[ ] to operation pursuant to [the still outstanding 2013 License]." *Id.* NWR states that, after grant of the 2019 License, it "again attempted to commence operation with the facilities authorized [therein] but found that the technical issues with the transmission facility and the primary station still existed." *Id*.

[29] *See* Response at 2-3.

[30] *Id.* at 5.

[31] *See Kingdom of God, Inc*., Memorandum Opinion and Order, 31 FCC Rcd 7522, 7525, para. 7 (2016) ("In order for a station to operate at variance from [its authorized] terms, the licensee must file and have granted either an application to modify its station authorization or a request for STA ….); *M.C. Allen Prods.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 9505, 9508, para. 8 (EB 2001) (noting station's continued unauthorized operations, emphasizing that "the mere pendency of [a] license application or the filing of a request for program test authority or STA will not suffice to avoid [ ] enforcement action," and explaining that "the license application or request for program test authority or STA must be granted"). *See also Media Assocs. Inc*., Forfeiture Order, 26 FCC Rcd 3703, 3705, para. 7 (MB 2011) (noting that, where renewal application was not filed until after station's license expired, station's unauthorized operations continued until grant of an STA request to operate pursuant to expired license); *Iglesia Cristiana Ebenezer, Inc*., Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14642, 14644, para. 7 (EB 2013) (noting that "[a] licensee simply cannot operate in conformity with its license modification application based on the assumption that the application will later be granted" and explaining that "[u]ntil such modification application has been granted, a licensee is expected to operate in strict conformity with its current

(continued….)

case because operation of a broadcast station with facilities that have not been reviewed and approved by Commission staff can result in violation of Commission technical rules, prohibited interference, and/or extension of a station's service beyond its licensed 60 dBμ service contour. Indeed, as noted above, we dismissed the January STA request after determining that the 60 dBμ contour of the facilities requested by NWR would extend "substantially beyond the location of the licensed and directional 60 dBμ service contour."[32]

14. Finally, we recognize that, as NWR asserts, the COVID-19 pandemic began impacting the Pacific northwest in early 2020.[33] However, NWR has not shown that the NWR Translator's unauthorized operations were directly attributable to the pandemic or otherwise explained how the pandemic resulted in the unauthorized operations.[34] As a result, we cannot conclude that the pandemic affected NWR in a way that mitigates its liability for unauthorized operation of the NWR Translator.

15. It is worth noting that, if NWR had simply updated the 2019 License Application—prior to its grant—to reflect that program tests had revealed the NWR Translator actually was not ready to operate with the facilities specified in the 2019 License Application,[35] NWR could have avoided violating section 301 of the Act and, as discussed below, could have avoided violating section 1.65 of the Rules. This is so because the Commission would have withheld action on the 2019 License Application, which would have left the 2013 License in place. NWR could then have reverted to operating with the facilities specified in the still valid 2013 License. Alternatively, once we granted the 2019 License Application and NWR again tried and failed to operate the NWR Translator with the facilities specified therein,[36] NWR could have avoided violating section 301 of the Act by advising the Commission—prior to the grant becoming final—that the NWR Translator could not operate with its newly licensed facilities. This would have triggered a rescission of our grant of the 2019 License Application and a return of that application to pending status, which would have resurrected the 2013 License and allowed the NWR Translator to continue to operate with the facilities specified in that license. Having taken neither of these steps, NWR should have taken the NWR Translator off the air until it was able to operate with the facilities specified in the 2019 License, or until it obtained STA to operate the NWR Translator with different facilities.

2. Certifications

16. We reconsider and reverse our finding that NWR made false certifications in the 2019 License Application when it certified that "the station is now in satisfactory operating condition and ready for regular operation." And "[t]he facility was constructed as authorized in the underlying construction

---

license authorization, unless it has been granted special temporary authority in the interim"); *John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541, 12542, para. 6 (MB 2009) (noting that licensee operated with non-conforming facilities during a period of time, and explaining such operations were not authorized until the date the Commission granted an STA request to operate with those facilities). For this reason, we also reject NWR's assertion that its culpability for unauthorized operations "should be limited to no more than the period between January 3, 2020 (30 days after the 2019 license was granted), and, at most, February 13, 2020, the date on which the long-pending STA request was filed." Response at 5.

[32] *See STA Dismissal Letter*.

[33] Response at 5.

[34] *See Heritage Media of Ky., Inc*., Forfeiture Order, 36 FCC Rcd 4716, 4717, n.13 (MB 2021) (finding fact that missed filing deadline for station's renewal application "correlated to the early days of the COVID-19 pandemic" did not constitute a basis for reducing a proposed forfeiture, and noting that station's licensee had not "directly attribute[d] its error to the pandemic or otherwise explain[ed] how the pandemic was responsible for its failure to timely file").

[35] This is not a situation where rapid action on the application prevented NWR from doing so. The application was pending from September 4, 2019, until December 4, 2019.

[36] Response at 2.

permit."[37] Based on the information provided by NWR in the Response,[38] we have determined that NWR actually did construct the facilities authorized in the 2019 License, but was unable to operate the NWR Translator with them due to technical issues. In light of the new information before us, we conclude that NWR did not violate section 1.17(a)(1) of the Rules.

17. We do find, though, that NWR violated section 1.65 of the Rules, which requires applicants to ensure "the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application."[39] When NWR discovered that the NWR Translator "was unready to broadcast in accordance with the [2019 License],"[40] it should have amended the 2019 License Application to reflect that.[41] We would normally propose a forfeiture for this violation. However, given our determination herein that payment of any forfeiture would impose a financial hardship on NWR, we instead admonish NWR for its willful and repeated violation of section 1.65 of the Rules.

3. Financial Hardship

18. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act, Section 1.80 of the Rules, and the Commission's *Forfeiture Policy Statement*.[42] In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.[43]

19. As noted in the *MOO and NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed 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; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.[44] The Commission has generally looked to gross revenues as the best indicator of whether a licensee is able to pay an assessed forfeiture.[45] Determining an appropriate forfeiture amount that a licensee is able to pay is not strictly mathematical, but the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the licensee's gross annual income and have not exceeded eight percent thereof.[46] Where appropriate, the Commission has also considered other, secondary indicators of the licensee's financial circumstances including debt, net

---

[37] *See* 2019 License Application, Section II – Legal, Item 5, and Section III – Engineering, Item 4.

[38] *See* Response at 2-3.

[39] 47 CFR § 1.65.

[40] Whenever the information furnished in a pending application is no longer substantially accurate and complete in all significant respects, the applicant must, as promptly as possible and in any event within 30 days, amend the application so as to furnish the additional or correct information. *Id.*

[41] Specifically, NWR should have changed its certification regarding the station being in "satisfactory operating condition and ready for regular operation" from "Yes" to "No." 2019 License Application at Legal Certifications, Station Ready for Operation.

[42] 47 U.S.C. § 503(b); 47 CFR § 1.80; *The Commission's Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997).

[43] 47 U.S.C. § 503(b)(2)(E).

[44] *See Discussion Radio, Inc*., Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (*Discussion Radio*).

[45] *See Studio 51 Multi Media Prod., Ltd*., Memorandum Opinion and Order, 30 FCC Rcd 6134, 6134-35, para. 3 (MB 2015).

[46] *See Zuma Beach FM and Emergency Commc'ns Broad., Inc*., Memorandum Opinion and Order, 34 FCC Rcd 5302, 5303-04, n.14 (MB 2019) (*Zuma Beach*), and cases cited therein.

losses, and other potential sources of income.[47] In cases of egregious violations, the Commission may impose forfeitures despite evidence of the violator's financial difficulties.[48]

20. NWR contends that payment of the proposed forfeiture would cause it financial hardship. In support of its request for cancellation of the forfeiture, NWR submits financial documentation for 2020, 2021, and 2022, and a declaration made under penalty of perjury to support the documentation.[49] A $20,000 forfeiture would be more than twenty times NWR's average gross income. Not only are NWR's average gross revenues very small but it has sustained average losses that are over three times those revenues. NWR's existence also depends heavily on loans from its board members.[50]

21. We conclude that NWR's circumstances are comparable to or exceed those in which the Commission has cancelled forfeitures for inability to pay.[51] We believe that payment of the $20,000 forfeiture, or any reduction thereof, would pose a financial hardship in view of NWR's documented net losses. Accordingly, we cancel the proposed forfeiture.

22. Although we cancel the proposed forfeiture, we find that it is appropriate to admonish NWR for its willful and repeated violation of Section 301 of the Act, and its willful and repeated violation of section 1.65 of the Act. In addition, we take this opportunity to warn NWR that it could face proposed forfeitures in the future—regardless of its financial circumstances—if the forfeiture imposed herein does

[47] *See Discussion Radio*, 24 FCC Rcd at 2207, n.11 (sustained losses), *citing First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996) (expenses exceeding income, and losses funded by sole shareholder who was receiving no remuneration); *South Bay Aviation, Inc*., Forfeiture Order, 27 FCC Rcd 3013, 3015, para. 7 (EB 2012) (considering debt and potential sources of income). If gross revenues are sufficiently large, the mere fact that a business is operating at a loss does not by itself demonstrate an inability to pay. *See Texas Educ. Broad. Co-op., Inc*., Forfeiture Order, 26 FCC Rcd 11249, 11251, para. 6 (MB 2011). However, the Commission has cancelled forfeitures when net losses demonstrate extraordinary circumstances, such as when the losses are a very large percentage of average gross revenue. *See, e.g., Peak Commc'ns, Inc.*, Letter Order, 25 FCC Rcd 16188 (MB 2010) (*Peak*) (losses exceeding revenue by nearly seventy percent*); Valley Air, LLC*, Letter Order, 24 FCC Rcd 5505 (MB 2009) (losses exceeding revenue by nearly 50 percent) (*Valley Air*).

[48] *See, e.g., Net One Int'l, Inc*., Forfeiture Order, 31 FCC Rcd 2367, 2380, paras. 38-39 (2016). We find, however, that NWR's violations are not egregious.

[49] Response at 5. Specifically, the documentation demonstrates that NWR's expenses were more than eleven times its gross revenues in 2020, more than twice its gross revenues in 2021, and more than six times its gross revenues in 2022. Response at 2020 Balance Sheet (showing $300 in listener donations (gross revenues) and $3,490.73 in expenses), 2021 Balance Sheet (showing $1,676.90 in listener donations and $3,490.73 in expenses), 2022 Balance Sheet (showing $825 in listener donations and $5,388.55 in expenses).

[50] Response at 2020 Balance Sheet (showing loans from board members totaling $3,190.73), 2021 Balance Sheet (showing loans from board members totaling $1,813.83), 2022 Balance Sheet (showing loans from board members totaling $4,563.55).

[51] We have cancelled or reduced forfeitures when the facts involve a compelling combination of modest gross revenues, significant losses, and/or evidence of financial difficulty. *Faith Baptist Church*, Forfeiture Order, 26 FCC Rcd 1391, 1393, n.19 (MB 2011). *See also Zuma Beach*, 34 FCC Rcd at 5305, para. 7 (cancelling forfeiture where forfeiture represented 195 percent of licensee's average gross income, licensee's gross income was "very small," its sustained average losses were "over 200 percent of that income," and its existence "depend[ed] almost entirely upon loans, in-kind donations, and cash infusions from [its] board, which [was] not retaining equity"); *Peak*, 25 FCC Rcd at 16190 (noting that the Bureau ordinarily would have reduced the proposed forfeiture to five percent of licensee's average gross revenue of $42,781, but instead canceled the forfeiture because licensee's losses exceeded its revenue by nearly seventy percent over a three year period); *Valley Air,* Letter Order, 24 FCC Rcd 5505 (MB 2009) (cancelling forfeiture because, over a four year period, licensee's total losses were four times its average gross revenue of $ 78,201); *West Mecklenberg Broad*., Letter Order, 23 FCC Rcd 13935 (MB 2008) (cancelling $6,000 forfeiture amounting to 83.5 percent of violator's gross revenue); *A-O Broad. Corp*., Order, 23 FCC Rcd 11296, 11300, paras. 11-12 (EB 2008) (cancelling forfeiture and substituting admonishment where licensee had no revenues and its only significant sources of cash were loans from its shareholder).

not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Rules.

IV. ORDERING CLAUSES

23. Accordingly, **IT IS HEREBY ORDERED** that, pursuant to Section 504(b) of the Communications Act of 1934, as amended,[52] and Sections 0.61, 0.283, and 1.80(f)(4) of the Commission's rules,[53] the *Notice of Apparent Liability for a Forfeiture* (NAL/Acct. No. MB-202341410019) issued to Northwest Rock N Roll Preservation Society **IS CANCELLED**. Northwest Rock N Roll Preservation Society instead **IS ADMONISHED** for violating section 301 of the Communications Act of 1934, as amended,[54] and section 1.65 of the Commission's rules.[55]

24. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order* **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Brian Spencer, Northwest Rock N Roll Preservation Society, PO Box 2673, Olympia, WA 98507-2673; counsel for Northwest Rock N Roll Preservation Society, Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, Eleventh Floor, Arlington, VA 22209; and counsel for Bustos Media Holdings, LLC, Dennis J. Kelly, Esq., PO Box 41177, Washington, DC 20018.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[52] 47 U.S.C. § 504(b).

[53] 47 CFR §§ 0.61, 0.283, 1.80(f)(4).

[54] 47 U.S.C. § 301.

[55] 47 CFR § 1.65.

Federal Communications Commission
Washington, D.C. 20554

December 18, 2023

DA 23-1175
In Reply Refer to:
1800B3-HD
Released: **December 18, 2023**

Bustos Media Holdings, LLC
c/o Dennis J. Kelly, Esq.
PO Box 41177
Washington DC 20019
Sent by email to dkellyfcclaw@comcast.net

Northwest Rock N Roll Preservation Society
c/o Mr. Brian Spencer
P.O. Box 2673
Olympia, WA 98507
Sent by email to nwrps@outlook.com

In re: **Bustos Media Holdings, LLC**
K266CP, Auburn, WA
Facility ID No. 202942
File No. BNPFT-20180418ABI

Petition for Reconsideration

Dear Counsel and Petitioner:

We have before us a Petition for Reconsideration (Petition) filed by Northwest Rock N Roll Preservation Society (NWR) on September 25, 2023.[1] NWR challenges a letter decision (*Reconsideration Decision*)[2] in which we (1) granted a petition for reconsideration (Bustos Petition) filed by Bustos Media Holdings, LLC (Bustos), (2) dismissed NWR's predicted interference claim against Bustos' proposed new FM translator at Auburn, Washington (Bustos Translator), and (3) reinstated and granted Bustos' application (Bustos Application) for a construction permit for the Bustos Translator.[3] For the reasons discussed below, we deny the Petition.

Background. In 2013, we granted NWR a license (2013 License) to operate K266BM, Olympia, Washington (NWR Translator) at 10 watts.[4] The license indicated that the NWR Translator would be rebroadcasting KGHO-LP, Hoquiam, Washington. The service contour for the facilities authorized in the

[1] Pleading File No. 221441 (Petition).

[2] *Bustos Media Holdings, LLC*, Letter Order, Application File No. BNPFT-20180418ABI (MB Aug. 25, 2023) (*Reconsideration Decision*).

[3] *See* Application File No. BNPFT-20180418ABI (Bustos Application). *See Broadcast Applications*, Public Notice, Report No. 30566, at 1 (MB Sept. 1, 2023); *Broadcast Actions*, Public Notice, Report No. 50566, at 1 (MB Sept. 1, 2023). Upon grant of the Bustos Application, the new translator was assigned the call letters K266CP.

[4] *See* Application File No. BLFT-20130402ACL; *Broadcast Actions*, Public Notice, Report No. 47978, at 10 (MB April 30, 2013).

2013 License (2013 Contour) extended roughly the same distance in all directions from the NWR Translator's transmitter site.

In 2016, NWR obtained a construction permit (2016 Permit) authorizing it to increase the NWR Translator's effective radiated power (ERP) from 10 watts to 70 watts and change its primary station to KGTK(AM).[5] In 2017, at NWR's request, we modified the 2016 Permit to specify an increased ERP of 250 watts (2017 Permit).[6] The service contour of the facilities authorized in the 2017 Permit primarily extended northeast of the NWR Translator's transmitter site.

In 2018, Bustos filed the Bustos Application.[7] NWR then filed an Informal Objection (Objection) to the Bustos Application,[8] which it later supplemented (2018 Supplement).[9] NWR alleged that the Bustos Translator's proposed facilities would cause interference to listener reception of the NWR Translator in violation of section 74.1204(f) of the Rules. NWR's predicted interference claims were based on operation of the NWR Translator with the facilities specified in the 2013 License.

In May 2019, the Commission revised its FM translator interference rules. Among other things, it adopted a 45 dBμ outer signal strength contour limit for interference complaints, and required a station to submit a minimum number of listener complaints.[10] The Commission also required that a station claiming predicted interference submit a statement that the station was operating with its licensed parameters, and a statement that it had "used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution."[11]

Shortly thereafter, on June 18, 2019, NWR filed an application (2019 Modification Application) to modify the 2017 Permit.[12] Then, a few days after the new FM translator interference rules became effective,[13] on August 19, 2019, NWR filed another supplement to the Objection (2019 Supplement).[14] Among other things, NWR submitted a signal strength contour map "with the addition of the 45 dBμ

---

[5] *See* Application File No. BPFT-20160729AKW; *Broadcast Actions*, Public Notice, Report No. 48811, at 15 (MB Sept. 1, 2016).

[6] *See* Application File No. BMPFT-20170925ADX; *Broadcast Actions*, Public Notice, Report No. 49090, at 20 (MB Oct. 13, 2017).

[7] Bustos later amended the Bustos Application. *See Broadcast Applications*, Public Notice, Report No. 29597, at 7-9 (MB Oct. 22, 2019).

[8] Northwest Rock N Roll Preservation Society, Informal Objection, Application File No. BNPFT-20180418ABI (rec'd July 31, 2018).

[9] Northwest Rock N Roll Preservation Society, Informal Objection, Application File No. BNPFT-20180418ABI (rec'd Oct. 5, 2018).

[10] *See Amendment of Part 74 of the Commission's Rules Regarding Translator Interference,* MB Docket No. 18-119 Report and Order, 34 FCC Rcd 3457, 3463-66, paras. 12-15, 3475-78, paras. 36-40 (2019), *recon. denied*, 35 FCC Rcd 11561 (2020).

[11] *Id*. at 3469-70, para. 23. *See also* 47 CFR § 74.1204(f)(3), (4).

[12] *See* Application File No. BMPFT-20190618ABI.

[13] *See also Media Bureau Announces August 13, 2019, Effective Date of Amended Rules for FM Translator Interference*, Public Notice, 34 FCC Rcd 7004 (MB 2019).

[14] Northwest Rock N Roll Preservation Society, Supplemental Information to Informal Objection, Application File No. BNPFT-21080418ABI (rec'd Aug. 19, 2019).

contour."[15] This map was based on the 2013 Contour (*i.e*., the signal strength contour of the NWR Translator's licensed facilities at the time).[16] NWR submitted 38 new listener complaints, and resubmitted six listener complaints that had accompanied the NWR Objection and/or the 2018 Supplement.[17] Additionally, NWR included a statement that the NWR Translator was operating with its licensed parameters, and submitted a copy of an August 12, 2019, letter that NWR had sent to counsel for Bustos regarding its predicted interference claims.[18]

While the 2019 Modification Application remained pending, NWR applied for a license to cover the facilities specified in the 2017 Permit (2019 License Application).[19] We granted the 2019 License Application on December 4, 2019, and issued a new license to cover the NWR Translator's modified facilities (2019 License).[20]

NWR then filed another supplement to the Objection (2020 Supplement). Therein, NWR acknowledged that the NWR Translator's protected contour had changed, and proffered a new map depicting the specific location of the predicted interference to each identified listener in relation to NWR Translator's newly licensed 45 dBμ contour (2019 Contour).[21]

On April 28, 2020, we issued an initial decision regarding the Bustos Application (*Letter Decision*).[22] We found that NWR had "adequately substantiated its Section 74.1204(f) claims."[23] As a result, we dismissed the Bustos Application.

Bustos filed the Bustos Petition on May 28, 2020. NWR opposed the Petition,[24] and Bustos replied.[25]

On August 25, 2023, we issued the *Reconsideration Decision*. As discussed above, that decision granted the Bustos Petition, dismissed NWR's predicted interference claims, and reinstated and granted

---

[15] *Id*. at 2.

[16] *Id*. at Map 1.

[17] *Id*. at Listener Declarations Attach.

[18] *Id*. at 6, 7.

[19] *See* Application File No. BLFT-20190904ABL (2019 License Application).

[20] *See Broadcast Actions*, Public Notice, Report No. 49629, at 2 (MB Dec. 9, 2019).

[21] Northwest Rock N Roll Preservation Society, Addendum to Supplemental Information to Informal Objection, Application File No. BNPFT-20180418ABI (rec'd Jan. 3, 2020).

[22] *Bustos Media Holdings, LLC,* Letter Order, Application File No. BNPFT-20180418ABI MB April 28, 2020).

[23] *Id*. at 6.

[24] Northwest Rock N Roll Preservation Society, Opposition to Petition for Reconsideration & Supplement, and Motion to Strike, Application File No. BNPFT-21080418ABI (rec'd Sept. 8, 2020).

[25] Bustos Media Holdings, LLC, Reply to "Opposition to Petition for Reconsideration & Supplement, and Motion to Strike," Application File No. BNPFT-21080418ABI (rec'd Sept. 17, 2020).

the Bustos Application. NWR then filed the Petition. Bustos opposed it,[26] and NWR replied.[27] We consider the Petition and Bustos' and NWR's related pleadings herein.

Discussion. Procedural Issue. We reject Bustos' allegation that NWR lacks standing to challenge the *Reconsideration Decision*.[28] Bustos incorrectly asserts that NWR was solely concerned about the Bustos Translator interfering with another NWR translator station's reception of the signal of its primary station (KGHO-LP) over the air via the NWR Translator.[29] Because the NWR Translator no longer rebroadcasts the KGHO-LP signal, and the other NWR translator no longer receives the KGHO-LP signal via the NWR Translator, Bustos argues that NWR no longer has standing.[30] It is true that, prior to filing the Objection, NWR filed a Petition to Deny the Bustos Application that raised only the issue of interference with the other NWR translator's reception of the signal of its primary station off the air via the NWR Translator.[31] However, in every other pleading it has submitted in relation to the Bustos Application, NWR has asserted that the Bustos Translator would cause interference to listener reception of the NWR Translator's signal in violation of section 74.1204(f). NWR clearly continues to have standing to challenge the *Reconsideration Decision*.[32]

Substantive Issues. In the *Reconsideration Decision*, we reversed our previous finding that NWR had adequately substantiated its predicted interference claims. We found that, at the time the *Letter Decision* was adopted, parts of NWR's interference claim package had become outdated or inaccurate due to issuance of the 2019 License, which authorized the NWR Translator to operate with a "vastly different contour."[33] We explained that grant of the 2019 License had rendered outdated both NWR's statement that the NWR Translator was operating within its licensed parameters and its statement regarding its efforts to inform Bustos and attempt private resolution.[34] We noted that, despite this, NWR had not submitted either a new statement that the NWR Translator was operating within the parameters of the 2019 License, or a new statement that NWR had attempted private resolution of the claimed predicted interference after grant of the 2019 License.[35] Given these circumstances, we held that we should have

---

[26] Pleading File No. 222169 (Opposition). The Opposition is a consolidated opposition filed in response to the Petition and another pleading filed by NWR on the same day. *See* Pleading File No. 221311. That pleading challenges a decision in which we, among other things, rejected Bustos' argument that NWR had violated section 73.860 of the Rules, which governs cross-ownership of LPFM and non-LPFM broadcast stations. *Northwest Rock N Roll Preservation Society*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-763 (MB Aug. 25, 2023). We will address the cross-ownership/real-party-in-interest argument that Bustos makes in the Opposition in our decision regarding that pleading.

[27] Pleading File No. 222904.

[28] Opposition at 5.

[29] *Id*. at 2, 5.

[30] *Id*. at 5.

[31] Northwest Rock N Roll Preservation Society, Petition to Deny, Application File No. BNPFT-20180418ABI (rec'd May 9, 2018).

[32] *See, e.g., Tribune Media Co*., Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019) (noting that, "[i]n the broadcast regulatory context, standing is generally shown in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the station").

[33] *Reconsideration Decision* at 5.

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

[35] *Id*. at 6.

found NWR's interference claim package was not rule-compliant and should have dismissed it.[36] Then, after finding that the package remained incomplete, we dismissed it.[37]

At the outset, we reject NWR's claim that the 2013 Contour and the 2019 Contour were not "vastly different."[38] A simple comparison of the contour maps available in the Commission's Licensing and Management System demonstrates that the two contours are quite different.[39]

Having upheld our determination that the 2013 and 2019 Contours were "vastly different," we also uphold our finding that the interference claim package based on the facilities specified in the 2013 License became outdated or inaccurate when we issued the 2019 License. As we explained in the *Reconsideration Decision*, NWR should have submitted an updated statement that the NWR Translator was operating with its licensed parameters, and an updated statement that it had attempted to privately resolve its predicted interference claims after grant of the 2019 License.[40]

We are not persuaded by NWR's argument that it did submit a statement that the NWR Translator was operating pursuant to the parameters specified in the 2019 License.[41] We acknowledge that, as NWR points out, Commission staff did receive an email from NWR on June 16, 2020, which indicated the NWR Translator was operating at 250 watts ERP and rebroadcasting the signal of KGTK(AM).[42] However, that email was not made a part of the record in this proceeding or otherwise associated with NWR's interference complaint package. Moreover, the email did not confirm that the NWR Translator was operating consistent with all of the technical parameters set forth in the 2019 License. For instance, the email did not state that the NWR Translator's antenna was located at the coordinates specified in the 2019 License, or confirm that the antenna was mounted at the height specified in that license.[43]

---

[36] *Id*.

[37] *Id*. We note that the *Reconsideration Decision* also (1) dismissed certain pleadings submitted by Bustos and NWR as late-filed or unauthorized, (2) held NWR violated the Commission's *ex parte* rules when it filed the 2020 Supplement and a request for waiver of the contour limit for predicted interference complaints, Northwest Rock N Roll Preservation Society, Request for Waiver & Addendum 2 to Supplemental Information to Informal Objection, Application File No. BNPFT-20180418ABI (rec'd Feb. 13, 2020), (3) found that the waiver request should have been dismissed for failing to satisfy the requirements of section 74.1204(f) rather than as moot, and (4) determined certain allegations made by Bustos did not need to be addressed. *Reconsideration Decision* at 4, 5, 6-7. Neither NWR nor Bustos has challenged these findings. Accordingly, they are not discussed further herein.

[38] Petition at 1-2.

[39] *See* Facility Technical Data for BLFT-20130402ACL, available at https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityTechDetails.html?facilityId=150021&applicationId=9c7e9bce80fc47b98a89c1b6063ebeb7 (last visited Nov. 7, 2023) (2013 Contour); Facility Technical Data for BLFT-20190904ABL, available at https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityTechDetails.html?facilityId=150021&applicationId=d2e0243bc1ef4d388b3cc1b6063ebeb7) (last visited Nov. 7, 2023) (2019 Contour).

[40] *Reconsideration Letter* at 5-6, and n.41.

[41] Petition at 1.

[42] *Id*.

[43] The email likely did not discuss all of the licensed parameters because it was sent in response to a request that NWR clarify only two things: (1) the primary station being rebroadcast by the NWR Translator, and (2) the ERP at which the NWR Translator was operating. *See* Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Brian Spencer, President, Northwest Rock N Roll Preservation Society, Application File Nos. BSTA-20200213ABI, 115908, at 2 (dated June 11, 2020).

We also uphold our finding that the interference complaint package was not rule-compliant because NWR did not proffer the statement required by section 74.1204(f)(4) regarding efforts it had made after grant of the 2019 License to privately resolve the predicted interference.[44] While NWR claims that there is evidence in the record to support a finding that NWR attempted private resolution of its interference claim after grant of the 2019 License, we disagree. Two of the communications that NWR cites were made prior to grant of the 2019 License.[45] And, while NWR asserts that the third was included in the 2020 Supplement, the version of the 2020 Supplement received by the Commission does not include it.[46]

In sum, we affirm our finding that NWR's interference claim package was not rule-compliant. Having considered and rejected NWR's challenges to the findings underpinning that holding, we uphold our dismissal of the interference claim package submitted by NWR. Accordingly, we will deny the Petition.

We again remind both Bustos and NWR that, should the Bustos Translator commence operation and cause actual interference to reception of the NWR Translator, such interference would be addressed under section 74.1203(a)(3).[47] That section prohibits an authorized FM translator station from "continu[ing] to operate" if it causes any actual interference to "[t]he direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station."[48]

Ordering Clauses. Accordingly, for the reasons discussed above, **IT IS ORDERED** that the Petition for Reconsideration (Pleading File No. 221441) filed by Northwest Rock N Roll Preservation Society, on September 25, 2023, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

---

[44] We reject NWR's argument that the *Reconsideration Decision* found "NWR had not attempted private resolution with Bustos." Petition at 1. In fact, the *Reconsideration Decision* held that NWR had failed to submit the statement required by section 74.1204(f)(4) that it had "used commercially reasonable efforts" to inform NWR of the claimed interference to the NWR Translator facilities authorized in the 2019 License, and "attempted private resolution." *Reconsideration Decision* at 5-6. The *Reconsideration Decision* focused on whether NWR had submitted a statement that it had attempted private resolution once grant of the 2019 License had rendered outdated the evidence it had previously submitted regarding its efforts to do so. *Id.*

[45] NWR cites to an email sent to counsel for Bustos on May 5, 2018, and an August 12, 2019, letter that was submitted with the 2019 Supplement. Petition at 1.

[46] It is worth noting that, while NWR specifies the dates of the other two communications it cites, NWR does not indicate the date of this third communication.

[47] 47 CFR § 74.1203(a).

[48] *Id*.

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

In re Application of	)	NAL/Acct. No. MB-202341410029
	)	
Iroquois County Broadcasting Company	)	FRN: 0005005137
	)	
for Consent to Transfer of Control of Stations WIBK(AM), Watseka, Illinois,	)	Facility ID Nos. 29202, 29203, and 142613
WGFA-FM, Watseka, Illinois, and	)	Application File No. 0000221788 et al.
W245CV, Watseka, Illinois	)	
	)	
from	)	
	)	
Samuel L. Martin II, Executor of the Estate of Richard A. Martin (Transferor)	)	
	)	
to	)	
	)	
Stacey E. Smith (Transferee)	)	
Samuel L. Martin II (Transferee)	)	
Nancy Burns (Transferee)	)	
Gregory Martin (Transferee)	)	
Daniel L. Martin (Transferee)	)	

ORDER

Adopted: December 20, 2023 **Released: December 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 Iroquois County Broadcasting Company (Licensee), licensee of stations WIBK(AM), Watseka, Illinois; WGFA-FM, Watseka, Illinois; and W245CV, Watseka, Illinois (Stations). The Consent Decree resolves issues arising from the Bureau's review of the captioned application (Voluntary Transfer Application).[1]

2. In the course of processing the Voluntary Transfer Application, the Bureau staff found that two unauthorized transfers of control occurred prior to the filing of the Application, with the first taking place in 2017 and the second in 2019. Pursuant to the terms of the Consent Decree, Licensee stipulates that it violated section 310(d) of the Communications Act of 1934, as amended (the Act),[2] and section 73.3540 of the Commission's rules (Rules).[3] The Consent Decree requires, among other things, that Licensee make an eight thousand dollar ($8,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be

[1] Application File No. 0000221788 et al. (filed October 2, 2023). *See Broadcast Applications*, Public Notice, Report No. PN-1-231004-01, at 1-3 (MB Oct. 4, 2023).

[2] 47 U.S.C. § 310(d).

[3] 47 CFR § 73.3540.

served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the Voluntary Transfer Application.

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

5. 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.

6. IT IS FURTHER ORDERED that the investigation by the 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 Iroquois County Broadcasting Company, and to its counsel, Anne Thomas Paxson, Esq., 5335 Wisconsin Ave NW, Suite 440, Washington, D.C. 20015.

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

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[4] 47 U.S.C. § 4(i).

[5] 47 CFR §§ 0.61, 0.283.

[6] *Id.* § 73.3526(e)(10).

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

In re Application of	)	NAL/Acct. No. MB-202341410029
Iroquois County Broadcasting Company	)	FRN: 0005005137
for Consent to Transfer of Control of Stations WIBK(AM), Watseka, Illinois, WGFA-FM, Watseka, Illinois, and W245CV, Watseka, Illinois	)	Facility ID Nos. 29202, 29203, and 142613
	)	Application File No. 0000221788 et al.
from	)	
Samuel L. Martin II, Executor of the Estate of Richard A. Martin (Transferor)	)	
to	)	
Stacey E. Smith (Transferee) Samuel L. Martin II (Transferee) Nancy Burns (Transferee) Gregory Martin (Transferee) Daniel L. Martin (Transferee)	)	

CONSENT DECREE

I. INTRODUCTION

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

II. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:

(a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et. seq.*;

(b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;

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

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

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

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

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

(h) "Licensee" means Iroquois County Broadcasting Company, licensee of stations WIBK(AM), Watseka, Illinois; WGFA-FM, Watseka, Illinois; and W245CV, Watseka, Illinois, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;

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

(j) "Richard Martin" means Richard A. Martin;

(k) "Samuel Martin" means Samuel L. Martin II;

(l) "Trust" means the Richard A. Martin Revocable Trust;

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

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

(o) "Voluntary Transfer Application" means the FCC Form 2100, Schedule 315 application for consent to the voluntary transfer of control, Application File No. 0000221788 et al.; and

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

III. BACKGROUND

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

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[1]

The Voluntary Transfer of Control Rule implements section 310(d) of the Act.[2] 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.[3]

4. Richard Martin held 100% of the Licensee's voting stock.[4] On July 5, 2017, Richard Martin transferred his interest in the Licensee to the Trust without prior Commission consent.[5] In addition, on March 23, 2019, Richard Martin resigned as trustee of the Trust, and Samuel Martin

[1] 47 U.S.C. § 310(d).

[2] 47 CFR § 73.3540. In particular, the Voluntary Transfer of Control Rule states, in pertinent part, that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control." *Id.* § 73.3540(a).

[3] *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).

[4] Richard Martin's interest in the Licensee was held jointly with his wife, Margaret Martin, who passed away in 2018. *See* Voluntary Transfer Application Attach., Agreement for Transfer of Stations (Transfer Agreement). Licensee did not timely notify the Commission upon Margaret Martin's passing or file an involuntary transfer of control application. *See* 47 CFR § 73.3541 (setting forth procedures following the death or legal disability of an individual permittee or licensee, a member of a partnership, or a person directly or indirectly in control of an entity which is a permittee or licensee).

[5] *See* Transfer Agreement. Richard Martin also became trustee of the Trust. *Id.*

succeeded him as trustee, thus acquiring control of the Licensee without prior Commission consent.[6] On October 2, 2023, the Licensee filed the Voluntary Transfer Application.[7] In the course of processing the Voluntary Transfer Application, the Bureau staff identified the two unauthorized transfers of control discussed above.

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

IV. TERMS OF AGREEMENT

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

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

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

9. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Licensee agrees to the terms, conditions, and procedures contained herein.

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

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

12. **Civil Penalty**. Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of eight thousand dollars ($8,000), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of

[6] *Id*. After Richard Martin's death in March 2020, Licensee filed an application for an involuntary pro forma transfer of control from Richard A. Martin (deceased) to the Estate of Richard A. Martin, with Samuel Martin as executor. *See* Application File No. BTCH-20200420AAN et al. (filed April 20, 2020). The application, which we granted, did not disclose the 2017 transfer of control from Richard Martin to the Trust, or the 2019 transfer of control from Richard Martin, trustee, to Samuel Martin, trustee.

[7] *See Broadcast Applications*, Public Notice, Report No. PN-1-231004-01, at 1-3 (MB Oct. 4, 2023).

1996.[8]

13. **Payment**. Licensee will also send electronic notification of payment to Joseph Cohen at Joseph.Cohen@fcc.gov and Christopher Clark at Christopher.Clark@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[9] or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[10]

- 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).[11] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

14. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensee possesses the basic qualifications,

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

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

[10] 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.

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

including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Voluntary Transfer Application after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 12 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Voluntary Transfer Application.

15. **Waivers**. Licensee agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[12] relating to the Consent Decree or Adopting Order.

16. **Severability**. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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

18. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Licensee does not expressly consent), such provision will be superseded by such Rule or order.

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

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

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

22. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

23. **Authorized Representative**. Each Party represents and warrants to the other Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

[12] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

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: 12/20/2023

Iroquois County Broadcasting Company

By: _____
Stacey E. Smith, 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: _____

Iroquois County Broadcasting Company

By: Stacey E. Smith
Stacey E. Smith, President

Date: 12/18/2023

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1177
Released: December 18, 2023

WIRELESS TELECOMMUNICATIONS BUREAU GRANTS 900 MHZ BROADBAND SEGMENT APPLICATIONS

WT Docket No. 17-200

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

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

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

---

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

[2] *Id.* at para. 113.

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

[4] 47 CFR § 27.1503; *see also 900 MHz Broadband Segment Applications Public Notice, Attachment A*.

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

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

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

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

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

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).

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

APPENDIX

900 MHZ BROADBAND SEGMENT LICENSES

APPLICATIONS GRANTED

SORTED BY LICENSEE

Licensee Name	File Number	FRN	Market/County Number (FIPS)	Market Description	Mandatory Relocation[7]
PDV Spectrum Holding Company, LLC	0010655933	0023948573	D55101	Racine County, WI	N/A
PDV Spectrum Holding Company, LLC	0010739584	0023948573	D13233	Polk County, GA	N/A
PDV Spectrum Holding Company, LLC	0010739586	0023948573	D55035	Eau Claire County, WI	N/A
PDV Spectrum Holding Company, LLC	0010739590	0023948573	D27037	Dakota County, MN	N/A
PDV Spectrum Holding Company, LLC	0010739595	0023948573	D27139	Scott County, MN	N/A
PDV Spectrum Holding Company, LLC	0010739597	0023948573	D27141	Sherburne County, MN	N/A
PDV Spectrum Holding Company, LLC	0010739602	0023948573	D27171	Wright County, MN	N/A
PDV Spectrum Holding Company, LLC	0010739604	0023948573	D27003	Anoka County, MN	N/A

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

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 19, 2023 Released: December 19, 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 The Cromwell Group, Inc. of Illinois (Petitioner or Cromwell Illinois),[1] seeking an extension of certain December 12, 2023 Emergency Alert System (EAS) compliance deadlines that 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] For the reasons discussed below, the Bureau 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.[3] Both the Federal Communications Commission (Commission) and the Federal Emergency Management Agency (FEMA) jointly oversee the EAS. Authorized alert originators[4] 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.[5] EAS Participants typically receive legacy EAS messages by monitoring

[1] The Cromwell Group, Inc. of Illinois, Petition for Temporary Waiver, PS Docket No. 15-94 (filed Dec. 12, 2023).

[2] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 37 FCC Rcd 11844 (2022) (*2022 Part 11 Report and Order*) *see also* PSHSB Announces Effective Date and Compliance Dates for Certain Emergency Alert System (EAS) Rules, PS Docket No. 15-94, Public Notice, DA 22-1189 (rel. Nov. 10, 2022). The FCC also adopted changes to the language associated with the national alert originator code, the national test code, and the national emergency code. Petitioners are not seeking an extension of these compliance deadlines.

[3] *Id. See* 47 CFR § 11.2(b) (defining "EAS Participants").

[4] *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).

[5] 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 (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.[6] 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.[7] 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;[8] 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.[9] Among other actions, the Commission adopted new rules to increase the proportion of alerts distributed to the public that include enhanced information.[10] 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.[11] 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.[12] EAS Participants must comply with this requirement, codified at Section 11.55(c)(2) of the Commission's rules, by December 12, 2023.[13]

---

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.

[6] *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).

[7] *See* 47 CFR § 11.31.

[8] 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.

[9] *2022 Part 11 Report and Order* at 1-2, paras. 1-3 and at 4-5, para. 10.

[10] *2022 Part 11 Report and Order* at 6, para. 14.

[11] 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).

[12] *2022 Part 11 Report and Order* at 5, para. 11.

[13] *See* 47 CFR § 11.55(c)(2).

4. *Cromwell Illinois's Petition.* On December 12, 2023, Petitioner filed a request for a 90-day temporary waiver of compliance deadline for CAP prioritization falling on December 12, 2023, or until March 11, 2024.[14] In support of its request, Petitioner states that it is the owner of 11 full power radio stations[15] that utilize Gorman-Redlich EAS units.[16] The Cromwell Illinois Stations have not yet completed the modifications because, they state, their vendor has not fulfilled the orders placed by Cromwell Illinois. Petitioner asserts that the stations are continuing to work closely with their vendor to procure and install the new EAS decoder/encoders and expect completion of the equipment exchanges and installation within the next two weeks, and that updated computer chips were sent via mail from by the vendor on December 12, 2023. When the chips are received, Cromwell Illinois' engineer will install the chips and update the computer software at the same time.[17]

5. Petitioner thus seeks a limited, temporary 90-day waiver for the EAS units for which the required hardware upgrades will not be complete prior to December 12, 2023, and request that it be granted an extension until March 11, 2024, to come into full compliance with the Commission's new EAS rules.

III. DISCUSSION

6. 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."[18] 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."[19] The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[20] Based on the circumstances described herein, we conclude there is good cause to provide an short, temporary extension of time until March 11, 2024, to accommodate the anticipated hardware delivery and installation time estimated by Cromwell Illinois.

7. Petitioner argues the limited duration of its request, as well as the inability of Petitioner to update its EAS equipment solely through software updates, which is the method the Commission anticipated EAS Participants would employ to accomplish the equipment modifications required by the rule change, justify the waiver. Cromwell Illinois further argues that it promptly identified the required

[14] At the request of staff, counsel to Petitioners clarified that wavier is sought specifically at to sections 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii)of the Commission's rules, 47 CFR §§ 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii).

[15] Petitioner identifies the following stations as covered by the requested waiver: WCRA-AM, Effingham, IL (Facility ID No. 19047), WCRC-FM, Effingham, IL (Facility ID No. 19048), WCBH-FM, Casey, IL (Facility ID No. 19050), WZNX-FM, Sullivan, IL (Facility ID No. 57461), WZUS-FM, Macon, IL (Facility ID No. 61225), WEJT-FM, Shelbyville, IL (Facility ID No. 65570), WMCI-FM, Mattoon, IL (Facility ID No. 65572), WYDS-FM, Decatur, IL (Facility ID No. 71440), WWGO-FM, Charleston, IL (Facility ID No. 72317), WHQQ-FM, Neoga, IL (Facility ID No. 73997), and WJKG-FM, Altamont, IL (Facility ID No. 191579) (collectively, the Cromwell Illinois Stations).

[16] Petitioners state that other stations owned by Cromwell Illinois and its affiliates have EAS encoder-decoder units manufactured by Sage Alerting Systems and are covered by the waiver to allow EAS participants who are Sage customers an additional 90 days to comply with the EAS Report and Order. Extension request at 2, *citing Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System,* PS Docket No. 15-94, Order, DA 23-1111 (rel. Nov. 28, 2023).

[17] Extension Request at 2.

[18] 47 CFR § 1.3.

[19] *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)).

[20] WAIT Radio v. FCC, 418 F.2d at 1157.

equipment replacements and worked with its vendor to ensure compliance using alternative procedures.[21]

8. In further support of its request, counsel clarified to staff that Cromwell Illinois' outside consulting engineer has been working with its vendors since September 25, 2023 to upgrade the relevant equipment, speaking with the vendor half a dozen times leading up to the submission of the waiver. Cromwell Illinois' consultant has also completed on-site training with the vendor to be prepared to install the new chips and effectuate the upgrade promptly when the chips are received. Petitioner's counsel represents that the chips have been sent to Cromwell Illinois for installation in all of their units, and are pending receipt.

9. We find that the limited nature of the extension to accommodate the unexpected delay from their vendor, coupled with the prompt and persistent action by the Petitioner upon the discovery of the non-compatibility of the subject equipment, including the repeated contact with the vendor other actions consistent with persistent effort to comply, justifies a limited extension of time and will serve the public interest. We agree with Petitioner that a narrowly-tailored brief extension, responding to unforeseen circumstances, will permit Petitioner to provide critical emergency and public safety information to the public promptly in compliance with the Commission's updated technical standards.[22]

10. In order to ensure adequate service to its customers during the pendency of the upgrades, we condition our waiver on the requirement that the EAS equipment now in place will continue to operate in all respects except for the requirements related to the rules waiver herein until the new equipment is installed, so there will be no interruption to alerting.

IV. ORDERING CLAUSES

11. 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, for Petitioners' stations WCRA-AM, Effingham, IL (Facility ID No. 19047), WCRC-FM, Effingham, IL (Facility ID No. 19048), WCBH-FM, Casey, IL (Facility ID No. 19050), WZNX-FM, Sullivan, IL (Facility ID No. 57461), WZUS-FM, Macon, IL (Facility ID No. 61225), WEJT-FM, Shelbyville, IL (Facility ID No. 65570), WMCI-FM, Mattoon, IL (Facility ID No. 65572), WYDS-FM, Decatur, IL (Facility ID No. 71440), WWGO-FM, Charleston, IL (Facility ID No. 72317), WHQQ-FM, Neoga, IL (Facility ID No. 73997), and WJKG-FM, Altamont, IL (Facility ID No. 191579), to comply with the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED for these Cromwell Illinois Stations until March 11, 2024.

12. 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.[23]

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

[21] Extension Request at 3.

[22] *See, e.g.,* Extension Request at 4.

[23] *See* 47 CFR §§ 0.191 and 0.392.

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

In the Matter of	)	
	)	
Amendment of section 73.202(b), Table of	)	MB Docket No. 23-302
Allotments, FM Broadcast Stations (Lac du	)	RM-11965
Flambeau, Wisconsin)	)	
	)	

REPORT AND ORDER

Adopted: December 18, 2023 **Released: December 19, 2023**

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a *Notice of Proposed Rule Making*[1] issued in response to a Petition for Rule Making (Petition) filed by L.D.F. Business Development Corp. (Petitioner), the non-gaming wholly-owned business entity of the Lac du Flambeau Band of Lake Superior Chippewa Indians (LDF Tribe), proposing to amend the Table of Allotments, section 73.202(b) of the Commission's rules,[2] by allotting FM Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment and a first local Tribal-owned service to the community.[3] Petitioner filed Comments.[4] No other comments were received. For the reasons discussed below, we grant the Petition and allot FM Channel 225A at Lac du Flambeau, Wisconsin to the Table of Allotments, as a Tribal Allotment.

II. BACKGROUND

2. In *Rural Radio*,[5] the Commission concluded that the public interest would be served by establishing a section 307(b) priority in favor of Tribes and Tribal Entities proposing the allotment of FM channels to serve Tribal Lands.[6] The Commission instituted several eligibility criteria to qualify for a

[1] *Lac du Flambeau, Wisconsin*, Notice of Proposed Rule Making, DA-23-813, rel. September 6, 2023 (MB 2023), 2023 WL 5828718 ("*Notice*"); *see also* 88 FR 63048 (published September 14, 2023).

[2] 47 CFR § 73.202(b).

[3] Petitioner filed an associated FCC Form 301 application. FCC Application File No. 0000219341.

[4] Petitioner filed Comments on October 17, 2023.

[5] *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (2009) (*NPRM*); First Report and Order, 25 FCC Rcd 1583 (2010) (*First R&O*); Second Report and Order, 26 FCC Rcd 2556 (2011) (*Second R&O*); *Third Report and Order*, 26 FCC Rcd 17642 (2011) (*Third R&O*) (collectively, *Rural Radio*).

[6] *First R&O*, 25 FCC Rcd at 1596-97; *NPRM*, 24 FCC Rcd at 5248, n.29 (defining "Indian Tribe[s]" and "Federally-Recognized Indian Tribes"), and n.30 (defining "Tribal Lands").

Tribal Allotment.[7] Petitioner, a federally-recognized Tribe,[8] certifies that its proposal meets the requirements established in *Rural Radio* for a Tribal Priority.[9] Specifically, Petitioner states that (1) more than fifty percent of the proposed station's principal community contour is over the boundaries of The LDF Tribal Lands;[10] (2) Lac du Flambeau, the proposed community of license, is located on The LDF Tribal Lands;[11] and (3) the proposed facility will be the first local Tribal-owned commercial transmission service at Lac du Flambeau.[12] Petitioner filed Comments reiterating its expression of interest in Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment.[13] Petitioner reaffirms its intention to apply for the channel, if allotted, and promptly build the station on Channel 225A at Lac du Flambeau, in accordance with the facilities specified in its application.[14]

III. DISCUSSION

3. We find that Lac du Flambeau is a community for allotment purposes. Lac du Flambeau is a census-designated place (CDP) in the town of Lac Du Flambeau in Vilas County, Wisconsin. The town of Lac du Flambeau has a 2020 U.S. Census population of 3,552 persons,[15] while the CDP of Lac Du Flambeau has a 2020 U.S. Census population of 1,845 persons.[16] Lac du Flambeau is the major community for the LDF Tribe. A staff engineering analysis confirms that the Tribal Reservation would cover 3,518 persons, of whom 3,480 persons (98.9%) reside on the LDF Tribal Lands. Our independent staff research reveals that Lac du Flambeau has two forms of government[17] and confirms that the town of

[7] In order to satisfy the prerequisites for a Tribal Allotment, the following eligibility criteria must be met: "(A) The applicant is either a federally recognized Tribe or Tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes . . . ; (B)(1) At least 50 percent of the area within the proposed principal community contour is over that Tribe's Tribal Lands, or (2) the proposed principal community contour (a) encompasses 50 percent or more of that Tribe's Tribal Lands, (b) serves at least 2,000 people living on Tribal Lands, and (c) the total population on Tribal Lands residing within the proposed station's service contour constitutes at least 50 percent of the total covered population . . . ; (C) The proposed community of license must be located on Tribal Lands; and (D) The proposed service must constitute first or second aural (reception) service, or first local Tribal-owned commercial transmission service at the proposed community of license." (Tribal Allotment Criteria). *Third R&O*, 26 FCC Rcd at 17646-47, para. 8. *See also First R&O*, 25 FCC Rcd at 1596-97, paras. 26-27; *Second R&O*, 26 FCC Rcd at 2561-63, 2586-87, paras. 9-11, 59; 47 CFR § 73.3573, Note 5.

[8] Petition at 1 (filed August 15, 2023).

[9] *Third R&O*, 26 FCC Rcd at 17646-47; *First R&O*, 25 FCC Rcd at 1596-97; *Second R&O*, 26 FCC Rcd at 2585-87.

[10] 96.3 percent of the area within the proposed station's principle community contour is over LDF Tribal Lands, and the new station will serve 98.9% of the tribal population. Petition at 1, *see also* Exhibit 1.

[11] *Id.*

[12] Petition at 2.

[13] Comments at 1.

[14] *Supra,* note 3.

[15] United States Census Bureau, https://data.census.gov/all?q=Lac%20du%20Flambeau%20town,%20Wisconsin

[16] United States Census Bureau, https://data.census.gov/all?q=Lac%20du%20Flambeau%20CDP,%20Wisconsin.

[17] The Town is organized under the provision of the Wisconsin State Statutes, with an elected Town Board consisting of a Town Chairman and two Town Supervisors, an appointed Town Clerk, and elected Town Treasurer. The LDF Tribe operates under Federal recognition as a sovereign Indian nation. Tribal government oversees issues related to Tribal members and Tribal land. The Town and Tribal governments work together on issues affecting the entire community. *See* Town of Lac du Flambeau, searchable at https://www.tn.lacduflambeau.wi.gov/ (Last visited 12/13/2023).

Lac du Flambeau, as a CDP, is a community for allotment purposes.[18]

4. We conclude that Petitioner's proposal satisfies the requirements for a Tribal Allotment and the public interest will be served by the allotment of Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment. The facts presented by Petitioner demonstrate that allotting Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment will serve the public interest by providing vital radio service to Lac du Flambeau and to surrounding LDF Tribal Lands and by enabling the Petitioner to set its own communications priorities and goals with respect to this new service. The allotment will also further the public interest by providing a first local Tribal-owned transmission service at Lac du Flambeau, Wisconsin. The staff engineering analysis indicates that Channel 225A can be allotted to Lac du Flambeau, Wisconsin, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 12.1 km (7.5 miles) northwest of the community. The reference coordinates are 46-01-14 NL and 89-44-54 WL.[19]

5. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[20] do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.202(b) of the Rules.[21] This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.[22] 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.[23]

IV. ORDERING CLAUSES

6. 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 section s 0.61, 0.204(b), and 0.283 of the Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, effective February 2, 2024, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

Community	**Channel No.**
Lac Du Flambeau, Wisconsin	225A[24]

7. The window period for filing applications for Channel 225A at Lac Du Flambeau, Wisconsin will not be opened at this time. Instead, the Commission will release in the near future a

[18] The community has Lac Du Flambeau Town Hall, Lac du Flambeau Public School, Lac du Flambeau Chamber of Commerce, Lac Du Flambeau Public Library, Lac du Flambeau Fire and Ambulance Department, and U.S. Post Office with its own zip code (54538). Additionally, Lac Du Flambeau has local businesses and organizations such as Lake of the Torches Resort Casino, Dillman's Bay Resort, Brew Bear Coffee Shop, George W. Brown, Jr. Ojibwe Museum & Cultural Center, Lac Courte Oreilles Ojibwa Community College, as well as those bearing the name of community, *i.e.*, Lac du Flambeau Campground & Marina, Lac du Flambeau Tribal Resources, Lac du Flambeau Community Education Classes, and Community Presbyterian Church of Lac Du Flambeau.

[19] Lac du Flambeau, Wisconsin is located within 320 kilometers (199 miles) of the U.S.-Canada border. Commission staff has requested Canadian concurrence. The concurrence of the Canadian Government has been received.

[20] 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).

[21] 47 CFR § 73.202(b).

[22] 44 U.S.C. §§ 3501-3520.

[23] 44 U.S.C. § 3506(c)(4).

[24] This channel is reserved as a Tribal Allotment.

public notice announcing a Threshold Qualifications Window. Any qualifying applicant may file an FCC Form 301 for this channel during the window.[25]

8. IT IS FURTHER ORDERED, That the Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2054.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

[25] *Third R&O*, 26 FCC Rcd at 17645-46; *Second R&O*, 26 FCC Rcd at 2588-90. Should no applicant meeting threshold qualifications file an FCC Form 301 during the Threshold Qualifications Window (and should the proponent request that its already-filed Form 301 application not be immediately processed), the Tribal Allotment will be included in the inventory for a broadcast auction at a later date. In that event, only threshold qualified applicants, including the original proponent, would be permitted to participate in the auction. *Third R&O*, 26 FCC Rcd at 17649.

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 23-1180
Released: December 19, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED 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

By this Public Notice, the Wireline Competition Bureau grants the 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]

On November 17, 2023, the Bureau released a public notice seeking comment on the Application.[3] The Bureau did not receive comments or petitions in opposition to the Application.

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.[4] Royal has elected to receive Enhanced

[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 filed a supplement to the Application on December 1, 2023. Supplement to 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 Dec. 1, 2023) (Supplement). 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] *Domestic Section 214 Application Filed for the Transfer of Control of* R*oyal Telephone Company to Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications*, WC Docket No. 23-364, Public Notice, DA 23-1094 (WCB 2023) (*Public Notice*).

[4] 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.

Alternative Connect America Cost Model (A-CAM) support beginning January 1, 2024.[5] There are no persons or entities with a 10% or greater ownership in Royal.[6]

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.[7] Mutual and Hospers receive A-CAM II support.[8] Premier and Heartland receive Rural Digital Opportunity Fund Phase I Auction (Auction 904) support.[9] Heartland also receives CAF II (Auction 903) support.[10] There are no persons or entities with a 10% or greater ownership in Mutual.[11] No board member or officer holds a 10% or greater direct or indirect interest in any other domestic telecommunications provider.[12]

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.[13] 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. Applicants assert that the proposed transaction will also have limited adverse effects

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

[6] *Id*. at 4.

[7] 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.

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

[9] *Id*.

[10] *Id*.

[11] *Id*. at 4.

[12] *Id*. at 5.

[13] *Id*. at 7.

on competition in the area because there is no overlap between the Applicants' service areas or fiber facilities.[14]

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.[15]

Pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a) and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, we grant the Application. 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 Megan Danner at megan.danner@fcc.gov.

-FCC-

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

[15] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03. Applicants attest that they will not close the transaction prior to January 1, 2024. Supplement at 1.

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

In the Matter of	)	
	)	
COMMONWEALTH OF VIRGINIA	)	WT Docket No. 20-241
DEPARTMENT OF STATE POLICE	)	
	)	
Request for Waiver of Section 22.565(f) of the	)	
Commission's Rules to Increase Mobile	)	
Transmitter Power Output from 60 Watts to 100	)	
Watts for Call Sign WQFA919	)	

ORDER

Adopted: December 19, 2023 **Released: December 19, 2023**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Commonwealth of Virginia, Department of State Police (Commonwealth or VA State Police) requests waiver of section 22.565(f) of the Commission's rules[1] to increase the limit on its part 22 transmitter power output for its mobile transmitters from 60 watts to 100 watts, using a maximum effective radiated power (ERP) of 150 watts for one part 22 paging authorization, call sign WQFA919.[2]

2. In 2020, the Commonwealth requested a waiver substantially identical to the instant request, identifying 64 part 22 paging authorizations to which the waiver would apply.[3] The Mobility Division of the Wireless Telecommunications Bureau (WTB or Bureau) granted the waiver request (subject to certain conditions) on March 31, 2022.[4] The Commonwealth now states that one paging authorization (WQFA919) was unintentionally omitted from the 2020 Waiver Request and by way of its instant request, seeks to correct this error by requesting identical relief for the omitted license. For the reasons stated below, we grant the VA State Police 2023 Waiver Request, subject to the conditions herein.

II. BACKGROUND

3. VA State Police reiterate that the purpose of its current request, as with the 2020 Waiver Request, is to increase the capacity of its existing land mobile radio network (LMR), referred to as the Statewide Agencies Radio System (STARS), by upgrading to Time-Division Multiple Access (TDMA)

[1] 47 CFR § 22.565(f).

[2] Commonwealth of Virginia, Department of State Police, Request for Waiver, WT Docket No. 20-241 (filed February 16, 2023) (2023 Waiver Request). VA State Police state that at the time of this request, the FCC's Universal Licensing System listed the "Output Power" and "Maximum ERP" of all mobile frequencies associated with call sign WQFA919 at 50. Consistent with this request, the VA State Police propose to increase these values to 100 and 150, respectively.

[3] Commonwealth of Virginia, Department of State Police, Request for Waiver, WT Docket No. 20-241 (filed June 25, 2020) (2020 Waiver Request).

[4] *In the Matter of Commonwealth of Virginia Department of State Police Request for Waiver of Section 22.565(f) of the Commission's Rules to Increase Mobile Transmitter Power Output from 60 Watts to 100 Watts*, Order, WT Docket No. 20-241, 37 FCC Rcd 4462, (WTB, MD 2022) (*2022 Waiver Order*).

technology, while maintaining the existing geographic coverage on which the STARS public safety communication system depends.[5] STARS is a statewide shared LMR system utilizing part 90 public safety channels,[6] part 80 VHF Public Coast channels,[7] and part 22 VHF paging channels, licensed according to Basic Economic Area markets.[8] STARS provides digital voice and data wireless communications for 22 Virginia state agencies.[9] STARS has been in operation since 2006, facilitating interoperability with local government and federal agencies.[10] Its infrastructure allows "talk groups" to communicate privately, even while located in different parts of the state.[11] According to the VA State Police, it takes many conventional VHF channels to support public safety-grade radio communications for approximately 336 talk groups.[12]

4. VA State Police contends that in the *2022 Waiver Order* approving the 2020 Waiver Request, the Mobility Division found "that the underlying purpose of section 22.565(f) would not be served by strict application in the present case and further [found] that grant of the waiver is in the public interest. Additionally, the waiver request is unopposed and grant is consistent with Commission precedent."[13] Now, VA State Police requests this additional waiver be approved for the same reasons cited in the 2020 Waiver Request.[14]

5. On March 22, 2023, the Bureau released a Public Notice seeking comment on the VA State Police request for waiver of section 22.565(f) to increase mobile transmitter output power from 60 to 100 watts for call sign WQFA919.[15] The two commenting parties responding to the public notice both

[5] *See* 2020 Waiver Request at 1; 2023 Waiver Request at 1.

[6] 47 CFR Part 90. STARS uses statewide mobile FCC Part 90 Public Safety pool trunked frequencies to transmit talk-in to base stations. Most of these frequencies are authorized for a mobile maximum transmitter power output of 125 watts, and a maximum ERP of 250 watts. 2023Waiver Request at 4.

[7] 47 CFR Part 80. VA State Police acquired auctioned spectrum for two FCC Part 80 Public Coast licenses. These part 80 licensed mobile transmit frequencies have a maximum mobile transmitter power output of 125 watts and maximum ERP of 285 watts. *See* Commonwealth of Virginia, *Order*, 19 FCC Rcd 15454 (WTB 2004) (granting Virginia's request for a waiver of part 80 of the Commission's Rules to permit its public safety operations on VHF Public Coast (VPC) spectrum to be governed by part 90 of the Commission's rules).

[8] In addition to holding part 90 and part 80 licenses, VA State Police purchased sixty-five (65) part 22 paging authorizations, sixty-four (64) of which were the subject of the 2020 Waiver Request (lead call sign WPVE519). VA State Police assert that in listing the paging authorizations in the 2020 Waiver Request, the Commonwealth unintentionally omitted one such authorization: WQFA919. 2023 Waiver Request at 5.

[9] 2023 Waiver Request at 2.

[10] *Id.* at 2–4.

[11] *See* 2023 Waiver Request at 5; Virginia State Police, *Statewide Agencies Radio System (STARS)*, https://vsp.virginia.gov/sections-units-bureaus/bass/communications/statewide-agencies-radio-system-program-stars/ (last visited October 17, 2023).

[12] *Id*.

[13] 2023 Waiver Request at 9 (citing *2022 Waiver Order*, DA 22-282, para. 7 (released March 31,2022)).

[14] The Commonwealth incorporates the 2020 Waiver Request into its 2023 Waiver Request by reference.

[15] *See Wireless Telecommunications Bureau Seeks Comment on the Commonwealth of Virginia, Department of State Police Request for Waiver of Section 22.565(f) of the Commission's Rules to Increase Mobile Transmitter Output Power from 60 to 100 Watts for Call Sign WQFA919*, Public Notice, WT Docket No. 20-241, DA 23-247 (*2023 Public Notice*).

supported the 2023 Waiver Request.[16]

III. DISCUSSION

6. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;[17] or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[18] An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[19]

7. Just as we found in the *2022 Waiver Order*, we find that the underlying purpose of section 22.565(f) would not be served by strict application in the present case and further find that grant of this waiver request is in the public interest. Additionally, the waiver request is unopposed and grant is consistent with Commission precedent. Further, as we did in the *2022 Waiver Order*, we ensure that the risk of harmful interference to adjacent part 22 licensees is mitigated by conditioning this waiver grant as described below.

8. *Underlying purpose would not be served.* Section 22.565(f) limits the transmitting power of mobile transmitters in order to eliminate or severely limit occurrences of harmful interference between one-way or two-way mobile communications systems. The intent and underlying purpose of this and other related part 22 rule sections is to afford part 22 licensees flexibility in providing service to the public and expand access to mobile radio networks and services while preventing harmful interference.[20] As we found in the *2022 Waiver Order*, we find, in this specific case, that the purpose of section 22.565(f) and other related rule sections would be better served by a waiver, with the conditions imposed below, than by strict adherence to the terms of the rule.[21] Strictly applied, section 22.565(f) limits the services that VA State Police is able to provide on its public safety network, rather than enabling flexibility. Waiver of the rule will allow the STARS network, including call sign WQFA919, to continue to provide high quality and cost-effective portable radio coverage covering 97% of Virginia's population (with over 90% geographical coverage) without unduly impacting adjacent licensees.

9. *Waiver is in the public interest*. As we found in the *2022 Waiver Order*, we also find that grant of this waiver request is in the public interest. Grant of this waiver will allow VA State Police to continue to operate its entire system using a more spectrally efficient technology while allowing it to continue unique public safety missions. Specifically, grant of this waiver will enable VA State Police to continue to operate its entire STARS public safety network, which as mentioned above, supports 22 state agencies, facilitates interoperability with local governments and federal agencies, and is routinely called

---

[16] *See* Comments of the National Wireless Communications Council (NWCC), WT Docket No. 20-241 (April 24, 2023) (NWCC Comments); Reply Comments of Commonwealth of Virginia, Department of State Police, WT Docket No. 20-241 (May 9, 2023) (VA State Police Comments).

[17] 47 CFR § 1.925(b)(3)(i).

[18] *Id.* § 1.925(b)(3)(ii).

[19] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415, para. 6 (2003).

[20] *See* Federal Communications Commission 2002 Biennial Regulatory Review, Staff Report of the Wireless Telecommunications Bureau, WT Docket No. 02-310, 18 FCC Rcd 4243, 4299 (2002) (Staff Report).

[21] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.").

upon to meet new communications and interoperability needs such as multi-agency response to public safety emergencies, requiring the addition of many new users.[22] Further, the network is used in more than 3,600 first responder and some public service vehicles.[23] Without the requested waiver, the Commonwealth would likely not be able to use a more spectrum-efficient technology which would yield more capacity, throughout its entire network, including call sign WQFA919, ensuring that it would not likely lose coverage and quality in some cases due to signal imbalance.[24]

10. *Waiver is consistent with Commission precedent*. The Bureau has granted multiple waivers of its part 22 paging (one-way or two-way) mobile operation rules in general,[25] and of section 22.565(f) in particular, to increase the mobile transmitter power output limits involving public safety networks.[26] In both the *Wyoming Waiver Order* and the *Maine Waiver Order*, the Bureau likewise increased the mobile transmitter power output limits from 60 to 100 watts for similar state public safety systems.[27] In the *Maine Waiver Order*, the Bureau specifically noted that forcing the state to maintain a 60-watt limit for its part 22 mobile units when the rest of its system was operating at 110 watts would be spectrally inefficient, unnecessarily costly, and thus unduly burdensome.[28] In each instance, the waiver grant supported state public safety/service entities when grant of such conditional waivers was not likely to cause harmful interference to adjacent users. As in the *2022 Waiver Order*, we find a very similar fact pattern present here and thus find grant of VA State Police's request for waiver consistent with the Commission's precedent.

11. *Waiver is unopposed*. We also note that the Bureau sought comment on the waiver request, including from any parties whose operations could be impacted by grant of the waiver request.[29] Yet the waiver request was unopposed, with one supporting comment and one supporting reply comment.[30]

12. *Conditions to mitigate risk of harmful interference*. In light of the lack of opposition from adjacent, co-channel part 22 licensees, the lack of complaint in the last year regarding the VA State Police STARS network since the release of the *2022 Waiver Order*, and for the reasons discussed above, we will allow VA State Police to increase the power output of the mobile transmitters of call sign WQFA919 to 100 watts, subject to conditions to minimize the risk of harmful interference caused by this power increase. These conditions are consistent with the approach we have used with success in similar past instances, including the original 64 call signs of VA State Police.[31] With the goal of not changing the

[22] *See* 2023 Waiver Request at 2–5.

[23] *Id.* at 2.

[24] Switching from FDMA to TDMA causes more or larger dead spots by increasing the imbalance for two-way communications. 2023 Waiver Request at 7.

[25] *See State of Wisconsin*, Order and Proposed Order of Modification, 33 FCC Rcd 11080 (WTB 2018) (*Wisconsin Waiver Order*).

[26] *See State of Wyoming*, Order, 23 FCC Rcd 9572 (PSHSB 2008) (*Wyoming Waiver Order*); *State of Maine—MSCommNet Project, Request for Waiver of Sections 90.35(a), 20.9(a)(6), 22.377, and 22.565(f) of the Commission's Rules*, Order, 27 FCC Rcd 8891 (PSHSB/WTB 2012) (*Maine Waiver Order*).

[27] *See Wyoming Waiver Order*, 23 FCC Rcd at 9580, para 21; *Maine Waiver Order*, 27 FCC Rcd at 8895, para. 18.

[28] *See Maine Waiver Order*, 27 FCC Rcd at 8895, para. 14.

[29] *2023 Public Notice*, WT Docket No. 20-241, DA 23-247 at 2.

[30] NWCC states that to the best of its knowledge, there have been no interference complaints from parties affected by any of the 64 already approved call signs in the VA State Police system. NWCC Comments at 2.

[31] *See Wyoming Waiver Order*, 23 FCC Rcd at 9580, para. 20 (Wyoming must accept any interference that may result from operation of co-channel transmitters authorized to incumbent licensees); *Maine Waiver Order*, 27 FCC

(continued….)

potential for interference to neighboring licensees at their license boundaries,[32] we approximated the potential effect that the increased mobile transmitter power could have on an interfering contour. As such, we condition our grant on VA State Police providing notice to their adjacent, co-channel paging geographic neighbors and resolving any concerns that arise over harmful interference arising from its system, including call sign WQFA919, or if any such concerns cannot be resolved, then the VA State Police must maintain a five-kilometer set back of its mobile transmitters from the objecting licensee's geographic license area. Specially, we require that:

1) At least 30 days prior to operating under the waiver in a market, VA State Police must notify all adjacent market, co-channel part 22 licensees of the grant of the waiver and the intended date to begin operating at the higher transmitter power, and provide a point of contact for the licensees to express technical concerns.

2) If an objection is received from an adjacent market, co-channel part 22 licensee within the 30-day period, VA State Police must address the objection to the satisfaction of the adjacent licensee prior to operation, or else refrain from operations at the higher transmitter power within five (5) km[33] of that objecting party's license boundary.

3) If an objection is received after the 30-day notice period, VA State Police must address the objection to the satisfaction of the adjacent market licensee within a reasonable timeframe, or else cease operations at the higher transmitter power within five (5) km of that objecting party's license boundary until the objection can be addressed.

13. With these conditions, and for the reasons discussed above, we find that the Commonwealth of Virginia, Department of State Police has satisfied the standard for waiver of the 60-watt limit for mobile units, specified in section 22.565(f) of our rules for call sign WQFA919.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that the 2023 Request for Waiver filed by the Commonwealth of Virginia Department of State Police IS GRANTED conditioned as discussed herein.

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

Rcd at 8895, para 15 (limiting the area in which Maine may operate mobile units at 110 watts on part 22 frequencies to reduce the potential for interference to part 22 licensees in adjacent regions). The State of Maine was required to operate its mobile units at least eight kilometers from the edge of its part 22 service area when transmitting at power levels above 60 watts on part 22 paging frequencies. *See Maine Waiver Order*, 27 FCC Rcd at 8895, para 19.

[32] *See* 47 CFR § 22.503(h).

[33] Five kilometers represents the distance between interfering contours generated for the mobile transmitter, using a transmitter power output of 60 watts and 100 watts. *See* 47 CFR § 22.567.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division

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

In the Matter of	)	
	)	
Continental Automotive Systems, Inc. and Continental Automotive GmbH.	)	ET Docket No. 22-382
	)	
	)	
	)	
Request for Waiver of Section 15.231(e) of the Commission's Rules.	)	
	)	

ORDER

Adopted: December 19, 2023 **Released: December 19, 2023**

By the Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. By this Order, we grant a request by Continental Automotive Systems, Inc. and Continental Automotive GmbH (Continental) to waive Section 15.231(e) of the Commission's rules to permit the certification and authorization for the newest update of Continental's tire pressure monitoring system (TPMS).[1] For the reasons discussed below, we find there is good cause to grant Continental's request for waiver.

II. BACKGROUND

2. Continental has designed the next generation of its TPMS to accelerate the process used to measure and alert drivers of a low-pressure condition inside of a tire.[2] Continental's website describes TPMS as a system that "measures the pressure inside a tire directly, transmits the reading and displays it. The driver is alerted of a critical situation by means of a corresponding signal."[3] Continental's website states that to measure the tire pressure: "Battery-fed sensors mounted on the rim and integrated into the valve measure the tire's inflation pressure and sends a high-frequency signal with coded information to a receiver. Special software in the control device then processes the data received and shows it on a display on the instrument panel."[4] Continental explains this new design will significantly reduce the

[1] *Request by Continental Automotive systems, Inc. and Continental Automotive GmbH for Waiver of Section 15.231(e) of the Commission's Rules* (Continental Waiver Request) (filed Aug. 30, 2022). Continental filed its request in INBOX-PART 15 in the Commission's Electronic Comment Filing System.

[2] Continental Waiver Request at 2.

[3] *See* Continental Group, *Tire Pressure Monitoring System (TPMS)*, https://www.continental-automotive.com/en-gl/Passenger-Cars/Safety-and-Motion/Products/Sensors/Tire-Information-Systems-(1)/Tire-Pressure-Monitoring-System (Last visited December 5, 2023).

[4] *See* Continental Group, *Tire Pressure Monitoring System (TPMS)*, https://www.continental-automotive.com/en-gl/Passenger-Cars/Safety-and-Motion/Products/Sensors/Tire-Information-Systems-(1)/Tire-Pressure-Monitoring-System (Last visited December 5, 2023)

amount of time it takes the system to measure and notify a driver of under-inflated tires by increasing the data transfer from the sensor to the monitor after the installation or reset of the sensor..[5]

3. To allow for the certification and to seek authorization of its new TPMS design, Continental requests to waive the periodic operation timing requirements in section 15.231(e) of the Commission's rules.[6] Section 15.231(e) obligates certain Part 15 intentional radiators to have a means for automatically limiting operation so that the duration of each transmission shall not be greater than one second and the silent period between transmissions shall be at least 30 times the duration of the transmission but in no case less than 10 seconds.[7] Continental's TPMS device is an intentional radiator. According to Continental, its next generation TPMS, which incorporates design changes meant to increase safety, would operate in the 315 MHz and the 433 MHz bands, and have more frequent emissions than those prescribed by Commission rules.[8] Because Continental's TPMS device would exceed the periodic timing requirements—albeit on a limited, infrequent basis—Continental seeks a waiver of this rule.[9]

4. Continental's TPMS will operate under the Commissions' Part 15 rules governing the periodic operation of intentional radiators within the 40.66-40.77 MHz band and in spectrum bands above 70 MHz .[10] Part 15 permits low-power radio frequency devices to operate without an individual license from the Commission.[11] Unlicensed intentional radiating transmitters 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.[12]

5. The Office of Engineering and Technology issued a Public Notice soliciting comment on Continental's request on October 28, 2022.[13] No comments or reply comments were filed in response.

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.[14] Good cause, in turn, may be found and a waiver

[5] Continental Waiver Request at 2-4.

[6] Continental Waiver Request at 1.

[7] *See* 47 C.F.R. § 15.231(e).

[8] Continental Waiver Request at 1-3. *See* IBL-Lab GmbH, Test Report, at 8, 11 (2022) (laying out the 315 MHz center frequency of one of Continental's Tire Pressure Monitoring Systems for FCC ID KRTIS -10D. On file in FCC's equipment authorization system under FCC ID KRTIS-10D). *See also*, SGS Compliance Certification Services Inc., FCC Radio Test Report at 1-2 (2022) (laying out the 433.92 MHz operation frequency of one of Continental's Tire Pressure Monitoring Systems for FCC ID KRTIS-21. On file in FCC's equipment authorization system under FCC ID KR5TIS 21).

[9] Continental Waiver Request at 2-3. We also note that Continental proposes two conditions be included if their waiver request is granted. For a discussion of conditions, see *infra* at paragraph 12.

[10] Continental Waiver Request at 2.

[11] 47 CFR §§ 15.1 *et seq.*

[12] 47 CFR § 15.5(b).

[13] *Office of Engineering and Technology Seeks Comment on Continental's Request for Waiver of Section 15.231(e) of the Commission's Rules for Intentional Radiators*, ET Docket No 22-382, Public Notice (OET 2022).

[14] 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).

granted "where particular facts would make strict compliance inconsistent with the public interest."[15] To satisfy this public interest requirement, 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.[16] We find that this standard has been met.

7. In its Waiver Request, Continental argues that including the design change will improve TPMS by accelerating the "learning and localization process."[17] Continental posits that improvements in this process will result in the critical safety benefit of warning drivers sooner of under-inflated tires.[18] According to Continental, its new TMPS design completes the "learning and localization process" in 2 to 3 minutes whereas the existing design performs the same process in 7 to 8 minutes during optimum conditions.[19] This reduction in time represents a 200% to 300% decrease in the initial calibration time for the TPMS.[20] To achieve this improvement, Continental's new design would operate outside the periodic timing and duration requirements of Section 15.231(e).[21] Specifically, the design improvement necessitates that during the initial five instances after a TPMS sensor is installed or reset, the transmissions would occur every 6 seconds for the first 144 seconds that the vehicle is in motion.[22] This new design, therefore, fails to meet the 10 second quiet period timing requirement.[23]

8. The transmission time limit in Section 15.231(e) was established to reduce the potential for interference to the authorized radio services.[24] Intentional radiators subject to Section 15.231(e) must be provided with a means to automatically limit operation so that the duration of each transmission is not greater than one second with a silent period between transmissions of 30 times the duration of the transmission and at least 10 seconds.[25] In its request, Continental states its new TPMS would operate outside of the limits set forth in section 15.231(e) for the first few minutes of operation during the first few drive cycles after the initial installation and resetting of the sensors.[26] Based on the information in the record, we observe that the total emissions from this Continental's new design of the sensors would result in similar emissions to the previous design, which operates within the requirements of

---

[15] *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.

[16] *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).

[17] Continental Waiver Request at 3-4.

[18] Continental Waiver Request at 2.

[19] Continental Waiver Request at 3-4.

[20] Continental Waiver Request at 3-4.

[21] Continental Waiver Request at 2-3, 6.

[22] Continental Waiver Request at 2.

[23] Continental Waiver Request at 2-3, 6-7.

[24] 47 CFR 15.231(e). *See Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, GN Docket No. 87-389, First Report and Order, 4 FCC Rcd 3493, 3495 para. 13 (1989) ("The [Part 15] rules are designed to provide a balance of our competing goals of eliminating unnecessary regulatory barriers and burdens on the development of new low power RF equipment and maintaining adequate interference protections for authorized radio services and recognized passive users of low level RF signals").

[25] 47 CFR 15.231(e).

[26] Continental Waiver Request at 2-3.

Section 15.231(e).[27] More specifically, because the TPMS is designed to transmit for a duration ranging between 3 to15 milliseconds and the total emissions for a single transmission is 200 milliseconds or less, the resulting total on time for the device with the specifications that Continental proposes is similar to the total on time for an existing TPMS with a total emissions for a single transmission of 333 milliseconds that strictly complies with our rules. Additionally, even though the Continental TPMS sensor is designed to temporarily transmit more frequently than the 10 second quiet period requirement, its operation in this mode would be in limited, infrequent cases where the TPMS within the tire is replaced or reset.[28] Continental also argues that because of operational modes with shorter pulse durations the total on time of the device will not have an increased potential to interfere with existing users in the band.[29] We agree. In this instance, adherence to the periodic timing requirement in Section 15.231(e) could result in the Continental TPMS having to transmit its signal over a longer period to complete its "learning and localization" process. A longer transmission period could potentially decrease the efficiency of the sensor and consequently could increase the potential for interference.

9. We find that Continental's proposed TPMS, when used in the manner described in its waiver request and subject to the conditions we impose below, is sufficiently similar to a TPMS operating under maximum transmission time limits provisioned in our rules. That is, the time of emissions transmission for the first 144 seconds of operations would appear to any victim receiver to be no different than any other TPMS operating under our rules. Furthermore, the power level under which the Continental TPMS will be permitted to operate will comply with Commission rules and therefore would be no more likely to cause interference than existing TPMS systems operating in the band. As the Continental TMPS device would only operate outside of the Section 15.231(e) prescribed timing requirement temporarily and for very limited intervals, a waiver of our rules would not contravene the purpose of the rule and in some instances actually produce less interference than if the device in question were to strictly comply with the rules.

10. As designed, Continental's new TPMS would have limited proliferation and would not have a high potential for causing harmful interference to the authorized services in the bands. Continental's TPMS devices use small batteries that are installed on vehicles and inside of tires.[30] The required power level for these devices is sufficiently low to enable TPMS sensor life cycles of several thousand miles or several years without requiring replacement (*i.e.*, the emissions from these devices are

[27] *See* Continental Waiver Request at 7. Continental explains that under Section 15.231(e) the range in which each transmission is a continuous 333 milliseconds of emissions, followed by ten seconds without an emission, would have combined emissions during the first 144 seconds of driving motion that are virtually identical to its newly designed TPMS. Continental states the emissions in the new design are between 3 to 15 milliseconds and that the combined length of a single RF emission will be 200 milliseconds or less. We calculate the total transmission on time within 144 seconds for a device operating in strict compliance with our rules as 4.64 seconds. We calculate the total transmission on time of Continental's newly designed TPMS as 4.65 seconds within the first 144 seconds of operation. The details of these calculations are as follows: Operations under strict compliance with our rules would allow for a normal Tire Pressure Monitoring System to operate with a maximum transmission duration of 0.333 and a quiet period duration of 10 seconds. If we were to look at this over the time observed of 144 seconds, then the total transmission impulses within these 144 seconds would be 13.935. Finding the total transmission on time within these 144 seconds would yield 4.640 seconds [Total Transmission on time = Transmission duration * Total transmission impulses (0.333 seconds*13.935 = 4.640 seconds)]. To find total transmission on time for Continental's new TPMS, we use the proposed maximum transmission duration of 200 milliseconds (0.2 seconds) and a quiet period duration of 6 seconds, observed over the same 144 seconds would yield 23.225 transmission impulses. Calculating the total transmission on time for the 200 milliseconds transmission yields 4.645 seconds [Total Transmission on time = Transmission duration * Total transmission impulses (0.2 seconds*23.225 = 4.645 seconds)].

[28] Continental Waiver Request at 4.

[29] Continental Waiver Request at 7.

[30] Continental Waiver Request at 7.

so low that they are designed to run for years off of a single small cell battery).[31] Further, the low level of emissions from these devices will be shielded by the tire and the body of the vehicle, which offers additional levels of signal attenuation.[32] These characteristics give us added confidence that operation of Continental's TPMS will not significantly increase the potential for harmful interference to authorized users. We also observe that this product is designed to comply with all other technical limits in our rules for Part 15 intentional radiators, except for that which we waive. For these reasons we conclude that waiver of Section 15.231(e) to Continental's TPMS will not undermine the purpose of the rule.

11. We find that Continental's TPMS device promises to deliver enhanced public interest benefits. The narrow relief we are providing will permit the deployment of innovative unlicensed applications that offer significant benefits to the public without increasing significant potential interference to authorized users in the band. Considering the importance of automobile safety, we find a stronger public interest benefit in granting the waiver than in applying the rule. Granting the waiver will provide substantial public benefit by, among other things, permitting the deployment of enhanced tire pressure monitoring systems that comprise a critical and important safety system on vehicles.[33] Without a waiver of the periodic timing requirement in Section 15.231(e), it is highly likely that Continental would not be able to produce innovative TPMS sensors that significantly decrease time for completing the "learning and localization" process. Granting the waiver will allow Continental to achieve its objective of warning drivers sooner of underinflated tires.[34] Providing drivers with such information may also reduce the number of vehicles that experience catastrophic tire failures.[35] In addition to the public safety benefits, Continental also suggests that its TPMS sensors will enable drivers to operate their vehicles with properly inflated tires and this in turn will lead to more efficient use of fuel.[36] Finally, as Continental notes, granting the waiver will help provide economies of scale and offer a competitive and harmonized product worldwide, which should lead to cost savings for customers.[37] Thus, we conclude that granting the waiver request will benefit the public interest.

12. We make the Continental waiver subject to a number of conditions. We require that the Continental TPMS device be certified by an authorized Telecommunication Certification Body (TCB) and that a copy of this Order be submitted with the application for certification to ensure that the TCB is aware of this waiver.[38] We also specify the technical requirements that the Continental TPMS device must meet, including the periodic operation timing requirements and minimum silent period between transmissions. These waiver conditions will help to ensure that the Continental TPMS operational parameters used to perform our analysis are those used to certify the newly designed device. This requirement will facilitate coexistence between incumbent users and unlicensed device users operating in the 315 MHz and 433 MHz bands. We note Continental has indicated that, for purposes of its operations

[31] *See, e.g.,* Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems; Controls and Displays Other Facilities, Docket No. 2005-20586, Final rule, 70 FR 18136, 18168, (2005), (the National Highway Traffic Safety Administration citing to comments that manufacturers design TPMS to provide a reasonable battery life of 8-10 years).

[32] Continental Waiver Request at 7.

[33] Continental Waiver Request at 8.

[34] Continental Waiver Request at 5.

[35] Continental Request at 8-9.

[36] Continental Request at 9.

[37] Continental Request at 8.

[38] All requests for equipment authorization must be submitted in writing to a Telecommunication Certification Body (TCB). 47 CFR § 2.911(a). TCBs are not permitted to waive the rules and therefore may only certify a non-compliant device if the Commission has granted a waiver of those rules with which the device does not comply. 47 CFR § 2.62(f)(10)(i).

under a waiver, it is prepared to satisfy such a requirement.[39] As such, we will require that the RF emission period, not including the intermittent non-transmission pauses, during the first 144 seconds of the first 5 drive cycles of the TPMS be limited to 200 milliseconds. For purposes of this waiver, we will require the minimum silent period between transmissions to be 6 seconds during the first 144 seconds the vehicle is in motion for the initial five drive cycles that exceed 144 seconds after installation or reset of the TPMS. This condition will prevent these devices from operating outside of the periodic timing requirement in Commission rules indefinitely and thereby prevent these devices from engaging in a singular continuous transmission. Operation pursuant to the waiver is expressly conditioned on compliance with the Commission's rules except as waived, which, in this case, is limited to Section 15.231(e) under the conditions we set forth below.

13. For these reasons, we conclude there is good cause to waive the requirements of Section 15.231(e) of the Commission's rules to permit the certification and authorization of Continental's TPMS that does not comply with the periodic timing and duration requirements in that section. This waiver is subject to the following conditions:

1) The Continental Tire Pressure Monitoring System shall be certified by an authorized Telecommunications Certification Body. A copy of this Order must be submitted with the application for certification.
2) The Continental TPMS device shall operate with a minimum silent period between transmissions of 6 seconds during the first 144 seconds the vehicle is in motion for the initial five drive cycles that exceed 144 seconds after installation or reset of the Tire Pressure Monitoring System.
3) Individual transmission periods, not including the intermittent non-transmission pauses, during the first five drive cycles after the installation or resetting of the device shall not exceed 200 milliseconds.

IV. ORDERING CLAUSES

14. Accordingly, pursuant to authority in Sections 0.31, 0.241, AND 1.3 of the Commission's rules, 47 CFR §§ 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 Continental Automotive Systems, Inc. and Continental Automotive GmbH IS GRANTED, consistent with the terms set forth above. This action is effective immediately.

15. 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

[39] Continental Request at 9.

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 23-1183
Released: December 19, 2023

APPLICATIONS OF T-MOBILE LICENSE LLC, NEXTEL WEST CORP., AND LB LICENSE CO, LLC FOR LICENSE ASSIGNMENT;
APPLICATION OF T-MOBILE LICENSE LLC, NEXTEL WEST CORP., AND CHANNEL 51 LICENSE COMPANY LLC FOR LICENSE ASSIGNMENT

NUMBERING RESOURCE UTILIZATION AND FORECAST (NRUF) REPORTS AND LOCAL NUMBER PORTABILITY (LNP) REPORTS PLACED INTO THE RECORD, SUBJECT TO THE PROTECTIVE ORDER

CC Docket 99-200
ULS File No. 0010168412
ULS File No. 0010168420
ULS File No. 0010168439

In connection with the Commission's review of the applications for the assignment of licenses to T-Mobile License LLC and Nextel West Corp. from LB License Co, LLC and Channel 51 License Company, LLC (collectively, the "Applicants"), the Commission is examining information contained in the biannual Numbering Resource Utilization and Forecast (NRUF) reports filed by wireless telecommunications carriers,[1] carrier-specific local number portability (LNP) data related to wireless telecommunications carriers, and further disaggregated monthly carrier-specific local number portability data (Carrier-to-Carrier LNP Data) related to wireless telecommunications carriers. These data may assist the Commission in assessing the competitive effects of the transaction. Accordingly, the NRUF reports for all wireless telecommunications carriers for December 2022 and the monthly LNP reports for all wireless telecommunications carriers for January 2022 through December 2022 are being placed in the record in these proceedings, subject to the provisions of a protective order.[2]

Section 251 of the Communications Act grants the Commission jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues.[3] To monitor better the way numbering resources are used within the NANP and allocate NANP resources efficiently, the Commission requires telecommunications carriers to provide the Commission with a utilization report of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements.[4] LNP data are collected by the LNP Administrator and provided to the Commission.

The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from public disclosure under 5 U.S.C.

[1] 47 CFR §§ 1.907, 52.5.

[2] A protective order will be adopted shortly.

[3] 47 U.S.C. § 251.

[4] 47 CFR § 52.15(f); *see Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 7574, 7578-79, para. 5 (2000) (*Numbering Report and Order*).

§ 552(b)(4).[5] The NRUF and LNP reports are being placed into the record subject to the provisions of a protective order. As such, the NRUF and LNP data will not be available to the public except pursuant to the terms of the protective order, as outlined below.

Persons seeking to review the NRUF and LNP data may do so only for purposes of participating in this proceeding. Pursuant to the protective order, outside persons participating or intending to participate in the proceeding who are not involved in competitive decision-making activities and who have signed the Acknowledgment of Confidentiality attached to the protective order may review the NRUF and LNP data. We emphasize that persons seeking to review the NRUF and LNP data must have adequate protections in place to prevent improper use or disclosure of the information.

Affected parties have until **December 29, 2023** to oppose the limited disclosure of their NRUF and LNP data pursuant to the protective order.[6] In addition, affected parties will have five business days after the filing of an acknowledgment of confidentiality to object to the release of their data to a particular person who requests permission to review it.

Under the Commission's current procedures for the submission of filings and other documents,[7] submissions in this matter may be filed electronically through the Commission's Universal Licensing System (ULS), referencing the file numbers set forth above.

- **To file electronically**,[8] filings shall be sent as an electronic file via the Internet to https://wireless2.fcc.gov/UlsEntry/pleadings/pleadingsType.jsp. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable ULS file number.
- **To file by paper**: Filings in response to this Public Notice may 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 delivered 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.[9]

One copy of each filing must be delivered electronically, by email, or if delivered as paper copy, by messenger delivery, commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Susannah Larson, Wireless Telecommunications Bureau, at Susannah.Larson@fcc.gov; (2) Catherine Matraves, Office of Economics and Analytics, at Catherine.Matraves@fcc.gov; and (3) Joel Rabinovitz, Office of General Counsel, at Joel.Rabinovitz@fcc.gov. Any submission emailed to these individuals should include in the subject line of the email, for example: (1) ULS File No. 0010168412; (2) the name of the submitting party; and (3) a

[5] *Numbering Report and Order*, 15 FCC Rcd at 7607, para. 78.

[6] If disclosure is opposed, the procedures set forth in 47 CFR § 0.461(i) shall apply.

[7] *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009).

[8] *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

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

brief description or title identifying the type of document being submitted (e.g., ULS File No. 0010168412, Widget Corp., NRUF Objection).

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.

This action is taken pursuant to Sections 4(i) and 310(d) of the Communications Act, 47 U.S.C. §§ 154(i), 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

For further information regarding this proceeding, please contact Susannah Larson, Susannah.Larson@fcc.gov; Catherine Matraves, Catherine.Matraves@fcc.gov; or Joel Rabinovitz, Joel.Rabinovitz@fcc.gov.

-FCC-

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1184
Released: December 20, 2023

WAVELENGTH'S RURAL DIGITAL OPPORTUNITY FUND BIDS IN DEFAULT ANNOUNCED

AU Docket No. 20-34
WC Docket No. 19-126
WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB or Bureau) and the Office of Economics and Analytics (OEA) announce that Wavelength LLC, a Rural Digital Opportunity Fund (RDOF or Auction 904) long-form applicant, has defaulted. The long-form applicant's defaulted bids are identified in Attachment A.

On December 7, 2020, we announced that there were 180 winning bidders in the auction and established the deadlines for winning bidders to submit their long-form applications for RDOF support.[1] Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.[2] 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.[3] On February 18, 2021, we announced that there were 417 long-form applicants.[4] Long-form applicants must 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."[5] The Commission conducts an in-depth review of timely submitted applications both for completeness and compliance with the Commission's rules *and* to determine whether an applicant is financially and technically qualified for support.[6] If a long-form applicant is found ineligible or unqualified to receive support, the applicant will be announced in default and subject to forfeiture.[7]

---

[1] *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 (WCB and OEA 2020) (*Auction 904 Closing Public Notice*).

[2] *Id.* at 13890-91, paras. 9-14.

[3] *Id.* at 13892-93, para. 16.

[4] *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34, Public Notice, 36 FCC Rcd 4140 (WCB and OEA 2021) (*Auction 904 Long-Form Applicants Public Notice*).

[5] *Rural Digital Opportunity Fund et al.*, Report and Order, 35 FCC Rcd 686, 717, para. 68 (2020) (*Rural Digital Opportunity Fund Order*).

[6] *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 Rural Digital Opportunity Fund Phase I*

(continued….)

Wavelength - Arizona. The Bureau has concluded its review of Wavelength's long-form application in Arizona. Wavelength proposes to deploy service to 12,418 estimated RDOF locations in Arizona. The Bureau has determined that, based on the totality of the long-form application and its inadequate responses to the Bureau's follow-up questions, Wavelength has failed to demonstrate that it is financially qualified to receive support to meet its RDOF program obligations in the areas where it has winning bids in Arizona. The Commission has an obligation to protect limited Universal Service Funds and to avoid extensive delays in providing needed service to rural areas, including by not subsidizing risky proposals that propose deployment plans that are unrealistic or that are predicated on aggressive assumptions and predictions. Accordingly, we deny Wavelength's long-form application in Arizona, and Wavelength is in default on all winning bids not already announced as defaulted, as listed in Attachment A. We will refer these defaults to the Enforcement Bureau for further consideration.

A defaulter is subject to a base forfeiture per violation of $3,000.[8] A violation is defined as any form of default with respect to the census block group. In other words, there shall be separate violations for each census block group assigned in a bid.[9] So that this base forfeiture amount is not disproportionate to the amount of a winning bidder's bid, the Commission has limited the total base forfeiture to 15% of the bidder's total assigned support for the bid for the support term.[10] Notwithstanding this limitation, the total base forfeiture will also be subject to adjustment upward or downward based on the criteria set forth in the Commission's forfeiture guidelines.[11]

Further Information Contact:

Press Information

Office of Media Relations
MediaRelations@fcc.gov
(202) 418-0500

(Continued from previous page)

Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904, Public Notice, 35 FCC Rcd 6077, 6112, para. 97 (2020) (*Auction 904 Procedures Public Notice*) (explaining the Commission's expectation that "the more in-depth long-form application process will further minimize the risk of authorizing an unqualified applicant"); *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13888, 13895, para. 18 ("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.").

[7] *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").

[8] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36 para. 115; *Auction 904 Procedures Public Notice* 35 FCC Rcd at 6178, para. 332.

[9] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

[10] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 117; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

[11] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(10), note to paragraph (b)(10); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 736, para. 115; *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 322.

General Universal Service Information	**Wireline Competition Bureau, Telecommunications Access Policy Division** Heidi Lankau Katie King (202) 418-7400 **Universal Service Administrative Company** Stephen Snowman (202) 414-2725
Auction 904 Information	
General Auction Information, Process, and Procedures	**Office of Economics and Analytics, Auctions Division** (717) 338-2868
Post-Auction Rules, Policies, and Regulations	**Office of Economics and Analytics, Auctions Division** (202) 418-0660
Small Businesses Additional information for small and disadvantaged businesses	**Office of Communications Business Opportunities** (202) 418-0990 http://www.fcc.gov/ocbo/
Accessible Formats Braille, large print, electronic files, or audio format for people with disabilities	**Consumer and Governmental Affairs Bureau** (202) 418-0530 fcc504@fcc.gov
FCC Internet Sites	http://www.fcc.gov https://www.fcc.gov/auction/904

This Public Notice contains the following attachment:

Attachment A: Bids in Default

-FCC-

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1185
Released: December 20, 2023

RURAL DIGITAL OPPORTUNITY FUND AUCTION 904 APPLICATION REVIEW CONCLUDES; LONG-FORM APPLICATIONS MADE PUBLIC

AU Docket No. 20-34
WC Docket No. 19-126
WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB), in conjunction with the Office of Economics and Analytics (OEA), announces the conclusion of the Rural Digital Opportunity Fund auction (Auction 904) long-form application review. Currently, there are 379 support recipients with authorized winning bids totaling over $6 billion in support over a ten-year term, covering just under 3.5 million locations in 48 states and one territory.[1] While authorized bids included a range of performance tiers, over 97% of locations are covered by winning bids for Gigabit speed service.

All Auction 904 winning bids have been authorized or defaulted, with state-level summaries of authorizations posted under the "Results" tab on the Auction 904 webpage at https://www.fcc.gov/auction/904. The summary provides for each authorized Auction 904 long-form applicant: 1) the total support amount over 10 years and total number of locations for which the long-form applicant is authorized in each state; 2) the total number of locations to which the authorized support recipient must offer the required voice and broadband services for each performance tier and latency in each state; and 3) the eligible census blocks included in the winning bids that are authorized in each state.

As part of the Rural Broadband Accountability Plan,[2] the Commission is also making available additional information from the long-form applications submitted by applicants (FCC Form 683). The Auction 904 FCC Form 683 long-form applications will be viewable through the application search feature, which can be accessed through the "Application Search" tab on the Auction 904 web page.[3] The Commission will continue to withhold from routine public inspection information related to a long-form applicant's detailed technology and system design description and its project funding description; financial information for which confidential treatment was requested under the section 0.459(a)(4)

[1] Three support recipients fully withdrew from the RDOF support program after being authorized to receive support for their winning bids. *See Rural Digital Opportunity Fund Post-Authorization Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 23-744 (WCB Aug. 22, 2023); *Rural Digital Opportunity Fund Support Authorized for 497 Winning Bids; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 13199, 13207-08 (WCB/OEA 2022).

[2] *See generally* Federal Communications Commission, *Rural Broadband Accountability Plan*, https://www.fcc.gov/rbap (last visited Dec. 15, 2023).

[3] Federal Communications Commission, *Auction 904: Rural Digital Opportunity Fund*, https://www.fcc.gov/auction/904 (last visited Dec. 15, 2023).

abbreviated confidential treatment process; letter of credit documentation; and any other information subject to a request for confidential treatment that has been granted or remains pending.[4]

Further Information Contact:

Press Information	**Office of Media Relations** (202) 418-0500 MediaRelations@fcc.gov
General Universal Service Information	**Wireline Competition Bureau, Telecommunications Access Policy Division** Heidi Lankau Katie King (202) 418-7400 **Universal Service Administrative Company** Stephen Snowman (202) 414-2725
Auction 903 Information General Auction Information, Process, and Procedures	**Office of Economics and Analytics, Auctions Division** (717) 338-2868
Post-Auction Rules, Policies, and Regulations	**Office of Economics and Analytics, Auctions Division** (202) 418-0660
Small Businesses Additional information for small and disadvantaged businesses	**Office of Communications Business Opportunities** (202) 418-0990 http://www.fcc.gov/ocbo/
Accessible Formats Braille, large print, electronic files, or audio format for people with disabilities	**Consumer and Governmental Affairs Bureau** (202) 418-0530 fcc504@fcc.gov
FCC Internet Sites	http://www.fcc.gov https://www.fcc.gov/auction/904

-FCC-

[4] *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., Public Notice, 35 FCC Rcd 13888, 13898-99, paras. 27-31 (WCB/OEA 2020); *Rural Digital Opportunity Fund Auction Support for 1,460 Winning Bids Ready to Be Authorized*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 11571, 11574 & n.17 (WCB/OEA 2021).

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 23-1186
Released: December 20, 2023

BROADBAND DATA TASK FORCE ANNOUNCES OPENING OF BROADBAND DATA COLLECTION FILING WINDOW AND RELEASE OF UPDATED BROADBAND SERVICEABLE LOCATION FABRIC

WC Docket Nos. 11-10, 19-195

By this Public Notice, the Broadband Data Task Force announces that the Broadband Data Collection (BDC) filing window for submitting broadband availability and other data as of December 31, 2023, will open on January 2, 2024. The December 2023 update (Version 4) of the Broadband Serviceable Location Fabric (Fabric) will be available to existing Fabric licensees starting on December 27, 2023.

Beginning January 2, 2024, facilities-based broadband service providers may begin submitting data into the BDC system that identifies where they made mass-market broadband internet access service available as of December 31, 2023.[1] Such entities, and providers of fixed voice services, must also submit their December 31, 2023, subscription data (required under Form 477) into the BDC system. All availability and subscription data must be submitted no later than March 1, 2024.[2]

Filers should submit their data in the BDC system at https://bdc.fcc.gov/bdc.[3] A recorded webinar demonstrating how to use the BDC system is available at the "Education" tab at https://www.fcc.gov/BroadbandData/resources. More information on how to log in, navigate the BDC system, and submit data can be found in the BDC System User Guide. Related video tutorials and help articles are available in the BDC Help Center at https://www.fcc.gov/BroadbandData/Help. Information about the categories of broadband providers that must file availability data, the types of entities that may

[1] *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, 1130-31, 33-34, paras. 10-11 & n.42, 16-17 (2021). Facilities-based broadband providers must have one or more end-user connections in service. The Broadband DATA Act requires the Commission to collect broadband Internet access service data from each "provider of fixed or mobile broadband Internet access service." Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) § 641(11). *See Broadband Data Task Force and Office of Economics and Analytics Announce Inaugural Broadband Data Collection Filing Dates*, Public Notice, DA 22-182 (BDTF/OEA Feb. 22, 2022) (*BDC Filing Window Public Notice*).

[2] These as-of dates and filing deadlines were established by the Commission in the *Second Order and Third Further Notice*. *See 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, 7484, para. 55 (2020); 47 CFR §1.7002; *see also BDC Filing Window Public Notice*.

[3] While broadband providers are no longer required to file broadband deployment information using FCC Form 477, we remind them that they must also continue to file Form 477 subscribership data and voice service availability data in the BDC system at http://bdc.fcc.gov.

submit verified availability data, and what data must be filed, can be found at https://www.fcc.gov/BroadbandData/filers.

The Fabric serves as the foundation for the collection of fixed broadband availability data in the BDC. The updated version being made available to Fabric licensees starting December 27, 2023, must be used by filers of fixed broadband availability for their availability data as of December 31, 2023. Providers who are already licensees of the Fabric, and all other Fabric licensees (including state, local, and Tribal government and other third party entities), will receive an email from CostQuest, the FCC's Fabric contractor, providing them with access to the December 2023 Fabric data. Entities that have not yet entered into a license agreement with CostQuest for Fabric data (including internet service providers, state, local or Tribal governmental entities, or other entities wishing to use the Fabric data for purposes of participating in the BDC or non-commercial academic/public policy broadband research) may do so by following the instructions for obtaining access to the Fabric at the BDC Help Center.[4]

The new version of the Fabric incorporates data from updated data sources and other improvement efforts conducted by the FCC and CostQuest, and the results of Fabric challenges submitted by state, Tribal, and local governments, broadband service providers, and the public through the National Broadband Map. Changes from previous versions of the Fabric include additional Broadband Serviceable Locations and corrections to addresses, unit counts, building types, land use, and geographic coordinates.[5]

We encourage filers to submit their December 31, 2023, availability data as early as possible in the filing window. This will give filers an opportunity to address any problems with their data identified by the BDC system in time to make any necessary corrections in advance of the March 1, 2024, deadline. Failure to timely file required data in the new BDC system may lead to enforcement action and/or penalties as set forth in the Communications Act and other applicable laws.[6]

For additional information and questions regarding the Broadband Data Collection, please visit the BDC website at https://www.fcc.gov/BroadbandData.

– FCC –

[4] Information about the Fabric and how service providers, governmental entities, and third parties can access it may be found in the BDC Help Center at https://www.fcc.gov/broadbanddata/fabrichelp.

[5] Reference document explaining the Fabric and methodology can be found at: https://www.fcc.gov/BroadbandData/resources under the "Key Reference Documents" tab.

[6] *See All Facilities-Based Broadband Internet Access Service Providers Must File Complete and Accurate Data in the Broadband Data Collection*, WC Docket Nos. 19-195, 11-10, Enforcement Advisory, DA 22-639, at 2-3 (EB June 15, 2022).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1187
December 20, 2023

FCC ANNOUNCES INTENT TO RE-ESTABLISH THE COMMUNICATIONS SECURITY, RELIABILITY, AND INTEROPERABILITY COUNCIL AND SOLICITS NOMINATIONS FOR MEMBERSHIP

By this Public Notice, the Federal Communications Commission (FCC or Commission), consistent with the Federal Advisory Committee Act (FACA),[1] announces its intent to re-establish the Communications Security, Reliability, and Interoperability Council (CSRIC or Council) on or before March 30, 2024, following consultation with the General Services Administration. This will be the FCC's ninth charter of CSRIC. The Commission intends to re-establish CSRIC IX for a period of two (2) years, with an expected first meeting in June 2024. By this Public Notice, we also seek nominations for membership and a chairperson(s) for the Council.

CSRIC IX will provide advice and recommendations to the Commission to improve the security, reliability, and interoperability of the nation's communications systems. Among other issues, Chairwoman Jessica Rosenworcel will ask CSRIC IX to consider how artificial intelligence and machine learning (AI/ML) policies or programs can be developed or leveraged to enhance the confidentiality, integrity, and availability of communications networks in a nondiscriminatory, transparent, and socially responsible way. The Chairwoman will also ask CSRIC IX to provide recommendations to ensure reliability across all networks supporting NG911 transport and to develop a plan to address security and reliability risks unique to emerging 6G networks and services.

In seeking nominations for CSRIC IX, Chairwoman Rosenworcel will again look to include in the Council's membership to a broad variety of stakeholders, including representation from the FCC's federal government partners with similar interests.

All organizational or individual members appointed to the Council, or its working groups are subject to an ethics review by the Commission's Office of General Counsel. Some applicants possessing expertise or perspectives of interest to the Council, and who have been appointed to serve on the Council in an individual capacity (and not as the representative of a nonprofit organization, corporation, or other entity) are deemed to be Special Government Employees (SGEs). Such individuals are ineligible to serve if they are federally registered lobbyists. SGEs are subject to a variety of restrictions under the conflict of interest statutes, 18 U.S.C. § 203 et seq., and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. SGEs must file confidential employee financial disclosure reports prior to beginning their service and annually thereafter. SGEs will also be subject to ethics restrictions in section 4(b) of the Communications Act, 47 U.S.C. § 154(b), and in the Commission's rules, 47 CFR Part 19 and 5 CFR Parts 3901 and 3902.

[1] 5 U.S.C. § 10

All members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission and shall promptly report to the Council's Designated Federal Officer (DFO) any changes in representation during their tenure on the Council. Council members will not be compensated for their service.

Nominations for membership to CSRIC IX should be submitted to the FCC no later than Saturday, February 3, 2024. Procedures for submitting nominations are set forth below, and applications should be sent by email to CSRIC@fcc.gov .

MISSION

The purpose of the Council is to provide recommendations to the FCC regarding ways the FCC can strive for security, reliability, and interoperability of the nation's communications systems. CSRIC IX's recommendations will focus on a range of public safety- and homeland security-related communications matters, including: (1) the security and reliability of communications systems and infrastructure; (2) 911, E911, and NG911; (3) emergency alerting; (4) Artificial Intelligence/Machine Learning; and (5) national security/emergency preparedness communications, including law enforcement access to communications. CSRIC IX will be organized under, and will operate in accordance with, the provisions of FACA. As authorized by FACA, the Council is authorized to facilitate its work through informal subcommittees, or other subgroups of the Council, which shall report their activities and recommendations to the Council as a whole.

WHO MAY APPLY FOR MEMBERSHIP

The Commission seeks applications from representatives of various sectors of the communications industry, representatives of state and local government agencies and organizations, and representatives of consumers and community organizations that wish to be considered for membership on the CSRIC. The Commission is particularly interested in receiving nominations and expressions of interest from individuals and organizations in the following categories:

- State, tribal, territorial and/or local government agencies and organizations with expertise in communications, public safety, emergency management and/or homeland security matters;
- Federal government agencies with expertise in communications, public safety, emergency management and/or homeland security matters;
- Communications service providers and/or industry organizations representing communications service providers (to include representation by different types of communications provider interests, e.g., wireless, wireless, satellite, broadcast radio, and television, and by including representation by smaller and rural providers);
- Developers of software applications and operating systems for mobile and desktop computing devices;
- Developers of mobile devices;
- Developers of new technologies, including artificial intelligence and machine learning;
- Organizations and other entities representing users of communications systems, such as organizations representing the business, finance, energy, education, health care, and similar sectors;
- Consumer or community organizations, such as those representing people with disabilities, the elderly, those living in rural areas, and those representing populations that speak, as their primary language, languages other than English; and
- Qualified representatives of other stakeholders and interested parties with relevant expertise regarding the subject matter.

Members will be selected to balance the expertise and viewpoints that are necessary to effectively address the issues to be considered by the Council.

OBLIGATIONS OF MEMBERS AND COUNCIL MEETINGS

Members will serve at the discretion of Chairwoman Rosenworcel of the FCC. Members should be willing to commit to a two-year term of service from the date of the re-charter of the Committee. Members will be encouraged to participate in deliberations of at least one (1) informal subcommittee or subgroup, if any are established. The time commitment for participation in any informal subcommittee or other subgroup may be substantial. However, subcommittee or other subgroup meetings may be conducted informally, using suitable technology to facilitate the meetings, subject to oversight by the Designated Federal Officer of CSRIC IX.

Meetings of the full Council shall be open to the public and timely notice of each meeting shall be published in the Federal Register and shall be further publicized through other appropriate vehicles. All such meetings will be fully accessible to individuals with disabilities.

APPLICATION PROCEDURE, DEADLINE, AND MEMBER APPOINTMENTS

Organizational Applicants

Applications from nonprofit organizations, corporations, or other entities ("organizational applicants") proposing a nominee should include the following:

- Name, title, and organization of the nominee and a description of the organization, sector or other interest the nominee will represent;
- Nominee's mailing address, e-mail address, and telephone number;
- A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to the Council;
- A current resume of the nominee; and
- A statement describing the organization the nominee will represent as well as the benefit of having the organization represented on the Council.

For applicants seeking to represent an organization or company, the applicant's nomination to the Council must be accompanied by confirmation on the following two (2) issues:

1. The nomination must be confirmed by a written statement of an authorized person (*e.g.*, organization or company official) that such organization or company supports the application of the nominee to represent it on the Council. The nominating official must possess the executive authority or hold a sufficiently high-level position within the organization or company to select a representative whose actions will be legally binding on the organization or company. For example, this confirmation may be in the following format:

   "I am [insert official's name], the [insert official's title] at the [insert name of organization - *e.g.*, company, government entity, trade association, *etc.*], with responsibilities for [concise description of position]. My organization supports [insert proposed member's name], who is currently [an employee of/consultant/attorney to the company], to serve as our representative on the Commission's Communications Security, Reliability, and Interoperability Council."

2. For applicants seeking to represent an entity that is, or who are themselves, a party to an FCC contract or subcontract or providing services for the benefit of the FCC under contract or subcontract, the application must include the following: 1) a general description of the contract/agreement; 2) a description of the product/services that the applicant provides pursuant to the contract/agreement; 3) a list of all parties to the contract/agreement; 4) the name of the Commission contracting officer (if known); and 5) a certification of the applicant that the applicant has provided written notice to the contracting officer and the FCC Manager, Contracts and Purchasing Center, that the applicant or representative nominee, as applicable, has applied for membership on the Commission's Communications Security, Reliability, and Interoperability Council.

In addition, organizational nominees are required to disclose whether they represent clients before the Commission or represent clients in matters that may come before the Council, other than representing the organizational applicant that has nominated them for service on the Council. Each nominee shall provide with the application all details of any such representation.

Individual Applicants

Applications from individual applicants who would serve as SGEs, as defined above, should include the following:

- Name and title of the applicant; current mailing address, email address, and telephone number;
- A statement summarizing the applicant's qualifications and reasons why the applicant should be appointed to the Council. The statement shall include the individual's specific knowledge or expertise that is relevant to the work of the Council;
- A current resume of the applicant;
- A statement that the individual applicant is not a registered federal lobbyist (as noted above, financial and other additional disclosures may also apply to individual applicants);
- An acknowledgement that the individual will not be entitled to receive reimbursement of travel expenses or payment of honoraria or other compensation from the Commission;
- A statement that the applicant does not have a contractual or other financial agreement (including as a subcontractor) with the Commission; and
- A statement that the applicant does not have clients with matters before the Commission or matters that may come before the Council.

Please note this *Public Notice* is not intended to be the exclusive method by which the Commission will solicit nominations to identify qualified candidates; however, all candidates for membership on the Council will be subject to the same evaluation criteria.

All nominations, including the requisite statements listed above, should be submitted by e-mail to CSRIC@fcc.gov, and should be received by the Commission as soon as possible, but no later than Saturday, February 3, 2024.

ACCESSIBLE FORMATS

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

More information about the CSRIC can be found at https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council. You may also contact Suzon Cameron, Designated Federal Official (DFO) for CSRIC IX, Public Safety and Homeland Security Bureau, at (202) 418-1916, Kurian Jacob, Deputy DFO, at (202) 418-2040, or Logan Bennett, Deputy DFO, at (202) 418-7790, or via the CSRIC e-mail account at CSRIC@fcc.gov.

-FCC-

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

In the Matter of	)	
	)	
Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment	)	ULS File No. 0010168412 ULS File No. 0010168420
	)	
	)	
Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment	)	ULS File No. 0010168439
	)	
	)	
	)	

NRUF/LNP PROTECTIVE ORDER

Adopted: December 20, 2023 **Released: December 20, 2023**

By the Chief, Wireless Telecommunications Bureau:

1. In connection with the Commission's review of the transactions at issue in this proceeding, the Commission is examining information contained in the Numbering Resource Utilization and Forecast (NRUF) reports filed by carriers engaged in the provision of wireless telecommunications services[1] (Wireless Telecommunications Carriers) and disaggregated, carrier-specific local number portability (LNP) data related to Wireless Telecommunications Carriers. We find that such materials are necessary to develop a more complete record on which to base the Commission's decision. We also anticipate that parties participating in the proceeding may seek to review this data.

2. Section 251 of the Communications Act of 1934, as amended, grants the Commission jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues.[2] In order to better monitor the way numbering resources are used within the NANP and efficiently allocate NANP resources, the Commission requires telecommunications carriers to provide the Commission with a utilization report of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements—the NRUF report.[3] LNP data are collected by the LNP Administrator and provided to the Commission. The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from general public disclosure under 5 U.S.C. § 552(b)(4).[4]

3. While we are mindful of the highly sensitive nature of such information, we are also mindful of the right of the public to participate in this proceeding in a meaningful way. Therefore,

[1] 47 CFR §§ 1.907, 52.5.

[2] 47 U.S.C. § 251.

[3] 47 CFR § 52.15(f); *see Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 7574, 7578–79, para. 5 (2000) (*Numbering Report and Order*).

[4] *Numbering Report and Order*, 15 FCC Rcd at 7607, para. 78.

consistent with past practice,[5] the NRUF reports and LNP data will not be available to the public except pursuant to the terms of this NRUF/LNP Protective Order; we will make such information available to participants in this proceeding, but limit such access to their Outside Counsel of Record and Outside Consultants whom they retain to assist them in this proceeding, and their Outside Counsel's and Outside Consultants' employees. We conclude that the procedures we adopt in this NRUF/LNP Protective Order give appropriate access to the public while protecting particularly competitively sensitive information from improper disclosure, and that the procedures we adopt thereby serve the public interest.[6]

4. *Definitions.* As used herein, capitalized terms not otherwise defined in this NRUF/LNP Protective Order shall have the following meanings:

"Acknowledgment" means the Acknowledgment of Confidentiality attached as Appendix A hereto.

"Competitive Decision-Making" means that a person's activities, association, or relationship with any of his or her clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with a Wireless Telecommunications Carrier.

"NRUF/LNP Confidential Information" means the NRUF reports, the data contained in those reports, the LNP data, and any information derived from the reports or the data that is not otherwise available from publicly available sources.

"Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney representing a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

"Outside Consultant" means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

"Outside Firm" means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

"Participant" means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

"Reviewing Party" means a person who has obtained access to NRUF/LNP Confidential Information pursuant to paragraphs 5 or 0 of this NRUF/LNP Protective Order.

"Support Personnel" means employees of a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and

[5] *E.g., AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations*, Protective Order, 26 FCC Rcd 6031 (WTB 2011); *AT&T Inc. and Centennial Communications Corp. for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Protective Order, 24 FCC Rcd 13915 (WTB 2009).

[6] This NRUF/LNP Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the NRUF/LNP Protective Order would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

5. *Procedure for Obtaining Access to NRUF/LNP Confidential Information*. Access to NRUF/LNP Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to NRUF/LNP Confidential Information shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this NRUF/LNP Protective Order, and file the Acknowledgment with the Commission, so that it is received at least five business days prior to such person's reviewing or having access to the NRUF/LNP Confidential Information. Each Wireless Telecommunications Carrier shall have an opportunity to object to the disclosure of its NRUF/LNP Confidential Information to any such person. A Wireless Telecommunications Carrier must file any such objection at the Commission and serve it on Counsel representing, retaining, or employing such person within five business days after that person's Acknowledgment has been filed with the Commission. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection from a Wireless Telecommunications Carrier shall not have access to that carrier's NRUF/LNP Confidential Information.[7] If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to NRUF/LNP Confidential Information by the Reviewing Party until the objection is resolved.

6. *Review of NRUF/LNP Confidential Information.* A Reviewing Party shall contact Catherine Matraves, catherine.matraves@fcc.gov, Office of Economics and Analytics, or Susannah Larson, susannah.larson@fcc.gov, Wireless Telecommunications Bureau, to receive instructions on how to obtain and review NRUF/LNP Confidential Information. A Reviewing Party may temporarily load onto a computer NRUF/LNP Confidential Information. Once loaded, any files containing NRUF/LNP Confidential Information shall be password protected immediately. The NRUF/LNP Confidential Information may not be stored on a computer after being analyzed. After the analysis is complete, the results of such analysis may be stored by saving the results (but not the original underlying NRUF/LNP Confidential Information) to a mobile data storage medium. All files containing NRUF/LNP Confidential Information shall be deleted from the computer as soon as practicable. The mobile storage medium containing the results shall be stored securely and a record kept of any persons given access to them.

Use of NRUF/LNP Confidential Information. Persons obtaining access to NRUF/LNP Confidential Information under this NRUF/LNP Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any NRUF/LNP Confidential Information in its decision in this proceeding, it will do so either by redacting any NRUF/LNP Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to NRUF/LNP Confidential Information under this

[7] An objection ordinarily will first be ruled upon by the Wireless Telecommunications Bureau (Bureau). If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the NRUF/LNP Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the NRUF/LNP Confidential Information shall be made available to the Reviewing Party.

NRUF/LNP Protective Order or by aggregating the NRUF/LNP Confidential Information such that no information of any Wireless Telecommunications Carrier (other than the Applicants) is revealed.

Permissible Disclosure. A Reviewing Party may discuss and share the contents of NRUF/LNP Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Wireless Telecommunication Carrier's own NRUF/LNP Confidential Information may also be disclosed to employees and Counsel of the carrier.

Filings with the Commission. A Reviewing Party may in any document that it files in this proceeding disclose NRUF/LNP Confidential Information only if it complies with the following procedure. The party shall file in the Commission's Universal Licensing System (ULS) as confidential one copy of the filing containing NRUF/LNP Confidential Information (the "NRUF/LNP Confidential Filing") and an accompanying cover letter. The cover or first page of the NRUF/LNP Confidential Filing and each page of the NRUF/LNP Confidential Filing that contains or discloses NRUF/LNP Confidential Information must be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN ULS FILE NOS. 0010168412, 0010168420, and 0010168439 before the Federal Communications Commission." The cover letter shall also contain this legend. The NRUF/LNP Confidential Filing will not be placed in the Commission's public file. The party shall also submit in ULS a copy of the filing in redacted form, *i.e.*, containing no Confidential Information (the "Redacted NRUF/LNP Confidential Filing")[8] The Redacted NRUF/LNP Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted NRUF/LNP Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted NRUF/LNP Confidential Filing shall have the same pagination as the NRUF/LNP Confidential Filing from which it is derived. To the extent that any page of the NRUF/LNP Confidential Filing contains any type of Confidential Information and non-confidential information, only the Confidential Information (of whatever type) shall be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the various types of Confidential Information and the non-confidential information. One copy of each Redacted NRUF/LNP Confidential Filing and the accompanying cover letter must also be sent by email to Susannah Larson, susannah.larson@fcc.gov. Parties should not provide courtesy copies of pleadings containing NRUF/LNP Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

7. *Non-Disclosure of NRUF/LNP Confidential Information*. Except as provided under this NRUF/LNP Protective Order, NRUF/LNP Confidential Information shall not be disclosed further.

8. *Protection of Stamped NRUF/LNP Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to NRUF/LNP Confidential Information is strictly limited as prescribed in this NRUF/LNP Protective Order. A Reviewing Party shall further have the obligation to ensure that NRUF/LNP Confidential Information is used only as provided in this NRUF/LNP Protective Order.

9. *Requests for Additional Disclosure*. If any person requests disclosure of NRUF/LNP Confidential Information outside the terms of this NRUF/LNP Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Client Consultation*. Nothing in this NRUF/LNP Protective Order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying

[8] If a party is not able to submit filings via ULS, it must submit two copies each of the NRUF/LNP Confidential Filing and Redacted NRUF/LNP Confidential Filing, along with their respective cover letters, to the Office of the Secretary, Federal Communications Commission, via first-class or overnight U.S. Postal Service mail addressed to 45 L Street, NE, Washington, DC 20554, or via commercial overnight mail addressed to 9050 Junction Drive, Annapolis Junction, MD 20701.

generally on examination of NRUF/LNP Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Outside Counsel shall not disclose NRUF/LNP Confidential Information.

11. *No Waiver of Confidentiality*. Disclosure of NRUF/LNP Confidential Information as provided herein by any person shall not be deemed a waiver by any affected party of any privilege or entitlement to confidential treatment of such NRUF/LNP Confidential Information. Reviewing Parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use NRUF/LNP Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of NRUF/LNP Confidential Information shall not be deemed a waiver of any privilege or entitlement.

12. *Subpoena by Courts, Departments, or Agencies*. If a court or a federal or state department or agency issues a subpoena for or orders the production of NRUF/LNP Confidential Information that a party has obtained under terms of this NRUF/LNP Protective Order, such party shall promptly notify the Commission and each affected Wireless Telecommunications Carrier of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that the Commission and each affected Wireless Telecommunications Carrier has a full opportunity to oppose such production prior to the production or disclosure of any NRUF/LNP Confidential Information.

13. *Violations of NRUF/LNP Protective Order*. Should a Reviewing Party violate any of the terms of this NRUF/LNP Protective Order, such Reviewing Party shall immediately convey that fact to the Commission. Further, should such violation consist of improper disclosure of NRUF/LNP Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this NRUF/LNP Protective Order, including but not limited to suspension or disbarment of Counsel or Outside Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to NRUF/LNP Confidential Information in this or any other Commission proceeding. Nothing in this NRUF/LNP Protective Order shall limit any other rights and remedies available to the affected Wireless Telecommunications Carriers at law or in equity against any person using NRUF/LNP Confidential Information in a manner not authorized by this NRUF/LNP Protective Order.

14. *Termination of Proceeding*. The provisions of this NRUF/LNP Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Commission all NRUF/LNP Confidential Information and all copies of the same. No material whatsoever containing NRUF/LNP Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this NRUF/LNP Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain NRUF/LNP Confidential Information, and one copy of orders issued by the Commission or Bureau that contain NRUF/LNP Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to the Commission not more than three weeks after conclusion of this proceeding. The provisions of this paragraph regarding retention of NRUF/LNP Confidential Information shall not be construed to apply to the Commission or its staff.

15. *Questions*. Substantive questions concerning this Protective Order should be addressed to Catherine Matraves, catherine.matraves@fcc.gov, Office of Economics and Analytics; Susannah Larson, susannah.larson@fcc.gov, Wireless Telecommunications Bureau; and Joel Rabinovitz, joel.rabinovitz@fcc.gov.

16. *Authority*. This Order is issued pursuant to Sections 4(i), 214, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

APPENDIX A

Acknowledgment of Confidentiality

ULS File No. 0010168412
ULS File No. 0010168420
ULS File No. 0010168439

I hereby acknowledge that I have received and read a copy of the foregoing NRUF/LNP Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the NRUF/LNP Protective Order and that I shall not disclose or use NRUF/LNP Confidential Information except as allowed by the NRUF/LNP Protective Order.

I acknowledge that a violation of the NRUF/LNP Protective Order is a violation of an order of the Federal Communications Commission. I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of the Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to NRUF/LNP Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the NRUF/LNP Protective Order limits any other rights and remedies available at law or in equity against me if I use NRUF/LNP Confidential Information in a manner not authorized by the NRUF/LNP Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the NRUF/LNP Protective Order is due solely to my capacity as Outside Counsel or Outside Consultant to a Participant or as a person described in paragraph 0 of the foregoing NRUF/LNP Protective Order and agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that NRUF/LNP Confidential Information is not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of NRUF/LNP Confidential Information in my possession or in the possession of those who work for me, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of NRUF/LNP Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the NRUF/LNP Protective Order.

Executed this ___ day of _____, [2023/2024].

_____

[Name]

[Position]

[Address]

[Telephone]

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

In the Matter of	)	
	)	
Internet Protocol Captioned Telephone Service Compensation	)	CG Docket No. 22-408
	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
	)	
Misuse of Internet Protocol (IP) Captioned Telephone Services	)	CG Docket No. 13-24
	)	

ORDER

Adopted: December 20, 2023 **Released: December 20, 2023**

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) extends the current compensation formula for Internet Protocol Captioned Telephone Service (IP CTS). In a series of Commission and Bureau orders, the expiration of the current IP CTS compensation formula, originally scheduled for June 30, 2022, has been extended through December 31, 2023.[1] On our own motion, to ensure uninterrupted service to consumers, we grant a temporary waiver to further extend the expiration date through June 30, 2024—or the effective date of Commission action revising the compensation formula, if earlier.

II. BACKGROUND

2. IP CTS, a telecommunications relay service (TRS)[2] supported by the TRS Fund,[3] "permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an [IP]-enabled device via the Internet to simultaneously listen to the other party and read captions of

[1] *See Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service,* CG Docket Nos. 03-123 and 10-51, Order, 37 FCC Rcd 7667, 7670-71 paras. 11-14 (CGB 2022) (*2022 TRS Funding Order*); *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service,* CG Docket Nos. 03-123 and 10-51, Order, DA 23-577, para. 17 (CGB June 30, 2023) (*2023 TRS Funding Order*); *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 22-408 and 03-123, Order, DA 23-1091 (CGB Nov. 17, 2023) (*November 2023 Extension Order*).

[2] TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deafblind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communication using voice communication services by wire or radio." 47 U.S.C. § 225(a)(3).

[3] *See* 47 CFR § 64.604(c)(5)(iii)(A).

what the other party is saying."[4] IP CTS providers receive monthly payments from the TRS Fund to compensate them for the reasonable cost of providing the service, in accordance with a per-minute compensation formula approved by the Commission.[5]

3. In 2018, the Commission authorized, for the first time, the provision of IP CTS on a fully automatic basis, using only automatic speech recognition (ASR) technology to generate captions, without the participation of a communications assistant (CA).[6] Pursuant to certification by the Bureau, every IP CTS provider is now authorized to use the ASR-only mode to generate captions—either as an alternative to CA-assisted captioning or as its sole mode of providing IP CTS.[7]

4. In December 2022, the Commission adopted the *2022 IP CTS Compensation Notice*, in which it proposed to establish separate compensation rates for CA-assisted and ASR-only modes of providing IP CTS, and asked for comment on how to set revised compensation formulas for this service.[8]

5. The current compensation formula for IP CTS, $1.30 per minute, was originally set to expire June 30, 2022.[9] On June 30, 2022, the Bureau waived the expiration of that compensation plan, extending it through June 30, 2023.[10] Subsequently, the Bureau extended the current compensation formula through November 30, 2023,[11] and later extended it further, through December 31, 2023.[12]

III. DISCUSSION

6. A Commission rule may be waived for good cause shown.[13] In particular, waiver of a rule is appropriate where the particular facts make strict enforcement of a rule inconsistent with the public interest.[14] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[15] Waiver of a rule is appropriate if special

[4] *Id*. § 64.601(a)(23).

[5] *See id*. § 64.604(c)(5)(iii)(E). The TRS Fund administrator reviews monthly compensation requests and supporting information submitted by providers of IP CTS and other forms of TRS and makes monthly payments of compensation in accordance with the applicable formula.

[6] *Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5827, para. 48 (2018) (*2018 IP CTS Order*).

[7] *See 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, para. 7 (Dec. 22, 2022) (*2022 IP CTS Compensation Notice*).

[8] *Id*., paras. 13-20.

[9] *2022 TRS Funding Order*, 37 FCC Rcd at 7069, para. 7.

[10] *Id*. at 7070-71, paras. 11-14.

[11] *See 2023 TRS Funding Order,* para. 17.

[12] *November 2023 Extension Order,* DA 23-1091.

[13] 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown).

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

[15] *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.

circumstances warrant a deviation from the general rule and such deviation will serve the public interest and will not undermine the policy underlying the rule.[16]

7. We find good cause to waive the expiration date of the current compensation formula for IP CTS, extending it through June 30, 2024, or the effective date of Commission action revising the compensation formula, whichever is earlier. Establishing a methodology and compensation level for this service is inherently complex.[17] While the Commission has made significant progress, it has not yet completed consideration and adoption of a revised plan. Extending the current compensation plan for IP CTS will provide certainty and stability to providers pending final Commission action. If we were to let the current compensation plans expire without providing for interim payments, these services would cease to be available to consumers with disabilities who rely on them for functionally equivalent communication. Under such circumstances, it is administratively efficient and consistent with prior practice to extend the current compensation formulas, pending resolution of Commission action.[18]

8. In addition, multiple parties have requested that the Commission await cost and demand data to be submitted in February 2024[19] before adopting a revised compensation plan.[20] Noting that the current record includes historical cost and demand for 2021 and 2022 and projected cost and demand for 2023 and 2024,[21] providers argue, among other things, that the cost data are stale[22] and of limited use in allocating costs between ASR-only and CA-assisted service, given that some providers only recently began offering ASR-only IP CTS.[23]

9. While we do not address here commenters' assertions regarding the adequacy of the current record, we do recognize that the updated annual cost data to be filed in February 2024 could provide useful additional information relevant to determining the reasonable cost of IP CTS, including ASR-only service. For example, the data submitted in February 2024 will provide the Commission with a second full year (2023) of historical data from most IP CTS providers that currently use ASR-only captioning (and a first full year of cost data from one such provider), as well as updated cost and demand projections reflecting recent changes in each provider's mix of CA-assisted and ASR-only minutes.

---

[16] *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-128 (D.C. Cir. 2008).

[17] *2022 TRS Funding Order,* 37 FCC Rcd at 7071, para. 13.

[18] *See, e.g.*, *2023 TRS Funding Order,* para. 17; *2022 TRS Funding Order,* 37 FCC Rcd at 7070-71, paras. 11-14.

[19] In February of each year, all TRS providers of interstate services must submit data to the TRS Fund administrator on their costs of providing the service and the demand for the service in the preceding calendar year and their cost and demand projections for the next calendar year. 47 CFR § 64.604(c)(5)(iii)(D)(*1*); *see, e.g.*, Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund: Payment Formulas and Fund Size Estimate, CG Docket No. 03-123 and 10-51, Appx.: Interstate TRS Fund Annual Provider Data Request (filed May 1, 2023) (TRS Provider Data Request).

[20] *See*, *e.g.,* Letter from David A. O'Connor, Hamilton Relay, Inc., to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2-3 (filed Dec. 8, 2023) (Hamilton December 8 *Ex Parte*); Letter from Scott D. Delacourt, CaptionMate LLC, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2-4 (filed Dec. 6, 2023) (CaptionMate December 6 *Ex Parte*); Letter from John T. Nakahata, CaptionCall, LLC, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2 (filed Nov. 21, 2023) (CaptionCall November 21 *Ex Parte*); Letter from Karen Peltz Strauss, Ultratec, to Marlene H. Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, at 2 (filed Nov. 15, 2023) (Ultratec November 15 *Ex Parte*).

[21] *See* Letter from Michael Scott, CGB, to Marlene Dortch, FCC, CG Docket Nos. 22-408, 03-123, and 13-24, with Attachment (confidential) (filed Nov. 6, 2023) (2023 IP CTS Cost and Demand Data).

[22] Hamilton December 8 *Ex Parte* at 2-3; CaptionMate December 6 *Ex Parte* at 2; CaptionCall November 21 *Ex Parte* at 2; Ultratec November 15 *Ex Parte* at 3-4.

[23] *See*, *e.g.*, Hamilton December 8 *Ex Parte* at 2-3; CaptionMate December 6 *Ex Parte* at 2; CaptionCall November 21 *Ex Parte* at 2; Ultratec November 15 *Ex Parte* at 2.

10. However, we remind IP CTS providers that they are required to submit, on the date specified by the Fund administrator in February 2024, *all* information reasonably requested by the Fund administrator.[24] In addition to identifying allowable expenses for ASR-only and CA-assisted service,[25] providers must report *non*-allowable expenses actually incurred or projected to be incurred in certain cost categories. As indicated in the *2022 IP CTS Compensation Notice,* the Commission is considering modifications to certain allowable cost criteria for this service.[26] The administrator's instructions specifically direct providers to submit data on currently non-allowable expenses in these categories.[27]

11. Further, IP CTS providers that contract for the supply of services used in the provision of TRS must report information on payment under such contracts, classified according to the substantive cost categories specified by the administrator.[28] The administrator's instructions for annual reports state that providers are responsible for "reporting and allocating subcontractor costs to the appropriate categories and subcategories," and that "[s]ubcontractor costs not properly allocated shall be treated as non-allowable costs."[29]

12. To the extent that providers have any questions about how to allocate costs, whether for subcontractor costs or for CA-assisted versus ASR-only costs, they should ask the Fund administrator for guidance well before the February 2024 due date for submission of data. Meeting the submission deadline and providing the requested data in a complete and detailed manner will ensure that a provider's cost and demand data can be given due consideration.

13. *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.

---

[24] 47 CFR § 64.604(c)(5)(iii)(D)(*1*) (TRS providers are required to submit, *inter alia,* "total TRS minutes of use, total interstate TRS minutes of use, total operating expenses and total TRS investment in general in accordance with [the Commission's cost-accounting rules] *and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements*.") (emphasis added).

[25] Some commenters have raised concerns about inconsistencies among providers in the attribution of costs to each service mode. *See* Hamilton December 8 *Ex Parte* at 2-3; CaptionMate December 6 *Ex Parte* at 3. Pending further clarification (*see 2022 IP CTS Compensation Notice*, paras. 24-25), and in accordance with well-established principles of regulatory accounting, providers should, where possible, directly assign costs to either ASR-only or CA-assisted IP CTS, and where that is not possible, reasonably allocate such costs based on direct analysis of the origin of the costs themselves. *2022 IP CTS Compensation Notice*, para. 25.

[26] *See 2022 IP CTS Compensation NPRM*, FCC 22-97, paras. 26-35.

[27] *See* TRS Provider Data Request at 16-19. To be clear, these instructions were issued prior to the February 2023 cost submissions. Thus, all IP CTS providers were required to, and presumably did, identify any non-allowable costs in these categories in their February 2023 reports.

[28] 47 CFR § 64.604(c)(5)(iii)(D)(*1*). To the extent that a third party's provision of services covers more than one cost category, the cost report must provide an explanation of how the provider determined or calculated the portion of contractual payments attributable to each cost category. *Id*.

[29] TRS Provider Data Request at 10. In this regard, we note that, while Ultratec emphasizes the need for "complete" IP CTS cost data (Ultratec November 15 *Ex Parte* at 1, 2, 3-4), Ultratec itself has not provided to the Commission (nor, as far as the record discloses, to its certificated IP CTS provider customer), *any* cost analysis regarding the substantial fees it earns as an IP CTS subcontractor. Absent such information, it is not possible to determine the extent to which, for example, Ultratec's contract fees are used to (i) provide IP CTS, (ii) develop and distribute IP CTS user devices (the cost of which is not allowable or proposed to be allowable), or (iii) support activities unrelated to IP CTS. To the extent that Ultratec believes it is important for the Commission to set IP CTS compensation based on complete cost data, that objective would be advanced by Ultratec's provision of a complete analysis of the specific operations or functions supported by its contract fees and the specific amounts attributable to each such activity.

14. *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.

IV. ORDERING CLAUSES

15. 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.

16. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of IP CTS through June 30, 2024 (or the effective date of Commission action revising the compensation formula, if earlier), in accordance with the formulas applicable on June 30, 2022.

17. 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	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
	)	
Federal-State Joint Board on Universal Service	)	WC Docket No. 10-90
	)	
Connect America Fund	)	

ORDER

Adopted: December 20, 2023 **Released: December 20, 2023**

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, we approve the request of BroadLife Communications, Inc. (BroadLife) to relinquish its eligible telecommunications carrier (ETC) designation in Alabama.[1] BroadLife seeks this relinquishment in connection with the approval and consummation of a transaction transferring all of its Rural Digital Opportunity Fund (RDOF) support and associated obligations to Yellowhammer Networks, LLC (Yellowhammer).[2]

2. To obtain universal service funds, a carrier must be designated as an ETC under section 214(e)(1) of the Communications Act, as amended (Act).[3] Although section 214(e)(2) grants states the primary role in designating ETCs, section 214(e)(6) provides that the Federal Communications Commission should designate ETCs in limited circumstances, i.e., where the carrier is not subject to the jurisdiction of a state.[4] Section 214(e)(4) of the Act provides that in the case of a carrier designated as an ETC by the Commission pursuant to section 214(e)(6), the Commission shall permit an ETC to relinquish its designation "in any area served by more than one [ETC]" so long as "the remaining [ETCs] ensure that

[1] *See* Petition of BroadLife Communications, Inc. for Relinquishment of Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed Sept. 15, 2023) (*Relinquishment Petition*); *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 09-197; 10-90, Order, 36 FCC Rcd 9384 (WCB 2021) (designating BroadLife as an ETC in areas where BroadLife was eligible to receive RDOF support, conditioned upon, limited to, and effective upon its authorization to receive this support) (*BroadLife ETC Designation Order*); *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34 and WC Docket Nos. 19-126 & 10-90, Public Notice, 37 FCC Rcd 4897, Attach. A (WCB/OEA 2022) (authorizing BroadLife to receive $26,461,542 in RDOF support over ten years for deployment to 7,483 locations in 953 census blocks in Alabama) (*BroadLife RDOF Authorization Order*).

[2] *Domestic Section 214 Application Granted for the Acquisition of Certain Assets of BroadLife Communications, Inc. by Yellowhammer Networks, LLC*, WC Docket 23-23, Public Notice, DA 23-473 at 1, 5 (WCB June 1, 2023) (*Transfer Order*) (approving the transfer of the domestic section 214 authorization from BroadLife to Yellowhammer, including the transfer of RDOF support, subject to, and conditioned upon, Yellowhammer's authorization to receive this support).

[3] 47 U.S.C. § 214(e)(1).

[4] *Id*. § 214(e)(6).

all customers served by the relinquishing carrier will continue to be served."[5] Consistent with this statutory provision, once the requesting ETC makes the required showing under section 214(e)(4), the Commission must grant the request for relinquishment.

3. On June 1, 2023, the Wireline Competition Bureau (Bureau) approved an application to transfer a domestic section 214 authorization from BroadLife to Yellowhammer (together, Parties).[6] As a result of this approval, Parties received consent for the transfer of certain assets from BroadLife to Yellowhammer, including RDOF support, subject to, and conditioned upon, Yellowhammer's authorization to receive this support.[7] On June 13, 2023, the Bureau designated Yellowhammer as an ETC in certain areas in Alabama eligible for the transferred RDOF support, conditioned upon, and limited by, its authorization to receive this support, and effective only upon such authorization.[8] The transaction was consummated on September 15, 2023,[9] and on October 3, 2023, the Bureau authorized Yellowhammer to receive the transferred support.[10] At this time, USAC discontinued the eligibility of the study area code (SAC) as assigned to BroadLife, SAC 259060, and assigned to Yellowhammer a new SAC 259063 for the ETC designated area.[11]

4. On September 15, 2023, BroadLife filed a petition to relinquish its ETC designation in the ETC designated area.[12] In this petition, BroadLife states that it had not expended RDOF support or undertaken any deployment activities in the areas covered by the ETC designation,[13] "has not provided and does not provide any services," and "has no subscribers in Alabama or elsewhere."[14] Further, BroadLife states that Pinebelt (in part) and Mediacom and Comcast (in full) operate as competitive carriers in the ETC designated area.[15] Finally, BroadLife states that pursuant to the transaction,

[5] *Id*. § 214(e)(4).

[6] *See Transfer Order* at 1, 5; *see also* Application of BroadLife Communications, Inc. and Yellowhammer Networks, LLC for Consent to Assignment of Domestic Section 214 Authorization, WC Docket No. 23-23 (filed Jan. 13, 2023) (Application), as supplemented, Letter from Stephen Coran, Counsel to Yellowhammer Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-23 (filed Feb. 15, 2023) (Application Supplement).

[7] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04. ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act or to engage in the sale of assets under section 214 "must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications." *BroadLife RDOF Authorization Order*, 37 FCC Rcd at 4904-05. "Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules. Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs." *Id.*

[8] *See Telecommunications Carriers Eligible for Universal Service Support*, Order, DA 23-505 (WCB June 13, 2023).

[9] Application Supplement.

[10] *Authorization of Yellowhammer Networks, LLC to Receive Digital Opportunity Fund Support Transferred from BroadLife Communications, Inc*., WC Docket 10-90, Public Notice, DA 23-926 (WCB Oct. 3, 2023) (*Yellowhammer Authorization Order*).

[11] *See id*. at 3.

[12] *See generally* Relinquishment Petition*; BroadLife ETC Designation Order,* 36 FCC Rcd 9384. The Bureau sought comment on BroadLife's petition for relinquishment of its ETC designation. *See Wireline Competition Bureau Seeks Comment on Petition for Relinquishment of Eligible Telecommunications Carrier Designation Submitted by BroadLife Communications, Inc*., Public Notice, DA 23-927 (WCB Oct. 3, 2023). No comments were filed.

[13] *See* Relinquishment Petition at 2.

[14] *Id*.

Yellowhammer would assume responsibility to provide service, including voice service, consistent with RDOF obligations, throughout the ETC designated area.[16] Based on these circumstances, we conclude that it is appropriate to grant BroadLife's petition to relinquish its ETC designation in the designated service area.

5. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(4), and the authority delegated in sections 0.91 and 0.291 of the Commission's Rules, 47 CFR §§ 0.91, 0.291, the Petition of BroadLife Communications, Inc. for Relinquishment of its Eligible Telecommunications Carrier Designation in Alabama is GRANTED and RELINQUISHED.

6. IT IS FURTHER ORDERED that BROADLIFE COMMUNICATIONS, INC. SHALL TRANSMIT a copy of this order to the Universal Service Administrative Company (USAC).

7. 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

Jodie C. Griffin
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

(Continued from previous page)
[15] *See id*. at 2-3.

[16] *See id*. at 3; *see also Yellowhammer Authorization Order*, DA 23-925 at 2-3 (citing *Rural Digital Opportunity Fund et al*., WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 745, para. 139 (2020)).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1191
Released: December 20, 2023

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON JOINT PETITION OF UNITED TELEPHONE ASSOCIATION, INC. AND PANHANDLE TELEPHONE COOPERATIVE, INC. FOR WAIVER OF PART 36 AND SECTIONS 51.909(a), AND 51.917(b)(1) AND (b)(7) OF THE COMMISSION'S RULES

WC Docket Nos. 23-255 and 10-90

CC Docket No. 96-45

Comments Due: January 3, 2024
Reply Comments Due: January 10, 2024

The Wireline Competition Bureau (Bureau) seeks comment on the joint petition of United Telephone Association, Inc. (United) and Panhandle Telephone Cooperative, Inc. (Panhandle) (together, Petitioners) for waiver of the definition of "study area" contained in the Appendix-Glossary of part 36 of the Commission's rules.[1] The Petitioners state the purpose of the waiver is to permit the assignment of the South Englewood telephone exchange and associated customer base in Oklahoma from the United study area to Panhandle's existing study area.[2] The Petitioners further request a waiver of sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's rules to allow them to adjust their Access Recovery Charges, Connect America Fund Intercarrier Compensation support, and reciprocal compensation and switched access rate caps.[3]

In the *USF/ICC Transformation Order*, the Commission streamlined its rules governing part 36 study area waiver requests, creating a method similar to the Bureau's processing of routine section 214 transfer of control applications.[4] In the past, the procedures for addressing petitions for study area

[1] Joint Petition of United and Panhandle for Waiver of the Definition of "Study Area" and Waiver of Sections 51.909 and 51.917 with Respect to the Transfer of the South Englewood, Oklahoma Exchange, CC Docket No. 96-45 and WC Docket No. 10-90 (filed July 25, 2023) (Petition); Supplement to Joint Petition for Waiver, CC Docket No. 96-45 and WC Docket No. 10-90 (filed Dec. 1, 2023) (Petition Supplement). Effective November 15, 1984, the Commission froze all study area boundaries to prevent incumbent local exchange carriers from establishing separate study areas made up only of high-cost exchanges in order to maximize their receipt of high-cost universal service support. *See MTS and WATS Market Structure*; *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, FCC 84-637, 50 Fed. Reg. 939 (1985). A carrier must therefore apply to the Commission for a waiver of the study area boundary freeze if it wishes to transfer or acquire additional exchanges.

[2] *See* Petition at 1; Petition Supplement at 2. Petitioners have separately filed a section 214 application for the proposed assignment of the South Englewood telephone exchange from United to Panhandle. *See* Application for Assignment of Assets of United Telephone Assoc., Inc. to Panhandle Telephone Cooperative, Inc., WC Docket No. 23-255 (filed July 25, 2023).

[3] *See* Petition at 6; Petition Supplement at 2.

waivers required the Bureau to issue an order either granting or denying the request after issuing a public notice. Under the revised process, upon determination that a petitioner has filed a complete petition and that the petition is appropriate for streamlined treatment, the Bureau will issue a public notice seeking comment on the petition, and the petition will be deemed granted 60 days after the reply comment due date absent further action by the Bureau.[5] Based on an initial review, however, the Bureau finds that because of the policy issues raised by the Petition, it is inappropriate for streamlined treatment and should be subject to further analysis and review. Accordingly, the Bureau will issue an order either granting or denying the Petition after considering the record, including any comments filed in response to this Public Notice.

Filing Requirements. Interested parties may file comments on or before the date indicated on the first page of this document.[6] All filings must refer to **WC Docket Nos. 23-255 and 10-90 and CC Docket No. 96-45**.[7]

- Electronic Filers: Comments may be filed electronically using the Commission's online Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs/.[8]
- 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 at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[9]

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).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.[10]

Permit but Disclose Ex Parte Communications. For the purposes of the Commission's *ex parte* rules, each petition addressed within this Public Notice will be treated as initiating a permit-but-disclose

(Continued from previous page)

[4] *See 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, 17763, paras. 266-67 (2011).

[5] *See id*.; 47 CFR § 36.4.

[6] *See* 47 CFR §§ 1.2, 1.405, and 1.419.

[7] All filings relating to this Public Notice should refer *only* to the dockets listed above.

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

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

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

proceeding under the Commission's rules.[11] 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).[12] 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.[13] 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.[14] 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).[15] 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).[16] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact William Layton, Telecommunications Access Policy Division, Wireline Competition Bureau at william.layton@fcc.gov or Lynne Engledow, Pricing Policy Division, Wireline Competition Bureau at lynne.engledow@fcc.gov.

- FCC -

[11] *See* 47 CFR § 1.1206.

[12] *Id*. § 1.2016(b)(2)(iii).

[13] *Id*. § 1.206(b)(1).

[14] *Id*.

[15] *Id*. § 1.1206(b)(2).

[16] *Id*. § 1.1206(b)(2)(i); *see also id.* § 1.49(f).

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

In the Matter of	)	
	)	
Petition for Waiver of	)	
	)	
Iliuliuk Family and Health Services Unalaska, AK	))	
	)	
Rural Health Care Universal Service Support Mechanism	)	WC Docket No. 02-60

ORDER

Adopted: December 20, 2023 **Released: December 20, 2023**

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition for waiver submitted by Iliuliuk Family and Health Services (IFHS) of the Rural Health Care (RHC) Program application filing deadline for funding year 2022.[1] Based on the unique circumstances described in the petition, we waive section 54.621(a) of the Commission's rules to allow IFHS to file a funding year 2022 application after the filing deadline so that it can seek RHC Telecommunications (Telecom) Program funding.[2]

II. BACKGROUND

2. Eligible health care providers may apply for reduced rates on eligible telecommunications, advanced telecommunications, and information services through the RHC Program. The RHC Program has two component programs: (1) the Telecom Program, which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas[3] and (2) the Healthcare Connect Fund Program (HCF Program), which supports the delivery of broadband services and development of state and regional health care networks.[4] Eligible health care providers may apply for support for eligible services after completing a competitive bidding process and selecting the most cost-effective service offering, unless a competitive bidding exemption applies.[5] Applicants in the HCF Program may seek multi-year commitments under which a single funding commitment can cover a period of up to three years.[6] Multi-year commitments are not available

[1] *See* Petition for Waiver of Iliuliuk Family and Health Services, WC Docket No. 02-60 (filed July 2, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/107011042110393 (Petition for Waiver).

[2] 47 CFR § 54.621(a) (2021).

[3] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (*FY 2018 Demand Order*).

[4] *Id.*

[5] *Id.* at 4139, para. 10.

[6] 47 CFR § 54.620(c) (allowing funding requests in the HCF Program to receive multi-year commitments).

in the Telecom Program, so applicants must annually file a request for Telecom Program funding.[7] Applicants must submit their requests prior to the close of the application filing window in order to be considered for RHC Program funding.[8] In funding year 2022, the application filing window opened in December 2021 and was scheduled to close April 1, 2022, but due to the COVID-19 pandemic, was extended to June 1, 2022.[9]

3. IFHS is a community-owned and operated Federally Qualified Health Center located in in Unalaska, Alaska, one of the remotest communities in the United States.[10] Unalaska has the largest population in the Aleutian Islands, measured at 4,254 persons in the 2020 Census[11] and is the top-ranked commercial fishing port in the nation, based on the aggregate weight of seafood landed.[12] The nearest hospital is in Anchorage, about 800 air miles away.[13] For purposes of the RHC Program, IFHS is placed in the most extreme rurality tier, Frontier, and serves a Medically Underserved Area/Population.[14]

4. IFHS has a small medical staff and, particularly important for the commercial fishing industry, offers emergency services 24 hours per day, 7 days per week, 365 days per year.[15] It also leases space to a local Indian Health Service clinic operated by the Aleutian/Pribilof Islands Association.[16] This is one of two health centers operated by the Aleutian/Pribilof Islands Association, which includes the Qawalangin Tribe of Unalaska, as well as three other villages on Unalaska and neighboring islands and the Aleut Community of St. Paul Island, which is about 270 miles away.[17]

5. IFHS failed to request funding in the Telecom Program for funding year 2022 during the application filing window.[18] On July 2, 2023, it filed the Petition for Waiver seeking a waiver of the application filing deadline to allow it to file a funding request for funding year 2022. IFHS has

[7] *Cf. id.; see also* 47 CFR § 54.620(a) (2021) (stating that health care providers must file funding requests each year unless a multi-year commitment applies).

[8] 47 CFR § 54.621(a)(3) (2021).

[9] *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 37 FCC Rcd 2834-36 (WCB 2022). The Order waived section 54.621(a)(1) of the Commission's rules, which requires the filing window to end no later than 90 days prior to the start of the funding year itself.

[10] Petition for Waiver at 1.

[11] U.S. Census Bureau, Unalaska city, Alaska, 2020 Decennial Census, https://data.census.gov/profile/Unalaska_city,_Alaska?g=160XX00US0280770 (last visited Dec. 18, 2023).

[12] U.S. Department of Commerce National Marine Fisheries Service, Fisheries of the United States, 2020, U.S. Department of Commerce, NOAA Current Fishery Statistics No. 2020, 2022, p. 7, available at: https://www.fisheries.noaa.gov/national/sustainable-fisheries/fisheries-united-states (last visited Dec. 18, 2023).

[13] City of Unalaska, Resolution 2020-24, Requesting the U.S. Department of Transportation to Provide Financial Subsidy to an Air Carrier to Provide Essential Air Service to Unalaska (Dutch Harbor), Alaska, passed and adopted April 28, 2020, https://www.ci.unalaska.ak.us/sites/default/files/fileattachments/Mayor%20and%20City%20Council/page/8061/24_eas_request.pdf (last visited Dec. 18, 2023).

[14] USAC Rurality Tier Search Tool, https://www.usac.org/rural-health-care/resources/tools/rurality-tier-search-tool/ (last visited Dec. 18, 2023).

[15] Petition for Waiver at 6.

[16] *Id.* at 5.

[17] Indian Health Service, Alaska Area Profile, Anchorage Service Area, pp. 29-30, https://www.ihs.gov/sites/alaska/themes/responsive2017/display_objects/documents/hf/asu.pdf (last visited Dec. 18, 2023).

[18] Petition for Waiver at 8-10.

participated in the Telecom Program since 2012, receiving a funding commitment each year, except for funding year 2022, which is the focus of this Petition for Waiver.[19] For funding year 2021, IFHS timely filed a funding request and received a Telecom Program funding commitment for dedicated, 30 Mbps MPLS Ethernet connection services from service provider OptimERA Holdings, Inc. (OptimERA) linking IFHS with health networks in Anchorage.[20] USAC determined that the parties' three-year contract was eligible for evergreen status,[21] thus relieving IFHS from the need to conduct an annual competitive bidding process during the evergreen period.[22] However, this evergreen status did not eliminate the requirement for IFHS to submit an annual funding application for the Telecom Program, for which multi-year funding commitments are not available.[23]

6. IFHS explains that there are significant unique events underlying its one-time failure to timely request Telecom Program funding for funding year 2022, including the absence of a permanent IFHS CEO during the majority of the application filing window, and the relative inexperience of IFHS' selected service provider with the RHC Program..[24] These events occurred in the midst of the COVID-19 pandemic national emergency, when normal operations for most organizations were anything but normal, and overlapped with the peak period for COVID-19 cases and deaths in Alaska, which was from approximately September 2021 to March 2022. [25]

7. First, in December 2021, the CEO of IFHS, who signed the new three-year contract in 2021 with OptimERA, left IFHS and was not replaced by a permanent successor until May 2022.[26] This left IFHS without a permanent CEO for nearly all of the funding year 2022 application filing window, which was open from December 1, 2021, to June 1, 2022.[27] The staff available during this time had no experience with the RHC Program.[28] IFHS cites this as "a primary factor" causing it to miss the funding year 2022 filing deadline for the Telecom Program.[29] Although IFHS failed to request Telecom Program funding for funding year 2022, IFHS continued to receive the service from OptimERA.[30]

---

[19] USAC, Open Data, Rural Health Care Commitments and Disbursements (FCC Form 462/466/466A), https://opendata.usac.org/Rural-Health-Care/Rural-Health-Care-Commitments-and-Disbursements-FC/2kme-evqq (last visited Dec. 18, 2023) (USAC Commitments and Disbursements Data).

[20] USAC Commitments and Disbursements Data; Petition for Waiver at 7. For funding year 2021, IFHS received Telecom Program disbursements of $766,230, and is scheduled for the same amount for funding year 2023.

[21] USAC Commitments and Disbursements Data; Petition for Waiver at 7-8.

[22] 47 CFR §§ 54.603(c) and 54.622(i)(3) (2021).

[23] For the annual filing requirement, see 47 CFR § 54.620(a). For the evergreen contracts exemption from annual competitive bidding, see 47 CFR §§ 54.603(c); 54.622(i)(3). In contrast to the Telecom Program, eligible health care providers can obtain multi-year funding commitments through the HCF Program. *See* 47 CFR § 54.620(c).

[24] Petition for Waiver, at 8-10.

[25] Johns Hopkins University of Medicine, Coronavirus Resource Center, Alaska Data Timeline, https://coronavirus.jhu.edu/region/us/alaska.

[26] Petition for Waiver at 8.

[27] USAC, Funding Year Overview, https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/ (last visited Dec. 18, 2023).

[28] Petition for Waiver at 10.

[29] Petition for Waiver at 8. IFHS submitted its funding year 2022 application seeking support for Internet access to the Healthcare Connect Fund on June 1, 2022. USAC Commitments and Disbursements Data. Internet access is not an eligible service in the Telecom Program. Section 254(h)(1)(A) of the Communications Act authorizes the Telecom Program and applies to only telecommunications services. *See* 47 U.S.C. § 254(h)(1)(A) ("A telecommunications carrier shall, upon receiving a bona fide request, provide *telecommunications services* which are (continued….)

8. Second, IFHS' service provider, OptimERA had limited experience with the RHC Program, including the funding processes for multiple-year contracts, and had issues with various complex, online systems for several months, which contributed to the delay in discovering IFHS' failure to file a funding request for funding year 2022.[31] OptimERA explains that based on its first year in the RHC Program, the absence of a funding commitment letter from the Telecom Program did not raise concerns for OptimERA until late 2022.[32] When in mid-December 2022, OptimERA attempted to check on IFHS' Telecom Program funding request status in USAC systems, it believed that it was locked out, which it attributed to being on red-light status due to missed license payments.[33] OptimERA promptly paid the Commission its license fees. However, for several months, OptimERA still believed it was unable to access its account page.[34] Additionally OptimERA reported challenges with its 2022 registration with the System for Award Management, which it believed prevented it from accessing USAC's systems.[35] Having resolved these system challenges and outstanding issues, OptimERA contacted USAC via email in early February 2023 and indicates that it first realized around this time that the lack of a funding commitment was due to IFHS' failure to file a funding request for funding year 2022.[36] OptimERA and IFHS did not immediately take action to address this issue out of concern that immediate action could be perceived as impacting competitive bidding for funding year 2023 because IFHS had posted a request for proposals in mid-February 2023.[37] IFHS waited until the competitive bidding process for funding year 2023 concluded in June 2023 before filing the Petition for Waiver.[38]

III. DISCUSSION

9. The Commission's rules may be waived for good cause shown.[39] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with

(Continued from previous page)
necessary for the provision of health care services in a State….) (emphasis added). *But see Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16684-85, paras. 12-13 (2012) (discussing initiative to provide support for Internet access under a different provision of the Communications Act, section 254(h)(2)(A)).

[30] Petition for Waiver at 1 and Letter from Brooks E. Harlow, Counsel for OptimERA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-60 (filed Aug. 11, 2023) (OptimERA Aug. 11 *Ex Parte*).

[31] USAC Commitments and Disbursements Data; Petition for Waiver at 6, 7-10; and Letter from Brooks E. Harlow, Counsel for OptimERA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-60 (filed Sept. 11, 2023) (OptimERA Sept. 11 *Ex Parte*).

[32] OptimERA Sept. 11 *Ex Parte* at 1-2.

[33] *Id.* at 2. *See also* 47 CFR § 1.1910(b) (requiring that applications from entities owing a debt to the Commission be held and that such applications be dismissed if the debt is not resolved or other arrangements made within 30 days).

[34] OptimERA Sept. 11 *Ex Parte* at 2-3. RHC Program data, including the status of applications is publicly available via the Open Data Portal. OptimERA indicates it was not aware of this option at the time due to inexperience with the RHC Program. *See id.* n.1. *See also* USAC Commitments and Disbursements Data.

[35] To receive payments from Universal Service Fund programs, organizations must have a valid registration with the System for Award Management (SAM). The specific issue with SAM was due to the system requiring a physical address and OptimERA's Unalaska address being designated as a "P.O. Box only" area by the U.S. Postal Service. OptimERA Sept. 11 *Ex Parte* at 3.

[36] *Id.*

[37] *Id.*; Petition for Waiver at 13-14.

[38] OptimERA Sept. 11 *Ex Parte* at 3; Petition for Waiver at 13-14.

[39] 47 CFR § 1.3.

the public interest.[40] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[41] 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.[42]

10. We find that good cause exists to grant IFHS' petition for waiver of the application filing deadline to permit it to file a funding year 2022 FCC Form 466 for the Telecom Program.[43] Based on the record, we find that the series of unique challenges IFHS and its service provider experienced, all taking place during the height of the COVID-19 pandemic, provides the special circumstances required to justify a waiver of the Commission's rules.[44] IFHS' normal operations were disrupted by the lack of a permanent CEO for nearly all of the funding year 2022 filing window, leaving IFHS without staff experienced with the RHC Program. Coupled with its switch to a service provider with limited experience with the RHC Program that encountered issues across multiple systems for several months, numerous additional failure points arose and certain backstops were lacking that might ordinarily help a program participant adhere to its RHC funding request deadline during such transitions. In light of these unique circumstances, we find that strict compliance with the Commission's funding request deadline would be inconsistent with the public interest.

11. Granting the filing deadline waiver request will also advance the public interest. Congress intended for section 254(h) to assist health care providers in rural areas with affordable access to modern communications services to enable them to provide medical and educational services to all parts of the nation.[45] Unalaska represents one of the remotest and highest cost areas in all of the United States. Due to its location on a small island in the ocean, far from a population center of any magnitude or a hospital, the Commission appreciates the unique operational challenges for IFHS, as well as its vital importance for addressing health care needs in the western Aleutians. Finally, the application filing window for funding year 2022 occurred during the height of the national pandemic emergency, and the Commission worked aggressively to help health care providers around the nation cope with special circumstances arising out of the pandemic. We find that the public interest would not be served if IFHS is denied the ability to request funding year 2022 Telecom Program funding for services critical to providing health care services in a very remote, medically unserved area/population in Alaska.

---

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

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

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

[43] 47 CFR § 1.3.

[44] *See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, Oak Forest, IL, et al.*, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 23 FCC Rcd 15474 (WCB 2008).

[45] *See* 47 U.S.C. § 254(h); Joint Explanatory Statement at 131 (explaining that Congress intended Section 254(h) "to ensure that health care providers for rural areas . . . have affordable access to modern telecommunications services that will enable them to provide medical . . . services to all parts of the Nation" and that "[t]he ability of . . . rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis"); *see also Universal Service First Report and Order*, 12 FCC Rcd at 8795, para. 31 (stating the "level of discounts correlated to indicators of poverty and high cost [i.e., rurality] for schools and libraries . . . satisfies section 254(h)(1)(B)'s directive that the discount be an amount that is 'appropriate and necessary to ensure affordable access to and use of' the services eligible for the discount").

12. Nothing in today's decision relieves RHC Program applicants of their obligation to abide by the application filing deadlines set forth in our current rules.[46] We emphasize that this waiver is based on unique circumstances – a very remote location with limited health care options, pandemic-period leadership turmoil in a very small organization, and a service provider with very limited RHC Program experience. In granting this waiver, we take no position on the merits of any funding requests that may be filed in response to today's action. We direct USAC to contact IFHS within 30 days of the release of this Order to make arrangements for the filing of its funding year 2022 applications. USAC should review any such requests for funding for compliance with Program rules applicable to funding year 2022 before issuing a funding decision.[47]

IV. ORDERING CLAUSES

13. 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, that the Petition for Waiver filed by Iliuliuk Family and Health Services on July 3, 2023, is **GRANTED**.

14. **IT IS FURTHER ORDERED**, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.719(c), that section 54.621(a) of the Commission's rules, 47 CFR § 54.621(a), is **WAIVED** to the limited extent provided herein. **IT IS FURTHER ORDERED** that this Order **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jodie Griffin
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

[46] *See* 47 CFR § 54.621(a) (directing USAC to open a filing window with an end date no later than 90 days prior to the start of the funding year).

[47] We find that granting this waiver to allow IFHS to file a funding request for funding year 2022 would not cause the RHC Program cap for funding year 2022 to be exceeded. *See Wireline Competition Bureau Announces the Availability of Unused Funds to Fully Satisfy Demand for Rural Health Care Program Funding for Funding Year 2022*, Public Notice, DA 22-792 (WCB July 22, 2022).

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 23-1193
December 21, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 28 (EASTERN PENNSYLVANIA, SOUTHERN NEW JERSEY AND DELAWARE AREA) REGIONAL PLANNING COMMITTEES 700 MHZ AND 800 MHZ 2024 MEETINGS SCHEDULE

PS Docket No. 23-237 and WT Docket 02-378

The Region 28 (Delaware, Eastern Pennsylvania, and Southern New Jersey Area) Public Safety 700 MHz RPC and 800 MHz Regional Planning Committees (RPCs)[1] will hold their 2024 quarterly meetings on the following dates. All 2024 meetings will be conducted remotely via Microsoft Teams. The January and July 2024 meetings will be held both remotely and on-site at the Montgomery County, PA Public Safety Training Center, Room Number 112, located at 1175 Conshohocken Road, Conshohocken, PA 19428.

Region 28 700 MHz and 800 MHz RPC Meetings Schedule for 2024

- Tuesday, January 9, 2024, 10:00 AM - Onsite and Remote
- Tuesday, April 9, 2024, 10:00 AM - Remote ONLY
- Tuesday, July 9, 2024, 10:00 AM - Onsite and Remote
- Tuesday, October 8, 2024, 10:00 AM - Remote ONLY

To participate:

- Microsoft Teams meeting via this LINK
- Meeting ID: 242 220 612 475
- Passcode: yibwRa
- Or call in (audio only): +1 323-792-6328, 420921184#
- Phone Conference ID: 420 921 184#

The agenda for the meetings include:

- Call to Order - Roll Call & Introductions
- Approval of Minutes
- Chair Report
- Vice Chair Report
- Secretary Report
- Technical Report 700 & 800 MHz
- Regional State Interoperability Executive Committee Updates
- Old Business

[1] The Region 28 (Delaware, Eastern Pennsylvania, Southern New Jersey) regional planning area includes the entire state of Delaware, the Pennsylvania counties of Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, Wyoming, and York, and the Southern New Jersey counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.

- New Business
- Future Meeting Dates
- Adjourn
- New Business
- Future Meeting Dates
- Adjourn

The Region 28 RPC 700 and 800 MHz meetings are open to the public. All eligible public safety providers whose sole purpose or principal purpose is to protect the safety of life, health, or property within Region 28 would utilize these frequencies. It is essential that not only public safety, but all government, Native American Tribal, and non-governmental organizations eligible under section 90.523 of the Commission's Rules be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not conversant with telecommunications technology should ensure that suitably conversant staff represent their respective agencies.

All interested parties wishing to participate in the planning for the use of the Public Safety spectrum in the 700 MHz and/or 800 MHz bands within Region 28 are encouraged to attend. For further information, please contact:

James Shelton – Region 28 Secretary, 700 & 800 MHz
V-COMM, LLC
736 Springdale Drive, Suite 300
Exton, PA 19341
Ph: 610-684-1000 x235
Fax: 484-879-6963
jim.shelton@vcomm-eng.com

- FCC -

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
	)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund – Alaska Plan	)	WC Docket No. 16-271
	)	
Expanding Broadband Through the ACAM Program	)	RM-11868
	)	

ORDER

Adopted: December 20, 2023 **Released: December 20, 2023**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies a waiver request submitted by NTCA—The Rural Broadband Association (NTCA) seeking waiver of section 54.308(e) of the Commission's rules,[1] which requires carriers that have elected to receive Enhanced Alternative Connect America Cost Model (A-CAM) support to certify and submit their initial cybersecurity and supply chain risk management plans by January 2, 2024 or within 30 days of approval under the Paperwork Reduction Act (PRA), whichever is later.[2] However, we also clarify that if an Enhanced A-CAM carrier submits a cybersecurity risk management plan that complies with the draft National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (CSF) version 2.0 (2.0) (Draft 2.0 Framework), the Enhanced A-CAM carrier will have met the requirement to file an initial plan that reflects the latest version of the NIST framework.[3] If the final version of NIST CSF 2.0 changes the Draft 2.0 Framework so that compliance with the final version would require a substantive modification to the Enhanced A-CAM carrier's cybersecurity risk

[1] 47 CFR § 54.308(e); Emergency Petition for Waiver of NTCA—The Rural Broadband Association, WC Docket No. 10-90 et al. (filed Nov. 17, 2023) (NTCA Petition for Waiver).

[2] 47 CFR § 54.308(e)(2); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 23-60, at 47, para. 109 (July 24, 2023) (*Enhanced A-CAM Order*). This Order does not address the issues raised in petitions seeking reconsideration and/or clarification of requirements related to the cybersecurity and supply chain risk management plans. *See* Petition for Clarification and/or Reconsideration of the Blooston Rural Carriers, WC Docket No. 10-90 et al. (filed Sept. 18, 2023); Petition for Reconsideration and/or Clarification of NTCA—The Rural Broadband Association, WC Docket No. 10-90 et al., at 21 (filed Sept. 15, 2023). Those petitions remain pending. We note that, because the Commission does not yet have approval under the Paperwork Reduction Act, we anticipate that the initial cybersecurity and supply chain risk management plans will be due no sooner than early February 2024.

[3] 47 CFR § 54.308(e)(4); *Enhanced A-CAM Order* at 47-48, para. 111.

management plan, the carrier will be required to submit an updated plan consistent with the Commission's rules.[4]

I. BACKGROUND

2. In the *Enhanced A-CAM Order*, the Commission required Enhanced A-CAM carriers to implement operational cybersecurity and supply chain risk management plans by January 1, 2024—the start of the Enhanced A-CAM support term.[5] The Commission also required carriers to certify they have done so and submit such plans to the Universal Service Administrative Company (USAC) by January 2, 2024 or within 30 days of approval under the PRA, whichever is later.[6] Because the rules are still undergoing the Office of Management and Budget's PRA approval process, we anticipate that the deadline for Enhanced A-CAM carriers to certify and submit their initial plans will not be until early February at the earliest.[7] However, Enhanced A-CAM carriers must still implement operational plans by January 1, 2024.[8] If an Enhanced A-CAM carrier fails to submit the plans and make the certification by the deadline, or does not have in place operational plans at any time during the support term, the Bureau will direct USAC to withhold 25% of monthly support until the carrier comes into compliance.[9]

3. Enhanced A-CAM carriers' cybersecurity and supply chain risk management plans must meet certain requirements.[10] Relevant here, the cybersecurity plans must reflect the latest version of NIST CSF.[11] While the latest version of NIST CSF is version 1.1 (1.1), NIST expects to release an updated version, 2.0, "early in 2024."[12] If an Enhanced A-CAM carrier makes a substantive modification to its plans, it must submit its updated plan to USAC within 30 days of making the modification.[13] A substantive modification includes, among other changes, updates that are made to comply with new cybersecurity regulations, standards, or laws.[14]

4. *Request for Waiver.* NTCA filed a petition for waiver requesting that Enhanced A-CAM carriers instead be permitted to certify and submit their initial cybersecurity and risk management plans by the later of the deadline for 2024 FCC Form 481 submissions, i.e., July 1, 2024,[15] or within 30 days of approval under the PRA.[16] NTCA claims that because the release of version 2.0 of NIST CSF is expected "early in 2024," it would be burdensome for carriers to have to submit an initial cybersecurity risk management plan that complies with NIST CSF 1.1, and then have to submit an updated version of the

[4] 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

[5] 47 CFR § 54.308(e)(1); *Enhanced A-CAM Order* at 47, para. 109.

[6] 47 CFR § 54.308(e)(2); *Enhanced A-CAM Order* at 47, para. 109.

[7] *See* Federal Communications Commission, Information Collection Being Submitted for Review and Approval to Office of Management and Budget, 88 Fed. Reg. 81416 (Nov. 22, 2023).

[8] 47 CFR § 54.308(e)(1); *Enhanced A-CAM Order* at 47, para. 109.

[9] 47 CFR § 54.308(e)(3); *Enhanced A-CAM Order* at 47, 49, paras. 109, 112.

[10] 47 CFR § 54.308(e)(4), (5); *Enhanced A-CAM Order* at 47-48, para. 111.

[11] 47 CFR § 54.308(e)(4); *Enhanced A-CAM Order* at 47, para. 111.

[12] NIST, Cybersecurity Framework Questions and Answers, https://www.nist.gov/cyberframework/frequently-asked-questions/framework-basics (last visited Dec. 18, 2023) (NIST Cybersecurity Framework Questions and Answers).

[13] 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

[14] 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 49, para. 112.

[15] 47 CFR § 54.313(j).

[16] *See generally* NTCA Petition for Waiver.

plan within 30 days if compliance with NIST CSF 2.0 results in substantive modifications to their initial plans.[17]

II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.[18] 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.[19]

6. We deny NTCA's request for waiver of the deadline to certify and submit initial cybersecurity and supply chain risk management plans. We find that it would not serve the public interest to wait until July 1, 2024 or later to require the submission of the plans. NTCA's proposal would delay the Commission's ability to ensure that Enhanced A-CAM carriers have the plans in place—which carriers would have implemented several months prior—to offer broadband over reasonably secure networks and to monitor the carriers' continued compliance with these requirements. The Commission's adoption of the cybersecurity and supply chain risk management plan requirements "emphasize[s] the critical importance of cybersecurity and supply chain risk management in modern broadband networks . . . ."[20] By adopting a deadline for the initial submission of plans as close as possible to the start of the Enhanced A-CAM carriers' support terms on January 1, 2024, the Commission will be able to identify soon after the support term starts whether any Enhanced A-CAM carriers have failed to meet the requirements and withhold support to help ensure compliance. Although Enhanced A-CAM carriers' service milestones do not begin until December 31, 2026 and their performance requirements pre-testing does not begin until January 1, 2026,[21] some Enhanced A-CAM carriers will be receiving support to maintain existing service and/or may deploy service to consumers faster than required, and the Commission has emphasized the importance of ensuring that the networks it supports through Enhanced A-CAM have sufficient protections in place.[22]

7. Moreover, while NTCA claims that the release of NIST CSF 2.0 may require Enhanced A-CAM carriers to submit updated plans soon after their initial submissions,[23] no definitive release date has been set.[24] Moreover, given the evolving environment, the risk of carriers having to update plans soon after the initial submission may be present regardless of when the Commission sets the deadline for initial submissions.[25] The Commission has acknowledged the burdens Enhanced A-CAM carriers may face in complying with these requirements as many are small companies with limited resources.[26] To

[17] *See id.* at 3-4, 6.

[18] 47 CFR § 1.3.

[19] *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)).

[20] *Enhanced A-CAM Order* at 47, para. 109.

[21] NTCA Waiver Petition at 4-5 (citing 47 CFR § 54.320(c), (d); *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*, Order, WC Docket No. 10-90 et al., Order, DA 23-778 (WCB Aug. 30, 2023)).

[22] *See, e.g.*, *Enhanced A-CAM Order* at 31, 47-49, paras. 73-74, 109-14.

[23] NTCA Waiver Petition at 3-4.

[24] NIST Cybersecurity Framework Questions and Answers.

[25] *See* 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112 (describing various conditions that would constitute a substantive modification).

[26] *See Enhanced A-CAM Order* at 49, para. 113. *See also* NTCA Waiver Petition at 4-5 (claiming that requiring Enhanced A-CAM carriers to submit their plans by the deadline "creates an unnecessary and entirely avoidable burden").

help alleviate those burdens, the Commission explained that it took "steps to mitigate concerns that development and implementation of cybersecurity plans are expensive and time consuming," including by giving carriers the "flexibility to include standards and controls in their cybersecurity management plans that are reasonably tailored to their business needs."[27] The Commission also directed carriers to existing federal resources to help facilitate the creation of the required plans.[28] The burdens associated with submitting these plans by the required deadline are outweighed by the Commission's interest in being able to timely monitor Enhanced A-CAM carriers' implementation of requirements that "will improve the cybersecurity of the nation's broadband networks and protect consumers from online risks such as fraud, theft, and ransomware that can be mitigated or eliminated through the implementation of accepted security measures."[29]

8. However, to further reduce these burdens, we also clarify that if an Enhanced A-CAM carrier submits a cybersecurity risk management plan that complies with the Draft 2.0 Framework, the Enhanced A-CAM carrier will have met the requirement to implement a plan that reflects the latest version of the NIST framework.[30] The Draft 2.0 Framework has been available since early August 2023—weeks before the Bureau announced the offers of Enhanced A-CAM support, and NIST is not planning to release another draft prior to releasing the finalized framework.[31] The Draft 2.0 Framework encompasses the current NIST CSF 1.1 so that if an Enhanced A-CAM carrier submits a plan that reflects the Draft 2.0 Framework, the plan will also reflect NIST CSF 1.1.[32] Nevertheless, if the finalized NIST CSF 2.0 makes changes to the Draft 2.0 framework that require an Enhanced A-CAM carrier to make a substantive modification to its cybersecurity risk management plan, the Enhanced A-CAM carrier must submit an updated plan within 30 days of making the substantive modification as required by the Commission's rules.[33]

III. ORDERING CLAUSES

9. 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.

10. IT IS FURTHER ORDERED that the petition for waiver of 47 CFR § 54.308(e) filed by NTCA—The Rural Broadband Association is DENIED.

---

[27] *Enhanced A-CAM Order* at 49, para. 113.

[28] *Id.* at 49, para. 114.

[29] *Id.* at 49, para. 112.

[30] 47 CFR § 54.308(e)(4); *Enhanced A-CAM Order* at 47, para. 111; NIST, The NIST Cybersecurity Framework 2.0, (Aug. 8, 2023), https://csrc.nist.gov/pubs/cswp/29/the-nist-cybersecurity-framework-20/ipd (NIST CSF 2.0).

[31] NIST CSF 2.0; *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-779 (WCB Aug. 30, 2023).

[32] NIST, Framework for Improving Critical Infrastructure Cybersecurity, v.1.1 (2018), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.

[33] 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

PUBLIC NOTICE

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

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

DA No. 23-1195

Report No. TEL-02323 **Thursday December 21, 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).

ISP-PDR-20221129-00011 E All West Communications, Inc.

Petition for Declaratory Ruling

Grant of Authority Date of Action: 12/20/2023

On November 29, 2022, All West Communications, Inc. (All West or Petitioner) filed a petition for declaratory ruling pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 310(b)(4), and section 1.5000(a)(1) of the Commission's rules, 47 CFR § 1.5000(a)(1), requesting that the Commission find that it would serve the public interest to approve the foreign equity and voting interests in Novacap All West Holdings, Inc. (Novacap Holdings), the proposed controlling U.S. parent of All West and its subsidiaries, in excess of the 25% statutory benchmarks in section 310(b)(4) of the Act. On April 25, 2023, the Petitioner filed a restated petition (Restated Petition). On May 3, 2023, the Petitioner filed a supplement to the Restated Petition. On May 5, 2023, We released a Public Notice seeking comment on the Restated Petition. Non-Streamlined International Applications, Accepted For Filing, Report No. TEL-02271NS, Public Notice (OIA rel. May 5, 2023). No comments were received in response to the Public Notice.

All West, a Utah corporation, and its wholly owned subsidiaries, All West/Utah, Inc. (All West/Utah), a Utah corporation, and Pilot Butte Transmission Company, Inc. (Pilot Butte), a Wyoming corporation, each holds common carrier wireless licenses (Licensees). All West filed the Restated Petition in connection with applications for the transfer of control of All West and its subsidiaries, including All West/Utah and Pilot Butte, to Novacap Holdings. See ULS File Nos. 0010284669, 0010284668, 0010284667, and 0010284658. According to the Restated Petition, All West Novacap Acquisition Company, Inc. (Novacap Acquisition), a Delaware corporation and a wholly owned subsidiary of Novacap Holdings, will acquire all of the issued and outstanding equity interests in All West, and, as result, will take control of All West and its subsidiaries. According to the Restated Petition, as part of the closing steps of the Transaction, Novacap Acquisition will be removed from the ownership structure resulting in All West becoming a direct wholly owned subsidiary of Novacap Holdings, a Delaware corporation. Novacap Holdings is an indirect subsidiary of Novacap Management Inc. (Novacap Management), a Canadian private equity group.

The direct owners of Novacap Holdings are: (1) Novacap Digital Infrastructure I, L.P. (Novacap Digital), a Canadian limited partnership (37% equity and voting); (2) Novacap International DI I, L.P. (Novacap International), a Canadian limited partnership (22% equity and voting); (3) Novacap Co-Investment (All West), L.P. (Novacap Co-Investment), a Canadian limited partnership (19% equity and voting); (4) Peppertree Capital Fund IX QP, L.P. (Peppertree), a Delaware limited partnership (19% equity and voting); and (5) other Peppertree investors (1% equity and voting).

Peppertree Capital FIX, LP (Peppertree FIX) is the general partner of Peppertree, and Peppertree Capital IX, Inc. (Peppertree IX) is the general partner of Peppertree FIX, both Delaware entities. Ryan Lepene and F. Howard Mandel, both U.S. citizens, each holds 50% equity and voting interests in Peppertree IX. According to the Restated Petition, the equity interests in Peppertree and Peppertree FIX are held by insulated limited partners, none of which holds a 10% or greater limited partnership interest.

Novacap Management is the general partner of NovaCap Digital, NovaCap International, and Novacap Co-Investment with a 100% voting interest and a 0.001% equity interest in each entity. According to the Restated Petition, the remaining equity interests in NovaCap Digital are held by insulated limited partners, none of which holds a 10% or greater limited partnership interest. Novo Holding A/S, a Denmark entity, holds a 16% equity interest in Novacap International and a 90% equity interest in Novacap Co-Investment. According to the Restated Petition, the remaining equity interests in NovaCap International and Novacap Co-Investment are held by insulated limited partners, none of which holds a 10% or greater limited partnership interest. Novo Holding A/S is wholly owned by Novo Nordisk Fonden, a Denmark entity, which is a commercial foundation with charitable purposes. According to the Restated Petition, Novo Nordisk Fonden is an independent self-governing institution without any owners, and the ultimate control of the foundation is vested in its Board of Directors, none of whom will hold an indirect interest in more than 10% of the equity of Novacap Holdings.

Novacap Management has delegated the decision-making authority over Novacap Digital, Novacap International, and Novcap Co-Investment to the DI Investment Committee comprised of Pascal Tremblay, Stéphane Tremblay, François Laflamme, David Lewin, Eric Desrosiers, and Benjamin Desmarais, all Canadian citizens, and Thadeus Mocarski, a U.S. citizen. Novacap Management is controlled (100% voting interest) by Novacap Fund Management Inc, a Canadian entity. Novacap Fund Management Inc. is controlled by the following individuals: Pascal Tremblay, Stéphane Tremblay, François Laflamme, David Lewin, and Eric Desrosiers, all Canadian citizens, and Thadeus Mocarski, a U.S. citizen.

According to the Restated Petition, all of the limited partnerships are fully insulated in accordance with section 1.5003 of the Commission's rules, 47 CFR § 1.5003, having only usual and customary investor protections consistent with those described in section 1.5003(c). 47 CFR § 1.5003(c). Further, the Petitioner states that other than Novo Holding A/S none of the limited partners holds a 10% or greater limited partnership interest.

The Petitioner requests approval of up to an aggregate 100% foreign ownership of Novacap Holdings, the proposed controlling U.S. parent of the Licensees. Pursuant to section 1.5001(i) of the Commission's rules, 47 CFR § 1.5001(i), the Petitioner requests that the Commission specifically approve the direct and/or indirect foreign equity and/or voting interests that would be held in Novacap Holdings, the proposed controlling U.S. parent of the Licensees, upon completion of the Transaction as follows:

Novacap Digital Infrastructure I, L.P. (37% equity and voting) (Canada);
Novacap International DI I, L.P. (22% equity and voting) (Canada);
Novocap DI Co-Investment (All West), L.P. (20% equity and voting) (Canada);
Novacap Management Inc. (less than 1% equity, 79% voting) (Canada);
Novacap Fund Management Inc. (0% equity, 79% voting) (Canada);
Pascal Tremblay (0% equity, deemed 79% voting) (Canada);
Stéphane Tremblay (0% equity, deemed 79% voting) (Canada);
François Laflamme (0% equity, deemed 79% voting) (Canada);
David Lewin (0% equity, deemed 79% voting) (Canada);
Eric Desrosiers (0% equity, deemed 79% voting) (Canada);
Benjamin Desmarais (0% equity, deemed 79% voting) (Canada);
Novo Holdings A/S (22% equity, 0% voting) (Denmark); and
Novo Nordisk Fonden (22% equity, 0% voting) (Denmark).

Pursuant to section 1.5001(k) of the Commission's rules, 47 CFR § 1.5001(k), the Petitioner requests advance approval for the following controlling foreign entities that have indirect ownership interest in Novacap Holdings to increase their interests in Novacap up to and including a controlling 100% voting and equity interests:

Novacap Management Inc. (100% equity and voting) (Canada); and
Novacap Fund Management Inc. (100% equity and voting) (Canada).

The Petitioner also requests advance approval for the following non-controlling foreign entities and individuals to increase their indirect equity and voting interests in Novacap Holdings up to a non-controlling 49.99% voting and equity interests:

Novacap Digital Infrastructure I, L.P. (49.99% equity and voting) (Canada);
Novacap International DI I, L.P. (49.99% equity and voting) (Canada);
Novocap DI Co-Investment (All West), L.P. (49.99% equity and voting) (Canada);
Pascal Tremblay (49.99% equity and voting) (Canada);
Stéphane Tremblay (49.99% equity and voting) (Canada);
François Laflamme (49.99% equity and voting) (Canada);
David Lewin (49.99% equity and voting) (Canada);
Eric Desrosiers (49.99% equity and voting) (Canada);
Benjamin Desmarais (49.99% equity and voting) (Canada);
Novo Holdings A/S (49.99% equity and voting) (Denmark); and
Novo Nordisk Fonden (49.99% equity and voting) (Denmark).

Pursuant to Commission practice, the Restated Petition was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the Restated Petition. 47 CFR § 1.40001(a). 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 (2020). On December 6, 2023, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a Petition to Adopt Conditions to Authorizations and Licenses (Committee Petition). The Committee advises that it has no objection to grant of the Restated Petition, provided that the Commission conditions its approval on the assurance of All West Communications, Inc. and its wholly owned subsidiaries All West/Utah, Inc., All West/Wyoming Inc., and Pilot Butte Transmission Company, Inc; Novacap All West Holdings, Inc.; and Novacap Management Inc. to abide by the commitments and undertakings set forth in the November 13, 2023, Letter of Agreement from Matthew Weller, President, All West Communications, Inc., All West/Utah, Inc., All West/Wyoming, Inc., and Pilot Butte Transmission Company, Inc.; Ted Mocarski, President and Secretary, Novacap All West Holdings, Inc.; and Pascal Tremblay, President and Chief Executive Officer, Managing Partner TMT, Novacap Management Inc., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice, National Security Division (LOA).

Foreign Ownership Ruling.

We find that the public interest would not be served by prohibiting foreign ownership of Novacap Holdings, the proposed controlling U.S. parent of the Licensees, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Restated Petition subject to the conditions set out herein.

This ruling authorizes 100% aggregate foreign ownership of Novacap Holdings, as the proposed controlling U.S. parent of All West, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before indirect foreign ownership of Novacap Holdings exceeds the terms and conditions of this ruling. 47 CFR § 1.5004. Specifically, pursuant to section 1.5001(i) of the Commission's rules, we grant the Petitioner's request to permit the above-listed foreign individuals and foreign-organized entities to hold, directly and/or indirectly, equity and/or voting interests in Novacap Holdings, the proposed controlling U.S. parent of Licensees, in the amounts specified above. In addition, pursuant to section 1.5001(k) of the Commission's rules, we grant the Petitioner's request for advance approval to permit the above-listed foreign individuals and foreign-organized entities to hold, directly and/or indirectly, equity and/or voting interests in Novacap Holdings, the proposed controlling U.S. parent of the Licensees, in the amounts specified above.

Individuals who hold minority voting interests in Novacap Holdings with a deemed 79% voting interest in Novacap Holdings in accordance with section 1.5002(b)(iii)(A) of the Commission's rules will continue to be deemed to hold a 79% voting interest in Novacap Holdings. 47 CFR 1.5002(b)(iii)(A). A finding that an individual is "deemed" to have a 79% voting interest for purposes of determining compliance with section 310(b)(4) of the Act and section 1.5000(a)(1) et seq. of the Commission's rules does not indicate that the interest constitutes de jure control for purposes of compliance with section 310(d) of the Act.

We grant the Committee Petition and condition grant of the Restated Petition on compliance by All West Communications, Inc. and its wholly owned subsidiaries All West/Utah, Inc., All West/Wyoming Inc., and Pilot Butte Transmission Company, Inc; Novacap All West Holdings, Inc.; and Novacap Management Inc with the commitments and undertakings set forth in the LOA. A copy of the Committee Petition and the LOA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching for ISP-PDR-20221129-00011 and accessing "Other filings related to this application" from the Document Viewing area.

Novacap Holdings has an affirmative duty to monitor its foreign equity and voting interests, calculate these interests consistent with the attribution principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules, and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act. 47 CFR §§ 1.5002-1.5003; 47 CFR § 1.5004, Note to paragraph (a).

A failure to comply and/or remain in compliance with any of these requirements shall constitute a failure to meet a condition of this declaratory ruling and the underlying licenses and thus grounds for declaring them terminated without further action on the part of the Commission. Failure to meet a condition of this declaratory ruling may also result in monetary sanctions or other enforcement action by the Commission.

Grant of this declaratory ruling is without prejudice to the Commission's action on any other related pending application(s).

ISP-PDR-20230316-00003 E Connect Holding II LLC

Petition for Declaratory Ruling

Grant of Authority Date of Action: 12/20/2023

On March 16, 2023, Connect Holding II LLC (Petitioner or Connect Holding II) filed a petition for a declaratory ruling, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4) (the Act), and section 1.5000(a)(1) of the Commission's rules, 47 CFR § 1.5000(a)(1), requesting that the Commission find that it would serve the public interest to approve the foreign equity and voting interests in Connect Holding II LLC (Connect Holding II), the controlling U.S. parent, in excess of the 25% statutory benchmarks in section 310(b)(4) of the Act. Connect Holding II is the controlling U.S. parent of ten entities that hold common carrier wireless licenses and are doing business as Brightspeed (Licensees). On April 24, 2023, the Petitioner filed a restated petition (Restated Petition). On May 12, 2023, the Petitioner filed a supplement with a revised ownership exhibit. On May 19, 2023, we released a Public Notice seeking comment on the Restated Petition. Non-Streamlined International Applications, Accepted For Filing, Report No. TEL- 02274NS, Public Notice (OIA rel. May 19, 2023). No comments were received in response to the Public Notice. On December 4, 2023, the Petitioner filed a second restated petition making minor adjustments to some of the ownership percentages (all changes of 1% or less) (Second Restated Petition). On December 20, 2023, the Petitioner filed a supplement regarding the insulation treatment of certain entities in the foreign ownership structure (December 2023 Supplement).

In 2022, the Commission issued a foreign ownership ruling to Connect Holding, LLC (Connect Holding) and Connect Holding II finding that the public interest would not be served by prohibiting 100% aggregate foreign ownership of Connect Holding II. Lumen Technologies, Inc. and Connect Holding LLC Application for Consent to Transfer Control, WC Docket No. 21-350, Memorandum Opinion and Order and Declaratory Ruling, 37 FCC Rcd 9523 (WCB, IB, WTB 2022) (2022 Ruling). Grant of the foreign ownership ruling was conditioned on compliance by Connect Holding, LLC and AP (Connect) VoteCo, LLC (VoteCo) with the Letter of Agreement from Thomas Maguire, Connect Holding, and Aaron Sobel, VoteCo, to the Chief, Foreign Investment Review Section (FIRS), Deputy Chief, Compliance and Enforcement (FIRS) on Behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division, dated July 19, 2022 (2022 LOA). Id. at 9552-53, para 71.

The Petitioner now seeks a new foreign ownership ruling to permit a new investment by CEPSA Holding LLC (CEPSA Holding), a limited liability company organized in the United Arab Emirates. According to the Second Restated Petition, CEPSA Holding proposes to acquire stock and warrants that will give it an approximate 29% equity interest and 2.5% voting interest and the right to appoint a board member in Connect Parent Corporation (Connect Parent), the indirect parent of Connect Holding and Connect Holding II.

Connect Holding II is the immediate parent of the Licensees, and in turn, is wholly owned by Connect Holding, both of which are Delaware limited liability companies. Connect Holding is wholly owned by Connect Midco LLC, which, in turn, is wholly owned by Connect Intermediate LLC, both of which are Delaware limited liability companies. Connect Intermediate LLC is wholly owned by Connect Parent, a Delaware corporation.

According to the Second Restated Petition and as a result of the proposed investment by CEPSA Holding, the following entities will have a direct ownership in Connect Parent: AP IX Connect Holdings, L.P. (AP IX Connect Holdings), a Delaware limited partnership (60% voting, 45% equity); AP IX Connect Co-Invest Holdings, L.P. (Co-Invest Holdings), a Delaware limited partnership (33% voting, 25% equity); AIOF II Connect Holdings, L.P. (AIOF II Holdings), a Delaware limited partnership (3% voting, 2% equity); and CEPSA Holding (28% voting, 2.5% equity).

AP IX Connect Holdings GP, LLC (AP IX Connect Holdings GP), a Delaware limited liability company, is the General Partner of Co-Invest Holdings and AP IX Connect Holdings. VoteCo, a Delaware limited liability company which indirectly controls Connect Holding II, is the sole member of AP IX Connect Holdings GP and the sole member of the general partner of AIOF II Holdings. VoteCo is owned and controlled by its three members, each of whom is a citizen of the United States and has a one-third interest: Scott Kleinman, John Suydam, and David Sambur. According to the Petition, the three managing members and officers and directors of VoteCo are officers and employees of Apollo Global Management, Inc. (AGM), a Delaware corporation, and will be simultaneously employed by AGM and VoteCo. In the 2022 Ruling, the WCB, IB, and WTB found that AGM exercises de facto control over Connect Holding and Connect Holding II through VoteCo. 2022 Ruling, 37 FCC Rcd at 9527-28, para. 10. BRH Holdings GP, Ltd. (BRH Holdings), a corporation organized in the Cayman Islands, holds a 27.87% voting interest and 0% equity interest in AGM.

According to the Second Restated Petition, AP IX Connect Holdings, Co-Invest Holdings, and AIOF II Holdings include foreign ownership held solely through insulated limited partnership interests. Stichting Pensioenfonds ABP (Stichting), a Dutch Foundation, indirectly holds insulated limited partnership interests in Co-Invest Holdings and AP IX Connect Holdings, through two or more intermediate entities with individually non-disclosable interests, representing an aggregate 2% equity and 0% voting. Aviva Investment Pte Ltd (Aviva Investment) is a Singapore private company limited by shares, organized in Singapore, and holds insulated limited partnership interests in Co-Invest Holdings and AP IX Connect Holdings, representing an aggregate 6% equity and 0% voting. According to the Second Restated Petition, Platinum Falcon B 2018 RSC Limited (Platinum Falcon), an Abu Dhabi restricted scope company, is organized in the United Arab Emirates, and holds limited partnership interests in Co-Invest Holdings and AP IX Connect Holdings representing 7% equity interest and a deemed 100% voting interest. Platinum International Investment Holdings RSC Limited (Platinum International) is an Abu Dhabi restricted scope company, organized in the United Emirates, and holds 100% direct voting and equity interest in Platinum Falcon. Platinum International is wholly owned by Abu Dhabi Investment Authority (ADIA), a public institution organized under the laws of the United Arab Emirates, which, in turn, is wholly owned by the Government of Abu Dhabi in the United Arab Emirates.

According to the Second Restated Petition, CEPSA Holding seeks to make an indirect investment in Connect Holding II. For its proposed investment, CEPSA Holding will receive 500,000 shares of non-voting preferred stock-representing an approximate 26% equity interest in Connect Parent, the indirect parent of Petitioner. In addition to lacking voting rights, these shares will not be convertible into common stock. Second, CEPSA Holding will receive warrants with a de minimis exercise price exchangeable for a 2.5% voting interest and approximately 1.9% equity interest in Petitioner. Together, this will represent an approximate 29% equity interest and 2.5% voting interest in Petitioner. As a result of the proposed investment, CEPSA Holding will have the right to appoint one of ten board members of Connect Parent. LIWA Energy Limited LLC (LIWA), a limited liability company organized in the United Arab Emirates has a 1% voting and equity interest in CEPSA Holding, and in turn, Mamoura Diversified Global Holding PJSC (Mamoura), a public joint stock company organized in United Arab Emirates holds 99% equity and voting interest in CEPSA Holding and 100% voting and equity interest in LIWA. Mubadala Investment Company PJSC (Mubadala) a public

joint stock company is organized in United Arab Emirates and holds 100% equity and voting interest in Mamoura, which, in turn, is wholly owned by the Government of Abu Dhabi in the United Arab Emirates. The remaining 1% equity and voting interest in Connect Parent is held by two directors of Connect Parent and two third parties, all U.S. citizens.

As a result of the proposed investment, the ultimate beneficial owner of both Platinum Falcon and CEPSA Holding will be the Government of Abu Dhabi in the United Arab Emirates. According to the Second Restated Petition, CEPSA Holding is an uninsulated entity. Although the Petitioner argues in the Second Restated Petition that Platinum Falcon should be treated as insulated pursuant to section 1.5003 of the Commission's rules, 47 CFR § 1.5003, it alternatively provided pertinent ownership information and made appropriate specific approval requests in the event that the Commission determines that Platinum Falcon's investment is uninsulated. However, in the December 2023 Supplement, the Petitioner requests that we treat both Platinum Falcon and CEPSA Holding as uninsulated for the purposes of this declaratory ruling.

The Petitioner requests aggregate approval of up to 100% indirect foreign ownership in Connect Holding II, the controlling U.S. parent of the Licensees.

Pursuant to section 1.5001(i) of the Commission's rules, 47 CFR § 1.5001(i), the Petitioner requests that the Commission specifically approve the indirect foreign equity and/or voting interests that would be held in Connect Holding II, the controlling U.S. parent of Licensees, by the foreign-organized entities listed below:

CEPSA Holding LLC (28% equity, 3% voting) (United Arab Emirates);
Mamoura Diversified Global Holding PJSC (28% equity, 3% voting) (United Arab Emirates);
Mubadala Investment Company PJSC (28% equity, 3% voting) (United Arab Emirates);
Platinum Falcon B 2018 RSC Limited (7% equity, deemed 100% voting) (United Arab Emirates);
Platinum International Investment Holdings RSC Limited (7% equity, deemed 100% voting) (United Arab Emirates);
Abu Dhabi Investment Authority (7% equity, deemed 100% voting) (United Arab Emirates);
Government of Abu Dhabi in the United Arab Emirates (36% equity, deemed 100% voting) (United Arab Emirates);
Green Leaf Investment Holdings Sole Proprietorship LLC (1% equity, deemed 100% voting) (United Arab Emirates);
Al Sariya Commercial Investments LLC (1% equity, deemed 100% voting) (United Arab Emirates);
Aviva Investment Pte Ltd (6% equity, 9% voting) (Singapore);
Stichting Pensioenfonds ABP (2% equity, deemed 4% voting) (Netherlands); and
BRH Holdings GP, Ltd. (0% equity, 28% voting) (Cayman Islands).

Pursuant to section 1.5001(k) of the Commission's rules, 47 CFR § 1.5001(k), the Petitioner requests advance approval for up to a non-controlling 49.99% foreign equity and/or voting interests in Connect Holding II, the controlling U.S. parent of Licensees for each of the following foreign-organized entities listed below:

CEPSA Holding LLC (49.99% equity, 49.99% voting) (United Arab Emirates);
Mamoura Diversified Global Holding PJSC (49.99% equity, 49.99% voting) (United Arab Emirates);
Mubadala Investment Company PJSC (49.99% equity, 49.99% voting) (United Arab Emirates);
Platinum Falcon B 2018 RSC Limited (49.99% equity, 49.99% voting) (United Arab Emirates);
Platinum International Investment Holdings RSC Limited (49.99% equity, 49.99% voting) (United Arab Emirates);
Abu Dhabi Investment Authority (49.99% equity, 49.99% voting) (United Arab Emirates);
Government of Abu Dhabi in the United Arab Emirates (49.99% equity, 49.99% voting) (United Arab Emirates);
Aviva Investment Pte Ltd (49.99% equity, 49.99% voting) (Singapore);
Stichting Pensioenfonds ABP (49.99% equity, 49.99% voting) (Netherlands); and
BRH Holdings GP, Ltd. (0% equity, 49.99% voting) (Cayman Islands).

The Petitioner asserts that the public interest would be served by granting the Second Restated Petition.

Pursuant to Commission practice, the Restated Petition was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy or trade policy concerns related to the foreign ownership of the Petitioner. 47 CFR § 1.40001(a). 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 (2020). On December 5, 2023, 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), filed a petition (Committee Petition). The Committee advises that it has no objection to the grant of the foreign ownership request, provided that the Commission conditions its approval on Connect Holding and VoteCo abiding by the commitments and undertakings set forth in the 2022 LOA.

Foreign Ownership Ruling.

We find that the public interest would not be served by prohibiting foreign ownership of Connect Holding II, the controlling U.S. parent of Licensees, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Second Restated Petition as amended subject to the conditions set out herein.

This ruling authorizes 100% aggregate foreign ownership of Connect Holding II, as the controlling U.S. parent of Licensees, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before indirect foreign ownership of Connect Holding II exceeds the terms and conditions of this ruling. 47 CFR § 1.5004. Specifically, pursuant to section 1.5001(i) of the Commission's rules, we grant Petitioner's request to permit the above-listed foreign entities to hold indirect equity and/or voting interests in Connect Holding II, the controlling U.S. parent, in the amounts specified above.

In addition, pursuant to section 1.5001(k) of the Commission's rules, we grant Petitioner's request for advance approval for the above listed foreign entities to increase their interests up to and including a non-controlling 49.99% equity and voting interests in Connect Holding II as the controlling U.S. parent of Licensees.

Uninsulated individuals and entities that hold minority equity and voting interests in Connect Holding II with a deemed 100% voting interest in Connect Holding II in accordance with section 1.5002(b)(iii)(A) of the Commission's rules will continue to be deemed to hold a 100% voting interest in Connect Holding II. 47 CFR § 1.5002(b)(iii)(A). A finding that an entity or individual is "deemed" to have a 100% voting interest for

purposes of determining compliance with section 310(b)(4) of the Act and section 1.5000(a)(1) et seq. of the Commission's rules does not indicate that the interest constitutes de jure control for purposes of compliance with section 310(d) of the Act.

We grant the Committee's Petition and condition grant of the Second Restated on Connect Holding and VoteCo's compliance with the 2022 LOA. A copy of the Committee Petition and the 2022 LOA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching for ISP-PDR- 20230316-00003.

The Petitioner has an affirmative duty to monitor its foreign equity and voting interests, calculate those interests consistent with the attribution principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules, and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act. 47 CFR §§ 1.5002-1.5003; 47 CFR § 1.5004, Note to paragraph (a).

A failure to comply and/or remain in compliance with any of these requirements shall constitute a failure to meet a condition of this declaratory ruling and the underlying licenses and thus grounds for declaring them terminated without further action on the part of the Commission. Failure to meet a condition of this declaratory ruling may also result in monetary sanctions or other enforcement action by the Commission. Grant of this declaratory ruling is without prejudice to the Commission's action on any other related pending application(s).

Grant of this declaratory ruling is without prejudice to the Commission's action on any other related pending application(s).

ITC-214-20231114-00144 E Maya Virtual Inc.

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority Date of Action: 12/15/2023

Maya Virtual Inc. (Maya Virtual) 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).

Maya Virtual, a Delaware corporation, is wholly owned by Daniel J. Fry, a U.S. citizen.

ITC-214-20231121-00146 E Lux Mobile USA, Inc

International Telecommunications Certificate

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

Grant of Authority Date of Action: 12/15/2023

Lux Mobile USA, Inc. (Lux 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).

Lux Mobile, a Delaware corporation, is owned by four U.S. citizens: Jamil Hindi (25%); Jarallah Hindi (25%); Bassel Saleh (25%); and Ryan Saleh (25%).

ITC-214-20231122-00147 E Cliq Communications 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: 12/15/2023

Cliq Communications LLC (Cliq) 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).

Cliq, a Florida limited liability company, is owned by three U.S. citizens: Walid Omar Hamid (33.33%); Jalal Shehadeh (33.33%); and Marwan Shihadeh (33.33%).

ITC-ASG-20231019-00130 E Metro Fibernet, LLC

Assignment

Grant of Authority Date of Action: 12/15/2023

Current Licensee: Velocity Telephone, Inc.

FROM: Velocity Telephone, Inc.

TO: Metro Fibernet, LLC

Metro Fibernet, LLC d/b/a Metronet (MFN) has filed an application seeking consent for the assignment of assets from Velocity Telephone, Inc. (Velocity and with MFN, the Applicants) to MFN. Pursuant to a September 26, 2023 Asset Purchase Agreement, MFN will acquire substantially all the assets of Velocity used to provide telecommunications services including its customer base, but not Velocity's international section 214 authorization. MFN will provide international services to its newly acquired customers under the international section 214 authorization for global resale service held by its indirect 100% parent, Metronet Holdings, LLC (Metronet Holdings) (ITC-214-20110114-00005), pursuant to section 63.12(h) of the Commission's rules. 47 CFR § 63.21(h). Velocity will retain its international section 214 authorization to provide global resale service (ITC-214-20090911-00413).

MFN, a Nevada limited liability company, is an indirect wholly owned subsidiary of Metronet Holdings, a Delaware limited liability company. According to the Applicants, Metronet Holdings does not have any majority interest owner, but the Oak Hill Investors and the Cinelli Investors each has negative de facto or actual control of Metronet Holdings. The ownership interests in Metronet Holdings are held, either directly or through holding companies, primarily by (1) the Oak Hill Investors, (2) the Cinelli Investors, and (3) funds advised and/or managed by indirect subsidiaries of KKR & Co. Inc. (KKR). The 10% or greater direct owners of MetroNet Holdings are: Metro Buyer Parent Blocker Corp., a Delaware corporation (approx. 26.63%), and Metronet Value Plan Holding, LLC, a Delaware limited liability company (approx. 10%).

The Oak Hill Investor entities with a 10% or greater indirect interest in Metronet Holdings are: (1) OHCP MN GenPar V, L.P., a Cayman Island entity (approx. 18.86%); (2) OHCP GenPar V, L.P., a Cayman Island entity (approx. 11.12%); (3) OHCP MGP V, Ltd., a Cayman Island entity (approx. 29.98%); (4) OCHP GenPar IV, L.P. a Cayman Island entity (approx. 10.31%); (5) Principal Investors IV, L.P., a Cayman Island entity (approx. 10.31%); (6) OHCP MGP IV, Ltd., a Cayman Island entity (approx. 10.31%); (7) OHCP GenPar Holdco, L.P., a Cayman Island entity (approx. 21.43%); (8) OHCP GenPar Super Holdco, L.P., a Cayman Island entity (approx. 21.43%); and (9) OHCP GenPar Super Holdco GP, Ltd., a Cayman Island entity (approx. 21.43%). OHCP GenPar Super Holdco GP, Ltd. has three equal shareholders, all U.S. citizens: Brian N. Cherry, Steven G. Puccinelli, and Tyler J. Wolfram. In addition, according to the Applicants, the following individuals, all U.S. citizens, each holds interests in one or more Oak Hill Investor Funds that may exceed a 10% interest in Metronet Holdings: Scott A. Baker, Brian N. Cherry, Benjamin Diesbach, Stratton R. Heath, III, John R. Monsky, Steven G. Puccinelli, and Tyler J. Wolfram.

The KKR entities with a 10% or greater indirect interest in Metronet Holdings are: (1) KKR Knox Aggregator (Electing) L.P., a Delaware limited partnership (approx. 26.63%); (2) KKR Knox Aggregator LLC, a Delaware limited liability company (approx. 36.10%); (3) KKR Associates Infrastructure IV AIV L.P., a Delaware limited partnership (approx. 13.79%); (4) KKR Infrastructure IV AIV LLC, a Delaware limited liability company (approx. 13.79%); (5) KKR Infrastructure IV Holdings AIV Limited, a Cayman Island entity (approx. 13.79%); (6) KKR Global Infrastructure Investors III (Knox) Electing L.P., a Delaware limited partnership (approx. 10.20%); (7) KKR Global Infrastructure Investors III (Knox) Direct L.P., a Delaware limited partnership (approx. 36.10%); (8) KKR Associates Infrastructure III AIV SCSp, a Luxembourg entity (approx. 36.10%); (9) KKR Infrastructure III AIV S.a.r.l., a Luxembourg entity (approx. 36.10%); (10) KKR Infrastructure III Holdings AIV Limited, a Cayman Islands entity (approx. 36.10%); (11) KKR Financial Holdings LLC, a Delaware limited liability company (approx. 36.10%); (12) KKR Group Partnership L.P., a Cayman Islands entity (approx. 36.10%); (13) KKR Group Holdings Corp., a Delaware corporation (approx. 36.10%); (14) KKR Group Co. Inc., a Delaware corporation (approx. 36.10%); and (15) KKR & Co. Inc., a Delaware company (approx. 36.10%). According to the Applicants, KKR & Co. Inc. is a publicly traded company in which no individual or entity holds a 10% or greater ownership interest.

The Cinelli Investors collectively hold approximately 15.21% of the direct equity interests in Metronet Holdings. According to the Applicants, except for John Cinelli and Janet Cinelli, none of the Cinelli Investors individually holds a 10% or greater interest in Metronet Holdings. John Cinelli, a U.S. citizen, holds his interests in Metronet Holdings: (1) individually, (2) as the managing member of a limited liability company with a less than 10% equity interest in Holdings, and (3) as co-trustee with Janet Cinelli of the grantor retained annuity trusts (GRATs) that comprise part of the Cinelli Investors. Janet Cinelli, a U.S. citizen, holds interest in Metronet Holdings: (1) individually and (2) as co-trustee with John Cinelli of the GRATs.

In the Executive Branch Review Process Order, the Commission set out categories of applications with reportable foreign ownership that may be excluded from referral 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, 10938-42, paras. 29-39 (2020). The Applicants have made a showing that the only reportable foreign ownership in MetroNet Holdings and MFN is through passive, offshore intermediary holding companies and that 100% of the ultimate control is held by a U.S. citizens and entities. We exercised our discretion and did not refer the application to the Executive Branch. Although we did not formally refer this application, we provided a courtesy copy of the accepted for filing public notice the Executive Branch agencies. See id. at 10941, para. 36, n. 99; see also id. at 10957, para 81, n. 205.

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

ITC-T/C-20221128-00141 E All West Communications, Inc.

Transfer of Control

Grant of Authority Date of Action: 12/20/2023

Current Licensee: All West Communications, Inc.

FROM: All West Communications, Inc.

TO: Novacap All West Holdings, Inc.

All West Communications, Inc. (All West), a Utah corporation that holds an international section 214 authorization (ITC-214-20220715-00083), has filed an application seeking the Commission's consent to the transfer of control of All West to Novacap All West Holdings, Inc. (Novacap Holdings). On April 25, 2023, the Applicants filed a restated application, and filed a supplement on May 3, 2023.

Under the proposed transaction, All West Novacap Acquisition Company, Inc. (Novacap Acquisition), a Delaware corporation that is wholly owned by Novacap Holdings, will acquire all of the issued and outstanding equity interests in All West and as result will take control of All West. As part of the closing steps of the transaction, Novacap Acquisition will be removed from the ownership structure resulting in All West becoming a direct wholly owned subsidiary of Novacap Holdings, a Delaware corporation. Novacap Holdings is an indirect subsidiary of Novacap Management Inc. (Novacap Mangement), a Canadian private equity group.

The direct owners of Novacap Holdings are: (1) Novacap Digital Infrastructure I, L.P. (Novacap Digital), a Canadian limited partnership (37% equity and voting); (2) Novacap International DI I, L.P. (Novacap International), a Canadian limited partnership (22% equity and voting); (3) Novacap Co-Investment (All West), L.P. (Novacap Co-Investment), a Canadian limited partnership (19% equity and voting); (4) Peppertree Capital Fund IX QP, L.P. (Peppertree), a Delaware limited partnership (19% equity and voting); and (5) other Peppertree investors (1% equity and voting).

Peppertree Capital FIX, LP (Peppertree FIX) is the general partner of Peppertree, and Peppertree Capital IX, Inc. (Peppertree IX) is the general partner of Peppertree FIX, both Delaware entities. Ryan Lepene and F. Howard Mandel, both U.S. citizens, each holds 50% equity and voting interests in Peppertree IX.

Novacap Management is the general partner of NovaCap Digital, NovaCap International, and Novacap Co-Investment with a 100% voting interest and a 0.001% equity interest in each. Novo Holding A/S, a Denmark entity, holds a 16% equity interest in Novacap International and a 90% equity interest in Novacap Co-Investment. Novo Holding A/S is wholly owned by Novo Nordisk Fonden, a Denmark entity, which is a commercial foundation with charitable purposes. According to the Application, Novo Nordisk Fonden is an independent self-governing institution without any owners and the ultimate control of the foundation is vested in its Board of Directors, none of whom will hold an indirect interest in more than 10% of the equity of Novacap Holdings.

Novacap Management has delegated the decision-making authority over Novacap Digital, Novacap International, and Novcap Co-Investment to the DI Investment Committee comprised of Pascal Tremblay, Stephane Tremblay, Francois Laflamme, David Lewin, Eric Desosiers, and Benjamin Desmarais, all Canadian citizens, and Thadeus Mocarski, a U.S. citizen. Novacap Management is controlled (100% voting interest) by Novacap Fund Management Inc, a Canadian entity. Novacap Fund Management Inc. is controlled by the following individuals: Pascal Tremblay, Stephane Tremblay, Francois Laflamme, David Lewin, and Eric Desosiers, all Canadian citizens, and Thadeus Mocarski, a U.S. citizen.

The Applicants state that no other individual or entity will have a 10% or greater direct or indirect equity or voting interest in Novacap Holdings or All West.

Pursuant to Commission practice, the application was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the application. 47 CFR § 1.40001(a). 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 (2020). On December 6, 2023, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a Petition to Adopt Conditions to Authorizations and Licenses (Committee Petition). The Committee advises that it has no objection to grant of the Restated Petition, provided that the Commission conditions its approval on the assurance of All West Communications, Inc. and its wholly owned subsidiaries All West/Utah, Inc., All West/Wyoming Inc., and Pilot Butte Transmission Company, Inc; Novacap All West Holdings, Inc.; and Novacap Management Inc. to abide by the commitments and undertakings set forth in the November 13, 2023, Letter of Agreement Agreement from Matthew Weller, President, All West Communications, Inc., All West/Utah, Inc., All West/Wyoming, Inc., and Pilot Butte Transmission Company, Inc.; Ted Mocarski, President and Secretary, Novacap All West Holdings, Inc.; and Pascal Tremblay, President and Chief Executive Officer, Managing Partner TMT, Novacap Management Inc., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice, National Security Division (LOA).

We grant the Committee Petition and condition grant of the application on compliance by All West Communications, Inc. and its wholly owned subsidiaries All West/Utah, Inc., All West/Wyoming Inc., and Pilot Butte Transmission Company, Inc; Novacap All West Holdings, Inc.; and Novacap Management Inc with the commitments and undertakings set forth in the LOA. A copy of the Committee Petition and the LOA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching for ITC-T/C-20221128-00141 and accessing "Other filings related to this application" from the Document Viewing area.

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

ITC-T/C-20231025-00133 E Royal Telephone Company

Transfer of Control

Grant of Authority Date of Action: 12/15/2023

Current Licensee: Royal Telephone Company

FROM: Royal Telephone Company

TO: Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications

Royal Telephone Company (Royal), an Iowa company that holds an international section 214 authorization to provide global resale service (ITC-214-20080826-00400), has filed an application for consent to the transfer of control of Royal to Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications (Mutual). Pursuant to an agreement and plan of merger, Royal will merge with and into Noble Acquisition, Inc., a wholly owned subsidiary of Mutual, with Royal being the surviving entity. As a result, Royal will become a direct wholly owned subsidiary of Mutual. Mutual is an Iowa company in which no individual or entity holds a 10% or greater ownership interest.

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

INFORMATIVE

ITC-214-19961003-00486 Verizon Business Global LLC dba Verizon Business

By letter filed December 14, 2023, Verizon Business Global LLC notified the Commission that the following wholly-owned subsidiaries may provide international telecommunications service under the international section 214 authorization held by the Verizon Business Global LLC, pursuant to section 63.21(h) of the Commission's rules, 47 CFR 63.21(h): Bell Atlantic Mobile Systems LLC.

SURRENDER

ITC-214-19950530-00027 MCI International LLC

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960509-00185 Bell Atlantic Mobile Systems LLC

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960802-00364 NYNEX LLC

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20080219-00075 Verizon Maryland LLC

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20141016-00281 Bluegrass Cellular, Inc.

Bluegrass Cellular, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20141016-00282 Bluegrass Wireless LLC

Bluegrass Wireless LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20150514-00127 TNZI USA LLC

TNZI USA LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20200311-00038 Cellco Partnership

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-MOD-20070212-00192 Verizon Communications Inc.

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-MOD-20070319-00191 Cellco Partnership

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-MOD-20070514-00322 Verizon Communications Inc.

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-MOD-20070524-00323 Verizon Communications Inc.

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

ITC-MOD-20070828-00362 Cellco Partnership

Verizon Communications Inc., on behalf of its wholly-owned subsidiary, notified the Commission of the surrender of its international section 214 authorization.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

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

In the Matter of	)	
	)	
Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	)	WC Docket No. 18-89
	)	
	)	
	)	
	)	
	)	

ORDER

Adopted: December 21, 2023 **Released: December 21, 2023**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the Petition filed by GigSky, Inc. (GigSky or Petitioner) requesting an extension of its removal, replacement, and disposal term under the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program).[1] The Bureau grants the extension pursuant to Commission rule 1.50004(h)(2)[2] and extends the term for GigSky, Inc. from December 22, 2023 to June 22, 2024.

2. As directed by the Secure and Trusted Communications Networks Act of 2019, as amended (Secure Networks Act), the Commission established the Reimbursement Program to reimburse providers of advanced communications services with ten million or fewer customers for reasonable costs incurred in the removal, replacement, and disposal of covered communications equipment or services from their networks that pose a national security risk, i.e., communications equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE), that were obtained by providers on or before June 30, 2020.[3] The Reimbursement Program was later funded by a

[1] Request of GigSky for Extension of Time, WC Docket No. 18-89 (filed Dec. 18, 2023), https://www.fcc.gov/ecfs/document/1218303079804/1 (Petition).

[2] 47 CFR § 1.50004(h)(2).

[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). 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 or 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).

$1.9 billion congressional appropriation,[4] which is less than the $5.6 billion in collective funds requested by applicants.[5] Because demand exceeded available funding, applicants received a pro-rated funding allocation of approximately 39.5% of their reasonable and supported estimated costs for removing, replacing, and disposing of covered communications equipment and services.[6]

3. Reimbursement Program recipients must complete the removal, replacement, and disposal of covered communications equipment and services within one year from the initial disbursement of funds to the recipient.[7] The Commission authorized the Bureau to rule on individual petitions for an extension of this term.[8] 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."[9]

4. GigSky requests an extension of its removal, replacement, and disposal term from December 22, 2023 to June 22, 2024.[10] It claims that the completion of its removal, replacement, and disposal obligations has been delayed due to the partial funding of the Reimbursement Program.[11] Specifically, GigSky states that as a small business it did not anticipate the full financial demands of the extensive project and that it needs additional time to complete the project efficiently and effectively and without compromising its financial stability or the integrity of the network changes.[12]

5. Based on the facts described above, and consistent with our prior analysis and grant of extension requests relying on similar arguments regarding the Reimbursement Program's funding shortfall,[13] we find that GigSky has established that the funding shortfall has impacted it so that, "due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term," as required by rule 1.50004(h)(2).[14] Gigsky's most recent quarterly status update provides additional context and further support for our finding that an extension of its removal, replacement, and disposal term is appropriate, as it states that "untrusted equipment within the network has been fully removed and disposed of" but the lack of full funding and GigSky's loss of capital is impacting its network replacement and operations. We therefore grant the extension.

6. Accordingly, IT IS ORDERED that, pursuant to section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), and sections 0.204, 0.291, and 1.50004(h)(2) of the Commission's rules, 47 CFR §§ 0.204, 0.291, 1.50004(h)(2), the Petition for Extension of Time filed by

[4] 47 U.S.C. § 1603(k).

[5] *See Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, at 1-2 (WCB July 18, 2022) (*SCRP Granted Applications Public Notice*).

[6] *See* 47 U.S.C. § 1603(d)(5)(C); 47 CFR § 1.50004(f)(1); *SCRP Granted Applications Public Notice* at 2-3.

[7] 47 U.S.C. § 1603(d)(6)(A); 47 CFR § 1.50004(h).

[8] *See* 47 U.S.C. § 1603(d)(6)(C); 47 CFR § 1.50004(h)(2).

[9] 47 CFR § 1.50004(h)(2); *see also 2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173 and n.501.

[10] *See generally* Petition.

[11] *Id.* at 2.

[12] *Id.*

[13] *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1016, paras. 12-14 (WCB Oct. 27, 2023); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-938, paras. 12-15 (WCB Oct. 10, 2023).

[14] 47 CFR § 1.50004(h)(2).

GigSky is GRANTED.

7. IT IS FURTHER ORDERED that the removal, replacement, and disposal term for GigSky under 47 CFR § 1.50004(h)(2) IS EXTENDED from December 22, 2023 to June 22, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

PUBLIC NOTICE

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

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

DA 23-1197
Released: December 21, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF ALL WEST COMMUNICATIONS, INC. TO NOVACAP ALL WEST HOLDINGS, INC.

WC Docket No. 22-410

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by All West Communications, Inc. (All West) and Novacap All West Holdings, Inc. (Novacap Holdings) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Federal Communications Commission's rules,[1] requesting consent for the transfer of control of All West from its current shareholders to Novacap Holdings.[2]

On May 5, 2023, the Bureau released a Public Notice seeking comment on the Application.[3] The Bureau did not receive comments or petitions in opposition to the Application.

Applicants and Description of Transaction

All West, a Utah corporation, is an incumbent local exchange carrier (LEC) that serves six rural local exchanges over approximately 4,200 access lines in its Utah study area and two rural local exchanges over approximately 200 access lines in its Wyoming study area.[4] All West Financial Services

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

[2] Restated Joint Section 214 Application of All West Communications, Inc. and Novacap All West Holdings, Inc. for Consent to Transfer Control, WC Docket No. 22-410 (filed Apr. 25, 2023) (Application) (updating the initial application filed on Nov. 28, 2022 (Initial Application)). Applicants filed multiple supplements to the Application. *See* Letter from John Gasparini, Counsel for Novacap All West Holdings, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-410 (filed Dec. 16, 2022); Letter from John Gasparini, Counsel for Novacap All West Holdings, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-410 (filed Jan. 9, 2023); Letter from Richard Rubino, Counsel for All West Communications, Inc. and Mathew Weller, President, All West Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-410 (filed May 2, 2023) (May 2 Supplement); Letter from John Gasparini, Counsel for Novacap All West Holdings, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-410 (filed Dec. 12, 2023). Applicants also filed applications for the transfer of authorizations associated with international services and wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] *See Domestic Section 214 Application Filed for the Transfer of Control of All West Communications, Inc. to Novacap Holdings, Inc.*, WC Docket Nos. 22-410, Public Notice, DA 23-372 (WCB 2023) (*Public Notice*).

d/b/a All West Broadband (AWFS), a Utah corporation and wholly-owned subsidiary of All West, provides broadband Internet access services (BIAS) to customers in the All West incumbent LEC service areas in Utah and Wyoming, and in the All West/Utah, Inc. (All West/Utah) and All West/Wyoming, Inc. (All West/Wyoming) competitive LEC service areas in Utah and Wyoming.[5] All West/Utah, a Utah corporation and wholly-owned subsidiary of AWFS, provides competitive LEC services and other services in and around five Utah communities (Park City, Heber, Huntsville, Morgan, and Salt Lake).[6] All West/Wyoming, a Wyoming corporation and wholly-owned subsidiary of AWFS, provides competitive LEC services in and around five Wyoming communities (Kemmerer, Farson, Evanston, Rock Springs, and Green River).[7] All West/Utah and All West/Wyoming competitive LEC operations, combined, serve approximately 1,100 access lines.[8] All West/Wyoming is authorized to receive a total of $46,648 in Rural Digital Opportunity Fund (RDOF) (Auction 904) to serve 218 locations in 22 eligible census blocks (Assigned Census Blocks).[9]

Novacap Holdings, a Delaware corporation, is a holding company and does not provide any telecommunications services.[10] Applicants state that Novacap Holdings will ultimately be controlled by Novacap Management Inc. (Novacap), a Canadian private equity fund.[11] Novacap controls Stratus Networks, Inc. (Stratus), Horizon Telecom, Inc. (Horizon), and Horizon's wholly-owned subsidiary, The Chillicothe Telephone Company (CTC).[12] CTC provides telecommunications services as an incumbent LEC in Ohio.[13] Stratus offers competitive long distance services and other services in 35 states.[14] CTC

---

[4] Application at 2. Applicants state that All West is designated as an eligible telecommunications carrier (ETC) in Utah and Wyoming where it receives ACAM II support and where it participates in the Lifeline program, Emergency Broadband Benefit program, and the Affordable Connectivity Program (ACP). *Id*. at 21-22. Applicants also state that All West will continue to support these programs through company promotion and state outreach programs. *Id.* at 21-22.

[5] Application at 2.

[6] *Id.*

[7] *Id.*

[8] Application at 3. Sweetwater Television Company, a Wyoming corporation and wholly-owned subsidiary of All West/Wyoming, owns cable television plant over which All West/Utah provides digital video services. *Id.* at 4.

[9] May 2 Supplement at 2; *see also Rural Digital Opportunity Fund Support Authorized For 469 Winning Bids,* AU Docket No. 20-34 et al., Public Notice, DA 21-1287, at Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2021). We note that All West/Wyoming is the designated ETC eligible to receive RDOF and Lifeline support and accordingly, maintains responsibility for complying with all RDOF-related and ETC-related obligations and requirements. *See* Application at 20-21;Application of All West/Wyoming, Inc. for Designation as an Eligible Telecommunications Carrier, Amended Order Granting Designation, Docket No. 70050-20-TG-21 (Record No. 15709) (WY Pub. Serv. Comm'n. 2021).

[10] Application at 4.

[11] *Id*. at 5, Exh. B (Post-Closing Ownership Structure Ex. B-3). Applicants state that the following individuals exercise Novacap's authority as general partner and individually hold a 14.3% interest in the "Novacap Vehicles": Pascal Tremblay, a Canadian citizen; Stéphane Tremblay, a Canadian citizen; Thadeus Mocarski, a U.S. citizen; Francois Laflamme, a Canadian citizen; David Lewin, a Canadian citizen; Eric Desrosiers, a Canadian citizen; and Benjamin Desmarais, a Canadian citizen. *Id*. at Exh. B (Post-Closing Ownership Structure Ex. B-3).

[12] *Id.* at 19. Horizon Acquisition Parent LLC, an indirect subsidiary of Novacap, filed an application for consent to transfer control of CTC, Horizon, and Urban Systems to Shenandoah Telecommunications Company. *See Domestic Section 214 Application Filed for the Transfer of Control of Horizon Acquisition Parent LLC and Its Subsidiaries to Shenandoah Telecommunications Company*, WC Docket No. 23-384, Public Notice, DA 23-2268 (WCB 2023).

[13] Application at 19. CTC receives ACAM support. *See* Application at 21.

[14] *Id.* at 19.

also owns and operates a fiber network of approximately 5,974 route miles that offers telecommunications services and other services to businesses, institutions, and wireless tower sites throughout southern and eastern Ohio, northwestern West Virginia, and portions of Indiana.[15] Novacap is wholly-owned by Novacap Fund Management Inc., a Canadian corporation.[16]

Pursuant to the terms of the proposed transaction, All West and Novacap All West Acquisition Company, Inc. (Novacap Acquisition) entered into an Agreement under which Novacap Acquisition, a wholly-owned subsidiary of Novacap Holdings created for the purposes of the proposed transaction, will acquire all of the issued and outstanding equity interests in All West and its subsidiaries.[17] Applicants state that, as a result of the proposed transaction, Novacap Holdings will assume control of All West and its subsidiaries, including all licenses, physical plant, and operations in Utah and Wyoming.[18]

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity and that Novacap's capital investment will enhance the Licensees' ability to meet their service obligations for their RDOF locations under the company's existing management.[19] Applicants assert that the transaction will enhance competition and not result in a reduction in the number of competitors in any service area, because "the service areas of Stratus, Horizon Telecom Inc. (together with CTC), and All West, do not and will not overlap."[20]

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[21] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[22] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[23]

---

[15] *Id*.

[16] *Id*. at Exh. B (Post-Closing Ownership Structure Ex. B-3). The majority of individuals holding a 10% or greater interest in Novacap Fund Management Inc. are Canadian citizens. *Id*.

[17] *See id.* at 5, n.2.

[18] *Id*. at 5.

[19] *Id*. at 6-7, 21.

[20] *Id*. at 6, 19.

[21] *See, e.g.*, *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al*., MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

[22] *See Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a reduction of competition. Applicants state that there will be no physical overlap in service areas or reduction in service providers in any markets as a result of the transaction.[24] Second, Applicants attest that the transaction "will not result in a change of management, technology or deployment that would alter or negatively impact All West's ability to meet its RDOF-related service obligations,"[25] and we thus expect no potential harm to existing customers to result from the transaction.

Applicants "commit to meeting all of the public interest and performance obligations associated with All West's receipt of RDOF support,"[26] and the record indicates that All West willl continue to have the technical, financial, and managerial expertise to do so after the consummation of the transaction.[27] All West will continue to be financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF funding, and we expect that the proposed transaction will not negatively impact the ability of All West to meet these obligations.[28] Applicants affirm that "All West will have very ample financial resources available to continue the build-out of All West's networks (including maintenance and enhancement of the builds completed using RDOF funds)."[29] Indeed, Applicants state that All West has already completed all of the required "RDOF census builds" in the Assigned Census Blocks and will submit its certification of compliance with its final build-out milestone in 2024.[30] Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.[31] Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.[32] Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and

---

[23] *See Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

[24] Application at 22.

[25] Dec. 12 Supplement at 1. All West/Wyoming is the recipient of RDOF support and the ETC directly responsible for continued compliance with RDOF- and ETC-related obligations after consummation of the transaction. Because All West/Wyoming is a wholly owned subsidiary of All West, however, we interpret Applicants' references to All West in the context of RDOF compliance to include All West/Wyoming.

[26] *Id*. The Bureau has provided a summary of the various obligations of authorized RDOF support recipients in prior authorization public notices. As stated in these public notices, the summary is not intended to be comprehensive, and all authorized parties are responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules. *See generally Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, 37 FCC Rcd 4897 (WCB 2022).

[27] Dec. 12 Supplement at 1; Application at 6-7, 21; Jan. 9 Supplement at 1-2.

[28] Dec. 12 Supplement at 1; Jan. 9 Supplement at 1-2.

[29] Application at 21.

[30] *Id.*

[31] *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

[32] *See id*. at 9237-38, paras. 275-76.

likelihood than when harms are present.[33]

Applicants state that the proposed transaction is consistent with the public interest.[34] Applicants contend that the transaction will enhance the ability of All West to "innovate and provide advanced services to its customers, which will in turn advance the telecommunications and information infrastructure of the state in which the Transferor operates and those state's economic health."[35] Moreover, Applicants assert that the proposed transaction will enable customers to continue to receive services without interruption and without "any immediate change in rates, terms, or conditions."[36] Finally, Applicants aver that the transaction will "enhance competition with other providers"[37] and "enhance the ability of the Transferor [All West] to innovate and provide advanced network services to its customers, which will in turn advance the telecommunications and information infrastructure of the state in which the Transferor operates and those states' economic health."[38]

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,[39] and accelerating private sector deployment of advanced services is one of the aims of the Act.[40] In light of the Applicants' commitments to meet all of Licensees' federal high-cost funding obligations[41] and the fact that Applicants are prepared to devote additional capital to accelerate facilities-based service offerings,[42] we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

On December 6, 2023, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), submitted a Petition to Adopt Conditions to Authorization and License (Committee Petition).[43] We grant the Committee Petition and condition grant of the Application on compliance by the Applicants with the commitments and undertakings set out in the Letter of Agreement (LOA) filed with the Committee Petition.

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

[33] *See id*.

[34] Application at 6.

[35] *Id*.

[36] *Id.*

[37] *Id.* at 7.

[38] *Id.* at 6.

[39] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[40] *See Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services")).

[41] Dec. 12 Supplement at 1; Jan. 9 Supplement at 2.

[42] Application at 21.

[43] National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorization and License, WC Docket No. 22-410, ITC-T/C-20221128-00141 (filed Dec. 6, 2023).

trade policy concerns.[44] As part of our public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.[45] 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.[46] The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.[47]

Pursuant to Commission practice, the Application and the associated international application and Petition for Declaratory Ruling, FCC Nos. ISP-PDR-20221129-00011, ITC-T/C-20221128-00141, 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.[48] On May 9, 2023, the U.S. Department of Justice (DOJ), on behalf of the Committee, informed 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.[49] We deferred action in response to this request from the Committee. Then, on August 14, 2023, DOJ notified the Commission that the Committee was "conducting [a 120-day] initial review to assess whether granting the Application

[44] *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*, 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*).

[45] *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

[46] *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, 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*, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *Pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

[47] 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.").

[48] *See Public Notice* at 3.

[49] Letter from Makenzie Briglia Skopowski, Attorney Advisor, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-410; File Nos. ISP-PDR-20221129-00011, ITC-T/C-20221128-00141, and Attach. (filed May 9, 2023).

will pose a risk to national security or law enforcement interests of the United States."[50]

In the Committee Petition, the Committee advises that it "has no objection to the Commission granting the above-captioned application, provided that the Commission conditions its consent" on compliance with the November 13, 2023, LOA, which NTIA filed with the Committee Petition.[51]

In accordance with the request of the Committee, and in the absence of any objection from the Applicants, we grant the Committee Petition. Accordingly, we condition grant of the Application to transfer domestic section 214 authority on compliance by the Applicants with the commitments and undertakings set forth in the LOA that apply to the Application.[52] A failure to comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and licenses and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

Grant of Application

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.[53] This grant of the Application is conditioned as set out in this Public Notice.

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, 63.03-63.04, we grant the Application with the condition described above. Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

Pursuant to sections 4(i)-(j) and 214(a), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j) and 214(a), and sections 63.03-63.04, of the Commission's rules, 47 CFR §§ 63.03-63.04, we grant the Committee Petition to Adopt Conditions to Authorization and License filed by the NTIA. Grant of the Application is conditioned upon compliance by the Applicants with the Letter of Agreement from Matthew Weller, President, All West Communications, Inc., and Ted Mocarski, President and Secretary, Novacap All West Holdings, Inc., et al. to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, National Security Division, United States Department of Justice, dated November 13, 2023.

For further information regarding the transfer of control application, please contact Dennis Johnson at (202) 418-0809 or Dennis.Johnson@fcc.gov, Wireline Competition Bureau.

-FCC-

---

[50] Letter from Makenzie Briglia Skopowski, Attorney Advisor, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-410; File Nos. ISP-PDR-20221129-00011, ITC-T/C-20221128-00141, and Attach. (filed Aug. 14, 2023).

[51] Committee Petition at 3.

[52] *T-Mobile/Sprint Order*, 34 FCC Rcd at 10732-33, para. 349*; Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

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

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

In the Matter of	)
	)
Amendment of Section 1.80(b) of the Commission's Rules	)
	)
Adjustment of Civil Monetary Penalties to Reflect Inflation	)
	)

ORDER

Adopted: December 22, 2023 **Released: December 22, 2023**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. This Order amends section 1.80(b) of the Commission's rules[1] to adjust the forfeiture penalties for inflation, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act).[2] That Act requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15.[3] The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase."[4]

II. DISCUSSION

2. The Bipartisan Budget Act of 2015 included, as section 701 thereto, the 2015 Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. That statute requires annual inflation adjustments for "any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law . . . or . . . has a maximum amount provided for by Federal law; and . . . is assessed or enforced by any agency pursuant to Federal law; and . . . is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts."[5] This

[1] 47 CFR § 1.80(b).

[2] Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015) (2015 Inflation Adjustment Act). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (1990 Inflation Adjustment Act).

[3] 1990 Inflation Adjustment Act § 4(a). *See also* Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-24-07 (Dec. 19, 2023) (OMB Dec. 2023 Guidance), https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.

[4] 1990 Inflation Adjustment Act § 6. *See also* OMB Dec. 2023 Guidance at 4.

[5] 1990 Inflation Adjustment Act § 3(2) *quoted in* OMB Dec. 2023 Guidance at 2.

adjustment thus applies only to penalties with a dollar amount.[6] The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance.[7]

3. On December 19, 2023, the Director of OMB issued guidance on the implementation of the annual adjustment rate for 2024 pursuant to the 2015 Inflation Adjustment Act,[8] and this Order follows that guidance. OMB instructs that, in order to complete the annual adjustment for 2024, the Commission must first identify the applicable civil monetary penalties.[9] Then the Commission must apply the OMB-supplied 2024 adjustment multiplier, which is 1.03241, to the most recently established or adjusted penalty amount.[10] Then the Commission must round each penalty amount to the nearest dollar.[11]

4. For 2024, the adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent penalty amount by the 2024 annual adjustment (1.03241), then rounding the result to the nearest dollar.[12] The adjustments in civil monetary penalties that we adopt in this Order apply only to such penalties assessed on and after January 15, 2024.

III. PROCEDURAL MATTERS

5. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures.[13] Further, the Commission delegated to the Chief of the Enforcement Bureau authority to perform such rulemaking functions that do not involve "[n]otices of proposed rulemaking and of inquiry and final orders in such proceedings."[14] In the 2015 Inflation Adjustment Act, Congress has mandated the periodic adjustment of the Commission's civil monetary penalties to reflect inflation and specified the formula for calculating such adjustment, and the Commission has no discretion to set alternative levels of adjusted civil monetary penalties. Moreover, that Act expressly provided that the annual adjustments shall be made "notwithstanding" the notice and comment rulemaking procedures that might otherwise apply under section 553 of the Administrative Procedure Act.[15] Therefore, action on delegated authority is properly taken in this Order amending the Commission's maximum civil monetary penalties, which are a part of the Commission's general enforcement policies and procedures. In addition, because a notice of proposed rulemaking is not required for these rule changes, no regulatory flexibility analysis is required.[16]

6. We have analyzed the actions taken herein with respect to the Paperwork Reduction Act of 1995 (PRA),[17] and we find them to impose no new or modified information collection(s) subject to the

[6] *See* OMB Dec. 2023 Guidance at 3.

[7] 1990 Inflation Adjustment Act § 7.

[8] *See generally* OMB Dec. 2023 Guidance.

[9] *Id.* at 2.

[10] *Id.* at 3. The adjustment is based on the percent change between each published October's CPI-U. "In this case, October 2023 CPI-U (307.671) /October 2022 CPI-U (298.012) = 1.03241." *Id.* at 1, n.4.

[11] *Id.* at 3.

[12] *Id.*

[13] *See* 47 CFR § 0.111(a)(22).

[14] *Id.* § 0.311(a)(1).

[15] 2015 Inflation Adjustment Act § 4(b)(2). *See also* OMB Dec. 2023 Guidance, *supra* note 3, at 3.

[16] 5 U.S.C. § 604(a).

[17] Pub. L. No. 104-13, 109 Stat. 163 (codified at 13 U.S.C. § 91, 44 U.S.C. §§ 101 note, 3501-3520).

PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[18] our actions do not impose any new or modified "information collection burden for small business concerns with fewer than 25 employees."[19]

7. 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.[20] The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to title 5, United States Code, section 801(a)(1)(A).

IV. ORDERING CLAUSES

8. Accordingly, pursuant to the Bipartisan Budget Act of 2015, 28 U.S.C. § 2461 note, and sections 0.111(a)(22) and 0.311 of the Commission's rules, 47 CFR §§ 0.111(a)(22), 0.311, **IT IS ORDERED** that this Order **IS ADOPTED**.

9. **IT IS FURTHER ORDERED** that section 1.80(b) of the Commission's rules, 47 CFR § 1.80(b), is **AMENDED** as set forth in the Appendix.

10. **IT IS FURTHER ORDERED** that this Order and the foregoing amendments to the Commission's rules **SHALL BE EFFECTIVE** upon publication in the Federal Register.

11. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Evaluation and Records Management, **SHALL SEND** a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

[18] Pub. L. No. 107-198, 116 Stat. 729 (codified at 5 U.S.C. § 601 note, 44 U.S.C. §§ 101 note, 3504, 3506, 3520, 3521).

[19] *See* 44 U.S.C. § 3506(c)(4).

[20] *See* 5 U.S.C. § 804(2).

APPENDIX

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1---PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.80 by revising paragraphs (b)(1) through (10), Table 4 to paragraph (b)(11), and Table 5 to paragraph (b)(12)(ii) to read as follows:

§1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(1) *Forfeiture penalty for a broadcast station licensee, permittee, cable television operator, or applicant*. If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph (b)(1), the forfeiture penalty under this section shall not exceed $61,238 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $612,395 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act (47 U.S.C. 554). Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed $495,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $4,573,840 for any single act or failure to act described in paragraph (a) of this section.

(2) *Forfeiture penalty for a common carrier or applicant*. If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $244,958 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $2,449,575 for any single act or failure to act described in paragraph (a) of this section.

(3) *Forfeiture penalty for a manufacturer or service provider*. If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act (47 U.S.C. 255, 617, or 619), and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than $140,674 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,406,728 for any single act or failure to act.

(4) *Forfeiture penalty for a 227(e) violation.* Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than $14,067 for each violation or three times that amount for each day of a continuing violation, except that the

amount assessed for any continuing violation shall not exceed a total of $1,406,728 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(5) *Forfeiture penalty for a 227(b)(4)(B) violation*. Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules in 47 CFR part 64 issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)–(F) of section 503(b)(2) plus an additional penalty not to exceed $11,955.

(6) *Forfeiture penalty for pirate radio broadcasting*.

(i) 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 $2,391,097; and

(ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than $119,555 for each day during which such offense occurs, in accordance with the limit described in this section.

(7) *Forfeiture penalty for a section 6507(b)(4) Tax Relief Act violation.* If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than $131,738 per incident nor more than $1,317,380 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(8) *Forfeiture penalty for a section 6507(b)(5) Tax Relief Act violation*. If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for contacting such a telephone number shall be not less than $13,174 per call nor more than $131,738 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(9) *Forfeiture penalty for a failure to block*. Any person determined to have failed to block illegal robocalls pursuant to §§ 64.6305(g) and 64.1200(n) of this chapter shall be liable to the United States for a forfeiture penalty of no more than $24,496 for each violation, to be assessed on a per-call basis.

(10) *Maximum forfeiture penalty for any case not previously covered*. In any case not covered in paragraphs (b)(1) through (9) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $24,496 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $183,718 for any single act or failure to act described in paragraph (a) of this section.

(11) * * *

Table 4 to Paragraph (b)(11) - Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors[21]

Violation	Statutory amount after 2024 annual inflation adjustment
Sec. 202(c) Common Carrier Discrimination ……	$14,697, $735/day
Sec. 203(e) Common Carrier Tariffs …….	$14,697, $735/day
Sec. 205(b) Common Carrier Prescriptions ……...	$29,395
Sec. 214(d) Common Carrier Line Extensions ….	$2,939/day
Sec. 219(b) Common Carrier Reports ……...	$2,939/day
Sec. 220(d) Common Carrier Records & Accounts	$14,697/day
Sec. 223(b) Dial-a-Porn …….	$152,310/day
Sec. 227(e) Caller Identification …….....	$14,067/violation $42,200/day for each day of continuing violation, up to $1,406,728 for any single act or failure to act
Sec. 364(a) Forfeitures (Ships) ……..	$12,249 /day (owner)
Sec. 364(b) Forfeitures (Ships) …….	$2,451 (vessel master)
Sec. 386(a) Forfeitures (Ships) …….	$12,249 /day (owner)
Sec. 386(b) Forfeitures (Ships) …….	$2,451 (vessel master)
Sec. 511 Pirate Radio Broadcasting ……..	$2,391,097, $119,555/day
Sec. 634 Cable EEO ……..….	$1,086/day

(12) * * *

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

[21] Unlike section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with two exceptions, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. One exception is section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The other exception is section 227(e) of the Act, which provides maximum forfeitures per violation, and for continuing violations. The Commission will apply the factors set forth in section 503(b)(2)(E) of the Act and this table 4 to determine the amount of the penalty to assess in any particular situation. The amounts in this table 4 are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in table 3 to this paragraph (b)(11).

Table 5 to Paragraph (b)(12)(ii)

U.S. Code citation	Maximum penalty after 2024 annual inflation adjustment
47 U.S.C. 202(c)	$14,697 $735
47 U.S.C. 203(e)	$14,697 $735
47 U.S.C. 205(b)	$29,395
47 U.S.C. 214(d)	$2,939
47 U.S.C. 219(b)	$2,939
47 U.S.C. 220(d)	$14,697
47 U.S.C. 223(b)	$152,310
47 U.S.C. 227(b)(4)(B)	$61,238, plus an additional penalty not to exceed $11,955 $612,395, plus an additional penalty not to exceed $11,955 $244,958, plus an additional penalty not to exceed $11,955 $2,449,575, plus an additional penalty not to exceed $11,955 $495,500, plus an additional penalty not to exceed $11,955 $4,573,840, plus an additional penalty not to exceed $11,955 $24,496, plus an additional penalty not to exceed $11,955 $183,718, plus an additional penalty not to exceed $11,955 $140,674, plus an additional penalty not to exceed $11,955 $1,406,728, plus an additional penalty not to exceed $11,955
47 U.S.C. 227(e)	$14,067 $42,200 $1,406,728
47 U.S.C. 362(a)	$12,249
47 U.S.C. 362(b)	$2,451
47 U.S.C. 386(a)	$12,249
47 U.S.C. 386(b)	$2,451
47 U.S.C. 503(b)(2)(A)	$61,238 $612,395
47 U.S.C. 503(b)(2)(B)	$244,958 $2,449,575
47 U.S.C. 503(b)(2)(C)	$495,500

	$4,573,840
47 U.S.C. 503(b)(2)(D) …….….	$24,496
	$183,718
47 U.S.C. 503(b)(2)(F)……	$140,674
	$1,406,728
47 U.S.C. 507(a) ……...……..…	$2,426
47 U.S.C. 507(b) …….....	$356
47 U.S.C. 511 ……..…	$2,391,097
	$119,555
47 U.S.C. 554 ……	$1,086
Sec. 6507(b)(4) of Tax Relief Act……	$1,317,380/incident
Sec. 6507(b)(5) of Tax Relief Act……	$131,738/call

* * * * *

Federal Communications Commission
Washington, D.C. 20554

December 22, 2023

DA 23-1199

Doug Smith
President and CEO
Ligado Networks LLC
10802 Parkridge Boulevard
Reston, VA 20191
doug@ligado.com

Daniel N. Bass
Chief Financial Officer
Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, NY 10105
dbass@fortress.com

David N. Brooks
Secretary and General Counsel
Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, NY 10105
dbrooks@fortress.com

Via E-MAIL

Re: Second Amended and Restated Voting Proxy Agreement, IB Docket No. 15-126

Dear Messrs. Smith, Bass, and Brooks,

This letter responds to the letters filed on December 1, 2023 and December 6, 2023 by Ligado Networks LLC (Ligado) and Fortress Investment Group (Fortress) requesting Commission approval for modifications to the March 11, 2019 Ligado Amended and Restated Voting Proxy Agreement (Amended and Restated VPA) in connection with the proposed transaction involving Ligado, Fortress Investment Group (Fortress), and Mubadala Capital (Mubadala), among other related entities (the Fortress/Mubadala Transaction).[1] In particular, Ligado seeks Commission approval to substitute Mubadala for Softbank and for other minor changes as reflected in the Second Amended and Restated Voting Proxy Agreement (Second Amended and Restated VPA).[2] The applicants seek to close the Fortress/Mubadala Transaction

[1] Letter from Doug Smith, President and CEO, Ligado Networks, LLC and Daniel N. Bass, Chief Financial Officer, Fortress Investment Group LLC, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, IB Docket 15-126 (filed Dec. 1, 2023) (Dec. 1, 2023 Letter); Letter from Doug Smith, President and CEO, Ligado Networks, LLC and Daniel N. Bass, Chief Financial Officer, Fortress Investment Group LLC, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, IB Docket 15-126 (filed Dec. 6, 2023) (Dec. 6, 2023 Letter). Although the Dec. 6, 2023 Letter was dated December 5, 2023, it was filed with the Commission on December 6, 2023.

[2] Pursuant to section 5.3 of the Amended and Restated VPA, prior written approval from the Commission is required before any changes to the Amended and Restated VPA can be made.

on or before December 29, 2023, and thus seek Commission approval of the changes to the Amended and Restated VPA as reflected in the Second Amended and Restated VPA.

According to the Dec. 6, 2023 Letter, the Committee on Foreign Investment in the United States (CFIUS) is currently reviewing the Fortress/Mubadala Transaction. Fortress and Mubadala confirmed in the Dec. 6, 2023 Letter that the parties do not intend to consummate the transaction until the CFIUS review has been completed and the transaction approved. We also note that Ligado subsidiaries, LightSquared Subsidiary LLC and One Dot Six LLC, entered into an agreement with the U.S. Department of Justice, including the Federal Bureau of Investigation, dated September 24, 2015 (2015 Agreement) to address issues relating to national security, law enforcement, and public safety. Ligado has advised that it is currently in compliance with the 2015 Agreement and will remain in compliance with its terms.

The Commission has no objection to the proposed changes to the Amended and Restated VPA and approves the version of the Second Amended and Restated VPA filed with the Dec. 1, 2023 Letter in IB Docket No. 15-126. Upon execution of the Second Amended and Restated VPA, applicants must file a copy of the final, signed agreement in IB Docket No. 15-126.

Sincerely,

Ethan Lucarelli
Chief
Office of International Affairs

cc: Wayne Johnsen
Counsel for Fortress Investment Group LLC
Wiley Rein LLP
wjohnsen@wiley.law

Scott Delacourt
Counsel for Fortress Investment Group LLC
Wiley Rein LLP
sdelacourt@wiley.law

Jennifer Richter
Counsel for Mubadala Capital
Akin Gump Strauss Hauer & Feld LLP
jrichter@akingump.com

Gerard Waldron
Counsel for Ligado Networks LLC
Covington & Burling LLP
gwaldron@cov.com

Sam Feder
Counsel for Softbank Group Corp.
Jenner & Block LLP

DA 23-1199

SFeder@jenner.com

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

In the Matter of	)	
	)	
CASTELLI MEDIA, LLC	)	Facility ID No. 182057
	)	NAL/Acct. No. 202341420045
Application for License to Cover for Low Power	)	FRN: 0032494429
Television Station	)	LMS File No. 0000232484
K35PH-D, College Station, Texas	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 21, 2023 **Released: December 21, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the above-captioned application (Application) of Castelli Media, LLC (CML), for license to cover low power television (LPTV) translator station K35PH-D, College Station, Texas (K35PH-D or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[1] we find that CML apparently willfully violated section 73.3598(a) the Commission's rules (Rules) by failing to timely file a license to cover application,[2] 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 CML is apparently liable for a monetary forfeiture in the amount of three thousand five hundred dollars ($3,500).

II. BACKGROUND

2. K35PH-D was an LPTV station and its original construction permit (CP)[5] was granted on August 4, 2020, with a three-year construction period expiring August 4, 2023.[6] The Station failed to file a licenses to cover by the CP's expiration date and the CP was automatically forfeited on August 4, 2023. On September 12, 2023, the Media Bureau's Video Division issued a letter memorializing the automatic forfeiture of the CP, deleting the Station's call sign and terminating all authority to construct the Station.[7]

3. On October 12, 2023, more than two months after the CP was forfeited and nearly seven months after CML states that construction of the Station's facilities was completed, CML sought

[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] 47 CFR § 73.3598(a).

[3] 47 CFR § 73.1745.

[4] *See* 47 U.S.C. § 301.

[5] *See* CDBS File No. BNPDTL-20090825AWA.

[6] The CP was subsequently modified but this did not change its expiration date. *See* LMS File No. 0000210687.

[7] *See* Letter to Castelli Media LLC from Barbara A. Kreisman, Chief, Video Division (Sept. 12, 2023) a copy of which is available at LMS File No. 0000210687.

reconsideration of the cancellation, reinstatement of the Station's expired CP, and permission to file an application for license to cover.[8] According to CML, the Station completed construction of its facilities and began operating on March 27, 2023.[9] CML provides documentation that the Station was constructed and operating at that time and have been operating continuously ever since.[10] CML goes on to explain that it failed to file a timely application for license to cover due to an administrative error.[11] CML's consulting engineer included a statement that she overlooked filing the Station's license to cover.[12] CML states that "steps are being taken to ensure such an error does not occur again."[13]

4. On December 11, 2023, the Media Bureau's Video Division granted CML's Petition,[14] granted a waiver of the Commission's rules and reinstated the Station's construction permit,[15] and instructed CML to file an application for license to cover within 10 days. CML promptly submitted an application for license to cover (Application) for the Station on December 12, 2023.[16]

III. DISCUSSION

5. Pursuant to section 503(b)(1)(B) of the Act,[17] 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.[18] 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.[19] 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,[20] and the Commission has so

[8] *See* Castelli Media, LLC Petition for Reconsideration (Oct. 12, 2023) (Petition) a copy of which is available at LMS File No. 0000232484.

[9] Petition at 2.

[10] *Id.* at Attachments A – G.

[11] *Id.* at Declaration of Vincent Castelli.

[12] *Id.* at Statement of Susan Hansen.

[13] *Id.*

[14] *See* E-Mail to Castelli Media, LLC from Shaun Maher, Video Division (Dec. 11, 2023), a copy of which is available at LMS File No. 0000232484.

[15] 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). The Division found that based on the specific facts and circumstances presented here waiver was warranted.

[16] LMS File No. 0000232484.

[17] 47 U.S.C. § 503(b)(1)(B).

[18] *Id. See also* 47 CFR § 1.80(a)(1).

[19] 47 U.S.C. § 312(f)(1).

[20] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

interpreted the term in the section 503(b) context.[21] 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."[22]

6. *Apparent Violation*. CML admits that it failed to timely file an application for license to cover as required by section 73.3598(xxx) of the Rules,[23] and continued operating the Station after the CP expired and before filing the Application nearly seven months later. CML explains that it completed construction of the Station's facilities in accordance with the CP and commenced operation of those facilities well before its expiration date. CML admits that it overlooked submitting the application for license to cover due to an administrative error. It is well settled Commission precedent that administrative oversight is not an excuse for failure to comply with the Commission's rules.[24] Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.[25] As a result, for nearly seven months, CML also engaged in unauthorized operation of the Station in violation of section 301 of the Act and section 73.1745 of the Rules.[26] We therefore find that CML has apparently violated the Rules and Act 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.[27] The guidelines also specify a base forfeiture amount of $10,000 for construction and operation without an instrument of authorization for the service.[28] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[29]

8. In this case, CML late-filed the Station's Application and engaged in unauthorized operation of the Stations for almost seven months. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to $3,500 because, as an LPTV station, the Station is providing a secondary service.[30]

---

[21] *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).

[22] 47 U.S.C. § 312(f)(2).

[23] *See* 47 CFR § 73.3598(a).

[24] *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).

[25] *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).

[26] *See* 47 U.S.C. § 301.

[27] *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.

[28] *Id.* A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

[29] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

[30] *See, e.g.*, *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of

(continued….)

Stations are only permitted to commence operation pursuant to a valid instrument of authorization and we find that CML's failure represents disregard, or at best ignorance, of Commission's licensing processes and the Act itself.

9. In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for CML'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.

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,[31] Vincent Castelli, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand five hundred dollars ($3,500) for its apparent willful violation of section 73.3598(a) 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.[32]

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[33] that, within thirty (30) days of the release date of this *NAL*, Castelli Media, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[34] 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:[35]

- 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).[36] For

---

Apparent Liability for Forfeiture, DA 21-1616 (rel. Dec. 21, 2021) (proposing $3,500 forfeiture for late-filed application for license to cover and four months unauthorized operations) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 21-1386 (rel. Nov. 5, 2021) (proposing $3,500 forfeiture for late-filed application for license to cover and six months unauthorized operations) (paid Nov. 30, 2021). *Cf. The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (finding that although the station is secondary, a forfeiture in the amount of $6,500 was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

[31] 47 U.S.C. § 503(b); 47 CFR § 1.80.

[32] 47 CFR § 73.3598(a); 47 CFR § 73.1745; and 47 U.S.C. § 301.

[33] 47 CFR § 1.80.

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

[35] 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.

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

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.[37] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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.[38] 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.[39] 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.

[37] *See* 47 CFR § 1.1914.

[38] 47 CFR §§ 1.16 and 1.80(g)(3).

[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 Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

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.[40]

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Castelli Media, LLC, 9925 Haynes Bridge Road, Suite 200-155, Alpharetta, GA 30022, as well as e-mailed to: castellimedialasvegas@gmail.com and a copy mailed to: Dan J. Alpert, Esq, 2120 N. 21st Rd., Arlington, VA 22201 and e-mailed to: dja@commlaw.tv.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[40] *See* 47 U.S.C. 503(b)(2)(E); *supra* para. 7.

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

In the Matter of	)	
	)	
Addressing the Homework Gap through the E-Rate Program	)	WC Docket No. 21-31
	)	
	)	

ORDER

Adopted: December 21, 2023 **Released: December 21, 2023**

New Deadline for Filing Comments: January 16, 2024
New Deadline for Filing Reply Comments: January 29, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (Bureau) partially grants a request filed by the State E-rate Coordinators' Alliance (SECA) and the Schools, Health and Libraries Broadband Coalition (SHLB) (collectively, the Petitioners), seeking extensions of the comment and reply comment deadlines for the above-captioned proceeding.[1] For the reasons explained below, we find that extensions are warranted, and we extend the comment and reply comment deadlines by one week to January 16, 2024,[2] and January 29, 2024, respectively.

II. BACKGROUND

2. On November 8, 2024, the Commission released a Notice of Proposed Rulemaking seeking comment on its proposal to permit eligible schools and libraries to receive E-Rate support for the off-premises use of Wi-Fi hotspots and wireless Internet services.[3] The *E-Rate Hotspots NPRM* was published in the Federal Register on December 7, 2023, and established January 8, 2024 and January 22, 2024 as the deadlines for filing comments and reply comments, respectively.[4]

3. On December 19, 2023, the Petitioners filed a petition to extend the comment deadline from January 8, 2024 to January 26, 2024, and the reply comment deadline from January 29, 2024 to February 9, 2024.[5] The Petitioners assert that the public interest will be served by granting their petition for several reasons.[6] First, the Petitioners explain that the current comment filing period overlaps with

[1] Petition of State E-rate Coordinators' Alliance and the Schools, Health and Libraries Broadband Coalition to Extend Comment and Reply Comment Deadline for Hot Spot Notice of Proposed Rulemaking, WC Docket No. 21-31 (filed Dec. 19, 2023) https://www.fcc.gov/ecfs/filing/121954068961 (Petition).

[2] We note that January 15, 2024 falls on a Federal holiday and extend the date to the next business day, January 16, 2024. *See also* 47 CFR § 1.4(j) (making the next business day the filing date when a deadline falls on a holiday).

[3] *See Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Order, FCC 23-91, 2023 WL 8602208 (Nov. 8, 2023) (*E-Rate Hotspots NPRM*).

[4] Federal Communications Commission, Addressing the Homework Gap through the E-Rate Program, Proposed Rule, 88 Fed Red 85157 (Dec. 7, 2023).

[5] Petition at 1.

[6] *See id.* at 1.

schools' winter breaks, leaving insufficient time for the Petitioners to confer with schools for the purposes of preparing comments.[7] Second, the Petitioners assert that additional time is necessary given the various other E-Rate program proceedings[8] and responsibilities[9] taking place at the same time or in the near future. Finally, the Petitioners highlight the importance of providing sufficient time for their organizations to develop a complete record and argue that the requested extension of time will not impede the Commission's ability to timely adopt new rules and issue a report and order for this proceeding in time for funding year 2025.[10]

III. DISCUSSION

4. We partially grant the Petitioners' request for a comment and reply comment deadline extension. As set forth in section 1.46 of the Commission's rules, the Commission does not routinely grant extensions of time for filing comments.[11] The Commission may consider an extension "to the extent that good cause for an extension is demonstrated."[12] The criteria for granting a request for extension of time "are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay."[13] In this instance, we do not find good cause exists to grant the requested 18-day extension of the comment and reply comment deadlines asked for by the Petitioners. However, we do find there is good cause to grant a shorter, seven-day extension of the comment and reply comment deadlines recognizing the overlap of the original comment period with the schools' winter holidays and the importance of developing a robust public record for this proceeding.

5. The Commission released the *E-Rate Hotspots NPRM* on November 8, 2023, giving commenters 61 days to address the issues in the *NPRM* before the January 8, 2024 original comment deadline. While we believe 61 days provides interested parties with ample time to respond to the proposals and issues raised in the *E-Rate Hotspots NPRM*, we recognize that there is overlap with winter holiday breaks that may impede the schools' availability to provide comments. Specifically, the Petitioners explain that many schools do not return from their winter breaks until the first week of January 2024.[14] We also acknowledge that many E-Rate participants are balancing concurrent or forthcoming program responsibilities, including preparing FCC Form 471 applications for funding year 2024,[15] and

[7] *See id.* at 1-2.

[8] *See id.* at 2 (explaining that the Petitioners were focusing on comments to the Eligible Service List updates when the *E-Rate Hotspots NPRM* was initially released in November 2023, and will need to also focus on responding to the Schools and Libraries Cybersecurity Pilot proceeding in the coming months).

[9] *See id.* at 2 (stating that they must also account and prepare for the E-Rate program funding year 2024 application filing window opening in January, including the training, competitive bidding, and administrative work needed to prepare for the window opening).

[10] *See* Petition at 3.

[11] 47 CFR § 1.46.

[12] *See e.g., Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59 and WC Docket No. 17-97, Order, 36 FCC Rcd 15572, 15573, para. 4 (WCB & CGB 2021) (*Robocall Extension Order*); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Order, DA 23-13 (WCB 2022).

[13] *Robocall Extension Order*, 36 FCC Rcd at 15573, para. 4.

[14] *See* Petition at 2, n.2. *See also* Letter from Johnathan Hurley, Assistant Superintendent of Technology, Dallas Independent School District, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 1 (filed Dec. 20, 2023).

[15] The funding year 2024 FCC Form 471 application filing window will open on January 17, 2024, and will close on March 27, 2024. Additionally, the E-Rate Productivity Center (EPC) Administrative Window will close on January 12, 2024.

participating in other E-Rate proceedings.[16] We therefore find that the record in this proceeding will benefit by allowing commenters additional time to respond to the proposals and questions asked in the *E-Rate Hotspots NPRM*. We agree with the Petitioners that developing a full record in this proceeding is important, particularly given the upcoming sunset of the Emergency Connectivity Fund program.[17] We further note that schools and libraries participating in the Emergency Connectivity Fund program have more than two full years of experience to draw from when considering these issues.[18] To avoid unnecessary delay and being conscious of other upcoming E-Rate program obligations, we find a brief seven-day extension of the comment and reply comment deadlines in this matter will serve the public interest by allowing parties additional time to gather the information needed to prepare and submit their comments, and thus, facilitate a more complete public record. We therefore partially grant the Petitioners' request and extend the comment deadline from January 8, 2024 to January 16, 2024, and the reply comment deadline from January 22, 2024 to January 29, 2024.

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.91, 0.131, 0.291, 0.331, 1.2, and 1.46 of the Commission's rules, 47 CFR §§ 0.91, 0.131, 0.291, 0.331, 1.2, and 1.46, that the Petition to Extend the Comment and Reply Comment Deadline filed by the Petitioners is GRANTED IN PART to the extent provided herein.

7. IT IS FURTHER ORDERED that the date for filing initial comments IS EXTENDED to January 16, 2024, and that the date for filing reply comments IS EXTENDED to January 29, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

[16] *See, e.g., Modernizing the E-Rate Program for School and Libraries*, WC Docket No. 13-184, Order, DA 23-1070 (WCB Nov. 9, 2023) (establishing a November 30, 2023 filing deadline for comments regarding the E-Rate program's funding year 2024 eligible services list, including the newly added equipment and services needed to use wi-fi on school buses); *Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Notice of Proposed Rulemaking, FCC 23-92 (Nov. 13, 2023) (seeking comment on a three-year cybersecurity pilot program for eligible schools and libraries).

[17] *See* Petition at 3.

[18] *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*).

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. 23-1202

Report No. SAT-01785 **Friday December 22, 2023**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-MOD-20230728-00187 E S2854 Intelsat License LLC
Modification 08/01/2023 - 07/31/2024
Grant of Authority Effective Date: 12/19/2023

Nature of Service: Fixed Satellite Service

On December 19, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for modification of its license to operate certain Ku-band frequencies on the NSS-7 satellite by extending the term for this authorization through July 31, 2024. Intelsat provides fixed-satellite service operations via NSS-7 at the 20.0° W.L. orbital location, in inclined-orbit, in the 10.95-11.20 GHz (space-to-Earth), 11.45-11.95 GHz (space-to-Earth), 12.50-12.75 GHz (space-to-Earth), and 14.00-14.50 GHz (Earth-to-space) frequency bands.

SAT-MOD-20230809-00198 E S2368 Intelsat License LLC
Modification
Effective Date:

Nature of Service: Fixed Satellite Service

On December 21, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat Licensee LLC for modification of its license for the Intelsat 1R space station at the 157.1° E.L. orbital location, in inclined-orbit, to extend its license term to March 31, 2024, and to modify the C- and Ku-band beam coverage capability. Intelsat IR will continue to operate in the 3700-4200 MHz, 10.95-11.2 GHz, 11.45-11.95 GHz (space-to-Earth), 5925-6425 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands. Telemetry, tracking and command operations will continue using the following center frequencies: 11696 MHz, 11697 MHz (space-to-Earth); and 13995 MHz, 14498.5 MHz (Earth-to-space).

SAT-STA-20231030-00268 E S2386 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 12/20/2023

On December 20, 2023, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for a period of 180 days, to operate Galaxy 13/Horizons-1 at the 150.0° W.L. orbital location. Galaxy 13/Horizons-1 operates 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 conducts 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-20231201-00298 E S3154 Momentus Space LLC

Special Temporary Authority

Grant of Authority Effective Date: 12/19/2023

On December 19, 2023, the Satellite Programs and Policy Division granted in part/deferred in part, with conditions, the request of Momentus Space LLC for special temporary authority to operate its Vigoride-6 (VR-6) space station for an additional 30 days.

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	)	
	)	
ROSELAND BROADCASTING, INC.	)	Facility ID No. 48834
	)	NAL/Acct. No. 202341420046
Low Power Television Station	)	FRN: 0028087013
KXCC-LD, Corpus Christi, TX	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 22, 2023 **Released: December 22, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it Roseland Broadcasting, Inc. (RBI or Licensee), licensee of low power television (LPTV) station KXCC-LD, Corpus Christi, Texas (KXCC-LD or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[1] we find that RBI apparently willfully violated section 73.3598(a)[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(a) of the Rules[3] and section 301 of the Act,[4] by engaging in unauthorized operation. Based upon our review of the facts and circumstances before us, we conclude that RBI is apparently liable for a monetary forfeiture in the amount of nine thousand five hundred dollars ($9,500).

II. BACKGROUND

2. KXCC-LD is an LPTV station licensed on channel 16.[5] On January 4, 2023, the Station was granted a construction permit to make minor modifications to its facilities (Mod CP), and the Mod CP was assigned an expiration date of January 4, 2026.[6] On February 6, 2023, RBI filed a resumption of operations notice stating that it "resumed regular operations, effective 2/1/2023, pursuant to the parameters of its license."[7] While it made reference to its resumption of operations, RBI failed to promptly submit an application for license, as required by the rules.[8] RBI eventually filed the Station's application for license to cover (License Application) on July 25, 2023, almost five months after

[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 § 73.3598(a).

[3] 47 CFR § 73.1745(a).

[4] *See* 47 U.S.C. § 301.

[5] *See* LMS File No. 0000075141.

[6] *See* LMS File No. 0000203596 (Mod CP).

[7] *See* LMS File No. 0000210344 (Resumption Notice). The Station went silent on September 28, 2022, due to the apparent loss of its tower site. *See* LMS File No. 0000201489 (granted Nov. 3, 2022).

[8] 47 CFR § 73.3598(a). *See also* 47 CFR § 73.1620(a) (permitting program tests upon notification to the Commission, provided that within 10 days thereafter, an application for a license is filed with the Commission).

construction was completed.[9] In that application, RBI acknowledges that the Station began operating pursuant to the Mod CP on February 1, 2023, and that it was late in submitting the application for license.[10] RBI states that it "overlooked filing a license to cover application at that time."[11] RBI requests that the Commission permit its late-filed license to cover *nunc pro tunc* to February 1, 2023, notwithstanding "the approximately 4-month delay . . . in filing this application."[12] RBI also stated that "[a]fter the license to cover application is granted, (RBI) intends to immediately file an application for Special Temporary Authority (STA) to operate KXCC-LD at reduced power (one-half of authorized ERP) while the station's transmitter is being repaired."[13]

3. In a series of amendments to its License Application filed in November 2023 following Video Division staff inquiries, RBI disclosed that the Station began operating with reduced power on June 27, 2023, and that it resumed full-power operation on September 25, 2023.[14] RBI also provided a Declaration of its Chief Financial Officer, Matthrew Davidge, recounting the facts previously disclosed in the License Application and confirming that the Station had operated with full-power prior to filing the Station's License Application from February 1, 2023 to June 27, 2023 and reduced power operations without a STA from June 27, 2023 to September 25, 2023.[15] According to Mr. Davidge, "[a]fter the station commenced broadcasting from the new site, a transmitter repair became necessary. Power was reduced accordingly and an STA was not sought due to the pendency of the license to cover."[16] He went on to explain that RBI did not immediately seek an STA for reduced power operation because: "[m]y attorney was concerned that the LMS database would associate the requested STA with the former site and create confusion."[17] According to Mr. Davidge, since the Commission had been alerted through the filing of License Application that the Station intended to reduce power, RBI assumed that "once the license to cover was granted, should it be necessary [it] would have filed the Request for STA."[18]

III. DISCUSSION

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act.[19] Under that provision, 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.[20] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or

[9] *See* LMS File No. 0000218484 (License Application). We note that because the Displacement CPs had not yet been canceled in the Commission's Licensing and Management System (LMS), the Stations were able to file license to cover applications against their expired permits. 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. 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.

[10] *Id.* at Notification of Late Filing Exhibit.

[11] *Id.*

[12] *Id.* We note that the Mod CP is still valid and does not expire until January 4, 2026. Therefore reinstatement of the Mod CP is not necessary.

[13] *Id.*

[14] License Application November 6, 2023 Amendment at Timeline.

[15] License Application November 1, 2023 Amendment at Declaration of Matthew Davidge, Chief Financial Officer.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] 47 U.S.C. § 503(b)(1)(B).

[20] *Id. See also* 47 CFR § 1.80(a)(1).

omission of [any] act, irrespective of any intent to violate" the law.[21] 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,[22] and the Commission has so interpreted the term in the section 503(b) context.[23] 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."[24]

5. *Apparent Violations*. RBI concedes that it failed to timely file a license to cover as required by section 73.3598(a) of the Rules and a STA as required by section 73.1635(a) of the Rules.[25] RBI stated that it failed to timely submit an application for license to cover due to an oversight. RBI also contends that it did not file a STA for the Station's reduced power operations because it did not think it was necessary since it notified the Commission of its reduced power operation in its License Application and its attorney advised that such a filing could "create confusion." It is well settled precedent that licensees are responsible for compliance with the Commission's rules and that administrative oversight does not excuse a violation or non-compliance .[26] Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.[27] Given that it commenced operations under the parameters of its Mod CP without timely filing an application for license to cover and then modified its operations without filing a STA, it appears RBI also engaged in unauthorized operation for almost eight months in violation of sections 73.1745(a) of the Rules and 301 of the Act.[28] Specifically, RBI operated at full-power without a valid license authorization from February 1, 2023 through June 27, 2023 and then it operated at reduced power without a valid STA from June 27, 2023 to September 25, 2023.[29] We therefore find that RBI has apparently violated the Rules and the Act and is apparently liable for forfeiture.

6. *Proposed Forfeiture*. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for the failure to file a required

[21] 47 U.S.C. § 312(f)(1).

[22] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

[23] *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).

[24] 47 U.S.C. § 312(f)(2).

[25] *See* 47 CFR §§ 73.3598(a); 73.1635(a).

[26] *See, e.g.*, *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc*., Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not "claim ignorance of the law as a defense") (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *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)*; Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) ("It is well settled that ignorance of the [Commission's] [r]ules does not excuse a violation.") (internal cites omitted).

[27] *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).

[28] *See* 47 CFR § 73.1745(a) and 47 U.S.C. § 301.

[29] Because the Station had a pending license to cover application on file, we will not consider the Station's full power operations that resumed on September 25, 2023, as unauthorized for purposes of the proposed forfeiture.

form.[30] The guidelines also specify a base forfeiture amount of $10,000 for each incident of construction and operation without an instrument of authorization for the service.[31] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[32]

7. In this case, RBI failed to timely-file a license to cover and STA to operate at reduced power, and as a result engaged in unauthorized operation of the Station for almost eight months. Although RBI may have attempted to notify the Commission in the Resumption Notice that it resumed operation pursuant to the parameters set forth in the Mod CP or in its License Application that it was planning to file an STA to operate at reduced power, RBI's statements in both are anything but clear that the Station commenced operations pursuant to the Mod CP in February 2023 or that it was operating at reduced power at the time its License Application was filed. RBI's statement in its Resumption Notice could just as easily have been read to say that the Station resumed operation under its then licensed parameters and in its License Application that it was planning in the future to operate at reduced power– which is how Division staff read it.

8. Regardless of how one may read RBI's statement in the Resumption Notice or License Application, RBI does not dispute that it failed to timely file its license to cover application in a timely manner, failed to file a STA to operate at reduced power after its License Application was filed, and operated for nearly eight months without valid authorizations. As a result, we find forfeiture for these violations is warranted and we decline to grant the application *nunc pro tunc* and treat it as having been filed in a timely manner.

9. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount of $26,000 to $9,500. We find this proposed forfeiture amount, which is higher than proposed forfeitures we have issued for violations of a similar nature,[33] is appropriate in light of the Bureau's recent admonishment against RBI for another instance of unauthorized operation and apparent pattern of rule violations.[34] However, we still find it appropriate to reduce the proposed forfeiture from the base forfeiture amount

[30] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. *See also Clear Channel*, 26 FCC Rcd at 7157 ("We note that the staff may also issue Notices of Apparent Liability for 'failure to file a required form' as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the 'Act') and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.").

[31] A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

[32] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

[33] *See infra* note 36.

[34] *See* Letter from Barbara A. Kreisman to Roseland Broadcasting, Inc., former licensee of DK07AAJ-D, Bakersfield, CA (Oct. 13, 2023) on file at LMS File No. 0000213425 (admonishing Roseland for unauthorized operation). In the case of DK07AAJ-D, Roseland filed an application for license to cover, but was in fact broadcasting from a different location. Roseland argued that its failure to specify the correct transmitter site location in its application for license to cover, as well as its construction permit and a request for special temporary authority, was inadvertent. Pursuant to 47 CFR § 73.3598(e) the application for license to cover was dismissed, its construction permit was declared forfeited, and Roseland's request for leave to file a minor modification and new application for license to cover was denied. Roseland did not appeal the Bureau's decision, which is now final. In addition to the actions taken in that case, we also expressed concern with the apparent lack of oversight with regards to RBI's regulatory compliance. We again express that concern, especially in light of what appears to be a pattern of rule violations. We will continue to consider increased forfeiture amounts for comparable violations, as we have done here, and more severe sanctions should this pattern of violations continue.

because, as an LPTV station, the Station is providing a secondary service.[35] We will grant the Station's pending License Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant.[36]

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,[37] Roseland Broadcasting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of nine thousand five hundred dollars ($9,500) for its apparent willful violation of sections 73.3598(a) and 73.1635(a) of the Commission's rules and apparent willful and repeated violation of section 73.1745(a) of the Rules and section 301 of the Communications Act of 1934, as amended.[38]

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[39] that, within thirty (30) days of the release date of this *NAL,* Roseland Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[40] 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 by e-mail to Shaun.Maher@fcc.gov and VideoNAL@fcc.gov.** 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. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to

[35] *See, e.g.*, *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 18042 (2021) (reducing forfeiture for late filed application for license to cover and four months unauthorized operations to $3,500 because station was an LPTV station and providing a secondary service) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 36 FCC Rcd 15530 (2021) (reducing forfeiture for late filed application for license to cover and six months unauthorized operations to $3,500 because station was an LPTV and providing a secondary service) (paid Nov. 30, 2021); *Cf. The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, 37 FCC Rcd 4111 (2022) (finding that although the station is secondary, a larger forfeiture amount ($6,500) was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022). The instant proposed forfeiture is comprised of the following amounts: $3,500 for the Station's unauthorized operation prior to filing its License Application; $3,500 for the Station's unauthorized operation after filing its License Application, but operating at reduced power without a STA; $1,750 for RBI's failure to file a timely application for license to cover; and $1,750 for RBI's failure to file a STA.

[36] While the Station is authorized to continue to operate during the pendency of its License Application pursuant to the parameters set forth therein, if the Station must operate at variance from these parameters it must file all required notifications and applications with the Commission. Any questions with regards to making such filings should be directed to Shaun Maher, Attorney-Advisor, Video Division, Media Bureau by e-mail at Shaun.Maher@fcc.gov (legal) or Mark Colombo, Associate Division Chief, Video Division, Media Bureau by e-mail at Mark.Colombo@fcc.gov (LMS/technical).

[37] 47 U.S.C. § 503(b); 47 CFR § 1.80.

[38] 47 CFR § 73.3598(a); 73.1635(a); 73.1745(a); 47 U.S.C. § 301.

[39] 47 CFR § 1.80.

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

[41] 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.

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).[42] 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.[43] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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.[44] 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, 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

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

[43] *See* 47 CFR § 1.1914.

[44] 47 CFR §§ 1.16 and 1.80(g)(3).

Secretary, Federal Communications Commission.[45] **A copy must also be e-mailed to Shaun.Maher@fcc.gov and VideoNAL@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.[46]

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Roseland Broadcasting, Inc., 888C 8th Avenue, Suite 733, New York, New York 10019 as well as by e-mail to legal@box733.com, and to RBI's counsel, Aaron P. Shainis, Shainis & Peltzman, Chartered, 1850 M Street NW, Suite 240, Washington, DC 20036, as well as e-mailed to aaron@s-plaw.com

FEDERAL COMMUNICATIONS COMMISSION

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[45] 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).

[46] *See* 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

Federal Communications Commission
Washington, D.C. 20554

December 22, 2023

DA 23-1204
In Reply Refer to:
1800B3-RDM
Released December 22, 2023

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Birach Broadcasting Corporation
21700 Northwestern Highway Tower 14, Suite 1190
Southfield, MI 48075
Sent via email: sima@birach.com

In re: **Birach Broadcasting Corporation**
Station KJMU(AM), Sand Springs, Oklahoma
Facility ID No. 47101
Application File No. 0000210889

Dear Licensee:

We have before us the application (Application) of Birach Broadcasting Corporation (Licensee) for renewal of its license for Station KJMU(AM), Sand Springs, Oklahoma (Station).[1] For the reasons set forth below, we grant the Application for a shortened renewal period, instead of a full term of eight years, pursuant to section 309(k)(2) of the Communications Act of 1934, as amended (Act).[2] **The Station's term will expire on December 22, 2024, and a renewal application will be due on or before August 1, 2024.**[3] **If, at the end of this one-year license renewal period, the Commission finds that the Licensee's conduct has again fallen short of that which would warrant routine license renewal, or if the Licensee has failed to restore the Station to unlimited operation at the power levels specified in its license, then we will either 1) place a condition on the grant of the next license renewal that specifies any additional license renewals will be conditioned on the Licensee returning the Station to unlimited operation during that license term or 2) designate the license for hearing based on the Licensee's failure to serve the public interest.**

Background. The Application was filed on February 16, 2023, seeking to renew the Station's license. The Station is currently operating under a shortened one-year license term that began on July 15, 2022, and ended on July 15, 2023.[4] The Bureau granted Licensee a shortened renewal term because the Station had been silent for extended periods of time during its prior license term.[5] During this shortened

[1] Application File No. 0000210889.

[2] 47 U.S.C. § 309(k)(2).

[3] *See* 47 CFR § 73.3539(a) ("an application for renewal of license shall 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").

[4] *See Birach Broadcasting Corporation*, Order and Consent Decree, 37 FCC Rcd 8429 (MB 2022) (*Birach-KJMU*); Application File No. 0000133723 (Renewal of License, granted July 15, 2022).

[5] *Birach-KJMU*, 37 FCC Rcd at 8429, paras. 1-2.

renewal term, the Station was silent for more than four months, from January 8, 2023 to May 24, 2023.[6] Licensee explained in the Silent STA Request that the reason for its silence was its transmitter was malfunctioning.[7] Thus, the Station was silent for 37% of its license term and 27% of its extended term under section 307(c)(3).[8]

In the Resumption Notice, Licensee disclosed that the Station had resumed operations on May 24, 2023 at 25% of authorized power during the daytime and was not operating at night.[9] Licensee subsequently filed a request for special temporary authority (STA) to operate the Station at reduced power, citing the issues with its transmitter and delays in obtaining parts to repair it, which the Bureau granted on July 20, 2023.[10] Thus, from May 24, 2023 to July 20, 2023, the Station operated at reduced power without authorization from the Commission.[11] Based upon Licensee's certifications and statements in the Resumption Notice and the July 2023 STA Request, the Station continues to operate during the day at 25% of its licensed power level pursuant to STA, and does not operate at night, even though the Station is a Class C station operating on a local channel and therefore required to operate unlimited time.[12]

Discussion. Silence instead of operation in accordance with a station's FCC authorization is a fundamental failure to serve a broadcast station's community of license, because a silent station offers that community no public service programming such as news, public affairs, weather information, and Emergency Alert System notifications. Moreover, brief periods of station operation sandwiched between prolonged periods of silence are of little value because the local audience is not accustomed to tuning into the station's frequency.[13]

In addition, operating at a reduced power level without authorization from the Commission is a violation of section 301 of the Act, and sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b)(5) and 73.1745(a) of the Rules.[14] Section 73.1745(a) of the Rules requires licensees to operate pursuant to the

---

[6] *See* Application File No. 000206594 (Request for Silent STA, granted Jan. 26, 2023) (Silent STA Request); Application File No. 0000215126 (Resume Operations, filed May 24, 2023) (Resumption Notice).

[7] Silent STA Request at Attach. "Silent KJMU.01.10.2023.docx".

[8] Section 307(c)(3) of the Act mandates that the Commission continue a broadcast license in effect while the license renewal application is pending. 47 U.S.C. § 307(c)(3); *see Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n.40 (MB 2014) (in acting on a renewal application, the Commission considers the licensee's performance since the beginning of its most recent license term but gives less weight to improved performance during the pendency of the renewal application).

[9] *See* Resumption Notice at Attach. "KJMU.On.Air.05.24.2023.docx".

[10] *See* Application File No. BSTA-20230717AAB (Engineering STA, granted July 20, 2023) (July 2023 STA Request).

[11] *See* Application File Nos. 0000215126 (Notice of Resumption of Operations disclosing that the Station resumed operations at 25% of authorized power); BSTA-20230717AAB (Engineering STA, granted July 20, 2023).

[12] Section 73.21(c) provides that a local channel is one on which stations operate unlimited time. *See* 47 CFR § 73.21(c).

[13] *See Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, para. 2 (2017).

[14] 47 U.S.C. § 301; 47 CFR §§ 73.1350, 73.1560, 73.1635, 73.1690, 73.1745. Section 301 of the Act and sections 73.1350(a), and 73.1745 of the Rules each require licensees to operate in accordance with their Commission-granted authorizations. Section 73.1560 requires AM stations to maintain their antenna input power "as near as practicable to the authorized antenna input power" and specifies that it "may not be less than 90 percent nor greater than 105

terms contained in their authorizations. In order for a station to operate at a variance from such terms, the licensee must file and have been granted either an application to modify its station authorization or a request for STA.[15] In this case, the Station operated at an unauthorized reduced power level for nearly two months before it obtained STA to operate at a reduced power level. Additionally, operating at reduced power for extended periods, even when authorized, is not in the public interest because the station may not serve its community of license.[16]

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.[17] That section provides that if, upon consideration of a station's license renewal application and related pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[18] If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[19]

In 2001, the Commission cautioned "all licensees that . . . a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term."[20] It also acknowledged the agency's longstanding policy to encourage stations

---

percent of the authorized power." Section 73.1560(d) provides that a station that is operating with reduced power for more than 30 days must obtain an STA to do so. Section 73.1635 requires a licensee to obtain STA in order to operate "a broadcast facility for a limited period at a specified variance from the terms of the station authorization." Section 73.1690(b)(5) requires the licensee of a commercial AM station to apply for and obtain a construction permit from the Commission before reducing the AM station's authorized power.

[15] *See* 47 CFR § 73.1635.

[16] *See Alaska Educational Radio System, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 6749, 6755, para. 17 (MB 2018) (finding that the licensee failed to meet the public service commitment licensees are expected to provide to their communities of license because it operated its station at reduced power for extended periods and was silent for a significant portion of its license term); *see also Vandalia Media Partners 2, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 36 FCC Rcd 7012, 7013, para. 5 (MB 2021) (noting that reduced power operations "cover a small portion of their service areas and may be insufficient to allow [stations] to provide service to their communities of license.").

[17] 47 U.S.C. § 309(k). *See also* 47 U.S.C. § 312(g). In addition to its enforcement of sections 309(k) and 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the public in several different contexts. *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (2011) (citing the Commission's "fundamental interest" in expediting new radio service and preventing "warehousing" of scarce spectrum); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23090-93, paras. 83-90 (1998), *on reconsideration*, 14 FCC Rcd 17525, 17539, paras. 35-36 (1999); *Liberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

[18] 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecomm. Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

[19] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[20] *See Birach Broad. Corp.,* Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach 2001 Order*).

to resume broadcast operations when license renewal applications were pending. However, the Commission noted that section 309(k)(1) applies a "backwards-looking standard" that does not give any weight to efforts to return a station to full-time operation in the future.[21] The Commission held that denial of the renewal application of the station in question in the *Birach 2001 Order* would be fundamentally unfair because the Commission had not provided sufficient notice of the effect the section 309(k)(1) standard would have on silent stations.[22] Since the issuance of the *Birach 2001 Order*, licensees, and particularly this Licensee that was the subject of the 2001 Order, have been on notice as to how section 309(k)(1) applies to silent stations.

In this case, Licensee's conduct has repeatedly fallen short of that which would warrant routine license renewal. Licensee's stewardship of the Station fails to meet the public service commitment which licensees are expected to provide to their communities of license on a daily basis because the Station was silent for a significant portion of the license term and operated at reduced power for a significant period of time without Commission authorization.[23]

On the facts presented here, we conclude that a short-term license renewal for the Station is the appropriate sanction. Although the Licensee did seek and obtain Commission authorization for the period of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended period of non-operation and the extended period of operation at reduced power without authorization from the Commission. While the usual sanction for unauthorized reduced power operation is a Notice of Apparent Liability for forfeiture,[24] in this case the Licensee notified the

[21] *Id.* at para. 12 ("[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.").

[22] In the *Birach 2001 Order*, the station was silent for the entire period (approximately two and one-half years) in which the license renewal applicant (Birach) held the license. Section 312(g) of the Act took effect during that period, and Birach returned the station to operation before that provision would have applied. *See* 47 U.S.C. § 312(g). The Commission stated: "The fact that Birach resumed WDMV operations only when faced with the potential license cancellation is not lost on us. Although we have concluded that Birach is qualified to be a licensee and that grant of the renewal application was proper, it is equally clear to us that Birach's conduct as a licensee upon acquiring WDMV fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis." *Id.*, 16 FCC Rcd at 2021, para. 13.

[23] *See Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n. 40 (MB 2014) (Commission considers the licensee's performance since the beginning of its most recent license term, but performance during the pendency of a renewal application is given less weight).

[24] *See, e.g.*, *Augustus Foundation, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 37 FCC Rcd 12250, 12253 (MB 2022) (proposing a $3,000 forfeiture amount for the station's failure to request an extension of its STA to operate at reduced power, which resulted in unauthorized reduced power operations); *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability, 33 FCC Rcd 5223, 5230 (MB 2018) (proposing a $10,000 forfeiture amount for the station's failure to operate in accordance with the terms of its authorization, by, among other things, operating at reduced power without authorization); *Nassau Broadcasting II, LLC, Debtor-in-Possession*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 322, 324 (EB 2012) (proposing a forfeiture amount of $5,000 for operating the station at reduced power in contravention of the terms of its authorization).

Commission when it began operating at reduced power,[25] and has since taken corrective action to come into compliance with the Act and the Rules by submitting the July 2023 STA Request.[26]

Accordingly, pursuant to section 309(k)(2) of the Act, we will grant the Station a short-term license renewal, limited to a period of one year from the date of this letter.[27] Additionally, we admonish Licensee for its violation of the Rules by failing to request STA to operate at reduced power. The Commission does not take unauthorized operation lightly. Licensee should take care to avoid further unauthorized operation and ensure it is fully in compliance with the Act and the Rules.

This limited renewal period will afford the Commission an opportunity to review the Station's public service performance, as well as compliance with the Act and the Commission's rules, and to take whatever corrective actions, if any, that may be warranted at that time. Additionally, we expect Licensee during this time to return the Station to unlimited time operation at the power levels specified in its license (0.5 kW daytime, 1 kW nighttime, subject to the tolerances specified by section 73.1560(a)) by the end of the one-year license term. If, at the end of this limited renewal period, the Commission finds that the Licensee's conduct has again fallen short of that which would warrant routine license renewal, or if the Licensee has failed to restore the Station to full operations, **we will either 1) place a condition on the grant of the next license renewal that specifies any additional license renewals will be conditioned on the Licensee returning the Station to unlimited operation during that term or 2) designate the license for hearing based on the Licensee's failure to serve the public interest.**

[25] *See* Resumption Notice.

[26] *See* July 2023 STA Request.

[27] *See, e.g., South Seas Broad., Inc.,* Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 6474 (MB 2008) (two-year renewal granted, NAL issued, for willfully and repeatedly violating 47 CFR § 73.1350 by engaging in operation of the station at an unauthorized site and willfully and repeatedly violating 47 CFR § 73.1740 by leaving the station silent without the proper authorization).

Conclusion. Accordingly, for the reasons set forth above, **IT IS ORDERED THAT** the license renewal application (Application File No. 0000210889) filed by Birach Broadcasting Corporation, for Station KJMU(AM), Sand Springs, Oklahoma, IS GRANTED pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,[28] for a license term of one year from the date of this letter.[29]

IT IS FURTHER ORDERED that Birach Broadcasting Corporation **IS ADMONISHED** for its violations of section 301 of the Communications Act of 1934, as amended, and sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b)(5) and 73.1745(a) of the Commission's rules.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
John C. Trent, Esq. (fccman3@shentel.net)
(Contact Representative for Birach Broadcasting Corporation)

[28] 47 U.S.C. § 309(k)(2).

[29] The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS).

Federal Communications Commission
Washington, D.C. 20554

December 22, 2023

DA 23-1205
***In Reply Refer to*:**
1800B3-CEG
Released December 22, 2023

Electron Benders
c/o Michael R. Reynolds
4130 E 31st St., Apt. 2029
Tulsa, OK 74135
mrrcpa@cox.net

Screen Door Broadcasting, LLC and
Broken Arrow Catholic Radio, Inc.
c/o Jason Bennett, FM Expansion Group LLC
7107 South Yale Ave #444
Tulsa, OK 74136
jason@fmexpansion.com

In re: **KOKT-LP, Tulsa, Oklahoma**
Facility ID No. 194191
Application File No. 147725

Informal Objection

KPIM-LP, Broken Arrow, Oklahoma
Facility ID No. 197632
Application File No. 147897

Dear Counsel and Objector:

We have before us the above-referenced applications to: (1) modify the facilities of LPFM station KOKT-LP, Tulsa, Oklahoma (KOKT), filed by Electron Benders on May 28, 2021 (KOKT Application); and (2) modify the facilities of LPFM station KPIM-LP (KPIM), Broken Arrow, Oklahoma, filed by Broken Arrow Catholic Radio, Inc. (Broken Arrow) also on May 28, 2021 (KPIM Application). We also have an informal objection to the KOKT Application filed by Screen Door Broadcasting, LLC (Screen Door)[1] on June 2, 2021 (Informal Objection).[2] For the reasons stated below, we deny the Informal Objection and designate the KOKT and KPIM Applications as mutually exclusive.

Background. On May 27, 2021, Tulsa Community Radio, Inc. submitted an application to voluntarily surrender the license for LPFM station KJZT-LP (now DKJZT-LP), assigned to Channel 211.[3]

[1] Screen Door is the licensee of three FM translators with service areas that overlap the service areas of both referenced LPFM stations. The three FM translators are: K235BK, K281CO and K289CC. FM translator station K235BK rebroadcasts the signal of KPIM-LP. The managing member of Screen Door, Jason Bennett, is also the technical consultant for Broken Arrow Catholic Radio, Inc. Informal Objection at 1.

[2] Pleading No. 149467 (duplicate of 149469). On June 4, 2021, Electron Benders filed an opposition to the Informal Objection (Opposition) (Pleading No. 149671). On April 6, 2023, Electron Benders filed a supplement to the Opposition (Supplement) (Pleading No. 213571).

[3] Application File No. 147597 (cancelled May 27, 2021, public notice of the cancellation published June 1, 2021 (*Broadcast Actions*, Public Notice, PN Report No. PN-2-210601-01 (MB June 1, 2021)). Public notice of cancellation became final July 1, 2021). Although both applications were defective when filed because they failed

On May 28, 2021, Electron Benders and Broken Arrow filed the KOKT and KPIM Applications, respectively, each requesting a channel change to newly-vacated Channel 211. In the Technical Certifications section of the KOKT Application, responding to the three-part "Reasonable Site Assurance" questions, Electron Benders certified that it has reasonable assurance of the site's availability, but for this particular modification application, it did not certify that it had obtained reasonable assurance by contacting the site owner and did not provide contact information for the person contacted. Rather, Electron Benders entered "N/A" in response to the second question, explaining that its understanding was that the second certification was not needed for "a channel change, which requires no actual construction work."[4] On June 2, 2021, Screen Door filed the Informal Objection, contending that Electron Benders lacked reasonable assurance of site availability at the time it filed the KOKT Application.[5] Even if Electron Benders demonstrated that it had timely obtained reasonable assurance of site availability, Screen Door argues, failure to provide that information in the initial application is a "fatal defect" that cannot be cured by subsequent amendment.[6] Therefore, Screen Door urges, the KOKT Application should be dismissed and the KPIM Application granted.

In the Opposition, Electron Benders responded that site assurance is not necessary for a minor modification requesting a channel change at the same site.[7] It notes that Screen Door "offers no example of any minor modification application, either involving the same or different site, where the Commission has "fatally" dismissed the application."[8] It also states that site assurance for its licensed facility was obtained five years ago.[9] In any case, Electron Benders reports, it amended the KOKT Application on June 3, 2021, to provide contact information for an agent of the tower owner.[10] Finally, Electron Benders argues that the information it provided on the KOKT application form was appropriate given "inconsistencies" in the instructions for the LPFM construction permit application form with respect to the reasonable assurance of site availability requirement.[11] On April 6, 2023, Electron Benders filed the Supplement, in which it argues that section 73.870(e) provides that LPFM applications receive first in

---

to protect KJZT-LP, this defect was cured by the time the applications were acted upon. *See WKVE, Semora, North Carolina*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411 (2003) (*Semora*) (upholding the grant of a full service FM station modification application that failed to protect the licensed facilities of another station at the time of filing but where the short-spacing had been eliminated before staff acted on the application and explaining that ""[o]ur broadcast licensing procedures do not require the return of applications that were unacceptable at the time of filing but which came into compliance with our technical rules prior to the deadline for corrective amendments. We will not take adverse action on [an application] based solely on its acceptability as filed, when subsequent events prior to staff review resulted in a fully acceptable application.").

[4] Opposition at 2.

[5] Informal Objection at 1-4.

[6] Informal Objection at 4.

[7] Opposition at 1-3. Both parties cite to the Commission's 2008 *Schober* decision, in which the Commission rescinded the grant of an FM translator construction permit application due to lack of initial site availability without permitting a curative amendment. *See Edward A. Schober*, Memorandum Opinion and Order, 23 FCC Rcd 14263 (2008). We note that this decision was overruled for applications in the auctionable services in *Christopher Falletti*, Memorandum Opinion and Order, 30 FCC Rcd 827, 831, para. 10 (2015).

[8] Opposition at 3.

[9] *Id*. at 1.

[10] *Id*. at 3.

[11] *Id*. at 2.

time priority if they are filed earlier than another application on the same day.[12]

Discussion. An informal objection must provide properly supported allegations of fact which, if true, would establish a substantial and material question of fact regarding whether grant of the application in question would be consistent with the public interest, convenience and necessity.[13] Screen Door has failed to meet this burden.

Mutual exclusivity. First, we reject Electron Benders' argument that the KOKT Application should receive first-in-time priority based on the time of day it was filed. For FM broadcast service applications, the Commission has never assigned cut-off priority based on the exact time of day. Rather, in both the noncommercial and commercial FM services, conflicting modification applications filed on the same day are treated as simultaneously filed and thus mutually exclusive.[14] In the LPFM service, minor modification applications are governed by section 73.870(e), which states, "Minor change LPFM applications may be filed at any time, unless restricted by the staff, and generally, will be processed in the order in which they are tendered."[15] Although this language is not identical to the corresponding rule provisions in the other FM services, there is no indication in either the rule itself or the adopting orders that section 73.870(e) was intended to implement a new cut-off priority rule based on the specific time of day that the application was filed.[16] To the contrary, in the *First LPFM Order*, the Commission considered and rejected a similar proposal for new LPFM applications, stating that "we are concerned that such an approach, by placing a premium on filing at the earliest possible moment, might unfairly disadvantage certain applicants based solely on the quality of their Internet connections."[17] Therefore, we conclude that first-come, first-served processing for LPFM minor modification applications follows the well-established general procedure, under which applicants filing on the same day are considered mutually exclusive and directed to use engineering solutions and good faith negotiation to resolve their mutual exclusivity.[18]

Site availability. We reject Screen Door's suggestion that the KOKT Application should be dismissed either for failure to obtain reasonable assurance of site availability or failure to supply complete information relating to site availability. The three-part "Reasonable Site Assurance" questions in the Technical Certifications section of the FCC Form 2100, Schedule 318 (Schedule 318) require applicants to first certify that they have "reasonable assurance in good faith that the site or proposed structure at the

---

[12] Supplement at 1-2.

[13] *See, e.g., WWOR-TV, Inc.,* Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

[14] 47 CFR §§ 73.3573(e)(1) (reserved channel FM broadcast applications), 73.3573(f)(1) (non-reserved band FM broadcast applications), 74.1233(b)(1) (reserved band FM translator applications).

[15] 47 CFR § 73.870(e).

[16] *See generally*, *Creation of a Low Power Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd 2471 (1999); *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205 (2000) (*First LPFM Order*).

[17] *First LPFM Order,* 15 FCC Rcd at 2256, para. 130. The Commission also noted, "Under first-come first-served procedures, applications may be filed at any time, and the filing of an acceptable application precludes the subsequent filing of mutually exclusive applications, unless filed on the same day. Mutual exclusivity arises when competing applications are filed on the same day. These procedures now are used only for minor changes for commercial and NCE broadcast stations."). *Id*. at 2255, para. 128, n.193

[18] *See Streamlining Radio Technical Rules*, First Report and Order, 14 FCC Rcd 5272, 5273 n.4 (1999) (stating that mutually exclusive applications must be disposed of by elimination of the mutual exclusivity through "technical amendment, settlement between the applicants, auction or other means"); *see generally* 47 U.S.C. § 309(j)(6)(E).

location of its transmitting antenna will be available to the applicant for the applicant's intended purpose." Schedule 318 then includes a second follow-up certification that, if reasonable assurance is not based on the applicant's ownership of the proposed site or structure, the applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure. Applicants are given three response options: "Yes," "No," and "N/A." Only applicants selecting either a "Yes" or "No" response are provided with fields to specify the name and telephone number of the person contacted, and whether that contact is the tower owner, agent or an authorized representative. The "N/A" response option is to be used where the applicant itself owns the proposed site or tower structure and therefore further contact information is unnecessary.

In the KOKT Application, Electron Benders responded "Yes" to the first reasonable assurance of site availability certification, and "N/A" to the second certification that it had obtained reasonable assurance from the site owner. Since Electron Benders selected the "N/A" option, no further site owner contact data fields displayed on the form and therefore Electron Benders did not submit that additional information, noting that "the official Form 2100, Schedule 318 instructions does not address these questions" and that "it is understandable why 'N/A' could be answered on a Schedule 318 for a minor modification for channel change, which requires no actual construction work."[19] Although the "N/A" response to the second certification is intended to be used only by applicants that also own the site, Electron Benders' interpretation was not unreasonable in these circumstances.

Screen Door does not cite to any cases, and we are not aware of any, in which the Commission has required a re-certification of reasonable assurance of site availability for an application for a channel change at the currently licensed site. The seminal cases establishing the reasonable assurance of site availability requirement all involve either a proposed new station or a proposed new facility site for an existing station.[20] The Schedule 318 reasonable site assurance certifications (and the corresponding form instructions regarding reasonable site availability) do not distinguish between LPFM applications for a new facility and modifications to an existing facility, or between modification applications based on whether they do or do not propose a new site. However, these application certifications, added in 2019,[21] do not change the underlying substantive site availability requirement—they merely require applicants to now certify and substantiate that they have complied with it.[22] Therefore, we conclude that Screen Door has not established that the reasonable assurance of site availability requirement applies to the KOKT Application's request for a new channel at its existing licensed site.

---

[19] Opposition at 2.

[20] *See, e.g., Port Huron Family Radio, Inc*., Decision, 66 RR 2d 545 (1989); *South Florida Broadcasting Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842 (1984); *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d. 1424, 1427, para. 6 (1974) (*Wallace*); *Indiana Community Radio*, Memorandum Opinion and Order, 23 FCC Rcd at 10965; *Genesee Communications, Inc*., Memorandum Opinion and Order, 3 FCC Rcd 3595 (Rev. Bd. 1988); *see also Radio 2000, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15453, 15457-58, paras. 11-12 (1996); *Global Broadcasting Group, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 5437, 5439, para. 12 (1995) (applying reasonable site assurance standard to a minor modification application proposing a new transmitter site).

[21] *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Report and Order, 34 FCC Rcd 12519, 12542-43, paras. 57-59 (2019) (*NCE Procedures Order*); *Media Bureau Announces October 30, 2020, Effective Date of New NCE and LPFM Rules*, Public Notice, 35 FCC Rcd 12694, 12695 (MB 2020).

[22] *NCE Procedures Order*, 34 FCC Rcd at 12543, para. 59 ("Because obtaining reasonable site assurance is already a prerequisite to the application filing, the requirement to simply report substantiating information on the initial Schedule 318 and Schedule 340 construction permit applications should pose little or no burden on applicants.").

Even if the policy did apply here, Electron Benders has demonstrated that it had reasonable assurance of site availability at the time it filed the KOKT Application, as it indicated in response to the first site availability question. The reasonable assurances standard is satisfied where the applicant has "[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated, and that he would give notice of any change of intention."[23] Here, Electron Benders has already had permission to use the site for several years without any indication in the record that the site might become unavailable. In these circumstances, the reasonable assurance of site availability standard is easily satisfied.

Finally, we find that Electron Bender's failures to certify that it contacted the person possessing control of the site or structure or to provide contact information—unlike failure to actually procure reasonable assurance of site availability—are not fatal defects that cannot be cured by subsequent amendment.[24] Therefore, Electron Benders was permitted to amend the KOKT Application to provide site owner contact information, which it did on June 3, 2021.[25]

For the above reasons, we deny the Informal Objection and find the KOKT and KPIM Applications to be simultaneously filed and thus mutually exclusive. In accordance with our longstanding policy for mutually exclusive applications, we expect the applicants to use engineering solutions and good faith negotiation to resolve their mutual exclusivity.[26]

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the informal objection filed by Screen Door Broadcasting, LLC on June 2, 2021 (Pleading File Nos. 149467 and 149469), IS DENIED and the modification application for station KOKT-LP, Tulsa, Oklahoma, filed by Electron Benders on May 28, 2021 (Application File No. 147725), and the modification application for station KPIM-LP, Broken Arrow, Oklahoma, filed by Broken Arrow Catholic Radio, Inc. on May 28, 2021 (Application File No. 147897), are left in pending status and will be treated as mutually exclusive. We hereby direct the applicants to use engineering solutions and good faith negotiation to resolve their mutual exclusivity.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

---

[23] *Elijah Broadcasting Corp*., Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351, para. 10 (1990*); Wallace*, 49 FCC 2d. at 1427, para. 6 ("Some indication from the property owner that he is favorably disposed to making an arrangement is necessary.").

[24] *Association for Community Education, Inc.*, Letter Decision, 37 FCC Rcd 9558, 9562 (MB 2022) (holding that an applicant may amend the new Schedule 340 if it has reasonable assurance of site availability but failed to provide the requested contact information documenting site availability in the application). Moreover, the D.C. Circuit has held that the Commission must provide "clear and explicit" notice if it wishes to treat a defect as incurable, which it has not done for reasonable assurance certifications. *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 329 (D.C. Cir. 1994).

[25] *See Broadcast Application*, Public Notice, Report No. PN-1-210608-01 (MB June 8, 2021).

[26] *See supra,* notes 16, 18.

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

In the Matter of	)	
	)	
Border International Broadcasting, Inc.	)	MB Docket No. 23-153
	)	
Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended	)	

DECLARATORY RULING

Adopted: December 26, 2023 **Released: December 26, 2023**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau (Bureau) grants a petition for a declaratory ruling (Petition) filed by 1234567 Corporation (123 Corp. or Petitioner), on behalf of Border International Broadcasting, Inc. (BIBI or Licensee).[1] The Petition asks the Commission to exercise its discretion to permit foreign ownership in 123 Corp., the proposed controlling U.S. parent of Licensee, to exceed the 25% benchmarks established in section 310(b)(4) of the Communications Act of 1934, as amended (the Act),[2] and sections 1.5000 *et seq.* of the Commission's rules.[3] As discussed below, the Petition seeks authority for up to 100% aggregate foreign investment (voting and equity) in 123 Corp.,

[1] Petition for Declaratory Ruling of Border International Broadcasting, Inc., Application File No. 0000206397 (filed Jan. 12, 2023) (Petition); Supplement to Petition for Declaratory Ruling, Application File No. 0000206397 (filed Apr. 20, 2023) (First Supplement); Second Supplement to Petition for Declaratory Ruling, Application File No. 0000206397 (filed Apr. 26, 2023) (Second Supplement). Contemporaneously with the filing of the Petition, BIBI filed an application seeking Commission consent to the transfer of control of WLYK(FM), Cape Vincent, New York (Facility ID No. 8567), the sole broadcast license it holds. *See* Application of Border International Broadcasting, Inc. for Consent to Transfer Control, Application File No. 0000206397 (filed Jan. 5, 2023). As detailed further below, 123 Corp., the proposed transferee in the transfer of control application and the proposed direct 100% interest holder of BIBI, filed the Petition on behalf of itself, the licensee BIBI, and the individuals and entities that will hold a direct or indirect interest in 123 Corp.

[2] Section 310(b)(4) of the Act states:

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

47 U.S.C. § 310(b)(4).

[3] 47 CFR §§ 1.5000 *et seq.* *See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (*2016 Foreign Ownership Order*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

the proposed controlling U.S. parent, and specific approval[4] for certain foreign investors to hold more than 5% equity and/or voting interest in 123 Corp.[5] No comments or oppositions were filed in response to the Petition.[6] As discussed below, and consistent with the input received from the National Telecommunications and Information Administration (NTIA) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), we find that it will serve the public interest to grant the Petition, subject to the conditions specified below.[7]

II. BACKGROUND

2. *Pending Transactions.* The Commission's approval of the Petition is being sought in connection with the sale of radio station WLYK(FM), Cape Vincent, New York (Facility ID No. 8567) from three U.S. citizens to 123 Corp., an entity indirectly owned and controlled by Canadian citizens.[8] As detailed in the pending application and the Petition, BIBI would remain the licensee of WLKY(FM), but BIBI would become 100% owned by 123 Corp. The proposed ownership structure of BIBI following the transfer of control is as described below.

3. *Corporate Structure.* As detailed in the Petition, the parties seek Commission consent to transfer 100% ownership of BIBI, a Delaware corporation, from the three natural persons who currently control the company today to 123 Corp., a Delaware corporation of which the sole shareholder is a Canadian corporation named Border Broadcasting Corporation (BBC). In turn, BBC will be owned by Canadian citizens Andrew Dickson and Jon Pole (each directly holding 0% equity and 45.15% voting interests), as well as two family trusts (each directly holding 50% equity and 4.545% voting interests).[9] The family trusts, named The Andrew and Karen Dickson (2022) Family Trust (the Dickson Trust), and The Jon and Sasha Pole (2022) Family Trust (the Pole Trust) (collectively the Trusts), are organized by each of the two principal individuals, respectively, and their spouses. The Trusts are each organized under the laws of Canada and their primary purpose is estate planning for the respective trustees.[10] The co-trustees of the Dickson Trust are Andrew Dickson and Karen Dickson, both Canadian citizens. The co-trustees of the Pole Trust are Jon Pole and Sasha Pole, also both Canadian citizens. In both cases, each co-trustee has a 50% voting interest and negative control in their respective Trusts.[11]

---

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

[5] Petition at 6-7; First Supplement at 3.

[6] The Petition was placed on public comment on May 4, 2023, with comments due June 5, 2023, and replies due June 20, 2023. *Media Bureau Announces Filing of Petition for Declaratory Ruling by Border International Broadcasting Inc.*, Public Notice, MB Docket No. 23-153, DA 23-367 (May 4, 2023) (*Public Notice*).

[7] *See infra* at para. 16.

[8] *See* Application of Border International Broadcasting, Inc. for Consent to Transfer Control, Application File No. 0000206397 (filed Jan. 5, 2023).

[9] The Petitioner indicates that Jon Pole, president, and Andrew Dickson, secretary-treasurer, are the sole directors and officers of BBC and that no other parties control BBC or have the power to appoint directors. Further, the Petitioner states that the company's by-laws provide that questions at board meetings must be decided by a majority of voting directors, and that no party is entitled to a second or casting vote when the board is deadlocked. First Supplement at 2-3.

[10] Petition at 6.

[11] Second Supplement at 3.

4. Pursuant to section 1.5001(h) of the Commission's rules,[12] the Petitioner requests approval of up to an aggregate 100% indirect foreign ownership of the proposed controlling U.S. parent, 123 Corp.[13] In addition, Petitioner requests specific approval for certain foreign individuals and entities that will hold, indirectly, more than 5% of the equity and/or voting interests of 123 Corp.[14] Specifically, Petitioner makes the following requests for specific approval: Border Broadcasting Corporation (Canada) to hold up to 100% equity and 100% voting; Andrew Dickson (Canada) to hold 21.42% equity and 49.995% voting; Jon Pole (Canada) to hold 10.71% equity and 49.995% voting; Karen Dickson (Canada) to hold 7.14% equity and 4.545% voting; The Andrew and Karen Dickson (2022) Family Trust (Canada) to hold 50.0% equity and 4.545% voting; and The Jon and Sasha Pole (2022) Family Trust (Canada) to hold 50.0% equity and 4.545% voting.[15]

5. *Public Interest Showing.* Petitioner contends that grant of the Petition is in the public interest because it would, among other things, further the Commission's stated goals of encouraging foreign investment in U.S. broadcast stations and the continuation of operations by such stations.[16] Petitioner also asserts that the two principals, Andrew Dickson and Jon Pole, have extensive experience operating broadcast radio stations in Canada with an emphasis on localism.[17] Petitioner asserts that the combination of the parties' broadcasting expertise and the infusion of capital that would result from the proposed transaction will allow BIBI to continue operations of WLYK and facilitate its provision of local news programming and music to the listeners in the Cape Vincent, New York community.[18]

6. *National Security, Law Enforcement, Foreign Policy and Trade Policy Review.* Pursuant to Commission practice, we referred the Petition to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the proposed foreign ownership of BIBI's proposed controlling U.S. parent, 123 Corp.[19] On May 8, 2023, the Committee notified the Commission that it was reviewing the Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Petition.[20] Subsequently, on July 28, 2023, the Committee notified the Commission that Petitioner had provided complete responses to the Committee's initial questions and that it was conducting its review to assess whether granting the Petition

[12] 47 CFR § 1.5001(h).

[13] Petition at 1-7.

[14] Petition at 6-7; First Supplement at 3; Second Supplement at 6-7.

[15] *Id*. The indirect equity interest of Andrew Dickson reflects his interest as an individual beneficiary of the Dickson Trust combined with his interest as the sole shareholder of two entities that are also beneficiaries of the Dickson Trust. Similarly, the indirect equity interest of Jon Pole reflects his interest as an individual beneficiary of the Pole Trust combined with his interest as the sole shareholder of two entities that are also beneficiaries of the Pole Trust. Petition at 5, nn. 11-12. The indirect equity interest of Karen Dickson reflects her interest as an individual beneficiary of the Dickson Trust.

[16] Petition at 8.

[17] *Id*.

[18] *Id*.

[19] *2023 Public Notice* at 3, n.26 (*citing 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) (*2020 Process Reform Order*) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913)).

[20] Letter from, Jake O. Seaboch, Attorney Advisor, National Security Division, Department of Justice (DOJ), to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-153 (filed May 8, 2023).

would pose a risk to the national security or law enforcement interests of the United States.[21] On November 3, 2023, the NTIA submitted a letter to the Commission in which the Committee advised the Commission that it has no recommendation to the Commission at this time and no objection to the Commission granting the Petition.[22]

7. *Standard of Review*. We review the Petition under section 310(b)(4) of the Act, which states that "[n]o broadcast . . . license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license."[23] This section of the Act grants the Commission discretion to allow foreign investment in a licensee's controlling U.S.-organized parent above 25% unless the Commission finds that the public interest would be served by refusing to permit such foreign investment.[24] In evaluating petitions relating to foreign ownership, the Commission affords appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.[25]

8. In the *2016 Foreign Ownership Order*, the Commission modified the broadcast licensee foreign ownership review process by extending the streamlined rules and procedures developed for review of foreign ownership of common carrier and certain aeronautical licensees under section 310(b)(4) to the broadcast context, with certain limited exceptions.[26] The *2016 Foreign Ownership Order* expressly provides for processing of petitions requesting approval for up to and including 100% aggregate foreign voting and/or equity investment by unnamed and future foreign investors in the controlling U.S. parent of a broadcast licensee.[27] To exercise in a meaningful way the discretion conferred by statute, the Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.[28]

III. DISCUSSION

10. We find that the public interest would be served by permitting foreign ownership of 123 Corp., BIBI's proposed controlling U.S. parent, in excess of the 25% benchmarks set forth in section 310(b)(4) of the Act and grant the Petition subject to the conditions described below. We also find that it is in the public interest to grant Petitioner's request to permit foreign investors to indirectly own up to 100% of 123 Corp.'s voting and equity interests, in the aggregate. In addition, we grant the requests for specific approval under the Commission's rules.

11. *Section 310(b)(4) Determination and Public Interest Analysis.* Pursuant to section 310(b)(4) of the Act, as well as sections 1.5001 through 1.5004 of the Commission's rules, we find that

---

[21] Letter from Jake O. Seaboch, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-153 (filed July 28, 2023).

[22] Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-153 (filed Nov. 3, 2023).

[23] 47 U.S.C. § 310(b)(4).

[24] *See id.*; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11276, para. 5.

[25] *2016 Foreign Ownership Order,* 31 FCC Rcd at 11277, para. 6.

[26] *See generally id.*

[27] *Id.* at 11282, para. 15.

[28] *See, e.g., id*. at 11282, 11283-84, paras. 15, 20 (noting that the requirements adopted in the streamlined foreign ownership rules ensure that the Commission has the information necessary to evaluate and understand a licensee's ownership structure and to fulfill its obligations under section 310(b) of the Act).

the public interest is served by permitting foreign ownership of 123 Corp. in excess of the 25% benchmarks in section 310(b)(4) of the Act and consequently, we grant the Petition, as conditioned below. We also find that it is in the public interest to grant Petitioner's request for approval of up to an aggregate 100% indirect foreign ownership of 123 Corp. We further find that it is in the public interest to grant specific approval for the percentages set out to individuals and entities specified in Section IV below.[29] Specifically, we conclude that grant of the Petition is in the public interest because it, among other things, provides the Licensee with greater access to foreign capital and thereby contributes to the strengthening of the broadcast industry.[30]

12. *National Security and Law Enforcement Review.* As stated, as part of its public interest analysis, the Commission coordinates petitions for section 310(b) foreign ownership rulings with the relevant Executive Branch agencies for national security, law enforcement, foreign policy, and trade policy issues.[31] The Executive Branch agencies with expertise on issues pertaining to national security, law enforcement, foreign policy, and trade policy concerns, have reviewed the Petition and do not object to the Commission granting it, nor do they request the imposition of any conditions on the grant.[32] We also note that no pleadings were filed opposing the Petition.

IV. DECLARATORY RULING

13. Under these circumstances, pursuant to section 310(b) of the Act and sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest would be served by permitting foreign ownership of BIBI's proposed controlling U.S. parent, 123 Corp., to exceed the 25% benchmarks in section 310(b)(4) of the Act, as amended. We also find that it is in the public interest to permit up to an aggregate 100% indirect foreign ownership of 123 Corp.

14. *Specific Approval.* We also find no grounds to deny the requests for specific approvals. Therefore, pursuant to section 1.5001(i) of the Commission's rules,[33] this Declaratory Ruling grants specific approval for the following individuals and entities to hold, indirectly, more than 5% of the equity and/or voting interests of 123 Corp.:

- Border Broadcasting Corporation (100% Equity and 100% Voting) (Canada);
- Andrew Dickson (21.42% Equity and 49.995% Voting) (Canada);
- Jon Pole (10.71% Equity and 49.995% Voting) (Canada);
- Karen Dickson (7.14% Equity and 4.545% Voting) (Canada);

[29] As noted in the Petition, the Petitioner does not seek advance approval pursuant to section 1.5001(k) of the Commission's rules for any foreign individual or entity subject to specific approval to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the broadcast licensee in the future. *See* Petition at note 13; 47 CFR § 1.5001(k).

[30] *See* Petition at 8 (describing public interest benefits arising from approval of this declaratory ruling and the related transaction).

[31] *See 2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, para. 15. *See also 2020 Process Reform Order* at 10934-36, paras. 17, 24 (2020).

[32] *See* Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-153 (filed Nov. 3, 2023).

[33] 47 CFR § 1.5001(i).

- The Andrew and Karen Dickson (2022) Family Trust[34] (50.0% Equity and 4.545% Voting) (Canada);
- The Jon and Sasha Pole (2022) Family Trust[35] (50.0% Equity and 4.545% Voting) (Canada).[36]

16. *Additional Terms and Conditions.* Under this Declaratory Ruling, the Petitioner has an affirmative duty to monitor its foreign equity and voting interests, calculate those interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules,[37] and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.[38] This Declaratory Ruling is subject to the terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before foreign ownership of Petitioner exceeds the terms and conditions of this Declaratory Ruling.[39] This includes the requirement that Petitioner obtain Commission approval for any new or additional foreign individual, entity, or group of such individuals or entities to hold, directly and/or indirectly, more than 5% (or more than 10% for certain investors) of the equity and/or voting interests, or for any foreign individual, entity, or group to hold a controlling interest, in the company.[40] If, at any time, Petitioner knows, or has reason to know, that it is no longer in compliance with this Declaratory Ruling, section 310(b) of the Act, or the Commission's foreign ownership rules, Petitioner shall file a statement with the Commission explaining the circumstances within 30 days of the date that it knew, or had reason to know, that it was no longer in compliance.[41] Petitioner may be subject to enforcement action by the

[34] Andrew Dickson and Karen Dickson are co-trustees of the Dickson Trust, with each co-trustee holding a 50.0% voting interest, and thus negative control, in the trust. Petition at 4-7; Second Supplement at 3, Exhibit F (Amended).

[35] Jon Pole and Sasha Pole are the co-trustees of the Pole Trust, with each co-trustee holding a 50.0% voting interest, and thus negative control, in the trust. Petition at 4-7; Second Supplement at 3, Exhibit F (Amended).

[36] As discussed above at note 27, the Petitioner has not sought advance approval pursuant to section 1.5001(k) of the Commission's rules for any foreign individual or entity subject to specific approval to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the broadcast licensee in the future. Accordingly, prior Commission approval would be necessary for any of these specific interest holders to increase their equity or voting interests above the percentages approved herein.

[37] 47 CFR §§ 1.5002-1.5003.

[38] 47 CFR § 1.5004, note to paragraph (a).

[39] *See generally* 47 CFR § 1.5004. Section 1.5004, *inter alia*, specifies that licensees have an ongoing, proactive obligation to monitor their foreign ownership compliance and to take preemptive action to remain in compliance with the Commission's foreign ownership rules and any declaratory ruling they have received. 47 CFR § 1.5004(a). This rule section sets out the requirements for when a licensee must seek prior Commission approval for any new, not previously approved, foreign individuals, entities, or groups acquiring an interest in excess of the specific approval threshold. 47 CFR § 1.5004(a). It sets out a licensee's obligations regarding subsidiaries and affiliates and the insertion of new controlling or non-controlling foreign-organized companies. 47 CFR § 1.5004(b)-(d). It also specifies when a new petition for declaratory ruling must be filed and the obligations for continuing compliance, including how to report inadvertent non-compliance, and how to file a remedial petition for declaratory ruling, as well as the consequences of trying to evade the foreign ownership rules. 47 CFR § 1.5004(e)-(f).

[40] 47 CFR § 1.5004(a)(1).

[41] *See* 47 CFR § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in BIBI above the specific approval threshold without Commission approval, BIBI, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of BIBI to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

Commission for such non-compliance, including an order requiring divestiture of the foreign investment.[42]

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), and sections 1.5001 through 1.5004 of the Commission's rules, 47 CFR §§ 1.5001-04, and pursuant to authority delegated to the Media Bureau in sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, the Petition for Declaratory Ruling filed by Border International Broadcasting, Inc. **IS GRANTED** subject to the conditions specified herein.

18. **IT IS FURTHER ORDERED** that this Declaratory Ruling **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[42] *Id.*

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-1207
Released: December 26, 2023

WIRELINE COMPETITION BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS ANNOUNCE REVISED 2024 URBAN RATE SURVEY BROADBAND SERVICES BENCHMARKS AND WAIVER OF IMPLEMENTATION DATE TO FEBRUARY 1, 2024

WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (Bureau) and the Office of Economics and Analytics (Office) announce revised 2024 reasonable comparability benchmarks for fixed broadband services for eligible telecommunications carriers (ETCs) that are subject to broadband public interest obligations.[1] The Bureau and Office determined there was an error in calculation of the broadband rates; therefore, we have posted revised broadband rates and explanatory notes on the Commission's website at https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources. The reasonable comparability benchmark for voice services and the required minimum usage allowance for fixed broadband remain the same as announced previously.[2]

The following table provides the revised 2024 benchmark for several different broadband service offerings, though providers will need to determine the benchmark for services with characteristics not shown in the table:[3]

[1] These ETCs include incumbent local exchange rate-of-return carriers, Rural Broadband Experiment providers, CAF Phase II Auction (Auction 903) winners, Rural Digital Opportunity Fund Auction (Auction 904) winners, Bringing Puerto Rico Together Fund providers, Connect USVI providers, and Enhanced A-CAM providers. *See 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 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom, In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *Rural Digital Opportunity Fund*, WC Docket No. 19-126, *Connect America Fund,* WC Docket No. 10-90, Report and Order, 35 FCC Rcd 686, 707, para. 42 (2020).

[2] *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2024 Urban Rates Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, Public Notice, WC Docket No. 10-90, DA 23-1172 (WCB/OEA Dec. 15, 2023).

[3] We emphasize that carriers subject to broadband public interest obligations may offer their customers services other than those meeting the defined benchmark and minimum usage allowance. As long as the carrier offers at least one broadband service plan that meets the relevant metrics, it is free to offer other plans and packages to meet the varying needs of consumers. We note that usage allowance requirements do not apply to those areas that rely exclusively on satellite backhaul. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101; *see also* 47 CFR § 54.313(g).

Download Bandwidth (Mbps)	Upload Bandwidth (Mbps)	Capacity Allowance (GB)	2024 U.S.	2024 Alaska
4	1	660	$83.80	$109.44
4	1	Unlimited	$83.80	$109.44
10	1	660	$83.80	$109.44
10	1	Unlimited	$83.80	$109.44
25	3	660	$89.41	$128.70
25	3	Unlimited	$89.41	$128.70
25	5	660	$88.91	$127.03
25	5	Unlimited	$88.91	$127.03
50	5	660	$89.66	$129.94
50	5	Unlimited	$92.19	$132.83
100	10	Unlimited	$91.35	$131.66
100	20	660	$91.24	$132.47
100	20	Unlimited	$92.24	$134.23
250	25	Unlimited	$104.62	$153.98
500	50	Unlimited	$119.73	$175.78
1000	100	Unlimited	$134.28	$193.39
1000	500	660	$133.36	$191.77
1000	500	Unlimited	$134.29	$193.39

*As noted below, the minimum usage allowance for carriers receiving support from the Rural Digital Opportunity Fund is 2 Terabytes (TB) for the Above-Baseline and Gigabit tiers.

The Office has posted a revised Excel file with a tool in which providers can enter the relevant variables to determine the benchmark for specific service characteristics at https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources.

Under the Commission's rules, each ETC must certify that it is meeting the relevant reasonable comparability benchmarks for fixed voice and broadband services provided during 2024 in FCC Form 481, to be filed no later than July 1, 2025.[4] However, because the broadband comparability benchmarks are being revised, the Office and Bureau waive the requirement that ETCs meet these benchmarks beginning January 1, 2024 and instead will provide ETCs until February 1, 2024 to meet the 2024 benchmarks. This waiver is in the public interest as it will ensure that ETCs have sufficient time to inform customers of any rate changes and to make any necessary changes to their billing systems.[5]

[4] 47 CFR § 54.313(a)(10), (a)(12); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17693, 17695,18046-47, paras. 81, 86, 1026. Carriers subject to the Alaska Plan are required to meet Alaska-specific benchmarks and to certify that they are meeting the relevant reasonable comparability benchmark for their broadband service offering in the FCC Form 481 filed no later than July 1, 2025. *See Connect America Fund; Universal Service Reform–Mobility Fund; Connect America Fund–Alaska Plan*, WC Docket Nos. 10-90, 16-271, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10149, para. 28 (2016); *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086, 12092, para. 21 (2016).

[5] Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest. *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

For further information, please contact Suzanne Yelen, Wireline Competition Bureau, at (202) 418-7400 or at suzanne.yelen@fcc.gov.

- FCC -

Federal Communications Commission
Washington, D.C. 20554

December 27, 2023

DA 23-1208
In Reply Refer to:
1800B3-ARR
Released: December 27, 2023

Omni Broadcasting, LLC
c/o Jennifer F. Hale
1320 Miracle Strip Parkway Suite 200
Ft. Walton Beach, FL 35248
ronhalesr@gmail.com

Re: **Omni Broadcasting, LLC**
WTKP(FM), Port St. Joe, Florida
Facility ID No. 67579
Application File Nos. BLH-19940613KM; 0000087367; 0000212297; BSTA-20210913AAF; 0000124529

Petition for Reconsideration

Dear Petitioner:

In this letter, we deny the Petition for Reconsideration (Petition) filed by Omni Broadcasting, LLC (Omni),[1] which seeks reconsideration of a Media Bureau (Bureau) decision that found that the license for Station WTKP(FM), Port St. Joe, Florida (Station) had expired as a matter of law under section 312(g) of the Communications Act of 1934, as amended (Act), and dismissed the above referenced application for renewal of the Station's license and related pending applications.[2]

Background. Omni became the licensee of the Station in 2012.[3] On November 5, 2015, the Station went silent due to a dispute with the tower owner at the licensed site (Site A) and resumed operation using an alternate site (Site B) pursuant to special temporary authority (STA) the Media Bureau granted December 3, 2015.[4] The 2015 Engineering STA expired June 1, 2016, and Omni did not file a request to extend it. Consequently, Omni's authorization to operate at Site B expired on June 1, 2016, and its only authorized site reverted to Site A. On August 29, 2016, Omni filed an application for construction permit to operate at its STA site, Site B, which the Bureau granted on July 28, 2017.[5] Omni never filed a covering license application for this construction permit. Consequently, Omni's authorized site remained Site A. The record does not address where Omni operated from between June 1, 2016, and August 29, 2016, or whether Omni resolved its dispute with its landlord during this time.

[1] Pleading File No. 0000219926 (filed Aug. 25, 2023).

[2] *Omni Broadcasting, LLC*, Letter Decision, Ref. No. 1800B3-ARR (MB July 26, 2023) (*Letter Decision*); Application File No. 0000087367 (filed Oct. 25, 2019) (Renewal Application).

[3] *See* Application File No. BALH-20120515ACM (filed May 15, 2012) (consummated on July 6, 2012).

[4] *See* Application File No. BSTA-20151125ACO (filed Nov. 25, 2015) (2015 Engineering STA).

[5] *See* Application File No. BPH-20160829ACO (filed Aug. 29, 2016).

On September 7, 2017, FCC Field inspectors observed the Station operating from an unauthorized location (Site C), approximately 40 miles from the licensed site, Site A, and verified from staff on site that Omni was leasing space on the tower at that location to operate the Station. Omni never sought Commission authorization to operate the Station from Site C.

On October 25, 2019, Omni filed an application for renewal of the license for the Station.[6] In that application, Omni inaccurately answered "Yes" to certifications that the Station's operations had not violated the Act or the Commission's rules (Rules).[7]

On October 13, 2020, Omni filed an application for a construction permit specifying a new community of license and transmitter site (Site D).[8] On August 12, 2021, Omni requested silent STA, stating that it had lost the temporary Site B, from which it had been operating as of that date.[9] On September 13, 2021, Omni requested STA to operate from Site D.[10] None of these applications disclosed to the Bureau Omni's operation at Site C or the FCC field inspectors' visit to the Station. Because the Bureau remained unaware of Omni's operation at Site C and the FCC field inspectors' interactions with the Station, the Bureau routinely processed Omni's request, and on October 20, 2021, the Bureau granted the STA, expiring August 13, 2022. On August 11, 2022, Omni filed a notice of resumption of operations, stating that it had resumed "operations on the tower authorized by the current license [*i.e.*, Site A]."[11] Omni also filed a reduced power notification which stated the Station was operating from its licensed site, Site A.[12] On September 9, 2022, Omni filed an amendment to the 2021 Engineering STA to move from Site D to an alternate location (Site E) at reduced power because the Site A facility was unavailable for long term operations.[13] On March 9, 2023, Omni filed an application to assign the Station's license to Divine Word Communications.[14]

After the Bureau became aware of the Station's operational history, the Bureau determined that the Station may have been silent or operating with unauthorized facilities for more than one year, specifically from June 1, 2016 to June 1, 2017. Accordingly, the Bureau issued a Letter of Inquiry (*LOI*) on April 6, 2022,[15] to evaluate whether the Station was silent or operating with unauthorized facilities for more than one year, in violation of section 312(g) of the Act.

Specifically, the Bureau requested: 1) the location, effective radiated power and antenna height above ground level for all periods of operation from June 2, 2016, to the present; 2) copies of all leases, personnel records (including payroll records appropriately redacted to protect the privacy of individual employees), engineering records, and station records, including Emergency Alert System (EAS) logs, and all correspondence (including emails and text messages) relating to the Station since June 2, 2016; 3) invoices, bills, checks written or received, credit card charges, wire transfers or deposits of funds, and

---

[6] *See* Renewal Application.

[7] Due to our conclusion that the Station's license has expired, we refrain from any further exploration of the significance of Omni's certifications in its renewal application.

[8] *See* Application File No. 0000124529 (filed Oct. 13, 2020).

[9] *See* Application File No. BLSTA-20210812AAG (filed Aug. 12, 2021) (expiring Apr. 18, 2022).

[10] *See* Application File No. BSTA-20210913AAF (filed Sept. 13, 2021) (2021 Engineering STA).

[11] Application File No. 0000197401 (filed Aug. 11, 2022). *See also* Application File No. BLH-19940613KM.

[12] Application File No. 0000197402 (filed Aug. 11, 2022).

[13] Application File No. BSTA-20210913AAF (filed Sept. 9, 2022).

[14] Application File No. 0000212297 (filed Mar. 9, 2023) (Assignment Application).

[15] *See* Letter *from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC, to Omni Broadcasting, LLC* (Apr. 6, 2022).

accounting software records relating to the Station's operation since June 2, 2016; and 4) pictures of the Station's studio facilities and transmission facilities since June 2, 2016, and provide exact coordinates for the Station's transmitter site.

On May 16, 2022, Omni submitted a written response to the *LOI* and supporting documentation.[16] Omni also submitted a supplemental response on May 31, 2022.[17] In the LOI Response, Omni stated that due to extreme hardship, including the regional economy and natural disasters, it was required to file a series of STAs. Specifically, Omni admitted that: 1) although it made a good faith effort to maintain the Station, at times has not been "within the Standards of Good Engineering Practice;"[18] and 2) administrative mistakes were made, including failure to adhere to legal and technical requirements and to file notifications.[19] Omni also claimed operational delays were due to what it characterized as the Bureau's slow processing of applications during the COVID-19 pandemic, however, Omni failed to identify any specific Commission delay or how any delay impacted its operations.[20]

In support of its claims, Omni submitted declarations signed under penalty of perjury from Jennifer F. Hale, Managing Member of Omni Broadcasting, LLC, and Jim Turvaville, engineer and consultant, and a declaration from Bryan A. Covey, engineer and consultant. Omni also submitted certain tower lease agreements, engineering invoices, monthly expenses for Omni Broadcasting, LLC, and photographs of destruction at the original licensed site.[21]

In the *Letter Decision*, the Bureau held that the Station failed to operate from an authorized site for at least a "consecutive twelve-month" period, from June 1, 2016, when the 2015 Engineering STA to operate at a temporary facility expired, through June 1, 2017, during which the Station failed to operate from its authorized site for one year, warranting automatic license expiration pursuant to section 312(g) of the Act.[22] As a separate and independent basis for dismissing the pending applications, the Bureau found that the LOI Response was incomplete because it failed to respond to all the interrogatories or explain why a response was not available.[23] Specifically, Omni's response was incomplete because it contained no submission of EAS logs, no explanation of when the Station operated at Site C, and no copy of the

---

[16] *See Email from John C. Trent, Attorney, to Victoria McCauley, Attorney, Audio Division, MB, FCC* (May 16, 2022, 17:10, EDT) (LOI Response).

[17] *See Email from John C. Trent, Attorney, to Victoria McCauley, Attorney, Audio Division, MB, FCC* (May 31, 2022, 10:34, EDT) (LOI Response Supplement).

[18] LOI Response at 4.

[19] *Id.*

[20] *Id.*

[21] *See generally* LOI Response and LOI Response Supplement.

[22] *Letter Decision* at 3-4 (citing *Chinese Voice of Golden City v. FCC*, 2021 WL 6102191 (D.C. Cir. 2021) (affirming that transmissions from an unauthorized location do not constitute "broadcast signals" for purposes of § 312(g)); *Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19, 20 (D.C. Cir. 2018) (Mem.) ("Kingdom's transmissions from its unauthorized location in Beech Grove do not constitute 'broadcast signals' for purposes of § 312(g)"); *Roy E. Henderson,* Memorandum Opinion and Order, 33 FCC Rcd 3385, 3385, n.3 (2018) (upholding a section 312(g) finding where the licensee had lost its licensed site and had not obtained authorization to operate at other temporary sites)).

[23] *Letter Decision* at 4 (citing 47 CFR §§ 73.3566(b) ("If an applicant is requested by the FCC to file any additional documents or information not included in the prescribed application form, a failure to comply with such request will be deemed to render the application defective, and such application will be dismissed."), 73.3568(a) (". . . failure to respond to official correspondence or request for additional information, will be cause for dismissal."), and *LPFM MX Group 37*, Memorandum Opinion and Order, 31 FCC Rcd 7512, 7517, para. 12 (2016) (dismissing application for failure to respond to letter of inquiry)).

tower lease agreement for Site C. The *Letter Decision* also dismissed the Renewal Application, the Assignment Application, and all other pending applications related to the Station, as moot.

In the Petition, Omni argues that: 1) its failure to provide certain documentation requested by the *LOI*, or an explanation why they were omitted, is not grounds for dismissal of its Renewal Application;[24] 2) absence of EAS logs has no bearing on the Station's operational status because its multiple station relay panel does not log individual station activity;[25] 3) Site C is only a few miles from the licensed site, and operation at Site C from August 25, 2016 through September 13, 2017, was due to loss of the licensed site;[26] 4) operation from Site C could have been licensed under STA, if requested;[27] 5) Omni operated from the unauthorized location in order to keep the Station on the air;[28] 6) Omni is unable to afford full-time engineering staff or legal counsel, which led to its unauthorized operation;[29] 7) the Bureau's grant of STA applications after the June 1, 2017 expiration date impacted expiration of the license;[30] 8) the Bureau should have imposed a monetary forfeiture for Omni's unauthorized operation, as it did in a recent unrelated case involving KEUC(FM), rather than cancelling the Station license and dismissing the Renewal Application;[31] and 9) dismissal of the Renewal Application is counter to the Commission's' policy to support minority-owned stations.[32]

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.[33] Section 312(g) of the Act, provides that the Commission may extend or reinstate a station license that expired pursuant to section 312(g) to promote equity and fairness.[34] Omni has not demonstrated any legal error in the *Letter Decision*, nor has it cited any precedent that warrants reinstatement.

The *Letter Decision* correctly concluded that Omni had operated from an unauthorized location for more than twelve months resulting in expiration of the license. In the Petition, Omni admits that it operated from the unauthorized Site C location for over one year – "[t]he operation of WTKP from 'Site C' . . . commenced on or about August 25, 2016 and continued until September 13, 2017."[35] Omni also acknowledges that it failed to seek STA to operate from Site C.[36] Our analysis need not go any further.

---

[24] Petition at 1.

[25] *Id.* at 2.

[26] *Id.*

[27] *Id.*

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

[29] *Id.* at 3.

[30] *Id.*

[31] *Id.* at 4; *see also Oklahoma City Broad., Inc.*, Order and Consent Decree, DA 23-663 (MB Aug. 7, 2023) (*Oklahoma City Consent Decree*).

[32] *Id.*

[33] *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.,* Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

[34] 47 U.S.C. § 312(g); *see also Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (*Eagle*).

[35] Petition at 2.

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

The Commission has consistently applied section 312(g) to cancel licenses when the station has operated from an unauthorized site for more than 12 months.[37]

We are not persuaded by Omni's attempts to excuse its actions. Although section 312(g) grants the Commission authority to reinstate expired licenses "to promote equity and fairness,"[38] the Commission only exercises that discretion in cases where the silence or unauthorized operation has been outside the control of the licensee.[39] Omni has failed to provide any evidence that its operation at Site C was due to factors beyond its control. Omni's claim that its unauthorized operation could have been authorized via STA is unpersuasive because Omni never sought such authorization. Omni's claim that Site C is only a few miles from the licensed site is also unpersuasive, since it was still not an authorized location.[40] As the Commission found in *Chinese Voice of Golden City*, section 312(g) applies to unauthorized operation even when the licensee has characterized the distance between the authorized and actual sites as *de minimis*. Finally, Omni's claims that it merely sought to keep the Station operating does not excuse unauthorized operations, and this argument is undermined by the fact that the Station was subsequently silent for another 12 month period from October 2018 to October 2019.[41]

Omni's lack of legal counsel does not excuse its failure to comply with the Commission's Rules and most notably the requirement to seek an STA for a new operating location. Applicants are solely responsible for complying with the Rules, regardless of whether they are represented by counsel,[42] and

---

[37] *Eagle Broadcasting*, 23 FCC Rcd at 592, para. 9 (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid license expiration under section 312(g)). *Absolute Broad. LLC*, Memorandum Opinion and Order, FCC-23-38 at 8, para. 18 (2023) (unauthorized operation is no better than silence for purposes of section 312(g)); *A-O Broadcasting*, 23 FCC Rcd 603, 608, para.10 (2008) (transmission from unauthorized location is not sufficient to avoid the consequences of section 312(g); *Int'l Aerospace Sols., Inc*., Memorandum Opinion and Order, FCC 23-8, para. 9 (2023) (upholding Bureau's determination that the station licenses expired pursuant to section 312(g) due to combined silence and operation from an unauthorized site).

[38] 47 C.F.R. § 312(g).

[39] *See V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (finding reinstatement of a 312(g)-cancelled license appropriate for a station that sustained damage from three hurricanes where original facilities were destroyed and the rebuilt facility also sustained damage); *Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Sumiton Broadcasting Company, Inc*., Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order); *Universal Broadcasting of New York, Inc*., 34 FCC Rcd 10319 (MB 2019) (finding that station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

[40] *See Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 567, 570, para. 11 (2020) (rejecting argument that operating from incorrect site that was 256 feet from authorized site was a *de minimis* and did not trigger automatic expiration under section 312(g)); *Shelby Broadcast Associates, LLC*, Letter Decision, 34 FCC Rcd 6202, 6203-4 (MB 2019) (cancelling station's license after operating an unauthorized site at a greater distance than the three-second "tolerance zone" of 47 CFR § 73.1690(b)(2)); *Powell Meredith Communications Co*., Letter Order, 37 FCC Rcd 15044 (MB 2022) (affirming rescission of license where the station was built only 30 yards from the authorized location).

[41] *See* Silent Notification (filed Oct. 30 2018). Licensee did not file a request for silent STA even though it was required to do so after 30 days of silence. 47 CFR 73.1740(a)(4). License claimed that the Station was silent from October 10, 2018, until October 5, 2019, when it resumed operations "at the license tower site [Site A]." Resumption Notice (filed Oct. 16, 2019). However, in the 2015 Engineering STA, License also claimed that it lost access to Site A. Omni offers no explanation for this discrepancy.

[42] *See Burlington Cablevision, Inc*., Order on Reconsideration, 13 FCC Rcd 772, 779, para. 18 (1998).

Bureau staff is not required to take into consideration whether an applicant is assisted by counsel.[43] Moreover, the Commission has held that applicants that decline to hire counsel assume the burden of complying with the Rules,[44] and cannot be allowed to disavow their decision after an unfavorable result.[45]

We reject Omni's claim that the Bureau's grant of STAs after June 1, 2017, has any bearing on the Station's expiration under section 312(g). Under section 312(g), the Station license had already expired automatically, absent any Bureau action, on June 1, 2017. The Bureau's grant of STAs had no effect—and could not have had an effect—on the earlier statutory expiration of the Station's license. Bureau staff issued the STAs to allow temporary operations on a going forward basis, for a limited period. The STAs did not address whether the Station's license expired under section 312(g), nor did they reinstate or extend the Station's license term. Accordingly, Bureau staff's grant of STAs after June 1, 2017, did not have any effect on the Station's license expiration.[46]

Omni's argument that its unauthorized operation was a minor infraction for which the Bureau should have assessed a monetary forfeiture is also unavailing.[47] Omni cites the recent *Oklahoma City Consent Decree* regarding station KEUC(FM), in which the Bureau entered into a consent decree imposing a monetary forfeiture and compliance plan, where a station failed to notify the Bureau that it was silent for a period of roughly eleven months.[48] Omni's reliance on this case is inapposite, because unlike KEUC(FM), WTKP operated from an unauthorized location for *more than* twelve consecutive months, which warrants automatic license expiration under section 312(g).[49]

The *Letter Decision* also correctly found that Omni's failure to fully respond to the LOI was an appropriate reason to dismiss the Renewal Application. Omni acknowledges that it failed to respond to all of the LOI interrogatories, or explain why a response was not available.[50] We reject Omni's argument that this failure to respond to the LOI is not grounds for dismissal of its Renewal Application. It is well settled that the failure to respond to Commission interrogatories is grounds for the dismissal of an application pending before the Commission.[51]

---

[43] *See Salzer v. FCC*, 778 F.2d 869, 875 n.27 (D.C. Cir. 1985) ("we do not rely on the fortuity that [the applicants] filed their applications without assistance of counsel; the FCC need not take this circumstance into consideration.").

[44] *See United Broadcasting Co.*, 93 FCC 2d 482, 487, para. 12 (1983) ("[w]here, as here, a party elects to proceed *pro se*, it must assume the burden of becoming familiar with Commission Rules and conforming to Rule requirements.)

[45] *See Enterprise Broadcasting, Inc.*, Memorandum Opinion and Order, 60 FCC 2d 852, 857, para. 14 (1976).

[46] *See Inca Communications, Inc.*, Letter Order, 31 FCC Rcd 7087, 7090 (MB 2016) (*Inca*) ("irrespective of whether the staff had acted on the Second STA Request, its license would still have expired on exactly the same date because the staff's grant of STA does not supersede the automatic cancellation provision of Section 312(g)"); *Universal Broadcasting of New York, Inc*., Memorandum Opinion and Order, 34 FCC Rcd 10319, 10321, para. 7 (MB 2019) (holding that grant of STA after a 12-month silence period did not implicitly reinstate or extend license term).

[47] Petition at 4.

[48] *See Oklahoma City Consent Decree*).

[49] 47 U.S.C. § 312(g); *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd by Eagle*, 563 F.3d 543; *Absolute* at 8, para. 18.

[50] Petition at 1-2.

[51] *See* note 21 *supra*. *See also Warren L. Percival*, Order of Revocation, 8 FCC 2d 333, 333-34, para. 4 (1967) (withholding information from the Commission "frustrates the Commission of the performance of its duty. In such event, denial or revocation of a license where such information is not furnished may be warranted on this ground alone, since it is the licensee who deprives the Commission of information necessary to determine its compliance with the public interest standard."). Here, for example, Omni failed to respond to provide information concerning its

Lastly, while the Commission has promoted minority and female ownership, minority status alone does not warrant reinstatement under the equity and fairness provision of section 312(g).[52]

Omni has not demonstrated any legal error to justify reversing the *Letter Decision*, and the Bureau's conclusion in the *Letter Decision* that Omni's license expired pursuant to section 312(g) is consistent with long-standing Commission precedent. Moreover, Omni has failed to demonstrate that it experienced any circumstances that would warrant the exercise of discretion under the "equity and fairness" provision of section 312(g). Accordingly, we deny the Petition.

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Omni Broadcasting, LLC, on August 25, 2023 (Pleading File No. 0000219926), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

operations in October of 2019, where it claimed to have lost access to Site A, and then subsequently claimed to have resumed operations at Site A.

[52] *See, e.g. Inca,* 31 FCC Rcd at 7090 ("while the Commission strongly encourages minorities to become broadcast licensees, we find no basis in the statute or its legislative history to apply a more lenient reinstatement standard for minority-owned broadcast stations.").

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 23-1209
Released: December 28, 2023

MEDIA BUREAU ANNOUNCES THAT ALL FM6 LPTV RULES AND FILING REQUIREMENTS ARE NOW IN EFFECT

FM6 LPTV Stations Must State Their Intent to Continue FM6 Service and Confirm Their FM6 Operational Parameters by January 29, 2024

MB Docket No. 03-185

By this Public Notice, the Media Bureau (Bureau) announces that the Office of Management and Budget (OMB) has approved the rules adopted in the *FM6 Report and Order* that were subject to its review.[1] The Bureau has published a notice in the Federal Register announcing this approval and setting today, **December 28, 2023**, as the effective date of all related rules and filing requirements.[2] We also establish **January 29, 2024**,[3] as the deadline for all FM6 LPTV stations[4] to notify the Bureau of their intent to continue to provide FM radio service (FM6 service) and confirm their FM6 operational parameters.

The rules adopted in the *FM6 Report and Order* took effect on September 28, 2023,[5] except for those that required review by OMB, including new sections 74.790(o)(9) and 74.790(o)(10) of the Commission's rules (Rules);[6] the requirement for FM6 LPTV stations to maintain an online public

[1] *See* Notice of Office of Management and Budget Action for OMB Control Nos. 060-0214, 3060-0110, and 3060-0386 (approved Dec. 5, 2023); *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 03-185, Report and Order, FCC 23-58 (July 20, 2023) (*FM6 Report and Order*).

[2] *See* 88 FR 89610 (Dec. 28, 2023).

[3] *Id.*

[4] The *FM6 Report and Order* permitted a limited number of digital channel 6 low power television stations (FM6 LPTV stations) to continue to offer analog FM radio service on an ancillary or supplementary service, subject to specific operational rules and requirements. Those stations included: KBKF-LD, San Jose, California; WMTO-LD, Norfolk, Virginia; KXDP-LD, Denver, Colorado; WTBS-LD, Atlanta, Georgia; WRME-LD, Chicago, Illinois; KZNO-LD, Big Bear Lake, California; KEFM-LD, Sacramento, California; WEYS-LD, Miami, Florida; WDCN-LD, Fairfax, Virginia; KRPE-LD, San Diego, California; KGHD-LD, Las Vegas, Nevada; WPGF-LD, Memphis, Tennessee; and WNYZ-LD, New York, New York. *FM6 Report and Order* at paras. 24-26. In addition, the Commission permitted WVOA-LD, Westvale, New York, to provide FM6 service, subject to certain requirements. *Id.* at paras. 27-28.

[5] *Media Bureau Announces September 28, 2023 Effective Date For Certain FM6 LPTV Rules*, MB Docket No. 03-185, Public Notice, DA 23-775 (Aug. 29, 2023).

[6] 47 CFR §§ 74.790(o)(9) and (10). *See FM6 Report and Order* at para. 52.

inspection file (OPIF);[7] and the requirement that FM6 LPTV stations notify the Commission of their intent to continue FM6 operations, provide their FM6 operational parameters, and notify the Commission of any changes to their operational parameters.[8] All FM6 rules and filing requirements adopted in the *FM6 Report and Order* are now effective and below we provide guidance relating to certain FM6 rules and filing requirements.

FM6 Operational Notification and STAs. In the *FM6 Report and Order* the Commission instructed the Bureau to establish a deadline for each FM6 LPTV station to notify the Bureau whether it will continue to provide FM6 service and to confirm its precise FM6 operational parameters (FM6 Operational Notification).[9] We establish **January 29, 2024**, as the deadline for filing the FM6 Operational Notification with the Bureau. This will ensure that FM6 LPTV stations have sufficient time to file the required notification with the Bureau and make sure all information being provided is accurate. The notification must be made by written letter and mailed to the FCC Office of the Secretary, Attention: Chief, Video Division, Media Bureau. An electronic copy of the FM6 Operational Notification must also be sent via electronic mail to Barbara Kreisman, the Chief of the Video Division, Media Bureau at Barbara.Kreisman@fcc.gov.[10]

The Bureau will consider all FM6 LPTV stations with an unexpired STA or pending STA extension to be in compliance with the Commission's rules as long as all operations comply with the rules adopted in the *FM6 Report and Order*. Once the FM6 Operational Notification is received, the Bureau will add a notation to each FM6 LPTV station's license to reflect that it is permitted to provide FM6 operations, pursuant to the operational parameters disclosed to the Bureau, as an ancillary or supplementary service pursuant to the *FM6 Report and Order*.[11] Any pending STA extension request will be dismissed as moot by the Bureau following the addition of the notation to a station's license.

Effective immediately, the Bureau will not process STA extension requests filed by any FM6 LPTV stations, with the exception of the STA extension request that is required by the *FM6 Report and Order* to be filed by WVOA-LD, Westvale, New York.[12] The Bureau also will promptly dismiss any STA requests for new FM6 operations.[13]

---

[7] *See id*. at para. 56; 47 CFR § 74.790(o)(11).

[8] *See FM6 Report and Order* at para. 52 and n.214.

[9] *Id.* at para. 52. Such information must include: maximum effective radiated power (ERP); radiation center above ground level (RCAGL); radiation center above mean sea level (RCAMSL); antenna height above average terrain (HAAT); antenna type (directional or non-directional); directional antenna pattern (if applicable); antenna make and model; transmitter power output (TPO); and a description of the transmission system, including any transmission lines, connectors, combiners, etc., and their associated losses. *Id.* at n.214.

[10] *Id.* at n.218.

[11] *Id.* at n.212 and n.213.

[12] WVOA-LD is required to provide FM6 service as an ancillary or supplementary service under STA for a period of one year prior to being permanently included in the limited group of FM6 LPTV stations. *Id.* at para. 28. WVOA-LD has converted to ATSC 3.0 and commenced FM6 service pursuant to an STA. S*ee* LMS File Nos. 0000227652 and 0000231253; Letter from David Oxenford, Counsel for Metro TV, Inc. to Barbara A. Kreisman, Chief, Video Division, Media Bureau (Dec. 21, 2023) on file at LMS File No. 0000231253 (notification that WVOA-LD commenced ATSC 3.0 operations on December 15, 2023 and FM6 service on December 18, 2023). WVOA-LD's STA is scheduled to expire on June 18, 2024 and an extension request must be filed prior to that date.

[13] *FM6 Report and Order* at paras. 29-34 (denying requests to permit new FM6 entrants or legacy analog FM6 LPTV stations that ceased or never previously provided FM6 service).

Online Public Inspection File Access. Pursuant to section 74.790(o)(11) of the Rules and the *FM6 Report and Order*, FM6 LPTV stations are required to maintain an OPIF for their FM6 service.[14] The Bureau has established an OPIF for each of the FM6 LPTV stations. FM6 LPTV station's may access their OPIF by visiting the OPIF sign-in page at https://publicfiles.fcc.gov/opifadmin/login and following the sign-in instructions. Stations are responsible for filing all documents that would need to be placed in a FM6 LPTV station's OPIF as of today, December 28, 2023, and moving forward. Documents that were due prior to the effective date do not need to be filed.[15]

Ancillary or Supplementary Service Fees. All television stations that offer feeable ancillary or supplementary services are required to submit an Annual DTV Ancillary/Supplementary Services Report (A&S Report)[16] by December 1st each year and remit a 5% fee on the gross revenues (for noncommercial stations 2.5% of the gross revenues from ancillary or supplementary services which are nonprofit, noncommercial, and educational) of such feeable services provided during the preceding twelve month period ending on September 30th of that year (i.e. October 1 through September 30).[17] FM6 LPTV stations that offer feeable ancillary or supplementary services are subject to this fee.[18] FM6 LPTV stations should disclose in an attachment to their A&S Report when feeable services were provided, the amount of all feeable revenues, and the fees owed. To the extent that FM6 LPTV stations provided feeable services, either during the current or prior reporting periods, but did not pay the fee pending the outcome of the instant proceeding, the Media Bureau in consultation with the Office of Managing Director will provide further guidance at a future date.[19] FM6 LPTV stations should amend or file any missing A&S Report for the current or prior reporting periods based on this guidance.

For additional information, contact Shaun Maher, Video Division, Media Bureau at Shaun.Maher@fcc.gov or (202) 418-2324 (legal); Kevin Harding, Video Division, Media Bureau at Kevin.Harding@fcc.gov or (202) 418-7077 (OPIF); or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov or (202) 418-7611 (technical).

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.[20]

-- FCC --

[14] *Id.* at para. 56; 47 CFR § 74.790(o)(11).

[15] For example, an FM6 LPTV station does not need file issues/programs lists for prior quarters (e.g. third quarter 2023). A station's fourth quarter issues/programs list would need to cover the period of December 28, 2023, through December 31, 2023.

[16] FCC Form 2100, Schedule G (A&S Report).

[17] 47 CFR § 73.624(g)

[18] *FM6 Report and Order* at paras. 59-60.

[19] *See id.* at n.247 (instructing the Media Bureau and Office of Managing Director to issue any guidance, as necessary, to facilitate payment of the required five percent ancillary or supplementary service fee).

[20] 47 CFR §§ 0.61 and 0.283.

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

In the Matter of	)	
	)	
Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment	)	ULS File No. 0010168412
	)	ULS File No. 0010168420
	)	
	)	
Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment	)	ULS File No. 0010168439
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 29, 2023 **Released: December 29, 2023**

By the Chiefs, Wireless Telecommunications Bureau and Office of Economics and Analytics

TABLE OF CONTENTS

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we approve the assignment applications filed by Channel 51 License Company LLC (Channel 51),[1] LB License Co, LLC (LB License),[2] Nextel West Corp. (Nextel West) and T-Mobile License LLC (T-Mobile License and, with Nextel West, T-Mobile) (collectively, the Applicants)[3] seeking Commission consent to assign 600 MHz spectrum licenses from Channel 51 and LB License to T-Mobile.[4]

2. After carefully evaluating the potential competitive effects of the proposed assignments, we find that the likelihood of competitive harm is low. As we have stated previously, we emphasize that the Commission's screen is not a hard cap on a company's holdings, but rather a trigger for further competitive analysis regarding the impact of a proposed transaction on the market for wireless services.[5] T-Mobile has been leasing this spectrum since 2020, and as we explain below, we do not find that competitive conditions in the markets subject to the instant transaction warrant spectrum divestitures or any other remedies. In addition, we find that some public interest benefits are likely to be realized, such as the continued use of this spectrum for 5G services resulting in enhanced network coverage, capacity, and performance to the benefit of American consumers.

[1] Amended Application of T-Mobile License LLC, Nextel West Corp., and Channel 51 License Company LLC for License Assignment, ULS File No. 0010168439 (filed Apr. 3, 2023) (T-Mobile/Channel 51 Amended Application). On September 2, 2022, Channel 51, LB License, and T-Mobile first filed applications requesting approval for the assignment of 10 to 30 megahertz of Channel 51's and LB License's 600 MHz licenses to T-Mobile. These applications were amended on April 3, 2023.

[2] Amended Applications of T-Mobile License LLC, Nextel West Corp., and LB License Co, LLC for License Assignment, ULS File Nos. 0010168412 and 0010168420 (filed Apr. 3, 2023) (T-Mobile/LB License Amended Applications).

[3] On April 3, 2023, three public interest statements were filed by the Applicants. The two public interest statements filed under the ULS File Nos. 0010168412 and 0010168420 regarding the T-Mobile/LB License Amended Applications are nearly identical and are cited to as "T-Mobile/LB License Public Interest Statement." There are only minor differences between the T-Mobile/LB License Public Interest Statement and what is stated in the public interest statement filed under the ULS File No. 0010168439 regarding the T-Mobile/Channel 51 Amended Application (T-Mobile/Channel 51 Public Interest Statement).

[4] T-Mobile currently leases from Channel 51 and LB License certain spectrum associated with Channel 51's and LB License's 600 MHz licenses. *See Application of T-Mobile License LLC and Channel 51 License Company LLC for Spectrum Manager Lease Arrangement; Application of T-Mobile License LLC and LB License Co, LLC for Spectrum Manager Lease Arrangement*, ULS File Nos. 0009021213, 0009021220, Order on Reconsideration, 35 FCC Rcd 14059 (WTB 2020) (*T-Mobile-Channel 51-LB License Lease Order*).

[5] *See*, *e.g.*, *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14059-60, para. 1; *Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10614, para. 87 (2019) (*T-Mobile-Sprint Order*); *SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent to Assign Licenses and Spectrum Lease Authorizations and to Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, WT Docket No. 15-262, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3638-39, para. 17 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations; Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2753, para. 41 (WTB/IB 2014) (*AT&T-Leap Order*).

3. Further, we find that DISH's requested conditions are not transaction-specific, and its proposed remedies are beyond the scope of these applications.[6] Moreover, DISH requests that we hold the applications in abeyance pending the resolution of the Wireless Telecommunications Bureau (WTB)'s and Office of Economics and Analytics (OEA)'s recent public notice on AT&T's petition for rulemaking,[7] which we decline to do. To the extent DISH asks us to reexamine broader spectrum aggregation and competition issues, we note that we have sought comment on mobile spectrum holding policies more generally in the separate proceeding initiated by WTB's and OEA's aforementioned public notice.[8] Regarding the proposed transaction before us, we disagree with DISH that the public interest is harmed by these assignment applications; in contrast, and as noted above, we find that the public interest is served by the continued use of the 600 MHz licenses for enhanced 5G and LTE network capacity, coverage, and performance. We therefore consent to the assignment applications.

II. BACKGROUND

A. Description of the Applicants

1. T-Mobile

4. T-Mobile is a wholly-owned subsidiary of T-Mobile USA, Inc. and, indirectly, T-Mobile US, Inc., a publicly-traded Delaware corporation controlled by Deutsche Telecom AG and part of the family of companies that operate under the T-Mobile brand names.[9] T-Mobile US, Inc. and its subsidiaries offer nationwide wireless voice and data services to consumer and business customers and provide service to approximately 114 million postpaid and prepaid customers, as of December 31, 2022, as well as a wide selection of wireless devices and accessories.[10] Substantially all of T-Mobile US, Inc.'s revenues for the years ended December 31, 2022, 2021, and 2020, were earned in the United States, including Puerto Rico and the U.S. Virgin Islands.[11] T-Mobile US, Inc. reported 2022 total revenues of approximately $80 billion, with an operating income of approximately $6.5 billion.[12]

[6] DISH Petition to Condition at 2, 7 (DISH Petition). While DISH styled its filing a "Petition to Condition," the Commission's rules do not provide for such a filing. DISH specifically stated that its filing was not a petition to deny the applications. Letter from Alison Minea, Vice President, Regulatory Affairs, DISH, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010168412, 0010168439 at 7 (filed Oct. 4, 2023) (DISH Oct. 4, 2023 Letter). We will exercise our discretion, however, to treat DISH's submission as an informal objection. *See* 47 CFR § 1.41.

[7] *Wireless Telecommunications Bureau and Office of Economics and Analytics Seek Comment on AT&T Petition for Rulemaking and Mobile Spectrum Holdings Policies*, WT Docket No. 23-319, RM-1196, Public Notice, DA 23-891 (WTB/OEA Sept. 22, 2023) (*Mobile Spectrum Holdings Public Notice*).

[8] *See Mobile Spectrum Holdings Public Notice* at 4-5.

[9] T-Mobile/Channel 51 Public Interest Statement at 1; T-Mobile/LB License Public Interest at 1; Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment, *Pro Forma* Changes to Ownership of Assignee, Section 1.65 Notification, ULS File Nos. 0010168412 and 0010168420 (filed Apr. 28, 2023); Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment, *Pro Forma* Changes to Ownership of Assignee, Section 1.65 Notification, ULS File No. 0010168439 (filed Apr. 28, 2023).

[10] T-Mobile US, Inc. SEC Form 10-K, at 5-6 (filed Feb. 14, 2023) (75% postpaid customers, 16% prepaid customers, and 9% wholesale and other services); *see also* T-Mobile/Channel 51 Public Interest Statement at 1; T-Mobile/LB License Public Interest at 1.

[11] T-Mobile US, Inc. SEC Form 10-K, at 6 (filed Feb. 14, 2023).

[12] T-Mobile US, Inc. SEC Form 10-K, at 32 (filed Feb. 14, 2023).

2. LB License and Channel 51

5. LB License is a wholly-owned direct subsidiary of LB Spectrum Holdings, LLC (LB Spectrum Holdings), which is indirectly controlled by LB Spectrum Holdings' board of directors.[13] The indirect equity and voting rights of LB License are dispersed among a number of entities, including several Columbia entities (Columbia Spectrum Partners II-A, L.P.; Columbia Spectrum Partners II GP, L.P.; and Columbia Spectrum II, LLC) and Future Fund entities (Future Fund Investment Co. No. 5 Pty Ltd; Future Fund Board of Guardians).[14] Ultimate control over the Columbia entities currently rests with two managing members.[15]

6. The sole member and U.S. controlling parent of Channel 51 is Channel 51, LLC.[16] Channel 51, LLC's managing member is vested with exclusive and full operational control of Channel 51, LLC.[17] While Channel 51's ultimate voting interests are vested in its managing member, its indirect equity interests are more dispersed, and—like LB License—include a number of Columbia entities (e.g., Columbia Capital VI, LLC; Columbia Spectrum, LLC) and Future Fund entities.[18] Like LB License, the Columbia entities are ultimately controlled by two managing members.[19]

B. Description of the Transaction

7. On August 8, 2022, the Applicants entered into two license purchase agreements, pursuant to which 600 MHz licenses held by Channel 51 and LB License would be assigned to T-Mobile.[20] In the proposed transaction, T-Mobile is proposing to acquire 10 to 20 megahertz of spectrum in 167 counties in all or parts of 50 cellular market areas (CMAs).[21] Post-transaction, in markets where there is geographical overlap, T-Mobile would hold 299.5 to 440 megahertz of spectrum[22] covering approximately 90 million people, or approximately 27% of the population of the United States, excluding the territories. As noted above, the licenses that are subject to the proposed transaction were previously leased to T-Mobile by Channel 51 and LB License through long-term spectrum manager

[13] FCC Ownership Disclosure Filing for LB License Co, LLC, FCC Form 602, FCC File No. 0008043391, Exh. A, Narrative Description of Ownership of LB License Co, LLC at A-1 (LB License Ownership Disclosure); *see also* T-Mobile/LB License Public Interest Statement at 2.

[14] LB License Ownership Disclosure at A-1, A-2.

[15] LB License Ownership Disclosure at A-1.

[16] FCC Ownership Disclosure Filing for Channel 51 License Company LLC, FCC Form 602, FCC File No. 0008435075, Exh. A, Narrative Description of Ownership of Channel 51 License Co LLC at 1 (Channel 51 Ownership Disclosure).

[17] Channel 51 Ownership Disclosure at 1.

[18] Channel 51 Ownership Disclosure at 1-3.

[19] Channel 51 Ownership Disclosure at 1.

[20] T-Mobile/Channel 51 Public Interest Statement at 1-2; T-Mobile/LB License Public Interest Statement at 1-2.

[21] *See* T-Mobile/Channel 51 Spectrum Aggregation Exhibit (filed Aug. 25, 2023); T-Mobile/LB License Spectrum Aggregation Exhibit (filed Aug. 25, 2023).

[22] *See* T-Mobile/Channel 51 Spectrum Aggregation Exhibit (filed Aug. 25, 2023); T-Mobile/LB License Spectrum Aggregation Exhibit (filed Aug. 25, 2023).

leasing arrangements.[23] As such, T-Mobile is already attributed with the spectrum, and T-Mobile currently provides service using this 600 MHz spectrum.[24]

8. The Applicants assert that approval of the proposed transaction will further the public interest by supporting enhanced competition and consumer benefits, promoting the rapid buildout of 5G, and enhancing network capacity, coverage, and performance.[25] They claim that because T-Mobile is already utilizing the spectrum under the long-term spectrum manager leasing arrangements, approval of the applications will allow T-Mobile to maintain the network performance it has achieved since those leases began.[26] Specifically, the low-band 600 MHz spectrum at issue provides a coverage layer and provides network control functions for other bands utilized by T-Mobile's network.[27]

C. Transaction Review Process

9. On April 3, 2023, LB License and T-Mobile filed two amended applications[28] requesting Commission approval for the assignment of 600 MHz licenses from LB License to T-Mobile.[29] In addition, concurrently with the filing of these applications, Channel 51 and T-Mobile filed an amended application requesting Commission approval for the assignment of 600 MHz licenses from Channel 51 to T-Mobile.[30] On April 19, 2023, these amended applications were put on an accepted for filing public

[23] On March 24, 2020, Channel 51 and LB License each filed a notification disclosing that they had entered into a long-term spectrum manager lease agreement with T-Mobile. *See* Notification of T-Mobile License LLC and Channel 51 License Company LLC of a Long-Term Spectrum Manager Lease Agreement, ULS File No. 0009021213 (filed Mar. 24, 2020); Notification of T-Mobile License LLC and LB License Co, LLC of a Long-Term Spectrum Manager Lease Agreement, ULS File No. 0009021220 (filed Mar. 24, 2020). These notifications were accepted by WTB on July 9, 2020. On December 3, 2020, WTB denied Verizon's Petition for Reconsideration of the acceptance of T-Mobile's spectrum manager lease arrangements with Channel 51 and LB License. *See T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd 14059.

[24] T-Mobile/Channel 51 Public Interest Statement at 2-3; T-Mobile/LB License Public Interest Statement at 2-3.

[25] T-Mobile/Channel 51 Public Interest Statement at 2-4; T-Mobile/LB License Public Interest Statement at 2-4.

[26] T-Mobile/Channel 51 Public Interest Statement at 3; T-Mobile/LB License Public Interest Statement at 3.

[27] T-Mobile/Channel 51 Public Interest Statement at 4; T-Mobile/LB License Public Interest Statement at 4.

[28] Subsequent to the April 3, 2023 amended applications, the Applicants amended these applications with additional exhibits and other documents. *See* Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment, *Pro Forma* Changes to Ownership of Assignee, Section 1.65 Notification, ULS File Nos. 0010168412 and 0010168420 (filed Apr. 28, 2023); Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment, *Pro Forma* Changes to Ownership of Assignee, Section 1.65 Notification, ULS File No. 0010168439 (filed Apr. 28, 2023); Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment, Spectrum Aggregation Exhibit and Table, Competition Exhibit, ULS File Nos. 0010168412 and 0010168420 (filed July 10, 2023); Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment, Spectrum Aggregation Exhibit and Table, Competition Exhibit, ULS File No. 0010168439 (filed July 10, 2023); Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment, Spectrum Aggregation Exhibit and Table, Competition Exhibit, ULS File Nos. 0010168412 and 0010168420 (filed Aug. 25, 2023); Application of T-Mobile License LLC, Nextel West Corp. and Channel 51 License Company LLC for License Assignment, Spectrum Aggregation Exhibit and Table, Competition Exhibit, ULS File No. 0010168439 (filed Aug. 25, 2023); Applications of T-Mobile License LLC, Nextel West Corp. and LB License Co, LLC for License Assignment and Channel 51 License Company LLC for License Assignment, Spectrum Aggregation Exhibit, ULS File Nos. 0010168412, 0010168420, 0010168439 (filed Nov. 10, 2023).

[29] T-Mobile/LB License Public Interest Statement.

[30] T-Mobile/Channel 51 Public Interest Statement.

notice.[31] On May 3, 2023, AT&T filed comments on the applications.[32] On May 4, 2023, DISH filed a self-styled "Petition to Condition" regarding the assignment of these 600 MHz licenses.[33] On May 15, 2023, Channel 51 and LB License filed a joint opposition to DISH's petition.[34] Also on May 15, 2023, T-Mobile filed a response to AT&T's comments and DISH's petition.[35] On June 6, 2023, DISH filed a reply to the oppositions.[36] On June 26, 2023, DISH, Channel 51/LB License, and T-Mobile each filed *ex parte* letters.[37] On October 4, 2023, DISH filed a letter that responded to T-Mobile's June 26 *ex parte* letter and Channel 51/LB License's June 26 *ex parte* letter.[38] On October 12, 2023, T-Mobile filed a response to the October 4 letter filed by DISH,[39] and on October 20, 2023, DISH replied to T-Mobile's letter.[40] On October 24, 2023, Channel 51/LB License filed a letter responding to DISH's two October letters.[41]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. Pursuant to section 310(d) of the Communications Act of 1934, as amended (Act), we must determine whether the proposed assignment to T-Mobile of licenses held by Channel 51 and LB License will serve the public interest, convenience, and necessity.[42] In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable

[31] *Wireless Telecommunications Bureau, Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and* De Facto *Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing*, ULS File Nos. 0010168412, 0010168420, 0010168439, Public Notice, Report No. 17666 (WTB Apr. 19, 2023). This public notice also announced that the applications were subject to applicable pre-grant notice and petition procedures and provided a 14-day notice period, running until May 3, 2023. *See* 47 CFR § 1.948(j)(1)(iii).

[32] AT&T Comments.

[33] DISH Petition.

[34] Channel 51/LB License Joint Opposition.

[35] T-Mobile Response.

[36] DISH Reply.

[37] Letter from Alison Minea, Vice President, Regulatory Affairs, DISH, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010168412, 0010168439 (filed June 26, 2023) (DISH June 26, 2023 *Ex Parte* Letter); Letter from Paul Chisholm, Channel 51, Monish Kundra, LB License, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010168412, 0010168439 (filed June 26, 2023) (Channel 51/LB License June 26, 2023 *Ex Parte* Letter); Letter from Steve Sharkey, Vice President, Government Affairs Engineering and Technology Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010168412, 0010168439 (filed June 26, 2023) (T-Mobile June 26, 2023 *Ex Parte* Letter).

[38] DISH Oct. 4, 2023 Letter.

[39] Letter from Steve Sharkey, Vice President, Government Affairs Engineering and Technology Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010168412, 0010168439 (filed Oct. 12, 2023) (T-Mobile Oct. 12, 2023 Letter).

[40] Letter from Alison Minea, Vice President, Regulatory Affairs, DISH, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010168412, 0010168439 (filed Oct. 20, 2023) (DISH Oct. 20, 2023 Letter).

[41] Letter from Paul Chisholm, Channel 51, Monish Kundra, LB License, to Marlene H. Dortch, Secretary, FCC, ULS File Nos. 0010168412, 0010168439 (filed Oct. 24, 2023) (Channel 51/LB License Oct. 24, 2023 Letter).

[42] 47 U.S.C. § 310(d). *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39 & n.121 (stating that section 310(d) of the Act requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under section 308 of the Act, 47 U.S.C. § 308).

statutes, and the Commission's rules.[43] If the proposed transaction does not violate a statute or rule, we then consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[44] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[45] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[46]

11. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[47] The U.S. Department of Justice (DOJ) has independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public standard is somewhat broader.[48] The Commission has determined it may impose and enforce transaction-specific conditions that address the potential harms of a transaction.[49] If we are unable to find that a proposed transaction serves the public interest or if the record presents a substantial and material question of fact, then we must designate the application for a hearing.[50]

12. *Qualifications of the Applicants.* Section 310(d) of the Act requires that we make a determination as to whether the Applicants have the requisite qualifications to hold Commission licenses.[51] Among the factors that the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."[52] Therefore, as a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualification requirements to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.[53] We note that no parties have

[43] 47 U.S.C. § 310(d); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *see also AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

[44] *See, e.g.*, *Application of Verizon Communications Inc. and America Móvil, S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*); *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *see also AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

[45] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *see also AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

[46] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *see also AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

[47] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 23; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *see also AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

[48] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 23; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *see also AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

[49] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *see also AT&T-Leap Order*, 29 FCC Rcd at 2743-44, para. 16.

[50] 47 U.S.C. § 309(e); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 42; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *see also AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

[51] 47 U.S.C. § 310(d).

[52] 47 U.S.C. § 310(d); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 8; *see also AT&T-Leap Order*, 29 FCC Rcd at 2744, para. 17.

[53] 47 U.S.C. § 310(d); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596-97, para. 43; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 8; *see also AT&T-Leap Order*, 29 FCC Rcd at 2744, para. 17.

raised issues regarding the basic qualifications of T-Mobile, Channel 51, or LB License. Accordingly, we find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications of these Applicants under the Act and our rules, regulations, and policies.

IV. PRELIMINARY ISSUES

13. DISH raises several issues that we find are outside of the scope of these applications and are not transaction-specific. First, DISH requests that the Commission hold the instant applications in abeyance pending the resolution of WTB's and OEA's public notice seeking comment on mobile spectrum holdings policies.[54] In support of its request, DISH also argues that the Commission should take into consideration the recent announcement of T-Mobile and Comcast to lease spectrum in the 600 MHz band.[55] Further, DISH argues that T-Mobile should be presumptively barred from acquiring additional 600 MHz licenses in the future absent a strong public interest showing rebutting that presumption.[56]

14. DISH requests that the Commission examine questions of general competition and spectrum aggregation issues for markets that are not subject to the applications before WTB.[57] Specifically, DISH asserts that T-Mobile's holdings already exceed the spectrum screen in over 100 markets.[58] Further, DISH argues that T-Mobile's existing low-band spectrum holdings should be examined given that T-Mobile currently exceeds the spectrum screen, arguing that the instant transaction should not be viewed in isolation.[59]

15. Next, DISH requests that the Commission impose conditions or limitations on T-Mobile across all of its 600 MHz spectrum band holdings. DISH asserts that because T-Mobile argued in favor of a 40 megahertz reserve limit during the pendency of the incentive auction in 2014, that the Commission should not grant the assignment of 600 MHz spectrum unless spectrum swaps are imposed to counterbalance spectrum aggregation concerns.[60] DISH claims that, because T-Mobile's 600 MHz spectrum holdings sit in the center of the band, other providers are left with non-contiguous licenses that are more difficult to combine.[61] DISH argues in its reply that while it previously suggested that T-Mobile hold no more than three blocks of 600 MHz spectrum in any market involved in this transaction, the potential competitive harms could be offset, if the Commission ensures that competitors can recombine their respective 600 MHz assets through spectrum swaps.[62]

16. DISH requests that the Commission require T-Mobile to commit to spectrum swaps in the 600 MHz band, as needed, to enable more contiguity among other 600 MHz license holders.[63] DISH

[54] DISH Oct. 20, 2023 Letter at 3-4.

[55] DISH Oct. 4, 2023 Letter at 2 & n.5 (citing T-Mobile USA Inc., Form 8-K, Sept. 12, 2023 announcing that subsidiary T-Mobile USA, Inc. entered into a License Purchase Agreement with Comcast under which T-Mobile will acquire spectrum in the 600 MHz band from Comcast).

[56] DISH Petition at 2, 7.

[57] DISH Petition at 6 (contending that T-Mobile's spectrum holdings exceed the screen in 127 CMAs and in many of the top 25 CMAs).

[58] DISH Petition at 6.

[59] DISH Reply at 3-4; DISH Oct. 4, 2023 Letter at 2-3.

[60] DISH Reply at 10-11.

[61] DISH Petition at 7-9 and Exhibit A (arguing that T-Mobile's spectrum holdings across 416 PEAs result in a "wall of magenta" that impacts the 600 MHz band to T-Mobile's advantage and to the harm of 5G competition).

[62] DISH Reply at 2, 10-11.

[63] DISH June 26, 2023 *Ex Parte* Letter at 4 (stating that on a PEA basis, this would require T-Mobile to swap assignments with other licensees to shift T-Mobile to the lower or the upper end of the 600 MHz band).

argues that spectrum swaps of 600 MHz licenses could rely upon voluntary participation by other 600 MHz licensees; further, this remedy would leave T-Mobile with the same spectrum depth in the band for each Partial Economic Area (PEA), while enabling other providers to maximize the utility of the remaining 600 MHz blocks.[64] In particular, DISH objects to the fact that in St. Louis, Missouri, T-Mobile would hold five blocks of 600 MHz spectrum.[65]

17. In response to DISH's arguments, the Applicants assert that the public interest harm that DISH seeks to correct is entirely speculative,[66] and should such harm ever materialize, it could be resolved by voluntary market spectrum swaps.[67] T-Mobile further contends that DISH's proposed remedies are unprecedented and unjustified.[68] T-Mobile asserts that WTB has never intervened in private transactions without finding market-specific competitive harm.[69] T-Mobile argues that DISH has not attempted to justify a 600 MHz-specific remedy to the theoretical contiguity problems DISH may or may not face in the future.[70] T-Mobile contends that the secondary market has efficiently and effectively addressed contiguity issues in the past.[71] In particular, T-Mobile states that providers have cooperatively pursued spectrum contiguity through spectrum swaps, and T-Mobile has actively participated in such spectrum swaps, including swaps with its competitors.[72] Channel 51 and LB License assert that DISH has not offered an explanation as to why it could not assemble contiguous blocks through spectrum swaps and other secondary market transactions.[73]

18. The Applicants contend that DISH offers no more than a hypothetical suggestion that it might actually have plans to purchase or lease its neighbors' 600 MHz channels, whether in the near-term or the distant future.[74] Channel 51 and LB License maintain that DISH has not shown that it: (1) has any real intention to engage in a transaction that the channel placement of T-Mobile, Channel 51, or LB License could ostensibly impede; or (2) has ever pursued and consummated secondary market solutions to any such problem before asking that the Commission modify the 600 MHz band's auction-based channel assignments to be more to DISH's current preferences.[75] Channel 51 and LB License assert that reconfiguring 600 MHz channel assignments would require the Commission to determine which licensees—DISH, T-Mobile, or third parties—to favor with preferred placement.[76] However, Channel 51 and LB License argue, the Commission has already developed and implemented a successful method of configuring channel assignments—a well-established process of assignment-phase bidding provides

[64] DISH June 26, 2023 *Ex Parte* Letter at 4.

[65] DISH Reply at 11.

[66] T-Mobile Response at 8-10; T-Mobile June 26, 2023 *Ex Parte* Letter at 3; Channel 51/LB License Joint Opposition at 12.

[67] Channel 51/LB License Joint Opposition at 12; *see also* T-Mobile Response at 9-10.

[68] T-Mobile June 26, 2023 *Ex Parte* Letter at 3; *see also* T-Mobile Response at 4-5, 8-10.

[69] T-Mobile June 26, 2023 *Ex Parte* Letter at 3.

[70] T-Mobile June 26, 2023 *Ex Parte* Letter at 3; *see also* T-Mobile Response at 8-10.

[71] T-Mobile June 26, 2023 *Ex Parte* Letter at 3.

[72] T-Mobile Response at 9. T-Mobile states that DISH had previously rejected a spectrum swap proposed by T-Mobile without explanation or proposing an alternative. *Id.*; T-Mobile June 26, 2023 *Ex Parte* Letter at 3.

[73] Channel 51/LB License Joint Opposition at 13.

[74] Channel 51/LB License Joint Opposition at 14; T-Mobile Response at 9-10.

[75] Channel 51/LB License Oct. 24, 2023 Letter at 3; Channel 51/LB License Joint Opposition at 12-14.

[76] Channel 51/LB License June 26, 2023 *Ex Parte* Letter at 5.

winning bidders in the clock phase of an auction with an economically efficient opportunity to express their preferences for specific frequencies based on their unique needs and business plans.[77]

19. *Discussion*. DISH advances several arguments that involve issues of general applicability across the 600 MHz band including issues of channel assignments and location across all 416 PEAs identified by DISH as presenting competitive concerns.[78] We agree with the Applicants that the Incentive Auction channel assignments were subject to an assignment bidding phase and that, if WTB were to order swaps of current 600 MHz band holdings, this would displace licensees from the channel assignment they bid on. In the 2014 *Mobile Spectrum Holdings Report and Order*, the Commission adopted market-based spectrum reserve limits for entities that did not hold a certain amount of below-1-GHz spectrum; T-Mobile qualified as one of those entities.[79] Further, the Commission noted in the *Mobile Spectrum Holdings Report and Order*, that while the aggregation of 600 MHz Band spectrum by means of secondary market transactions may have the potential to exacerbate concerns about below-1-GHz spectrum concentration, this must be balanced against the Commission's general policy of promoting flexibility in secondary market transactions.[80] We find that DISH's requested remedy of requiring the licensees within the 600 MHz band to reallocate to different channels is beyond the scope of this transaction review and, in any event, this is not the appropriate proceeding to consider whether to modify or swap the holdings of licenses within the 600 MHz band. We note that no other 600 MHz licensee has filed in support of DISH's arguments. Further, we decline to presumptively bar the consideration of other assignment applications, leases, or license transfers within the context of this proceeding. We likewise decline DISH's request to hold these applications in abeyance pending the resolution of WTB's and OEA's public notice seeking comment on mobile spectrum holdings policies more generally.[81] Rather, we examine the spectrum holdings in the markets implicated in this specific transaction and set forth our competitive analysis below.

V. POTENTIAL PUBLIC INTEREST HARMS

20. Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the marketplace.[82] Regarding mobile spectrum holding policies, the Commission's fundamental goal is the preservation and promotion of competition, which in turn, leads to lower prices, improved quality, and increased innovation.[83] When considering the potential competitive effects of spectrum aggregation, the Commission has considered whether there would be an increased likelihood that rival service providers or potential entrants would be foreclosed

[77] Channel 51/LB License June 26, 2023 *Ex Parte* Letter at 5; Channel 51/LB License Joint Opposition at 11; *see also* T-Mobile Response at 9-10.

[78] DISH Petition and Exhibit A. While the Applicants argue that the Commission should disregard DISH's filing in its entirety and grant the applications, Channel 51/LB License June 26, 2023 *Ex Parte* Letter at 2-7, to the extent that DISH's arguments pertain to potential harms that may result from the assignment of spectrum, we discuss those issues below.

[79] *Policies Regarding Mobile Spectrum Holdings Expanding the Economic Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, Report and Order, 29 FCC Rcd 6133, 6196, para. 153 (2014) (*Mobile Spectrum Holdings Report and Order*).

[80] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6212, para. 198.

[81] DISH Oct. 20, 2023 Letter at 3-4.

[82] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10617, para. 94; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd 3635-36, para. 9; *AT&T-Leap Order*, 29 FCC Rcd 2745-46, para. 21; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88.

[83] *See*, *e.g.*, *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6144, para. 17.

from expanding capacity, deploying advanced mobile broadband technologies, or entering the market, and also whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.[84] In reviewing applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.[85]

21. *Record*. The Applicants assert that the assignment of 10 to 20 megahertz of spectrum to T-Mobile will not foreclose market entry by a competitor or raise rivals' costs. The Applicants further note that AT&T and Verizon gained substantial amounts of spectrum in the C-band and 3.45 GHz auctions.[86]

22. DISH asserts that T-Mobile should not be allowed to permanently acquire the 600 MHz spectrum licenses it currently leases because the rationale that T-Mobile argued in support of its long-term spectrum manager leasing arrangements—to facilitate 5G deployment—is no longer applicable.[87] DISH claims that the rationale is no longer valid because T-Mobile itself asserts that it has now reached 5G deployment coverage of 98% of the U.S. population.[88] Further, DISH argues that the transaction raises spectrum holding concerns, particularly regarding low-band holdings, which the Commission should examine and which could necessitate conditions to ameliorate the harms arising from the transaction.[89]

23. In response, T-Mobile and Channel 51/LB License both assert that DISH fails to provide evidence of public interest harms to any local market.[90] The Applicants argue that the licenses that are the subject of these applications have been continuously leased in their entirety to T-Mobile for over two years and have been used in T-Mobile's network during that time to support 5G services to consumers.[91] T-Mobile explains that it needs the "spectrum to *continue* to provide high quality, high capacity 5G

[84] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10617-18, para. 94; *AT&T-Leap Order*, 29 FCC Rcd at 2741-43, paras. 13-15; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-36, paras. 6, 9.

[85] Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[86] T-Mobile/Channel 51 Public Interest Statement at 5; T-Mobile/LB License Public Interest Statement at 5. The Applicants claim that AT&T has gained access to spectrum by virtue of a network services agreement entered into with DISH including over 70 megahertz of mid-band spectrum nationwide. T-Mobile/Channel 51 Public Interest Statement at 5; T-Mobile/LB License Public Interest Statement at 5. AT&T filed comments on May 3, 2023 stating that AT&T does not have access to DISH's spectrum under the AT&T-DISH Network Services Agreement. AT&T Comments at 1-4.

[87] DISH Petition at 1, 3-4; *see also* DISH Reply at 2; DISH June 26, 2023 *Ex Parte* Letter at 2-3.

[88] DISH Petition at 1. DISH notes that T-Mobile was permitted to acquire spectrum in excess of the Commission's spectrum screen when the Commission approved its acquisition of Sprint. DISH asserts that the Commission approved that spectrum concentration on the grounds that it would facilitate T-Mobile's 5G deployment, but, DISH argues, this rationale is no longer applicable. *Id.*; *see also* DISH Reply at 2; DISH June 26, 2023 *Ex Parte* Letter at 2-3.

[89] DISH Petition at 2 (asserting that conditions are needed to "ameliorate the harms that would otherwise result from an enhanced low-band spectrum portfolio").

[90] T-Mobile Response at 1, 4; Channel 51/LB License Joint Opposition at 2. T-Mobile also notes that AT&T's comments do not provide evidence of public interest harms. T-Mobile Response at 1-2, 4. AT&T states that its comments are "limited to a single issue—correcting an inaccurate statement of fact made by the Applicants about AT&T in support of their Application[s]." AT&T Comments at 1. T-Mobile asserts that AT&T's comments are not material to the outcome of the proceeding. T-Mobile Response at 1-2, 4.

[91] T-Mobile Response at 2-3, 5; Channel 51/LB License Joint Opposition at 4.

services because T-Mobile is *already* using that spectrum for those services."[92] The Applicants conclude that DISH alleges no grounds for denial.[93]

24. *Enhanced Factor Review*.[94] DISH contends that although T-Mobile structured the instant transaction to avoid enhanced factor review, the Commission should nevertheless analyze T-Mobile's low-band spectrum holdings.[95] DISH asserts that the Commission should impose conditions to ameliorate harms that would otherwise result from T-Mobile's low-band spectrum holdings.[96] Specifically, DISH contends that T-Mobile holds 54.8 megahertz of below-1-GHz spectrum as compared to the holdings of AT&T and Verizon, with 52.1 megahertz and 45.9 megahertz of low-band spectrum, respectively.[97] DISH argues that it holds just 22.4 megahertz of low-band spectrum holdings, which amount to over 20 to 30 megahertz less of low-band spectrum than the incumbent wireless providers.[98] DISH alleges that T-Mobile would hold more than one-third of below-1-GHz spectrum in twelve CMAs that DISH does not identify, with the average amount of 72 megahertz of spectrum across the unnamed markets.[99]

25. The Applicants respond that the assignment of these licenses to T-Mobile would not result in T-Mobile holding more than one-third of the total suitable and available below-1-GHz spectrum in any geographic area.[100] Channel 51/LB License argues that DISH already has extensive 5G spectrum holdings, including low-band 600 MHz spectrum, and an option to acquire more from T-Mobile.[101] In particular, T-Mobile argues that if DISH were to complete its purchase of the 13.8 megahertz of 800 MHz spectrum from T-Mobile that is described in the Final Judgment adopted in connection with T-Mobile's acquisition of Sprint, T-Mobile would hold less low-band spectrum than either AT&T or Verizon.[102]

26. *Spectrum Aggregation and Competition*. DISH asserts that granting the instant transaction would harm the public and competition, while obstructing the Commission's competition goals.[103] Specifically, DISH argues that T-Mobile characterized its spectrum leases as a temporary

[92] T-Mobile Response at 5 (emphasis in original); *see also* Channel 51/LB License Joint Opposition at 4 ("The public can only continue to realize the benefits of T-Mobile's highly competitive 5G network if T-Mobile has access to the spectrum on which that network operates.").

[93] T-Mobile Response at 3-5, 8; Channel 51/LB License Joint Opposition at 1-2, 14.

[94] In the *Mobile Spectrum Holdings Report and Order*, the Commission determined that any increase in spectrum holdings below 1 GHz would be treated as an "enhanced factor" for case-by-case review if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6238-40, paras. 267, 282-88.

[95] DISH October 20, 2023 Letter at 1 (arguing that T-Mobile's exceedance over the spectrum screen undeniably triggers enhanced review); *see also* DISH Petition at 2; DISH Reply at 3-4.

[96] DISH Petition at 2.

[97] DISH Reply at 4.

[98] DISH Reply at 4.

[99] DISH Petition at 6. DISH also asserts that T-Mobile's spectrum holdings in McAllen-Edinburg-Mission, Texas, exceed the spectrum screen by 71 megahertz; however, CMA 128: McAllen-Edinburg-Mission, TX is not subject to the instant transaction.

[100] T-Mobile/Channel 51 Public Interest Statement at 4; T-Mobile/LB License Public Interest Statement at 4; T-Mobile October 12, 2023 Letter at 1-2.

[101] Channel 51/LB License Joint Opposition at 4, 6, 7.

[102] T-Mobile June 26, 2023 *Ex Parte* Letter at 2-3; *see also* Channel 51/LB License June 26, 2023 *Ex Parte* Letter at 3-4; Channel 51/LB License Oct. 24, 2023 Letter at 5; Channel 51/LB License Joint Opposition at 7.

[103] DISH October 4, 2023 Letter at 9.

capacity boost to help transition legacy Sprint customers following the T-Mobile/Sprint transaction.[104] DISH contends that the initial rationale T-Mobile argued in support of its previous spectrum leases cannot be used to justify the permanent assignment of the licenses.[105] DISH asserts that ensuring the availability of spectrum, in particular low-band spectrum, is crucial to preserving and promoting competition, investment, and innovation in the mobile wireless marketplace.[106]

27. The Applicants argue that the spectrum at issue is already attributed to T-Mobile, and WTB previously examined the competitive impact concerning the spectrum at issue and determined that T-Mobile's utilization of the spectrum did not raise competitive concerns.[107] The Applicants further assert that since the spectrum leases were approved, DISH has launched its operations and is now an operating provider in certain markets.[108] The Applicants state that when the leases were approved, WTB noted that it had the ability to reevaluate the leases and mitigate any potential harms that might arise.[109] WTB has not taken such action since then because, T-Mobile asserts, its use of the spectrum has not raised any competitive concerns.[110]

28. DISH argues that T-Mobile's spectrum holdings currently exceed the spectrum screen in many markets.[111] DISH asserts that T-Mobile's spectrum holdings exceed the spectrum screen in 127 CMAs and that in 64 of those CMAs, T-Mobile's spectrum holdings exceed the screen by at least 20 megahertz.[112] DISH argues that the proposed transaction increases the harms due to T-Mobile's spectrum holdings.[113] Specifically, DISH claims that T-Mobile's spectrum holdings exceed the spectrum screen in the following CMAs subject to this transaction: Los Angeles, California; Philadelphia, Pennsylvania; Boston, Massachusetts; Houston, Texas; St. Louis, Missouri; Minneapolis-St. Paul, Minnesota and Wisconsin; Seattle, Washington; and Tampa, Florida.[114] Further, DISH raises spectrum aggregation concerns in several markets that are not subject to this transaction.[115]

29. According to the Applicants, there are numerous other service providers with competitive coverage and access to spectrum in certain markets, including robust AT&T and Verizon coverage in every market in which T-Mobile will exceed the spectrum screen.[116] Channel 51/LB License reiterates

[104] DISH Petition at 3 & n 5.

[105] DISH Petition at 3.

[106] DISH Petition at 5.

[107] T-Mobile/Channel 51 Public Interest Statement at 6; T-Mobile/LB License Public Interest Statement at 6; *see also* T-Mobile Response at 7-8.

[108] T-Mobile/Channel 51 Public Interest Statement at 5; T-Mobile/LB License Public Interest Statement at 5.

[109] T-Mobile/Channel 51 Public Interest Statement at 6; T-Mobile/LB License Public Interest Statement at 6; *see also* Channel 51/LB License Oct. 24, 2023 Letter at 6.

[110] T-Mobile/Channel 51 Public Interest Statement at 6; T-Mobile/LB License Public Interest Statement at 6.

[111] DISH Petition at 6 (DISH argues that T-Mobile already exceeds the screen in 127 CMAs without taking into consideration pending applications from Auction 108 or the instant transaction; however, DISH does not identify the names of the 127 markets where T-Mobile exceeds the screen or the 64 markets where T-Mobile exceeds the screen by 20 megahertz in its filings).

[112] DISH Petition at 6 (contending that T-Mobile's spectrum holdings exceed the screen in many of the top 25 CMAs).

[113] DISH Petition at 4-6 & n.20.

[114] DISH Petition at 6 & n.20.

[115] DISH Petition at 6 & n.20.

[116] T-Mobile/Channel 51 Public Interest Statement at 5; T-Mobile/LB License at 5.

that DISH does not articulate how it would suffer real harm if T-Mobile directly controls the licenses at issue rather than leasing them.[117] T-Mobile argues that DISH's unsupported claims, whether regarding exceeding the spectrum screen or holding a certain number of 600 MHz license blocks determined by DISH, are irrelevant because DISH has not pleaded a *prima facie* case that such spectrum aggregation would result in decreased competition.[118]

30. *Discussion*. We note as a preliminary matter that some markets discussed by DISH are not subject to the instant transaction. Specifically, we reject DISH's claims of competitive harm in the markets of Detroit, Michigan; Dallas, Texas; Miami, Florida; Cleveland, Ohio; San Diego, California; Cincinnati, Ohio; Kansas City, Missouri and Kansas; and Buffalo, New York as unrelated to the instant transaction and therefore beyond the scope of this review. Moreover, while DISH argues that T-Mobile holds more than one-third of below-1-GHz spectrum in twelve unspecified CMAs, we note that T-Mobile's holdings do not trigger enhanced factor review and decline therefore to apply that analysis. In addition, as noted above, DISH argues that the Commission should require T-Mobile to commit to spectrum swaps in the 600 MHz band to enable greater contiguity among licensees, and it objects, in particular, to T-Mobile holding 50 megahertz of 600 MHz spectrum in St. Louis, Missouri. However, the Commission has not adopted enhanced factor review with regard to the 600 MHz spectrum nor adopted a band-specific limit on 600 MHz spectrum or any other band included in the screen, and we decline to do so here.

31. In our examination of the potential competitive effects, following long-standing Commission precedent, we first define the relevant product and geographic markets and the input market for spectrum, and we then identify the current market participants. As part of our competitive analysis, we apply our initial spectrum screen to help identify markets of potential concern.[119] We then undertake our market review by geographic cluster.[120] We note, as an initial matter, that due to the existing spectrum manager leasing arrangements between the Applicants, the spectrum at issue in the instant transaction has already been attributed to T-Mobile. Nonetheless, we undertake our competitive analysis to ensure that the public interest, convenience, and necessity is served. As discussed in detail below, we find that, post-transaction, the likelihood of competitive harm in the particular markets at issue is low.[121]

A. Market Definitions and Market Participants

32. *Product Market*. Consistent with Commission precedent, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises

[117] Channel 51/LB License June 26, 2023 *Ex Parte* Letter at 3.

[118] T-Mobile October 12, 2023 Letter at 1-2; *see also* T-Mobile Response at 6-7; T-Mobile June 26, 2023 *Ex Parte* Letter at 1-2.

[119] *See Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231. Further, we point out that the screen is the first step in our competitive evaluation, and, as the Commission has previously found, *ex ante* limits on spectrum aggregation may prevent transactions that are in the public interest. *Id*.

[120] The geographic clusters we use are based on the U.S. Census Bureau, Geographic Levels, Regions and Divisions, https://www.census.gov/programs-surveys/economic-census/guidance-geographies/levels.html (last visited Dec. 27, 2023). The clusters analyzed are in the Mid-Atlantic, the Midwest, New England, Northern California, the Southern United States, Southern California, the Southwestern United States, and Washington State. U.S. Census Bureau, Census Regions and Divisions of the United States, https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf (last visited Dec. 27, 2023).

[121] A list of markets in which T-Mobile is above the total spectrum screen trigger is provided in Appendix A.

mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).[122]

33. *Geographic Market.* The Commission has previously found that the geographic market for wireless transactions is local.[123] The Commission also has found, however, that a proposed transaction's competitive effects should also be evaluated at the national level where a proposed transaction exhibits certain national characteristics that provide cause for concern.[124] For this proposed transaction, we continue to use CMAs as the appropriate local market for analyzing spectrum aggregation issues.[125]

34. *Input Market for Spectrum.* The Commission has previously determined that the following bands, or portions thereof, meet the definition of suitable and available and should be included in the input market for spectrum: 600 MHz, 700 MHz, cellular, specialized mobile radio service (SMR), broadband personal communications service (PCS), Advanced Wireless Services (AWS) in the 1710-1755 and 2110-2155 MHz band (AWS-1), AWS-3, AWS in the 2000-2020 MHz and 2180-2200 MHz spectrum bands (AWS-4), Broadband Radio Service (BRS), Wireless Communications Service (WCS) spectrum, H Block, Educational Broadband Service (EBS), 3.7 GHz, and 3.45 GHz.[126] The total amount of spectrum that is currently considered suitable and available for the provision of mobile telephony/broadband services is 1,123 megahertz, with an associated spectrum screen trigger of 385 megahertz.[127]

[122] *See*, *e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17004, para. 27; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10601, 10603, paras. 55, 60; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 23; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6224, para. 234 & n.623.

[123] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17005, para. 30; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, para. 66; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27; *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 12-301, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2332, para. 29 (WTB/IB 2013) (*T-Mobile-MetroPCS Order*).

[124] *See*, *e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17005, para. 30; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10606, para. 66; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2332, para. 29.

[125] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10605-06, 10607, paras. 66, 69; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636-37, para. 12; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2332-33, para. 31; *see also* United States of America v. AT&T Inc., T-Mobile USA, Inc., and Deutsche Telekom AG, Complaint, Case No. 1:11-cv-01560, paras. 16-17 (D.D.C.) (Aug. 31, 2011) (U.S. Department of Justice using CMAs as relevant geographic markets in its competitive analysis, in addition to a national-level analysis).

[126] *See, e.g.*, *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, FCC 22-103, at 65-66, paras. 84-85, Fig. II.B.9 (Dec. 30, 2022) (*2022 Communications Marketplace Report*); *see also Verizon-TracFone Order*, 36 FCC Rcd at 17005, para. 31 & n.86; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, 6177-79, 6184-87, paras. 70, 100-102, 118-25.

[127] *2022 Communications Marketplace Report*, at 65-66, paras. 84-85, Fig. II.B.9. We note that 3.7 GHz and 3.45 GHz spectrum are not available for use in Hawaii, Alaska, and the territories. In these areas, the total amount of suitable and available spectrum is 743 megahertz, and the associated spectrum screen trigger is 250 megahertz. *Id.* at 65-66, para. 84 & n.216.

35. *Market Participants.* Consistent with Commission precedent, we focus on facilities-based entities providing mobile telephony/broadband services using the spectrum bands included in the spectrum screen.[128]

B. Competitive Analysis

1. Initial Screen

36. To help identify those local markets in which competitive concerns are more likely, initially we apply a two-part screen. The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI) and the change in the HHI.[129] The second part of the screen, which is applied on a county-by-county basis, identifies those local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services post-transaction.[130]

37. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. In terms of spectrum aggregation, and as noted above, T-Mobile, as a result of the two proposed assignments, would acquire 10 to 20 megahertz of 600 MHz spectrum in 167 counties in all or parts of 50 CMAs, which together cover approximately 27% of the population of the United States. We note that while this spectrum has already been attributed to T-Mobile due to underlying spectrum manager leasing arrangements that were previously approved,[131] we nonetheless undertake our market-by-market analysis to ensure that the public interest, convenience, and necessity is served. Post-transaction, T-Mobile would hold a maximum of 440 megahertz of spectrum, including a maximum of 66 megahertz of below-1-GHz spectrum.[132]

2. Market-by-Market Analysis

38. Consistent with existing Commission precedent,[133] we consider various competitive variables that help to predict the likelihood of competitive harm as a result of the proposed transaction.

---

[128] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2334-35, para. 37; *see also Verizon-TracFone Order*, 36 FCC Rcd at 17005-06, para. 32. In addition, we recognize that mobile virtual network operators may provide additional competitive constraints, which we account for in our evaluation of the likely competitive effects. *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17005-06, para. 32; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10609, para. 73; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638, para. 16 & n.48; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37.

[129] The initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614, para. 87 & n.277; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17 & n.50; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2335, para. 38 & n.94.

[130] *See*, *e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10614, para. 87; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2335, para. 38. If the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we also apply enhanced factor review. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88.

[131] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, paras. 2, 4.

[132] The current trigger for enhanced factor review is 68 megahertz.

[133] *See, e.g.*, *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14063-65, paras. 11-13; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10620-23, paras. 101, 106; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3640-41, para. 21; *AT&T-Leap Order*, 29 FCC Rcd at 2767, para. 75.

These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks;[134] the rival firms' market shares;[135] the applicant's market share; the total amount of spectrum available;[136] the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the applicant; and the spectrum holdings of each of the rival service providers and licensees.[137] Further, we consider whether current service providers can access additional spectrum in the market either through auction or on the secondary market.[138] In assessing spectrum concentration and its likely competitive effects, we are cognizant of the need to prevent the undue concentration of spectrum and to promote the dissemination of licenses among a wide variety of applicants.[139]

a. Analysis by Geographical Cluster

39. *Mid-Atlantic*: There are eight CMAs in the Mid-Atlantic region of the United States in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger.[140] All of these CMAs—Philadelphia, PA, Washington, DC-MD-VA,

[134] We base the coverage analysis on providers' coverage data they submitted pursuant to the Broadband Data Collection for coverage as of December 31, 2022. 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); 47 U.S.C. § 642(a)(1)(A) (Broadband Data Collection).

[135] We base providers' market shares analysis on Numbering Resource Utilization/Forecast (NRUF) data, which indicate the number of phone numbers that a wireless service provider has been assigned in a particular rate center (there are approximately 18,000 rate centers in the country). *See* 47 CFR § 52.15(e)(5); *see also Applications of T-Mobile License LLC, Nextel West Corp, And LB License Co., LLC For License Assignment; Application of T-Mobile License LLC, Nextel West Corp., And Channel 51 License Company LLC For License Assignment; Numbering Resource Utilization and Forecast (NRUF) Reports And Local Number Portability (LNP) Reports Placed Into the Record, Subject to the Protective Order*, CC Docket 99-200, ULS File Nos. 0010168412, 0010168420, 0010168439, Public Notice, DA-23-1183 (WTB/OEA Dec. 19, 2023). Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. *2022 Communications Marketplace Report* at 56, para. 73 & n.181. We calculate the total number of wireless subscribers from the total number of assigned phone numbers reported by wireless service providers in their required NRUF reports. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties. We note that the aggregation to larger geographic areas, such as to whole counties or groups of counties, reduces the level of inaccuracy inherent in combining non-coterminous areas, such as rate center areas and counties.

[136] The total amount of suitable and available spectrum in the total spectrum screen is currently 1,123 megahertz and the associated total spectrum screen trigger is 385 megahertz, while the below-1-GHz trigger for enhanced factor review is 68 megahertz. Regarding high-band millimeter wave (mmW) spectrum, the Commission has made 4,950 megahertz available for licensed use, and adopted a separate threshold for mmW spectrum holdings, with an associated mmW threshold trigger of 1,850 megahertz.

[137] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10621, para. 102; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238, para. 280.

[138] *See, e.g.*, *T-Mobile License LLC, Cellco Partnership, Applications for 3.7-3.98 GHz Band Licenses, Auction No. 107*, Memorandum Opinion and Order, 36 FCC Rcd 11486, 11498, para. 28 (WTB 2021); *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14063-64, para. 11.

[139] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6136-37, para. 6.

[140] In numerical order, the eight CMAs are: CMA 4: Philadelphia, PA; CMA 8: Washington, DC-MD-VA; CMA 69: Wilmington, DE-NJ-MD; CMA 105: Lancaster, PA; CMA 118: Reading, PA; CMA 134: Atlantic City, NJ; CMA 228: Vineland-Millville, NJ; and CMA 359: Delaware 1–Kent.

Wilmington, DE-NJ-MD, Lancaster, PA, Reading, PA, Atlantic City, NJ, Vineland-Millville, NJ, and Delaware 1–Kent—are non-rural markets with populations ranging from approximately 154,000 to 5.5 million, and with population densities of 272 to 1,923 people per square mile.[141]

40. *Record*. DISH argues that T-Mobile exceeds the spectrum screen in Philadelphia, Pennsylvania by holding approximately 395 megahertz of spectrum.[142] The Applicants claim that there is no public interest harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[143] Specifically, the Applicants argue that both Verizon Wireless and AT&T have complete 4G LTE and 5G-NR coverage in this cluster, and that while DISH's 5G-NR coverage in this cluster is not clear,[144] DISH holds a substantial amount of spectrum for build-out of its network.[145]

41. *Analysis*.[146] Considering these eight non-rural markets, T-Mobile held 390 to 430 megahertz of spectrum on a county-by-county basis pre-transaction.[147] Due to the assignment applications, T-Mobile would continue to hold a maximum of 430 megahertz of spectrum on a county-by-county basis post-transaction.[148] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 60 to 80 megahertz and Verizon Wireless won 160 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH also won 40 megahertz. Currently, AT&T holds 255 to 291 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 277 to 297 megahertz of spectrum. In addition, DISH holds 125 to 141 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 20 megahertz of spectrum on a county-by-county basis across these markets.

42. Regarding coverage in these eight non-rural markets,[149] AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in these

[141] The population density is measured by the number of people per square mile using 2020 Census data. Rural markets are characterized by fewer than 100 people per square mile. *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum Based Services*, Report and Order, 19 FCC Rcd 19078, 19087-88, paras. 11-12 (2004).

[142] DISH Petition at 6 & n.20.

[143] *See* the Applicants' Updated Spectrum Aggregation Exhibit at 10-14 (filed Nov. 10, 2023), in which the Applicants discuss the markets by region.

[144] Applicants' Updated Spectrum Aggregation Exhibit at 10-11 (filed Nov. 10, 2023).

[145] Applicants' Updated Spectrum Aggregation Exhibit at 11-12 (filed Nov. 10, 2023).

[146] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[147] We derive spectrum holdings from the Applicants' submissions and our licensing databases as of August 25, 2023. *See, e.g.*, *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3640-41, para. 21 & n.66; *AT&T-Leap Order*, 29 FCC Rcd at 2767, para. 75 & n.261.

[148] T-Mobile also holds 1,300 to 1,625 megahertz of mmW spectrum, while AT&T holds 1,000 to 1,100 megahertz, and Verizon Wireless holds 1,650 to 1,850 megahertz. Other licensees, including DISH, hold 200 to 600 megahertz.

[149] As noted above, we derive mobile broadband coverage from the December 2022 Broadband Data Collection data. For 4G LTE, these data are based on speed thresholds of 5/1 Mbps with a minimum cell edge probability of 90% and minimum cell loading of 50%. For 5G-NR, these data are based on speed thresholds of 7/1 Mbps and 35/3 Mbps with a minimum cell edge probability of 90% and minimum cell loading of 50%. 47 U.S.C. § 642(b)(2)(B)(ii); *see also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477*

(continued….)

markets.[150] Further, T-Mobile has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in seven of the eight markets, along with significant population and close-to-significant land area coverage in Vineland-Millville, NJ, while both AT&T and Verizon Wireless have significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in all but two of the eight non-rural markets—Atlantic City, NJ and Vineland-Millville, NJ. In these two markets, AT&T has significant 5G-NR population coverage at speeds of 7/1 Mbps in Atlantic City, NJ and Vineland-Millville, NJ, while Verizon Wireless has significant 5G-NR population coverage at speeds of 7/1 Mbps in Atlantic City, NJ and has deployed its 5G-NR network at speeds of 7/1 Mbps to some extent in Vineland-Millville, NJ.[151] In addition, DISH has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in Lancaster, PA and Reading, PA, and has deployed its 5G-NR network at speeds of 7/1 Mbps to some extent in Philadelphia, PA, Wilmington, DE-NJ-MD, and Delaware 1-Kent.[152]

43. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[153] and we find no evidence in the record that this has led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily considered, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 10 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

44. *Midwest*: There are five CMAs in the Midwest United States in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger.[154] Four of these CMAs—St. Louis, MO-IL, Minneapolis-St. Paul, MN-WI, Columbus, OH, and

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, 7479-80, paras. 44-45 (2020) (*BDC Second Report and Order*). For 4G LTE and 5G-NR, providers must submit two types of propagation maps: one that models outdoor stationary usage and one that models in-vehicle mobile usage. *See BDC Second Report and Order*, 35 FCC Rcd at 7481-82, para. 48. We report the various speed thresholds based on the outdoor stationary propagation maps.

[150] It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. *See*, *e.g.*, *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3642-44, para. 25 & n.77; *AT&T-Leap Order*, 29 FCC Rcd at 2769-70, para. 81 & n.279.

[151] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile has significant population and land area coverage in five of the eight markets, as well as significant population coverage in Atlantic City, NJ and Vineland-Millville, NJ, and has deployed its network to some extent in Delaware 1–Kent. Further, AT&T has close-to-significant 5G-NR land area coverage at speeds of 35/3 Mbps in Lancaster, PA and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in the other seven markets while Verizon Wireless has significant 5G-NR population and land area coverage at speeds of 35/3 Mbps in three of the eight markets, as well as significant 5G-NR population coverage and close-to-significant land area coverage in Wilmington, DE-NJ-MD and Reading, PA, significant 5G-NR population coverage in Atlantic City, NJ and Delaware 1–Kent, and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in Vineland-Millville, NJ. In addition, DISH has significant 5G-NR population and land area coverage at speeds of 35/3 Mbps in Reading, PA, significant 5G-NR land area coverage at speeds of 35/3 Mbps in Lancaster, PA, and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in Philadelphia, PA, Wilmington, DE-NJ-MD, and Delaware 1-Kent.

[152] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in these non-rural Mid-Atlantic markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in this cluster.

[153] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[154] In numerical order, the five CMAs are: CMA 11: St. Louis, MO-IL; CMA 15: Minneapolis-St. Paul, MN-WI; CMA 31: Columbus, OH; CMA 198: St. Cloud, MN; and CMA 399: Illinois 6–Montgomery.

St. Cloud, MN—are non-rural markets with populations ranging from approximately 297,000 to 3.5 million, and with population densities of 134 to 732 people per square mile. The other CMA—Illinois 6–Montgomery—is a rural market with a population of approximately 194,000, and a population density of 45 people per square mile.

45. *Record*. DISH argues that T-Mobile exceeds the spectrum screen in St. Louis, Missouri by holding approximately 388 megahertz of spectrum and in Minneapolis-St. Paul, Minnesota and Wisconsin by holding approximately 404 megahertz of spectrum.[155] Further, DISH objects that T-Mobile would hold five blocks of 600 MHz spectrum in St. Louis, Missouri as a result of this transaction.[156] The Applicants claim that there is no harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[157] Specifically, the Applicants argue that both Verizon Wireless and AT&T have nearly complete 4G LTE and 5G-NR coverage in this cluster, and that while DISH's 5G-NR coverage in this cluster is not clear,[158] DISH holds a substantial amount of spectrum for build-out of its network.[159]

46. *Analysis*.[160] Considering first the four non-rural markets, T-Mobile held 348 to 440 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 440 megahertz of spectrum on a county-by-county basis post-transaction.[161] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 160 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH won 20 to 40 megahertz. Currently, AT&T holds 255 to 300 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 267 to 297 megahertz of spectrum. In addition, DISH holds 111 to 141 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 42 megahertz of spectrum on a county-by-county basis across these markets.

47. Regarding coverage in these four non-rural markets, AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in these markets. Further, AT&T, T-Mobile, and Verizon Wireless also have significant 5G-NR population and

[155] DISH Petition at 6 & n.20.

[156] DISH Reply at 11.

[157] Applicants' Updated Spectrum Aggregation Exhibit at 18-23, 26-30 (filed Nov. 10, 2023).

[158] Applicants' Updated Spectrum Aggregation Exhibit at 19-20, 27-28 (filed Nov. 10, 2023). According to the Applicants, DISH does not appear to have availability in Minneapolis-St. Paul, MN-WI and St. Cloud, MN. *Id*.

[159] Applicants' Updated Spectrum Aggregation Exhibit at 20-21, 28 (filed Nov. 10, 2023).

[160] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[161] T-Mobile also holds 850 to 1,425 megahertz of mmW spectrum, while AT&T holds 1,000 to 1,100 megahertz, and Verizon Wireless holds 1,425 to 1,850 megahertz. Other licensees, including DISH, hold 200 to 1,000 megahertz.

land area coverage at speeds of 7/1 Mbps in these markets.[162] In addition, DISH has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in St. Louis, MO-IL and Columbus, OH.[163]

48. In the rural market—Illinois 6–Montgomery—T-Mobile held 258.5 to 418 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 418 megahertz of spectrum post-transaction.[164] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 160 to 200 megahertz of 3.7 GHz spectrum in Auction 107 in this market. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in this market, while DISH won 20 to 40 megahertz. Currently, AT&T holds 275 to 295 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 257 to 317 megahertz of spectrum. In addition, DISH holds 101 to 131 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 52 megahertz of spectrum in this market.

49. Regarding coverage in this rural market, AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in this market. Further, AT&T has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps while T-Mobile and Verizon Wireless each have deployed their 5G-NR networks at speeds of 7/1 Mbps to some extent in this rural market.[165] In addition, DISH has deployed its 5G-NR network at speeds of 7/1 Mbps to some extent in this rural market.[166]

50. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[167] and we find no evidence in the record that this has led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily considered, as noted above, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 10 to 20 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

---

[162] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile has significant population and land area coverage in Minneapolis-St. Paul, MN-WI and Columbus, OH, as well as significant population coverage and close-to-significant land area coverage in St. Louis, MO-IL and significant population coverage in St. Cloud, MN. Further, AT&T has significant 5G-NR population and land area coverage at speeds of 35/3 Mbps in St. Louis, MO-IL, close-to-significant 5G-NR land area coverage at speeds of 35/3 Mbps in Minneapolis-St. Paul, MN-WI, and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in the other two markets, while Verizon Wireless has significant 5G-NR population and land area coverage at speeds of 35/3 Mbps in all four markets. In addition, DISH has significant 5G-NR population and land area coverage at speeds of 35/3 Mbps in St. Louis, MO-IL and significant 5G-NR population coverage and close-to-significant land area coverage at speeds of 35/3 Mbps in Columbus, OH.

[163] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in these non-rural Midwestern markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in these non-rural markets.

[164] T-Mobile also holds 700 to 1,000 megahertz of mmW spectrum, while AT&T holds 1,000 to 1,100 megahertz, and Verizon Wireless holds 1,000 to 1,850 megahertz. Other licensees, including DISH, hold 200 to 850 megahertz.

[165] In terms of 5G-NR coverage at speeds of 35/3 Mbps, AT&T, T-Mobile, and Verizon Wireless each have deployed their 5G-NR networks to some extent in this rural market.

[166] According to the December 2022 NRUF data, in terms of significant market share, AT&T holds {[ ]} % while Verizon Wireless holds {]} % in Illinois 6–Montgomery. No other service providers have a significant market share in this rural Midwestern market. T-Mobile has some market presence in Illinois 6–Montgomery with a market share of {[ ]} %.

[167] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

51. *New England*: There are six CMAs in the New England region of the United States in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger.[168] All six of these CMAs—Boston-Brockton-Lowell, MA-NH, Providence-Warwick, RI, Worcester-Leominster, MA, New Bedford-Fall River, MA, Massachusetts 2–Barnstable, and Rhode Island 1–Newport—are non-rural markets with populations ranging from approximately 85,600 to 4.8 million, and with population densities of 453 to 1,502 people per square mile.

52. *Record*. DISH argues that T-Mobile exceeds the spectrum screen in Boston, Massachusetts by holding approximately 381 megahertz of spectrum.[169] The Applicants claim that there is no harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[170] Specifically, the Applicants argue that both Verizon Wireless and AT&T have complete 4G LTE and 5G-NR coverage in this cluster, and that while DISH's 5G-NR coverage in this cluster is not clear,[171] DISH holds a substantial amount of spectrum for build-out of its network.[172]

53. *Analysis*.[173] Considering the six non-rural markets, T-Mobile held 360 to 440 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 440 megahertz of spectrum on a county-by-county basis post-transaction.[174] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 160-200 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH won 20 to 40 megahertz. Currently, AT&T holds 251 to 261 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 267 to 317 megahertz of spectrum. In addition, DISH holds 120 to 140 megahertz of spectrum. Finally, multiple other licensees hold between 5 and 20 megahertz of spectrum on a county-by-county basis across these markets.

54. Regarding coverage in these six non-rural markets, AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in four of the six markets, as well as significant 4G LTE population coverage at speeds of 5/1 Mbps in Massachusetts 2–Barnstable and Rhode Island 1-Newport. Further, AT&T and T-Mobile have significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in four of the six markets and significant 5G-NR population coverage at speeds of 7/1 Mbps in Massachusetts 2–Barnstable and Rhode Island 1–Newport,[175] while Verizon Wireless has significant 5G-NR population and land area coverage at speeds

[168] In numerical order, the six CMAs are: CMA 6: Boston-Brockton-Lowell, MA-NH; CMA 38: Providence-Warwick, RI; CMA 55: Worcester-Leominster, MA; CMA 76: New Bedford-Fall River, MA; CMA 471: Massachusetts 2–Barnstable; and CMA 624: Rhode Island 1–Newport.

[169] DISH Petition at 6 & n.20.

[170] Applicants' Updated Spectrum Aggregation Exhibit at 10-14 (filed Nov. 10, 2023).

[171] Applicants' Updated Spectrum Aggregation Exhibit at 10-11 (filed Nov. 10, 2023).

[172] Applicants' Updated Spectrum Aggregation Exhibit at 11-12 (filed Nov. 10, 2023).

[173] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[174] T-Mobile also holds 1,200 to 1,625 megahertz of mmW spectrum, while AT&T holds 1,000 to 1,100 megahertz, and Verizon Wireless holds 1,100 to 1,750 megahertz. Other licensees, including DISH, hold 200 to 600 megahertz.

[175] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile has significant population and land area coverage in New Bedford-Fall River, MA, significant population coverage and close-to-significant land area coverage in Boston-Brockton-Lowell, MA-NH and Worcester-Leominster, MA, significant population coverage in Providence-

(continued….)

of 7/1 Mbps in two of the six markets, as well as significant 5G-NR population coverage and close-to-significant land area coverage at speeds of 7/1 Mbps in Providence-Warwick, RI and significant 5G-NR population coverage at speeds of 7/1 Mbps in Worcester-Leominster, MA, Massachusetts 2–Barnstable, and Rhode Island 1-Newport.[176]

55. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[177] and we find no evidence in the record that this has led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily considered, as noted above, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 20 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

56. *California–North*: There are seven CMAs in Northern California in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger.[178] All of these CMAs—San Francisco-Oakland, San Jose, Stockton, Vallejo-Fairfield-Napa, Santa Rosa-Petaluma, Modesto, and Santa Cruz—are non-rural markets with populations ranging from approximately 271,000 to 4.7 million, and with population densities of 309 to 1,892 people per square mile.

57. *Record*. The Applicants claim that there is no harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[179] Specifically, the Applicants argue that both Verizon Wireless and AT&T have substantial 4G LTE and 5G-NR coverage and mature network deployments in this cluster, and that while DISH's 5G-NR coverage in this cluster is not clear,[180] DISH holds a substantial amount spectrum for build-out of its network.[181]

Warwick, RI and Rhode Island 1–Newport, and has deployed its 5G-NR network to some extent in Massachusetts 2-Barnstable. Further, AT&T has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in all six markets, while Verizon Wireless has significant 5G-NR population coverage and close-to-significant land area coverage at speeds of 35/3 Mbps in New Bedford-Fall River, MA, significant 5G-NR population coverage at speeds of 35/3 Mbps in Boston-Brockton-Lowell, MA-NH and Providence-Warwick, RI, and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in the remaining three markets.

[176] According to the December 2022 NRUF data, in terms of significant market share in five of the six markets, T-Mobile holds {[ ]} % in these non-rural New England markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in this cluster. We note that Rhode Island 1-Newport is a single-county market; for this reason we believe that the market shares for AT&T, T-Mobile, and Verizon Wireless in this market of {[ ]} %, respectively, are unreliable and inaccurate so we do not report them here.

[177] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[178] In numerical order, the seven CMAs are: CMA 7: San Francisco-Oakland, CA; CMA 27: San Jose, CA; CMA 107: Stockton, CA; CMA 111: Vallejo-Fairfield-Napa, CA; CMA 123: Santa Rosa-Petaluma, CA; CMA 142: Modesto, CA; and CMA 175: Santa Cruz, CA.

[179] Applicants' Updated Spectrum Aggregation Exhibit at 4-9 (filed Nov. 10, 2023).

[180] Applicants' Updated Spectrum Aggregation Exhibit at 4-6 (filed Nov. 10, 2023).

[181] Applicants' Updated Spectrum Aggregation Exhibit at 6-7 (filed Nov. 10, 2023).

58. *Analysis*.[182] Considering these seven markets, T-Mobile held 386.8 to 420 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 420 megahertz of spectrum on a county-by-county basis post-transaction.[183] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 140 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH won 30 megahertz. Currently, AT&T holds 261 to 316 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 237 to 267 megahertz of spectrum. In addition, DISH holds 125 to 135 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 30 megahertz of spectrum on a county-by-county basis across these markets.

59. Regarding coverage in these markets, AT&T and Verizon Wireless have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in all seven markets while T-Mobile has significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in five of the seven markets, as well as significant 4G LTE population coverage at speeds of 5/1 Mbps in Santa Rosa-Petaluma and Santa Cruz. Further, AT&T and Verizon Wireless have significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in five of the seven markets, significant 5G-NR population coverage and close-to-significant land area coverage at speeds of 7/1 Mbps in Santa Rosa-Petaluma, and significant 5G-NR population coverage at speeds of 7/1 Mbps in Santa Cruz while T-Mobile has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in two of the seven markets, significant 5G-NR population coverage at speeds of 7/1 Mbps in San Francisco-Oakland, San Jose, Vallejo-Fairfield-Napa, and Santa Rosa-Petaluma, CA, and has deployed its 5G-NR network at speeds of 7/1 Mbps to some extent in Santa Cruz.[184] In addition, DISH has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in Stockton, significant 5G-NR population coverage at speeds of 7/1 Mbps in Modesto, and has deployed its 5G-NR network at speeds of 7/1 Mbps to some extent in San Francisco-Oakland.[185]

60. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[186] and we find no evidence in the record that this has led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily

[182] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[183] T-Mobile also holds 1,300 to 1,400 megahertz of mmW spectrum, while AT&T holds 1,100 megahertz, and Verizon Wireless holds 1,000 to 1,850 megahertz. Other licensees, including DISH, hold 200 to 850 megahertz.

[184] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile has significant population coverage in five of the seven markets, and has deployed its 5G-NR network to some extent in Santa Rosa-Petaluma and Santa Cruz. Further, AT&T has significant 5G-NR population and land area coverage at speeds of 35/3 Mbps in two of the seven markets, significant 5G-NR population coverage at speeds of 35/3 Mbps in San Francisco-Oakland, San Jose, and Vallejo-Fairfield-Napa, and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in Santa Rosa-Petaluma and Santa Cruz while Verizon Wireless has significant 5G-NR population coverage and land area coverage at speeds of 35/3 Mbps in three of the seven markets, significant 5G-NR population coverage and close-to-significant land area coverage at speeds of 35/3 Mbps in San Jose, and significant 5G-NR population coverage at speeds of 35/3 Mbps in San Francisco-Oakland, Santa Rosa-Petaluma, and Santa Cruz. In addition, DISH has significant 5G-NR population coverage and close-to-significant land area coverage at speeds of 35/3 Mbps in Stockton and significant 5G-NR population coverage at speeds of 35/3 Mbps in Modesto.

[185] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in these Northern California markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in this cluster.

[186] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

considered, as noted above, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 10 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

61. *South*: There are six CMAs in the Southern United States in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger.[187] Five of these CMAs—Atlanta, GA, Tampa-St. Petersburg, FL, Athens, GA, Florida 4–Citrus, and Georgia 2–Dawson—are non-rural markets with populations ranging from approximately 276,500 to 5.4 million, and with population densities of 191 to 1,404 people per square mile. The other CMA—Georgia 4–Jasper—is a rural market with a population of approximately 155,000, and a population density of 45 people per square mile.

62. *Record*. DISH argues that T-Mobile exceeds the spectrum screen in Tampa, Florida by holding approximately 383 megahertz of spectrum.[188] The Applicants claim that there is no harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[189] Specifically, the Applicants argue that both Verizon Wireless and AT&T have complete 4G LTE and 5G-NR coverage in this cluster, except for a few areas of wilderness, and that while DISH's 5G-NR coverage in this cluster is not clear,[190] DISH holds a substantial amount of spectrum for build-out of its network.[191]

63. *Analysis*.[192] Considering first the five non-rural markets, T-Mobile held 370 to 420 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 420 megahertz of spectrum on a county-by-county basis post-transaction.[193] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 140 to 160 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH won 40 megahertz. Currently, AT&T holds 255 to 280 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 252 to 297 megahertz of spectrum. In addition, DISH holds 131 to 141 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 40 megahertz of spectrum on a county-by-county basis across these markets.

64. Regarding coverage in these five non-rural markets, AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in these markets.[194] Further, T-Mobile has significant 5G-NR population and land area coverage at speeds of 7/1

[187] In numerical order, the six CMAs are: CMA 17: Atlanta, GA; CMA 22: Tampa-St. Petersburg, FL; CMA 234: Athens, GA; CMA 363: Florida 4–Citrus; CMA 372: Georgia 2–Dawson; and CMA 374: Georgia 4–Jasper.

[188] DISH Petition at 6 & n.20.

[189] Applicants' Updated Spectrum Aggregation Exhibit at 14-18, 23-26 (filed Nov. 10, 2023).

[190] Applicants' Updated Spectrum Aggregation Exhibit at 15-16, 24-25 (filed Nov. 10, 2023).

[191] Applicants' Updated Spectrum Aggregation Exhibit at 16, 25 (filed Nov. 10, 2023).

[192] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[193] T-Mobile also holds 1,200 to 1,625 megahertz of mmW spectrum, while AT&T holds 1,100 megahertz, and Verizon Wireless holds 1,200 to 1,850 megahertz. Other licensees, including DISH, hold 425 to 850 megahertz.

[194] We note that Southern Linc holds 7.5 megahertz of below-1-GHz spectrum in Atlanta, GA, where it has close-to-significant 4G LTE land area coverage, Athens, GA, where it has significant 4G LTE land area coverage, and Georgia 2–Dawson.

Mbps in these markets, and AT&T has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in every non-rural market except for Georgia 2–Dawson, where it has significant 5G-NR population coverage at speeds of 7/1 Mbps. Verizon Wireless has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in Atlanta, GA, significant 5G-NR population coverage and close-to-significant land area coverage at speeds of 7/1 Mbps in Tampa-St. Petersburg, FL, significant 5G-NR population coverage at speeds of 7/1 Mbps in Athens, GA and Florida 4–Citrus, and close-to-significant 5G-NR population coverage at speeds of 7/1 Mbps in Georgia 2–Dawson.[195] In addition, DISH has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in Florida 4–Citrus and has deployed its 5G-NR network at speeds of 7/1 Mbps to some extent in Atlanta, GA, Athens, GA, and Georgia 2-Dawson.[196]

65. In the rural market—Georgia 4–Jasper—T-Mobile held 356.7 to 389.2 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 389.2 megahertz of spectrum post-transaction.[197] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 160 to 200 megahertz of 3.7 GHz spectrum in Auction 107 in this market. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in this market, while DISH won 20-40 megahertz. Currently, AT&T holds 255 to 285 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 277 to 327 megahertz of spectrum. In addition, DISH holds 101 to 131 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 40 megahertz of spectrum in this market.

66. Regarding coverage in this rural market, AT&T and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in this market, while T-Mobile has significant 4G LTE population coverage at speeds of 5/1 Mbps.[198] Further, AT&T has significant 5G-NR population coverage at speeds of 7/1 Mbps,[199] while T-Mobile and Verizon Wireless each have deployed their 5G-NR networks at speeds of 7/1 Mbps to some extent.[200]

---

[195] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile has significant population and land area coverage in Atlanta, GA and Athens, GA, significant population and close-to-significant land area coverage in Tampa-St. Petersburg, FL, significant population coverage in Florida 4–Citrus, and close-to-significant population coverage in Georgia 2–Dawson. AT&T has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in these markets. Verizon Wireless has significant 5G-NR population and land area coverage at speeds of 35/3 Mbps in Atlanta, GA, as well as significant 5G-NR population coverage at speeds of 35/3 Mbps in Tampa-St. Petersburg, FL, and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in the remaining markets. In addition, DISH has significant 5G-NR population and close-to-significant 5G-NR land area coverage at speeds of 35/3 Mbps in Florida 4-Citrus and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in Atlanta, GA, Athens, GA, and Georgia 2-Dawson.

[196] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in these non-rural Southern markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in these non-rural markets.

[197] T-Mobile also holds 600 to 1400 megahertz of mmW spectrum, while AT&T holds 1,000 to 1,100 megahertz, and Verizon Wireless holds 1,200 to 2,450 megahertz. Other licensees, including DISH, hold 300 to 850 megahertz.

[198] We note that Southern Linc holds 7.5 megahertz of below-1-GHz spectrum in Georgia 4–Jasper, but it does not have any significant 4G LTE coverage.

[199] In terms of 5G-NR coverage at speeds of 35/3 Mbps, AT&T, T-Mobile, and Verizon Wireless each have deployed their 5G-NR networks to some extent in this rural market.

[200] According to the December 2022 NRUF data, in terms of significant market share, AT&T holds {[ ]} % while Verizon Wireless holds {[ ]} % in Georgia 4–Jasper. No other service providers have a significant market

(continued….)

67. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[201] and we find no evidence in the record that this has led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily considered, as noted above, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 10 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

68. *California–South*: There are six CMAs in Southern California in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger.[202] Five of these CMAs—Los Angeles-Anaheim, Oxnard-Simi Valley-Ventura, Bakersfield, Santa Barbara, and Salinas-Seaside-Monterey—are non-rural markets with populations ranging from approximately 439,000 to 17.8 million, and with population densities of 112 to 553 people per square mile. The other CMA—California 5–San Luis Obispo—is a rural market with a population of approximately 282,400, and a population density of 85 people per square mile.

69. *Record*. DISH argues that T-Mobile exceeds the spectrum screen in Los Angeles, California by holding approximately 402 megahertz of spectrum.[203] The Applicants claim that there is no harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[204] Specifically, the Applicants argue that both Verizon Wireless and AT&T have substantial 4G LTE and 5G-NR coverage and mature network deployments in this cluster, and that while DISH's 5G-NR coverage in this cluster is not clear,[205] DISH holds a substantial amount of spectrum for build-out of its network.[206]

70. *Analysis*.[207] Considering first the five non-rural markets, T-Mobile held 410 to 430 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 430 megahertz of spectrum on a county-by-county basis post-transaction.[208] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 140 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH won 30 megahertz. Currently, AT&T holds 261 to 286 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 247 to 297 megahertz of spectrum. In addition,

share in this rural Southern market. T-Mobile has some market presence in Georgia 4–Jasper with a market share of {[ ]} %.

[201] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[202] In numerical order, the six CMAs are: CMA 2: Los Angeles-Anaheim, CA; CMA 73: Oxnard-Simi Valley-Ventura, CA; CMA 97: Bakersfield, CA; CMA 124: Santa Barbara, CA; CMA 126: Salinas-Seaside-Monterey, CA; and CMA 340: California 5–San Luis Obispo.

[203] DISH Petition at 6 & n.20.

[204] Applicants' Updated Spectrum Aggregation Exhibit at 4-9 (filed Nov. 10, 2023).

[205] Applicants' Updated Spectrum Aggregation Exhibit at 4-6 (filed Nov. 10, 2023).

[206] Applicants' Updated Spectrum Aggregation Exhibit at 6-7 (filed Nov. 10, 2023).

[207] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[208] T-Mobile also holds 1,100 to 1,380 megahertz of mmW spectrum, while AT&T holds 1,100 megahertz, and Verizon Wireless holds 1,000 to 1,950 megahertz. Other licensees, including DISH, hold 100 to 850 megahertz.

DISH holds 115 to 135 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 30 megahertz of spectrum on a county-by-county basis across these markets.

71. Regarding coverage in these five non-rural markets, Verizon Wireless has significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in three of the five markets and significant 4G LTE population coverage at speeds of 5/1 Mbps in Oxnard-Simi Valley-Ventura and Santa Barbara, and AT&T has significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in two of the five markets, significant 4G LTE population and close-to-significant land area coverage at speeds of 5/1 Mbps in Salinas-Seaside-Monterey, and significant 4G LTE population coverage at speeds of 5/1 Mbps in Oxnard-Simi Valley-Ventura and Santa Barbara, while T-Mobile has significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in two of the five markets and significant 4G LTE population coverage at speeds of 5/1 Mbps in Oxnard-Simi Valley-Ventura, Santa Barbara, and Salinas-Seaside-Monterey. Further, T-Mobile and Verizon Wireless have significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in Bakersfield and significant 5G-NR population coverage at speeds of 7/1 Mbps in the remaining four markets,[209] while AT&T has significant 5G-NR population and land area coverage at speeds of 7/1 Mbps in Los Angeles-Anaheim, significant 5G-NR population coverage at speeds of 7/1 Mbps in Oxnard-Simi Valley-Ventura, Santa Barbara, and Salinas-Seaside-Monterey, and close-to-significant population coverage at speeds of 7/1 Mbps in Bakersfield.[210]

72. In the rural market—California 5–San Luis Obispo—T-Mobile held 400 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 400 megahertz of spectrum post-transaction.[211] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 140 megahertz of 3.7 GHz spectrum in Auction 107 in this market. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in this market, while DISH won 30 megahertz. Currently, AT&T holds 276 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 282 megahertz of spectrum. In addition, DISH holds 115 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 20 megahertz of spectrum in this market.

73. Regarding coverage in this rural market, AT&T and Verizon Wireless have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps while T-Mobile has significant 4G LTE population coverage at speeds of 5/1 Mbps in this rural market. Further, T-Mobile and Verizon Wireless

[209] In terms of 5G-NR coverage at speeds of 35/3 Mbps, Verizon Wireless has significant population coverage in all five markets. Further, T-Mobile has significant 5G-NR population coverage at speeds of 35/3 Mbps in three of the five markets, close-to-significant 5G-NR population coverage at speeds of 35/3 Mbps in Santa Barbara, and has deployed its 5G-NR network to some extent at speeds of 35/3 Mbps in Salinas-Seaside-Monterey while AT&T has significant 5G-NR population coverage at speeds of 35/3 Mbps in two of the five markets, close-to-significant 5G-NR population coverage at speeds of 35/3 Mbps in Oxnard-Simi Valley-Ventura and has deployed its 5G-NR network to some extent at speeds of 35/3 Mbps in Bakersfield and Santa Barbara.

[210] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in these non-rural Southern California markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in these non-rural markets.

[211] T-Mobile also holds 1,100 megahertz of mmW spectrum, while AT&T holds 1,100 megahertz, and Verizon Wireless holds 1,950 megahertz. Other licensees, including DISH, hold 100 to 700 megahertz.

have significant 5G-NR population coverage at speeds of 7/1 Mbps,[212] while AT&T has close-to-significant 5G-NR population coverage at speeds of 7/1 Mbps in this rural market.[213]

74. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[214] and we find no evidence in the record that this has led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily considered, as noted above, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 10 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

75. *Southwest*: There are six CMAs in the Southwestern United States in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger.[215] Five of these CMAs—Houston, TX, Phoenix, AZ, Salt Lake City-Ogden, UT, Provo-Orem, UT, and Galveston-Texas City, TX—are non-rural markets with populations ranging from approximately 350,700 to 6.7 million, and with population densities of 201 to 986 people per square mile. The other CMA—Texas 21–Chambers—is a rural market with a population of approximately 46,600, and a population density of 76 people per square mile.

76. *Record*. DISH argues that T-Mobile exceeds the spectrum screen in Houston, Texas by holding approximately 394 megahertz of spectrum.[216] The Applicants claim that there is no harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[217] Specifically, the Applicants argue that both Verizon Wireless and AT&T have substantial 4G LTE and 5G-NR coverage and mature network deployments in this cluster, and that while DISH's 5G-NR coverage in this cluster is not clear,[218] DISH holds a substantial amount of spectrum for build-out of its network.[219]

77. *Analysis*.[220] Considering first the five non-rural markets, T-Mobile held 410 to 430 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 430 megahertz of spectrum on a county-by-county basis

[212] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile and Verizon Wireless each have significant population coverage, while AT&T has deployed its 5G-NR network to some extent in this rural market.

[213] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in California 5–San Luis Obispo, while AT&T holds {[ ]} % and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in this rural Southern California market.

[214] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[215] In numerical order, the six CMAs are: CMA 10: Houston, TX; CMA 26: Phoenix, AZ; CMA 39: Salt Lake City-Ogden, UT; CMA 159: Provo-Orem, UT; CMA 170: Galveston-Texas City, TX; and CMA 672: Texas 21–Chambers.

[216] DISH Petition at 6 & n.20.

[217] Applicants' Updated Spectrum Aggregation Exhibit at 4-9, 14-18 (filed Nov. 10, 2023).

[218] Applicants' Updated Spectrum Aggregation Exhibit at 4-6, 15-16 (filed Nov. 10, 2023).

[219] Applicants' Updated Spectrum Aggregation Exhibit at 6-7, 16 (filed Nov. 10, 2023).

[220] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

post-transaction.[221] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 160 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH won 30 to 40 megahertz. Currently, AT&T holds 265 to 295 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 267 to 292 megahertz of spectrum. In addition, DISH holds 121 to 131 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 45 megahertz of spectrum on a county-by-county basis across these markets.

78. Regarding coverage in these five non-rural markets, AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in Houston, TX, Phoenix, AZ, and Provo-Orem, UT. In Salt Lake City-Ogden, UT, AT&T and Verizon Wireless have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps, while T-Mobile has significant population coverage. In Galveston-Texas City, TX, all three providers have significant 4G LTE population and close-to-significant 4G LTE land area coverage at speeds of 5/1 Mbps. Further, AT&T, T-Mobile, and Verizon Wireless have significant 5G-NR population coverage at speeds of 7/1 Mbps in these markets. T-Mobile and AT&T have significant 5G-NR land area coverage at speeds of 7/1 Mbps in Houston, TX and Provo-Orem, UT, as well as close-to-significant land area coverage in Galveston-Texas City, TX. AT&T also has significant 5G-NR land area coverage at speeds of 7/1 Mbps in Salt Lake City-Ogden, UT. Verizon Wireless has significant 5G-NR land area coverage at speeds of 7/1 Mbps in Houston, TX, Phoenix, AZ, and Provo-Orem, UT, as well as close-to-significant land area coverage in Galveston-Texas City, TX.[222] In addition, DISH has significant 5G-NR population coverage at speeds of 7/1 Mbps in all CMAs except Phoenix, AZ, as well as significant 5G-NR land area coverage at speeds of 7/1 Mbps in Houston, TX.[223]

79. In the rural market—Texas 21–Chambers—T-Mobile held 410 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 410 megahertz of spectrum post-transaction.[224] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 160 megahertz of 3.7 GHz spectrum in Auction 107 in this market. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in this market, while DISH won 30 megahertz. Currently, AT&T holds 285 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 287 megahertz of spectrum. In addition, DISH holds 111 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 20 megahertz of spectrum in this market.

---

[221] T-Mobile also holds 1,000 to 1,400 megahertz of mmW spectrum, while AT&T holds 900 to 1,100 megahertz, and Verizon Wireless holds 1,600 to 1,850 megahertz. Other licensees, including DISH, hold 200 to 1,450 megahertz.

[222] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile and Verizon Wireless each have significant population coverage in all five CMAs as well as significant land area coverage in Houston, TX. In addition, T-Mobile has significant 5G-NR land area coverage at speeds of 35/3 Mbps in Provo-Orem, UT, and Verizon Wireless has significant 5G-NR land area coverage at speeds of 35/3 Mbps in Phoenix, AZ and close-to-significant coverage at speeds of 35/3 Mbps in Provo-Orem, UT. AT&T has close-to-significant population coverage at speeds of 35/3 Mbps in Phoenix, AZ, and has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in the remaining markets. In addition, DISH has significant 5G-NR population coverage at speeds of 35/3 Mbps in all CMAs except Phoenix, AZ as well as significant 5G-NR land area coverage at speeds of 35/3 Mbps in Houston, TX.

[223] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in these non-rural Southwestern markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in these non-rural markets.

[224] T-Mobile also holds 1,400 megahertz of mmW spectrum, while AT&T holds 1,000 megahertz, and Verizon Wireless holds 1,850 megahertz. Other licensees, including DISH, hold 200 to 500 megahertz.

80. Regarding coverage in this rural market, AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population and land area coverage at speeds of 5/1 Mbps in this market. Further, AT&T, T-Mobile, and Verizon Wireless also have significant 5G-NR population and land area coverage at speeds of 7/1 Mbps.[225] In addition, DISH has significant 5G-NR population coverage at speeds of 7/1 Mbps.[226]

81. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[227] and we find no evidence in the record that this has led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily considered, as noted above, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 10 to 20 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

82. *Washington*: There are four CMAs in the state of Washington in which T-Mobile would be attributed post-assignment with spectrum such that its holdings are above the spectrum screen trigger. Three of these CMAs—Seattle-Everett, Tacoma, and Bremerton—are non-rural markets with populations ranging from approximately 276,000 to 3.1 million, and with population densities of 546 to 733 people per square mile. The other CMA—Washington 1–Clallam—is a rural market with a population of approximately 344,000, and a population density of 60 people per square mile.

83. *Record*. DISH argues that T-Mobile exceeds the spectrum screen in Seattle, Washington by holding approximately 392 megahertz of spectrum.[228] The Applicants claim that there is no harm from spectrum aggregation in this cluster, based on the spectrum held by other licensees, and both existing and projected 4G LTE and 5G-NR buildout by the other providers in these markets.[229] Specifically, the Applicants argue that both Verizon Wireless and AT&T have substantial 4G LTE and 5G-NR coverage and mature network deployments in this cluster, and that while DISH's 5G-NR coverage in this cluster is not clear,[230] DISH holds a substantial amount of spectrum for build-out of its network.[231]

84. *Analysis*.[232] Considering first the three non-rural markets, T-Mobile held 400 to 410 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 410 megahertz of spectrum on a county-by-county basis post-transaction.[233] Since the underlying spectrum manager leasing arrangements were approved, AT&T

[225] In terms of 5G-NR coverage at speeds of 35/3 Mbps, Verizon Wireless has significant population coverage and T-Mobile has close-to-significant population coverage, while AT&T has deployed its 5G-NR network to some extent in this rural market. In addition, DISH has significant 5G-NR population coverage at speeds of 35/3 Mbps.

[226] We note that Texas 21–Chambers is a single-county market; for this reason, we believe that the market shares according to the December 2022 NRUF data for AT&T, T-Mobile, and Verizon Wireless in this market of {
]} %, respectively, are unreliable and inaccurate so we do not report them here.

[227] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[228] DISH Petition at 6 & n.20.

[229] Applicants' Updated Spectrum Aggregation Exhibit at 4-9 (filed Nov. 10, 2023).

[230] Applicants' Updated Spectrum Aggregation Exhibit at 4-6 (filed Nov. 10, 2023).

[231] Applicants' Updated Spectrum Aggregation Exhibit at 6-7 (filed Nov. 10, 2023).

[232] As a threshold matter, we again note that T-Mobile is already attributed with the spectrum that it is acquiring in these markets, as a result of the previously approved underlying spectrum manager leasing arrangements. *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

[233] T-Mobile also holds 1,100 megahertz of mmW spectrum, while AT&T holds 1,000 megahertz, and Verizon Wireless holds 1,850 megahertz. Other licensees, including DISH, hold 400 to 600 megahertz.

won 80 megahertz and Verizon Wireless won 160 megahertz of 3.7 GHz spectrum in Auction 107 in these markets. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in these markets, while DISH won 30 megahertz. Currently, AT&T holds 255 to 285 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 267 to 287 megahertz of spectrum. In addition, DISH holds 131 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 20 megahertz of spectrum on a county-by-county basis across these markets.

85. Regarding coverage in these three non-rural markets, AT&T, T-Mobile, and Verizon Wireless each have significant 4G LTE population coverage at speeds of 5/1 Mbps in these markets. Verizon Wireless has significant 4G LTE land area coverage at speeds of 5/1 Mbps in these markets, while AT&T has significant 4G LTE land area coverage at speeds of 5/1 Mbps in two of the markets, excluding Seattle-Everett, WA, where it has close-to-significant coverage. T-Mobile has significant 4G LTE land area coverage at speeds of 5/1 Mbps in Bremerton and close-to-significant land area coverage in Tacoma. Further, AT&T, T-Mobile, and Verizon Wireless have significant 5G-NR population coverage at speeds of 7/1 Mbps in these markets,[234] as well as close-to-significant 5G-NR land area coverage at speeds of 7/1 Mbps in Bremerton.[235]

86. In the rural market—Washington 1–Clallam—T-Mobile held 367.5 to 440 megahertz of spectrum on a county-by-county basis pre-transaction. Due to the assignment applications, T-Mobile would continue to hold a maximum of 440 megahertz of spectrum post-transaction.[236] Since the underlying spectrum manager leasing arrangements were approved, AT&T won 80 megahertz and Verizon Wireless won 160 megahertz of 3.7 GHz spectrum in Auction 107 in this market. In addition, in Auction 110, AT&T won 40 megahertz of 3.45 GHz spectrum in this market, while DISH won 30 to 40 megahertz. Currently, AT&T holds 255 megahertz of spectrum on a county-by-county basis, while Verizon Wireless holds 287 megahertz of spectrum. In addition, DISH holds 121 megahertz of spectrum. Finally, multiple other licensees hold between 10 and 20 megahertz of spectrum in this market.

87. Regarding coverage in this rural market, AT&T, T-Mobile, and Verizon Wireless have significant 4G LTE population coverage at speeds of 5/1 Mbps. Further, AT&T and T-Mobile have significant 5G-NR population coverage at speeds of 7/1 Mbps,[237] while Verizon Wireless has deployed its 5G-NR network at speeds of 7/1 Mbps to some extent in this rural market.[238]

88. As noted above, T-Mobile has already been using this spectrum as a result of the underlying spectrum manager leasing arrangements,[239] and we find no evidence in the record that this has

[234] In terms of 5G-NR coverage at speeds of 35/3 Mbps, T-Mobile and Verizon Wireless each have significant population coverage in Seattle-Everett and Tacoma. In Bremerton, Verizon Wireless has significant 5G-NR population coverage at speeds of 35/3 Mbps, and T-Mobile has close-to-significant 5G-NR population coverage at speeds of 35/3 Mbps. AT&T has deployed its 5G-NR network at speeds of 35/3 Mbps to some extent in these markets.

[235] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in these non-rural Washington markets, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in these non-rural markets.

[236] T-Mobile also holds 1,500 to 1,525 megahertz of mmW spectrum, while AT&T holds 1,000 megahertz, and Verizon Wireless holds 1,425 to 1,850 megahertz. Other licensees, including DISH, hold 400 to 600 megahertz.

[237] In terms of 5G-NR coverage at speeds of 35/3 Mbps, AT&T, T-Mobile, and Verizon Wireless each have deployed their 5G-NR networks to some extent in this rural market.

[238] According to the December 2022 NRUF data, in terms of significant market share, T-Mobile holds {[ ]} % in this rural Washington market, while AT&T holds {[ ]} %, and Verizon Wireless holds {[ ]} %. No other service providers have a significant market share in this rural market.

[239] *T-Mobile-Channel 51-LB License Lease Order*, 35 FCC Rcd at 14060, para. 2.

led to anticompetitive effects in this geographic cluster. Based on our evaluation of the factors ordinarily considered, as noted above, including the fact that multiple licensees have access to considerable amounts of spectrum, we find that the likelihood of competitive harm is low in these markets post-transaction. We find it highly unlikely that the assignment of 10 megahertz of spectrum to T-Mobile in this cluster would allow it to foreclose entry, raise rivals' costs, or otherwise harm the public interest.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

89. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms "if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[240] Moreover, the Commission will find a claimed benefit to be cognizable only if it is transaction-specific—meaning it naturally arises as a result of the transaction and likely could not be accomplished in the absence of the transaction[241]—and verifiable.[242] Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.[243] Further, the Commission is "more likely to find marginal cost reductions to be cognizable than reductions in fixed cost"[244] as, in general, reductions in marginal cost are more likely to result in lower prices for consumers. In addition, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.[245] The Commission applies a "sliding scale approach" to evaluating benefit claims.[246] Under this approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[247] Conversely,

[240] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 131; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 57.

[241] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *2010 DOJ/FTC Horizontal Merger Guidelines*, § 10 at 29-31; *see also Sprint-Shentel-NTELOS Order,* 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[242] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[243] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[244] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[245] *See, e.g.*, *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *Sprint-Shentel-NTELOS Order,* 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342, para. 58.

[246] *See, e.g.*, *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342-43, para. 59.

[247] *See, e.g.*, *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342-43, para. 59.

where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.[248]

90. *Record*. The Applicants assert that T-Mobile is already utilizing the spectrum under the long-term spectrum manager leasing arrangements and that grant of the applications will allow T-Mobile to maintain its network performance.[249] Specifically, the low-band 600 MHz spectrum at issue provides a coverage layer and provides network control functions for other bands utilized by T-Mobile's network.[250] The Applicants further assert that, since T-Mobile began utilizing the spectrum as part of the previously approved spectrum leases, T-Mobile has deployed the spectrum at issue to support the rapid and robust deployment of its 5G network in the license areas covered by the licenses.[251] The Applicants claim that this led directly to T-Mobile providing significantly faster speeds, enhanced capacity, and a far better user experience with more advanced use cases in those areas.[252] The Applicants maintain that continued access to the 600 MHz spectrum at issue allows T-Mobile to continue to enhance and bolster its 5G service offerings in all or parts of the license areas, including four of the top ten markets (PEAs), and meet consumers' increasing demand for mobile broadband data in those areas.[253] Specifically, the Applicants contend that the spectrum has enabled additional capacity and improved data throughputs, network reliability, and coverage in the license areas.[254] The Applicants assert that the 600 MHz spectrum covered by the licenses is particularly well-suited to support T-Mobile's network; its characteristics enhance the T-Mobile user experience by significantly improving in-building coverage in urban areas and enhancing coverage and performance in suburban and rural areas.[255] The Applicants use the example of its in-home broadband offering, asserting that the spectrum supports this offering, enhancing competition in the in-home broadband market, with a focus on targeting unserved and underserved areas.[256]

91. *Increased Network Capacity and 5G Deployment*. According to the Applicants, the 600 MHz licenses, which have already been deployed by T-Mobile pursuant to the 2020 spectrum leasing arrangements, meaningfully augment the capacity of T-Mobile's low-band network.[257] The Applicants

[248] *See, e.g.*, *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342-43, para. 59.

[249] T-Mobile/Channel 51 Public Interest Statement at 3; T-Mobile/LB License Public Interest Statement at 3.

[250] T-Mobile/Channel 51 Public Interest Statement at 4; T-Mobile/LB License Public Interest Statement at 4.

[251] T-Mobile/Channel 51 Public Interest Statement at 2-3; T-Mobile/LB License Public Interest Statement at 2; T-Mobile Response at 2; Channel 51/LB License Joint Opposition at 4; Applicants' Updated Spectrum Aggregation Exhibit at 1, 9, 13-14, 18, 22-23, 26, 30 (filed Nov. 10, 2023).

[252] T-Mobile/Channel 51 Public Interest Statement at 2-3; T-Mobile/LB License Public Interest Statement at 2-3; T-Mobile Response at 2-3; Applicants' Updated Spectrum Aggregation Exhibit at 8, 13, 17, 22, 26, 29 (filed Nov. 10, 2023).

[253] T-Mobile/Channel 51 Public Interest Statement at 3; T-Mobile/LB License Public Interest Statement at 3; T-Mobile Response at 2, 5; Applicants' Updated Spectrum Aggregation Exhibit at 2 (filed Nov. 10, 2023).

[254] T-Mobile/Channel 51 Public Interest Statement at 3; T-Mobile/LB License Public Interest Statement at 3; T-Mobile Response at 2; Applicants' Updated Spectrum Aggregation Exhibit at 1, 3, 9, 13-14, 18, 22-23, 26, 30 (filed Nov. 10, 2023).

[255] T-Mobile/Channel 51 Public Interest Statement at 4; T-Mobile/LB License Public Interest Statement at 4; Applicants' Updated Spectrum Aggregation Exhibit at 1, 8, 13, 17, 22, 26, 29 (filed Nov. 10, 2023).

[256] T-Mobile/Channel 51 Public Interest Statement at 4; T-Mobile/LB License Public Interest Statement at 3-4; T-Mobile Response at 3; Applicants' Updated Spectrum Aggregation Exhibit at 1-3, 7-8, 12, 17, 21, 25, 29 (filed Nov. 10, 2023).

[257] Applicants' Updated Spectrum Aggregation Exhibit at 1 (filed Nov. 10, 2023).

claim that access to the spectrum at issue allows T-Mobile to allocate more continuous spectrum to their 5G NR channels in certain of the affected markets, offering substantial capacity benefits,[258] and that this low-band network provides foundational geographic coverage for customers and is therefore an important component of the 5G network.[259] Thus, T-Mobile asserts that it is able to maintain enhanced 5G and LTE network capacity in these markets at a low marginal cost.[260] The Applicants further maintain that consumers benefit considerably from the availability of 5G services that are provided as a result of T-Mobile's use of this spectrum, with benefits including access to in-home broadband service and increased competition.[261] The Applicants also describe tangible differences in customer experience, such as an increased ability to complete 911 emergency calls, and higher data speeds, that are a result of this increased capacity.[262]

92. *Fixed Wireless Access*. The Applicants assert that the increase in spectrum capacity enables T-Mobile to increase the extent of its Fixed Wireless Access services, thereby increasing competition in the market for in-home broadband.[263] They also argue that this is a market where limited competition exists, and where the existing providers are traditional cable providers that are typically dominant in their footprints.[264] The Applicants claim that loss of access to the spectrum in question would result in loss of access to this competitive service for approximately 200,000 households.[265]

93. *Provision of Service to Underserved Groups and Areas*. The Applicants describe the low-band network as critical to providing both the extended cell reach to serve low population density rural areas and the building penetration to serve metropolitan customers in offices and apartments.[266] They argue that having sufficient low-band capacity is crucial to ensure that remote rural customers and inner-city populations have access to more optimal high-speed broadband data.[267] The Applicants assert that losing access to this spectrum would have a disproportionate impact on rural and low-income consumers, leading to the potential for a gap in service to consumers that need it the most.[268] The Applicants further contend that although it is difficult to fully quantify the impact of the low-band network capacity for inner cities, the impact on rural areas can be quantified.[269] Specifically, the Applicants assert that losing access to the spectrum in question would have a significant negative effect on services in rural census tracts covering a rural population of almost two million, including nearly 500,000 members of racial and ethnic minority groups; over 480,000 school age children; and over 200,000 people below the poverty line.[270] The Applicants maintain that for these reasons, and the disproportionate importance of low-band spectrum to lower income residents in high density urban

[258] Applicants' Updated Spectrum Aggregation Exhibit at 9, 13-14, 18, 22-23, 26, 30 (filed Nov. 10, 2023).

[259] Applicants' Updated Spectrum Aggregation Exhibit at 1 (filed Nov. 10, 2023).

[260] Applicants' Updated Spectrum Aggregation Exhibit at 3 (filed Nov. 10, 2023).

[261] Applicants' Updated Spectrum Aggregation Exhibit at 1-2, 3, 7-8, 12, 17, 21, 25, 29 (filed Nov. 10, 2023).

[262] Applicants' Updated Spectrum Aggregation Exhibit at 8, 13, 17, 22, 26, 29 (filed Nov. 10, 2023).

[263] Applicants' Updated Spectrum Aggregation Exhibit at 1-2 (filed Nov. 10, 2023).

[264] Applicants' Updated Spectrum Aggregation Exhibit at 3 (filed Nov. 10, 2023).

[265] Applicants' Updated Spectrum Aggregation Exhibit at 1-2, 7-8, 12, 17, 21, 25, 29 (filed Nov. 10, 2023).

[266] Applicants' Updated Spectrum Aggregation Exhibit at 1, 8, 13, 17, 22, 26, 29 (filed Nov. 10, 2023).

[267] Applicants' Updated Spectrum Aggregation Exhibit at 1 (filed Nov. 10, 2023).

[268] Applicants' Updated Spectrum Aggregation Exhibit at 1, 2, 8, 13, 18, 22, 26, 29-30 (filed Nov. 10, 2023).

[269] Applicants' Updated Spectrum Aggregation Exhibit at 8, 13, 17, 22, 26, 29 (filed Nov. 10, 2023)

[270] Applicants' Updated Spectrum Aggregation Exhibit at 1 (filed Nov. 10, 2023).

dwellings, T-Mobile's access to this low-band spectrum is directly related to the provision of mobile broadband to underserved groups and areas.[271]

94. *Discussion*. We have reviewed the Applicants' asserted benefits in the Public Interest Statement, as well as their supplemental filings. We note that the spectrum at issue provides additional capacity and extended cell reach to serve low population density rural areas and provides building penetration to serve metropolitan customers in more urban areas. We credit as a public interest benefit that consumers are receiving greater capacity benefits and expanded competition from this deployment, and that T-Mobile, through this spectrum acquisition, will continue to deploy and enhance its 5G network. We further find that the proposed transaction would allow T-Mobile to provide a better user experience to its customers. Further, T-Mobile has set forth a detailed public interest showing explaining how its spectrum deployment benefits consumers in each of the regions it identifies, including how the acquisition and use of this spectrum impacts rural and minority groups. We therefore find that the record provides support for the Applicants' assertions that the proposed transaction would result in certain verifiable, transaction-specific public interest benefits.

VII. CONCLUSION

95. After carefully evaluating the potential competitive effects of the proposed assignments, we find that the likelihood of competitive harm is low. We find it highly unlikely that rival service providers or potential entrants will be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, as a result of the permanent assignment of this spectrum. We disagree with DISH's characterization that T-Mobile has not satisfied its burden that the asserted public interest benefits set forth in the record exceed the potential public interest harms in the instant case. We agree with T-Mobile that discontinued access to this spectrum would have a significant negative effect on services in rural census tracts and inner-city populations that have benefitted from the increased capacity. We therefore find that the grant of these applications is in the public interest.

96. In addition, we find that DISH's requested conditions are not transaction-specific, and that DISH is requesting remedies beyond the scope of these assignment applications. Further, the remedy DISH seeks is a novel remedy not previously granted by the Commission, and as such, would be better raised in the context of a rulemaking. To the extent DISH's petition asks us to address spectrum aggregation and competition issues beyond the scope of this transaction, we note that WTB and OEA recently initiated a separate proceeding seeking comment on the Commission's mobile spectrum holdings policies and competition issues more generally.[272]

97. On balance, given we find that the likelihood of competitive harm is low, and that there are some cognizable public interest benefits associated with the proposed transaction, we conclude that the public interest, convenience, and necessity would be served by this transaction. We therefore grant the applications filed by Channel 51, LB License, and T-Mobile seeking consent to assign 600 MHz spectrum licenses from Channel 51 and LB License to T-Mobile.

VIII. ORDERING CLAUSES

98. ACCORDINGLY, having reviewed the applications and record in this matter, **IT IS ORDERED** that, pursuant to sections 4(i-j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i-j), 303(r), 309, 310(d), the applications for consent to assignments filed by Channel 51, LB License, and T-Mobile **ARE GRANTED**.

99. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order **SHALL BE EFFECTIVE** upon adoption. Petitions for Reconsideration under section 1.106 of the Commission's

[271] Applicants' Updated Spectrum Aggregation Exhibit at 1, 8, 13, 18, 22, 26, 29 (filed Nov. 10, 2023).

[272] *See Mobile Spectrum Holdings Public Notice* at 4-5.

Rules, 47 CFR § 1.106, may be filed within thirty days of the date of adoption of this Memorandum Opinion and Order.

100. 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

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

Giulia McHenry
Chief, Office of Economics and Analytics

APPENDIX A: LIST OF CELLULAR MARKET AREAS IN WHICH T-MOBILE IS ABOVE THE SPECTRUM SCREEN TRIGGER

CMA	Name	2020 Population	2020 Population Density
2	Los Angeles-Anaheim, CA	17,800,837	554.34
4	Philadelphia, PA	5,505,770	1,574.14
6	Boston-Brockton-Lowell, MA-NH	4,810,743	1,542.68
7	San Francisco-Oakland, CA	4,749,008	1,922.25
8	Washington, DC-MD-VA	6,561,964	2,345.80
10	Houston, TX	6,694,820	1,008.83
11	St. Louis, MO-IL	2,637,506	533.70
15	Minneapolis-St. Paul, MN-WI	3,454,598	753.50
17	Atlanta, GA	5,370,765	1,251.29
20	Seattle-Everett, WA	3,097,632	737.03
22	Tampa-St. Petersburg, FL	2,980,760	1,460.51
26	Phoenix, AZ	4,420,568	480.49
27	San Jose, CA	1,936,259	1,500.86
31	Columbus, OH	1,799,215	735.31
38	Providence-Warwick, RI	1,011,736	1,086.22
39	Salt Lake City-Ogden, UT	1,882,838	220.00
55	Worcester-Leominster, MA	862,111	570.64
69	Wilmington, DE-NJ-MD	739,281	669.36
73	Oxnard-Simi Valley-Ventura, CA	843,843	457.83
76	New Bedford-Fall River, MA	579,200	1,047.20
82	Tacoma, WA	921,130	551.74
97	Bakersfield, CA	909,235	111.81
105	Lancaster, PA	552,984	585.91
107	Stockton, CA	779,233	560.07
111	Vallejo-Fairfield-Napa, CA	591,510	376.73
118	Reading, PA	428,849	500.70
123	Santa Rosa-Petaluma, CA	488,863	310.22
124	Santa Barbara, CA	448,229	163.88
126	Salinas-Seaside-Monterey, CA	439,035	133.83
134	Atlantic City, NJ	369,797	458.16
142	Modesto, CA	552,878	369.86
159	Provo-Orem, UT	659,399	329.13
170	Galveston-Texas City, TX	350,682	926.85
175	Santa Cruz, CA	270,861	608.44
198	St. Cloud, MN	296,854	135.90
212	Bremerton, WA	275,611	697.85
228	Vineland-Millville, NJ	154,152	318.69
234	Athens, GA	276,497	298.77
340	California 5-San Luis Obispo	282,424	85.62
359	Delaware 1-Kent	419,229	275.40
363	Florida 4-Citrus	862,066	339.46

CMA	Name	2020 Population	2020 Population Density
372	Georgia 2-Dawson	506,087	194.13
374	Georgia 4-Jasper	154,751	46.27
399	Illinois 6-Montgomery	193,920	44.89
471	Massachusetts 2-Barnstable	263,851	486.87
624	Rhode Island 1-Newport	85,643	836.47
672	Texas 21-Chambers	46,571	77.99
693	Washington 1-Clallam	344,300	60.88

Note: 2020 U.S. Census population data.

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 23-1211

Released: December 28, 2023

MEDIA BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS ACTION

THIRD QUARTER 2023 INFLATION ADJUSTMENT FIGURES FOR CABLE OPERATORS USING FCC RATE REGULATION FORM 1240 NOW AVAILABLE

This Public Notice is applicable to rate-regulated cable operators that use FCC Forms to justify their cable rates.[1] Cable operators adjusting the non-external cost portion of their rates for inflation should follow the instructions provided with the applicable FCC Form. All inflation adjustment figures are based on changes in the Gross National Product Price Index (GNP-PI) published by the United States Department of Commerce, Bureau of Economic Analysis (BEA). The chain-type price indexes were obtained from the BEA Table 1.7.4 (Price Indexes for Gross Domestic Product, Gross National Product, and Net National Product) Line 4 (Gross National Product) on December 21, 2023.[2]

Operators filing FCC Form 1240 may make an adjustment based on quarterly figures. The third quarter 2023 inflation factor for operators using FCC Form 1240 is 3.33%. The adjustment factor of 3.33% is a measure of the annualized change in prices occurring over the period from July 1, 2023 to September 30, 2023. The inflation adjustment factor is calculated by dividing the GNP-PI for the third quarter of 2023 (122.699) by the GNP-PI for the second quarter of 2023 (121.697). The result of this calculation is converted from a quarterly change measurement factor to an annual change measurement factor by raising it to the fourth power. We then convert the calculation to an inflation adjustment factor by subtracting one.

Operators calculating the Inflation Factor for a True-Up Period that includes some portion of the third quarter of 2023 should enter the inflation factor on the appropriate lines of Worksheet 1 of FCC Form 1240 as "0.0333." Operators using this factor for calculating the Projected Period Inflation Segment of FCC Form 1240 should enter this number on Line C3 (January 1996 version), or Line C5 (July 1996 version) as "1.0333".

Each quarter the Commission releases a quarterly inflation factor for use with FCC Form 1240. The following table lists these factors beginning in 2018.[3]

---

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

[2] Table 1.7.4 can be found at this link: https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJOSVBBX1RhYmxlX0xpc3QiLCI0MiJdXX0=.

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

Year	Quarter	Dates Covered	Inflation Factor
2018	First	Jan. 1, 2018 – Mar. 31, 2018	2.20%
2018	Second	Apr. 1, 2018 – Jun. 30, 2018	3.04%
2018	Third	Jul. 1, 2018 – Sep. 30, 2018	1.81%
2018	Fourth	Oct. 1, 2018 – Dec. 31, 2018	1.68%
2019	First	Jan. 1, 2019 – Mar. 31, 2019	0.90%
2019	Second	Apr. 1, 2019 – Jun. 30, 2019	2.42%
2019	Third	Jul. 1, 2019 – Sep. 30, 2019	1.81%
2019	Fourth	Oct. 1, 2019 – Dec. 31, 2019	1.28%
2020	First	Jan. 1, 2020 – Mar. 31, 2020	1.41%
2020	Second	Apr. 1, 2020 – Jun. 30, 2020	-1.82%
2020	Third	Jul. 1, 2020 – Sep. 30, 2020	3.51%
2020	Fourth	Oct. 1, 2020 – Dec. 31, 2020	2.04%
2021	First	Jan. 1, 2021 – Mar. 31, 2021	4.32%
2021	Second	Apr. 1, 2021 – Jun. 30, 2021	6.07%
2021	Third	Jul. 1, 2021 – Sep. 30, 2021	5.95%
2021	Fourth	Oct. 1, 2021 – Dec. 31, 2021	7.13%
2022	First	Jan. 1, 2022 – Mar. 31, 2022	8.19%
2022	Second	Apr. 1, 2022 – Jun. 30, 2022	9.00%
2022	Third	Jul. 1, 2022 – Sep. 30, 2022	4.37%
2022	Fourth	Oct. 1, 2022 – Dec. 31, 2022	3.88%
2023	First	Jan. 1, 2023 – Mar. 31, 2023	4.14%
2023	Second	Apr. 1, 2023 – Jun. 30, 2023	1.74%
2023	Third	Jul. 1, 2023 – Sep. 30, 2023	3.33%

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

For additional information, contact Jake Riehm, jake.riehm@fcc.gov, (202) 418-2166 or Zaira Gonzalez, zaira.gonzalez@fcc.gov, (202) 418-2743.

TTY: (202) 418-0432 or 1 (888) 835-5322

–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. 23-1212

Report No. TEL-02326 **Friday December 29, 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-T/C-20230120-00004 E Mashell Telecom, Inc. d/b/a Rainier Connect

Transfer of Control

Consummated Date of Action: 10/20/2023

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

FROM: Mashell, Inc.

TO: Alphaboost Purchaser, LLC

On September 12, 2023, we granted the application of Mashell Telecom, Inc. d/b/a Ranier Connect (Mashell Telecom) for the transfer of control of Mashell Telecom, which holds international section 214 authority for global resale service (ITC-214-19970821-00502), from Mashell, Inc. to Alphaboost Purchaser, LLC. Grant of the application was conditioned on Mashell Telecom abiding by the commitments and undertakings set forth in the Letter of Agreement from Brian Haynes, President/CEO, Mashell Telecom, Inc, dba Rainier Connect, to the Chief, Foreign Investment Review Section, and Deputy Chief, Compliance and Enforcement, Foreign Investment Review Section, on behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division (Aug. 24, 2023) (August 24, 2023 LOA). See International Authorizations Granted, Report No. TEL-02302, Public Notice, DA 23-846 (OIA rel. Sep. 14, 2023).

On December 20, 2023, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) filed a letter requesting that we replace the August 24, 2023 LOA with a December 14, 2023 mitigation agreement as a condition on the domestic and international authority held by Mashel Telecom. Letter from Tyler J. Wood, Deputy Chief for Compliance & Enforcement, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, FCC (Dec. 20, 2023) (filed in ITC-T/C-20230120-00004 and WC Docket No. 23-30) (Committee Letter). According to the letter, the Committee has made a non-substantive administrative modification to the mitigation agreement with the consent of the authorization holder.

We grant the Committee's request and condition grant of the transfer application on Alphaboost Holdings, LLC and its subsidiaries, including Mashell Telecom, abiding by the commitments and undertakings set forth in the Letter of Agreement from Michael Reynolds, Pak Ka Kelvin Wong, and Anand Vadapalli, Alphaboost Holdings, LLC, to the Chief, Foreign Investment Review Section, and Deputy Chief, Compliance and Enforcement, Foreign Investment Review Section, on behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division (Dec. 14, 2023) (December 14, 2023 LOA). The Committee Letter and the December 14, 2023 LOA may be viewed on the FCC's website through the International Communications Filing System by searching for ITC-T/C-20230120-00004 and accessing the "Other Filings related to this application" from the Document Viewing Area.

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

ITC-T/C-20231024-00132 E CP-TEL Network Services, Inc.

Transfer of Control

Grant of Authority Date of Action: 12/21/2023

Current Licensee: CP-TEL Network Services, Inc.

FROM: Epic Touch Co., Inc.

TO: H.N.G. Holdings, LLC

CP-TEL Network Services, Inc. (CP-TEL Services), a Louisianna corporation that holds international section 214 authority for global resale service (ITC-214-20001222-00758), filed an application for consent to the transfer of control of CP-TEL Services from Epic Touch Co., Inc. (Epic Touch) to H.N.G. Holdings, L.L.C. (HNG Holdings). CP-TEL Services is a wholly owned subsidiary of CP-TEL Holdings, Inc. (CP-TEL Holdings), a Louisiana corporation, which is a wholly owned subsidiary of Epic Touch, a Kansas corporation. Pursuant to the terms of the proposed transaction, HNG Holdings will purchase all of the issued and outstanding stock of CP TEL Holdings from Epic Touch. As a result, CP-Tel Holdings and CP-TEL Services will become direct and indirect wholly owned subsidiaries of HNG Holdings respectively.

HNG Holdings is a Louisiana limited liability company. William Michael George, a U.S. citizen, holds 64% equity and voting interests directly in HNG Holdings. He also serves as the trustee for three trusts for his children, all U.S. citizens, which each holds 12% equity and voting interests in HNG Holdings: Erin E. George Minority Trust, Christine M. George Minority Trust, Douglas M. George Minority Trust; all organized in Louisiana. The Applicants state that no other individual or entity directly or indirectly owns or controls ten percent or more of HNG Holdings.

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

SURRENDER

ITC-214-19960206-00058 Cumberland Cellular Partnership

Cumberland Cellular Partnership notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970826-00507 Kentucky RSA #3 Cellular General Partnership

Kentucky RSA #3 Cellular General Partnership notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970826-00508 Cumberland Cellular Partnership

Cumberland Cellular Partnership notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970826-00510 Kentucky RSA 4 Cellular General Partnership d/b/a Bluegrass

Kentucky RSA 4 Cellular General Partnership d/b/a Bluegrass notified the Commission of the surrender of its international section 214 authorization.

SURRENDER

ITC-214-20191028-00174 Itel Networks Inc.

Itel Networks Inc. notified the Commission of the surrender of its international section 214 authorization.

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 D.C. 20554

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

DA No. 23-1213

Report No. FCN-00127 **Friday December 29, 2023**

Foreign Carrier Affiliation Notification

Pursuant to the Commission's rules, the U.S. international carriers and submarine cable landing licensees listed below filed with the Commission a notification of the affiliation they have or propose to have with foreign carriers. These notifications are filed pursuant to Sections 63.11 and 1.768 of the Commission's rules, 47 CFR §§ 63.11 and 1.768.

FCN-NEW-20231226-00002 E Fusion Connect, Inc.

Notification

Pursuant to section 63.11 of the Commission's rules, Fusion Connect, Inc. (Fusion), which holds an international section 214 authorization (ITC-214-19971001-00592), has notified the Commission that it has become affiliated with the following foreign carriers: Fusion Cloud Services (Canada) Inc. and Tele Columbus AG. Fusion Cloud Services (Canada) Inc. is an indirect, wholly-owned subsidiary of Fusion Connect. According to Fusion, Fusion Cloud Services (Canada) has a de minimis share of the Canadian market. Tele Columbus AG is affiliated with Fusion through common ultimate ownership by Morgan Stanley. Fusion states that Tele Columbus AG is a nondominant carrier in Germany with a non-controlling share of the German market. Fusion asserts that since neither of these carriers has a 50% or greater market share in their respective countries, it qualifies to be classified as non-dominant under section 63.10(a)(3) of the Commission's rules for these affiliations. 47 CFR § 63.10(a)(3).

For further information concerning this matter, please contact David Krech, Telecommunications and Analysis Division, International Bureau, (202) 418-1480.

Unless otherwised specified, interested parties may file comments with respect to these notifications within 14 days of the date of this public notice (see Section 1.4(b)(4)). The notifying carrier may respond within 10 days after any such pleadings are filed, and the parties that filed such pleadings may reply within 5 days. See Section 63.52(c), 1.45(c)-(j). It is requested that such comments refer to the notification file number shown above. A copy of the notification is available for public inspection in the Reference Information Center, Court Yard Level, 445 12th Street, S.W., Washington, D.C. 20554. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

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 23-1214
Released: December 29, 2023

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

WC Docket No(s). 23-366 & 23-420

Comments Due: January 15, 2024

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 29, 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

[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 **January 15, 2024**.[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

[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*.

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).

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 Colorado, LLC**
WC Docket No. 23-366, Comp. Pol. File No. 1872
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-366*%22))
Affected Service(s) – Basic Business Line Service, 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) – Denver, Englewood and Westminster, Colorado
Authorized Date(s) – on or after January 30, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): Fusion Cloud Services, LLC and Fusion Telecom of Texas, Ltd., L.L.P.**
WC Docket No. 23-420, Comp. Pol. File No. 1885
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-420*%22))
Affected Service(s) – VOIP services
Service Area(s) – California, Colorado, District of Columbia, Florida, Georgia, Illinois, Maryland, New Jersey, New York, Ohio, Texas, Virginia and Washington.
Authorized(s) – on or after February 1, 2024
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, D.C. 20554

In the Matter of	)	
	)	
Application for Review of	)	File No. 0009395128
	)	
Starlink Services, LLC	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Rural Digital Opportunity Fund (Auction 904)	)	OEA Docket No. 20-34
	)	
Viasat Auction 904 Application for Review	)	GN Docket 21-231
	)	
	)	
	)	
	)	

ORDER ON REVIEW

Adopted: December 1, 2023 **Released: December 12, 2023**

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez; Commissioners Carr and Simington dissenting and issuing separate statements.

I. INTRODUCTION

1. By this Order on Review, we deny an application for review submitted by Starlink Services, LLC (Starlink).[1] Starlink seeks review of a decision by the Wireline Competition Bureau (WCB or Bureau) that denied its application to be authorized to receive broadband deployment subsidies from the Rural Digital Opportunity Fund (Auction 904).[2]

[1] *See* Application for Review of Starlink Services, LLC, WC Docket No. 10-90 (filed Sept. 9, 2023) (Starlink AFR). 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., Public Notice, DA 22-848, at 8-11 (WCB/OEA Aug. 10, 2022) (*11th RDOF Ready to Authorize/Defaults Public Notice*). Consistent with our denial of Starlink's AFR, we dismiss as moot Viasat's motions to (1) hold Starlink's AFR in abeyance, *see* Motion of Viasat, Inc. to Hold Proceeding in Abeyance, for Protective Order, and for Other Procedural Rulings, WC Docket Nos. 19-126 et al., File No. 0009395128 (filed Sept. 20, 2022) (Viasat Motion) and (2) oppose Starlink's AFR, *see* Initial Opposition of Viasat, Inc. to Application for Review of Starlink Services, LLC, WC Docket Nos. 19-126 et al, File No. 0009395128 (filed Sept. 26, 2022) (Viasat Opposition). Finally, we dismiss as moot Viasat's previous AFR which sought a "reauction" of all of the areas where Starlink was the winning bidder and sought to allow Viasat's own low earth orbit satellite constellation to bid in the auction to provide low latency service. Application of Viasat, Inc. for Review of Auction 904 Eligibility Determination, AU Docket No. 20-34 (filed Jan. 29, 2021) (Viasat AFR). Because this order concludes the potential disbursement of funds in the areas where Starlink was the winning bidder, Viasat's request for a reauction is moot.

II. BACKGROUND

2. In January, 2020, the Commission announced the Rural Digital Opportunity Fund Auction (RDOF), 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 ensure 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.[5]

3. Before the auction began, all potential bidders were required to submit "short-form applications," 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 in their long-form applications, 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

[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.

[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

(continued….)

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 determined after reviewing a long-form application that it needed more information to make such a determination, it 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 applicant was announced as 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

(Continued from previous page)
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 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).

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. Put simply, the Commission made it clear that there was a different level of review for the short-form and long-form applications. As opposed to a more generalized, high-level review of the short-form application, long-form application review focused specifically on whether the winning bidder made a sufficient showing of its technical and financial ability to serve the specific areas where it won support. Accordingly, 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. When it established procedures for Auction 904, the Commission considered categorically excluding low earth orbit (LEO) satellite providers from applying to bid to offer low-latency services, noting that it was unaware of any real-world examples of LEOs providing the low-latency service that RDOF's low-latency service tier required.[22] Ultimately, the Commission allowed LEO providers to apply to bid to provide low-latency service, but noted its concerns as to whether LEO providers would even be able to meet the short-form application requirements for bidding in the low latency tier.[23] In fact, the Commission specifically noted its concerns with "applicants that propose to use technologies that have not been widely deployed to offer services at high speeds or low latency, or have not been deployed at all on a commercial basis to retail consumers."[24]

9. The RDOF auction began on October 29, 2020, and ended on November 25, 2020. On December 7, 2020, WCB and the Office of Economics and Analytics (OEA) announced that there were 180 winning bidders in the auction and established the deadlines for winning bidders to submit their long-form applications for Rural Digital Opportunity Fund support.[25] Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.[26] 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.[27] On February 18, 2021, WCB and OEA announced

[19] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6124, para. 125.

[20] *Id.* at 6099, para. 64.

[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.").

[22] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6118, para. 111.

[23] *Id.*

[24] *Id.* at 6112, para. 98.

[25] *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 (WCB and OEA 2020) (*Auction 904 Closing Public Notice*).

[26] *Id.* at 13890-91, paras. 9-14.

[27] *Id.* at 13892-93, para. 16.

that there were 417 long-form applicants.[28]

10. Despite the fact that it had only just recently started offering mass-market service using a nascent LEO satellite technology in the early stages of deployment, SpaceX, Starlink's parent company, bid in the first round of the auction for $15,999,984,230 of 10-year support to deploy 100/20 Mbps low-latency service to 2,590,563 locations in 49 states.[29] At the conclusion of the auction, SpaceX was the winning bidder for $885,509,638.40 in 10-year support to deploy 100/20 Mbps low-latency service to 642,925 locations in 35 states.[30]

11. After the auction, SpaceX assigned its winning bids to its wholly-owned subsidiary, Starlink.[31] Starlink timely filed its long-form application for support on January 29, 2021, and submitted, among other items, an attachment with its technology and system design description, as required of all applicants, by February 15, 2021.

12. In April 2021 and May 2021, the Bureau spoke with Starlink about the numerous financial and technical deficiencies the Bureau had identified in Starlink's application. Starlink submitted to the Bureau a response attempting to address these identified issues in January 2022, and submitted additional information in February 2022. The Bureau spoke with Starlink about continuing concerns with Starlink's technical and financial deficiencies in March 2022 and April 2022. In these calls, the Bureau explained the deficiencies to Starlink and answered Starlink's questions about program requirements. Starlink followed up with written responses in June 2022 and July 2022. Finally, on June 3, 2022, the Bureau sent a formal letter to Starlink (June 3rd Letter) that described the Starlink application's deficiencies and provided Starlink a final opportunity to demonstrate its qualifications for support.[32] Among other things, the Bureau asked Starlink to explain why its network performance was below the required minimum speeds of 100/20 Mbps {[[redacted]]}.[33] Starlink's response was due by July 5, 2022. On July 1, 2022, Starlink notified the Bureau that it had submitted revised financial and technical documents to explain its network deployment plans in the states covered by its winning bids in response to the June 3rd Letter.[34]

13. After reviewing all of the information submitted by Starlink, the Bureau ultimately concluded that Starlink had not shown that it was reasonably capable of fulfilling RDOF's requirements to deploy a network of the scope, scale, and size required to serve the 642,925 model locations in 35 states for which it was the winning bidder. On August 10, 2022 the Bureau sent Starlink a letter informing Starlink of its conclusions.[35]

---

[28] *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, Public Notice, 36 FCC Rcd 4140 (WCB and OEA Feb. 18, 2021) (*Auction 904 Long-Form Applicants Public Notice*).

[29] FCC Auctions Public Reporting System, https://auctiondata fcc.gov/public/projects/auction904.

[30] *Id.*; *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, Attach. A (2020) (*Auction 904 Closing Public Notice*).

[31] *Auction 904 Long-Form Applicants Public Notice*.

[32] Letter from Trent Harkrader, Chief, Wireline Competition Bureau, to Bret Johnsen, Chief Financial Officer, Starlink Services, LLC (June 3, 2022) (June 3rd Letter).

[33] Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[34] Email from David Finlay, Starlink Services, LLC to Zachary Ross, Legal Advisor, Wireline Competition Bureau (July 1, 2002 20:45 EDT).

[35] Letter from Trent Harkrader, Chief, Wireline Competition Bureau, to Bret Johnsen, Chief Financial Officer, Starlink Services, LLC (Aug. 10, 2022) (Bureau Letter). A Public Notice announcing that Starlink was in default was released concurrently. *See 11th RDOF Ready to Authorize/Defaults Public Notice*. The August 10th Letter provided an in-depth explanation of the Bureau's decision.

14. Starlink now seeks Commission review of the Bureau's decision and requests that the Commission reverse the Bureau's decision by finding that Starlink is reasonably capable of meeting its performance obligations in its winning bid areas, order the Bureau to approve Starlink's long-form application as to those states where it has submitted proof of ETC status, and grant Starlink's request for waiver of the deadline to submit evidence of ETC designations in those states where it has yet to receive such designation.

III. DISCUSSION

15. For the reasons explained below, we affirm the Bureau's decision to deny Starlink's long-form application.

16. We deny Starlink's request that the Commission reverse the Bureau's denial of its long-form application for RDOF support. Starlink makes several arguments as to why the Bureau's decision should be reversed. It argues that: (1) the Bureau disregarded Commission policy and the long-form application review process by applying heightened scrutiny to Starlink's long-form application; (2) the Bureau's denial of the long-form application was contrary to the evidence, erroneous, and unreasonable; (3) the Bureau ignored the role of RDOF's Letter of Credit requirement; and (4) the Bureau ignored and implicitly denied Starlink's request for a waiver of the ETC designation deadline.[36] We discuss each argument in turn.

17. Awarding USF support requires a balancing of potentially competing interests, and that balance is achieved by 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"[37] by ensuring that USF funding is used efficiently to provide much-needed, reliable service throughout the Nation.

18. After careful review, we find that the Bureau followed Commission guidance and correctly concluded that Starlink is not reasonably capable of offering the required high-speed, low-latency service throughout the areas where it won auction support.

19. *The Bureau Applied the Correct Standard of Review.* Starlink first argues that the Bureau disregarded Commission policy by denying Starlink's long-form application "because it was not 100% certain that [Starlink] could meet [RDOF's] requirements,"[38] instead of assessing whether Starlink was "reasonably capable" of meeting its obligations as a winning bidder.

20. In support of its contention that the Bureau disregarded Commission policy and the long-form review process, Starlink argues that because its short-form application to bid to offer high-speed, low-latency services was approved, which allowed Starlink to participate in the auction, the Commission had already essentially concluded that Starlink was reasonably capable of meeting its obligations in the areas where it ultimately won support,[39] and the Bureau's decision was an impermissible reversal of that decision. Starlink also argues that it was held to an inappropriately onerous standard, and that the Bureau improperly relied on the Commission's pre-auction skepticism over allowing LEO providers to bid to offer low-latency services.[40] We disagree.

---

[36] Starlink AFR at 3.

[37] *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).

[38] Starlink AFR at 8.

[39] Starlink AFR at 8.

[40] Starlink AFR at 8 (citing Bureau Letter at 1-2).

21. Starlink's argument fails to account for the differences between the short-form and long-form application review processes, and would collapse any distinction between the two. Starlink's argument also ignores the express warning in the *Auction 904 Procedures Public Notice* 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."[41]

22. By approving Starlink's short-form application, the Bureau concluded that, based on the high-level information required in the short-form application, Starlink was reasonably capable of offering, at some level, the required service in at least one relevant area in each of the states in which it was approved to bid. Because short-form applicants did not identify how many areas within a state they would bid on, the approval of a short-form application cannot be viewed as approving the specific, more comprehensive service plans that a long-form applicant ultimately submitted.[42] As the Commission explained when announcing the auction procedures, such an approval would not be feasible after the short-form review process, because finding that an applicant was likely to meet its public interest obligations and, therefore, have its long-form application approved, would require "more information about exactly where the applicant will win support and how many locations it will serve."[43] That information was only provided in the long-form application.

23. In the *Auctions 904 Procedures Public Notice*, the Commission also specifically explained for its short form application review that its "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."[44]

24. 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 Starlink could provide the required service in the "specific areas" where it won support.[45] Put differently, rather than a generalized assessment of whether a short-form applicant could provide the required service, at some level, in each state where it wished to bid, the long-form application review determined whether the applicant could provide that service "associated with its winning bids," i.e., in each of the areas where it ultimately won support.[46]

25. Accordingly, the rejection of Starlink's long-form application is not inconsistent with the approval of Starlink's short-form application. Consistent with the more thorough review required by the long-form application review process, Bureau staff sent Starlink multiple, detailed inquires laying out its

[41] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 64.

[42] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6101, para. 71 (noting the different standards of review between the short-form, which requires examining "high-level information that is sufficient for determining *eligibility to bid in a state*" and the long-form, which requires "a more thorough [] technical showing for the areas *where support is won*") (emphasis added).

[43] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6124, para. 125.

[44] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6101, para. 71.

[45] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 64.

[46] *Id.* at 6116, para. 108.

specific questions and concerns which Starlink did not adequately answer.[47]

26. Starlink next argues that the Bureau misinterpreted the Commission's initial concerns about allowing LEOs to bid to offer low-latency and Gigabit service to mean that the "Commission was generally skeptical of LEO satellite systems meeting download/upload speed requirements in any tier,"[48] and that, as a result, the Bureau impermissibly applied heightened scrutiny to Starlink's long-form application. We disagree.

27. Starlink's argument mischaracterizes the Bureau's decision. While the Bureau briefly acknowledged the Commission's skepticism that LEOs would be able to offer low-latency service in its Denial Letter,[49] that skepticism was not the basis for the Bureau's decision. When the Bureau undertook a more thorough examination of Starlink's technical capacity, as required by the long-form application process, the Bureau concluded that Starlink would not be able to meet RDOF requirements in the areas where it was the winning bidder. In its letter, the Bureau concluded that "a number of unresolved issues and their associated risks preclude Starlink from demonstrating that it is reasonably capable of meeting its RDOF auction obligations in the areas where it has winning bids."[50] This was not a "presumption of default" as Starlink claims; rather, the Bureau examined the totality of the evidence Starlink submitted, including its long-form application and supplemental material, and concluded that Starlink was not reasonably capable of offering the required service.

28. *The Bureau Reasonably Found Starlink to Be Unqualified to Receive Support.* Starlink next argues that the Bureau's decision was "contrary to the evidence, erroneous, and unreasonable," and that Starlink "clearly demonstrated that it was reasonably capable, from both technical and financial perspectives, of meeting its RDOF obligations . . . ."[51] We address Starlink's arguments regarding its technical and financial showings in turn, and we affirm the Bureau's decision.[52]

29. *Technical Capability*. Starlink argues that the Bureau erroneously concluded that Starlink was not reasonably capable of offering the required service in the areas where it won support because of Starlink's technical limitations,[53] and that the Bureau should not have relied on Ookla speed

[47] Bureau Letter at 6.

[48] Starlink AFR at 8.

[49] Bureau Letter at 6.

[50] Bureau Letter at 6.

[51] Starlink AFR at 9.

[52] In a footnote, Starlink makes a cursory argument that its Fifth Amendment right to due process was violated. Starlink AFR at 9 n.13. We disagree. Starlink was afforded ample due process in the review of its long form application. As noted above, staff engaged in discussions with Starlink for over a year about the deficiencies in its application, the Bureau sent a detailed letter to Starlink explaining concerns about the application, and then the Bureau issued Starlink an extensive letter explaining its decision. *See* Bureau Letter; June 3rd Letter. This extensive, over year-long iterative process was in accord with the program requirements and standards, was based upon the risks entailed in Starlink's proposal to deploy a novel technology to the vast service areas for which Starlink itself had chosen to seek subsidies, and provided Starlink ample notice of the Bureau's concerns. Moreover, Starlink filed an application for review, which herein has been addressed. Starlink was well afforded due process in this program, it was not deprived of a protected property interest, and its rights under the Fifth Amendment were not violated. Additionally, as we discuss in more detail above, *see supra* paras. 25-28, the Bureau did not disregard the "reasonably capable" standard that the Commission established. Finally, the Bureau's decision did not deprive Starlink of a protected property interest, because the approval of Starlink's short-form application, which allowed Starlink to bid in the auction, did not guarantee that Starlink would be able to ultimately receive support. As the *Auction 904 Procedures Public Notice* made explicit, the "determination that an applicant is qualified to participate in Auction 904 does not guarantee that the applicant will also be deemed qualified to receive support if it becomes a winning bidder." 35 FCC Rcd at 6088-89, para. 27.

[53] Starlink AFR at 10-15.

tests from 2021 and 2022 to predict what Starlink's service offerings would have been in 2025, when it would have been required to start offering service in the areas where it won RDOF support.[54]

30. We disagree with Starlink's arguments. First, the technical and predictive judgments made by the Bureau are compelled by the long-form review process, which required a determination of whether Starlink would be able to meet its RDOF obligations. While Starlink faults the Bureau for relying on the most recent available data at the time of its decision to evaluate its existing network performance,[55] Starlink does not explain what other data source the Bureau should have used in lieu of using the most recently available data. When the Bureau's decision was made, the most recent available evidence showed that "Starlink's performance had been declining for download speed, upload speed, and jitter test performance."[56] In other words, it was not only failing to meet the RDOF public interest obligations, but also trending further away from them. Starlink also asserts that {[ ]} But Starlink provides no details {[ ]} In any event, that does not change the fact that the relevant data indicated declining network performance and thus gave the Bureau a reasonable concern that Starlink would ultimately not be able to meet its RDOF obligations.

31. Starlink argues that the Bureau should not have relied on speed-test data when denying Starlink's long-form application because it claims that it will {[ ]} and that {[ ]} However, we cannot rely on this assertion, and, as we discuss in more detail below, the Bureau ultimately disagreed with Starlink's projections and {[ ]} For the same reasons, the Bureau could not accept Starlink's argument that {[ ]} Unlike fiber or other technologies currently in use, Starlink did not point to examples where its technology was providing service at the required level in the United States. Starlink only argued that it would be able to meet the required RDOF obligations by 2025; evaluating this claim required the Bureau to use the best available data to make a predictive judgement. In addition, there were no other relevant LEO networks offering widespread service in the United States to verify Starlink's claims that it would be able to meet the Commission's requirements. In sum, the Bureau correctly relied upon the most relevant speed test data in its assessment and made appropriate predictive judgements based on the information available at that time of its decision. We agree that such information did not demonstrate that Starlink would be reasonably capable of meeting its RDOF obligations.[61]

[54] Starlink AFR at 10-11.

[55] Starlink AFR at 11.

[56] Bureau Letter at 7.

[57] Starlink AFR at 12.

[58] Starlink AFR at 11.

[59] See *infra* para. 34.

[60] Starlink AFR at 10.

[61] We note, on our own motion, that Starlink's most recent publicly available performance data reportedly shows a slight decline in performance after a previous report indicated that its performance data had improved in the United States. *See* https://www.ookla.com/articles/us-satellite-performance-q3-2023 (noting that in the United States "Starlink recorded a median download speed of 64.54 Mbps in Q3 2023, a marginal decline quarter-on-quarter, but (continued….)

32. On a more granular level, the Bureau {[[redacted]]} After carefully reviewing the information that Starlink submitted, the Bureau concluded that {[[redacted]]} For these reasons, we agree with the Bureau and believe this conclusion is supported by the record.

33. In its response to the Bureau's technical questions, Starlink laid out its future deployment plans.[66] {[[redacted]]} At the time of the Bureau's decision, Starship had not yet been launched. Indeed, even as of today, Starship has not yet had a successful launch; all of its attempted launches have failed. Based on Starlink's previous assertions about its plans to launch its second-generation satellites via Starship, and the information that was available at the time, the Bureau necessarily considered Starlink's continuing inability to successfully launch the Starship

(Continued from previous page)
still an increase over the 53.00 Mbps it recorded in Q3 2022."). Even if the performance had improved, though, that still would not demonstrate an ability to meet RDOF's performance standards, and it also does not show how Starlink would meet its RDOF obligations to a significantly larger customer base. Accordingly, the newer data does not change our conclusions about whether Starlink was reasonably capable of meeting its RDOF obligations in the area where it won support.

[62] Bureau Letter at 7.

[63] Starlink AFR at 5, n.6, 12-14.

[64] Starlink AFR at 13 (citing its "Overview of Technical Questions and Responses" at 17).

[65] *See infra* para. 33. *See also* Letter from William M. Wiltshire, Counsel, SpaceX, to Karl Kensinger, Chief, Satellite Division, International Bureau, FCC, IBFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105, at 5 (filed Jan. 7, 2022), available at https://licensing.fcc.gov/myibfs/download.do?attachment_key=14456966 (Starlink Jan. 7 Letter) (explaining that Starlink had "reached a point in the development of its Starship launch vehicle and Gen2 satellites that it can concentrate solely on Configuration 1 and no longer pursue Configuration 2"). As referred to in the letter, Configuration 1 refers to launching Gen 2 satellites via Starship, while Configuration 2 refers to launching those satellites via Falcon 9. *See* Amendment filed by William M. Wiltshire, Counsel, SpaceX IBFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Aug. 18, 2021) at 1 ("Configuration 1 fully leverages the upgraded satellite capabilities and the availability of Starship, bringing significantly increased capability to deliver satellites to orbit. Configuration 2 provides an alternative that also leverages the capabilities of the reliable Falcon 9 rocket.") (Gen 2 Amendment Narrative).

[66] Overview of Technical Questions and Responses at 17, table.

[67] Overview of Technical Questions and Responses at 17, table.

[68] *Id.*

[69] *See supra* note 64.

rocket when making predictive judgements about its ability to meet its RDOF obligations.[70] We also agree with the Bureau's ultimate conclusions that the uncertain nature of Starship's future launches could impact Starlink's ability to meet its RDOF obligations.

34. Starlink further asserts that even assuming {[ ]}

35. {[ ]}

36. {[ ]}

[70] Only after the release of the Denial Letter did Starlink make a public statement that it would use the Falcon 9 rocket to launch second-generation satellites. https://spacenews.com/spacex-adds-falcon-9-back-to-second-gen-starlink-launch-plan.

[71] Overview of Technical Questions and Responses at 3.

[72] *Id*.

[73] *Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, IBFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105, Order and Authorization, 37 FCC Rcd 14882, 14912, para. 46 (2022) ("We therefore condition this authorization, consistent with SpaceX's commitment on the record of this proceeding, such that SpaceX must operate its Gen2 Starlink constellation with an NCo of 1, in the 12.2-12.7 GHz (space-to-Earth) frequency band. In other words, *SpaceX may not use more than one satellite beam from any of its authorized Gen2 Starlink satellites in the same frequency in the same or overlapping areas at a time*.") (emphasis added).

[74] Starlink Jan. 7 Letter.

[75] Overview of Technical Questions and Responses at 3.

37. *Financial Capability*. Because we agree with the Bureau's conclusions that Starlink did not show that it was technically capable of meeting its RDOF obligations, we affirm the Bureau's denial of Starlink's long-form application on that basis alone. We therefore do not address all of Starlink's arguments that the Bureau erred when determining that Starlink was not financially capable of meeting its RDOF obligations. We disagree, however, with Starlink's argument that the Bureau erred by ignoring the role that a letter of credit (LOC) plays in determining the financial health of a long-form applicant.[76] While the Commission did identify an auction winner's ability to obtain an LOC as a relevant factor when evaluating that auction winner's long-form application,[77] obtaining an LOC was not the sole factor to be considered when reviewing a long-form application. The Commission made clear that the long-form application must include other relevant financial information[78] beyond simply a long-form applicant's ability to obtain an LOC. There would be no point to require the submission of such information if the Bureau was not allowed to assess it and was only permitted to consider the existence of an LOC to determine an applicant's financial qualifications.

38. *The Bureau Was Not Obligated to Address Starlink's ETC Waiver Request.* Finally, Starlink argues that the Bureau ignored or implicitly denied its request for waiver of the ETC designation deadline.[79] Because we ultimately affirm the Bureau's decision that Starlink was not reasonably capable of providing the required service in the areas where it was the winning bidder, we do not need to address this argument.

IV. ORDERING CLAUSES

39. 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 Starlink, LLC on September 9, 2022 is **DENIED**.

40. **IT IS FURTHER ORDERED,** that the Motion to Hold Proceeding in Abeyance, for Protective Order, and for Other Procedural Rulings filed by Viasat, Inc. on September 20, 2022 is **DISMISSED AS MOOT**.

41. **IT IS FURTHER ORDERED**, that pursuant to sections 1.3 and 1.115 of the Commission's rules, 47 CFR §§ 1.3, 1.115, that the waiver of the Application for Review service requirements filed by Starlink, LLC on September 9, 2022 is **GRANTED.**

42. **IT IS FURTHER 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, that the Application for Review filed by Viasat, Inc. on January 29, 2021 is **DENIED**.

[76] Starlink AFR at 22.

[77] *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, para. 64.

[78] *Id.* at 6174-75, para. 312.

[79] Starlink AFR at 23-25.

43. **IT IS FURTHER ORDERED** that this Order on Review **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

DISSENTING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: *Application for Review of Starlink Services, LLC*, *Rural Digital Opportunity Fund*, *Rural Digital Opportunity Fund (Auction 904), Viasat Auction 904 Application for Review*, WC Docket No. 19-126, OEA Docket No. 20-34, GN Docket No. 21-231, Order on Review.

Last year, after Elon Musk acquired Twitter and used it to voice his own political and ideological views without a filter, President Biden gave federal agencies a greenlight to go after him. During a press conference at the White House, President Biden stood at a podium adorned with the official seal of the President of the United States, and expressed his view that Elon Musk "is worth being looked at."[80] When pressed by a reporter to explain how the government would look into Elon Musk, President Biden remarked: "There's a lot of ways."[81] There certainly are. The Department of Justice, the Federal Aviation Administration, the Federal Trade Commission, the National Labor Relations Board, the U.S. Attorney for the Southern District of New York, and the U.S. Fish and Wildlife Service have all initiated investigations into Elon Musk or his businesses.

Today, the Federal Communications Commission adds itself to the growing list of administrative agencies that are taking action against Elon Musk's businesses. I am not the first to notice a pattern here. Two months ago, *The Wall Street Journal* editorial board wrote that "the volume of government investigations into his businesses makes us wonder if the Biden Administration is targeting him for regulatory harassment."[82] After all, the editorial board added, Elon Musk has become "Progressive Enemy No. 1." Today's decision certainly fits the Biden Administration's pattern of regulatory harassment. Indeed, the Commission's decision today to revoke a 2020 award of $885 million to Elon Musk's Starlink—an award that Starlink secured after agreeing to provide high-speed Internet service to over 640,000 rural homes and businesses across 35 states—is a decision that cannot be explained by any objective application of law, facts, or policy.

First, the FCC revokes Starlink's $885 million award by making up an entirely new standard of review that no entity could ever pass and then applying that novel standard to only one entity: Starlink. In particular, FCC law provides that a winning bidder like Starlink must demonstrate that it is "reasonably capable" of fulfilling its end of the bargain that it struck with the FCC back in 2020. In this case, that means Starlink needed to show that it was more likely than not that Starlink could provide high-speed Internet service (specifically, low-latency, 100/20 Mbps service) to at least 40% of those roughly 640,000 rural premises by December 31, 2025. Starlink did exactly that in a voluminous series of submissions that it filed with the FCC throughout 2021 and 2022. Indeed, the record leaves no doubt that Starlink is reasonably capable of providing qualifying high-speed Internet service to the required number of locations by the end of 2025. The Commission's decision does not even grapple with that evidence—it simply ignores it.

Instead of applying the traditional FCC standard to the record evidence, which would have compelled the agency to confirm Starlink's $885 million award, the FCC denied it on the grounds that

[80] Press Conference, White House State Dining Room, Remarks by President Biden (Nov. 9, 2022), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/11/09/remarks-by-president-biden-in-press-conference-8/

[81] *Id*.

[82] Editorial Board, *The Harassment of Elon Musk*, WSJ.com (Sept. 22, 2023), https://www.wsj.com/articles/elon-musk-biden-administration-justice-department-investigations-accdd84a?mod=article_inline.

Starlink is not providing high-speed Internet service to all of those locations today.[83] What? FCC law does not require Starlink to provide high-speed Internet service to even a single location today. As noted above, the first FCC milestone does not kick in until the end of 2025. Indeed, the FCC did not require—and has never required—any other award winner to show that it met its service obligation years ahead of time.

To the extent the Commission is intending to say that the agency does not believe, standing here today, that Starlink is reasonably capable of meeting its year end 2025 obligation by year end 2025, the agency's position fares no better.

For one, the FCC is still holding Starlink to a standard that it has made up on the fly. I am not aware of any other circumstance in which the FCC has looked at current speed benchmarks to determine whether an awardee is reasonably capable of meeting a speed benchmark that kicks in years down the road. Indeed, if the FCC were to apply this novel Starlink speed test standard to any of the other 2020 awardees, it would show that those entities are not reasonably capable of meeting their 2025 obligations either because they have not built out to those areas yet. Applying a speed test to those providers would show speeds of 0/0 Mbps.

For another, the FCC makes a fundamental error because the speed test data it relies on is not sufficiently probative. In other words, the FCC might be saying in its decision that it *needs* to apply a novel standard to Starlink because it is the first low-earth orbit (LEO) satellite system to win an FCC award. Putting aside the admission in that case that the agency *is* applying a novel standard, the speed test evidence the agency relies on to make its prediction about how Starlink's LEO system will perform at the end of 2025 is flawed. Indeed, the FCC is not applying a standard that makes any sense for Starlink's LEO system.

This is an important point. The FCC is purporting to make a prediction about the trajectory that Starlink's LEO system is on, but it is not using any evidence that is tailored to making such a prediction. I am not saying that this is an easy task for the agency—it does involve rocket science after all. But comparing speed test snapshots from two, cherry-picked moments in time and using those to predict how Starlink would likely perform years down the road and at particular U.S. locations is not a credible methodology. That would be like watching the pace lap of a NASCAR race and then predicting that the cars will never exceed 50 MPH.

In the case of technologies like Starlink's LEO system, progress is not measured in a straight line, particularly not one that can be plotted by drawing an arrow through two speed test measures. The FCC knows this. It is more accurate to think about technological progress in this context as a saw-toothed, hockey curve—there are ups and downs, breakthroughs and setbacks, but the curve moves steadily up and to the right over any considerable period of time.

That is certainly the case with Starlink. Indeed, all of the data that has come in—the latest set of U.S. speed test measures, Starlink's actual performance in Europe, the pace and cadence of new launches and satellites in orbit, Starlink's own detailed descriptions of its plans—this much richer and more probative set of data all confirm that Starlink is on track to meets its FCC obligations.[84]

---

[83] *See, e.g.*, Order on Review at para. 30; *see also id.* at para. 24. The Agency found that Starlink's long-form application review process "required a more thorough examination of required service in 'specific areas' where [Starlink] won support" essentially requesting performance testing early-on from Starlink. *Id*. at para. 25.

[84] Notably, at the time of the FCC's initial decision in August 2022, there were 3,007 Starlink satellites in orbit. Today, that number has expanded to 5,420. Moreover, among European countries that Ookla recently surveyed, Starlink now has median download speeds greater than 100 Mbps in 14 countries.

Second, the FCC's decision leaves rural communities stuck on the wrong side of the digital divide. As noted above, in exchange for awarding Starlink $885 million back in 2020, the FCC secured a commitment for the delivery of high-speed Internet service to over 642,000 unserved rural homes and businesses across 35 states. By reversing course, the FCC has chosen to vaporize that commitment and replace it with . . . nothing. That's a decision to leave families waiting on the wrong side of the digital divide when we have the technology to get them high-speed service today.

Third, the FCC's decision hits Americans in their pocketbooks. To the extent the federal government ever makes another commitment to serve these rural communities, it will cost us orders of magnitude more money to do so. Indeed, while the Commission's 2020 award secured a deal to bring high-speed service to all of these areas for $885 million in federal support, extending high-speed fiber lines to these same areas will likely cost somewhere in the neighborhood of $3 billion based on past bidding patterns and analysis—more once you start accounting for inflation. That is not a good deal for U.S. taxpayers.

The problems only compound from there. After all, there is a limited pot of federal infrastructure dollars, and we are now far more likely to exhaust those resources before getting every American connected.

* * *

Stepping back for a moment—it is clear that today's decision simply does not hang together when measured against the law, facts, or policy. Indeed, I think it's obvious to everyone that the Biden Administration itself does not believe that Elon Musk's Starlink is a risky technology. If it did, you would not have seen the Pentagon ink a multi-million-dollar agreement with SpaceX just weeks ago for a military adaptation of Starlink, known as Starshield, that leverages LEO satellites for a more secure communication network.[85] But the government continues to take regulatory action against his businesses, nonetheless.

In the end, today's decision mirrors many of the same missteps that the Biden Administration is making in its implementation of other, multi-billion-dollar infrastructure initiatives. The Biden Administration is choosing to prioritize its political and ideological goals at the expense of connecting Americans. We can and should reverse course.

But that is not what the agency chooses today. Accordingly, I dissent.

[85] David E. Sanger & Eric Lipton, *The White House May Condemn Musk, but the Government Is Addicted to Him*, nytimes.com (Nov. 19, 2023), https://www.nytimes.com/2023/11/19/us/politics/elon-musk-white-house-pentagon html.

DISSENTING STATEMENT OF COMMISSIONER NATHAN SIMINGTON

Re: *Application for Review of Starlink Services, LLC*, *Rural Digital Opportunity Fund*, *Rural Digital Opportunity Fund (Auction 904), Viasat Auction 904 Application for Review*, WC Docket No. 19-126, OEA Docket No. 20-34, GN Docket No. 21-231, Order on Review.

I wholeheartedly agree with the entirety of Commissioner Carr's dissent. I write separately to further highlight some of the meretricious logic that underlies the Bureau's, and now Commission's, rescinding of SpaceX's RDOF award.

The fundamental issue is that the majority is impermissibly holding SpaceX to its 2025 RDOF targets three years early, in 2022. In 2020, the Bureau accepted SpaceX's short-form application and winning bid to use a first-of-its-kind mass-market low Earth orbit (LEO) broadband service to deliver high-speed, low-latency internet to specified areas by 2025. But in August 2022, based on Ookla speed test data—data that in fact demonstrated the tremendous success of the Starlink system in delivering high-quality service to the most difficult-to-serve areas—the Bureau decided to rescind SpaceX's award. It concluded that because SpaceX had not yet met the 2025 speed and latency goals, and as it was using a new kind of system and could not point to others using similar technology to meet such targets, it was not reasonably capable of meeting that goal.

What good is an agreement to build out service by 2025 if the FCC can, on a whim, hold you to it in 2022 instead? In 2022, many RDOF recipients had deployed *no* service at *any* speed to *any* location at all, and they had no obligation to do so. By contrast, Starlink had half a million subscribers in June 2022 (and about two million in September 2023). The majority's only response to this point is that those other recipients were relying on proven technologies like fiber, while SpaceX was relying on new LEO technology. But the Commission knew that LEO-based service was new when it allowed LEO providers to participate in RDOF and when it accepted SpaceX's short-form application. So that cannot be a reason to change the rules in the middle of the game and hold SpaceX to a 2025 goal in 2022. Furthermore, SpaceX's technology *is* proven. The proof is the millions of subscribers—many in areas that other providers and the FCC have failed to serve for decades—already receiving high-quality broadband service through Starlink. And SpaceX continues to put more satellites into orbit every month, which should translate to even faster and more reliable service.

To justify its motivated reasoning, the majority points to delays in the development of SpaceX's Starship launch platform—the largest, most powerful rocket ever built—as evidence that SpaceX would be unable to launch enough Starlink satellites to meet its 2025 commitments. The trouble with this argument is that SpaceX never indicated that it was relying on the Starship platform to meet its RDOF obligations, and in fact it repeatedly stated that it was not. Undeterred by the facts, the Commission now resorts to twisting SpaceX's words. For example, SpaceX said in a letter to the Commission that it had "reached a point in the development of its Starship launch vehicle and Gen2 satellites [such] that it *can* concentrate solely on Configuration 1 and no longer pursue Configuration 2" (emphasis added). Configuration 1 involves launching with Starship, and Configuration 2 involves launching with Falcon 9. Nothing in this sentence suggests that SpaceX *needed* Starship to launch Gen2 satellites, but that's exactly the interpretation that the majority now relies on. Rather, the sentence says that because the Starship program was going well, SpaceX would be *able* to use it for that purpose. As a previous SpaceX letter—also quoted by the majority—says, "Configuration 2 provides an alternative that also leverages the capabilities of the reliable Falcon 9 rocket." Of course, Starship did not turn out to be ready in time, but exactly as those letters suggest, SpaceX has nonetheless launched over fifteen hundred Gen2 satellites using the Falcon 9 rocket and now has over five thousand satellites in the Starlink system overall.

I was disappointed by this wrongheaded decision when it was first announced, but the majority today lays bare just how thoroughly and lawlessly arbitrary it was. If this is what passes for due process and the rule of law at the FCC, then this agency ought not to be trusted with the adjudicatory powers Congress has granted it and the deference that the courts have given it.

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

In the Matter of	)	
	)	
Promoting Competition in the American Economy:	)	MB Docket No. 23-405
Cable Operator and DBS Provider Billing Practices	)	
	)	
	)	
	)	
	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: December 13, 2023 **Released: December 14, 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

TABLE OF CONTENTS

I. INTRODUCTION

1. This Notice of Proposed Rulemaking (NPRM) initiates a proceeding to consider certain billing practices that may have the effect of inhibiting video service subscribers from choosing the video services they want or result in consumers paying fees for video services they did not choose to receive. We propose to adopt customer service protections that prohibit cable operators[1] and direct broadcast satellite (DBS) service providers[2] from imposing early termination fees (ETFs)[3] and billing cycle fees

[1] A "cable operator" is any "person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." 47 U.S.C. § 522(5). *See also* 47 U.S.C. §§ 522(6) (defining "cable service"), 522(7) (defining "cable system").

[2] Direct Broadcast Satellite, or DBS, Service is a radiocommunication service in which signals transmitted or retransmitted by Broadcasting–Satellite Service space stations in the 12.2–12.7 GHz band are intended for direct reception by subscribers or the general public. 47 CFR § 25.103.

(BCFs)[4] on subscribers. We have initiated proceedings to review how the Commission's existing cable customer service standards may be updated to protect consumers from misleading pricing and be applied to DBS providers.[5] This item builds upon those efforts and addresses additional junk fee billing practices of cable and DBS providers that penalize subscribers for terminating video service or switching video service providers, and further protects consumers and promotes competition in the video programming marketplace.

II. BACKGROUND

2. *Billing Practices*. ETFs require subscribers to pay a fee for terminating a video services contract prior to its expiration date, making it costly for consumers to switch services during the contract term. Because an ETF may have the effect of limiting consumer choice after a contract is enacted, it may negatively impact competition for services in the marketplace. This billing practice has been used by video service providers for some time and, in 2008, the Commission heard from expert panelists regarding the use of ETFs by communications service providers, including representatives from cable and DBS providers.[6] More recently, the *Executive Order on Promoting Competition in the American Economy* encouraged the Commission to consider "prohibiting unjust or unreasonable early termination fees for end-user communication contracts; enabling consumers to more easily switch providers" in order to promote competition and lower prices.[7]

3. BCFs require video service subscribers to pay for a complete billing cycle even if the subscriber terminates service prior to the end of that billing cycle. As such, BCFs penalize consumers for terminating service by requiring them to pay for services they choose not to receive. Video service subscribers may terminate service for any number of reasons, including moving, financial hardship, or poor service. Recently, some states have enacted laws restricting BCFs.[8] The U.S. Court of Appeals for the First Circuit in *Spectrum Northeast, LLC v. Frey* recently decided that one such BCF regulation imposed by the State of Maine was not impermissible cable service rate regulation.[9] Likewise, the

(Continued from previous page)

[3] An ETF is a fee that a provider charges a subscriber when the subscriber terminates its service contract prior to its expiration.

[4] A BCF is the fee that subscribers pay when they cancel service prior to the end of a billing cycle but do not receive a refund of a pro-rated share of the monthly charge for the unused service.

[5] *See All-In Pricing for Cable and Satellite Television Service*, MB Docket No. 23-203, FCC 23-52 (rel. June 20, 2023) (2023 WL 4105426).

[6] *See Open Commission Meeting*, June 12, 2008, https://www.fcc.gov/news-events/events/2008/06/open-commission-meeting-june-2008.

[7] Executive Order 14036, 86 FR 36987 (July 9, 2021), §(l)(iv) (link: https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/)).

[8] *See, e.g.*, Maine regulation, 30-A M.R.S.A. § 3010(1-A) ("A franchisee shall grant a subscriber a pro rata credit or rebate for the days of the monthly billing period after the cancellation of service if that subscriber requests cancellation of service 3 or more working days before the end of the monthly billing period.") and New Jersey regulation, N.J. Admin. Code § 14:18-3.8 ("Bills for cable television service shall be rendered monthly, bi-monthly, quarterly, semi-annually or annually and shall be prorated upon establishment and termination of service.").

[9] *Spectrum Northeast, LLC v. Frey*, 22 F.4th 287 (1st Cir. 2022), *cert denied*, 143 S.Ct. 562 (2023) (finding that a Maine statute requiring cable franchisees to provide a *pro rata* credit or rebate to subscribers that cancel their service is not a law governing "rates for the provision of cable service" but rather is a "consumer protection law" that is not preempted). *See infra* para. 14.

Supreme Court of New Jersey recently reached the same conclusion regarding a similar New Jersey statute in the *Alleged Failure of Altice* case.[10]

4. *Customer Service Standards*. The 1984 Cable Act added Title VI to the Communications Act of 1934 (Act).[11] Section 632, entitled "Consumer Protection," addressed one particular type of consumer protection—"customer service requirements," providing specifically that "[a] franchising authority may require . . . provisions for enforcement of . . . customer service requirements . . ."[12] Although the term "customer service" is not defined in the statute, the legislative history of the 1984 Cable Act defined "customer service" as "the direct business relation between a cable operator and a subscriber" and "customer service requirements" as including requirements related to "rebates and credits to consumers."[13] In 1992, Congress amended section 632 to "provide protection for consumers against . . . poor customer service"[14] in part by requiring the Commission to "establish standards by which cable operators may fulfill their customer service requirements."[15] The legislative history of the 1992 Cable Act explained that Congress considered cable customer service "an area of paramount concern,"[16] and that the standards are intended to "provide increased consumer protection."[17] In 1993, the Commission implemented this mandate in section 76.309 of its rules, adopting baseline customer service requirements for cable operators.[18] Although section 632 specifies certain topics that must be addressed in the

[10] *Alleged Failure of Altice USA, Inc., to Comply with Certain Provisions of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq*., --- A.3d ---- (Supreme Court of New Jersey, Apr. 3, 2023), 2023 WL 2746964 ("*Alleged Failure of Altice")*.

[11] Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

[12] 47 U.S.C. § 552.

[13] H.R. REP. 98-934 at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716 ("Customer service means the direct business relation between a cable operator and a subscriber. Customer service requirements include requirements related to interruption of service; disconnection; rebates and credits to consumers; deadlines to respond to consumer requests or complaints; the location of the cable operator's consumer service offices; and the provision to customers (or potential customers) of information on billing or services.").

[14] S. REP. 102-92, at 1 (1992).

[15] Pub. L. No. 102-385, 106 Stat. 1460 (1992); 47 U.S.C. § 552 (1992 Cable Act). The legislative history of the 1992 Cable Act points out that, "despite the ability of franchising authorities to include customer service requirements in franchise agreements, some cable operators have failed to provide satisfactory customer service. Numerous submissions to the Committee demonstrate that some cable operators . . . ignore or are slow to respond to customer billing inquiries." H.R. REP. 102-628 at 36-37, 105 (1992).

[16] H.R. REP. 102-628, at 36-37, 105 (1992); S. REP. 102-92, at 1, 3 (1992).

[17] Pub. L. No. 102-385, 106 Stat. 1460 (1992). Nothing in the 1992 Cable Act changed the statement in the legislative history of the 1984 Cable Act that included "rebates and credits to consumers" as an example of customer service requirements. We note that, while not specifically addressing ETFs and BCFs, Congress has recently renewed its commitment to protecting consumers of video programming services, including DBS services, with the Television Viewer Protection Act of 2019 (TVPA). *See Television Viewer Protection Act of 2019*, Pub. L. No. 116-94, 133 Stat. 2534 (2019) (TVPA) (requiring MVPDs to "give consumers a breakdown of all charges related to the MVPD's video service" before entering into a contract with a consumer for service). *See also* 47 U.S.C. § 562; *Media Bureau Seeks Comment on Implementation of the Television Viewer Protection Act of 2019*, DA 21-1610 (MB 2021). Congress stated its purpose in enacting the TVPA was "to provide basic protections to consumers when purchasing MVPD services . . ." *See* H.R. REP. 116-329, 116th Cong., 1st Sess. 2019 at 4. Both cable operators and DBS service providers fall within the statutory definition of the term MVPD or multichannel video programming distributor. *See* 47 U.S.C. § 522(13) ("the term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming").

Commission's cable customer service rules, such as "communications between the cable operator and the subscriber (including standards governing bills and refunds),"[19] the list is not exhaustive.[20] Because section 632(b) states that the standards must address these topics "at a minimum," the Commission has broad authority to adopt customer service requirements beyond those enumerated in the statute.[21] Indeed, when enacting its customer service standards, the Commission noted that "we reserve the right to respond to particular circumstances brought to our attention to ensure that customer service satisfaction is achieved nationwide."[22]

5. With regard to DBS providers, section 303(v) of the Act grants the Commission "exclusive jurisdiction to regulate the provision of direct-to-home satellite services,"[23] and section 335(a) provides broad statutory authority to the Commission to impose "public interest or other requirements for providing video programming" on DBS providers.[24] While the Commission has not adopted specific customer service obligations for DBS providers as it has for cable providers, it has adopted rules implementing other public interest obligations.[25]

III. DISCUSSION

6. Consistent with the objectives outlined above, we seek comment on our tentative conclusions with respect to ETFs and BCFs. As more thoroughly discussed below, this includes the scope and substance of our proposed rules, our legal authority to adopt these rules, the benefits and impacts of the proposed rules, and the extent to which any alternatives could achieve our policy goals.

7. *Proposed Rules*. First, we propose to prohibit cable and DBS service providers from imposing a fee for the early termination of a cable or DBS video service contract.[26] To the extent that the existing terms of service between a cable operator or DBS provider and its subscriber provide for an ETF,

(Continued from previous page)

[18] 47 CFR § 76.309(c)(1) (addressing cable system office hours and telephone availability), 76.309(c)(2) (addressing installations, outages, and service calls), 76.309(c)(3) (addressing communications between cable operators and cable subscribers); *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd 2892, 2901, para. 34 (1993) (*1993 Cable Consumer Protection Order*). The Commission later moved the notification requirements to a newly created Subpart T of its rules. *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, 14 FCC Rcd 4653, 4655-58, paras. 7-11 (1999).

[19] *Id*. *See also* 47 U.S.C. § 552(b)(3).

[20] 47 U.S.C. § 552(b) ("such standards shall include, at a minimum, requirements governing" three enumerated areas, including (i) cable system office hours, telephone availability; (ii) installations, outages, and service calls; and (iii) communications between the cable operator and the subscriber, including billing and refunds).

[21] *Id*. Congress emphasized the minimal nature of its articulated standards by noting that section 632 does not "prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section." 47 U.S.C. § 552(d)(2).

[22] *1993 Cable Consumer Protection Order*, 8 FCC Rcd at 2907, para. 69.

[23] 47 U.S.C. § 303(v).

[24] 47 U.S.C. § 335(a).

[25] *See, e.g.*, 47 CFR § 25.701 (political broadcasting and children's programming rules) and 47 CFR § 76.1300 (regulation of carriage agreements).

[26] *See* Appendix A, proposed rules 47 CFR § 25.701(g), "A DBS provider shall not charge a subscriber a fee for terminating a DBS services contract before its expiration date," and 47 CFR § 76.309(c)(5), "A cable operator shall not charge a subscriber a fee for terminating a cable services contract before its expiration date."

we seek comment on whether to deem such a provision unenforceable if we were to prohibit ETFs. We seek comment on this proposal to regulate video service ETFs. We tentatively find that our proposed prohibition on ETFs is a reasonable customer service requirement in an area, billing practices, where the Commission receives hundreds of complaints annually.[27] When the Commission first established its customer service standards, it acknowledged that a "key objective" of the Act was to "ensure that cable operators nationwide provide satisfactory service to their customers."[28] We tentatively find that the imposition of ETFs inhibits subscribers from switching providers and making choices about the video services they wish to receive.[29] We tentatively find that the prohibition of ETFs will create a standard that protects consumers from a billing practice that may effectively limit their ability to switch video service providers.[30] Limiting such restrictions imposed on consumer choice could serve the public interest by allowing consumers to freely choose among providers, which promotes vibrant competition in the market for video services and encourages providers to maintain high customer service standards to retain subscribers to their service.[31] Although in the past video service providers have generally claimed that ETFs decrease overall consumer costs,[32] individual consumers maintain in general that ETFs are unreasonably restrictive.[33] We tentatively find that our proposed rule preventing ETFs will protect consumers from billing practices that may deter or make it more difficult for consumers to switch providers, and thereby impede competition in the video marketplace. We seek comment on these tentative conclusions.

8. We also propose to require cable and DBS service providers to grant subscribers a prorated credit or rebate[34] for the remaining whole days in a monthly or periodic billing cycle after the

[27] This figure is based on informal consumer complaints filed with the Commission for the years 2018-2022. The Commission's Consumer Complaint Center can be found at: https://consumercomplaints.fcc.gov/hc/en-us.

[28] *See 1993 Cable Consumer Protection Order*, 8 FCC Rcd 2892, 2893 at para. 4, citing S. REP. 102-92 and H.R. REP. 102-628.

[29] Examples taken from the Commission's informal complaint process include the following consumer complaints: A subscriber moved to a different state that the provider did not service and was charged an ETF that they were not aware existed; a subscriber was told an ETF would be waived after moving to a new state but it was not; a subscriber was charged an ETF after moving to an address not serviced by the provider even after paying for service for 8 years; an elderly subscriber who needed to relocate for care was charged an ETF by the provider.

[30] S. REP. 102-92, at 1 (1992) ("The purpose of this legislation is to . . . provide protection for consumers against . . . poor customer service.").

[31] *See* 47 U.S.C. § 335(a) (authorizing the Commission to impose "public interest or other requirements for providing video programming" on DBS providers). *See also* 1992 Cable Act, Sec. 2(a)(6) ("There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.").

[32] In testimony at the June 12, 2008 Open Commission Meeting, John F. Murphy, then Senior Vice President, Controller & Chief Accounting Officer for DIRECTV stated that DIRECTV's early cancellation fee is "critical to its competitiveness with other video providers. It enables DIRECTV to reduce upfront costs to consumers, encouraging consumers to switch to our offering." Similarly, Daniel Brenner, then Sr. Vice President, Law and Regulatory Policy, NCTA, testified that "[b]arring early termination fees would only serve to squelch the offering of additional long-term options – and to deny consumers the savings benefits that such options can provide." *See* https://www.fcc.gov/news-events/events/2008/06/open-commission-meeting-june-2008.

[33] Individual consumers testified that, at least in the context of cellular phone service, "It is my belief that the ETF is not a rate charge but is a marketing tool used to prevent customers from changing providers" (*Id*., Testimony of Harold P. Schroer) and ETFs "have the intentional appearance of offering the consumer, me, a deal, while ultimately locking me into a long-term service agreement and making it very difficult and expensive for me to elect to change carriers when a better deal is available somewhere else." (*Id*., Testimony of Molly White).

[34] We note that the Act uses the term "refund" in section 632(b) whereas Congress referred to "rebates or credits" in the legislative history of section 632. *Compare* 47 U.S.C. 552(b)(3) *with* H.R. REP. 98-934 at 79 (1984), *reprinted*

(continued….)

cancellation of service.[35] We seek comment on this proposal, and whether the specific language reflects our intent of relieving a subscriber from payment obligations as of the date the provider receives a cancellation request. To the extent that the existing terms of service between a cable operator or DBS provider and its subscriber provide for a BCF, we seek comment on whether to deem such a provision unenforceable if we were to prohibit BCFs. We tentatively find that this prohibition on BCFs is a reasonable customer service requirement because this practice requires consumers to pay for service they no longer wish to receive.[36] As with ETFs, we tentatively find that prohibition of BCFs will create a standard that protects consumers from poor customer service,[37] specifically, paying for services that have been cancelled, and that such a standard will serve the public interest[38] by protecting consumers from unfair billing practices. BCFs impose significant costs on consumers for services they have cancelled and no longer wish to receive. For instance, based on the average price for cable service, subscribers cancelling mid-billing cycle could pay a significant price even after cancelling their service: the average monthly price for basic tier cable service is $42.63, for expanded basic tier service it is $101.54, for the next most popular cable service tier it is $115.67,[39] and the price for services comparable to expanded basic tier service from DIRECTV and DISH average $123.52 and $90.44 per month, respectively.[40] We tentatively find that our proposed rule preventing BCFs will protect consumers from charges for cancelled cable or DBS service they no longer want.[41] We seek comment on these tentative conclusions.

(Continued from previous page)
in 1984 U.S.C.C.A.N. 4655, 4716. Neither the Act nor the legislative history otherwise define these terms. We note that the dictionary definitions of each terms is similar. *See* Merriam-Webster Dictionary, online version, https://www.merriam-webster.com/dictionary/rebate (defining "rebate" as "a return of a part of a payment"); https://www.merriam-webster.com/dictionary/credit (defining "credit" as "a deduction from an amount otherwise due"); https://www.merriam-webster.com/dictionary/refund (defining "refund" as "to return (money) in restitution, repayment, or balancing of accounts"). Accordingly, we tentatively conclude that Congress did not intend for there to be any legal distinction between these terms, and thus we may use these terms interchangeably, as we do throughout this notice. We seek comment on this analysis and tentative conclusion.

[35] *See* Appendix A, proposed rules 47 CFR § 25.701(g), "A DBS provider must provide a subscriber a prorated credit or rebate for the remaining days in a monthly billing cycle after the cancellation of DBS service," and 47 CFR § 76.309(c)(5), "A cable operator must provide a subscriber a prorated credit or rebate for the remaining days in a monthly billing cycle after the cancellation of cable service."

[36] As noted above, the Commission receives hundreds of complaints annually about billing practices. This figure is based on informal consumer complaints filed with the Commission for the years 2018-2022. The Commission's Consumer Complaint Center can be found at: https://consumercomplaints.fcc.gov/hc/en-us. Examples of consumer complaints include the following: A subscriber cancelled service on the 11th day of the month and was charged for the whole month despite service being disconnected; a subscriber cancelled service on the 16th day of the month and returned all of the provider's equipment but was charged for the whole month; a subscriber terminated service on the 3rd day of the month but was charged for the whole month.

[37] S. REP. 102-92, at 1 (1992).

[38] 47 U.S.C. § 335(a).

[39] 2022 *Communications Marketplace Report*, *Appendix E, Report on Cable Industry Prices*, GN Docket No. 22-203, FCC 22-103, at 231, 233 (Dec. 30, 2022) ("[P]rogramming services referenced in the Report on Cable Industry Prices . . . reflect the non-promotional rates and exclude taxes and fees as well as fees subscribers may incur to lease cable equipment . . . We collected information on basic service and other cable programming services not offered on a per channel or per program basis, as well as cable equipment.")

[40] *2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3500-3501, Appendix E, Report on Cable Industry Prices at para. 40 and Attachment 1 (2020).

[41] As one consumer stated, "Essentially, I was giving them a full month payment for less than a day of service." (Testimony of Chris Black with regard to Maine's BCF legislation). *See* http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=141443. Another Maine video subscriber testified that a BCF "takes choice away from consumers in an already very limited marketplace, it disproportionately
(continued….)

9. *Legal Authority*. We seek comment on our authority to adopt ETF and BCF regulations for cable and DBS providers.[42] We tentatively conclude that adoption of restrictions on both ETFs and BCFs is a proper exercise of the Commission's authority under section 632 to "establish standards by which cable operators may fulfill their customer service requirements."[43] Section 632(b)(3) directs the Commission to establish standards governing "communications between the cable operator and the subscriber (including standards governing bills and refunds)."[44] Because ETFs and BCFs involve cable operators' billing and refund practices, we tentatively conclude that these are customer service matters within the meaning of section 632(b)(3). In addition, we tentatively find that we may regulate these practices under our general authority in 632(b) to establish "customer service" standards. Although the term "customer service" is not defined in the statute, the legislative history defines the term "customer service" to mean "in general" "the direct business relation between a cable operator and a subscriber," and goes on to explain that "customer service requirements" include requirements related to "rebates and credits to consumers."[45] We tentatively conclude that the proposed restriction on ETFs and BCFs satisfies the definition of a "customer service requirement" because billing practices governing the termination of service, such as ETFs and BCFs, involve the "direct business relation between a cable operator and a subscriber."[46] Additionally, we tentatively find that pro-rata refunds are properly considered "rebates [or] credits" given to consumers, which, according to the legislative history, are customer service matters.[47] Furthermore, the list of topics Congress required the Commission to address in terms of customer service[48] was not exhaustive. We tentatively conclude that fees—both those inhibiting subscribers from making choices about the video services they wish to receive and those imposing significant costs on consumers for services they did not choose to receive—are precisely the type of customer service concerns that Congress meant to address when it enacted section 632.[49] Thus, we tentatively find that restrictions on such practices are within the statute's grant of authority. We seek comment on this analysis. We also seek comment on whether there are alternative or additional statutes or arguments that provide a legal basis for our authority to adopt this customer service requirement for cable operators.

10. We also seek comment on our authority to adopt ETF and BCF regulations for DBS providers. We tentatively find that restrictions on ETFs are in the public interest because the fees unreasonably inhibit competition and consumer choice among video service providers. We tentatively find that restrictions on BCFs are in the public interest because the practice imposes fees on subscribers for services that they did not choose to receive and that the fees can be significant. Excluding DBS from these rules would mean that their subscribers would remain vulnerable to these practices. Do we have authority under section 335(a) to adopt ETF and BCF regulations for DBS providers?[50] Do we have

(Continued from previous page)
affects fellow Mainers subject to housing and other financial insecurities, and it's simply unfair by any reasonable measure of fairness." (Testimony of Ryan Minikis). *See* http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=141444.

[42] 47 U.S.C. § 552.

[43] 47 U.S.C. § 552(b).

[44] 47 U.S.C. § 552(b)(3).

[45] H.R. REP. 98-934 at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716.

[46] *Id*.

[47] *Id*.

[48] 47 U.S.C. § 552(b). *See also* H.R. REP. 102-628, at 36-37, 105 (1992); S. REP. 102-92, at 1, 3 (1992).

[49] H.R. REP. 98-934 at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716; H.R. REP. 102-628, at *34 (both noting that customer service topics include "rebates and credits to consumers" and "information on billing or services.").

[50] Section 335(a) authorizes the Commission to impose on DBS providers "public interest or other requirements for providing video programming." 47 U.S.C. § 335(a). Although section 335(a) requires the Commission to adopt
(continued….)

authority under other provisions of Title III?[51] We also seek comment on whether we have—and should exercise—ancillary authority under section 4(i) of the Act to adopt such regulations and whether it is necessary to undertake this regulation for the Commission to effectively perform its responsibilities under the foregoing primary sources of statutory authority?[52] By doing so, we will ensure uniformity of regulation between and among cable operators (regulated under Title VI and by various state consumer protection laws and local franchising provisions) and DBS providers (under Title III), thereby preventing DBS providers from gaining a competitive advantage over their competitors through the use of ETFs and BCFs.[53] We seek comment on this analysis. We also seek comment on whether there are alternative or additional statutes or arguments that provide a legal basis for our authority to adopt these customer service requirements for DBS providers.

11. Finally, as noted above, based on the language and structure of section 632, Congress authorized the Commission to establish customer service requirements, and franchising authorities to adopt additional laws above and beyond the Commission's baseline requirements.[54] Therefore, we tentatively find that this proposed rule would not preempt existing state and local laws that prohibit ETFs and BCFs or otherwise exceed the requirements we adopt in this proceeding, so long as they are not inconsistent with Commission regulations. We seek comment on this analysis.

12. *Rate Regulation versus Customer Service Regulation.* In *Spectrum Northeast, LLC v. Frey*, the First Circuit determined that a state regulation prohibiting BCFs substantially similar to the prohibition we propose here is not rate regulation pursuant to the Act.[55] We tentatively conclude that this same analysis (as described in further detail below) applies to our proposed BCF prohibition. We seek comment on this tentative conclusion. While *Spectrum Northeast, LLC v. Frey* addresses the issue of whether a BCF prohibition is impermissible rate regulation, the court did not address ETFs. We tentatively conclude that cable ETF regulations are not rate regulations under section 623 of the Act.[56] We seek comment on this tentative conclusion. The statute does not define the term "rates" or explain the

(Continued from previous page)
certain statutory political broadcasting requirements for DBS providers, the statute is clear that this list is not exhaustive. 47 U.S.C. § 335(a) ("Any regulations prescribed pursuant to such rulemaking shall, *at a minimum*, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service …") (emphasis added).

[51] *See Targeting and Eliminating Unlawful Text Message*s, Report and Order and Further Notice of Proposed Rulemaking, 2023 WL 2582658, para. 40 (2023) (noting the Commission's authority under Sections 303(b), 307, and 316).

[52] 47 U.S.C. § 154(i).

[53] *See, e.g.*, *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405-06 (D.C. Cir. 1996) (upholding reliance on 4(i) for the Commission to adjust the terms of preferences to reduce the gulf between recipients of preferences (who would otherwise receive a free license) and other license aspirants (who, under the new auction regime, would have to pay for a license)).

[54] 47 U.S.C. § 552. *See 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*, Second Report and Order, MB Docket No. 05-311, 22 FCC Rcd 19633, 19646, para. 27 (2007) (citing 47 U.S.C. §552(d)(2) (stating that the "statute's explicit language makes clear that Commission standards are a floor for customer service requirements, rather than a ceiling, and thus do not preclude LFAs from adopting stricter customer service requirements").

[55] *Spectrum Northeast, LLC v. Frey*, 22 F.4th 287, 293 (1st Cir. 2022), *cert denied*, 143 S.Ct. 562 (2023) (stating a "termination event ends cable service, and a rebate on termination falls outside the 'provision of cable service.' Thus, the plain language of § 543 excludes the time after provision of service . . . ."). *See* 47 U.S.C. § 543(a)(1); Maine regulation, 30-A M.R.S.A. § 3010(1-A) ("A franchisee shall grant a subscriber a pro rata credit or rebate for the days of the monthly billing period after the cancellation of service if that subscriber requests cancellation of service 3 or more working days before the end of the monthly billing period.").

[56] 47 U.S.C. § 543.

meaning of the phrase "rates for the provision of cable service" for purposes of section 623. Historically, the Commission's cable rate regulations have not covered service termination fees or termination rebates.[57] The Commission has previously found the regulation of fees similar to the proposed regulation of ETFs and BCFs is not rate regulation. For instance, the Commission has found that limits on late fees are considered customer service regulation and not rate regulation.[58] And, in practice, the Media Bureau and its predecessor bureau (the Cable Services Bureau) have found that local regulations similar to the proposed ETF and BCF regulations herein, were not properly categorized as rate regulation and therefore not pre-empted. Such findings have included local regulations that address unreturned equipment fees, pay-by-phone fees, late fees, returned check fees, and other miscellaneous cable subscriber charges that were found not to be included as part of the Commission's rate regulations.[59] Thus, we tentatively conclude that Commission practice and precedent supports the notion that ETF regulations also are not rate regulation.

13. Furthermore, our tentative conclusion is consistent with recent court precedent. In the First Circuit's recent decision in *Spectrum Northeast, LLC v. Frey*,[60] the court determined that a state BCF regulation is not rate regulation pursuant to the Act.[61] The Maine regulation was enacted after a cable company implemented a new practice of declining to provide refunds when cable service was terminated prior to the end of a billing cycle. The regulation then required cable operators to issue prorated credits or rebates for the days remaining in a billing period after termination of cable service. The court determined that the federal preemption of cable rate regulation[62] "did not extend to the regulation of termination rebates"[63] and concluded that the Maine law is not a law governing "rates for the provision of cable service" but rather is a "consumer protection law"[64] that is not preempted.[65] The court based its decision on four aspects of the structure and legislative history of the Act. First, the court explained that the legislative history of the Act and the Commission's regulations "focused on preempting monthly 'rates' charged for the provision of basic cable service" and do not "suggest that the term 'rates

[57] *See* 47 CFR §§ 76.901-76.990.

[58] *See 1993 Cable Consumer Protection Order*, 8 FCC Rcd at 2907, para. 68.

[59] *See, e.g.*, *Falcon Cablevision, Memorandum Opinion and Order*, 11 FCC Rcd 10511, 10525 (CSB 1996) (late fees and charges for returned checks, converter equipment deposits, field collections, and account transfers may be reviewed through the application of customer service laws); *Charter Communications*, 20 FCC Rcd 3503, 3505-06 (MB 2005) (unreturned equipment fees may be reviewed through application of customer service laws).

[60] *Spectrum Northeast*, 22 F.4th at 301 ("It is also not a stretch to think that Maine's limited termination-rebate law in the Pro Rata Act protects against the kind of deceptive business practices that consumer protection laws typically target.").

[61] 47 U.S.C. § 543(a)(1); Maine regulation, 30-A M.R.S.A. § 3010(1-A) ("A franchisee shall grant a subscriber a pro rata credit or rebate for the days of the monthly billing period after the cancellation of service if that subscriber requests cancellation of service 3 or more working days before the end of the monthly billing period.").

[62] *See* 47 U.S.C. § 556 ("Except as provided in section 557 of this title, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.").

[63] *Spectrum Northeast*, 22 F.4th at 299-301.

[64] The court left open the separate issue of whether the state BCF regulation was a "customer service" regulation within the broader category of consumer protection laws. *Id*. at 303.

[65] *Id*. The Maine statute, entitled "When Service Is Cancelled by a Subscriber" amended Me. Stat. tit. 30-A, § 3010, titled "Consumer rights and protection relating to cable television service," to add: "A franchisee shall grant a subscriber a pro rata credit or rebate for the days of the monthly billing period after the cancellation of service if that subscriber requests cancellation of service 3 or more working days before the end of the monthly billing period." This language is similar to the proposed rule in Appendix A. *See* Appendix A, proposed rule 47 CFR § 76.309(c)(5), "A cable operator must provide a subscriber a prorated credit or rebate for the remaining days in a monthly billing cycle after the cancellation of cable service."

for the provision of cable service' includes termination fees or termination rebates."[66] Second, the court noted that Congressional silence concerning termination fees or rebates is "particularly significant" because Congress included regulation of rates for "installation" fees, but not termination fees, as rates "for the provision of cable service."[67] Third, the court observed that Congress acknowledged multiple potential sources of competition but did not identify termination credits as being controlled by effective competition. Instead, termination credits encourage competition "by prohibiting cable companies from creating artificial barriers to switching between competitors by charging consumers beyond termination of service."[68] Finally, the court found that Congress expressed a purpose to "preserve state consumer protection laws" despite preempting the regulation of "rates for the provision of cable service," and this favors "a narrow reading of the scope of the preemption provision."[69]

14. The New Jersey Supreme Court also recently concluded that a New Jersey statute banning BCFs was not rate regulation preempted by federal law.[70] The New Jersey code states that "[b]ills for cable television service shall be rendered monthly, bi-monthly, quarterly, semi-annually or annually and shall be prorated upon establishment and termination of service."[71] In *Alleged Failure of Altice*, the Supreme Court of New Jersey concluded that New Jersey's BCF regulation does not regulate cable rates or control the rates for the provision of cable service.[72] The court based its decision on the "ordinary meaning" of the text from the New Jersey statute and the Cable Act.[73] The court determined that "the plain and ordinary meaning of rate regulation . . . is not so broad as to encompass all laws that affect or concern cable prices."[74] With regard to the New Jersey BCF regulation, the court concluded that "the challenged regulation does not even indirectly affect the actual rate Altice charges . . . the regulation merely uses the rate that the cable provider sets to enforce a price proportional to the quantity of service provided."[75]

15. With regard to cable ETFs, we tentatively conclude that the courts' logic in *Spectrum Northeast, LLC v. Frey* and *Alleged Failure of Altice* applies to the ETF regulation we propose in this *NPRM*. Similar to a BCF, an ETF is assessed upon *termination* of service, i.e., it concerns the time period when cable service ends. Thus, a restriction on ETFs does not appear to cap the amount a cable operator can charge for the provision of cable service; rather, it regulates only the charge that a cable operator may impose on a customer *after* the customer has elected to *terminate* service. Further, we tentatively find that the structure and legislative history of the Act does not support treating ETFs as a form of rate regulation, just as the courts found with regard to BCFs.[76] Also, we tentatively find that an ETF does not

[66] *Spectrum Northeast*, 22 F.4th at 298-299.

[67] *Id*. at 299.

[68] *Id*. at 300.

[69] *Id*.

[70] *See Alleged Failure of Altice*. *See also, Altice USA, Inc. v. New Jersey Board of Public Utilities*, 26 F.4th 571 (3d Cir. 2022) (vacating and remanding a Federal District Court's finding of preemption).

[71] N.J. Admin. Code § 14:18-3.8.

[72] 2023 WL 2746964 at 8.

[73] *Id*.

[74] *Id*. at 9.

[75] *Id*.

[76] *See* discussion in para. 14, *supra*. That is, (i) the legislative history of the Cable Act does not suggest that the term "rates for the provision of cable service" includes termination fees; (ii) Congressional silence concerning termination fees is "particularly significant" because Congress included regulation of rates for "installation" fees, but not termination fees, as rates "for the provision of cable service"; (iii) Congress acknowledged multiple potential sources of competition but did not identify termination fees as being controlled by effective competition; and (iv) (continued….)

fall within the plain and ordinary meaning of rate regulation, similar to the court's reasoning regarding BCFs.[77] Thus, we tentatively conclude that regulation of ETFs is not "rate regulation." In addition, our tentative conclusion is consistent with case law evaluating whether State regulation of cellular telephone ETFs is preempted by federal rate regulation.[78] In *In re Cellphone Termination Fee Cases*, the California Court of Appeals for the First District concluded that a cellular telephone ETF regulation was not preempted by federal law.[79] Although the court was not addressing cable rate regulation specifically, it was addressing a similar statutory provision[80] that carves out the universe of "other terms and conditions" from rate regulation of wireless services, similar to how "consumer protection" and "customer service" is distinct from rate regulation in the cable statute. The scope of both carveouts appears to be similar in nature and includes billing issues, consumer protection, and customer service.[81] The court concluded that the "purpose in adopting the cellular telephone ETF was to control churn" and prevent customers from leaving,[82] and because the State law invalidating the ETFs had "only an indirect and incidental effect on . . . rates," it was not preempted by federal law.[83] We find this reasoning and that of the BCF cases discussed above to be applicable to the question of whether cable ETF regulations are rate regulations under the Act, and tentatively conclude that they are not. We therefore tentatively conclude that, consistent with case law and the Commission's own precedent, regulations concerning cable ETFs also are not rate regulations. Thus, we tentatively find inapplicable section 623's prohibition on the Commission's regulation of "the rates for the provision of cable service" in franchise areas where effective competition exists.[84] Nearly all, if not all, cable operators now face effective competition and are not subject to rate regulation.[85] However, there is no such prohibition found in section 632's customer

(Continued from previous page)
Congress preserved the regulation of customer service, despite placing limitations on the regulation of "rates for the provision of cable service." *Id*. *See also Cable Television Ass'n of N.Y., Inc. v. Finneran*, 954 F.2d 91 (2d Cir. 1992) ("[T]he Cable Act does not expressly pre-empt state regulation of downgrade charges.").

[77] *See* discussion in para. 15, *supra*. As mentioned above, ETFs are fees imposed upon termination of service, rather than charges for the provision of cable service.

[78] *In re Cellphone Termination Fee Cases*, 193 Cal.App.4th 298, 122 Cal.Rptr.3d 726 (2011), *cert. denied*, 565 U.S.1014, 132 S.Ct. 555, 181 L.Ed.2d 397 (2011) (regulation of cellular telephone ETFs as liquidated damages provisions was not preempted rate regulation).

[79] *In re Cellphone Termination Fee Cases*, 193 Cal.App.4th at 319, 122 Cal.Rptr.3d at 744, *cert. denied*, 565 U.S.1014, 132 S.Ct. 555, 181 L.Ed.2d 397 (2011).

[80] *See* 47 U.S.C. § 332(c)(3)(A) ("no State or local government shall have any authority to regulate the … rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services").

[81] *Id*. Section 332(c)(3)(A)'s clause governing "other terms and conditions," which are regulated by the States, "include such matters as customer billing information and practices and billing disputes and other consumer protection matters." *See* H.R. Rep. No. 103-111, at 211 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 588.

[82] *In re Cellphone Termination Fee Cases*, 193 Cal.App.4th 298, 320 (2011).

[83] *Id*. at 321.

[84] 47 U.S.C. § 543(a)(2) ("If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission…"). There is no corollary provision with regard to DBS providers.

[85] *See, e.g.*, *NATOA v. FCC*, 862 F.3d 18 (D.C. Cir. 2017) (upholding the FCC's rebuttable presumption that cable operators are subject to effective competition under the competing provider test); *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI*, Memorandum Opinion and Order, 34 FCC Rcd 10229 (2019), *petition for review denied*, *Mass. Dep't of Telecomms. & Cable v. FCC*, 983 F.3d 28 (1st Cir. 2020) (finding of LEC effective competition). Likewise, if State and local ETF and BCF regulations are "rate regulations," they would be preempted by the Commission's rules and also susceptible to the effective competition rule. *See* 47 U.S.C § 543 ("No Federal agency or State may regulate the rates for the provision of cable service
(continued….)

service provision.[86] Accordingly, the applicability of ETF and BCF regulations are not affected by the existence of effective competition in a community. We seek comment on this analysis.

16. *Implementation*. We seek comment on how to tailor our rules to best protect consumers and promote competition. As an initial matter, we seek specific comment on the interplay of our proposed rules and any state or local ETF and BCF regulations.[87] To what extent are State and local authorities currently regulating ETFs and BCFs with respect to cable and DBS services?[88] Do local authorities have adequate resources to enforce the proposed rules effectively? To the extent the Commission were to enforce its own rules in individual cases, how could it best coordinate enforcement with local authorities?

17. We also seek specific comment from State and local authorities on our proposed prohibition on cable and DBS ETFs and BCFs as proposed in Appendix A. Should we adopt something less than a total ban and allow variations within States or communities?[89] Given our shared jurisdiction with local authorities over cable customer service issues, we seek comment regarding their local subscriber complaints and regulation experiences. We seek comment on what enforcement mechanisms should be implemented at the federal level. We also seek comment on what enforcement mechanisms have been or could be implemented at the local level and how those might inform enforcement mechanisms at the federal level. To the extent we adopt a ban on DBS ETFs and BCFs, would this need to be enforced by the Commission given that DBS providers are not required to have local or state franchises? If so, are there additional rules we should adopt to ensure an effective enforcement scheme?

18. If the Commission adopts the proposals to ban ETFs and BCFs, what is a reasonable amount of time for cable and satellite providers to implement this change? How should our proposed rule banning BCFs be implemented for the benefit of current subscribers? Do operators require time to implement changes to their current billing systems? What effect, if any, will our proposed rule banning ETFs have on consumers' existing contracts? If commenters argue that our proposed rule should apply only to new contracts entered into after its effective date, what are the legal and policy justifications for treating agreements of existing customers differently than new customers? Should there be a grace period to accommodate existing contracts with ETF provisions? If so, what effect, if any, will our proposed rule have on existing ETFs? In lieu of the rules proposed in Appendix A, we seek comment on whether the

(Continued from previous page)
except to the extent provided under this section. . ."). *See also* 47 U.S.C. § 556 ("[A]ny provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.").

[86] 47 U.S.C. § 552.

[87] Section 632 does not prevent "the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section." 47 U.S.C. § 552(d)(2).

[88] To date, the Commission has deferred to local authorities to enforce its cable customer service obligations. *See 1993 Cable Consumer Protection Order*, 8 FCC Rcd at 2897, para. 19. Although the Commission previously determined that the statute did not give it a "specific enforcement role" with regard to customer service requirements whereas it gave such a role to local franchise authorities, we note that there is nothing in section 632 or its legislative history that precludes the Commission's ability to enforce its own standards. *Id.* Indeed, the Commission has always retained its enforcement authority to address "systemic abuses that undermine the statutory objectives." *1993 Cable Consumer Protection Order*, 8 FCC Rcd at 2897, para. 19. Moreover, the Commission has broad authority under the Act to enforce its rules. *See* 47 U.S.C. § 151 (directing the Commission to "execute and enforce the provisions of [the Communications] Act"); 47 U.S.C. § 312(b) (authorizing the Commission to order persons to cease and desist from violating any provision of the Act or the Commission's rules); 47 U.S.C. § 503 (authorizing the Commission to assess a forfeiture penalty for failure to comply with any of the provisions of the Act, or any rule, regulation, or order issued by the Commission under this Act).

[89] *See infra* para. 19.

Commission should, on the other hand, adopt more detailed cable and DBS regulations that include grace periods, limiting or extenuating circumstances, or other factors for determining when an ETF or BCF might be appropriate. Is there any justification for less than a total ban on ETFs and BCFs? For example, should our rules exempt small cable operators or rural cable operators? Any party advocating for an exception should explain the reason they believe a carve-out from the prohibition is necessary. We seek comment on these issues.

19. To the extent cable or DBS video service is part of a bundled package with non-video services, could ETF and BCF rules be applied to the entire bundle, and if so, under what authority? We therefore seek comment on enforcement issues relating to an ETF or BCF ban when video services are bundled with non-video services. With respect to cable, does permitting state and local government enforcement of an ETF or BCF ban conflict with other sections of Title VI of the Act or the scope of local franchise authority under Title VI when video services are included as part of a bundle?[90] We recognize that section 624(b)(1) provides that franchising authorities "may not . . . *establish* requirements for . . . information services."[91] Does this provision limit franchising authorities' ability to enforce a Commission-established ban on ETFs or BCFs when video services are part of a bundle with non-video services? We seek comment on these issues.

20. *State of the Video Marketplace.* We seek comment on how cable operators and DBS providers currently handle ETFs and BCFs.[92] As noted above, BCFs are a more recent development than ETFs. Were there changes in the video marketplace that prompted introduction of ETFs and/or BCFs? Are there video service providers who currently do not impose ETFs and/or BCFs? Are there providers that offer multiple subscription choices including plans with and without ETFs? Are providers offering long term contracts at reduced prices without ETFs? If so, what other differences are there between offerings with and without ETFs? How likely are consumers to elect a plan that does not include ETFs when such offerings are available? If such offerings are available, what is the cable operator's or DBS provider's rationale for offering that plan or option? Would the absence or presence of an ETF impact a consumer's choice of provider? Are there any cable operators or DBS providers that offer multiple subscription choices including plans with and without BCFs? If so, what is the cable operator's or DBS provider's rationale for offering that plan or option? Are there cable operators or DBS providers that only impose BCFs in certain circumstances and not in other circumstances? If so, what are the circumstances in which the BCF is not imposed? What is the cable operator's or DBS provider's rationale for not imposing the BCF in those circumstances? Would the absence or presence of BCFs impact a consumer's choice of provider? How would prohibiting or limiting cable operators and DBS providers from imposing ETFs and/or BCFs change providers' current customer services?

21. *Cost/Benefit Analysis*. If a ban on ETFs were implemented, we expect consumers to benefit because they would have the ability to switch video service providers more easily and cancel video service without cost. In addition, a ban on BCFs would benefit consumers because it would prevent consumers from paying for services they choose not to receive. If ETFs are eliminated, would video service providers still choose to offer long term contracts for reasons other than price, for instance in order to avoid churn? Could the elimination of ETFs alter the price of long term contracts and if so how? What would be the impact of such changes on consumers? If video service providers were to decide not

[90] *See City of Eugene, Oregon v. FCC*, 998 F.3d 701 (6th Cir. 2021), *cert. denied*, 142 S.Ct. 1109 (2022) (holding that the Act preempts State or local action that is "inconsistent" or "incompatible" with any of the Act's provisions).

[91] 47 U.S.C. § 544(b)(1) (emphasis added). *See also City of Eugene,* 998 F.3d at 715.

[92] *See* Letter from Mary Beth Murphy, Vice President and Deputy General Counsel, NCTA to Marlene H. Dortch, Secretary, Federal Communications Commission (December 6, 2023); Letter from Michael Nilsson, Counsel to the American Television Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission (December 6, 2023); and Letter from Michael Nilsson, Counsel to DIRECTV, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (December 7, 2023).

to offer long term contracts or to offer them at higher prices, would the higher prices be offset by the consumer savings in avoiding ETFs? How would these possible outcomes affect low-income and new consumers? Further, would eliminating ETFs and BCFs affect billing cycles? We seek comment on how the Commission should assess the likelihood and magnitude of these potential benefits and costs to consumers.

22. We also seek comment on how a ban on ETFs and BCFs would affect competition among video providers. By reducing consumer switching costs, could a ban on ETFs foster competition between developing online video services and cable and satellite video providers? For example, might consumers who have signed multi-year contracts with cable and satellite video providers benefit from earlier opportunities to choose among all options? Would this additional choice enhance competition? For cable and satellite video customers, what are the shares of customers with month-to-month, one-year, two-year, or other service agreements subject to ETFs or BCFs?

23. We also seek comment on any potential costs that would be imposed on regulatees if we adopt the proposals contained in this *NPRM*. Do these costs differ between large and small cable providers? Would a ban on ETFs and BCFs impose substantial or unnecessary burdens on small cable operators? Further, would a ban on ETFs limit entry by new providers by limiting their ability to recoup upfront costs through an ETF? Would a ban on ETFs and BCFs have a positive impact on video service provider negotiations with broadcast stations and cable networks for programming by allowing consumers more freedom to switch providers to obtain preferred programming? Could programming costs be affected by a ban on ETFs and BCFs? What amounts do cable and DBS operators charge for early termination fees? Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

24. *Digital Equity and Inclusion*. Finally, the Commission, as part of its continuing effort to advance digital equity for all,[93] 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[94] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

25. *Ex Parte Rules - Permit-But-Disclose*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[95] 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

[93] 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.

[94] 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).

[95] 47 CFR §§ 1.1200 *et seq.*

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.

26. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - 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.[96]
- 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.

27. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[97] 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

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

[97] *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).

substantial number of small entities."[98] Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *NPRM*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

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

29. *Providing Accountability Through Transparency Act*. Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on https://www.fcc.gov/proposed-rulemakings.[99]

30. *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.

31. *Additional Information*. For additional information on this proceeding, please contact Katie Costello, Media Bureau, Policy Division at katie.costello@fcc.gov or (202) 418-2233.

V. ORDERING CLAUSES

32. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 303(v), 335(a) and 632(b), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(v), 335(a) and 552(b), this Notice of Proposed Rulemaking **IS ADOPTED.**

33. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[98] *Id.* § 605(b).

[99] 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.

APPENDIX A

Proposed Rules

Part 25 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 25 – SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 is amended to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 335, 605, and 721, unless otherwise noted.

2. Amend § 25.701 by revising paragraph (a) and by adding paragraph (g) to read as follows:

§ 25.701 Other DBS Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b), (c), (d), (e), (f) and (g) of this section. * * *

* * * * *

(g) Customer service obligations.

A DBS provider shall not charge a subscriber a fee for terminating a DBS services contract before its expiration date. A DBS provider must provide a subscriber a prorated credit or rebate for the remaining days in a billing cycle after the cancellation of DBS service.

* * * * *

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573

2. Amend § 76.309(c) by adding paragraph (5) to read as follows:

§ 76.309 Customer service obligations.

* * * * *

(c) * * *

(5) A cable operator shall not charge a subscriber a fee for terminating a cable services contract before its expiration date. A cable operator must provide a subscriber a prorated credit or rebate for the remaining days in a billing cycle after the cancellation of cable service.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Act 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 small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). 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 specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The NPRM initiates a proceeding to consider billing practices that inhibit video service subscribers from choosing the video services they want and that result in consumers paying fees for video services they choose not to receive. The Commission has received numerous complaints from cable and DBS subscribers about two billing practices: early termination fees (ETFs) and billing cycle fees (BCFs). An ETF is a fee that a provider charges a subscriber when the subscriber terminates its service contract prior to its expiration. ETFs remove consumer choice, negatively impacting competition for services in the marketplace. A BCF is a fee that subscribers pay when they cancel service prior to the end of a billing cycle and the service provider refuses to refund a pro-rated share of the billing cycle charge for the unused service. BCFs harm consumers by requiring them to pay for services they did not choose to receive. Both of these fees place a financial burden on subscribers and can create barriers to competition. The proposed rules in the NPRM will prevent the imposition of ETFs and BCFs, protecting consumers and promoting competition.

B. Legal Basis

3. The proposed action is authorized under sections 1, 4(i), 303(v), 335(a) and 632(b), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(v), 335(a) and 552(b).

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 rule revisions, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).[6] A small

---

[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] 5 U.S.C. § 603(b)(3).

[5] 5 U.S.C. § 601(6

[6] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

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.[7]

5. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[8] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[9] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[10] The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small.[11] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[12] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[13] Based on this data, the Commission estimates that a majority of firms in this industry are small.

6. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[14] Based on industry data, there are about 420 cable companies in the U.S.[15] Of these, only seven have more than 400,000 subscribers.[16] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[17] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[18] Of these, about 639 have more than 15,000 subscribers.[19] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

---

[7] 15 U.S.C. § 632(a)(1)-(2)(A).

[8] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[9] *Id.*

[10] *Id.*

[11] *See* 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

[12] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[13] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[14] 47 CFR § 76.901(d).

[15] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[16] 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).

[17] 47 CFR § 76.901(c).

[18] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

7. *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."[20] 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.[21] Based on industry data, only six cable system operators have more than 498,000 subscribers.[22] 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.[23] 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.

8. *Direct Broadcast Satellite ("DBS") Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[24] Transmission facilities may be based on a single technology or combination of technologies.[25] 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 and infrastructure that they operate are included in this industry.[27]

9. The SBA small business size standard for Wired Telecommunications Carriers classifies

(Continued from previous page)

[19] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[20] 47 U.S.C. § 543(m)(2).

[21] *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).

[22] 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).

[23] 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).

[24] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[25] *Id.*

[26] *See id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[27] *Id*.

firms having 1,500 or fewer employees as small.[28] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[29] Of this number, 2,964 firms operated with fewer than 250 employees.[30] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[31] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. The *NPRM* proposes to adopt rules that prohibit cable and DBS service providers from imposing ETFs and BCFs. This may impose new or additional compliance obligations on small entities. When subscribers wish to terminate their services contract prior to its expiration date, small entity cable operators may need to use additional accounting and finance processes to determine the prorated credit or rebate to provide subscribers for the remaining days in a billing cycle. These operators must then determine how to return this fee to the subscriber. The *NPRM* seeks comment on any potential costs that would be imposed on regulatees and whether a ban on ETFs and BCFs would impose unnecessary burdens on small cable operators.[32] The Commission anticipates the information received in comments including where requested, cost and benefit analyses, will help identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries made in the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[33]

12. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *NPRM*, and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the compliance requirements described above can be minimized for small entities.[34] An alternative option that may reduce burdens on

---

[28] *See* 13 CFR § 121.201, NAICS Code 517311.

[29] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[30] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[31] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

[32] *NPRM* at para. 22 (discussing cost/benefit analysis of ban on ETFs and BCFs for small cable operators).

[33] *See* 5 U.S.C. § 603(c).

[34] *NPRM* at para. 27.

small entities considered in the *NPRM* is whether the Commission should adopt more detailed cable and DBS regulations that include grace periods, limiting or extenuating circumstances, or other factors for determining when an ETF or BCF might be appropriate.[35] Additionally, the Commission seeks comment on whether potential costs associated with a ban on small entities imposing ETFs and BCFs would impose unnecessary burdens on small cable operators.[36] The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *NPRM* and this IRFA.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

13. None.

[35] *NPRM* at para. 19.

[36] *NPRM* at para. 23 (discussing cost/benefit analysis of ban on ETFs and BCFs for small cable operators).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Promoting Competition in the American Economy: Cable and DBS Provider Billing Practices*, MB Docket No. 23-405, Notice of Proposed Rulemaking (December 13, 2023)

If you are one of the millions of people in this country who subscribe to cable television or satellite service, one day you might want to end that subscription. You may move, you might want to switch providers, or you might want to check out new competitors offering different kinds of video service. When that happens you will have to contact your cable or satellite provider. If you have ever been on one of those calls you know they are no fun. They take too long. Plus you can get charged early termination fees when all you want to do is shut the service down. On top of that, you can get stuck with paying for weeks of service you do not want just because you cut it off early in the billing cycle.

Consumers are tired of these junk fees. They now have more choices when it comes to video content. But these friction-filled tactics to keep us subscribing to our current providers are aggravating and unfair. So today we kick off a rulemaking to put an end to these practices. We propose restricting early termination fees and requiring providers to grant subscribers credits or rebates for the remaining days in a billing cycle after the cancellation of service. We ask questions about legal authority, the impact of our proposed rules, and any alternatives we should consider.

This rulemaking is part of a broader effort to make billing across the economy—and across communications—more transparent and fair. Last year, we adopted broadband nutrition labels requiring carriers to disclose service terms to consumers in an easy and simple way. This year, we proposed all-in pricing for cable television and satellite providers so the advertised price for video service would actually be the price customers pay when the bill arrives. These initiatives are important. Because consumers know when they are being stuck with charges that are unfair, fees that no one told them about, and practices that try their patience and waste their time. We can do something about this—and we should.

Thank you to the staff responsible for this rulemaking, including Katie Costello, Hillary DeNigro, Maria Mullarkey, Brendan Murray, and Holly Saurer from the Media Bureau; Douglas Galbi, Kim Makuch, and George Williams from the Office of Economics and Analytics; Susan Aaron and David Konczal from the Office of General Counsel; Joycelyn James from the Office of Communications Business Opportunities; and Cathy Williams from the Office of Managing Director.

DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, MB Docket No. 23-405, Notice of Proposed Rulemaking.

Two years ago, President Biden signed an Executive Order directing the FCC to start regulating early termination fees—also known as service rates—for consumer communications agreements. Today, the FCC acts on the President's demands in the cable/DBS context. It does so at a time when traditional MVPDs are bleeding market share to new, unregulated competitors. And it does so based on illusory statutory authority under the FCC's customer service mandates. Congress's charge was to address customer service issues such as wait times on service calls, not rate regulation.

But taking a step back, it's clear that the Administration has decided that the FCC is going to regulate rates, no matter how competitive the market and without regard to the FCC's legal authority. We saw it in big proceedings like Net Neutrality and Digital Equity, and we see it in more targeted proceedings like this one. I cannot support this push for rate regulation, and I cannot support this item.

Accordingly, I dissent.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *In the Matter of Promoting the American Economy: Cable Operator and DBS Provider Billing Practices*, MB Docket No. 23-405, Notice of Proposed Rulemaking

There are some items that come before me at the FCC, that hit me not just as a regulator, but as an everyday consumer. I felt that way about our June 2023 NPRM, proposing to require MVPDs to clearly provide the bottom-line, all-in price for video service to consumers in both promotional materials and on subscribers' bills. And I feel that way about today's NPRM, which follows that item in many ways.

Obscuring the bottom-line fee isn't fair to consumers, and neither is imposing exorbitant, unexpected fees on consumers cancelling their service. We've begun our inquiry on the former; today we ask questions about the latter. Take, for example, early termination fees, or ETFs. I know what it's like to cancel a service, and get slapped with a startling high termination fee. I'd hazard a guess that most of us do – it's an experience that's all too common. That's why the Biden Administration's Executive Order on Promoting Competition in the American Economy encouraged the FCC to consider "prohibiting unjust or unreasonable early termination fees for end-user communications contracts."[1]

But first, we have to understand how fees like this may be used in MVPD contracts. Do they unfairly prohibit consumers from switching providers? Are there circumstances in which they may benefit consumers – for example, by giving consumers a choice between a costlier, month-to-month contract and a cheaper, longer-term contract with an ETF? Even if those situations exist, are there ways we can protect consumers from unreasonable fees? These are the questions we're asking today. I look forward to seeing the record develop.

Not only is today's NPRM in conversation with the FCC's action in June on all-in pricing, it's in step with our sister agencies across the government. From the FTC to the CFPB, the government is pursuing proposals and advisories to protect consumers from unjust and unreasonable fees across industry. As President Biden said, this is "just about simple fairness."[2] I agree.

[1] Executive Order on Promoting Competition in the American Economy, July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

[2] Remarks by President Biden on New Actions to Protect Consumers from Hidden Junk Fees and Put More Money Back in the Pockets of Hardworking Americans, Oct. 11, 2023, https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/11/remarks-by-president-biden-on-new-actions-to-protect-consumers-from-hidden-junk-fees-and-put-more-money-back-in-the-pockets-of-hardworking-americans/.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, MB Docket. No. 23-405

This item proposes to prohibit cable and satellite operators from charging early termination fees and so-called "billing cycle fees." I've never met a consumer who has not felt hard-done by paying fees that they would prefer not to pay. Certainly I have paid fees that I would have preferred not to pay, and I wished at the time that I didn't have to pay them. So, is that the end of the analysis?

Well, for this Commission, perhaps. At the behest of the Biden administration, Commission leadership and my colleagues across the aisle today approve an item notionally designed to improve consumer welfare through "prohibiting unjust or unreasonable early termination fees for end-user communication contracts[,]" and by "enabling consumers to more easily switch providers." I say notional because the relationship between consumer welfare and the rules this item proposes is actually negative. Let me be clear: consumers will be *worse* off after these rules are adopted—provided that the rules survive legal challenge, including a challenge to the almost certainly inadequate Section 632 authority on which they are based. Consumers will pay *more* for their cable packages. This isn't advanced economic theory, this is basic horse sense. By replacing consumer choice with the sacerdotal wisdom of the new regulatory clerics, the Commission proposes to leave consumers *worse* off than before. Here's how. Let's treat ETFs first.

The modal consumer who signs up for service with an MVPD (and, to be clear, I will use 'MVPD' to mean both MVPDs and DBS providers) generally has at least two options. One option is discounted service, which often comes with a contract for a service term. Some of those contracts do have an early termination fee—often at a somewhat lower price relative to other contracts—and some do not. The other option is a higher-rate, month-to-month service agreement. In the first case, a consumer terminating service prior to the end of the term is sometimes obligated to pay a fee; in the second, she is not.

Any consumer wishing to avoid the prospect of an early termination fee has the option, *ex ante*, to avoid the fee. Just don't sign up for the plan that has the fee. Seems simple enough. But, some may say: what about the consumer who signs up for the plan but then is forced by circumstance to terminate the contract? Say she has to move for a new job, and the prior MVPD is not available in her new location. Is the fee not punitive in this case?

Well, tabling for the moment that the consumer presumably knew or could have discovered what she was signing up for, *and* tabling for the moment that the contract terms *provide* for a variety of circumstances under which the ETF is not owed, she is *still* better off, generally speaking, in the second half of service term contracts than she otherwise would have been. If a contract for video service offers a $10 monthly discounted promotional rate for a one year term, it is often joined with an early termination fee amounts to, in the case of one major provider, $110. The early termination fee declines, generally, by $1/12^{th}$ or $1/11^{th}$ per month—this is a pretty universal industry practice. So, in literally half of the cases, assuming terminations occur randomly in a contract lifetime, the consumer is *better* off *having paid* the ETF and received the discounted service relative to the month-to-month service. Indeed, the discount is often *greater* on a monthly basis that the ETF reduction, putting the ETF-paying consumer in the money even faster. This is not the only case, but it is an archetypical one.

But now we are proposing to eliminate the prospect of the early termination fee altogether, and constructively proposing to eliminate the discounted rate that it supports—at least, the portion of the discount equivalent to the revenue lost by ETFs—and we are doing this in the name of consumer welfare. I am not sure what animates the Commission's logic here. Does the Commission imagine that the

invisible hand of this highly regulated market will keep contractual prices level after ETFs are removed (those same market forces that the Commission evidently discounts today by undercutting the commercial judgment of MVPDs)? Or does it imagine that MVPDs will, out of their gracious love of consumers, voluntarily fully retain today's long-term contractual discounts while merely doing without ETF revenue? Which of this twin naivetes will this rulemaking embrace? I suppose we'll find out when the supposed consumer advocates, whose very jobs require the invention of more and more phantasmagoric consumer harms, furnish the Commission with their conclusory cant in the record.

Turning briefly to what we term in the item "billing cycle fees," and what the rest of the world calls monthly billing, here are some folks who typically aren't going to take you call if you ask for part of the month you paid for back in your subscription service: Netflix. Hulu. Max. Disney. Paramount. YouTube. Spotify. Apple. Do we typically consider these services difficult to cancel? Is it hard to switch between and among them? Given their churn figures, I would be surprised to learn that that were the case. Consumer choice in the video marketplace abounds, and today, consumers are exercising that choice. They're marching right out the door from traditional MVPDs. Today's proposed action on monthly billing will make it marginally harder to operate as an MVPD, in that it puts a costly burden on them that no other video marketplace participant is required by law to bear. It may not be the proverbial straw on the camel's back, but the pro-consumer effect of today's proposal will certainly be a mirage. Rather than improving the consumer experience, it will just make the experience for most MVPD consumers marginally worse, as MVPDs recoup lost revenues in the form of higher monthly service costs overall.

Because, let's be clear, our so-called "pro-consumer" proposal today requires angelic forbearance on the parts of MVPDs to have actual pro-consumer effect. Putting this plainly: this proposal will reduce consumer choice, make it harder for MVPDs to compete in the unified video marketplace, and it won't save consumers one thin dime. Today’s proposal is merely an optical victory.

Now that the Commission has a full slate of Commissioners, the hour of partisan politics has come round at last, and today's crypto rate regulation slouches toward approval. I dissent.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, Notice of Proposed Rulemaking.

As the video market continues to evolve at a rapid pace that shows no signs of abating, initiating this rulemaking to seek comment on adopting rules around cable operators' and direct broadcast satellite providers' assessment of early termination fees and billing cycle fees is timely. Consumers have more choices than ever before, and it is imperative that we understand whether such billing practices have the effect of inhibiting subscribers from choosing the video services they want or result in consumers paying fees for video services they did not choose to receive as we consider these rules.

Thank you to the Chairwoman for her leadership on this item and for working with me to ensure that we ask broad questions about the state of the video marketplace as we consider these important rules. I look forward to reviewing a robust record. Thank you also to the Media Bureau for its hard work on this item.

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

In the Matter of	)	
Targeting and Eliminating Unlawful Text Messages	)	CG Docket No. 21-402
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
Advanced Methods to Target and Eliminate Unlawful Robocalls	)	CG Docket No. 17-59

SECOND REPORT AND ORDER,
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN CG DOCKET NOS. 02-278 AND 21-402, AND WAIVER ORDER IN CG DOCKET NO. 17-59

Adopted: December 13, 2023 **Released: December 18, 2023**

Comment Date: [30 days after Federal Register publication]
Reply Date: [45 days after Federal Register publication]

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements; Commissioner Simington approve in part, dissent in part and issuing a separate statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. Consumers increasingly rely on text messaging to stay in touch with friends and family, to do business, communicate with their child's school, and get information from their government. On many devices, people immediately see some or all of the messages once received on the device, whereas they have the option to ignore unwanted calls. This causes consumers to open their texts quickly because texts are an expected trusted source of communications, not annoyance and scams.[1] The rise of junk texts jeopardizes consumer trust in text messaging. The increase of unwanted and illegal texts[2] also frustrate consumers, and scam texts can cause serious harm. Scam texts can contain links to phishing campaigns and load malware onto unsuspecting consumers' phones, leading to fraud and other harms.[3] The Federal Trade Commission (FTC) reports that text messaging scams cost

[1] *See* CTIA, Messaging, https://www.ctia.org/homepage/messaging-channel ("The text messaging platform is one of the most trusted forms of communication because consumers have choice and control over their text message experience.") (last visited Oct. 26, 2023); CTIA, Protecting Yourself from Spam Messages, https://www.ctia.org/consumer-resources/protecting-yourself-from-spam-text-messages ("Overall, text messaging is one of the most trusted and widely used forms of communication by consumers. In fact, Americans send over 63,600 text messages per second.") (last visited Oct. 26, 2023).

[2] The rules we adopt today focus on stopping illegal calls or texts, which in many cases also are unwanted. A call or text may be illegal for a number of reasons, including those that violate the Telephone Consumer Protection Act (TCPA) or Do-Not-Call (DNC) protections.

[3] SMS phishing, or smishing, is the practice of sending text messages to someone in order to trick the person into revealing personal or confidential information which can then be used for criminal purposes. Merriam Webster Dictionary, https://www.merriam-webster.com/dictionary/smishing (last visited Nov. 3, 2023).

consumers $86 million in 2020 and $326 million in 2022.[4] Other estimates show higher losses, e.g., over $20 billion in 2022.[5]

2. We take action today to stop this trend and ensure consumers can continue to trust text messaging. We do so by building on our recent text blocking requirements. First, we require terminating mobile wireless providers[6] to block text messages[7] from a particular number following notification from the Commission unless their investigation determines that the identified text messages are not illegal. Next, we codify that the National DNC Registry's protections apply to text messages. Third, we encourage providers to make email-to-text, a major source of illegal texts, a service that consumers proactively opt into. Next, we close the lead generator loophole by prohibiting lead generators, texters, and callers from using a single consumer consent to inundate consumers with unwanted texts and calls when consumers visit comparison shopping websites.

3. And we propose further steps to stop illegal texts. First, we propose a stronger blocking requirement following Commission notification and seek comment on other options for requiring providers to block unwanted or illegal texts. Second, we seek further comment on text message authentication, including the status of any industry standards in development. Finally, we propose to require, rather than simply encourage, providers to make email-to-text services opt in.

4. We also adopt a limited waiver to allow providers to use the Reassigned Numbers Database (RND) to determine whether a number that the Commission has ordered to be blocked has been permanently disconnected. This waiver will help prevent blocking of lawful texts from a new subscriber to the number.

II. BACKGROUND

5. While combating unwanted and illegal calls has long been one of the Commission's top consumer protection priorities, combating unwanted and illegal text messages is a comparatively new

[4] FTC, Consumer Sentinel Network Data Book 2020 at 12 (2021), https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf (2020 Consumer Sentinel Data Book); FTC, Consumer Sentinel Network Data Book 2022 at 12 (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf (2022 Consumer Sentinel Data Book). *See also* FTC, Consumer Sentinel Network Data Book 2021 at 12, https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2021 (2022) (2021 Consumer Sentinel Data Book). As the Joint Consumer Commenters observe, the FTC data are based solely on reports made by consumers and represent only a fraction of the universe of losses from text scams; the actual losses to consumers from text-initiated frauds are, undoubtedly, exponentially greater. Joint Consumer Commenters at 3.

[5] Robokiller, The Robokiller Phone Scam Report: 2022 Insights & Analysis, at 4 (2023), https://assets.website-files.com/61f9a8793a878d7f71c5505d/6400e06e514500224ad26830_The%20Robokiller%20phone%20scam%20report%20-%202022%20insights%20%26%20analysis.pdf (Robokiller 2022 Report). Robokiller observes that, in 2022, 225.7 billion spam texts were sent, a 157% increase from 2021's then-record 87.8 billion. *Id*. at 5. Robokiller estimates the loss to robotext scams at $13 billion, for the first half of 2023, a $4 billion increase from the first half of 2022. Robokiller, The Robokiller Phone Scam Report: 2023 Midyear Insights & Analysis, at 4 (2023), https://assets.website-files.com/61f9a8793a878d7f71c5505d/64ca6ccf1f5e962fae3e55e3_Robokiller%20Mid-Year%20Report%202023.pdf (Robokiller 2023 Report).

[6] In this order, we use "provider" to mean a mobile wireless provider that provides text messaging services. Where we refer to providers of voice calls, we use the term "voice service provider," which may include originating, intermediate, or terminating voice service providers.

[7] We use the definition of text message in section 64.1600(o) of our rules in this proceeding. The scope of our decision regarding text messages is limited to those originating from North American Numbering Plan (NANP) numbers that use the wireless networks, e.g., SMS and MMS, not over-the-top (OTT) messaging, such as iMessage and WhatsApp, or Rich Communications Services (RCS); 47 CFR § 64.1600(o) *et seq*.

focus.[8] Just like unwanted and illegal calls, unwanted and illegal texts defraud and harass consumers. Robokiller estimates that these texts increased by over 300% between 2020 and 2022.[9] These texts can result in real financial loss to consumers.[10]

6. Robocalls and robotexts can both annoy and defraud consumers, but robotexts can be particularly pernicious. Robotexts are delivered directly to consumers phones and can include links to phishing websites that look identical to legitimate websites, easily tricking potential victims into providing personal or financial information.[11] Or, the link itself may be the threat.[12] Simply clicking on a scam link could load malware onto phones that provides opportunities for theft of passwords, personally identifiable information, and other credentials, without consumer consent or knowledge.[13]

A. The Commission's Multi-Pronged Approach to Unwanted and Illegal Calls

7. Unwanted and illegal texts reach the same consumers and may even come from the same sources as unwanted and illegal calls. Our long-standing work on robocalls thus informs our new work on robotexts.

8. *Telephone Consumer Protection Act and National Do-Not-Call Registry*. The TCPA and the Commission's implementing rules require callers to obtain consumer consent for certain calls and texts sent using an automatic telephone dialing system (autodialer) or made using a prerecorded or artificial voice.[14] If a robocall or robotext includes or introduces an advertisement or constitutes telemarketing, the prior express consent must be in writing.[15] The Commission has clarified that

[8] Since 2003, the Commission has interpreted "call" in section 227(b)(1)(A) of the Communications Act of 1934, as amended (Act or Communications Act) to include both voice calls and text messages. This order distinguishes "calls" (voice) from "texts" for purposes of our blocking and other actions today even though they are both "calls" under the statute.

[9] Robokiller 2022 Report at 4. Robokiller observes that, in 2022, fraudsters sent 225.7 billion spam texts, a 157% increase from 2021's then-record 87.8 billion. *Id*. at 5. According to Robokiller, Americans received 78 billion robotexts in the first half of 2023, an increase of 18% from the first half of 2022. Robokiller 2023 Report at 4.

[10] *See, e.g.*, 2020 Consumer Sentinel Data Book at 12; 2021 Consumer Sentinel Data Book at 12; 2022 Consumer Sentinel Data Book at 12; Robokiller 2022 Report at 4; Robokiller 2023 Report at 4.

[11] *See, e.g.*, FTC, Consumer Advice, *How to Recognize and Avoid Phishing Scams,* https://consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams (last visited Nov. 3, 2023); AT&T, Cyber Aware, *Text Message Scams*, https://about.att.com/pages/cyberaware/ni/blog/text_scams (last visited Nov. 3, 2023); Verizon, Account Security, *Smishing and Spam Text Messages*, https://www.verizon.com/about/account-security/smishing-and-spam-text-messages (last visited Nov. 3, 2023).

[12] FTC, Consumer Advice, *How to Recognize and Avoid Phishing Scams,* https://consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams (last visited Nov. 3, 2023).

[13] FTC, Consumer Advice, *How to Recognize, Remove, and Avoid Malware*, https://consumer.ftc.gov/articles/how-recognize-remove-avoid-malware (last visited Nov. 6, 2023).

[14] 47 U.S.C § 227(b)(1)(A); 47 CFR § 64.1200(a)(1); *see also* 47 CFR § 64.1200(a)(9) (providing exemptions to (a)(1)(iii) and noting that "the term 'call' includes a text message, including a short message service (SMS) call"). This restriction applies to calls directed to wireless numbers, as well as to emergency numbers and other specified locations. For autodialed or prerecorded-voice telemarketing calls to wireless numbers, prior express consent must be written. *See* 47 CFR § 64.1200(a)(2); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1838, para. 20 (2012) (*2012 TCPA Order*). The seller bears the "burden of demonstrating that a clear and conspicuous disclosure was provided and that unambiguous consent was obtained." *2012 TCPA Order*, 27 FCC Rcd at 1844, para. 33. In the *Facebook v. Duguid* decision, the Supreme Court clarified that "a necessary feature of an autodialer under § 227(a)(1)(A) is the capacity to use a random or sequential number generator to either store or produce phone numbers to be called." *Facebook, Inc. v. Duguid*, 141 S.Ct. 1163, 1173 (2021) (*Facebook*).

[15] *See* 47 CFR § 64.1200(a)(2).

Internet-to-phone text messages, which are sent via the Internet to a provider and then routed to a consumer's phone over the provider's wireless network, are also covered by the TCPA.[16] The Commission's DNC rules protect consumers from unwanted telephone solicitations or telemarketing calls to wireless[17] and wireline phones when the consumer has added the number to the National DNC Registry.[18]

9. *Call Blocking, Robocall Mitigation, and Caller ID Authentication.* To better protect consumers from bad actors that do not comply with the restrictions under the TCPA and National DNC Registry or otherwise place illegal calls or texts, the Commission has taken further steps to combat illegal calls. This includes ensuring consumers have a say in which calls ring their phones, restoring faith in caller ID and making callers easier to identify, and holding voice service providers responsible for the calls they originate or transmit.

10. Of particular interest here, the Commission has authorized providers to block calls in certain instances,[19] adopted safe harbors to ensure that providers are not subject to liability for blocking within certain constraints,[20] and in some cases mandated blocking of certain categories of calls that are highly likely to be illegal.[21] These rules require certain voice service providers to block calls following notification of illegal traffic by the Commission and that providers immediately downstream block their traffic if they fail to do so.[22] And the Commission has adopted rules mandating that voice service providers respond to traceback requests[23] and requiring originating, terminating, and intermediate voice

---

[16] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, 30 FCC Rcd 7961, 8019-20, paras. 113-15 (2015) (*2015 TCPA Declaratory Ruling and Order*) (describing services that allow senders to initiate texts via the Internet rather than via an individual phone where those texts look functionally equivalent to the recipient).

[17] In the *2003 TCPA Order*, the Commission concluded that the National DNC Registry should allow for the registration of wireless telephone numbers, and that such action will better further the objectives of the TCPA and the Do-Not-Call Act. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14037-38, para. 33 (2003) (*2003 TCPA Order*).

[18] *2003 TCPA Order*, 18 FCC Rcd at 14033-39, 14116, paras. 25-36, 166; 47 CFR § 64.1200(c)(2), (e). The National DNC Registry currently protects over 249 million telephone numbers from telemarketing sales calls, or "telephone solicitations." *See* FTC, Reports, National Do Not Call Registry Data Book for Fiscal Year 2023, (Nov. 2023) https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2023 . The TCPA defines a "telephone solicitation" as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person" but not including calls or messages made with prior express invitation or permission, to any person with whom the caller has an established business relationship, or by a tax exempt nonprofit organization. 47 U.S.C. § 227(a)(4).

[19] *See* 47 CFR § 64.1200(k)(1), (2).

[20] *See* 47 CFR § 64.1200(k)(3), (4), (11).

[21] *See* 47 CFR § 64.1200(o).

[22] 47 CFR § 64.1200(n)(5), (n)(6).

[23] 47 CFR § 64.1200(n)(1). Traceback is the process of following the call path back to the point of origin. In the *Gateway Provider Order and Further Notice*, the Commission enhanced the existing traceback requirement to require gateway providers to respond to traceback requests within 24 hours. *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 19-59, Fifth Report and Order in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59 & Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, 37 FCC Rcd 6865, 6894-97, paras. 65-71 (2022) (*Gateway Provider Order and Further Notice*). In the *May 2023 Call Blocking Order*, we expanded that enhanced requirement to cover all domestic voice service providers. *Advanced Methods to Target and Eliminate Unlawful Robocalls*, *Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No . 17-97, paras. 21-28 (*May 2023 Call Blocking Order*).

service providers to implement the STIR/SHAKEN caller ID authentication framework in the IP portions of their networks.[24] Taken together, these requirements help identify bad actors—both callers and voice service providers—and stop these calls at their source.

11. *Enforcement*. The Commission has also taken enforcement action to protect consumers against illegal calls. For example, the *Sumco Forfeiture Order* found that certain robocall campaigns violated the TCPA for reasons including the telemarketers' failure to obtain prior express written consent before initiating telemarketing calls to wireless phones and residential lines.[25] And the Commission recently required all voice service providers immediately downstream from a specific gateway provider to block and cease accepting all traffic from that gateway provider after it repeatedly allowed transmission of illegal robocalls into the United States.[26]

B. Combating Unwanted and Illegal Texts

12. The Commission for the first time required providers to block certain texts that are highly likely to be illegal in March of 2023.[27] The Commission required providers to block—at the network level—texts purporting to be from North American Numbering Plan (NANP)[28] numbers on a reasonable

[24] *See Call Authentication Trust Anchor, Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3252, para. 24 (2020) (*First Caller ID Authentication Order*) (requiring originating and terminating providers to implement STIR/SHAKEN); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1876-97, paras. 36-73 (*Second Caller ID Authentication Order*) (providing implementation extensions to certain providers); *Gateway Provider Order and Further Notice*, 37 FCC Rcd at 6886-894, paras. 51-63 (requiring gateway providers, a subset of intermediate providers, to implement STIR/SHAKEN); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18 (Mar. 17, 2023) at paras. 15-27 (*2023 Caller ID Authentication Order*) (requiring non-gateway intermediate providers that receive unauthenticated calls directly from originating providers to authenticate calls with STIR/SHAKEN by December 31, 2023); 47 CFR §§ 64.6301, 64.6302, 64.6304. STIR/SHAKEN caller ID authentication helps confirm that the caller ID is not spoofed, or otherwise provides information regarding what the signing voice service provider knows to be true about the caller and its right to use the number. Protocols developed by the Secure Telephony Identity Revisited (STIR) working group of the Internet Engineering Task Force (IETF) work with the Signature-based Handling of Asserted information using toKENs (SHAKEN) implementation standards created by the Alliance for Telecommunications Industry Solutions (ATIS) and the SIP Forum. *See First Caller ID Authentication Order*, 35 FCC Rcd 3241, 3244-46, paras. 5-10.

[25] *Sumco Panama SA, et al* , EB File No. EB-TCD-21-00031913, Forfeiture Order, FCC 23-64, at 12-13, paras. 25-26 (Aug. 3, 2023) (*Sumco Forfeiture Order*).

[26] *One Eye LLC*, EB Docket No. 22-174, Final Determination Order, DA 23-389, at 1, 2-3, paras. 1, 5 (May 2023) (*One Eye*). More recently, the Enforcement Bureau issued an Initial Determination Order against One Owl Telecom for the apparent transmission of illegal traffic. *One Owl Telecom Inc.*, EB Docket No. 22-174, Initial Determination Order, DA 22-174 (Sept. 2023).

[27] *See generally Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 02-278, 21-402, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-21 (Mar. 17, 2023) (*Text Blocking Order and Further Notice*). Previously, the Commission's Enforcement Bureau had investigated instances of robotexting. *See, e.g.*, *Emanuel (Manny) Hernandez, Click Cash Marketing, LLC, and Rock Solid Traffic*, Citation and Order, Unauthorized Text Message Violations, 33 FCC Rcd 12382 (EB 2018) (*Hernandez*); Public Notice, FCC Enforcement Advisory, *Robotext Consumer Protection, Text Message Senders Must Comply With The Telephone Consumer Protection Act*, 31 FCC Rcd 12615 (EB 2016).

[28] The NANP is the basic numbering scheme for the telecommunications networks located in American Samoa, Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, Saint Maarten, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands). 47 CFR § 52.5(d).

Do-Not-Originate (DNO) list, which includes numbers that purport to be from invalid, unallocated, or unused numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked.[29] The Commission also took steps to ensure that any erroneous blocking can be quickly remedied, by requiring providers to maintain, or ensure that entities that block texts on their networks maintain, a point of contact for texters to report erroneously blocked texts.[30]

13. The Commission also proposed a number of rules and revisions to further address the issue of unwanted and illegal texts, including: requiring terminating providers to block texts from a sender after they are on notice from the Commission that the sender is sending illegal texts; codifying that the National DNC Registry's protections extend to text messages; and banning the practice of marketers purporting to have written consent for numerous parties to contact a consumer, based on one consent.[31]

III. SECOND REPORT AND ORDER

14. In this Second Report and Order, we take further steps to protect consumers from unwanted and illegal text messages and calls. First, we require terminating providers to block texts from a particular number following Commission notification of illegal texts. Second, we codify that the National DNC Registry protections apply to text messages. Third, we encourage providers to make email-to-text an opt-in service. Next, we close the lead generator loophole by requiring that texters and callers get written consumer consent for robocalls or robotexts from one seller at a time, and thus prohibit abuse of consumer consent by comparison shopping and other websites. Finally, we decline at this time to adopt specific text authentication requirements.

15. At the outset, we acknowledge the voluntary efforts providers have made to protect consumers from unwanted and illegal text messages, including blocking significant numbers of unwanted and illegal texts.[32] We believe those efforts have gone a long way to protect consumers. At the same time, the rapid increase in consumer losses resulting from scam texts makes clear that consumers need more protection. As the Joint Consumer Commenters observe, the numbers of text-borne scams and the direct losses to consumers resulting from them have escalated dramatically in recent years.[33]

A. Mandatory Blocking Following Commission Notification

16. We adopt, with some changes, our proposal[34] to require terminating providers to block all texts from a particular number or numbers when notified by the Enforcement Bureau of illegal texts from that number or numbers. Upon receipt of the notice, a provider must block all texts from the

[29] 47 CFR § 64.1200(p).

[30] 47 CFR § 64.1200(r).

[31] *Text Blocking Order and Further Notice*, at paras. 48-62.

[32] For example, CTIA has reported that, between 2015 and 2020, the number of provider-blocked spam text messages grew 10 times, from an estimated 1.4 billion in 2015 to 14 billion in 2020. CTIA Comments at 2. CTIA observes that, "[t]o further protect consumers and the integrity of the text messaging platform, the wireless industry leverages best practices along with filtering software, machine learning tools, and other analytics that help curb unwanted or unlawful text messages." CTIA, Messaging, *Protecting Consumers from Spam Messages*, https://www.ctia.org/homepage/messaging-channel (last visited Nov. 3, 2023).

[33] Joint Consumer Commenters at 2.

[34] *Text Blocking Order and Further Notice*, at paras. 50-53.

number(s) and respond to the Enforcement Bureau indicating that the provider has received the notice and is initiating blocking.[35]

17. We agree with commenters that support requiring terminating providers to block in these instances.[36] As one commenter noted, "[i]t is imperative that the Commission use every available tool to stop bad actors from sending texts to consumers that are illegal" and when a provider is on notice from the Commission it should block illegal texts.[37] A similar model has worked well in the call blocking context[38] and allows the Enforcement Bureau to take clear, decisive action to protect consumers.

18. We thus disagree with commenters that argue a blocking mandate is inappropriate because either providers already block texts or that the mandate may not otherwise significantly reduce the volume of illegal texts.[39] These commenters offer no specific or compelling evidence that providers consistently block all text traffic the Enforcement Bureau might identify as illegal.[40] Undisputed public data makes clear that unwanted and illegal texts are rising as is the financial loss that accompanies them.[41] If providers' voluntary efforts alone were enough to protect consumers, we would not see that trend. Thus, we believe that, just as with call blocking, a block-upon-notice requirement complements, rather than supplants, the work providers already do. The rule we adopt serves as an important backstop to ensure that consumers are protected against illegal texts.

19. Our experience with call blocking demonstrates that the Enforcement Bureau can act quickly and identify illegal traffic that providers have not blocked, and we see no reason to believe that it cannot do so here. We thus disagree with commenters who argue that the blocking process we adopt today may be slower, and thus less effective, than voluntary blocking measures by providers.[42] Nothing we require slows voluntary blocking – providers can (and we expect them to) continue to block and to improve their blocking going forward. Our new requirements instead will ensure they block texts their current blocking fails to capture, a necessary complement to their existing work. Providers that argue texters will have moved on to new numbers by the time the Enforcement Bureau identifies their texts

[35] We disagree with CTIA's assertion that requiring a provider to investigate prior to blocking would constitute "inappropriately delegating the Commission's investigatory responsibilities and determinations of lawfulness to wireless providers." Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278and 21-402, at 3 (filed Dec. 4, 2023) (CTIA Dec. 4 *ex parte*). However, we recognize that terminating providers "are not the 'choke point' for the suspect illegal traffic," that requiring terminating providers to investigate may in some cases impose a significant burden, and that it may lead to differing approaches for different providers. *Id.* at 4. We therefore do not require a provider to investigate before initiating blocking. We do, however, require providers to respond to the Enforcement Bureau's notice unless the Enforcement Bureau expressly exempts providers from that requirement in a particular situation. That could be as simple as an acknowledgement of receipt and indication that the provider will initiate blocking.

[36] *See, e.g.*, ECAC Comments at 2-3; Bankers Joint Commenters Reply at 9; State Attorneys General Reply at 19-20; VON Comments at 3-4 (supporting requiring blocking but also urging the Commission to add a traceback component and ensure that traffic is illegal before requiring blocking).

[37] Bankers Joint Commenters Reply at 9.

[38] *See, e.g., One Eye*.

[39] *See, e.g.*, CTIA Comments at 7-8 & Reply at 5; M^{3}AAWG Comments at 4; T-Mobile Reply at 2-5; Twilio Reply at 3-7; Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, at 1-2 (July 25, 2023) (CTIA July 25 *ex parte*).

[40] *See, e.g.* CTIA Comments at 7-8 & Reply at 5; T-Mobile Reply at 2-5; Twilio Reply at 7.

[41] *See, e.g.*, 2020 Consumer Sentinel Data Book at 12; 2021 Consumer Sentinel Data Book at 12; 2022 Consumer Sentinel Data Book at 12; Robokiller 2022 Report at 4; Robokiller 2023 Report at 4.

[42] *See, e.g.*, M^{3}AAWG Comments at 4; NetNumber Comments at 2-6; T-Mobile Reply at 3-4.

point to no specific evidence to that effect. Indeed, we believe that some texters undoubtedly use numbers until their texts no longer reach recipients at all. And, as detailed further below, we disagree with the comment that our requirements would unduly increase costs.[43] We believe that providers are already familiar with the similar call blocking requirements and extending those to texting should not represent a material additional burden.

20. We adapt the call blocking rule to text blocking to recognize important differences. First, we agree with commenters that there may not be a provider directly analogous to a gateway voice service provider in texting.[44] We therefore we require only terminating mobile wireless providers to block. Second, we do not require text blockers to also block traffic "substantially similar" to the traffic the Enforcement Bureau identifies to avoid blocking based on analytics that could lead to over blocking.[45] Texters that run afoul of this rule and find all texts from a particular number blocked can obtain a new number and, as long as they do not then use that number to send illegal texts, will not be blocked under this rule. This approach addresses record concerns about liability for blocking incorrectly, as well as potential burdens if we adopted a more expansive rule.[46] We also believe blocking based on a specific number or numbers identified by the Enforcement Bureau will be competitively neutral.[47] Additionally, we modify the process the Enforcement Bureau must follow, including not requiring an Initial Determination Order or Final Determination Order. These steps are unnecessary, because there is no requirement for downstream providers to block, and in fact no downstream providers at all, so a provider does not lose access to the network if it fails to comply.

21. *Notification of Illegal Texts*. Under our new rules, the Enforcement Bureau may notify terminating providers of illegal texts from a number or numbers. The Notification of Illegal Texts shall: (1) identify the number(s) used to originate the illegal texts and the date(s) the texts were sent or received; (2) provide the basis for the Enforcement Bureau's determination that the identified texts are unlawful;[48] (3) cite the statutory or regulatory provisions the illegal texts violate; (4) direct the provider receiving the notice that it must comply with section 64.1200(s) of the Commission's rules; and (5) provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Notification of Illegal Texts shall specify a reasonable time frame for the notified provider to respond to the Enforcement Bureau and initiate blocking.[49] The Enforcement Bureau shall publish the Notification of Illegal Texts in EB Docket No. 23-418.

---

[43] CCA Comments at 2-3.

[44] *See, e.g.*, CTIA Comments at 10.

[45] *See, e.g.*, ECAC Comments at 4 (The common use of content analysis in text message blocking means that there is more opportunity and risk for overly broad interpretations of "substantially similar traffic."); CTIA Reply at 13 ("A bright-line rule requiring mandatory blocking based on the content of certain text messages (e.g., URLs) would only increase the incidences of blocking legitimate text messages.").

[46] CCA Comments at 2-3.

[47] *See, e.g.*, INCOMPAS Comments at 5; VON Comments at 3-4.

[48] The Notification should include any relevant nonconfidential evidence from credible sources.

[49] In our call blocking rules, we require the Enforcement Bureau to specify a timeframe of no fewer than 14 days for a notified gateway provider to complete its investigation and report its results. 47 CFR § 64.1200(n)(5)(i)(A). Here, however, we allow the Enforcement Bureau discretion to select a different response time, as providers are not required to investigate and the consequences of a terminating mobile wireless provider failing to comply with the deadline are less significant than in call blocking, where the ultimate consequence of a gateway provider failing to comply with our blocking rule is that immediate downstream providers will block all of the provider's traffic. *See id*. § 64.1200(n)(6). We note that the Enforcement Bureau will need to be able demonstrate that whatever timeframe it establishes, if shorter than 14 days, is reasonable.

22. *Responses to a Notification of Illegal Texts*. Upon receiving such notice, the provider must promptly begin blocking all texts from the identified number(s) within the timeframe specified in the Notification of Illegal Texts. The provider must respond to the Enforcement Bureau, including a certification that it is blocking texts from the identified number(s).

23. If the provider learns that some or all of the numbers have been reassigned, the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates the number has been reassigned.[50] If, at any time in the future, the provider determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. In such instances, we encourage providers to continue to use other available methods to protect their customers. Providers are not required to monitor whether any numbers subject to this blocking requirement have been reassigned, but are required to notify the Commission and cease blocking if the provider learns of a number reassignment. We encourage providers that are able to monitor for number reassignments to do so.[51]

24. We do not adopt any additional protections in case of erroneous blocking, but any individual or entity that believes its texts are being blocked under this rule in error can make use of the point of contact required under section 64.1200(r) of the Commission's rules.[52] If the provider determines that blocking should cease, it should notify the Enforcement Bureau of that finding, including any evidence that supports that finding.

25. This rule shall be effective 180 days after publication of this Order in the Federal Register, to allow providers additional time to ensure that they are prepared to comply. However, we disagree that this rule requires Paperwork Reduction Act (PRA) approval[53] as it falls under the exception for collections undertaken "during the conduct of . . . an administrative action or investigation involving an agency against specific individuals or entities."[54]

B. National Do-Not-Call Registry

26. We adopt our proposal to codify the National DNC[55] Registry's existing protections to text messages.[56] Texters must have the consumer's prior express invitation or permission before sending a marketing text to a wireless number in the DNC Registry. The Commission previously concluded that

[50] We strongly encourage providers to make an effort to determine whether a number has been reassigned in order to avoid blocking lawful texts from a different source. The Reassigned Numbers Database (RND) should be a useful tool for accomplishing this, and we are adopting a waiver to permit such use of the RND. *See infra* paras. 100-103.

[51] CTIA argued that requiring "providers to constantly monitor" the RND would impose an "unnecessary burden" and that we therefore did not account "for the significant and substantial burdens and costs of this obligation on wireless providers." CTIA Dec. 4 *ex parte* at 5-6. We clarify that monitoring the RND or any other source for number reassignments is not required and, instead, is a voluntary step that providers may take to help more quickly remedy issues where a number has been reassigned. We believe that some providers may wish to take this step, and may already have contracts with the RND for their own telemarking divisions, to better protect their customers. We do, however, require a provider that learns that a number has been reassigned to notify the Commission, so that the Commission can inform other providers that may also be required to block.

[52] 47 CFR § 64.1200(r).

[53] Letter from Alexandra Mays, Assistant General Counsel & Director, Regulatory Affairs, CCA, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402 (filed Dec. 6, 2023) (CCA Dec. 6 *ex parte*); CTIA Dec. 4 *ex parte* at 8-9.

[54] 44 USC § 3518(c)(1)(B)(ii); *see also 5* CFR § 1320.4(a)(2).

[55] The Commission stated in the *2003 TCPA Order* that "wireless subscribers may participate in the national do-not-call list" and "we will presume wireless subscribers who ask to be put on the national do-not-call list to be 'residential subscribers'" for purposes of our DNC rules. *2003 TCPA Order*, 18 FCC Rcd at 14039, para. 36.

[56] *Text Blocking Order and Further Notice* at paras. 55-57.

the national database should allow for the registration of wireless telephone numbers and that such action will further the objectives of the TCPA and the Do-Not-Call Act.[57] Our action is consistent with federal court opinions[58] and will deter both illegal texts and make DNC enforcement easier.

27. Commenters generally support this step.[59] As the Joint Consumer Commenters observe, section 64.1200(e) of the Commission's rules explicitly applies its DNC regulations to wireless telephone numbers and it would be anomalous to conclude that text messages to wireless numbers are "calls" for one part of the Commission's TCPA rules but not for the DNC protections.[60]

28. We disagree with a commenter that our proposal could undermine basic security protections because third-party, two-factor authentication providers could be prohibited from contacting end users whose numbers are on the National DNC Registry.[61] Two-factor authentication providers can simply avoid including solicitation or telemarketing in their texts. Such parties have other ways to contact their customers who may be on the DNC registry, such as obtaining their written consent for a text or call, or through email.

C. Email-to-Text Messages

29. We encourage providers to make email-to-text an opt-in service as a way to reduce the number of fraudulent text messages consumers receive.[62] We do so in response to several commenters that observe texts originating from email addresses, rather than telephone numbers, account for a significant percentage of fraudulent text messages.[63] For example, ZipDX states that email-to-text gateways enable anyone to send a text message to a mobile subscriber in relative anonymity.[64] Commenters state that the email-to-text messages process allows the sender to be anonymous because the text is sent from an email account on a computer, not a phone number.[65] Commenters also observe

[57] *2003 TCPA Order*, 18 FCC Rcd at 14037-38, para. 33. In the *2003 TCPA Order*, the Commission, pursuant to section 227(c) of the Communications Act, adopted a national do-not-call registry, maintained by the FTC, to provide residential consumers with a one-step option to prohibit unwanted telephone solicitations. *2003 TCPA Order*, 18 FCC Rcd at 14034-35, para. 28.

[58] *See, e.g., Barton v. Temescal Wellness, LLC*, 525 F. Supp.3d 195 (D. Mass. 2021) (*Barton*); *Sagar v. Kelly Auto. Group, Inc*., No. 21-cv-10540-PBS, 2021 WL 5567408 (D. Mass. Nov. 29, 2021) (*Sagar*); *Hall v. Smosh Dot Com, Inc*., 72 F.4th 983, 986 (9th Cir. 2023) (*Hall*).

[59] *See, e.g*., State Attorneys General Reply at 21 (stating that this is a common-sense approach to eliminate any potential confusion in the industry and has the added benefit of providing protection to consumers regardless of whether the texting party utilizes an autodialer); Joint Consumer Commenters at 13-15; M^{3}AAWG Comments at 4; CCA Comments at 5; Dobronski Comments at 9; Subbaiah Comments at 1; Shields Reply at 1-3.

[60] Joint Consumer Commenters at 13-15.

[61] INCOMPAS Comments at 6.

[62] The Commission previously concluded that the equipment used to originate Internet-to-phone text messages to wireless numbers via email or via a wireless carrier's web portal is an "automatic telephone dialing system" as defined in the TCPA, and therefore calls made using the equipment require consent. *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8017-8022, paras. 111-122.

[63] ZipDX Comments at 2; Somos Reply at 5; Bankers Joint Commenters Reply at 8.

[64] ZipDX Comments at 2.

[65] ZipDX Comments at 2; Somos Reply at 5 (brand impersonation scams are increasingly widespread form of text scam).

a spike in text impersonation scams originating from email-to-text gateways.[66] Below we seek comment on requiring providers to make this service opt-in.

D. Closing the Lead Generator Loophole

30. We now make it unequivocally clear that texters and callers must obtain a consumer's prior express written consent to robocall or robotext the consumer soliciting their business. We also make it unequivocally clear that this requirement applies a single seller at a time, on the comparison shopping websites that often are the source of lead generation, thus closing the lead generator loophole.[67] Lead-generated communications are a large percentage of unwanted calls and texts and often rely on flimsy claims of consent to bombard consumers with unwanted robocalls and robotexts.[68] While many comparison shopping websites that involve lead generation (i.e., websites that generate a consumer "lead" for a seller) benefit consumers by enabling them to quickly compare goods and services and discover new sellers,[69] the record is clear that new protections are necessary to stop abuse of our established consent requirements.[70] We also require that the consent must be in response to a clear and

[66] Somos Reply at 5; Bankers Joint Commenters Reply at 8 (observing that bad actors are distributing large volumes of SMS phishing messages from email addresses (which convert the e-mail message to an SMS text message).

[67] The TCPA generally requires callers to get consumer consent before making certain calls to consumers using an "automatic telephone dialing system" (also known as an "autodialer") or an artificial or prerecorded voice. 47 U.S.C. § 227(b)(1)(A). Since 2003, the Commission has applied the consent requirement to text messages using an autodialer and "made to a telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged." *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165. This encompasses both voice calls and text calls to wireless numbers including, for example, SMS calls, provided the call is made to a telephone number assigned to such service. *Id*. In the Further Notice of Proposed Rulemaking, we sought comment on a proposal that for TCPA consent "prior express written consent to receive calls or texts must be made directly to one entity at a time." *Text Blocking Order and Further Notice* at para. 61. IMC contends that we do not have statutory authority to adopt or revise the definition of prior express written consent. Letter from Insurance Marketing Coalition to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, at 5-7 (Dec. 6, 2023) (IMC Dec. 6 *ex parte*). We disagree and note that the Commission adopted a definition of prior express written consent in the *2012 TCPA Order*. *2012 TCPA Order*, 27 FCC Rcd at 1838-1844, paras. 20-34 (requiring prior express written consent for telemarketing robocalls to wireless numbers and residential lines).

[68] USTelecom Comments at 2.

[69] *See* Federal Trade Commission, Follow The Lead: An FTC Workshop On Lead Generation (Oct. 30, 2015) at 5 (available at https://www.ftc.gov/system/files/documents/videos/follow-lead-ftc-workshop-lead-generation-part-1/lgw-transcript-pt1.pdf) (noting that lead generation is a well-established industry that offers benefits to both consumers and advertisers). *But see also* Federal Trade Commission, "Follow the Lead" Workshop, a Staff Perspective (Sept. 2016) (available at https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff_perspective_follow_the_lead_workshop.pdf) (observing that consumers who fill out web forms may not realize they are operated by lead generators, i.e., not merchants, or may not know that this information can be sold and re-sold multiple times). Commenters contend that that comparison shopping saves consumers money. *See, e.g.*, Letter from United States Senators Thom Tillis and Marsha Blackburn, to Jessica Rosenworcel, Chairwoman, FCC, at 1 (Dec. 6, 2023) (Dec. 6 Congressional); Letter from Steven A. Augustino, Counsel to LendingTree, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, Attach. at 3 (Dec. 6, 2023) (LendingTree Dec. 6 *ex parte*). There is no evidence that unequivocally requiring one-to-one consent would reduce this benefit to consumers. IMC contends that each year millions of satisfied consumers provide prior express consent to comparison shopping sites and are satisfied with the calls they receive and thus do not file complaints with regulators. IMC Dec. 6 *ex parte* at 2. This, of course, does not rebut arguments in the record that consent abuse by comparison shopping websites harms consumers.

[70] Several commenters describe such abuses, *see, e.g.*, Connors Comments at 1 (discussing Coverage Vista, https://www.coverage-vista.com/, with a list of hundreds of "partners" in a hyperlink (https://coverage-vista.com/disclaimer.php) that the consumer would "consent" to by asking for insurance information from the

(continued….)

conspicuous disclosure to the consumer and that the content of the ensuing robotexts and robocalls must be logically and topically associated with the website where the consumer gave consent.[71]

31. *One-to-One Consent*. As an initial matter, we agree with the several commenters, including consumer groups, State Attorneys General, and members of Congress that we must take action to close the lead generator loophole and stop consent abuse by unscrupulous robotexters and robocallers.[72] We agree with the Joint Consumer Commenters, who argue that the "resale of consumer data by lead generators and lead aggregators significantly contributes to the problem of illegal calls."[73] We agree with commenters that requiring one-to-one consent obtained with a clear and conspicuous disclosure to the consumer is the way to close this loophole.[74] Unequivocally requiring one-to-one

Coverage Vista insurance site); USTelecom Comments at 4 (USTelecom also notes that this was discussed in the *Sumco NAL* at paras. 45-48); Joint Consumer Commenters at 4 & Reply at 8; Presley Comments at 1; Dobronski Comments at 3; Shields Reply at 3-5 (observing that the LendingTree partner list contains marketer EverQuote which has more than 2247 partners on its own list of partners; similarly, the QuoteWizard list also contains companies that have nothing to do with insurance such as auto warranty companies, lead generators, and marketers); Keller Reply at 1-3; Douglas Reply at 1; State Attorneys General Reply at 2-4 (describing the Assurance IQ list of over 2000 "partner companies," some of which were other lead generation and telemarketing companies). For a description of the chain of lead generators and telemarketers associated with QuoteWizard, *see Mantha v. QuoteWizard.com, LLC*, No. 19-12235-LTS, 2022 WL 325722 (D. Mass. Feb. 3, 2022) (*Mantha*) at *10 (QuoteWizard alleged that it obtained consent when the plaintiff visited the Snappy Auto website operated by Fenix Media, and the lead was sold by Fenix Media to Plural, then to RevPoint, and then to QuoteWizard; however, the IP addresses associated with such consent did not belong to the plaintiff and the "lead identification" number for the consent was not associated with the plaintiff or with Snappy Auto.).

[71] Under our existing rules, prior express written consent under the TCPA means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. 47 CFR § 64.1200(f)(9). A similar rule, to obtain prior express invitation or permission for a telemarketing call to a DNC line, the caller must meet the requirements of section 64.1200(c)(2)(ii) of the Commission's rules: "Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed." We did not seek comment on, and we are not revising, section 64.1200(c)(2)(ii). We disagree with the assertion made by IMC that requiring one-to-one consent is a content-based restriction on speech subject to strict scrutiny. IMC Dec. 6 *ex parte* at 7-9. On the contrary, the rule we adopt here (and the requirements of section 64.1200(c)(2)(ii), which we are not revising) are clear that consent must be between the consumer and seller; we are making it unequivocal that such consent for TCPA purposes must be one-to-one between the consumer and seller. This is also consistent with the FTC's Telemarketing Sales Rule which requires one-to-one consent. Requiring that a consumer consent to be contacted by each seller (if applicable) is not a content-based restriction on IMC's speech, but a logical and consistent measure of consumer protection.

[72] *See, e.g.*, Joint Consumer Commenters at 2; USTelecom Comments at 2; State Attorneys General Reply at 5;; Letter from Alexander H. Burke, Burke Law Offices, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402 (Dec 5, 2023) (Burke Dec. 5 *ex parte*); Letter from United States Senators Ben Ray Luján, Edward J. Markey, Peter Welch, Chris Van Hollen, Elizabeth Warren, Angus S. King, Jr., Richard J. Durbin, Martin Heinrich, Mark R. Warren, Gary C. Peters, Ron Wyden, Amy Klobuchar, to Jessica Rosenworcel, Chairwoman, FCC, at 1 (Aug. 7, 2023) (Aug. 7 Congressional).

[73] Joint Consumer Commenters Reply at 10, (citing Shields Comments at 4; Connors Comments at 1; Presley Comments at 2). *See also* USTelecom Comments at 2-3.

[74] *See, e.g.*, USTelecom Comments at 3; State Attorneys General Reply at 13; Presley Comments at 2; Dobronski Comments at 9-10; Subbaiah Comments at 1; Joint Consumer Commenters at 15-17. The Joint Consumer Commenters state that, instead of revising the TCPA consent rule, the Commission should affirm the single-seller interpretation of section 64.1200(f)(9) and take enforcement action against telemarketers making use of illegitimately obtained consumer "consent." Joint Consumer Commenters at 15. *See also* Aug. 7 Congressional at 1 (continued….)

consent will end the current practice of consumers receiving robocalls and robotexts from tens, or hundreds, of sellers—numbers that most reasonable consumers would not expect to receive.[75]

32. Our requirement stops the practice of buried, barely visible disclosures that, as USTelecom explains, appear in fine print on a website or only accessible through a hyperlink, burdening the consumer with yet another step to be fully informed.[76] This requirement ensures that consumers consent only to sellers they wish to hear from[77] and will stop the abuses we saw, for example, in *Urth Access*, where the websites at issue included TCPA consent disclosures whereby the consumer "consented" to receive robocalls from "marketing partners."[78] Those "marketing partners" were only visible to the consumer if the consumer clicked on a specific hyperlink to a second website that contained the names of 5,329 entities.[79] With this requirement we make it clear that sharing lead information with a daisy-chain of "partners" is not permitted. Our action is also consistent with the FTC's Telemarketing Sales Rule (TSR), which some commenters observe requires one-to-one consent.[80] As the State Attorneys General argue, it is not necessary to require a consumer to agree to

("Both the [DNC and the TCPA rules] clearly set out the types of protections intended by Congress to eliminate unwanted telemarketing calls. Both of these regulations allow robocalls *only if* the call recipients sign a written agreement relating to calls from a *single seller*."). Instead, we find that the rule we adopt here will make it unequivocally clear that texters and callers must obtain a consumer's prior express written consent for calls or texts from a single seller at a time.

[75] Zillow contends that its process for connecting an agent to a prospective customer could be problematic under our revision to prior express written consent under the TCPA because Zillow would not have the name of the agent until after the customer consents to be so contacted. Letter from Luke Bell, Director, Government Relations, Zillow Group, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 1-3 (Dec. 8, 2023) (Zillow Dec. 8 *ex parte*). However, based on Zillow's description of the contact between the agent and the customer, it appears to be a live call (where Zillow adds the agent to the call), and not autodialed, or using a prerecorded or artificial voice, and therefore a process appropriate under the TCPA prior to and after the subsequent changes to the regulations contained in this Order, and thus our rule change would not be relevant to that interaction.

[76] USTelecom Comments at 2. *See also* State Attorneys General Reply at 5 (explaining how telemarketers typically collect consent forms and then sell the consumers' data to intermediaries that then compile and sell the data to other telemarketers); Presley Comments at 1 (observing that the lead generation industry is in the business of selling leads, not selling goods or services to consumers).

[77] Joint Consumer Commenters at 21. In addition, as commenters observe, allowing consent to multiple sellers at a time may make revocation of consent to multiple sellers difficult. Joint Consumer Commenters at 18-19; State Attorneys General Reply at 12-13. A called party may revoke consent at any time and through any reasonable means. A caller may not limit the manner in which revocation may occur. *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7989-90, para. 47. Consent is granted from a consumer to a seller to be contacted at a particular wireless phone number or residential line. *2012 TCPA Order*, 27 FCC Rcd at 1838, para. 20. Revocation of consent is instruction that the caller no longer contact the consumer at that number. We also disagree with the contention that if a consumer revokes consent for autodialed text messages from a seller on one text messaging chain, the seller can continue to send that consumer texts or calls through a different program or chain. RILA Reply at 15. The Commission has never bifurcated consent in such a manner and does not endorse it here.

[78] *Urth Access, LLC*, EB File No. EB-TCD-22-00034232, Order, DA 22-1271 (Dec. 8, 2022) (*Urth Access*). Similarly, in the *Avid Telecom Notice*, the Enforcement Bureau observed that two of Avid's websites were devoid of any language stating that the consumer was agreeing to receive telemarking calls and, to the extent the callers are disclosed elsewhere through a hyperlink, such disclosures would be insufficient to establish consent. Letter from Loyaan Egal, Chief, Enforcement Bureau, FCC, to Michael Lansky, Chief Executive Officer, Avid Telecom (June 7, 2023) (*Avid Telecom Notice*), available at https://www.fcc.gov/document/fcc-orders-avid-telecom-cease-and-desist-robocalls (last visited Nov. 3, 2023).

[79] *Urth Access* at para. 16.

[80] *See, e.g.*, Joint Consumer Commenters at 22 (citing the FTC Business Guidance); State Attorneys General Reply at 10-11; Burke Dec. 5 *ex parte* at 2 (contending that the best way to provide true clarity to industry groups and (continued….)

receive robocalls or robotexts from multiple, potentially hundreds, of other callers in order for them to access the services of comparison-shopping website.[81] We believe that adopting the revised rule is the best way to make unequivocally clear that one-to-one consent is required under the TCPA and to stop large numbers of robocalls and robotexts from many different entities based on a single grant of consumer consent.[82]

33. Grounded in our authority under the TCPA, our rule requires consent to one seller at a time. Comparison shopping websites can provide additional information about sellers or a list of sellers that a consumer can affirmatively select in order to be contacted. In adopting our requirement, we reject the proposal to permit consent to a hyperlinked list of sellers, effective for a limited number of sellers to whom the consumer is matched only after already having provided consent to robocall and robotext.[83] We find that this proposal would unnecessarily require consumers to consent to a potentially lengthy list of entities that may not be relevant to the product or service the consumer is seeking. The commenters advocating for this proposal have not explained why they could not implement one-to-one consent for each seller.[84] In other words, such commenters failed to articulate why, under their current lead generation processes, a consumer should be deprived of the opportunity to consent to robocalls and robotexts after the "match" between consumer and seller is made.

34. We do not prescribe the number of sellers that a comparison shopping website can list for purposes of the prior express written consent rule.[85] We believe that this is an important business

---

consumers is to conform the Commission's rules to the FTC's one-to-one seller-to consumer consent rule); LendingTree, however, disagrees and observes that under the FTC rule, calls or texts delivered using an autodialer are not subject to the same requirement. Letter from Steven A. Augustino, counsel for LendingTree, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, (Dec. 6, 2023) (LendingTree Dec. 6 *ex parte* Burke Response). *See also* Federal Register, Vol. 73, No. 169, 51164, 51182 (Aug. 29, 2008); FTC, Business Guidance, "Complying with the Telecommunications Sales Rule," https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#writtenagreement (last visited Oct. 18, 2023).

[81] State Attorneys General Reply at 17. IMC contends that a lengthy hyperlinked list does not necessarily mean that the consumer will get called by all the sellers on the list. IMC Dec. 6 *ex parte* at 4. However, the record has evidence of unrelated companies, including other lead generators, on such hyperlinked lists. *See, e.g.*, State Attorneys General Reply at 2-4 (describing the Assurance IQ list of over 2,000 "partner companies," some of which were other lead generation and telemarketing companies).

[82] *See, e.g.*, Joint Consumer Commenters at 15-16; USTelecom Comments at 5; State Attorneys General Reply at 7. Commenters also suggest that the Commission issue guidance restating the rules regarding telemarketing calls. Aug. 7 Congressional. These commenters also request that we issue guidance on the requirements of the federal E-Sign Act. *Id.* That topic, however, is outside the scope of this rulemaking.

[83] LendingTree Comments at 3 (contending that comparison-shopping providers should be permitted to disclose the specific companies to whom the consumer's consent extends after the comparison-shopping service has matched the consumer to potential providers); LendingTree Dec. 6 *ex parte*, attach. At 10; QuinStreet Nov. 30 *ex parte* at A-1 (suggesting that we amend the definition of prior express written consent to specify that if a hyperlink is used to identify potentially matched sellers, then consent will apply only to those entities identified in a "match notice" subsequently transmitted to the consumer).

[84] *See, e.g.*, Letter from Steven A. Augustino, counsel for LendingTree, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, (Nov. 30, 2023) (LendingTree Nov. 30 *ex parte*) (contending that it undermines the premise of the comparison shopping platform to require the consumer to give consent multiple times in order to engage in the comparison); IMC Dec. 6 *ex parte* at 3-4. As ZipDX observes, after the specific matches are displayed, the consumer could review the matches and grant consent individually to each seller from which it wished to hear. Email from David Frankel, ZipDX, to FCC, CG Docket Nos. 02-278 and 21-402, (Dec. 3, 2023) (ZipDX Dec. 3 *ex parte*).

[85] *See, e.g.*, NAMIC Comments at 4 (proposing no more than 10); AAAB Comments at 1 (specify the maximum number); SEIA Comments at 3 (proposing three); Chandler Comments at 2 (proposing five); LendingTree Dec. 6 *ex* (continued….)

decision that belongs to those websites and other lead generators and would not close the lead generator loophole. We do not believe that it would provide consumers with sufficient control over which parties they consent to receive robocalls or robotexts from, and would still deprive consumers of the ability to grant consent only to those sellers from which they wish to receive robocalls or robotexts. Consumers would be forced to consent to all callers on the list without the ability to limit that list for purposes of their comparison shopping. Further, this alternative would not prevent the daisy-chaining of consents whereby a seller on the initial list would then resell or otherwise share their consent to another lead buyer and so on potentially hundreds of times.[86] If the comparison shopping website seeks to obtain prior express written consent from multiple sellers, the webpage must obtain prior express written consent separately for each seller.[87] In addition, other sellers can be included on the web page for reasons other than obtaining consent, e.g., for contact that does not require TCPA prior express written consent, or with information allowing the consumer to contact the seller directly.[88] These commenters have not offered any data on why the number of sellers they suggest is better than a different number of sellers.

35. *Clear and Conspicuous Disclosure and Logically and Topically Related.* We adopt two additional protections to further guard against consent abuse and protect consumers from unwanted robocalls and robotexts. First, the one-to-one consent must come after a clear and conspicuous disclosure to the consenting consumer that they will get robotexts and/or robocalls from the seller. "Clear and conspicuous" means notice that would be apparent to a reasonable consumer.[89] In addition,

parte, attach. at 10 (proposing five). We also do not adopt the proposal to add to the definition of consent the types or categories of property, goods, or services about which the person agrees to be called, the total number of callers that may call the person, or the maximum time period(s) in which such callers may call the person. IMC Comments at 3; IMC Dec. 6 *ex parte* at 1-2 & n.4. We also decline to limit how many times one seller can call a consumer, as the issue is outside the scope of this proceeding. Drip Comments at 3-4 (proposing five calls in 24 hours).

[86] Joint Consumer Commenters Reply (citing REACH Comments at 3, where REACH explained that the lead generator industry works to facilitate telemarketing robocalls in that "once the consumer has submitted the consent form the company seeks to profit by reselling the "lead" multiple—perhaps hundreds—of times over a limitless period of time.); Shields Reply at 3-5 (observing that the LendingTree partner list contains marketer EverQuote which has more than 2247 partners on its own list of partners).

[87] *See infra* para. 41, (noting that "the website may offer a consumer a check box list that allows the consumer to choose each individual caller that they wish to hear from").

[88] Our rules also require that the written consent agreement "include a clear and conspicuous disclosure" providing certain information to the person signing, 47 CFR § 64.1200(f)(9), an additional requirement website publishers must follow.

[89] 47 CFR § 64.2401(e). We use the same definition for junk fax opt-out notice requirements. *See Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, CG Docket 02-278, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3801, para. 26 (2006) (Consistent with the definition in our truth-in-billing rules, "clear and conspicuous" for purposes of the opt-out notice means a notice that would be apparent to a reasonable consumer.).

if compliance with the federal Electronic Signatures in Global and National Commerce Act (the E-Sign Act)[90] is required for the consumer's signature, then all the elements of E-Sign must be present.[91]

36. Second, we adopt our proposal that robotexts and robocalls that result from consumer consent obtained on comparison shopping websites must be logically and topically related to that website.[92] Thus, for example, a consumer giving consent on a car loan comparison shopping website does not consent to get robotexts or robocalls about loan consolidation.[93] We therefore agree with commenters who argue that consumers deserve protection against calls that go beyond the scope of consent, a scope that can be reasonably inferred from the purpose of the website at which they gave that consent.[94] We believe that texters and callers are capable of implementing this standard and, when in doubt, will err on the side of limiting that content to what consumers would clearly expect. As a result, we decline to adopt a definition of "logically and topically" at this time as some commenters suggest.[95]

37. *Preserving Comparison Shopping and Protecting the Needs of Small Businesses.* The rule we adopt today best balances the desire of businesses to utilize lead generation services to call and text potential customers with the need to protect consumers, including small businesses, from a deluge of unwanted robocalls and robotexts. We recognize the value that comparison shopping offers to consumers who seek specific goods and services, and the value that lead generators offer to businesses, including small businesses, seeking new customers.[96]

38. We understand the concerns of commenters like SBA's Office of Advocacy who note that certain small businesses rely on purchasing sales leads from lead generators and who share their "unease" with our rule.[97] Taking that concern into consideration, we make clear that the rule we adopt today only limits sellers, of any size, from robocalling or robotexting consumers who did not explicitly

---

[90] Pub. L. No. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. §§ 7001-7006). The E-Sign Act establishes rules for satisfying a requirement for a writing or a signature with their electronic equivalents. Joint Consumer Commenters Reply at 5-7 (observing that the rules of the federal E-Sign Act apply whenever agreements consenting to telemarketing calls are entered into online); Aug. 7 Congressional at 1 ("Although telemarketers routinely ignore the requirements of the E-Sign Act, the legislation's mandate for E-Sign consent before writings can be provided in electronic records in 15 U.S.C. § 7001(c) is fully applicable.").

[91] *See, e.g.*, Joint Consumer Commenters at 31-32 & Reply at 5-7; State Attorneys General Reply at 14-15. In the *2012 TCPA Order*, the Commission concluded that consent obtained in compliance with the E-Sign Act will satisfy the requirements of our rule, including permission obtained via an email, web site website form, text message, telephone keypress, or voice recording. *2012 TCPA Order*, 27 FCC Rcd at 1844, para. 34. Although we are amending our prior express written consent TCPA rule here, we continue to find that compliance with the federal E-Sign Act will satisfy the requirements of our revised rule.

[92] *Text Blocking Order and Further Notice* at para. 61.

[93] Thus, we disagree with IMC's contention that on a loan comparison website a consumer can be solicited about loan consolidation. IMC Dec. 6 *ex parte* at 2-3.

[94] *See, e.g.*, USTelecom Comments at 5; VON Comments at 7-8; Chandler Comments at 1; QuinStreet Comments at 7; Letter from Lucas Bell, Director, Government Relations, Zillow Group, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, (Oct. 27, 2023) at 3 (Zillow Oct. 27 *ex parte*).

[95] *See, e.g.*, UHC Comments at 4; PACE Comments at 5; Bankers Joint Commenters Reply at 13-16.

[96] *See, e.g.*, OLA Comments at 3 (observing that small-dollar lead generators often connect underserved consumers with credit providers willing to quickly help solve the needs of the credit challenged); REACH Comments at 4 (lead generators can be "an engine that drives a huge number of small and independent companies that do not have their own robust marketing team"); Dec. 6 Congressional at 2 ("Comparison shopping … allows smaller businesses to compete on a level field against larger entities.").

[97] Letter from Major L. Clark III and Jamie Belcore Saloom, Small Business Administration Office of Advocacy, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, at 1-2 (Dec 1, 2023) (SBA Dec. 1 *ex parte*).

consent to receive such communications from a particular seller. As the Joint Consumer Commenters point out, "[l]ead generators can still…conduct business as they are currently with minimal changes: they can collect and share leads to consumers interested in products and services, they just will not be able to collect and share the consents for telemarketing calls that included an artificial or prerecorded voice or made with an automatic dialer."[98] Moreover, sellers that wish to use robocalls and robotexts for such communications may still do so—provided they obtain consent consistent with the reasonable limits codified in today's rule.

39. Our rule does not restrain comparison shopping, nor does it unnecessarily constrain a businesses' ability to rely on leads purchased from lead generators.[99] For example, consumers may reach out to multiple businesses themselves or ask to be contacted only by businesses through means other than robocalling and robotexting. Further, sellers may avail themselves of other options for providing comparison shopping information to consumers.[100] They may initiate calls or texts consumers without using an autodialer or prerecorded or artificial voice messages.[101] They may use email or postal mail, both to provide information and to solicit further one-to-one consent to robocall or robotext. Nothing in our rule restricts the ability of businesses, including small businesses, from relying on leads generated by third party lead generators.[102]

40. Furthermore, while the record suggests that comparison shopping can benefit consumers and businesses alike, no commenter provides specific evidence that the limit we establish today would have any deleterious effect on the ability of consumers to comparison shop or businesses to assist consumers in doing so. Indeed, commenters that tout the benefits of comparison shopping (and we do not doubt those benefits),[103] make no effort to tie those benefits exclusively to comparison shopping websites or to sellers that use robocalls or robotexts through consent that is not one-to-one to reach consumers.

41. Additionally, we find that, even under our new rule, comparison shopping websites can obtain the requisite consent for sellers to robocall and robotext consumers using easily-implemented methods. For instance, a website may offer a check box list that allows the consumer to choose each seller that they wish to hear from.[104] Alternatively, a comparison shopping website may offer the consumer a clickthrough link to a business so that it may obtain requisite consent from the consumer directly. Our rule does not prohibit websites from obtaining leads and merely codifies reasonable limits on when those leads allow sellers to use robocalls and robotexts to reach consumers.

---

[98] Letter from Margot Saunders, Senior Counsel, National Consumer Law Center, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 4 (Dec 1, 2023) (Joint Consumer Commenters Dec. 1 *ex parte*).

[99] SBA Dec. 1 *ex parte* at 2.

[100] *See, e.g.,* Joint Consumer Commenters Dec. 1 *ex parte* at 4.

[101] However, if the calls or text messages are sent to lines that are registered with the DNC Registry, compliance with our regulations regarding those messages is required.

[102] SBA Dec. 1 *ex parte* at 2.

[103] *See, e.g*., LendingTree Dec. 6 *ex parte* attach. At 3 (explaining that comparison shopping saves consumers money).

[104] Joint Consumer Commenters Reply at 13; State Attorneys General Reply at 17. We disagree with the commenters who oppose check boxes, contending that customers could miss them, particularly on a mobile device. *See, e.g*., Letter from Steven A. Augustino, counsel for LendingTree, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, Attach. at 5 (Dec. 5, 2023) (LendingTree Dec. 5 *ex parte*). There is no indication in the record that such check boxes are unworkable, particularly in light of the extended implementation period we are providing to affected parties to implement solutions.

42. We disagree with commenters who suggest that requiring one-to-one consent would be detrimental to consumers and small businesses.[105] First, while we agree that some businesses may have to alter their business practices to provide more transparency upfront to consumers, commenters have not explained why such changes to their current business practices will result in their inability to continue doing business. Nowhere in the record has any commenter provided specific evidence to demonstrate that such a rule would harm their businesses in a way that would outweigh the need to protect consumers, including small businesses, from the "nuisance" and "invasion of privacy" resulting from unwanted automated and prerecorded calls.[106] These commenters have not, for example, offered evidence of what fraction of their business involves robocalls and robotexts and thus how much of their total business would be affected by the new rule. Nor do they indicate how much it would cost to modify their websites and processes to disclose to the consumer who will call and get consent for each such caller. Nor do they quantify the cost to small businesses of disclosing their names before consumers consent. More broadly, none of these parties account for possible offsetting benefits to businesses, including small businesses, of disclosing the business name before consent. In short, the record is devoid of any evidence that leads us to conclude the cost of implementation for all businesses, large and small, is material.

43. Our existing rules already require that callers and texters demonstrate that they have obtained valid consent from the called party.[107] Thus, we also find that the new rule will assist callers and texters in at least two ways. First, the rule protects callers who rely on leads generated by third parties by ensuring that such callers operate pursuant to legally sufficient consent from the consumers. A caller who is unable to meet its burden of proof in demonstrating that it had valid consent to initiate and robocall or robotext to the individual consumer would be liable under the TCPA for making such a call. The rule we adopt today helps callers and texters, including small businesses, by providing legal certainty as to how to meet their burden of proof when they have obtained consent via a third-party. In other words, businesses

[105] Several commenters generally oppose one-to-one consent and contend that it would hurt small businesses, but they have not shown that any the businesses would actually be harmed by complying with the TCPA consent requirements (if applicable). *See, e.g.*, SolarReviews Comments at 4; OLA Comments at 3-4; Wagoner Comments at 1; Harvey Comments at 3; REACH Comments at 8; Letter from Yaron Dori and Jorge Ortiz, counsel to QuinStreet, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, at 2 (Aug. 30, 2023) (QuinStreet Aug. 30 *ex parte*); Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, (Sept. 20, 2023) (REACH Sept. 20 *ex parte*); SBA Dec. 1 *ex parte* at 1-2); Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, (Sept. 15, 2023) (REACH Sept. 15 *ex parte*); Letter from Eric J. Troutman, Counsel to EXP Realty, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, (Nov. 16, 2023) (EXP Realty *ex parte*); Letter from Jonathan Thessin, Vice President, Senior Counsel, American Bankers Association, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, (Nov. 30, 2023) (ABA Nov. 30 *ex parte*); IMC Dec. 6 *ex parte* at 3; Dec. 6 Congressional at 1-3.

[106] *See* Pub. L. No. 102–243, § 2, at ¶¶ 5–6, 9–10, 13–14, 105 Stat. 2394 (1991); 137 Cong. Rec. S16206 (1991) (statement of Sen. Warner in support of the TCPA) ("Indeed the most important thing we have in this country is our freedom and our privacy, and this is clearly an invasion of that…."); S. Rep. No. 102-178, at 5 (1991) ("The Committee believes that Federal legislation is necessary to protect the public from automated telephone calls. These calls can be an invasion of privacy, an impediment to interstate commerce, and a disruption to essential public safety services."). *See also* Joint Consumer Commenters Dec. 1 *ex parte* at 3. Robokiller 2022 Report at 4 (estimating the financial losses from text scams alone to be approximately $20 billion in 2022, and this figure does not include the nuisance costs of spam texts); Robokiller 2023 Report at 9 (estimating the financial losses due to robocall scams to be $33 billion for the first half of 2023).

[107] *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7989-7993, paras. 47-54. We also note that to obtain prior express invitation or permission for a telemarketing call to a DNC line, the caller must meet the requirements of section 64.1200(c)(2)(ii) of the Commission's rules: "Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed." We did not seek comment on, and we are not revising, section 64.1200(c)(2)(ii).

relying on such leads will have an easier and more certain way to demonstrate that they have obtained valid consent to call.

44. Second, we agree with the Joint Consumer Commenters that small businesses themselves will benefit from the protections we adopt. Small businesses also may use comparison shopping services when comparison shopping for businesses services. As the Joint Consumer Commenters note, our prior express written consent requirements are not limited to residential lines.[108] Rather, these requirements extend to and protect business phones from having their own phones inundated with unwanted calls and texts. Such calls to these businesses may tie up small business phones, annoy small business employees, and subject them to the same type of fraud as consumers generally. As the Joint Consumer Commenters argue, "[t]his is especially helpful for small business owners who feel they must answer all of their calls because each call may be from a potential customer. So, they are unable to ignore calls from strange numbers."[109]

45. We also heard from commenters who contend that our rule would harm small businesses because consumers will not choose them if given a transparent choice.[110] We disagree with those comments and note that commenters provided no evidence that consumers will choose larger businesses over smaller or more regional businesses. As the Joint Consumer Commenters argue, "[s]ome consumers may prefer to receive offers from large, well-known businesses and others may prefer to receive offers from small, local businesses. Consumers may also want to receive offers from both and compare the offers."[111] We agree with the Joint Consumer Commenters that there is no basis in the record "on which to assume that consumers will never consent for telemarketing calls from small businesses if they are pitched at the same time as large businesses."[112] Indeed, even if this were the case, we believe that consumers have the right to make that determination and to choose those callers for which they consent to receive autodialed and/or prerecorded calls or texts.

46. *Assisting Businesses with Compliance*. We want this important consumer protection rule to be successfully implemented by comparison shopping websites and lead generators. While we find that our rule does not unduly burden callers or comparison shopping websites, we nonetheless give sellers, texters, and callers, and any third-party websites they obtain consent through, a 12 month implementation period to make the necessary changes to ensure consent complies with our new requirement.[113] We agree with the Online Lenders Alliance that this implementation period will help mitigate some challenges to

[108] Joint Consumer Commenters Dec. 1 *ex parte* at 2.

[109] *Id*.

[110] *See, e.g.*, QuinStreet Aug. 30 *ex parte* at 2 (contending that the likely result would be that one or two large advertisers would come to dominate the online search results for products and services).

[111] Joint Consumer Commenters Dec. 1 *ex parte* at 5.

[112] *Id*.

[113] This period for implementation will be 12 months following Federal Register publication of this Report and Order or 30 days after announcement in the Federal Register of the Paperwork Reduction Act approval of the information collection in this new rule, whichever is later. The Consumer and Governmental Affairs Bureau will announce the effective date for section 64.1200(f)(9) by Public Notice. OLA had requested a 12 to 18 month implementation period. Letter from Michael Day, Policy Director, Online Lenders Alliance, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, at 2 (Dec. 4, 2023) (OLA Dec. 4 *ex parte*).

implementation of our new rules[114] and we believe that such period should provide both lead generators and the callers that rely on the leads they generate ample time to implement our new requirements.[115]

47. *Further Efforts to Assist Small Businesses.* We recognize that, as some parties assert, a one-to-one consent requirement may impact some business models more than others.[116] We are particularly cognizant of the Small Business Administration's request that the Commission obtain further comment and conduct further economic analysis on the impact of this proposal on small entities.[117] We observe that no party objecting to our proposal provided specific evidence on the potential economic impact of our proposal and that our own analysis suggests that the harm of unwanted and illegal calls is at least $13.5 billion annually.[118] Additionally, the evidence in the record indicates that lead generators and lead aggregators are a significant contributor to this problem.[119]

48. We will continue to monitor the impact that our rule has on small businesses. In the accompanying *Second Further Notice*, we seek comment on ways that the Commission may continue to refine our one-to-one consent rule to further mitigate any burdens it may create for businesses, especially small businesses. Additionally, we delegate to the Consumer and Governmental Affairs Bureau to conduct outreach and education focusing on compliance with our rules for small business lead generators as well as for small business lead buyers.

49. *Burden of Proof for Valid Consent.* We take this opportunity to reiterate that the TCPA and our existing rules already place the burden of proof on the texter or caller to prove that they have obtained consent that satisfies federal laws and regulations.[120] They may not, for example, rely on comparison websites or other types of lead generators to retain proof of consent for calls the seller makes. And, in all cases, the consent must be from the consumer. "Fake leads" that fabricate consumer consent do not satisfy the TCPA or our rules.[121] In addition, the consumer's consent is not transferrable or subject to sale to another caller because it must be given by the consumer to the seller.[122]

50. *Relationship to ACA Declaratory Ruling.* We find that the rule we adopt today does not

[114] OLA Dec. 4 *ex parte* at 2.

[115] We are not adopting LendingTree's proposal to postpone adoption of the new rule and "act incrementally to ensure that a one-to-one rule does not harm consumers or businesses." LendingTree Dec. 6 *ex parte*, attach. at 10. The extended implementation period we adopt should be sufficient for smaller entities to comply with our rules.

[116] *See, e.g.*, REACH Sept. 20 *ex parte* at 2 (while "big tech" may be able to profit from one-to-one consent and an end to consent transfers, small players will not be able to—there is simply no alternative to the leads they rely on); EXP Realty *ex parte* at 1-2 (explaining that real estate agents rely on online sources and leads; although, no information was provided in this *ex parte* that the real estate agents are engaging in marketing practices that require TCPA consent or if it would be burdensome for them to obtain one-to-one consent, if required.); ABA Nov. 30 *ex parte* at 3 (arguing that the proposal could harm consumers by making it more burdensome to use comparison□shopping websites); IMC Dec. 6 *ex parte* at 3 (contending that there would be a serious impact on small businesses).

[117] SBA Dec. 1 *ex parte* at 2.

[118] *See* section III F for a discussion of benefits and costs.

[119] *See, e.g.*, USTelecom Comments at 4; Joint Consumer Commenters at 4 & Reply at 8.

[120] *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7989-7990, para. 47.

[121] *See, e.g.*, Dobronski Comments at 3-10; Joint Consumer Commenters at 2-6 & Reply at 7-12; State Attorneys General Reply at 2-5: USTelecom Comments at 2; Letter from David Frankel, ZipDX, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278 and 21-402, at 10-11 (May 15, 2023) (ZipDX May 15 *ex parte*).

[122] Section 64.1200(f)(9) provides that prior express written consent for a call or text message must be directly to one individual seller at a time. Consumer consent to be contacted by one seller is not consent to be contacted by another seller who purchased the lead from the first seller.

upset the precedent established in our *ACA Declaratory Ruling*. In the *ACA Declaratory Ruling*, the Commission determined that "the provision of a cell phone number to a creditor . . . reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt."[123] The Commission emphasized that such consent would be deemed granted "only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed."[124]

51. Further, the Commission concluded that the creditor would be responsible for demonstrating that the consumer had provided consent because the "creditors are in the best position to have records kept in the usual course of business showing such consent, such as purchase agreements, sales slips, and credit applications."[125] Therefore, "[c]alls placed by a third-party collector *on behalf of* that creditor are treated as if the creditor itself placed the call."[126] In other words, the *ACA Declaratory Ruling* concerned calls regarding a specific transaction for which calls would be related solely to that specific transaction. The Commission determined that calls made *on behalf of* the creditor would be treated as if they were placed by the creditor itself because the creditor would have kept the best records of consent related to that specific transaction.

52. By contrast, the rule we adopt today for prior express written consent concerns the precursor to a transaction. We therefore disagree with LendingTree that the revised TCPA prior express written consent requirement is inconsistent with the *ACA Declaratory Ruling*.[127] That is, the lead generator is not otherwise engaged in business with the consumer for which another entity is calling on behalf of the lead generator, in the way that a creditor and third-party collector calling on behalf of the creditor were in the *ACA Declaratory Ruling*. Rather, the lead generator is merely facilitating consent for another business to engage in marketing of a potential future specific transaction with the called party. Because the calling party has not engaged in a specific transaction on which to base its consent, we find that our rule—and specifically, placing the burden on the caller—is consistent with the *ACA Declaratory Ruling* as well as other Commission precedent.[128]

---

[123] *Rules and Regulations Implementing the Telephone Consumer Protection Act Of 1991, Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 559, 564, para. 9 (2008) (*ACA Declaratory Ruling*).

[124] *Id.* at 564-65, para. 10.

[125] *Id.* at 565, para. 10.

[126] *Id*.

[127] LendingTree Dec. 6 *ex parte*, attach. at 9. We also disagree with LendingTree that the rule we adopt here undermines the TCPA exemption for calls subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), that may be made without the prior express written consent of the called party. In the *2015 TCPA Declaratory Ruling and Order*, the Commission explained that that provision of a phone number to a healthcare provider constitutes prior express consent for healthcare calls subject to HIPAA by a HIPAA-covered entity and business associates acting on its behalf, as defined by HIPAA, if the covered entities and business associates are making calls within the scope of the consent given, and absent instructions to the contrary. *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8029, para. 141. The HIPPA exemption is, for example. for calls for which there is exigency and that have a healthcare treatment purpose, such as appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, and home healthcare instructions. *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 8028-32, paras. 140-148. Neither the *ACA Declaratory Ruling* situation nor the HIPAA exemption are for marketing calls to prospective customers, but are for calls made on behalf of the creditor or health care entity.

[128] *See, e.g., GroupMe, Inc./Skype Communications S.A.R.L Petition For Expedited Declaratory Ruling, Rules and Regulations Implementing the Telephone Consumer Protection Act Of 1991*, CG Docket No. 02-278, Declaratory Ruling, 29 FCC Rcd 3442, 3446, para. 11 (2014) (finding that, while consent may be obtained and conveyed

(continued….)

53. We also disagree with LendingTree that our action, in making it unequivocally clear that one-to-one consent is required for TCPA prior express written consent, is arbitrary and capricious.[129] The Commission sought comment on this issue, i.e., "Public Knowledge's request that prior express consent to receive calls or texts must be made directly to one entity at a time" in the *Further Notice*.[130] The Commission specifically discussed the issue of hyperlinks in a comparison shopping website, and illustrated the problem by describing Assurance IQ, a website that purports to enable consumers to comparison shop for insurance.[131] The Assurance IQ site sought consumer consent for calls and texts from insurance companies and other various entities, including Assurance IQ's "partner companies," that were listed when accessing a hyperlink on the page seeking consent (i.e., they were not displayed on the website without clicking on the link) and included both insurance companies and other entities that did not appear to be related to insurance.[132] The Commission also sought comment on "amending our TCPA consent requirements to require that such consent be considered granted only to callers logically and topically associated with the website that solicits consent and whose names are clearly disclosed on the same web page."[133] Numerous commenters supported these proposals.[134] Thus, our findings in this *Second Report and Order* are reasonably and rationally based on the issues for which the Commission sought comment and the comments filed in this proceeding. The lead generator commenters disagree with our conclusion, but such disagreement does not mean that our conclusion is arbitrary and capricious.

E. Text Message Authentication and Spoofing

54. We decline to adopt at this time caller ID authentication requirements for text. We agree with commenters that number spoofing in the SMS/MMS domain is rare at this time and that providers that originate texts generally permit their customers to initiate those texts only from numbers for which they are the assignee.[135]

55. In addition, several commenters observe that the wireless industry is evaluating authentication technologies that could address text-specific issues. For example, there is active work by the Internet Engineering Task Force on text authentication standards, and ATIS's IP-NNI Task Force is exploring whether technical standards that work to enhance existing mitigations should be pursued.[136] For these reasons, we decline to adopt caller ID authentication requirements for text messages. We seek further comment below on the issues of number spoofing and new technical standards for caller ID authentication.

---

through an intermediary, the caller remains liable for initiating or making autodialed text messages to wireless numbers in the event consent was not actually obtained).

[129] LendingTree Nov. 30 *ex parte*.

[130] *Report and Order and Further Notice of Proposed Rulemaking* at para. 61.

[131] *Id*.

[132] *Id*.

[133] *Id*.

[134] *See, e.g.*, Joint Consumer Commenters at 2; USTelecom Comments at 2; State Attorneys General Reply at 5; Aug. 7 Congressional at 1.

[135] *See, e.g.*, CTIA Comments at 12-15; ECAC Comments at 6; M^{3}AAWG Comments at 5; NetNumber Comments at 7; ZipDX Comments at 1; CTIA Reply at 7-9; T-Mobile Reply at 5-6 (explaining that message sender authentication is already happening and the Commission does not need to mandate a technology solution); Twilio Reply at 7-8.

[136] *See, e.g.*, INCOMPAS Comments at 5; CTIA Reply at 8-9; T-Mobile Reply at 6.

F. Summary of Benefits and Costs

56. Our conservative estimate of the total loss from unwanted and illegal texts is $16.5 billion annually, which reflects both a substantial increase in the number of spam texts in recent years (the nuisance cost), and an increase in financial losses due to text scams. We continue to estimate the nuisance cost of spam texts to be 5 cents per text.[137] This cost is multiplied by 225.7 billion spam texts sent annually[138] and the result is $11.3 billion in total nuisance cost. In addition, we estimate financial losses due to text scams to be $5.2 billion. This figure is based on the $2 billion financial loss figure estimated previously,[139] scaled up to reflect the increased volume of spam texts.[140] Our estimate is conservative; for example, Robokiller estimates the financial losses from text scams alone to be approximately $20 billion in 2022, and this figure does not include the nuisance costs of spam texts.[141] Further, the total loss from unwanted and illegal calls is relevant for our consideration of the benefit generated by closing the lead generator loophole. Even relying on the TrueCaller data provided by CTIA, which provides a more conservative estimate of 5.47 billion spam texts over a 12 month period, at 5 cents per text the potential nuisance cost is 273.5 million.[142] It is unclear why CTIA considers TrueCaller a more accurate estimate than Robokiller, but even assuming the correct estimate is somewhere between TrueCaller's data and Robokiller's data, the potential loss to consumers is significant. We reiterate the harm of unwanted and illegal calls to be at least $13.5 billion annually.[143] We note that this is also a conservative estimate; for example, Robokiller estimates the financial losses due to robocall scams to be $33 billion for the first half of 2023.[144]

57. We expect the actions we take today will impose minimal costs on mobile wireless providers and comparative shopping websites. Nothing in the record demonstrates that requiring terminating providers to block texts when notified by the Commission of illegal texts would impose significant costs on mobile wireless providers. The only argument CTIA presents for a particularly high burden is to state that wireless providers will have "to constantly check for reassigned numbers to unblock" but as we made clear above, that is not a requirement and CTIA has not adequately defined the burden they claim.[145] Further, we expect that terminating providers aim to minimize texts that subject their customers to nuisance and receiving notifications from the Commission would assist in that effort and help providers improve customer satisfaction. With respect to our action codifying that text messages are covered by the National DNC Registry's protections, we see no additional cost to providers.

58. Various commenters assert consumer benefits from comparison shopping websites will be lost as a result of these rules.[146] We note that these rules do not prohibit comparison shopping

---

[137] *Text Blocking Order and Further Notice* at para. 45.

[138] Robokiller 2022 Report at 5.

[139] *Text Blocking Order and Further Notice* at para. 45.

[140] The number of spam texts was estimated to be 86 billion when the Commission first estimated the financial harm of text scams to be $2 billion. *Targeting and Eliminating Unlawful Text Messages*, CG Docket No. 21-402, Notice of Proposed Rulemaking, 37 FCC Rcd 11618, 11632, at paras. 43-44 (2022) (*Text Blocking NPRM*). The Robokiller 2022 Report states that the number of spam texts has increased to 225.7 billion, as of 2022, an amount 2.62 times the original amount. Robokiller 2022 Report at 5.

[141] Robokiller 2022 Report at 4.

[142] CTIA Dec. 4 *ex parte* at 9-10.

[143] *First Caller ID Authentication Order*, 35 FCC Rcd at 3263, paras. 47-48.

[144] Robokiller 2023 Report at 9.

[145] CTIA Dec. 4 *ex parte* at 10. *See supra* para. 23, n.50.

[146] *See, e.g.*, LendingTree Dec. 6 *ex parte* at 2; QuinStreet Dec. 5 *ex parte* at 2; OLA Dec. 4 *ex parte* at 2.

websites, only the use of robocalls and robotexts without one-to-one consent. Nonetheless, we conclude that these commenters have not established a cost that outweighs the reduction in harm. The SBA Office of Advocacy notes that small businesses have stated that the proposal to require sellers to obtain consent to robocall or robotext from one consumer at a time could increase costs significantly for small businesses that both buy and sell sales leads.[147] The SBA did not offer any evidence to support this contention and did not address the benefit to consumers and to small businesses in having a reduction of unwanted calls and texts. This rule makes it unequivocally clear that prior express written consent under the TCPA must be to one seller at a time, but does not prevent small businesses from buying and selling leads nor does it prevent small businesses from contacting consumers. As the Joint Consumer Commenters observe, the requirements for prior express written consent for the telemarketing calls covered by the TCPA will also protect business phones from the floods of unwanted prerecorded telemarketing calls.[148] We agree with the Joint Consumer Commenters that our rule is especially helpful for small business owners who are incentivized to answer all incoming calls because each call may be from a potential customer and are unable to ignore calls from unfamiliar numbers.[149] In addition, this requirement will help small businesses because it will provide legal certainty as to how callers and texters can demonstrate valid consent when that consent was obtained via a third party.

59. Our decision to make unequivocally clear that prior express written consent under the TCPA must be one-to-one consent may raise costs for some businesses that use robocalling, including those that fall under the definition of small businesses.[150] No party has presented any specific data to substantiate such possible additional costs. Further, the benefits of making it unequivocally clear that one-to-one consent is required for prior express written consent under the TCPA, will accrue to millions of individuals and businesses, including small businesses, and will outweigh any such costs to those businesses currently using multi-party "consent" for robocalls and robotexts. Over time, it may be possible for technological solutions to lower the costs to businesses that use robocalls or robotexts for seeking one-to-one prior express written consent, and maintaining consent records. Any effort to create an exception for particular businesses, including small businesses, has the potential to undermine the effectiveness and intent of the policy, which is to provide consumers (including small businesses) the ability to determine when and how they are contacted in a transparent manner.

60. We also see very little cost to providers as a result of our encouragement to make email-to-text an opt-in service. Providers who do not take up this option will incur no additional cost and, for those providers who do so, we assume that the benefits of making email-to-text an opt-in service, e.g., more satisfied customers, outweighs the costs of setting up an opt-in program and marketing it to their subscribers. Similarly, we believe closing the lead generator loophole so that prior express written consent can only be given directly from a consumer to a single seller-caller at a time will result in only small additional costs for comparative shopping websites. Such practices should lead to greater customer satisfaction that may benefit such websites.

61. Based on the analysis of the anticipated benefits and costs discussed above, we believe the benefits of the rules adopted in this Report and Order significantly outweigh their costs. Even if these rules eliminate only a small share of unwanted and illegal texts and calls, the benefits would be substantial, given the magnitude of the likely losses from such texts and calls.

---

[147] SBA *ex parte* at 2.

[148] Joint Consumer Commenters Dec. 1 *ex parte* at 2.

[149] *Id*.

[150] The TCPA generally requires callers to get consumer consent before making certain calls to consumers using an "automatic telephone dialing system" (also known as an "autodialer") or an artificial or prerecorded voice. 47 U.S.C. § 227(b)(1)(A).

G. Legal Authority

62. We rely on the TCPA to adopt rules applicable to mobile wireless text messaging providers,[151] including our blocking requirement. First, the TCPA gives the Commission authority over the unsolicited text messages within the scope of this order.[152] The TCPA, in relevant part, restricts certain autodialed calls to wireless telephone numbers absent the prior express consent of the called party.[153] The Commission has found that, for the purposes of the TCPA, texts are included in the term "call."[154] Because the Commission has authority to regulate certain text messages under the TCPA, particularly messages sent using an autodialer and without the consent of the called party, we have legal authority to require providers to block text messages violate the TCPA. The TCPA also provides authority for our consent requirements and our codification that text messages are covered by the National DNC Registry.[155]

63. We therefore disagree with RILA that we do not have the legal authority to expand the DNC restrictions to text messages because Congress did not include text messages in the statute and no appellate court has construed the National DNC Registry's restrictions to include text messages.[156] The DNC restrictions have long applied to wireless phones[157] and the Commission and courts have long held that text messages are calls under the TCPA.[158] Further, we are codifying that text messages are included in the National DNC Registry's protections—a position that the Commission and several courts have previously taken[159]—we are not expanding the National DNC Registry's restrictions.

64. To the extent that the Commission may direct providers to block texts where an autodialer has not been used, we further find authority under section 251(e)(1) of the Communications Act. Section 251(e)(1) provides us independent jurisdiction to prevent the abuse of NANP resources, regardless of the classification of text messaging.[160] Requiring blocking of a particular number that has

---

[151] CTIA specifically supported use of the TCPA, as well as the Truth-in-Caller ID Act for this purpose. CTIA Comments at 11-12.

[152] The Commission stated in the *2003 TCPA Order* that the authority to regulate telemarketing derives from the TCPA. *2003 TCPA Order*, 18 FCC Rcd at 14070, para. 95. The Commission also observed that Congress anticipated "that the FCC, under its TCPA rulemaking authority, might need to consider changes in technologies." *Id*. at 14092, para. 132.

[153] 47 U.S.C. § 227(b)(1)(A).

[154] *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165.

[155] 47 U.S.C. § 227(c) (granting the Commission rulemaking authority to protect residential telephone subscribers' privacy rights).

[156] RILA Reply at 5-8.

[157] *See* 47 CFR § 64.1200(e); *2003 TCPA Order*, 18 FCC Rcd at 14115-16, paras. 165-66.

[158] *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165; *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 156 (2016) ("A text message to a cellular telephone, it is undisputed, qualifies as a 'call' within the compass of § 227(b)(1)(A)(iii)."); *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009) ("[W]e hold that a text message is a 'call' within the meaning of the TCPA.").

[159] *See, e.g., Hernandez*, 33 FCC Rcd at 12386, para. 10; *Barton*, 525 F. Supp.3d 195; *Mantha*, 2022 WL 325722; *Visco v. Creditors Relief, LLC*, No. 20-cv-12303-DJC, 2022 WL 488495 (D. Mass. Feb. 17, 2022); *Eagle v. GVG Capital, LLC*, No. 22-cv-00638-SRB, 2023 WL 1415615 (W.D. Mo. Jan. 31, 2023); *Pariseau v. Built USA, LLC*, 619 F. Supp.3d 1203 (M.D. Fla. 2022); *Sagar*, 2021 WL 5567408; *Hall*, 72 F.4th at 986.

[160] *See May 2023 Call Blocking Order* at para. 66. There, the Commission noted that "this particularly applies where callers spoof caller ID for fraudulent purposes and therefore exploit numbering resources, *regardless of whether the voice service provider is a common carrier.*" *Id*. (emphasis added). While the Commission

(continued….)

sent known illegal texts will help ensure that entities sending illegal texts cannot continue to abuse NANP resources to further their illegal schemes. We therefore disagree with CTIA, which has argued that reliance on section 251(e) "would raise unnecessary questions about the scope of the Commission's authority, given that text messaging is an information service."[161] We also find each of the other arguments raised by CTIA to be unpersuasive. First, CTIA asserts that the Commission "has never used Section 251(e) without a direct nexus to voice calls" and that the "FCC and courts have understood that numbering administration authority under Section 251(e) pertains only to numbers used for routing of voice calls in the U.S., not numbers used for text messaging."[162] The fact that Commission has not previously exercised its authority under section 251(e)(1) to address similar issues in texting does not limit our authority under that section. Furthermore, the fact that the court cases cited by CTIA pertained to voice calls merely reflects that those cases involved voice calls and pre-dated the widespread use of texting, nothing more. Second, CTIA asserts that "Section 251(e) authority is limited to services that connect with the public switched telephone network."[163] Although NANP numbers are used for routing calls on the public switched telephone network (PSTN), the authority granted in section 251(e)(1) is not restricted to voice calls routed via the PSTN.[164] Rather, section 251(e)(1) is a clear grant of authority "over those portions of the North American Numbering Plan that pertain to the United States"[165] and the underlying technology does not change the fact that the numbers in question are portions of the NANP that pertain to the United States. We further disagree that section 251(e)(1) "is also inapplicable because problems with illegal text messages are not numbering problems."[166] Here, we exercise our section 251(e)(1) authority to prevent the abuse of NANP resources by sending illegal texts, regardless of whether the number is spoofed.[167] This is consistent with our approach in calling, where we have found that our authority under this section does not hinge on whether a call is spoofed.[168] CTIA further asserts that we do not spell out what authority outside of the TCPA we may rely on when determining that a text is illegal.[169] The specific reason for a text to be illegal will vary on a case-by-case basis and, as with calls, may be based on violation of any number of state or federal

---

stated that section 251(e) "particularly applies" where numbers are spoofed, it did not find that the authority in section 251(e) was limited to spoofing, and we find no reason to construe section 251(e)(1) in that manner.

[161] CTIA Comments at n. 37; *see also* CTIA Dec. 4 *ex parte* at 6-8.

[162] CTIA Dec. 4 *ex parte* at 7 (citing *New York v. FCC*, 267 F.3d 91 (2d Cir. 2001) and *Sprint Corp. v. FCC*, 331 F.3d 952 (D.C. Cir. 2003)).

[163] CTIA Dec. 4 *ex parte* at 7.

[164] As CTIA notes, "text messages may be routed using ten-digit NANPA [sic] numbers." CTIA Dec. 4 *ex parte* at 7. We note that the paragraph of the 2021 order cited by NTIA for support was discussing whether to require cost sharing under section 251(e)(2). *See id.* (citing *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-366, Second Report and Order, 36 FCC Rcd 16901, 16930, n.211 (2011). That order did not discuss the Commission's authority under section 251(e)(1).

[165] 47 U.S.C. § 251(e)(1).

[166] CTIA Dec. 4 *ex parte* at 8. This argument is inconsistent with CTIA's own suggestion that we rely on the Truth in Caller ID Act. CTIA Dec. 4 *ex parte* at 6-8. If section 251(e)(1), which does not address spoofing on its face, is inapplicable because spoofing is rare in texting, then the Truth in Caller ID Act, which is expressly about misleading or fraudulent caller ID, would also be inapplicable in most cases.

[167] This is distinct from the blocking the Commission required in the *Text Blocking Order and Further Notice*. There, the Commission required blocking of numbers that should never be used to originate calls. *Text Blocking Order and Further Notice* at paras. 16-26. In such cases, the likelihood the numbers is spoofed is high, even if spoofing is generally rare in text messaging. The blocking rule we adopt today, however, addresses situations where the sender has the right to use the number, but is using it to send illegal texts. *Supra* paras. 16-25.

[168] *See, e.g.*, *May 2023 Call Blocking Order* at para. 66.

[169] CTIA Dec. 4 *ex parte* at 6-7.

statutes.[170] That fact in no way diminishes our authority to rely on section 251(e)(1) to prevent the abuse of NANP resources by robotexters.

65. We also find that we have authority under Title III of the Act to adopt these measures. Title III "endow[s] the Commission with 'expansive powers' and a 'comprehensive mandate to "encourage the larger and more effective use of radio in the public interest."'[171] Section 303 of the Act grants the Commission authority to establish operational obligations for licensees that further the goals and requirements of the Act if such obligations are necessary for the "public convenience, interest, or necessity" and are not inconsistent with other provisions of law.[172] In particular, section 303(b) authorizes the Commission to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within each class," and that is what our notice requirement and blocking rule addresses here.[173] In addition, sections 307 and 316 of the Act allow the Commission to authorize the issuance of licenses or adopt new conditions on existing licenses if such actions will promote public interest, convenience, and necessity.[174] We find the requirements we adopt for mobile wireless providers after they are on notice of illegal text messages are necessary to protect the public from illegal text messages and that such a requirement is in the public interest.

66. Because we find that the sources of authority identified above provide sufficient authority for the rules we adopt today, we find it unnecessary to address other possible sources of authority to adopt these rules.

IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

67. Because bad actors continue to evolve in their methods of defrauding consumers, in this Second Further Notice of Proposed Rulemaking, we seek comment on a number of additional steps to better protect consumers from unwanted and illegal texts. First, we seek comment on additional blocking requirements and related approaches. Second, we seek further comment on text message authentication. Finally, we seek comment on whether to make email-to-text an opt-in service.

A. Text Blocking

68. We propose and seek comment on additional text blocking options to better protect consumers from illegal texts. Specifically, we first propose and seek comment on extending the text blocking requirement we adopt in the Report and Order[175] to include originating providers, and to require all immediate downstream providers to block the texts from providers that fail to block after Commission notification. We also seek additional comment on whether to require this blocking to be

---

[170] *See Gateway Provider Order and Further Notice*, 37 FCC Rcd at 6868, n.7 ("Fraudulent calls may violate any of a number of state or federal statutes. *See, e.g.*, Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108; Credit Card Fraud Act of 1984, 18 U.S.C. § 1029; 18 U.S.C. §§ 1343, 1344.").

[171] *Cellco Partnership v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012) (*Cellco Partnership*) (upholding the Commission's authority under Title III to adopt data roaming rules) (quoting *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 219 (1943) (*Nat'l Broad Co.*) (quoting 47 U.S.C. § 303(g)).

[172] 47 U.S.C. § 303.

[173] *See Cellco Partnership*, 700 F.3d at 543 ("Like other rules that govern Title III services, the data roaming rule merely defines the form mobile-internet service must take for those who seek a license to offer it."). We find several other provisions of section 303 relevant here. *See* 47 U.S.C. § 303(g) (requiring the Commission to "encourage the larger and more effective use of radio in the public interest"); *id*. § 303(r) (authorizing the Commission to "[m]ake 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 Act").

[174] *See* 47 U.S.C. §§ 307, 316; *see also Cellco Partnership,* 700 F.3d at 543 (recognizing section 316 as additional Title III authority for our data roaming rules).

[175] *See* 47 CFR § 64.1200(s); *supra* paras. 16-25.

based on number, source, the "substantially similar" traffic standard,[176] or some other standard. Next we seek comment on requiring providers to block texts based on content-neutral reasonable analytics. Third, we seek comment on traceback for text messaging, including whether to adopt a traceback response requirement for text messaging. Fourth, we seek comment on any other rules we could adopt to effectively protect consumers from illegal texts. Finally, we seek comment on any additional protections that may be necessary in case of erroneous blocking.

1. Expanding the Mandatory Text Blocking Requirement to Originating Providers and Adding a Downstream Provider Blocking Requirement

69. *Requiring Originating Provider Blocking*. We propose and seek comment on extending the requirement to block following Commission notification of illegal texts to other providers generally, and originating providers specifically. We believe that originating providers are similar to gateway or originating voice service providers in that they are the first U.S.-based provider in the text path and that applying an analogous rule to originating providers could help ensure that these providers are properly incentivized to stop illegal texts even before we send any notice. We seek comment on this view.

70. We seek comment on whether and, if so, how to define originating providers here. Is the originating provider the first provider in the text path, and therefore in a similar position to a gateway or originating voice service provider? Are there other providers in the path that are more similar to a gateway provider? Alternatively, should we apply these rules to some other entity in the chain to better protect consumers? The call blocking rules help hold bad-actor voice service providers responsible for the calls they allow onto the network by denying those voice service providers access to the network entirely when they have demonstrated noncompliance. Is there a particular type of entity in the texting ecosystem that is more likely to either intentionally or negligently shield those sending illegal texts?

71. *Blocking Standard*. We propose to require originating providers to block all texts from a particular source following Commission notification. We seek comment on this proposal. Is this an appropriate standard for blocking? How might originating providers determine the source of a particular text or texts in order to comply with this rule? Alternatively, should we require blocking based on the number or numbers, as we do for terminating providers in the Report and Order?[177] If so, how effective is such a requirement? If not, should we also change the standard for terminating providers to match the standard for originating providers, or do originating providers have access to more information, making a broader requirement to block based on source appropriate?

72. Should we limit the length of time for which blocking is required? If so, how long should we require providers to block? Alternatively, should we require originating and/or terminating providers to block using the "substantially similar" standard applied in our call blocking rules?[178] We believe that texting may present concerns unique from calling that justify a different standard, or require additional guidance for compliance. For example, while a voice service provider will not have the content of a particular call prior to that call reaching the recipient, a texting provider likely does have access to this information. Given that, should we require that blocking be content as well as competitively-neutral? Are there any other standards we should consider?

73. *Blocking Process*. We seek comment on whether the process for voice service providers should be applied here to texting. Our current rules for call blocking lay out a detailed process that must be followed before requiring all immediate downstream providers to block all of an identified

[176] 47 CFR § 64.1200(n)(5), (n)(6); *see also Gateway Provider Order and Further Notice*, 37 FCC Rcd at 6897-6901, paras. 74-86; *May 2023 Call Blocking Order*, at paras. 29-48 (effective Jan. 8, 2024).

[177] *Supra* paras. 16-25.

[178] *See* 47 CFR § 64.1200(n)(5), (n)(6).

voice service provider's traffic.[179] Is this process appropriate for the texting environment, or are the differences between texting and calling that justify modifications? Several commenters expressed concerns about the delays inherent in this process.[180] While the process works well for calling,[181] delays may have different consequences in the texting context.

74. Is a delay particularly significant when dealing with texts compared to calls? Why or why not? If so, are there changes we could make to address this issue while still ensuring that providers are afforded sufficient due process? For example, should we, as we do in the calling context, allow 14 days for the originating provider to investigate and respond following the Notification of Suspected Illegal Texts or should we change that time frame? Should we establish a different docket for text blocking Orders, or use the same docket used for call blocking?

2. Requiring Blocking of Texts Based on Reasonable Analytics

75. We seek comment on requiring or incentivizing providers to block texts based on reasonable analytics. Our call blocking rules provide a safe harbor for the blocking of unwanted calls based on reasonable analytics on an opt-out basis.[182] In addition, our call blocking rules provide a safe harbor for the blocking of calls without consumers' consent and calls that are highly likely to be illegal based on reasonable analytics.[183] In both cases, we require that analytics are applied in a non-discriminatory, competitively neutral manner.[184] The Commission also recently sought comment on requiring terminating voice service providers to offer opt-out blocking services for calls that are highly likely to be illegal.[185] We have not yet addressed text blocking based on reasonable analytics.

76. *Blocking Standard*. We seek comment on whether and how to define reasonable analytics for this purpose. The record indicates that many providers already make use of analytics or other techniques to block illegal texts.[186] What analytics do providers use to identify unwanted or illegal texts? If providers are reluctant to share specifics to avoid tipping off bad actors we seek comment on broad criteria that providers may use. For example, a call-blocking program might block calls based on a combination of factors, such as: large bursts of calls in a short timeframe, low average call duration, low call completion ratios, invalid numbers placing a large volume of calls, etc.[187]

77. We seek comment on whether, and to what extent, providers use volumetric triggers to identify bad traffic. Do any of the call-blocking reasonable analytics factors apply to text and, if so, which ones? Are there other content-neutral factors that are more likely to indicate that a text is illegal that do not apply in the calling context? If we adopt such a rule, are there any necessary modifications

---

[179] These steps include a Notification of Suspected Illegal Traffic, time for the provider to investigate and respond, and an Initial Determination Order with additional time to respond before the Enforcement Bureau may adopt a Final Determination Order requiring all immediate downstream providers to block. 47 CFR § 64.1200(n)(5)-(6).

[180] *See, e.g.*, M^{3}AAWG Comments at 4; NetNumber Comments at 4-6 & Reply at 2-3; T-Mobile Reply at 3-4.

[181] *See, e.g.*, *One Eye*; *see also Urth Access*, *Sumco Forfeiture Order*.

[182] 47 CFR § 64.1200(k)(3).

[183] 47 CFR § 64.1200(k)(11).

[184] *See* 47 CFR § 64.1200(k)(3)(iv), (k)(11)(v).

[185] *May 2023 Call Blocking Order*, at paras. 71-75.

[186] *See, e.g.*, CTIA Comments at 7-8; M^{3}AAWG Comments at 4; NetNumber Reply at 3; Twilio Reply at 3-6. CTIA explains that considerations involved in investigating and blocking potentially illegal messages are different from those involved in imposing similar obligations on international gateway voice providers, for a variety of reasons, including the ever-evolving tactics used by bad actors to send spam text messages (e.g., brand impersonation, SIM boxes, snowshoe messaging, etc.). CTIA Comments at 10.

[187] *See 2019 Call Blocking Declaratory Ruling*, 34 FCC Rcd at 4888, para. 35.

we should make to accommodate small businesses? As we noted above, the content of a text is available to the provider at the time that blocking occurs, which is not generally true for calls.[188] If we require providers to block based on reasonable analytics, should we therefore require that these analytics be content-neutral? Should we also require that the blocking be non-discriminatory and competitively neutral? Alternatively, are there ways we could encourage this blocking without requiring it? Are there any other issues we should consider?

78. *Safe Harbor*. Because texting is currently classified as an information service, we do not believe that providers need safe harbor protections to engage in this type of blocking. We seek comment on this belief. Do providers risk liability when they block erroneously? If so, what can we do to reduce that risk while still ensuring that wanted, lawful texts reach consumers?

3. Alternative Approaches

79. We seek comment on alternative blocking or mitigation rules we could adopt to target unwanted and illegal texts and better protect consumers. Are there approaches we have not considered here that would stop illegal texts and protect consumers? What can the Commission do to encourage or require providers to adopt these approaches? For example, can the Commission take steps to encourage information sharing between providers?

4. Protections Against Erroneous Blocking

80. If we adopt additional text blocking requirements, should we also adopt additional protections against erroneous text blocking? Our rules already require providers to provide a point of contact for blocking issues.[189] Considering that providers can and do block texts, is this sufficient, or are other protections necessary? If so, what protections should we adopt? For example, should we do as one commenter suggests and create a white list for "legitimate research organizations and/or research campaigns"[190] or other entities, or would doing so raise legal or policy concerns? Similarly, should we require some form of notification when texts are blocked,[191] similar to our requirement when calls are blocked based on reasonable analytics? If so, how can providers send a notification technically? Should we require notification only to certain categories of blocking? Or, should we, as one commenter suggests, require providers to give "advance notice when a number is flagged as suspicious and may be blocked" along with several other protections?[192] Alternatively, should we adopt the same protections already in place for erroneous blocking of calls?[193] What are the risks and benefits of each approach?

B. Text Message Authentication

81. We seek additional comment on text message authentication and spoofing. We have so far declined to adopt authentication requirements for texting.[194] The record thus far is mixed on the feasibility of such a requirement, with commenters noting that the STIR/SHAKEN caller ID

[188] *See supra* para. 72.

[189] 47 CFR § 64.1200(r).

[190] AAPOR Comments at 3-5.

[191] *See, e.g.*, CCA Comments at 5; INCOMPAS Comments at 4; RMAI Comments at 3; Bankers Joint Commenters Reply at 12-13.

[192] RMAI Comments at 3.

[193] ABA Nov. 30 *ex parte* at 2.

[194] *See Text Blocking Order and Further Notice*, at para. 37; *supra* paras. 44-45.

authentication system is designed to work only on IP networks.[195] Further, the record indicates that number spoofing is comparatively rare in SMS and MMS.[196]

82. We believe it is important to continue to build a record on these issues and ensure that we are aware of any new developments or concerns. We therefore seek further comment on the need for and feasibility of text authentication. In particular, commenters should address whether number spoofing is an issue in text messaging and, if so, the extent of the problem. If number spoofing is uncommon, are there steps we can take to ensure that it remains the exception rather than the rule? Do bad actors use other spoofing techniques, such as identity spoofing? If so, what can we do to address this problem? Commenters should also discuss any new or in-process technical standards for authentication in text messaging, including their current status and any timelines for development. What issues will these new tools address? If the new technical standards are designed to prevent number spoofing, is this evidence of a more significant spoofing issue than commenters[197] acknowledged in response to the *Further Notice*? If so, should the Commission act more quickly in this area, rather than waiting for the standards bodies to finish their work?

83. We seek comment on whether we should require industry to regularly update us with its progress on text authentication. We believe doing so would ensure that we have the most up-to-date information available without having to adopt further Notices of Proposed Rulemaking covering this topic. Is this belief correct? If so, how often should we require industry to update us and how should we determine when further updates are no longer required? For example, should we set a six-month cycle for updates over the next two years? Or should we require some other update cycle and endpoint?

C. Traceback

84. Traceback has been a key part of our strategy for combating illegal calls.[198] We seek comment on whether we should require a response to traceback requests for texting. We seek comment on requiring providers to respond to traceback requests from the Commission, civil or criminal law enforcement within 24 hours, consistent with our existing rule for gateway voice service providers and our recently adopted rule for all voice service providers that will take effect in January 8, 2024.[199] Should we also include the industry traceback consortium as an entity authorized to conduct traceback of texts, or is there some other entity that should be included? Is traceback for texting similar enough to traceback for calls for such a requirement to be effective? Are there any changes we should make to the rule to ensure that traceback works for texts? How should we handle aggregators and cloud platforms? Are there industry efforts that are already in operation, such as CTIA's Secure Messaging Initiative, that could replace or complement a traceback requirement?[200] Are there other issues we should consider in adopting a traceback requirement?

85. We seek comment on the specifics of the traceback process for texts, as well as any obstacles to industry-led traceback efforts that may work alongside or in place of rules we may establish. Are tracebacks typically conducted for texting? If so, what does the process look like? Are there types of providers that are routinely reluctant to respond to these requests? Is information from

---

[195] *Text Blocking Order and Further Notice* at para. 37 & note 107.

[196] *See, e.g.*, ECAC Comments at 6; M^{3}AAWG Comments at 5; NetNumber Reply at 6-8; ZipDX Comments at 1; Twilio Reply at 7-8.

[197] Such commenters argue that number spoofing in the text message domain is comparatively rare. *See, e.g.*, ZipDX Comments at 1-2; CTIA Comments at 12-14 & Reply at 7-8; M^{3}AAWG Comments at 5; ECAC Comments at 6; NetNumber Comments at 7; Twilio Reply at 7-8.

[198] 47 CFR § 64.1200(n)(1).

[199] *Id.*

[200] CTIA Dec. 4 *ex parte* at 10-11.

traceback processes shared and then incorporated into blocking decisions? Are there network modifications, standards, or changes to software or hardware that would enable efficient texting traceback? If we adopt a traceback requirement for texting, are there any necessary modifications we should make to accommodate small business? Is there anything else we should know about traceback for texting?

D. E-Mail-To-Text Messages

86. In the Order, we encourage providers to make email-to-text an opt in service. We now propose to require providers to do so, so that subscribers wishing to receive these types of messages would first have to opt in to the service.[201] Would such a rule reduce the quantity of fraudulent text messages consumers receive? Does the anonymity of email-to-text make it more attractive to fraudulent texters? Commenters should discuss any drawbacks to requiring providers to block such messages if the consumer has not opted in to such service. For example, would this result in blocking important or urgent messages? If so, how could we reduce this risk? Are there alternatives to making this service opt in that would have a similar effect? If so, what are they and how would they compare? Commenters should discuss how we should define "email-to-text service." Are there analogous services that should be covered, e,g., voicemail-to-text? We seek comment on the details of any opt-in requirement and if the opt-in should be in writing. Must it be stand-alone and conspicuous? Will providers have the burden of demonstrating opt-in decisions? Are there any other issues we should consider in adopting a rule?

E. Further Efforts to Assist Small Businesses with Compliance

87. We seek further comment on how the Commission can refine and expand its efforts to assist businesses, particularly small businesses, in complying with our one-to-one consent requirement. In the *Further Notice*, the Commission sought comment on how our proposal might affect the value of comparison-shopping websites to consumers and whether there were alternatives to our proposals.[202] As explained in the *Order*, we have determined based on the record that prior express written consent required under the TCPA must be given to one seller at a time.[203] The Order recognizes, however, some commenters' concerns that this requirement will increase costs or otherwise disadvantage small business lead generators and/or small business lead buyers.[204] We, therefore, are committed to monitoring the impact that our rule has on these businesses and to assisting small businesses with complying with the one-to-one consent rule.[205] We seek comment on whether and how the Commission can further minimize any potential economic impact on small businesses in complying with our one-to-one consent requirement for prior express written consent under the TCPA. Are there ways to further clarify or refine this requirement to further minimize any compliance costs? What impact would such refinements have on consumers? Are there further outreach efforts or other ways the Commission can assist small businesses in complying with our one-to-one consent rule?

---

[201] Commenters state that the email-to-text messages process allows the sender to be anonymous because the text is sent from an email account on a computer, not a phone number. ZipDX Comments at 2; Somos Reply at 5 (observing a spike in text impersonation scams originating from email-to-text gateways, which permit a message to appear as sent from someone else's number or from an email address, and stating they are an increasingly popular method for scammers to impersonate brands using the text messaging channel).

[202] *Text Blocking Report and Order and Further Notice* at para. 61.

[203] *See supra* paras. 30-53.

[204] *See supra* paras. 38, 42..

[205] *See supra* para. 48

F. Benefits and Costs

88. We estimate that the total harm of unwanted and illegal texts is at least $16.5 billion. As discussed in the Order,[206] Robokiller estimates that Americans received 225.7 billion spam texts in 2022.[207] Assuming a nuisance harm of 5 cents per spam text, we estimate total nuisance harm to be $11.3 billion (i.e., 5 cents multiplied by 225.7 billion spam texts). Further, we estimate that an additional $5.3 billion of harm occurs annually due to fraud. Previously, we estimated the harm due to fraud from scam texts at $2 billion.[208] In the Order, we revised this figure upward in proportion with the increase in spam texts, resulting in an estimate of $5.3 billion.[209] We believe this estimate is conservative, given that Robokiller estimates financial losses due to fraud through text messaging to be $20 billion, and this figure does not include the nuisance costs of spam texts.[210] We seek comment on these estimates of harm and on the costs of the proposals to reduce the harm of unwanted and illegal texts outlined in this FNPRM. The Commission will analyze any detailed cost data received in comments.

G. Digital Equity and Inclusion

89. The Commission, as part of its continuing effort to advance digital equity for all,[211] including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations[212] 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.

H. Legal Authority

90. In the Second Further Notice of Proposed Rulemaking, we seek comment on several issues: (i) additional blocking requirements and related approaches to protect consumers from illegal texts; (ii) text message authentication; and (iii) whether to make email-to-text an opt-in service. We seek comment on our authority to adopt each of these three measures. The Commission has authority to regulate certain text messages under the TCPA, particularly with regard to messages sent using an autodialer and without the consent of the called party. We seek comment on whether we have legal authority to adopt rules addressing these issues under the TCPA or the TRACED Act. For example, is

---

[206] *See supra* para. 56.

[207] Robokiller 2022 Report at 5.

[208] *Text Blocking Order and Further Notice* at para 43. *See also Text Blocking NPRM* , 37 FCC Rcd at 11632, para 44.

[209] The volume of spam texts in 2022 (225.7 billion) was 2.62 times the previous annual amount (86 billion per year). Our calculation scales up the $2 billion fraud harm by this factor, resulting in an estimated harm of $5.3 billion.

[210] Robokiller 2022 Report at 4.

[211] Section 1 of the Communications Act 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.

[212] 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 TCPA jurisdiction sufficient to support our blocking proposals, and does the TRACED Act provide us with additional authority to adopt these rules?

91. Similarly, does the TCPA grant us sufficient authority to adopt the rules we discuss regarding requiring email-to-text to be an opt-out service? Commenters should also discuss whether we have authority for our proposals under section 251(e) of the Act, which provides us "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,"[213] particularly to adopt any authentication, traceback, or blocking requirements. The Commission found authority to implement STIR/SHAKEN for voice service providers under section 251(e) of the Act in order to prevent the fraudulent exploitation of numbering resources.[214] Does section 251(e) of the Act grant us authority to adopt implementation of authentication for text messages?

92. We seek comment on our authority under the Truth in Caller ID Act for these proposals. The Commission found that it has authority under this statute to adopt a blocking requirement in the *Text Blocking Order and Further Notice*.[215] The Commission also found authority under this provision to mandate STIR/SHAKEN implementation, explaining that it was "necessary to enable voice service providers to help prevent these unlawful acts and to protect voice service subscribers from scammers and bad actors."[216] We seek comment on whether that same reasoning applies here. We also seek comment on whether we have authority for these proposals under Title III of the Act. Are there any other sources of authority we could rely on to adopt any of the rules we discuss in this Second Further Notice of Proposed Rulemaking?

V. WAIVER ORDER

93. We adopt a waiver, *sua sponte*, for a period of 12 months, to commence on the effective date of section 64.1200(s) of the Commission's rules, specifically to allow mobile wireless providers to access the RND to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. We delegate authority to the Consumer and Governmental Affairs Bureau to extend the term of this waiver, if needed. The Commission established the RND to allow callers to determine whether a telephone number has been permanently disconnected after a date certain and therefore is no longer assigned to the party the caller wants to reach.[217] The Commission's rules require providers ensure the efficient use of telephone numbers by reassigning a telephone number to a new consumer after it is disconnected by the previous subscriber.[218] When a number is reassigned, callers may inadvertently reach the new consumer who now has the reassigned number (and may not have consented to calls from the calling party). To mitigate these occurrences, in the *Reassigned Numbers Report and Order*, the Commission established a single, comprehensive database to contain reassigned number information from each provider that obtains North American Numbering Plan (NANP) U.S. geographic numbers, which enables any caller to verify whether a telephone number has been reassigned before calling that number.[219]

94. We strongly encourage providers to determine whether a number has been reassigned in order to avoid blocking lawful texts from a different source using the number. One way to make this

[213] 47 U.S.C. § 251(e).

[214] *STIR/SHAKEN Order*, 35 FCC Rcd at 3260-61, para. 42.

[215] *Text Blocking Order and Further Notice*, at para. 39.

[216] *STIR/SHAKEN Order*, 35 FCC Rcd at 3262, para. 44.

[217] *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, 33 FCC Rcd 12024, 12029, para. 11 (2018) (*Reassigned Numbers Report and Order*).

[218] *Id.* at 12027, para. 5 (citing 47 CFR § 52.15); *see* 47 CFR § 52.15(f)(1)(ii) (addressing aging of numbers).

[219] *Reassigned Numbers Report and Order,* 33 FCC Rcd at 12031, para. 19; *see also id*. at 12033-34, paras. 24-25.

determination is through use of the RND. However, the use of the RND in this manner is outside of the original scope of the RND and disallowed by the *Reassigned Numbers Report and Order*, which states that the RND is "available only to callers who agree in writing that the caller (and any agent acting on behalf of the caller) will use the database solely to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts."[220]

95. However, when it adopted the *Reassigned Numbers Report and Order*, the Commission stated that it would address requests to access to the database for other lawful purposes through its waiver process.[221] Under this process, the Commission may waive its rules for good cause shown.[222] 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.[223] We find that permitting providers to access the RND for the purpose of determining if a number has been permanently disconnected after the date of an illegal text described in a Notification of Illegal Texts would prevent erroneous blocking of text messages (if the number had been reassigned) and is good cause to grant this waiver, *sua sponte*. A subsequent user of the number that had previously been used for illegal texts should not be subject to erroneous blocking, particularly as this can be avoided by such access to the RND, and this consequent reduction in erroneous blocking would serve the public interest. We thus find good cause for such a waiver, for accessing the RND for this purpose.

96. We therefore adopt a waiver, *sua sponte*, for a period of 12 months, to commence on the effective date of section 64.1200(s) of the Commission's rules, specifically for accessing the RND to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. Providers may access the RND for this purpose in the same manner as they would to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts.[224]

VI. PROCEDURAL MATTERS

97. *Paperwork Reduction Act*. This document may contain new and 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 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

[220] *Id*. at 12034, para. 26.

[221] *See id*. at n.68.

[222] *See* 47 CFR § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Our rules also expressly provide that any rule may be waived by the Commission on its own motion. *See* 47 CFR § 1.3.

[223] *See Northeast Cellular*, 897 F.2d at 1166. Courts have recognized that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[224] The certification statement for use of the RND will need to be modified to cover this use. We anticipate that the certification would be substantially similar to "The user agrees and warrants that it, and any agent acting on its behalf, will access and use the reassigned numbers database to: 1) determine whether a number has been permanently disconnected since a date selected by the user, or its agent, for the purpose of making lawful calls or sending lawful texts. The date selected will be a date that the user, or its agent, reasonably and in good faith believes the person it intends to call or text could be reached at that number; or 2) Determine if a number that the Commission's Enforcement Bureau has directed a provider to block has been permanently disconnected and therefore if such blocking should cease. The date selected will be the latest date given for an illegal text from the number by the Commission's Enforcement Bureau in its Notification of Illegal Texts."

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 present document, we have assessed the effects of our requirement that providers block texts following notification from the Enforcement Bureau of fraudulent texts from a particular source. We find that, to the extent this requirement constitutes an information collection, such collection will not present a substantial burden for small business concerns with fewer than 25 employees and that any such burdens would be far outweighed by the benefits to consumers from blocking text messages that are highly likely to be illegal.

98. This document may also contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any proposed 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.

99. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[225] 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."[226] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in Appendix D.

100. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Second Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix E. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Second Further Notice of Proposed Rulemaking* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

101. *Congressional Review Act*. The Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, has concurred that this rule is "major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

102. *Ex Parte Rules*. The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[227] 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

[225] *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. 847 (1996).

[226] 5 U.S.C. § 605(b).

[227] 47 CFR §§ 1.1200 *et seq*.

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.[228]

103. *Filing of Comments and Reply Comments*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *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: www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, D.C. 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020).

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

105. *Availability of Documents*. Comments, reply comments, *ex parte* submissions, and the Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

106. *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.[229] Accordingly, the Commission will publish the required summary of this Second Further Notice of Proposed Rulemaking on

[228] 47 CFR § 1.49(f).

[229] 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.

107. *Additional Information*. For additional information on this proceeding, contact Jerusha Burnett, jerusha.burnett@fcc.gov, 202 418-0526, or Mika Savir, mika.savir@fcc.gov, 202 418-0384, both of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

VII. ORDERING CLAUSES

108. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 4(j), 227, 251(e), 301, 303, 307, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227, 251(e)(1), 301, 303, 307, and 316, that this Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order IS ADOPTED.

109. **IT IS FURTHER ORDERED** that this Second Report and Order **SHALL BE EFFECTIVE** 60 days after publication in the Federal Register, except that the amendments to section 47 CFR § 64.1200(f)(9), which may contain new or modified information collection requirements, will not become effective until 12 months after publication in the Federal Register or 30 days after notice that the Office of Management and Budget has completed review of any information collection requirements that the Consumer and Governmental Affairs Bureau determines is required under the Paperwork Reduction Act, whichever is later and the amendments to 47 CFR § 64.1200(s) which shall be effective 180 days after publication in the Federal Register. The Commission directs the Consumer and Governmental Affairs Bureau to announce the effective date for section 64.1200(f)(9) by subsequent Public Notice.

110. **IT IS FURTHER ORDERED**, that, the Commission's rule restricting access to the Reassigned Numbers Database only to callers to determine whether a number has been permanently disconnected for the purpose of making lawful calls or sending lawful texts **IS WAIVED** to the extent described in the Waiver Order (Section V) to allow mobile wireless providers to access the Reassigned Numbers Database to determine whether a number has been permanently disconnected since the date(s) of the illegal texts described in a Notification of Illegal Texts.

111. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order and Second Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.**IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Second Report and Order in a report to be sent to Congress and to the Governmental Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

	Commenter	Abbreviated Name	Date Filed
1	American Association of Ancillary Benefits	AAAB	5/5/23
2	American Association for Public Opinion Research	AAPOR	5/2/23
3	(Anonymous) Small Business	Small Business	4/7/23
4	Assurance IQ, LLC	Assurance	5/8/23
5	Balboa Digital/Kevin Wagoner	Balboa Digital	4/17/23
6	Campaign Verify, Inc.	Campaign Verify	5/8/23
7	Chandler, Corey	Chandler	5/8/23
8	Competitive Carriers Association	CCA	5/8/23
9	Concerned Citizen	Concerned Citizen	5/8/23
10	Connors, James	Connors	4/17/23
11	Consumer Consent Council	C3	5/8/23
12	CTIA —The Wireless Association®	CTIA	5/8/23
13	Dobronski, Mark W.	Dobronski	5/8/23
14	Drips Holdings, LLC	Drips	5/8/23
15	Earl, William J.	Earl	5/3/23
16	Enterprise Communications Advocacy Coalition	ECAC	5/8/23
17	Harvey, Brian	Harvey	5/8/23
18	Haskins, Hayden	Haskins	5/8/23
19	High Tech Forum/Richard Bennett	High Tech Forum	4/16/23
20	INCOMPAS	INCOMPAS	5/8/23
21	Insurance Marketing Coalition	IMC	5/8/23
22	Keller, Richard	Keller	5/9/23
23	LendingTree, LLC	LendingTree	5/8/23

24	Messaging Malware Mobile Anti-Abuse Working Group	M^{3}AAWG	5/4/23
25	National Association of Mutual Insurance Companies/Thomas Karol	NAMIC	5/8/23
26	National Consumer Law Center, on behalf of its low-income clients, Electronic Privacy Information Center, Appleseed Foundation, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Association of State Utility Consumer Advocates, National Consumers League, Public Citizen, Public Knowledge, U.S. PIRG	Joint Consumer Commenters	5/8/23
27	NetNumber, Inc.	NetNumber	5/8/23
28	Online Lenders Alliance/Michael Day	OLA	5/8/23
29	Professional Association for Customer Engagement	PACE	5/8/23
30	Pain, Edmond and Stodolak, David	Pain and Stodolak	5/8/23
31	Presley, Richard	Presley	4/11/23
32	QuinStreet, Inc.	QuinStreet	5/8/23
33	Receivables Management Assoc International	RMAI	5/8/23
34	Responsible Enterprises Against Consumer Harassment, Mutual Benefit Corporation/Eric Troutman	REACH	5/8/23 and 5/9/23 (amendment to comments to correct spellings, etc.)
35	Rubenstein, Mark	Rubenstein	3/28/23
36	Schwab, Thomas J. (filed in 02-278)	Schwab	4/17/23
37	Shields, Joe	Shields	5/9/23
38	Solar Energy Industries	SEIA	5/8/23

	Association		
39	SolarReviews	SolarReviews	4/19/23
40	Subbaiah, Kelly	Subbaiah	3/28/23
41	UnitedHealthcare	UHC	5/8/23
42	USTelecom – The Broadband Association	USTelecom	5/8/23
43	Voice on the Net Coalition	VON	5/8/23
44	Williamson, Sydney	Williamson	3/28/23
45	ZipDX, LLC	ZipDX	5/8/23

	Reply Commenter and Ex Parte	**Abbreviated name**	**Date Filed**
1	28 State Attorneys General (Steve Marshall, Alabama; Treg Taylor, Alaska; Kristin K. Mayes, Arizona; Rob Bonta, California; Philip J. Weiser, Colorado; William Tong, Connecticut; Brian L. Shwalb, District of Columbia; Kwame Raoul, Illinois; Aaron M. Frey, Maine; Anthony G. Brown, Maryland; Andrea Joy Campbell, Massachusetts; Dana Nessel, Michigan; Keith Ellison, Minnesota; Lynn Fitch, Mississippi; Matthew J. Platkin, New Jersey; Josh Stein, North Carolina; Drew H. Wrigley, North Dakota; Dave Yost, Ohio; Gentner Drummond, Oklahoma; Ellen F. Rosenblum, Oregon; Michelle A. Henry, Pennsylvania; Alan Wilson, South Carolina; Jonathan Skrmetti, Tennessee; Charity R. Clark, Vermont; Jason Miyares, Virginia; Bob Ferguson,	State Attorneys General	6/6/23

	Washington; Joshua L. Kaul, Wisconsin; Bridget Hill, Wyoming)		
2	American Bankers Association, ACA International, American Financial Services Association, Bank Policy Institute, Credit Union National Association, Mortgage Bankers Association, National Association of Federally-Insured Credit Unions, National Council of Higher Education Resources, and Student Loan Servicing Alliance	Bankers Joint Commenters	6/6/23
3	Competitive Carriers Association	CCA	6/6/23
4	Connors, James	Connors	6/7/23
5	Contact Care Compliance	Contact Care Compliance	5/18/23
6	Crisp, Marcus	Crisp	6/7/23
7	CTIA —The Wireless Association®	CTIA	6/6/23
8	Dobronski, Mark	Dobronski	6/7/23
9	Douglas, John	Douglas	6/6/23
10	Insurance Marketing Coalition	IMC	6/6/23
11	Keller, Richard	Keller	6/4/23 (two replies filed, one is an express comment)
12	LendingTree, LLC	LendingTree	6/6/23
13	Madame Mohawk	Madame Mohawk	6/26/23
14	National Consumer Law Center, on behalf of its low-income clients, Electronic Privacy Information Center, Appleseed Foundation, Consumer Action, Consumer Federation of America, National	Joint Consumer Commenters	6/6/23

	Association of Consumer Advocates, National Association of State Utility Consumer Advocates, National Consumers League, Public Citizen, Public Knowledge, U.S. PIRG		
15	NetNumber, Inc.	NetNumber	6/6/23
16	Powell, William J.	Powell	5/9/23
17	Email from David Frankel, ZipDX, to Marlene H. Dortch, Secretary, FCC (May 15, 2023)	ZipDX May 15 *ex parte*	5/15/23
18	Provenant	Provenant	6/6/23
19	Responsible Enterprises Against Consumer Harassment, Mutual Benefit Corporation/Eric Troutman	REACH	6/5/23
20	Retail Industry Leaders Association	RILA	5/9/23
21	Rural Wireless Association, Inc.	RWA	6/6/23
22	Shields, Joe	Shields	6/6/23
23	Solar Energy Industries Association	SEIA	6/6/23
24	Somos, Inc.	Somos	6/6/23
25	Subbaiah, Kelly	Subbaiah	6/5/23
26	T-Mobile USA, Inc.	T-Mobile	6/6/23
27	Twilio, Inc.	Twilio	6/6/23
28	Westbrook, Ken	Westbrook	7/26/23
29	Williams, Marjorie	Williams	6/6/23
30	ZipDX, LLC	ZipDX	6/5/23
31	Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC (July 25, 2023)	CTIA July 25 *ex parte*	7/25/23
32	Letter from Scott	CTIA Aug. 2 *ex parte*	8/2/23

	Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC (Aug. 2, 2023)		
33	Letter from United States Senators Ben Ray Luján, Edward J. Markey, Peter Welch, Chris Van Hollen, Elizabeth Warren, Angus S. King, Jr., Richard J. Durbin, Martin Heinrich, Mark R. Warren, Gary C. Peters, Ron Wyden, Amy Klobuchar, to Jessica Rosenworcel, Chairwoman, FCC (Aug. 7, 2023)	Aug. 7 Congressional	8/7/23
34	Letter from Missy Meggison, Co-Executive Director, Consumer Relations Consortium, to FCC (Aug. 9, 2023).	CRC Aug. 9 *ex parte*	8/9/23
35	Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC (Aug. 23, 2023)	CTIA Aug. 23 *ex parte*	8/23/23
36	Letter from Yaron Dori and Jorge Ortiz, counsel to QuinStreet, to Marlene H. Dortch, Secretary, FCC (Aug. 30 2023)	QuinStreet Aug. 30 *ex parte*	8/30/23
37	Letter from Steven A. Augustino and Josh Myers, counsel to LendingTree, LLC to Marlene H. Dortch, Secretary, FCC (Sept. 8, 2023)	LendingTree Sept. 8 *ex parte*	9/8/23
38	Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC (Sept. 15, 2023)	REACH Sept. 15 *ex parte*	9/15/23
39	Letter from Michael H. Pryor, Brownstein, Hyatt,	ABA Sept. 18 *ex parte*	9/18/23

	Farber, Schreck LLP, to Marlene H. Dortch, Secretary, FCC (Sept. 18, 2023)		
40	Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC (Sept. 20, 2023)	REACH Sept. 20 *ex parte*	9/20/23
41	Letter from Steven A. Augustino and Josh Myers, counsel to NetNumber, Inc. to Marlene H. Dortch, Secretary, FCC (Sept. 21, 2023)	NetNumber *ex parte*	9/21/23
42	Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC (Sept. 26, 2023)	REACH Sept. 26 *ex parte*	9/26/23
43	Letter from David Frankel, ZipDX, to Marlene H. Dortch, Secretary, FCC (Sept. 26, 2023	ZipDX Sept. 26 *ex parte*	9/26/23
44	Letter from Michael H. Pryor, Brownstein, Hyatt, Farber, Schreck LLP, to Marlene H. Dortch, Secretary, FCC (Sept. 26, 2023)	ABA Sept. 26 *ex parte*	9/26/23
45	Letter from Lucas Bell, Director, Government Relations, Zillow Group, to Marlene H. Dortch, Secretary, FCC (Oct. 27, 2023)	Zillow Oct. 27 *ex parte*	10/27/23
46	Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC (Oct. 31, 2023)	REACH Oct. 31 *ex parte*	10/31/23
47	Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC	REACH Nov. 2 *ex parte*	11/2/23

	(Nov. 2, 2023)		
48	Letter from Michael H. Pryor, Brownstein, Hyatt, Farber, Schreck LLP, to Marlene H. Dortch, Secretary, FCC (Nov. 9, 2023)	Credit Union National Association Nov. 9 *ex parte*	11/9/23
49	Letter from Michael H. Pryor, Brownstein, Hyatt, Farber, Schreck LLP, to Marlene H. Dortch, Secretary, FCC (Nov. 15, 2023)	ABA Nov. 15 *ex parte*	11/15/23
50	Letter from Eric J. Troutman, Counsel to EXP Realty, to Marlene H. Dortch, Secretary, FCC (Nov. 16, 2023)	EXP Realty *ex parte*	11/16/23
51	Letter from Eric J. Troutman, President, REACH, to Marlene H. Dortch, Secretary, FCC (Nov. 20, 2023)	REACH Nov. 20 *ex parte*	11/20/23
52	Email from David Frankel, ZipDX, to FCC (Nov. 29, 2023).	ZipDX Nov. 29 *ex parte*	11/29/23
53	Letter from Yaron Dori and Jorge Ortiz, Counsel to QuinStreet, to Marlene H. Dortch, Secretary, FCC (Nov. 30 2023)	QuinStreet Nov. 30 *ex parte*	11/30/23
54	Letter from Steven A. Augustino, Counsel to LendingTree, to Marlene H. Dortch, Secretary, FCC (Nov. 30, 2023).	LendingTree Nov. 30 *ex parte*	11/30/23
55	Letter from Jonathan Thessin, Vice President/Senior Counsel, American Bankers Association, to Marlene H. Dortch, Secretary, FCC (Nov. 30, 2023)	ABA Nov. 30 *ex parte*	11/30/23
56	Letter from Margot Saunders, National Consumer Law Center, to Marlene H. Dortch,	Joint Consumer Commenters Dec. 1 *ex parte*	12/1/23

	Secretary, FCC (Dec 1, 2023).		
57	Letter from Major L. Clark III and Jamie Belcore Saloom, Small Business Administration Office of Advocacy, to Marlene H. Dortch, Secretary, FCC (Dec 1, 2023).	SBA Dec. 1 *ex parte*	12/1/23
58	Email from David Frankel, ZipDX, to FCC (Dec. 3, 2023).	ZipDX Dec. 3 *ex parte*	12/3/23
59	Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC (Dec. 4, 2023)	CTIA Dec. 4 *ex parte*	12/4/23
60	Letter from Michael Day, Policy Director, Online Lenders Alliance, to Marlene H. Dortch, Secretary, FCC (Dec. 4, 2023)	OLA Dec. 4 *ex parte*	12/4/23
61	Letter from Alexander H. Burke, Burke Law Offices, LLC, to Marlene H. Dortch, Secretary, FCC (Dec. 5, 2023)	Burke Dec. 5 *ex parte*	12/5/23
62	Letter from Steven A. Augustino, Counsel to LendingTree, to Marlene H. Dortch, Secretary, FCC (Dec. 5, 2023).	LendingTree Dec. 5 *ex parte*	12/5/23
63	Letter from Steven A. Augustino, Counsel to LendingTree, to Marlene H. Dortch, Secretary, FCC (Dec. 6, 2023).	LendingTree Dec. 6 *ex parte* Burke Response	12/6/23
64	Letter from Alexandra Mays, Assistant General Counsel and Director, Regulatory Affairs, Competitive Carrier Association, to Marlene H. Dortch, Secretary, FCC	CCA Dec. 6 *ex parte*	12/6/23

	(Dec. 6, 2023)		
65	Letter from Insurance Marketing Coalition to Marlene H. Dortch, Secretary, FCC (Dec. 6, 2023)	IMC Dec. 6 *ex parte*	12/6/23
66	Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC (Dec. 6, 2023)	CTIA Dec. 6 *ex parte*	12/6/23
67	Letter from Steven A. Augustino, Counsel to LendingTree, to Marlene H. Dortch, Secretary, FCC (Dec. 6, 2023).	LendingTree Dec. 6 *ex parte*	12/6/23
68	Letter from Michael Day, Policy Director, Online Lenders Alliance, to Marlene H. Dortch, Secretary, FCC (Dec. 6, 2023)	OLA Dec. 6 *ex parte*	12/6/23
69	Letter from Michael Day, Policy Director, Online Lenders Alliance, to Marlene H. Dortch, Secretary, FCC (Dec. 7, 2023)	OLA (Carr) Dec. 7 *ex parte*	12/7/23
70	Letter from Michael Day, Policy Director, Online Lenders Alliance, to Marlene H. Dortch, Secretary, FCC (Dec. 7, 2023)	OLA (Starks) Dec. 7 *ex parte*	12/7/23
71	Letter from Steven A. Augustino, Counsel to LendingTree, to Marlene H. Dortch, Secretary, FCC (Dec. 7, 2023).	LendingTree CGB Dec. 7 *ex parte*	12/7/23
72	Letter from Steven A. Augustino, Counsel to LendingTree, to Marlene H. Dortch, Secretary, FCC (Dec. 7, 2023).	LendingTree Dec. 7 *ex parte*	12/7/23
73	Letter from Luke Bell, Director, Government	Zillow Dec. 8 *ex parte*	12/8/23

	Relations, Zillow Group, to Marlene H. Dortch, Secretary, FCC (Dec. 8, 2023)		
74	Letter from United States Senators Thom Tillis and Marsha Blackburn to Jessica Rosenworcel, Chairwoman, FCC (Dec. 6, 2023)	Dec. 6 Congressional	12/6/23

APPENDIX B

Final Rules

The Federal Communications Commission amends Parts 0 and 64 of Title 47 of the Code of Federal Regulations as follows:

PART 0—COMMISSION ORGANIZATION

Subpart A—Organization

1. Amend section 0.111(a) by revising paragraph (27) to read:

(27) Identify suspected illegal calls and illegal texts and provide written notice to voice service or mobile wireless providers. The Enforcement Bureau shall: (1) identify with as much particularity as possible the suspected traffic or texts; (2) cite the statutory or regulatory provisions the suspected traffic appear to violate or illegal texts violate; (3) provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic or the determination that the illegal texts are unlawful, including any relevant nonconfidential evidence from credible sources such as the industry traceback consortium or law enforcement agencies; and (4) direct the voice service provider receiving the notice that it must comply with section 64.1200(n)(2) of the Commission's rules or direct the mobile wireless provider receiving the notice that it must comply with 64.1200(s) of the Commission's rules.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Amend § 64.1200 by revising paragraph (e) to add "or text messages," to read as follows:

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls or text messages to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02–278, FCC 03–153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

3. Amend § 64.1200 by revising the first full paragraph of paragraph (f)(9) to read as follows:

(f)(9) The term prior express written consent means an agreement, in writing, that bears the signature of the person called or texted that clearly and conspicuously authorizes no more than one identified seller to deliver or cause to be delivered to the person called or texted advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. Calls and texts must be logically and topically associated with the interaction that prompted the consent and the agreement must identify the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.
(i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that:
(A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls or texts using an automatic telephone dialing system or an artificial or prerecorded voice; and
(B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services. The term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

4. Amend § 64.1200 by adding paragraph (s) to read as follows:

(s) A terminating mobile wireless provider must, upon receipt of a Notification of Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s), including, when required, blocking all texts from the identified number or numbers. The Enforcement Bureau will issue a Notification of Illegal Texts that identifies the number(s) used and the date(s) the texts were sent or received; provides the basis for the Enforcement Bureau's determination that the identified texts are unlawful; cites the statutory or regulatory provisions the identified texts violate; directs the provider receiving the notice that it must comply with this section; and provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Enforcement Bureau's Notification of Illegal Texts shall give the identified provider a reasonable amount of time to comply with the notice. The Enforcement Bureau shall publish the Notification of Illegal Texts in EB Docket No. 23-418 at *https://www.fcc.gov/ecfs/search/search-filings*. The provider must include a certification that it is blocking all texts from the number or numbers and will continue to do so unless the provider learns that the number has been reassigned, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. The provider is not required to monitor for number reassignments.

APPENDIX C

Proposed Rules

The Federal Communications Commission amends Part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

1. Amend section 64.1200 by revising paragraph (s) to reread:

(s) A mobile wireless provider must:

(1) A terminating mobile wireless provider must, upon receipt of a Notification of Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s)(1), including, when required, blocking all texts from the identified number or numbers. The Enforcement Bureau will issue a Notification of Illegal Texts that identifies the number(s) used and the date(s) the texts were sent or received; provide the basis for the Enforcement Bureau's determination that the identified texts are unlawful; cite the statutory or regulatory provisions the identified texts violate; direct the provider receiving the notice that it must comply with this section; and provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Enforcement Bureau's Notification of Illegal Texts shall give the identified provider a reasonable amount of time to comply with the notice. The Enforcement Bureau shall publish the Notification of Illegal Texts in EB Docket No. 23-418 at *https://www.fcc.gov/ecfs/search/search-filings*. The provider must include a certification that it is blocking all texts from the number or numbers and will continue to do so unless the provider learns that the number has been reassigned, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. The provider is not required to monitor for number reassignments.

(2) If an originating provider, upon receipt of a Notification of Suspected Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s)(2), including, when required, blocking all texts from the source. The Enforcement Bureau will issue a Notification of Suspected Illegal Texts that identifies with as much particularity as possible the suspected illegal texts including the number(s) used and the date(s) the texts were sent or received; provides the basis for the Enforcement Bureau's reasonable belief that the identified texts are unlawful; cites the statutory or regulatory provisions the identified texts appear to violate; and directs the provider receiving the notice that it must comply with this section. The Enforcement Bureau's Notification of Suspected Illegal Texts shall give the identified provider a minimum of 14 days to comply with the notice. Each notified provider must promptly investigate the identified texts and report the results of that investigation to the Enforcement Bureau within the timeframe specified in the Notification of Suspected Illegal Texts.

(i) The provider must include a certification that it is blocking all texts from the source, and will continue to do so unless:

(A) the provider determines that the identified texts are not illegal, in which case it shall provide an explanation as to why the provider reasonably concluded that the identified texts are not illegal and what steps it took to reach that conclusion; or

(B) the provider learns that the number has been reassigned and the source cannot be otherwise identified in a content-neutral and competitively-neutral manner, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it should notify the Enforcement Bureau and cease blocking unless further blocking of the source can be done in a content-neutral and competitively-neutral manner.

(ii) If an originating mobile wireless provider fails to respond to the Notification of Suspected Illegal Texts, the Enforcement Bureau determines that the response is insufficient, the Enforcement Bureau determines that the provider is continuing to originate texts from the same source that could be blocked after the timeframe specified in the Notification of Suspected Illegal Texts, or the Enforcement Bureau determines based on the evidence that the texts are illegal despite the provider's assertions, the Enforcement Bureau may issue an Initial Determination Order to the provider stating the Bureau's initial determination that the provider is not in compliance with this section. The Initial Determination Order shall include the Enforcement Bureau's reasoning for its determination and give the provider a minimum of 14 days to provide a final response prior to the Enforcement Bureau making a final determination on whether the provider is in compliance with this section.

(1) If an originating mobile wireless provider does not provide an adequate response to the Initial Determination Order within the timeframe permitted in that Order or continues to originate texts from the same source onto the U.S. network, the Enforcement Bureau may issue a Final Determination Order finding that the provider is not in compliance with this section. The Final Determination Order shall be published in EB Docket No. 22-174 at. A Final Determination Order may be issued up to one year after the release date of the Initial Determination Order, and may be based on either an immediate failure to comply with this rule or a determination that the provider has failed to meet its ongoing obligation under this rule to block all texts from the identified source.

(2) When notified by the Commission through its Enforcement Bureau that a Final Determination Order has been issued finding that an originating mobile wireless provider has failed to block as required under paragraph (s)(1) of this section, block and cease accepting all texts received directly from the identified originating provider beginning 30 days after the release date of the Final Determination Order. This paragraph (s)(2) applies to any provider immediately downstream from the originating provider. The Enforcement Bureau shall provide notification by publishing the Final Determination Order in EB Docket No. 22–418 at *https://www.fcc.gov/ecfs/search/search-filings*. Providers must monitor EB Docket No. 22–174 and initiate blocking no later than 30 days from the release date of the Final Determination Order.

APPENDIX D

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),[1] as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Further Notice of Proposed Rulemaking* (*FNPRM*), released March 2023.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Second Report and Order

2. The *Second Report and Order* continues the Commission's efforts to stop the growing tide of unwanted and illegal texts by building on the text blocking requirements from the March 2023 *Text Blocking Order*.[4] While mobile wireless providers voluntarily block a significant number of unwanted and illegal texts, many of these harmful texts still reach consumers. The *Second Report and Order* requires terminating mobile wireless providers to block texts from a particular source following notification from the Commission; codifies that the National Do-Not-Call (DNC) Registry protections apply to text messages; encourages mobile service providers to make email-to-text an opt-in service; and revises our definition of prior express written consent making clear that consent must be to one seller at a time, and the seller must be logically and topically related to the content of the website on which consent is obtained.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

5. The Chief Counsel did not file comments in response to the proposed rules in this proceeding; however, the Chief Counsel filed an *ex parte* letter on December 1, 2023. The SBA contends that small businesses have stated that the proposal to require sellers to obtain consent to call or text from one consumer at a time could increase costs significantly for small businesses that both buy and sell sales leads. The SBA did not offer any evidence to support this contention and did not address the benefit to consumers and to small businesses in having a reduction of unwanted calls and texts.

---

[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] *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 02-278, 21-402, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-21 (Mar. 17, 2023) (*Text Blocking Order and Further Notice*).

[3] *See* 5 U.S.C. § 604.

[4] *Text Blocking Order and Further Notice* at 7-14,-paras. 13-31.

6. This rule makes it unequivocally clear that prior express written consent under the TCPA must be to one seller at a time, but does not prevent small businesses from buying and selling leads or prevent small businesses from contact with consumers. The requirements for prior express written consent for the telemarketing calls covered by the TCPA will also protect business phones from the floods of unwanted prerecorded telemarketing calls. This is especially helpful for small business owners who are incentivized to answer all incoming calls because each call may be from a potential customer and are unable to ignore calls from unfamiliar numbers. In addition, this requirement will help small businesses because it will provide legal certainty as to how callers and texters can demonstrate valid consent when that consent was obtained via a third party.

7. The Commission acknowledges that the decision to make unequivocally clear that prior express written consent under the TCPA must be one-to-one consent may raise costs for some businesses, including those that fall under the definition of small businesses, in that direct consent between a consumer and a seller requires more labor and administration than a blanket authorization for affiliated companies to contact an individual. However, the benefits of this policy, which accrue to millions of individuals and businesses, including small businesses, outweigh the costs to those businesses currently benefiting from multi-party "consent." Over time, it may be possible for technological solutions to lower the costs to businesses for seeking one-to-one prior express written consent and maintaining consent records. Any effort to create an exception for particular businesses, including small businesses, has the potential to undermine the effectiveness and intent of the policy, which is to provide consumers (including small businesses) the ability to determine when and how they are contacted in a transparent manner.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, 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

[5] *Id.* § 604 (a)(4).

[6] 5 U.S.C. § 601(6).

[7] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[8] 15 U.S.C. § 632.

[9] *See* 5 U.S.C. § 601(3)-(6).

[10] *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)

small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[11]

10. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[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 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]

11. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[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

[11] *Id*.

[12] *See* 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. 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.

[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] *See* 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] *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.

[19] *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.

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]

12. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[23] 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.[24] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[25] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[26] Of that number, 2,837 firms employed fewer than 250 employees.[27] 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.[28] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[29] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[30] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or

[20] *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.

[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 - 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, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[24] *Id.*

[25] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[26] 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.

[27] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[28] 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.

[29] *Id.*

[30] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[31] 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.[32] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[33] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[34] Of those firms, 1,039 had revenue of less than $25 million.[35] 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

14. The *Second Report and Order* includes new or modified reporting, recordkeeping, and compliance requirements for small and other entities. This includes requiring terminating mobile wireless providers to block texts from a particular number or numbers following notification from the Commission. Providers must promptly begin blocking the identified texts if illegal, and respond to the notice. If the provider is unable to block further texts from that number because it has learned that the number has been reassigned the provider should promptly notify the Enforcement Bureau. If the provider determines at a later date that the number has been reassigned, it should notify the Enforcement Bureau, and cease blocking. Providers that fail to comply may be subject to enforcement penalties, including monetary forfeiture.

15. The *Second Report and Order* also codifies that the National DNC Registry protections apply to text messages, and encourages mobile service providers to make email-to-text an opt-in service. Additionally, it revises our definition of prior express written consent making clear that consent must be only to one single seller-caller to one single consumer at a time, and the seller must be logically and topically related to the content of the website on which consent is obtained. Small entities may comply with the Telephone Consumer Protection Act (TCPA) and contact consumers by obtaining consent from the consumer to one seller at a time. The Commission expects that small and other providers already taking significant measures to block illegal texts and will not find it burdensome to comply with these new obligations. Any such burdens would be far outweighed by the benefits to consumers from blocking text messages that are highly likely to be illegal.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. 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

---

[31] *Id.*

[32] *Id*.

[33] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[34] *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.

[35] *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.

other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[36]

17. In the *Second Report and Order*, the Commission adopted text blocking rules modeled after the call blocking rules, but modified the new rules to account for the differences in the technology and delivery of text messages, and adopted requirements similar to those service providers were already familiar to reduce any additional burdens.[37] For example, a terminating provider will be required to block text messages only after it has received notice from the Commission's Enforcement Bureau. Second, text blockers are not required to block traffic "substantially similar" to the traffic the Enforcement Bureau identifies to avoid blocking on content analysis, which could lead to over blocking.[38] This modification will reduce concerns about liability for blocking incorrectly, as well as potential burdens if the Commission adopted a more expansive rule. While commenters suggested a blocking mandate is inappropriate because providers already take action to block text messages,[39] the Commission found commenters made general assertions, but offered no compelling evidence that they consistently block all traffic the Enforcement Bureau might identify.

18. In the *Second Report and Order*, the Commission also modified the prior express written consent requirement for TCPA consent to protect consumers while preserving the ability of comparison shopping websites to provide consumers with comparison shopping opportunities. This rule revision does not change the longstanding requirement that callers, including small businesses, must have consent from the called party, to comply with the TCPA. This modification makes it unequivocal that one-to-one consent is required under the Commission's TCPA consent rules. Such a requirement should not burden small entities that use lead generators to reach out to potential customers, because websites, including comparison shopping websites, can use a variety of means for collecting one-to-one consent for sellers to comply with the consent rule. For example, a website may offer a consumer a check box list that allows the consumer to specifically choose each individual seller that they wish to hear from or may offer the consumer a clickthrough link to a specific business so that the business itself may gather express written consent from the consumer directly. A website publisher could also reach out to a consumer for consent after the consumer has provided certain requested information and the site has subsequently selected a specific seller or sellers to contact the consumer.

19. The adopted modification does not prohibit comparison shopping websites from obtaining leads through valid consent and provides opportunities for such sites to obtain leads for potential callers (including small businesses) and texters. Further, this rule modification should help small businesses in reducing the number of unwanted and illegal calls and texts they receive, particularly if they cannot screen calls from unknown numbers. This rule modification best balances the needs of businesses, including small businesses, to utilize lead generation services to make calls to potential buyers with protecting consumers from a deluge of unwanted robocalls and robotexts. This will also help callers and texters, including small businesses, by providing legal certainty as to how to meet their burden of proof when they have obtained consent via a third party. Further, callers and texters may avail themselves of other options for providing comparison shopping information to consumers, e.g., manually dialed or non-prerecorded or artificial voice calls or texts, email, or information displayed directly on the third party website.

[36] 5 U.S.C. § 604(a)(6).

[37] *Second Report and Order* paras. 16-25.

[38] *Id.*

[39] *Id.*

G. Report to Congress

20. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[40] In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Second Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[41]

[40] 5 U.S.C. § 801(a)(1)(A).

[41] *Id.* § 604(b).

APPENDIX E

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 proposed in this *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Second Further Notice* The Commission will send a copy of this entire *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Second Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Second Further Notice*, the Commission proposes additional action to stop unwanted and illegal text messages that may harass and defraud consumers. Specifically, the Commission proposes extending the call blocking requirements to require all downstream providers to block the texts from upstream providers that fail to block after Commission notification. The Commission also seeks comment on requiring providers to block texts based on content-neutral analytics, and on whether it is appropriate to adopt a 24-hour traceback response requirement for text messaging. The *Second Further Notice* also requests comment on alternative approaches to protect consumers from unwanted texts, and any additional protections that may be necessary in case of erroneous blocking. In addition, we seek comment on the viability of text authentication, and whether we should require industry updates on its feasibility. Finally, the Commission proposes requiring providers to make email-to-text an opt-in service,.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 4(j), 227, 301, 303, 307, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227, 301, 303, 307, and 316.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A "small

[1] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996)

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *Id.*§ 603(b)(3).

[5] *Id.* § 601(6).

[6] *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 (continued….)

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.[7]

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.[8] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[9] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[10]

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."[11] 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.[12] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[13]

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 districts, with a population of less than fifty thousand."[14] U.S. Census Bureau data from the 2017 Census of Governments[15] indicate there were 90,075 local governmental jurisdictions consisting of

---

comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[7] 15 U.S.C. § 632.

[8] *See* 5 U.S.C. § 601(3)-(6).

[9] SBA, Office of Advocacy, "What's New With Small Business?," https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023)

[10] *Id*.

[11] *See* 5 U.S.C. § 601(4).

[12] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file,"https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[13] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[14] *See* 5 U.S.C. § 601(5).

[15] 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.

general purpose governments and special purpose governments in the United States.[16] Of this number, there were 36,931 general purpose governments (county,[17] municipal, and town or township[18]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[19] with enrollment populations of less than 50,000.[20] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[21]

8. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these service providers.[22] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[23] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[24] Of this number, 2,837 firms employed fewer than 250 employees.[25] 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

[16] U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes Local Governments by Type and State_2017.

[17] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[18] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[19] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State_Census Years 1942 to 2017.

[20] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[21] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

[22] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[23] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[24] *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.

[25] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

provision of wireless services.[26] Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.[27] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[28] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[29] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[30] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[31] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[32] Of those firms, 1,039 had revenue of less than $25 million.[33] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The *Second Further Notice* includes proposals that may alter the Commission's current information collection, reporting, recordkeeping, or compliance requirements for small entities. Specifically, the proposal to extend call blocking mandates to require all downstream providers to block the texts from upstream providers that fail to block after Commission notification, and requiring providers to block texts based on content-neutral analytics would create new obligations for small entities and other providers. Similarly, establishing a 24-hour traceback response requirement for text messaging and requiring providers to make email-to-text an opt in service would also impose new compliance obligations on all providers, including small businesses.

11. Additional blocking requirements, if adopted, such as requiring originating providers to block texts after notification from the Commission that the texts are likely to be illegal should not be a burden for small entities due to the fact that mobile wireless providers are currently blocking texts that are likely to be illegal. We anticipate the information we receive relating to cost and benefit analyses will help the Commission identify and evaluate relevant compliance matters for small entities, including

---

[26] 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.

[27] *Id.*

[28] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[29] *Id.*

[30] *Id.*

[31] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[32] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[33] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

compliance costs and other burdens that may result from the proposals and inquiries we make in the *Second Further Notice*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities."[34]

13. In the *Second Further Notice* the Commission considered and seeks comment on several alternatives that may significantly impact small entities. As we evaluate additional blocking requirements to protect consumers from illegal texts, we seek comment on how to define originating providers, and whether we should apply these rules to some other entity in the chain to better protect consumers. We propose blocking messages based on their source, but consider alternatively whether they should be blocked on other criteria such as traffic that is "substantially similar" to blocked texts. In addition, we seek comment on alternatives to requiring providers to block texts based on content-neutral reasonable analytics. We also request comment on alternatives to the proposed blocking or mitigation rules that would help to protect consumers from unwanted and illegal texts. The Commission expects to fully consider whether any of the costs associated with the proposed text blocking requirements can be alleviated for small entities and any alternatives to minimize the economic impact for small entities following the review of comments filed in response to the *Second Further Notice*.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.

[34] 5 U.S.C. § 603(c)(1)–(4).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Targeting and Eliminating Unlawful Text Messages,* CG Docket No. 21-402; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order (December 13, 2023)

It's the holiday season. This is the time of year when we are ramping up our online shopping, donating to charities, and maybe, if we are lucky, planning for some downtime visiting with family and friends. But it is also a time when scammers are coming up with new schemes to cheat us through our phones. They know that sending us a message about a package we never ordered or a payment that never went through along with a link to a shady website is a quick and easy way to get us to fall prey to fraud. These messages make a mess out of our phones. But they do more than that; they erode trust in the networks we all count on to communicate.

We need to find every way we can under the law to stop these junk robocalls and robotexts from reaching us on our devices. And because scam artists are nimble—during the holidays and throughout the year—we need to regularly update our policies to stop this stuff from coming over the line.

The changes we make today matter. We make clear that when the Federal Communications Commission identifies a number sending this junk, carriers must block texts from that number before they reach your phone. Likewise, we make clear that the national registry to prevent unwanted calls applies not only to calls but also to texts.

Then we go one step further and shut down a loophole that is a significant source of a growing number of robocalls and robotexts. This loophole has been identified as a problem by countless consumer groups, members of Congress, and State Attorneys General because it creates a marketplace for our numbers, with companies buying and selling access to our phones and in the process cranking up the number of unwanted calls and texts we receive.

Let me explain.

Imagine you are shopping online. You give a business your number and in a single click you are also giving that business the right to sell and share your number with hundreds if not thousands of other businesses that may use it to send you robocalls and robotexts that you never asked for, do not want, and do not need. They bury it in the fine print, so you do not realize when you make that one click you are authorizing all kinds of incoming junk to your phone. This is called the lead generator loophole. And it is a big reason why unwanted robocalls and robotexts are multiplying on our phones. So today we put an end to this loophole. We make clear that any company that wants to use robocalls and robotexts in their businesses obtain consent one-to-one. That means consumers get back the power to pick who they want to communicate with and when.

Then, to make sure we can keep updating our efforts to stop unwanted calls and texts, we seek comment on some additional ideas we have to address them, including blocking through originating service providers, using authentication practices for texting, and requiring texting response to traceback requests.

I look forward to the record that develops. I look forward to putting an end to illegal robocalls and robotexts. We are not going to stop until we do.

Thank you to those at the agency who worked on this effort, including Mark Stone, Aaron Garza, Wesley Platt, Kristi Thornton, Zac Champ, Jerusha Burnett, Mika Savir, Rebecca Maccaroni, Robert Aldrich, Kimberly Wild, and James Brown from the Consumer and Governmental Affairs Bureau; Kristi Thompson, Daniel Stepanicich, Caitlin Barbas, and Jane van Benten from the Enforcement Bureau; Jonathan Lechter, Connor Ferraro, Elizabeth Drogula, Adam Copeland, Jodie May, Melissa Droller Kirkel, Chris Laughlin, and Zachary Ross from the Wireline Competition Bureau; Kenneth Carlberg and David Furth from the Public Safety and Homeland Security Bureau; Kari Hicks, Susannah Larson, Jennifer Salhus, Barbara Esbin, Arpan Sura, Garnet Hanly, and John Lockwood from the Wireless Telecommunications Bureau; Joy Ragsdale, Joycelyn James, and Chana Wilkerson from the Office of Communications Business Opportunities; Michelle Schaefer, Patrick Brogan, Emily Talaga, Kim Makuch, Andrew Wise, Eugene Kiselev, Eric Ralph, and Mark Montano from the Office of Economics and Analytics; and Andrea Kearney, Rick Mallen, Derek Yeo, Jeffrey Steinberg, Kathleen Fulp, Anjali Singh, Michael Janson, Karen Schroeder, Douglas Klein, Marcus Maher, and Chin Yoo from the Office of General Counsel.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Targeting and Eliminating Unlawful Text Messages,* CG Docket No. 21-402; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order (December 13, 2023)

Combatting robocalls and robotexts is like whack-a-mole. We shut down one scam, another arises. We close one pathway for illegal and unwanted calls, fraudsters create another. But this is no game, and the FCC has not backed down.

We are also adapting our tactics and adopting new ones. That's what today's order does. First, we impose additional text blocking requirements on providers, building on those we adopted in March of this year. Second, we target the "lead generator loophole." Consumers have a right to control who contacts them. And just because you want to comparison shop doesn't mean you agree to provide a blanket consent to be robocalled and robotexted by strange, unrelated parties looking to prey. And finally, we ask questions about what other steps we can take to stay ahead of scammers, including whether and how to impose certain parts of our robocall playbook – including traceback and authentication – onto our robotext efforts. Here, as always, we will benefit from the knowledge and input of our industry and public interest partners.

Thank you to the FCC staff who worked on this item. It has my support.

STATEMENT OF COMMISSIONER NATHAN SIMINGTON, APPROVE, DISSENTING IN PART

Re: *Targeting and Eliminating Unlawful Text Messages,* CG Docket No. 21-402; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order (December 13, 2023)

I, like everyone in this building, and everyone on earth, hate receiving illegal and unwanted robotexts. I am pleased to approve every word of this item that does not relate to our approach to so-called "1-to-1 consent" for robotexts in the lead generation context. Unsurprisingly, the rest of the item is more-or-less well-trod regulatory territory that members of the Commission and staff are trained to understand.

However, as to our approach to 1-to-1 consent in the lead generation context, we are over our skis, and I dissent. I would have been pleased to support the approach, laid out in the NPRM, to constrain consumer consent to robotexting to only those entities "logically and topically related" to the predicate of the consumer inquiry. I voted for that because it made sense. That is: if I give consent to be robotexted about car insurance offers, I expect to receive texts about car insurance, not about garage doors—and, indeed, not even about car loans. Great. Makes sense. That proposal aligns typical consumer expectations around in what their consent to be robotexted consists, and it would eliminate the abusive practices contemplated in the NPRM.

I even supported asking about 1-to-1 consent in a further notice, because there is, possibly, a way to accomplish 1-to-1 consent that doesn't break the backs of American small business that rely on lead generation. Not probably, but at least possibly. We could have developed a fulsome record that actually contemplated that issue, instead of parachuting in an approach at the eleventh hour that caught American small businesses flat-footed and risks benefiting only the plaintiffs' bar. Unfortunately, by adopting 1-to-1 consent on a factually thin record, we today clumsily rush to save the American consumer from herself by sticking our finger in yet another new pie, vigorously stirring, calling the resulting mess a cobbler, insisting that it's healthier, and leaving the janitorial staff of brick-and-mortar, Main Street mortgage lenders, insurance brokers, real estate agents, and the like to clean up.

My colleagues worry that if we relax 1-to-1 consent, predatory lenders will rush into the regulatory gap left. Ah, yes. Predatory lenders, those conscientious respecters of regulation. If we regulate robotext consent hard enough, surely an offshore Cayman-funded organization with a call center in Belize relying principally on home-rolled SEO to dominate SERP visibility and using algorithmic approaches to beating Google's ad restrictions will be brought to heel. Give me a break. These people do not need to buy leads, and our action today does nothing to prevent their abusive behavior. At all. Nothing. It is another paper consumer victory for a Commission at least as interested in appearances as reality.

Speaking of appearances, the factual record on the question of 1-to-1 consent is so thin, and the Report and Order so impoverished in its reasoning supporting a rule upending the consumer financial products industry, that it gives every appearance of an arbitrary and capricious action by the Commission. But listen, I'm not the only one with concerns. Don't take the word of the Republican minority Commissioner. It is easy for me to take pot shots.

Consider instead the word of the Small Business Administration, who admonished the Commission to rethink today's Report and Order and to further consider our approach to 1-to-1 consent. The SBA's Office of Advocacy indicated not just that the small businesses of America are deeply concerned by today's action, but that it may indeed formally fail regulatory flexibility analysis in that it fails to account for the impact this action will have on small American businesses. Quite so, and no amount of last-second wordsmithing can rehabilitate a requirement this ill-considered and unsupported.

Again, as to the rest of the item, I approve. But as to this narrow issue, that easily could have been fixed by a further notice, I strongly dissent.

STATEMENT OF
COMMISSIONER ANNA GOMEZ

Re: *Targeting and Eliminating Unlawful Text Messages,* CG Docket No. 21-402; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order (December 13, 2023)

Choosing the right product or service in a thriving competitive market with a sea of options can be an overwhelming task. That is why consumers turn to comparison shopping websites. To make the process of choosing the right product or service – be it a loan, medical insurance, or real estate – easier, and less overwhelming. But when what seemed like a solution to staying afloat in a sea of too many choices turns into a tsunami of unwanted robocalls and robotexts, it is our job to step in to help.

The Order we adopt today makes clear that businesses interested in robocalling and robotexting consumers will need to receive specific consent from a consumer in order to send those types of communications. Importantly, this decision does not foreclose other marketing options.

In considering this item, I thought deeply about its effect on small businesses. The sea of product and service options can also be challenging for small businesses to navigate from a marketing perspective, because they face larger competitors for consumer attention. That is why small businesses turn to lead generators, to get leads on potential customers. I pay close attention when our rules impact small businesses. And, in this instance, they continue to have various options to work with lead generators. First, as long as a consumer provides prior express written consent to receiving marketing through robocalls or robotexts, a small business can still use leads obtained through lead generators to make robocalls and robotexts. And small businesses will continue to be able to contact customer leads via non-autodialed calls and non-autodialed texts—provided the customers are not on the Do Not Call List, email, and even mail.

While this Order alters the way some lead generator websites have operated, we believe that reducing the harm to consumers resulting from a tsunami of robotexts and robocalls to which they did not consent outweighs the discomfort of the change we adopt in this Order.

I want to thank the Office of the Chairwoman for accepting our edits to this item incorporating concerns from the small business community and highlighting the marketing options that remain available for small businesses. Also for directing the Consumer and Governmental Affairs Bureau to conduct outreach and provide education focusing on compliance to small business lead generators and small business lead buyers. And thank you to the Bureau for your hard work on this important item. I approve.

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

In the Matter of	)	
	)	
Achieving 100% Wireless Handset Model Hearing Aid Compatibility	)	WT Docket No. 23-388
	)	
Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets	)	WT Docket No. 15-285 (terminated)

NOTICE OF PROPOSED RULEMAKING

Adopted: December 13, 2023 **Released: December 14, 2023**

Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 45 days after publication in the Federal Register

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. The Commission has a longstanding commitment to ensuring that all Americans, including those with disabilities, are able to access communications services on an equal basis.[1] The recent pandemic highlighted just how important equal access to communications services is for individual well-being as well as the day-to-day functioning of American society. Our commitment to ensuring accessibility for all Americans includes ensuring those with hearing loss—more than 37.5 million Americans—have equal access to communications services as required by section 710 of the Communications Act.[2] This section directs the Commission to facilitate compatibility between wireless handset models and hearing aids.[3] In fulfilling this statutory directive, we are committed to ensuring that our wireless hearing aid compatibility provisions keep pace both with the ways handset models couple with hearing devices and requiring all handset models to be hearing aid compatible. It is with these objectives in mind that we initiate today's rulemaking.

2. Specifically, we issue this Notice of Proposed Rulemaking to develop a record with respect to a proposal submitted to us by the Hearing Aid Compatibility (HAC) Task Force on how the Commission can achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered in the United States or imported for use in the United States.[4] The HAC Task Force is an independent organization composed of groups who represent the interests of people with hearing loss, wireless service providers, and wireless handset manufacturers that was formed for the purpose of

[1] *See, e.g.*, *Access to Video Conferencing*, CG Docket No. 23-161, Report and Order, Notice of Proposed Rulemaking, and Order, FCC 23-50, at 3, paras. 3-5 (June 12, 2023) (taking steps to ensure video conferencing is accessible to all, including people with disabilities); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, 37 FCC Rcd 11900, 11902, para. 3 (2002) (adopting requirements to improve access to communications services for incarcerated people with communication disabilities); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report and Order, FCC 23-82, at 1, para. 1 (Oct. 17, 2023) (expanding audio description requirements to ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming).

[2] 47 U.S.C. § 610. Approximately 37.5 million Americans age 18 or over report hearing loss and about 2 to 3 out of every 1,000 children in the United States are born with a detectable level of hearing loss in one or both ears. National Institute on Deafness and Other Communication Disorders, Quick Statistics About Hearing, https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing. The Hearing Loss Association of America (HLAA) estimates that approximately 48 million Americans have some degree of hearing loss. HLAA, Hearing Loss Facts and Statistics, https://www.hearingloss.org/wp-content/uploads/HLAA_HearingLoss_Facts_Statistics.pdf.

[3] The Commission has long considered the scope of hearing aid compatibility to include compatibility with cochlear implants. *See, e.g.*, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, Report and Order, 18 FCC Rcd 16753, 16754, para. 2 (2003) (*2003 HAC Order*). Accordingly, questions in this Notice of Proposed Rulemaking pertaining to the interaction between handset models and hearing aids apply to cochlear implants as well.

[4] Hearing Aid Compatibility Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022) (HAC Task Force Final Report); *see also Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336, 9337, para. 3 (2016) (*2016 HAC Order*). References to comments and other filings in this Notice can be found in WT Docket No. 15-285.

reporting to the Commission on whether requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective. The Task Force's Final Report represents a consensus proposal for how the Commission can achieve this objective. We propose to adopt the Task Force's proposal with certain modifications in order to ensure that all handset models provide full accessibility for those with hearing loss while at the same time ensuring that our rules do not discourage or impair the development of improved technology.[5]

3. Specifically, we tentatively conclude that requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective under the factors set forth in section 710(e) of the Communications Act.[6] As part of this determination, we seek comment on adopting the more flexible "forward-looking" definition of hearing aid compatibility that the HAC Task Force recommends. This determination also includes a proposal to broaden the current definition of hearing aid compatibility to include Bluetooth connectivity technology and to require at least 15% of offered handset models to connect to hearing aids through Bluetooth technology as an alternative to or in addition to a telecoil. We seek comment on the Bluetooth technology that we should utilize to meet this requirement and how we should incorporate this requirement into our wireless hearing aid compatibility rules.

4. Further, we explore ways to reach the 100% compatibility benchmark, and we propose a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States. We seek comment on certain implementation proposals and updates to the wireless hearing aid compatibility rules related to these proposals. These proposals include requirements for hearing aid compatibility settings in handset models, revised website posting, labeling and disclosure rules, and revised reporting requirements along with seeking comment on renaming our section 20.19 rules to better reflect what this section covers.

5. Our proposals are based on the results of collaborative efforts of members of the HAC Task Force who worked together over a period of years to reach a consensus proposal on how best to ensure that all new handset models meet the needs of those with hearing loss. The revisions that we propose today to our wireless hearing aid compatibility rules would ensure greater access to wireless communication services for Americans with hearing loss and the ability of these consumers to consider the latest and most innovative handset models for their needs.

II. BACKGROUND

6. Over time, the Commission has progressively increased the deployment benchmarks for hearing aid-compatible wireless handset models.[7] In 2016, the Commission reconfirmed its commitment to pursuing 100% hearing aid compatibility to the extent achievable.[8] The *2016 HAC Order* supported this objective by increasing the number of hearing aid-compatible handset models that handset

[5] 47 U.S.C. § 610(e); *see also 2003 HAC Order*, 18 FCC Rcd at 16765, para. 28 ("In the legislative history of the HAC Act, Congress stated that the Act does not tie manufacturers to a particular technology and inhibit future development; instead, it sought only to require that telephones be compatible.") (citation omitted).

[6] 47 U.S.C. § 610(e).

[7] *See 2016 HAC Order*, 31 FCC Rcd at 9336-9338, paras. 1, 5-6 & n.3; *see also 2003 HAC Order*, 18 FCC Rcd at 16754-55, paras. 3-4.

[8] *2016 HAC Order*, 31 FCC Rcd at 9337, para. 3; *see also 2003 HAC Order*, 18 FCC Rcd at 16754, para. 2; *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11174, para. 18 (2010) (*2010 HAC Order*); *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Report and Order, 36 FCC Rcd 4566, 4577-78, paras. 1, 27-28 (2021) (*2021 HAC Order*).

manufacturers and service providers were required to offer by adopting two new handset model deployment benchmarks. After a two-year transition for handset manufacturers, and with additional compliance time for service providers, the then-applicable handset model deployment benchmarks were increased to 66%.[9] After a five-year transition period for handset manufacturers, and with additional compliance time for service providers, the 66% handset model deployment benchmarks were increased to 85%.[10]

7. In this same order, the Commission established a process for determining whether a 100% hearing aid compatibility requirement is "achievable." The Commission stated that it wanted to continue the "productive collaboration between stakeholders and other interested parties" that had been part of the process for enacting the two new handset model deployment benchmarks.[11] The Commission noted the stakeholders' proposal to form a task force independent of the Commission to "issue a report to the Commission helping to inform" the agency "on whether 100 percent hearing aid compatibility is achievable."[12] Part of this process included determining whether the hearing aid compatibility requirements should be modified to include alternative technologies such as Bluetooth.[13] The Commission stated that it was deferring action on compliance processes, legacy models, burden reduction, the appropriate transition periods, and other implementation issues until after it received the HAC Task Force's Final Report on achievability.[14] The Commission specified that it intended to decide by 2024 whether to require 100% of covered wireless handset models to be hearing aid compatible.[15] The Commission indicated that it would make its determination as to whether this goal is achievable by relying on the factors identified in section 710(e) of the Communications Act.[16] After the *2016 HAC Order* was released, stakeholders convened the independent Task Force and filed progress updates with the Commission.[17]

8. In 2018, the Commission imposed new website posting requirements and took steps to reduce regulatory burden on service providers by allowing them to file a streamlined annual certification under penalty of perjury stating their compliance with the Commission's hearing aid compatibility requirements.[18] As part of the *2018 HAC Order*, the Commission noted that, in the 100% hearing aid compatibility docket, it was considering broader changes to the hearing aid compatibility rules that may be appropriate in the event it required 100% of covered handset models to be hearing aid compatible.[19] The Commission indicated that the website, record retention, and certification requirements it was adopting as part of the *2018 HAC Order* would remain in place unless and until the Commission took further action in the 100% hearing aid compatibility docket and that its decisions did not "prejudge any further steps we may take to modify our reporting rules in that proceeding."[20]

---

[9] *2016 HAC Order*, 31 FCC Rcd at 9336, 9343, paras. 1, 20.

[10] *Id.*

[11] *Id.* at 9337, para. 4.

[12] *Id.* at 9342, 9349-50, paras. 17, 35.

[13] *Id.* at 9355-56, paras. 46-47.

[14] *Id.* at 9353-54, para. 43.

[15] *2016 HAC Order*, 31 FCC Rcd at 9337, 9349, paras. 4, 34.

[16] *Id.* at 9354-55, paras. 44-45.

[17] HAC Task Force Final Report at 11-12.

[18] *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 17-228, Report and Order, 33 FCC Rcd 11549, 11554, paras. 12-14 (2018) (*2018 HAC Order*).

[19] *Id.* at 11554, para. 15.

[20] *Id.*

9. In February 2021, the Commission adopted the 2019 ANSI Standard for determining hearing aid compatibility.[21] The 2019 ANSI Standard was to replace the existing 2011 ANSI Standard[22] after a two-year transition period that was set to end on June 5, 2023.[23] Like the 2011 ANSI Standard, the 2019 ANSI Standard addresses acoustic and inductive coupling between wireless handset models and hearing aids but uses heightened testing methodologies intended to ensure handset models offer a better listening experience for consumers.[24] In addition, the 2019 ANSI Standard includes for the first time a volume control requirement. The standard specifically incorporates by reference the TIA 5050 Standard that addresses volume control requirements for wireless handset models.[25] As part of the order adopting the 2019 ANSI Standard and the related TIA 5050 Standard, the Commission reiterated its goal "to continue on the path to making 100% of wireless handsets hearing aid compatible."[26]

10. In December 2022, the HAC Task Force filed its Final Report with the Commission, which makes five central recommendations. The report recommends that the Commission: (1) adopt a more flexible, forward-looking definition of hearing aid compatibility; (2) adjust current technical standards; (3) allow for exploration of changes in coupling technology (e.g., by additional exploration of Bluetooth and alternative technologies); (4) allow reliance on information linked in the Commission's Accessibility Clearinghouse; and (5) set a 90-day shot clock for the resolution of petitions for waiver of the hearing aid compatibility requirements.[27]

11. The Final Report also recommends that the Commission grant the volume control waiver request that the Alliance for Telecommunications Industry Solutions (ATIS) filed the same day that the HAC Task Force filed its Final Report.[28] In its waiver request, ATIS asserted that the testing performed

[21] *See* Accredited Standards Committee C63®–Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2019 (approved Aug. 19, 2019) (2019 ANSI Standard).

[22] *See* Accredited Standards Committee C63®–Electromagnetic Compatibility, *American National Standard Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids*, ANSI C63.19-2011 (approved May 27, 2011) (2011 ANSI Standard).

[23] *2021 HAC Order*, 36 FCC Rcd at 4570, 4576, paras. 9, 22.

[24] Hearing aids operating in acoustic coupling mode receive sounds through a microphone and then amplify all sounds surrounding the user, including both desired sounds, such as a handset's audio signal, and unwanted ambient noise. To use a mobile handset model with a hearing aid or cochlear implant in acoustic coupling mode, radiofrequency interference and other electromagnetic interference from the handset must be controlled. Hearing aids operating in inductive coupling mode turn off their microphone to avoid amplifying unwanted ambient noise, instead using a telecoil (T-Coil) to receive only audio signal-based magnetic fields generated by inductive coupling-capable telephones. The hearing aid converts these fields back to sound or to a signal appropriate for cochlear implant users. For ease of reference, we refer to the 2019 ANSI Standard's radiofrequency interference (RF) immunity requirements as acoustic coupling requirements and the standard's T-Coil compatibility requirements as telecoil coupling requirements.

[25] 2019 ANSI Standard at § 7; *2021 HAC Order*, 36 FCC Rcd at 4571, para. 10; ANSI/TIA-5050-2018, Telecommunications—Communications Products—Receive Volume Control Requirements for Wireless (Mobile) Devices (approved January 17, 2018) (TIA 5050 Standard). The TIA 5050 Standard establishes a volume control testing methodology, which defines conversational gain as the acoustic output level of speech from a handset relative to the acoustic level that would be present in a face-to-face conversation with two people one meter apart. TIA 5050 Standard at § 1.

[26] *2021 HAC Order*, 36 FCC Rcd at 4566, para. 1; *see also id*. at 4578, para. 28.

[27] HAC Task Force Final Report at ii.

[28] *Id.*; Petition of ATIS on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force for Limited, Interim Waiver, WT Docket Nos. 15-285 and 20-3 (filed Dec. 16, 2022) (ATIS Waiver Petition). ATIS filed its waiver petition on behalf of all manufacturers and service providers subject to sections 20.19(b)(1) and (b)(3) of the Commission's wireless hearing aid compatibility rules. *Id*. at 1, 4.

by the Task Force revealed that the TIA 5050 Standard for volume control was fundamentally flawed because it required the use of a pulsed-noise signal, which ATIS claimed was insufficiently voice-like to be compatible with many modern codecs.[29] ATIS also stated that the standard's use of a pulsed-noise signal resulted in none of the handsets that it tested passing the standard.[30] As a result, ATIS requested that the Commission allow handsets to be certified as hearing aid compatible using a modified volume control testing methodology.[31]

12. On March 23, 2023, the Wireless Telecommunications Bureau (WTB) released a Public Notice seeking comment on the HAC Task Force's Final Report.[32] The Public Notice sought comment generally on the report's recommendations and whether they furthered the Commission's goal of attaining 100% hearing aid compatibility.[33] The Public Notice also asked whether the report's recommendations were consistent with the policy goals the Commission has historically outlined in its hearing aid compatibility-related proceedings and with the Commission's statutory duties under section 710 of the Communications Act of 1934, as amended.[34] The Commission received three comments and three replies in response to the Public Notice.[35]

13. On April 14, 2023, WTB released an order extending the transition period for exclusive use of the 2019 ANSI Standard from June 5, 2023 to December 5, 2023.[36] WTB took this step to ensure that handset manufacturers could continue to certify new handset models with hearing aid compatibility features under the 2011 ANSI Standard while the Commission considered ATIS's waiver petition.[37] WTB stated that continuing to allow new handset models to be certified as hearing aid compatible is essential as the Commission moves to its goal of all handset models being hearing aid compatible.[38]

14. On September 29, 2023, WTB conditionally granted in part ATIS's request for a limited waiver of the 2019 ANSI Standard's volume control testing requirements.[39] Under the terms of the waiver, a handset model may be certified as hearing aid compatible under the 2019 ANSI Standard if it meets the volume control testing requirements described in the order as well as all other aspects of the 2019 ANSI Standard.[40] This waiver will remain in place for two years to allow time for the development of a new, full volume control standard and for its incorporation into the wireless hearing aid compatibility rules.[41]

---

[29] ATIS Waiver Petition at 3-4.

[30] *Id.* at 3.

[31] *Id.* at 4, 12-13.

[32] *Wireless Telecommunications Bureau Requests Comment on the Hearing Aid Compatibility Task Force's Final Report and Recommendation*, Public Notice, Docket No. 15-285 (WTB Mar. 23, 2023) (*HAC Public Notice*).

[33] *Id.* at para. 6.

[34] *Id.* at para. 6.

[35] Bluetooth Special Interest Group, Inc. (Bluetooth SIG) Comments; Consumer Technology Association (CTA) Comments; Samsung Electronics America (Samsung) Comments; HAC Task Force Reply; Ms. Janice S. Lintz (Lintz) Reply; and Mobile & Wireless Forum (MWF) Reply.

[36] *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Order, DA 23-327, at 1, para. 1 (WTB Apr. 14, 2023) (*HAC Extension Order*).

[37] *Id.*

[38] *Id.* at 2, para. 2.

[39] *Amendment of the Commission's Rules Governing Standards for Hearing Aid-Compatible Handsets*, WT Docket No. 20-3, Order, DA 23-914 (WTB Sept. 29, 2023) (*HAC Waiver Order*).

[40] *Id.* at 1, para. 1.

[41] *Id.* at 2, 13, paras. 5, 36.

III. DISCUSSION

15. Below, we tentatively conclude that a 100% hearing aid compatibility requirement for wireless handset models offered in the United States or imported for use in the United States is an achievable goal. We seek comment on ways to achieve this goal, including seeking comment on a more flexible, forward-looking definition of hearing aid compatibility, as recommended by the HAC Task Force. In addition, consistent with the HAC Task Force's recommendation, we propose to broaden the definition of hearing aid compatibility to include Bluetooth connectivity technology. We propose to implement this revised definition by requiring at least 15% of offered handset models to connect to hearing aids through Bluetooth technology as an alternative to or in addition to a telecoil. We also seek comment on the Bluetooth technology that we should utilize to meet this requirement and how we should incorporate this requirement into our wireless hearing aid compatibility rules. We further explore ways to reach the 100% compatibility benchmark as well as the appropriate transition period for reaching that benchmark. Finally, we seek comment on implementation of these proposals and updates to the wireless hearing aid compatibility rules, including proposed requirements for hearing aid compatibility settings in handset models, updates to website posting, labeling and disclosure, and revised reporting requirements. Finally, we seek comment on renaming our hearing aid compatibility rules to reflect more accurately what those rules cover.

A. Achievability of 100% Hearing Aid Compatibility Under the Section 710(e) Factors

16. In the *2016 HAC Order*, the Commission stated that by 2024, it would make a determination of whether 100% hearing aid compatibility is achievable based on the factors identified in section 710(e) of the Communications Act.[42] The Commission noted that commenters recommend that the Commission use a section 710 analysis (as opposed to the achievability requirements of sections 716 and 718) to determine whether a 100% standard is achievable.[43] The Commission found that this approach was consistent with the analysis it undertook previously when adopting modifications to the then-current deployment benchmarks.[44] The HAC Task Force's Final Report did not directly address achievability under the section 710(e) factors, and we did not receive comments addressing these factors in response to WTB's Public Notice seeking comment on the HAC Task Force's Final Report.[45]

17. We tentatively conclude that requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective under the factors in section 710(e) of the Communications Act. Section 710(e) requires the Commission, in establishing regulations to help ensure access to telecommunications services by those with hearing loss, to "consider costs and benefits to all telephone users, including persons with and without hearing loss," and to "ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology."[46] It further directs the

[42] *2016 HAC Order*, 31 FCC Rcd at 9354, paras. 44-45. The Hearing Aid Compatibility Act was enacted in 1988 and codified as amended at 47 U.S.C. § 610. Pub. L. No. 100-394, § 3, 102 Stat. 976, 976 (1988). Congress amended section 610 in 2010 with the passage of the Twenty-First Century Communications and Video Accessibility Act (CVAA). Pub. L. 111–260, § 102, 124 Stat. 2751, 2753. The CVAA revised section 610(e) by adding at the end of the section: ''In implementing the provisions of subsection (b)(1)(C), the Commission shall use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users." 47 U.S.C. § 610(e).

[43] *2016 HAC Order*, 31 FCC Rcd at 9354, para. 45.

[44] *Id.* at 9354, para. 45.

[45] HAC Task Force Final Report at 1, 13.

[46] 47 U.S.C. § 610(e).

Commission to use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users.[47]

18. We tentatively conclude that the benefits to all handset users of adopting a 100% compliance standard for handset models offered in the United States or imported for use in the United States would exceed the costs. We anticipate that adopting a 100% compliance standard would provide significant benefits to those with hearing loss by ensuring that a greater share of handset models for purchase are hearing aid compatible. At the same time, we do not expect that adopting the 100% standard would impose undue burdens on manufacturers or service providers, as the vast majority of new handset models are already hearing aid compatible today.

19. The HAC Task Force's Final Report found that, as of August 2022, about 93% of wireless handset models offered by manufacturers were already hearing aid compatible, which exceeds the benchmarks in the Commission's current rules.[48] We do not anticipate large costs for those with or without hearing loss if non-compliant models are discontinued, considering the overwhelming share of wireless handset models are already hearing aid compatible. Given the existing availability of hearing aid-compatible handset models, we seek comment on our tentative conclusion and on any specific burden or cost that a 100% compliance standard would impose on manufacturers and service providers. We also seek comment on the extent to which a 100% compliance standard would reduce the affordability of lowest-cost handset models and adversely affect low-income persons.

20. In addition, we tentatively conclude that adopting a 100% compliance standard would encourage the use of currently available technology and would not discourage or impair the development of improved technology. Handset manufacturers, service providers, and consumer organizations that compose the HAC Task Force all unanimously support the Task Force's consensus proposal for achieving 100% compliance,[49] and the Task Force's Final Report provides no indication or evidence that adopting the new standard would discourage the use of currently available technology or the development of improved technology. To the contrary, the Task Force's Final Report suggests that revising the wireless hearing aid compatibility rules to permit the use of Bluetooth as a coupling method would better align the Commission's requirements with current consumer preferences, as Bluetooth has become an increasingly popular method for pairing hearing aid devices to wireless handsets.[50] We seek comment on this tentative conclusion.

21. Further, with respect to our tentative conclusion regarding the impact of a 100% requirement on technology, we specifically seek comment on whether allowing Bluetooth coupling as a way to achieve hearing aid compatibility or as an alternative or replacement for telecoil coupling would satisfy relevant statutory criteria. To permit the use of Bluetooth coupling as an alternative or as a replacement for telecoil coupling, is it sufficient for the Commission to find that Bluetooth coupling meets the achievability factors of section 710(e)? If so, commenters should explain how Bluetooth coupling meets the requirements of section 710(e) or why this method does not meet these statutory requirements. Are there other statutory requirements that Bluetooth coupling must meet in order for the

[47] *Id.*

[48] HAC Task Force Final Report at 7. We note that the HAC Task Force's 93% compliance figure is based on handset manufacturer compliance filings covering the reporting period of July 1, 2021 to June 30, 2022, which is before volume control testing requirements or use of the 2019 ANSI Standard became mandatory.

[49] *Id.* at i-ii, 18-20; HAC Task Force Reply at 1.

[50] HAC Task Force Final Report at 15 (stating that "[t]he vast majority of wireless handsets now include at least some type of Bluetooth audio technology, without a regulatory mandate, and the HAC Task Force anticipates that operating system designers and manufacturers of handsets, headsets, earbuds, hearing aids, cochlear implants, personal sound amplification products, and other information and communications technology will incorporate the Bluetooth HAP going forward, providing a purpose-built, familiar, and effective means of using one's handset with hearing aids designed to be compatible with telephones.").

Commission to allow its use as an alternative or replacement for telecoil coupling? If so, commenters should explain why Bluetooth coupling meets or does not meet these other statutory requirements.

22. Finally, we tentatively conclude that adopting a 100% compliance standard after a reasonable transition period meets the requirements of section 710(e) that the Commission "use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users."[51] The transition periods that we propose below will expand access to hearing aid-compatible handset models while giving manufacturers and service providers sufficient notice and lead time to build hearing aid compatibilities into all future handset models rather than just a percentage of handset models.[52] We seek comment on this tentative conclusion. Do commenters agree with our analysis and on the costs and benefits of our proposed finding? Given the current number of handset manufacturers who already include hearing aid compatibility in all of their handset models, would our finding adversely impact the ability of handset manufacturers to innovate and create new products? If so, how would shifting to a 100% requirement curtail innovation? Similarly, would requiring hearing aid compatibility in all handset models impose an undue burden on those handset manufacturers who currently do not meet this mark, or otherwise create disruptions in the competitive marketplace?

B. Definition of Wireless Hearing Aid Compatibility

23. As a threshold question for implementing a 100% hearing aid compatibility requirement, we seek comment on the appropriate definition of hearing aid compatibility for wireless handsets. Specifically, we seek comment on expanding the definition of hearing aid compatibility to reflect changing coupling technologies. First, we seek comment on adopting the HAC Task Force's recommended "flexible" hearing aid compatibility definition. Next, we propose to expand the definition to include Bluetooth connectivity and to require a certain percentage of offered handset models to include Bluetooth connectivity technology. As part of that proposal, we seek comment on which Bluetooth technologies the Commission should recognize and how we should incorporate these technologies into our rules.

1. HAC Task Force Recommended Hearing Aid Compatibility Definition

24. *Background*. Our existing wireless hearing aid compatibility rules do not contain an express definition of hearing aid compatibility in the definitional section.[53] Rather, our rules provide that a handset model is considered to be hearing aid compatible if it has been certified as such under a Commission-approved technical standard that the Commission has incorporated by reference into the rules through notice and comment rulemaking procedures.[54] As of December 5, 2023, a new handset model can be certified as hearing aid compatible only if it meets the acoustic and inductive coupling requirements of the 2019 ANSI Standard and applicable volume control requirements.[55]

25. The HAC Task Force recommends that the Commission define hearing aid compatibility in a more flexible manner than whether a handset model merely meets the criteria of a technical certification standard that the Commission has incorporated by reference into its rules. Specifically, the Task Force "encourages the Commission to adopt a forward-looking, flexible definition" of hearing aid compatibility "that reflects changing technologies while abiding by Congress's direction in the statute."[56]

---

[51] 47 U.S.C. § 610(e).

[52] *See infra* paras. 89-94.

[53] 47 CFR § 20.19(a).

[54] *Id.* § 20.19(b).

[55] *HAC Waiver Order* at para. 35; *HAC Extension Order* at para. 1.

[56] HAC Task Force Final Report at 16.

Specifically, the Task Force recommends that a hearing aid-compatible handset model be defined as a handset model that: (1) has an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable.[57]

26. In the Public Notice, WTB sought comment on whether the Task Force's proposed revised definition of hearing aid compatibility would be consistent with the Commission's goal of ensuring that consumers have access to handset models that are fully hearing aid compatible.[58] WTB asked whether the proposed definition would allow the Commission to determine hearing aid compatibility with certainty and whether a definition that makes general reference to "established technical standards for hearing aid coupling or compatibility" would be consistent with the Administrative Procedure Act (APA) or other legal requirements.[59] In response to the Public Notice, the Consumer Technology Association (CTA) expresses support for the Task Force's proposed definition, arguing that a more flexible approach encourages innovation while ensuring objective testing standards.[60] In reply comments, the Task Force states that the definition of hearing aid compatibility should incorporate current and alternative hearing aid compatibility technologies.[61]

27. *HAC Task Force Definition*. We seek comment on the HAC Task Force proposed definition of hearing aid compatibility, including whether we could adopt the definition in a manner that is consistent with the statutory requirements of section 710(c) of the Communications Act. Section 710(c) provides that "[t]he Commission shall establish or approve such technical standards as are required to enforce this section."[62] Further, this section states that "[a] telephone or other customer premises equipment that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders . . . will be considered hearing aid compatible for purposes of this section."[63] It also states that "[t]he Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards."[64] Finally, this section states that "[t]he Commission shall remain the final arbiter as to whether the standards meet the requirements of this section."[65]

28. Is the more flexible definition of hearing aid compatibility that the Task Force proposes consistent with section 710(c)? Does section 710(c) require us to continue to define hearing aid compatibility through technical standards that the Commission incorporates by reference into its rules or does it permit us to recognize technical standards that industry and consumers are using for hearing aid compatibility without adopting those standards through a rulemaking process? Commenters should provide a detailed analysis of why their approach is consistent with statutory requirements, including why the commenter's proposal is more consistent with the public interest than the Commission's current approach. This analysis should also explain the costs and benefits of the commenter's proposed approach versus the Commission's current approach.[66]

---

[57] *Id.*

[58] *HAC Public Notice* at para. 7.

[59] *Id.* at para. 7.

[60] CTA Comments at 3.

[61] HAC Task Force Reply at 3.

[62] 47 U.S.C. § 610(c).

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *See* 47 U.S.C. § 610(e).

29. In adopting technical standards into our hearing aid compatibility rules, the Commission has relied historically on standards that were developed by organizations composed of handset manufacturers, wireless service providers, and, in some cases, groups that represent consumers with hearing loss who, through a consensus-driven process, create or revise technical standards. The standards development process does not necessarily include an opportunity for members of the public to participate in the initial creation of new technical standards. Once these technical standards bodies have developed a new standard, they petition the Commission to adopt the new standard into the hearing aid compatibility rules.[67] The Commission accomplishes this task in compliance with the APA and Communications Act through notice and comment rulemaking that allows the Commission to meet public participation requirements.

30. The HAC Task Force recommends, however, that the Commission adopt a more forward-looking definition of hearing aid compatibility that would allow for the express incorporation of alternative and innovative technologies that can enable compatibility between handset models and hearing aid devices.[68] As stated above, the Task Force proposes that the Commission define a hearing aid-compatible handset model as a handset model that: (1) has an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable.[69] We seek comment on each part of the HAC Task Force's proposed definition of hearing aid compatibility, as discussed below.

31. *"Internal Means of Compatibility."* The Task Force recommends that the Commission define an "internal means of compatibility" to mean that "the capability must be provided as an integral part of the phone, rather than through the use of add-on components that significantly enlarge or alter the shape or weight of the phone as compared to other phones offered by the manufacturer."[70] We seek comment on this aspect of the HAC Task Force's proposed definition of hearing aid compatibility. As the Task Force notes, its proposed definition of "internal means of compatibility" is based on language from the *2003 HAC Order*.[71] This Order recognized that section 710(b)(1)(B) of the Act refers to providing for internal means for effective use with hearing aids.[72] The Commission interpreted this to mean that the capability must be provided as an integral part of the handset model, rather than through the use of add-on components that significantly enlarge or alter the shape or weight of the handset model as compared to other handset models offered by manufacturers.[73] Commenters supporting or opposing this part of the HAC Task Force's proposed definition of hearing aid compatibility should explain why they support or oppose this part of the definition and whether it is consistent with the Commission's recognition of a possible Bluetooth coupling standard. Is this part of the Task Force's proposed definition clear and can it be applied effectively by testing organizations? Does it include the types of connectivity components that are desirable to include, and exclude those that are undesirable to include?

32. *"Meets Established Technical Standards."* We seek comment on the "meets established technical standards for hearing aid coupling or compatibility" portion of the HAC Task Force's proposed definition. With respect to this portion of the definition, the Task Force states that "[a]ny established

---

[67] *See* Report and Petition of American National Standards Institute Accredited Standards Committee C63®, CG Docket No. 13-46, WT Docket Nos. 07-250 and 10-254, at 1 (filed Sept. 23, 2019).

[68] HAC Task Force Final Report at 15-17.

[69] *Id.* at 16.

[70] *Id.* at 16 (citing *2003 HAC Order*, 18 FCC Rcd at 16778, para. 61).

[71] *2003 HAC Order*, 18 FCC Rcd at 16778, para. 61 (cited in HAC Task Force Final Report at 16).

[72] *Id.* (citing 47 U.S.C. § 610(b)(1)(B) (This section requires handsets to "provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.")).

[73] *2003 HAC Order*, 18 FCC Rcd at 16778, para. 61.

technical standard for hearing aid coupling should be interoperable, non-proprietary, and adopted by industry and consumers alike."[74] The HAC Task Force also "recommends that the Commission consider factors such as ease-of-use, reliability, industry adoption, and consumer use and adoption when evaluating what technical standards" would meet the proposed definition.[75] We seek comment on this approach, particularly because use of an "established technical standards" definition would be in contrast to an approach that would seek to reference each and every possible technical standard within section 20.19 of the rules. We note that incorporating multiple standards by reference may be particularly difficult where technology is rapidly changing, new or revised standards continue to be developed, and the legal requirements for incorporating specific technical standards into Commission regulations may be resource intensive and would necessarily lag behind marketplace developments.

33. If we adopt this approach, how should we evaluate whether a standard is "established" and "adopted by industry and consumers alike?" What criteria should we rely on to make these determinations? To be deemed "established," would a given standard have to be adopted by all manufacturers and consumers or just a certain percentage of manufacturers and consumers, and how would the Commission measure the degree of acceptance of a standard by industry and consumers? How would testing bodies and the Commission's Office of Engineering and Technology determine compliance with such standards? Further, should the Commission qualify the term "non-proprietary" in the Task Force's proposed definition, to permit reliance on proprietary Bluetooth standards, as discussed in the next section?

34. Further, would adopting this portion of the definition be consistent with the section 710(c) requirement that a wireless handset model is hearing aid compatible if it is compliant with relevant technical standards developed through a public participation process and in consultation with interested stakeholders, including people with hearing loss, as discussed above? We note that section 710(c) appears to provide that a handset model may be deemed compatible by complying with a technical standard that has not yet been affirmatively adopted or approved by the Commission:

> The Commission shall establish or approve such technical standards as are required to enforce this section. *A telephone or handset that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders (designated by the Commission for the purposes of this section) will be considered hearing aid compatible for purposes of this section, until such time as the Commission may determine otherwise.* The Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards. The Commission may delegate this authority to an employee pursuant to section 155(c) of this title. The Commission shall remain the final arbiter as to whether the standards meet the requirements of this section.[76]

35. Should we interpret section 710(c) to permit handset models to be designated as hearing aid compatible based on a technical standard that has been "developed through a public participation process" and in consultation with designated consumer stakeholders, even if the standard has not yet been adopted or approved by the Commission? How should the Commission define and determine compliance

[74] HAC Task Force Final Report at 16.

[75] *Id.* at 17.

[76] 47 U.S.C. § 610(c) (emphasis added).

with such a "public participation process" and consumer consultation?[77] Would the Commission's adoption of such a procedure be consistent with the Commission's other section 710 obligations, the Administrative Procedure Act, and the U.S. Constitution?

36. Further, would this approach be sufficiently certain for enforcement purposes as required by section 710(c)? If we took this approach, how would we enforce such a standard? Alternatively, can we adopt the Task Force's proposed definition, while still incorporating industry-developed standards for hearing aid compatibility into our rules, consistent with our current approach?

37. *"Is Usable."* Finally, we seek comment on the third aspect of the HAC Task Force's proposed definition of hearing aid compatibility. The Task Force explains that it defines "usable" in a manner consistent with the Commission's accessibility requirements.[78] Specifically, the Task Force states that "usable" refers "to ensuring that an individual has adequate information on how to operate a product and access to the 'full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities.'"[79] We seek comment on incorporating this aspect of the proposed definition into our rules. What does this aspect of the HAC Task Force's proposed definition add to our hearing aid compatibility rules that our rules do not already cover? Does "usable" mean anything more than complying with Commission regulations and practicing good consumer relations?

38. *Federal Register Regulations*. We also seek comment on the HAC Task Force's proposed definition in light of the Federal Register regulations. When we incorporate by reference a new hearing aid compatibility standard into our rules, we must request Federal Register approval by submitting a request to the Federal Register for approval that complies with the Federal Register incorporation by reference requirements. Among other requirements, the Federal Register rules state that "[i]ncorporation by reference of a publication is limited to the edition of the publication that is approved" and "[f]uture amendments or revisions of the publication are not included."[80] Further, the Federal Register requires that the Commission "[e]nsure that a copy of the incorporated material is on file at the Office of Federal Register."[81] The Commission also makes the document being incorporated by reference available for inspection in the Commission's public reference room.[82]

39. As a result, when we request Federal Register's approval, we must ensure that the standard that we ask to be incorporated by reference is limited to the approved edition and make clear that future updates to the standard are not incorporated by reference without going through notice and comment rulemaking. Further, to ensure that any technical standard is "reasonably available"[83] to affected parties, the Commission would ensure that a copy of the incorporated standard is on file at the Office of Federal Register and make a copy of the standard available for public inspection in its reference room. We seek comment on whether there is a way for us to continue to incorporate ANSI standards for

[77] In 2015, the Commission proposed a procedure to implement this provision, but no action has been taken on that proposal. *See Access to Telecommunications Equipment and Services by Persons with Disabilities*, CG Docket No. 12-32, Notice of Proposed Rulemaking, 30 FCC Rcd 12219, 12242-50, paras. 50-70 (2015).

[78] HAC Task Force Final Report at 17 (citing *Implementation of Sections 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, 6429, para. 22 (1999); 47 CFR § 6.3(l)); *see also* 47 CFR § 20.19(f) (labeling and disclosure requirements for hearing aid-compatible handset models).

[79] HAC Task Force Final Report at 17 (citations omitted).

[80] 1 CFR § 51.1(f).

[81] *Id.* § 51.5(b)(5).

[82] 47 CFR § 20.19(l); *see also* 1 CFR § 51.5(a)(1).

[83] *See* 5 U.S.C. § 552(a).

hearing aid compatibility into our rules, while allowing for a more flexible approach for alternative technologies, such as Bluetooth technologies. Is there a way to distinguish alternative coupling technologies, such as Bluetooth technologies, from the traditional ANSI coupling capabilities?

40. We also seek comment on how the Commission could comply with the Federal Register incorporation by reference regulations if it adopted a specific Bluetooth standard, such as the non-proprietary Bluetooth Low Energy Audio (Bluetooth LE Audio) and the Bluetooth Hearing Access Profile (Bluetooth HAP) standards. Could the Commission submit a copy of the Bluetooth LE Audio and Bluetooth HAP standards to the Federal Register with its request for incorporation by reference permission and then make a copy of these standards available for public inspection in the Commission's reference room? Further, how would the Commission address updates to these standards given that the Commission can only incorporate by reference an approved edition of a standard? Is there another way consistent with statutory requirements that would allow the Commission to recognize these standards without following the traditional incorporation by reference process and that would allow the standards to be updated as industry releases revised versions of these standards?

2. Expanding the Definition of Hearing Aid Compatibility to Include Bluetooth Connectivity

41. As part of the *2016 HAC Order*, the Commission requested that the HAC Task Force consider whether the 100% hearing aid compatibility goal could be achieved in part or in whole by relying on alternative hearing aid compatibility technologies, such as Bluetooth, bearing in mind the importance of ensuring interoperability between hearing aids and alternative technologies.[84] The Task Force's Final Report recommends that the Commission move to a hearing aid compatibility standard that requires a handset model to be able to couple with hearing aids using two of three possible methods.[85] All handset models would have to be capable of coupling using acoustic coupling and these handset models would also have to be capable of coupling through either a telecoil that meets certification standards or through Bluetooth connectivity.[86] In response to WTB's Public Notice seeking comment on the Task Force's recommendation, most commenters expressed support for the Task Force's proposal to permit Bluetooth connectivity to be used as an alternative coupling method to telecoils, noting that most consumers are already using hearing aids that come with Bluetooth connectivity.[87]

42. In light of the record, we propose to expand the definition of hearing aid compatibility to include Bluetooth connectivity, and we seek comment on the best way to accomplish this objective. Below, we propose to require handset models to connect to hearing aids through Bluetooth connectivity as an alternative to telecoil coupling on a limited basis as we continue to study this issue, as long as both types of handset models also meet applicable acoustic coupling and volume control standards. As part of our proposal, we seek comment on whether we should take a "market based" approach to Bluetooth technology whereby the Commission would not explicitly adopt or incorporate by reference a single Bluetooth connectivity technology but would allow market forces to continue to determine which Bluetooth technology handset models use to pair with hearing aids. Alternatively, we seek comment on an approach whereby the Commission would broaden the current definition of hearing aid compatibility by explicitly incorporating by reference one or more non-proprietary Bluetooth connectivity standards, such as Bluetooth LE Audio and Bluetooth HAP, into the wireless hearing aid compatibility rules, the use of which would be required on a non-exclusive basis.[88]

---

[84] *2016 HAC Order*, 31 FCC Rcd at 9353, 9355, paras. 42, 46.

[85] HAC Task Force Final Report at 18-19.

[86] *Id.*

[87] CTA Comments at 3; MWF Reply at 2; Samsung Comments at 2; *see also* HAC Task Force Reply at 2.

[88] The HAC Task Force states that unlike telecoils, Bluetooth audio transmission methods are expressly designed to transmit and facilitate audio, and that Bluetooth LE Audio greatly improves power consumption resulting in longer (continued….)

a. Requiring Bluetooth Connectivity as an Alternative Coupling Method to Telecoil Coupling

43. *Background*. The HAC Task Force states that based on a survey that it conducted, most consumers prefer to use Bluetooth connectivity for pairing hearing aid devices with wireless handsets, as compared to acoustic and telecoil coupling methods.[89] Further, it explains that unlike telecoils, Bluetooth audio transmission methods are expressly designed to transmit and facilitate audio. According to the HAC Task Force, consumers are increasingly using—and are increasingly finding a satisfying listening experience with using—Bluetooth connectivity.[90] Bluetooth technology is an umbrella term for related technical standards that enable devices to communicate wirelessly.[91] Some of these standards are proprietary standards, such as Apple's Made-for-iPhone (MFi) and Google's Audio Streaming for Hearing Aids (ASHA) standards and other standards are non-proprietary standards, such as LE Audio and Bluetooth HAP standards. The Task Force indicates that variations of these Bluetooth standards can be found in many of today's handset models. In fact, the HAC Task Force states that "[t]he vast majority of wireless handsets now include at least some type of Bluetooth audio technology, without a regulatory mandate . . . ."[92] The Task Force expects even greater use of Bluetooth connectivity in the coming years.[93]

44. The vast majority of commenters support the Task Force's findings with respect to Bluetooth coupling between wireless handset models and hearing aids. Bluetooth Special Interest Group, Inc. (Bluetooth SIG) states that more than 80% of hearing aids today use some form of Bluetooth technology, and that the Commission should adopt Bluetooth as a primary coupling method.[94] CTA states that nine out of ten consumers own smartphones with Bluetooth and two-thirds report that their hearing device includes satisfactory direct Bluetooth audio streaming.[95] Samsung expresses support for the consensus recommendation on coupling requirements and notes that Bluetooth is among the top three most frequently mentioned features included in hearing devices desired by consumers.[96] The Mobile & Wireless Form (MWF) states that Bluetooth is a dominant wireless technology and used in over-the-counter hearing aids.[97]

45. The Task Force's Final Report notes, however, that there is a subset of consumers that continue to use telecoils and that these consumers find telecoils to be an important feature in wireless handset models.[98] This finding is consistent with a comment arguing that telecoil coupling facilitates interoperability, is more reliable than Bluetooth, is consistent across devices, and does not require

(Continued from previous page)
battery life, and smaller, lightweight devices. HAC Task Force Final Report at 13, 15. Further, the Task Force states that Bluetooth HAP extends the Bluetooth LE Audio standard and will enhance the ability of individuals with hearing devices that implement the profile to interchangeably use wireless handsets from any manufacturer that also implements the profile. *Id*. at 14.

[89] HAC Task Force Final Report at 13.

[90] *Id.* at i.

[91] *Id.* at 13.

[92] *Id.* at 15.

[93] *Id.* at i, 20, 68.

[94] Bluetooth SIG Comments at 1-2.

[95] CTA Comments at 2.

[96] Samsung Comments at 2.

[97] MWF Reply at 3.

[98] HAC Task Force Final Report at 16.

replacing hearing aids or a handset when the other is updated.[99] This commenter states that through its HAC rules, the Commission is helping to maintain the availability of telecoils and urges the Commission to have a 100% telecoil requirement.[100]

46. *Discussion*. We propose to require some handset models to connect to hearing aids through Bluetooth connectivity as an alternative to telecoil coupling on a limited basis as we continue to study this issue. We seek comment on this proposal. The record indicates that Bluetooth coupling is presently being widely utilized by consumers to couple handsets with hearing aids and achieving positive results.[101] Under our proposal, we will maintain a telecoil requirement but require a certain percentage of handset models to use Bluetooth connectivity as an alternative to telecoil coupling as long as both types of handset models also meet applicable acoustic coupling and volume control requirements, as discussed in more detail below.[102]

47. Specifically, we seek comment on how Bluetooth coupling compares with telecoil coupling as far as interoperability between handsets and hearing aids. Is a handset model that meets telecoil certification requirements more expensive to manufacture then a handset model that substitutes Bluetooth connectivity for a telecoil? Does one type of coupling have better sound quality or maintain its connection better than the other type of coupling? Is it easier to connect a handset to a hearing aid with a telecoil connection versus a Bluetooth connection? What are the costs and benefits of allowing Bluetooth coupling on a limited basis as an alternative to telecoil coupling? Would a gradual transition from telecoil coupling to Bluetooth coupling serve the public interest? As Bluetooth coupling becomes more accepted by consumers, will telecoil coupling become a less favorable way of connecting handsets to hearing aids as the HAC Task Force suggests?[103]

48. We are concerned with the cost to consumers of Bluetooth connectivity versus telecoil coupling. When using Bluetooth connectivity as an alternative to telecoil coupling, how frequently do consumers need to replace hearing aids or a handset when the other is updated? Similarly, does telecoil technology evolve over time, or is it a stable technology that does not change in the way Bluetooth standards are updated and therefore does not require a handset to be replaced when a consumer purchases a new hearing device with telecoil connectivity? In general, do lower priced hearing devices include telecoil or Bluetooth connectivity? Are new over-the-counter hearing aids more likely to include telecoil or Bluetooth connectivity? If they are more likely to include Bluetooth connectivity, what type of Bluetooth technology are they likely to include? How can the Commission ensure that its hearing aid compatibility rules allow consumers to have access to reasonably priced hearing aid-compatible handset models?

49. We also seek comment on the future of telecoil coupling. Is the HAC Task Force's observation that Bluetooth coupling has been steadily increasing over time while telecoil coupling has been stagnating an accurate reflection of consumer preferences and trends?[104] Is telecoil coupling being replaced with Bluetooth connectivity in the marketplace? Would allowing market conditions to control

[99] Lintz Reply at 1-4.

[100] Lintz Reply at 1, 5.

[101] HAC Task Force Final Report at i (consumers are increasingly using and finding a satisfying listening experience with Bluetooth connectivity).

[102] *See infra* Section III.C (compliance benchmarks).

[103] HAC Task Force Final Report at 15, 20. The HAC Task Force reports that the results of its consumer survey show that a larger percentage of consumers prefer coupling via Bluetooth than with telecoil. *Id*. at 20. The Task Force suggests that this might be because consumers are familiar with the concept of Bluetooth pairing. *Id*. at 14. The Task Force expects the popularity of Bluetooth coupling to increase as newer versions of the Bluetooth standard greatly improve power consumption resulting in longer battery life and smaller, lightweight devices. *Id*. at 13.

[104] *Id.* at 22.

the replacement of telecoil coupling with Bluetooth connectivity technologies in handset models protect the interests of all consumers? Will relying on market conditions—which may lead to fewer handset models with telecoil coupling—leave behind the needs of consumers who may not be able to update to the newest handset models or hearing aids or who find that telecoil coupling better meets their needs?

b. Alternative Approaches to Incorporating a Bluetooth Connectivity Requirement

50. Given our proposal to require Bluetooth coupling in a certain percentage of handset models (either as an alternative to or in place of telecoil)—and in light of the various Bluetooth technologies currently in use in the market—we seek comment on how to implement Bluetooth coupling into our rules. Specifically, we seek comment on two alternative approaches to adopting such a requirement: (1) requiring a certain percentage of handset models to meet a Bluetooth technical standard (either proprietary or non-proprietary) without incorporating any particular standard into our rules; or (2) requiring a certain percentage of handset models to meet a (non-proprietary) Bluetooth standard that has been specifically incorporated into our rules. In considering these approaches, we seek comment on whether there is a need for the Commission to approve and incorporate particular Bluetooth technical standards into its rules for hearing aid compatibility certification or whether the Commission can adopt a Bluetooth connectivity requirement without incorporating a particular standard into the rules.

51. *Market Based Approach to a Bluetooth Requirement.* Given the variety of Bluetooth standards that exist today—both proprietary and non-proprietary—we seek comment on an approach to implementing a Bluetooth requirement that does not mandate a particular Bluetooth connectivity technology. Under this approach, the Commission would not explicitly adopt or endorse a particular Bluetooth connectivity technology or standard but would allow manufacturers and service providers to determine which Bluetooth technology to use to satisfy the required percentage of Bluetooth-compatible handset models (e.g., the proposed 15% requirement, as detailed below).

52. Would this approach be in the public interest? How would such an approach impact the development of Bluetooth technology in handset models? This approach appears to be consistent with the *2003 HAC Order*, where the Commission noted that Congress expressly avoided technology mandates so as not to "inhibit future development" of handset models, provided they are compatible with hearing aids.[105] Further, under this approach, the Commission could continue to monitor the development of Bluetooth connectivity between wireless handset models and hearing aids as it has been doing since the release of the *2016 HAC Order*. If an issue develops in the future, the Commission could take action at that time to resolve the problem. We seek comment on this analysis.

53. We also seek comment on whether this approach is consistent with the Commission's obligations under section 710(c). Section 710(c) of the Act states that "[t]he Commission shall establish or approve such technical standards as are required to enforce this section."[106] If the Commission does not establish or approve a specific Bluetooth standard, how can the Commission enforce a Bluetooth connectivity requirement? For the purposes of implementing section 710(c), can a distinction be drawn between the industry-developed standards for the more traditional coupling technologies (i.e., acoustic and inductive) and volume control on the one hand, and the standards developed for Bluetooth technology on the other hand? For example, should the fact that industry has already developed and implemented a variety of proprietary and non-proprietary standards for Bluetooth coupling impact how we evaluate the need for the Commission to adopt a Bluetooth coupling requirement into our rules? Should we rely on the fact that handset manufacturers have already been including various forms of Bluetooth connectivity in their handset models without our involvement, and more recently have been including updated versions

[105] *2003 HAC Order*, 18 FCC Rcd at 16765, para. 28; *see also* HAC Task Force Final Report at 2.

[106] *See* 47 U.S.C. § 610(c).

of this form of connectivity that permit lower battery usage and can allow a user to connect to assistive listening devices in movie theaters, convention centers, public transit vehicles, and other ventures?

54. Along these same lines, how would an approach that may allow manufacturers and service providers to meet Bluetooth benchmarks using proprietary standards, be consistent with the "established technical standard for hearing aid coupling compatibility" portion of the HAC Task Force's proposed definition for hearing aid compatibility? As noted above, the Task Force proposes that "[a]ny established technical standard for hearing aid coupling should be interoperable, non-proprietary, and adopted by industry and consumers alike."[107] If we adopt this proposed definition, should we limit the permissible Bluetooth standards to non-proprietary standards? Even if we do not adopt a specific Bluetooth standard, should we nevertheless stipulate that any Bluetooth standard that a manufacturer chooses to use in a handset model must at least incorporate LE Audio technology given the efficiency and quality advantages of that technology? Under a market-based approach, could we encourage use of the latest non-proprietary Bluetooth standards, such as the Bluetooth LE Audio and HAP Profile?

55. *Incorporation by Reference of a Non-Proprietary Bluetooth Connectivity Standard*. Alternatively, we seek comment on requiring a handset model to meet a Bluetooth standard that the Commission has incorporated by reference into its rules in order to meet a Bluetooth requirement. Under this approach, we would broaden the current definition of hearing aid compatibility by explicitly incorporating by reference non-proprietary Bluetooth connectivity standards whose use would be required on a non-exclusive basis. Specifically, we would explicitly incorporate by reference the non-proprietary Bluetooth LE Audio and Bluetooth HAP standards into our hearing aid compatibility rules and require their use instead of a telecoil in a manner consistent with the proposed Bluetooth requirement.

56. Under this approach, handset models could come with other Bluetooth connectivity options, such as Apple's MFi and Google's ASHA proprietary standards, but the handset models also would have to include a non-proprietary Bluetooth standard, such as Bluetooth LE Audio and Bluetooth HAP coupling abilities, in order to satisfy our certification rules. Handset models that include other Bluetooth technologies rather than the Commission endorsed technologies, such as proprietary technologies, could not be used to satisfy the Bluetooth benchmark, unless the Commission decides to allow interim use of other Bluetooth technologies to meet the Bluetooth benchmark as a means of transitioning to full utilization of the Commission endorsed Bluetooth technology. We seek comment on this approach.

57. The HAC Task Force's Final Report states that Bluetooth LE Audio is an industry standard and that handset models with Bluetooth LE Audio are likely to increase interoperability with hearing devices entering the marketplace.[108] Further, the Final Report states that Bluetooth HAP, which extends the Bluetooth LE Audio standard, is likely to increase Bluetooth technology's popularity as a coupling method for hearing devices and wireless handsets.[109] The Final Report states, however, that Bluetooth LE Audio and Bluetooth HAP are relatively new standards and that to ensure a seamless transition to full interoperability the Commission should allow the use of well-established standards, such as Bluetooth Classic, ASHA, and MFi in the near term.[110]

58. As an initial matter, we seek comment on whether we are required by section 710(c) to incorporate specific Bluetooth standards into our rules in order to implement a Bluetooth requirement (e.g., the proposed 15% requirement, as detailed below), or whether we can interpret section 710(c) to allow a handset model to meet a standard that has not been affirmatively adopted or incorporated into the

[107] HAC Task Force Final Report at 16.

[108] *Id.* at 14.

[109] *Id.* at 14.

[110] *Id.* at 20.

Commission's rules.[111] Further, what are the costs and benefits of this approach relative to the more flexible market-based approach discussed above? Does this approach balance the need to adopt specific Bluetooth standards into our rules with the need to avoid excluding other standards, the loss of which might force consumers to replace their hearing aids prematurely to avoid connectivity issues with a new handset? How would this approach affect the availability of proprietary Bluetooth standards? Do proprietary Bluetooth technologies provide superior connectivity that would be sacrificed under this approach? What are the quality differences, if any, between the various Bluetooth standards with regard to the consumer experience in coupling and utilizing such Bluetooth technology? Would this approach be feasible in view of the pace at which Bluetooth technologies change and develop? Would one of these approaches better protect the interests of consumers with hearing loss and the ability of handset manufacturers to innovate?

59. If the Commission adopts a specific non-proprietary Bluetooth standard, would the Commission run the risk of tipping the marketplace in favor of Bluetooth LE Audio and Bluetooth HAP rather than another non-proprietary Bluetooth connectivity standard? In addition to Bluetooth LE Audio and Bluetooth HAP, are there other non-proprietary Bluetooth connectivity standards that the Commission should consider incorporating by reference into the wireless hearing aid compatibility rules? Are there other non-proprietary Bluetooth standards in the development stage? How can the Commission ensure that its choice of a non-proprietary Bluetooth standard is best suited to meet the needs of consumers with hearing loss?

60. *Transitional Use of Proprietary Bluetooth Standards*. We also seek comment on whether we should permit the use of other Bluetooth standards, such as proprietary standards, to satisfy our certification requirements on an interim basis as the industry transitions to full use of the Bluetooth LE Audio and Bluetooth HAP. In its Final Report, the HAC Task Force states that the Commission should consider incorporating Bluetooth technology such as Apple's MFi and Google's ASHA into the Commission's rules for a period of transition.[112] The Task Force states that Bluetooth LE Audio and Bluetooth HAP represent a long-term goal and current "widespread use" of these other Bluetooth standards "indicates that these methods should be considered to ensure a seamless transition toward full interoperability."[113]

61. Recently, the HAC Task Force reiterated its commitment to continuing to explore the development and inclusion of Bluetooth LE Audio and Bluetooth HAP in new handset models.[114] How likely is it that handset manufacturers will replace proprietary Bluetooth connectivity in their handset models with non-proprietary standards and over what time period? If we allow the use of proprietary Bluetooth standards to meet the Bluetooth benchmark before transitioning to exclusive use of Bluetooth LE Audio and Bluetooth HAP, how long should the transition period be? What are the costs and benefits of allowing the use of proprietary standards for a period of time while the marketplace transitions to full use of Bluetooth LE Audio and Bluetooth HAP?

62. *Other Approaches to Incorporating Bluetooth Standards*. We also seek comment on whether the Commission should establish a Bluetooth safe harbor or allow WTB to use its delegated authority to approve new Bluetooth connectivity standards or new editions of currently adopted standards that meet certain requirements.

63. Under the safe harbor approach, the Commission would require a certain percentage of handset models to include Bluetooth LE Audio and Bluetooth HAP connectivity technologies, but we

[111] *See supra* paras. 34-36.

[112] HAC Task Force Final Report at 20.

[113] *Id.*

[114] Letter from Thomas Goode, General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 15-285 and 20-3, at 2 (filed Sept. 27, 2023) (ATIS Ex Parte Letter).

would not require compliance with a certain edition or version of these technologies by referencing those editions or versions in our rules. As long as the handset model included some edition or version of the technologies, the handset model would meet certification requirements in terms of the proposal to require a certain percentage of handset models to meet Bluetooth connectivity requirements. Is the establishment of a Bluetooth safe harbor consistent with the requirements of section 710(c)? Under the safe harbor approach, how would we enforce compliance with these technologies if we do not require compliance with a specific edition or version of the technologies?

64. Along these same lines, we seek comment on whether WTB could use its delegated authority under section 20.19(k) to incorporate new Bluetooth connectivity technologies into the hearing aid compatibility rules or use this authority to revise the edition that could be used for certification purposes.[115] Under this approach, the Commission could establish criteria that should guide the Bureau when making the determination of whether to approve a new Bluetooth connectivity standard or new edition of a currently approved standard. Alternatively, the Commission could adopt the Bluetooth connectivity standard and allow WTB to use its delegated authority to approve new editions of the Commission's adopted standard. WTB could make a list of approved standards publicly available that handset manufacturers could use for certification purposes.

65. If the Commission adopted this approach, would WTB be required to use notice-and-comment rulemaking procedures or could WTB release a Public Notice authorizing the use of a new Bluetooth connectivity standard or the use of a new edition of a currently approved standard? Would such an approach be consistent with section 710(c) of the Act and other statutory requirements, such as notice and comment rulemaking procedures? Would the Commission need to differentiate the process of adopting new ANSI standards from the processes of adopting new Bluetooth connectivity standards or editions? If the Commission needed to differentiate the two processes, how would the Commission make this distinction? Would the Commission need to adjust or supplement WTB's delegated authority under section 20.19(k) if we determine to use this approach?

66. *Bluetooth Compliance Requirements*. Finally, we seek comment on how the Commission could ensure a handset model is in compliance with the Bluetooth standards permitted by any of the above approaches. How could the Commission ensure that a handset model complies with the Bluetooth connectivity standard that the manufacturer indicates that it meets, and how can we ensure that this standard meets minimum consumer requirements for a quality wireless connection with a hearing device?

67. The HAC Task Force suggests that a handset manufacturer should be required to submit a Bluetooth attestation as part of its FCC equipment certification application.[116] We seek comment on this suggestion. Would the submission of an attestation be sufficient to meet statutory requirements? How could the Commission ensure that a handset model submitted with an attestation actually meets the Bluetooth connectivity standards that the manufacturer indicates is embedded within the handset model? What kind of testing does a handset model undergo in order to receive such an attestation? Should the Commission rely on the Bluetooth standard party's own testing process such that an attestation is sufficient to satisfy that process including any interoperability concerns? Even if a handset model receives an attestation, how can we ensure that the standard that is incorporated into the handset model is robust enough to meet the minimum consumer needs with respect to establishing a quality connection between the handset model and a hearing device?

68. Bluetooth SIG has indicated that it has its own qualification process, which involves testing at the product level for interoperability.[117] If the Commission adopts Bluetooth LE Audio and

[115] 47 CFR § 20.19(k).

[116] HAC Task Force Final Report at 19.

[117] Letter from Pamela Garvey, K&L Gates LLP, on behalf of Bluetooth SIG, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 15-285, at 1 (filed Sept. 11, 2023).

Bluetooth HAP standards, should the Commission rely on the Bluetooth SIG's own testing process such that an attestation is sufficient to satisfy that process including any interoperability concerns? Is there reason to believe that some Bluetooth standards bodies provide more robust testing then other standards bodies?

C. Compliance Benchmarks

69. *Background*. Our hearing aid compatibility rules require that 85% of the total number of handset models that manufacturers and service providers offer must be certified as hearing aid compatible.[118] Our rules, however, do not impose separate benchmarks for the three components of the 2019 ANSI Standard (acoustic coupling, inductive coupling, and volume control). That is, in order for a handset model to be certified as hearing aid compatible under this standard, the handset model must meet all aspects of the standard and not just certain parts of the standard. Further, our rules allow handset manufacturers and service providers to grandfather existing hearing aid-compatible handset models for benchmark purposes as long as the handset models are still offered to the public.[119]

70. Under the HAC Task Force's 100% proposal, after the applicable transition period passes, all of the handset models that manufacturers and service providers offer in their handset portfolios would have to be certified as hearing aid compatible.[120] The Task Force proposes, however, that a portion of handset models could be certified as hearing aid compatible by meeting only certain aspects of the 2019 ANSI Standard's requirements rather than all of the requirements as presently required.[121] Specifically, the Task Force proposes that to meet the 100% compatibility requirement, all handset models would have to meet the 2019 ANSI Standard's acoustic coupling requirements, but only 85% of these handset models would have to continue to meet the 2019 ANSI standard's telecoil coupling requirements.[122] The remaining 15% of these handset models would have to meet a new Bluetooth connectivity requirement.[123] To the extent the handset model "does not pass the telecoil test, it would have to support Bluetooth, and vice-versa."[124] While the Task Force's Final Report does not contain a specific volume control benchmark proposal, recently members of the Task Force reiterated their commitment to working towards the goal that all new handset models will meet hearing aid compatibility requirements and that this will include an applicable volume control requirement.[125]

71. As discussed above, the HAC Task Force has recommended that the Commission consider a "more forward-looking" definition of HAC.[126] The Task Force asserts that its proposed 85/15% split between telecoil and Bluetooth coupling requirements is an appropriate way to reflect the popularity of Bluetooth connectivity for pairing hearing aid devices to handsets. According to a survey that it conducted, most consumers prefer to use Bluetooth connectivity for pairing hearing aid devices with wireless handsets, as compared to acoustic and telecoil coupling methods.[127] Further, the Task Force

[118] 47 CFR § 20.19(c)(1)(ii), (2)(ii), (3)(ii).

[119] *Id.* § 20.19(b)(5).

[120] HAC Task Force Final Report at 20.

[121] *Id.* at 19.

[122] *Id.* at 19-20.

[123] *Id.*

[124] *Id.* at 20.

[125] *Id.* at ii, 19; ATIS Ex Parte Letter at 2-3. The Final Report notes that a volume control requirement would "be determined based on FCC adoption of an updated Volume Control standard." WTB recently granted a limited waiver allowing a modified testing methodology for volume control. *HAC Waiver Order* at para. 1.

[126] HAC Task Force Final Report at 15-20.

[127] *Id.* at 13.

states that unlike telecoils, Bluetooth audio transmission methods are expressly designed to transmit and facilitate audio.[128] By contrast, the HAC Task Force explains, telecoils are a "by-product" of certain 1940s-era phone designs that later proved useful to couple to a similarly coiled piece of copper in a hearing aid.[129] Noting that consumers are already familiar with Bluetooth technology, the Task Force reports that the vast majority of wireless handset models now include at least some type of Bluetooth audio technology.[130] The Task Force expects even greater use of Bluetooth connectivity in the coming years and that consumers will prefer Bluetooth applications over acoustic and inductive coupling.[131]

72. The Task Force's Final Report appears to recommend that at the end of its proposed four-year transition period for manufacturers and five-year transition period for service providers, all handset models in a manufacturer's or service provider's overall handset portfolio would have to be certified as hearing aid compatible under the 2019 ANSI Standard, subject to the percentages detailed above.[132] The Final Report, though, is ambiguous regarding the grandfathering of existing handset models that have been certified as hearing aid compatible under older technical standards and are still being offered to the public. While the body of the Final Report does not discuss this issue, it does suggest in its Model Rule section that the current grandfathering rule be kept in place but given a new subparagraph designation.[133] The Final Report does not explain how the grandfathering rule would operate with respect to the overall composition of a handset manufacturer's or service provider's handset portfolio after the end of the relevant transition periods.

73. In response to WTB's Public Notice seeking comment on the Task Force's Final Report, CTA, MWF, and Samsung state that they support the HAC Task Force's consensus recommendations that provide a path to 100% hearing aid compatibility.[134] Further, CTA and Samsung state that they support the Task Force's recommendation regarding the 85% benchmark for telecoil coupling and the 15% benchmark for Bluetooth coupling.[135] Samsung also states that the Commission should adopt a benchmark for the volume control requirement, but it does not propose a benchmark for this requirement.[136] The HAC Task Force states that the Commission should adopt a new Bluetooth connectivity benchmark, and Bluetooth SIG states that the use of a Bluetooth coupling requirement will help the Commission achieve its 100% hearing aid compatibility objective.[137] As noted above, however, an individual commenter argues that the Commission should adopt a 100% telecoil requirement.[138] This commenter states that telecoil coupling facilitates interoperability, is more reliable than Bluetooth, is consistent across devices, and does not require replacing hearing aids or a handset when the other is

[128] *Id.* at 15.

[129] *Id.* at 15 (citing Linda Kozma-Spytek*, Hearing Aid Compatible Telephones: History and Current Status*, 24(1) Telephones and Telecoils: Past, Present and Future, Seminars in Hearing at 17, 19 (2003)).

[130] HAC Task Force Final Report at 14-15.

[131] *Id.* at 13, 16.

[132] *Id.* at 19 (proposing that 100% of handset models meet the RF Immunity Test C63.19-2019; at least 85% of handset models meet the T-Coil Compatibility Test C63.19-2019; and at least 15% of handset models "support Bluetooth").

[133] *Id.* at 22. The Final Report states that: "The HAC Task Force does not, at this time, address other possible modifications to the HAC rule to address how a transition to a 100% regime would work in practice . . . ." *Id*. at 26.

[134] CTA Comments at 3; MWF Reply at 2; Samsung Comments at 2; *see also* HAC Task Force Reply at 2.

[135] Samsung Comments at 2; CTA Comments at 3.

[136] Samsung Comments at 2.

[137] HAC Task Force Reply at 5; Bluetooth SIG Comments at 1.

[138] Lintz Reply at 1.

updated.[139] Further, this commenter states that the Commission "is helping to maintain the availability of telecoils" and that the Commission "should require telecoil technology in 100% of all mobile devices . . . and mandate a timeline for compliance."[140]

74. *100% Benchmark.* Consistent with our tentative conclusion regarding achievability, we propose that after the expiration of the relevant transition periods, 100% of the handset models that manufacturers and service providers offer or import for use in the United States must be certified as hearing aid compatible. As part of this requirement, we propose to require all handset models offered or imported for use in the United States to have at least two forms of coupling, as proposed by the HAC Task Force: (1) 100% of handset models would be required to meet an acoustic coupling requirement; and (2) 100% of handset models would be required to meet *either* a telecoil or a Bluetooth coupling requirement.[141] Specifically, at least 85% of handset models would be required to meet a telecoil requirement and at least 15% of handset models would be required to meet a Bluetooth requirement. Any handset models not meeting a telecoil requirement would be required to meet a Bluetooth requirement, and any handset models not meeting a Bluetooth requirement would be required to meet a telecoil requirement. We seek comment on this proposal in more detail below and throughout this Notice. These handset models would have to be certified as hearing aid compatible under the requirements of part 2 subpart J—Equipment Authorization Procedures of our rules, and include the relevant test reports showing compliance with these rules and the Commission's section 20.19 hearing aid compatibility testing requirements for mobile handset models.[142] All of these procedures must be complied with in full for a handset model to be labeled as hearing aid compatible and offered in the United States or imported for use in the United States.[143] Once the relevant transition period ends, handset manufacturers and service providers will no longer be able to offer handset models that are not certified as hearing aid compatible.

75. We seek comment on our proposal to require all handset models that manufacturers and service providers offer in the United States or imported for use in the United States to be hearing aid compatible after the end of the applicable transition periods. Since we have tentatively concluded above that 100% is achievable, and no commenters opposed or found issue with some form of a 100% requirement when WTB sought comment on the HAC Task Force's Final Report, any commenter objecting to our proposal should explain why this objective is not achievable using the statutory criteria outlined above.

76. Additionally, we seek comment below on a proposal—as well as an alternative approach—for meeting the 100% hearing aid-compatible handset portfolio requirement, including our proposed 85/15% split for telecoil and Bluetooth connectivity. Under our proposal, manufacturers and service providers could meet the 100% requirement by including grandfathered handset models that have been certified as hearing aid compatible in their overall handset portfolios as long as the handset models are still being offered in the United States or imported for use in the United States, as our current rule allows. Manufacturers and service providers could meet the 85/15% telecoil/Bluetooth requirement using new or grandfathered handset models. Alternatively, we seek comment on an approach where we would discontinue our grandfathering rule and not allow handset manufacturers and service providers to count grandfathered handset models certified under older certification standards towards the benchmark. Under this alternative, 100% of the handset models in a manufacturer's or service provider's handset portfolio

[139] *Id.* at 1-4.

[140] *Id.* at 1, 5.

[141] *See* HAC Task Force Final Report at ii, 19.

[142] 47 CFR pt. 2, subpart J; 47 CFR § 20.19.

[143] *See HAC Waiver Order* at para. 1.

would have to be certified as hearing aid compatible using the 2019 ANSI Standard's requirements, as modified by a possible telecoil and Bluetooth connectivity split.

77. *Grandfathering Proposal to Reach 100%.* Consistent with our existing rules, we propose to allow manufacturers and service providers to continue to offer handset models that are already certified as hearing aid compatible under older technical standards after the end of the relevant transition periods. These handset models would be grandfathered, and manufacturers and service providers could include these handset models as part of their 100% handset portfolios as long as the handset models are still being offered.[144] Under this proposal, 100% of handset models would have to meet an acoustic coupling requirement, and could meet this requirement with handset models certified under the 2019 ANSI Standard or with grandfathered handset models (i.e., handset models previously certified using a pre-2019 ANSI Standard). Further, all handset models would have to meet a telecoil or Bluetooth requirement, with at least 85% meeting a telecoil requirement—which could be met using handset models certified under the 2019 ANSI Standard or grandfathered handset models—and with at least 15% meeting a Bluetooth requirement. We seek comment on this proposal.

78. Under our grandfathering proposal, handset manufacturers and service providers would have in their handset portfolios handset models that have been certified under different certification standards. For instance, manufacturer and service provider handset portfolios might include handset models certified as hearing aid compatible using the 2011 ANSI Standard and other handset models certified under the 2019 ANSI Standard. With respect to handset models certified under the 2019 ANSI Standard, some of these handset models might be certified as hearing aid compatible under the conditions of WTB's volume control waiver order or, depending on timing, under a new volume control standard that the Commission has adopted. Further, if the Commission adopts the Task Force's proposal regarding the 85/15% split between telecoil and Bluetooth connectivity, manufacturer and service provider handset portfolios might include these types of handset models as well. All of these handset models could be part of a manufacturer's or service provider's 100% hearing aid-compatible handset portfolio as long as the handset models are still being offered.

79. If we adopt this proposal, should we modify our grandfathering rule to allow only a certain percentage of a handset portfolio to include handset models certified under older certification standards or older volume control requirements (e.g., the volume control waiver standard)? Should we modify the grandfathering rule if we adopt a new volume control requirement to replace the waiver condition standard? How would such an approach work and would it require that certified handset models be taken out of a handset portfolio prior to the end of a handset model's product cycle? What would be the costs and benefits of such a rule and how would such a rule impact consumers, manufacturers, and service providers? Would removal of handset models certified under prior standards adversely affect consumers by prematurely removing from the market handset models that are relatively low-priced or that offer special features relied upon by certain groups of customers?

80. If the Commission adopts the Task Force's proposed 85/15% split between telecoil and Bluetooth connectivity, but allows grandfathered handset models to count towards these benchmarks, how should the Commission count handset models certified under pre-2019 ANSI Standards towards this split? Under a grandfathering approach to the 85/15% split, would handset manufacturers and service providers be likely to offer fewer new handset models with telecoil connectivity? Or are market incentives sufficient to ensure that manufacturers and service providers would continue to offer new handset models with telecoil coupling technology? What percentage of handset models have both Bluetooth connectivity and telecoil capabilities? If we adopt our grandfathering proposal, should we impose a requirement on service providers that they have to offer a certain percentage of new handset models that meet telecoil requirements and the rest would have to meet Bluetooth connectivity requirements? If so, what percentage should we impose and how would this percentage work with small

[144] 47 CFR § 20.19(b)(5).

or rural service providers that may only add one or two new handset models over a period of years? Alternatively, does the fact that a consumer can purchase a handset directly from a manufacturer and bring the handset to the service provider's network solve this problem? What are the costs and benefits to consumers to having to purchase a handset from a manufacturer and bring it to the service provider for service? What impact does this approach have on manufacturers and service providers?

81. *Alternative Approach to Reach 100%.* Alternatively, instead of allowing grandfathering, should we require 100% of all handset models offered in the United States or imported for use in the United States to meet the 2019 ANSI Standard (or any future ANSI standards), with 100% of handset models meeting the acoustic coupling portion of the 2019 ANSI standard, at least 85% of all handsets models meeting the telecoil portion of the 2019 ANSI standard, and at least 15% meeting a Bluetooth component? Under this approach, manufacturers and service providers would no longer be able to offer handset models certified as hearing aid compatible under earlier (pre-2019) versions of the ANSI standard and would either have to remove these handset models from their handset portfolios or recertify these handset models under the 2019 ANSI Standard. We seek comment on this approach, as opposed to our proposal above to allow handset models to meet the 100% benchmark using grandfathered handset models. What are the benefits and drawbacks of such an approach? Would an approach that requires service providers and manufacturers either to retire older handset models or certify those handset models under the 2019 ANSI Standard lead to better options available in the market for consumers with hearing loss? Given the pace of technology advancement, would such an approach be feasible for manufacturers and service providers? Would it be more straightforward and thus (i) easier for manufacturers and service providers to implement; (ii) easier for consumers to understand; and (iii) easier for the Commission to enforce?

82. We seek comment on the differences between our grandfathering proposal and this alternative approach, including the costs and benefits of each option, and how either approach might impact transition time. Should we consider a hybrid of the two, such as a phased approach that would enable us to reach a 100% benchmark using grandfathered handset models within a shorter period of time, with the ultimate goal of 100% of handset models meeting the 2019 ANSI Standard (or newer ANSI standards as they are developed)? For example, after one year, 75% of handset models could be grandfathered; after two years, 50%; after three years, 25%; and after four years, no grandfathered handset models could be counted towards the 100% benchmark.

83. *Volume Control Benchmark.* Under either our grandfathering proposal or the alternative 100% 2019 ANSI Standard approach, how should we incorporate the volume control requirement into our benchmarks? As noted above, under our current rules, as of December 5, 2023, handset models can no longer be certified as hearing aid-compatible using the older 2011 ANSI Standard that does not include a volume control requirement.[145] After this date, handset models can only be certified as hearing aid-compatible if they meet the requirements of the 2019 ANSI Standard and the related TIA 5050 Standard that sets forth volume control requirements for wireless handset models.[146] The recently issued *HAC Waiver Order*, however, modified these requirements by allowing handset models to be certified as hearing aid-compatible if the handset model meets the limited volume control standard set out in that order and all other aspects of the 2019 ANSI Standard.[147] This waiver remains in effect for a two-year period that ends on September 29, 2025.[148]

[145] *HAC Extension Order* at paras. 1, 10, 14, 17; *see also* 47 CFR § 20.19(b)(1).

[146] *Id*.

[147] *HAC Waiver Order* at paras. 1, 4, 34-35.

[148] *Id*. at paras. 3, 36, 42. *See* Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 23-388 at 2 (filed Dec. 6, 2023) (CTIA Ex Parte Letter) (requesting a reference to the terms of the interim waiver in the discussion of volume control).

84. If we adopt an approach where all handset models must be certified as hearing aid-compatible using the 2019 ANSI Standard, as modified by the *HAC Waiver Order*, should we include a 100% volume control requirement at the end of the transition period? On the other hand, if we allow manufacturers and service providers to meet the 100% requirement using grandfathered handset models, as we propose above, should we impose a requirement that a certain percentage of handset models must meet the volume control portion of the 2019 ANSI Standard, as modified by the *HAC Waiver Order*? Or should we limit the volume control requirement to all new handset models certified as hearing aid compatible using the 2019 ANSI Standard, as modified by the *HAC Waiver Order*, without setting an overall volume control benchmark for the portfolio? How would the grandfathering approach—which means that not all available handset models would meet a volume control requirement—impact consumers with hearing loss?

85. How should the Commission handle the volume control requirement if the Commission adopts a new volume control standard to replace the TIA 5050 Standard, as modified by the *HAC Waiver Order*? Under these circumstances, should the Commission allow a limited grandfathering of handset models that meet the *HAC Waiver Order's* volume control standard and all other aspects of the 2019 ANSI Standard, but not the requirements of the new volume control standard? Should the Commission impose a requirement that these types of handset models should be eliminated from handset portfolios over a certain time period, such as two years from the effective date of the new volume control standard? Alternatively, should the Commission just allow these types of handset models to be phased-out over the handset model's normal product life cycle? What are the costs and benefits to consumers and manufacturers of permitting these types of handset models to be grandfathered?

86. *Telecoil/Bluetooth Benchmarks*. We also seek comment on implementing our proposed 85/15% split between telecoil and Bluetooth connectivity under the two alternatives discussed above (i.e., our grandfathering proposal and the 100% 2019 ANSI Standard approach), as well as some alternative approaches to setting benchmarks for telecoil and Bluetooth coupling. In this regard, we note that members of the HAC Task Force have recently reiterated their commitment to working towards the goal of including Bluetooth connectivity as an alternative to telecoil coupling in a certain percentage of handset models as described in the HAC Task Force's Final Report.[149] Under either approach, how do we enforce a requirement that at least 85% of handset models must meet telecoil requirements and at least 15% must meet a Bluetooth connectivity standard? Should we allow a handset model that meets telecoil certification requirements and Bluetooth connectivity requirements to be counted as meeting both the telecoil and Bluetooth connectivity requirements? Should we allow for some fluctuation within a range close to an 85/15% split, or should we strictly enforce that number? For example, should we require that a manufacturer or service provider offer at least 85% of handset models that meet the telecoil requirements and the rest of the handset models offered meet a Bluetooth connectivity standard, without imposing a 15% minimum? If a manufacturer releases one new handset model a year, how many years after the transition date will it take for the 85/15% split to be reached?

87. Instead of our proposed 85/15% split between telecoil and Bluetooth connectivity, we seek comment on a number of alternative approaches to establishing a telecoil and Bluetooth coupling benchmark.

- Under the first alternative, instead of our proposed 85/15% split, should we continue to require all handset models to meet the 2019 ANSI Standard's telecoil requirements?[150] This approach would require 100% compliance with all three aspects of the 2019 ANSI Standard (acoustic coupling, telecoil coupling, and volume control) and would ensure that consumers who use telecoils in their hearing aids could purchase any new handset model on the market without having their selection

[149] ATIS Ex Parte Letter at 2 & n.5 (citing HAC Task Force Final Report at 24-26).

[150] *See, e.g.*, Lintz Reply at 1.

of handset models reduced by an 85% benchmark. This approach would not require a certain percentage of handsets to meet a Bluetooth connectivity requirement.

- Under the second alternative, should we require 100% of new handset models to meet all three aspects of the 2019 ANSI Standard and impose an additional requirement that 15% of these handset models must also meet a Bluetooth connectivity requirement?
- Under the third alternative, should we set a deadline for 50% or more of handset models to incorporate Bluetooth connectivity technology, while retaining an 85% telecoil requirement? This alternative reflects the fact that Bluetooth connectivity is popular among consumers with hearing loss and that 56% of handset models already support some form of Bluetooth connectivity.[151] Would this approach create redundancy in coupling requirements or provide consumers with hearing loss much needed flexibility to connect with hearing devices?
- Under the fourth alternative, instead of an 85/15% split, should we impose a different telecoil/Bluetooth split such as a 75/25% or 60/40% split or should our rules provide for a gradual change in the split over a period of years that results in a more even split between the telecoil and Bluetooth coupling requirements?[152]
- Under the fifth alternative, should we avoid imposing a precise percentage and give manufacturers and service providers more flexibility to follow market demands and determine the percentage of handset models that they offer that meet either telecoil or Bluetooth connectivity requirements? Would such a flexible approach benefit or harm consumers with hearing loss and how would the Commission monitor and evaluate whether the split that develops is appropriate or harmful to consumers with hearing loss?

88. We seek comment on these alternative approaches. Is there a significant additional cost to incorporating both forms of connectivity in a single handset model (even though most new handsets today offer both technologies)? Would any of these approaches impede the development or improvement of handset model technology, either for consumers in general or for consumers with hearing loss? We seek comment on this issue in light of the Task Force's statement that consumers prefer Bluetooth coupling over telecoil coupling.[153] Is one of these approaches more in the interest of consumers while allowing more opportunity for handset manufacturers to innovate? What are the costs and benefits of each of these approaches or an approach that gradually evens the split between telecoil and Bluetooth coupling requirements over a period of years and what should the period of years be?

D. Transition Periods for 100% Hearing Aid Compatibility

89. We propose to establish a 24-month transition period for handset manufacturers to meet the 100% benchmark, running from the effective date of an amended rule adopting the 100% requirement, and a 30-month transition period for nationwide service providers. Further, we propose a 42-month transition period for non-nationwide service providers.[154] We seek comment on this proposal.

---

[151] HAC Task Force Final Report at 34 (stating that 56% of devices support one of the proprietary Bluetooth methods, and support is increasing over time).

[152] HAC Task Force Final Report at 21 (suggesting that "in the future, the Commission may wish to consider adjusting the Bluetooth benchmark").

[153] *Id.* at i.

[154] The dates in the proposed rules are based on calculating the transition periods of 24 months, 30 months, and 42 months as starting from December 31, 2024. In the *2016 HAC Order*, the Commission indicated its intent to make a final determination in this proceeding by no later than 2024. *2016 HAC Order*, 31 FCC Rcd at 9337, 9349, 9352, paras. 4, 34, 41. The dates in the proposed rules are for illustration purposes only. Under this proposal, the actual dates would be based on the effective date of any rule amendments that the Commission adopts. *See* CTIA Ex Parte (continued….)

90. While our proposed transition periods are shorter than the four-year transition period the HAC Task Force recommends for handset manufacturers and the five-year transition period it recommends for service providers,[155] the Commission previously has relied on a two-year transition period when transitioning to new technical standards and we propose that establishing a two-year transition period again would be appropriate to balance the product development cycles for manufacturers and service providers with the needs of consumers with hearing loss.[156] The longer transition periods we propose for service providers will allow new handset models certified using the latest certification standards to flow downstream and be available for providers to offer for sale.

91. Given that the Commission adopted the 2019 ANSI Standard in February 2021 and that WTB has conditionally granted ATIS's volume control waiver request, we believe that these transition periods are reasonable. Handset manufacturers have been on notice since February 2021 of the requirements of the new standard and WTB granted ATIS's request to adjust the volume control testing requirements by waiver, based on the conditions set out in the ATIS Ex Parte Letter.[157] Is there any reason why handset manufacturers cannot meet a two-year transition requirement assuming that the volume control testing requirements are those recently approved by WTB and the Commission does not adopt a new volume control standard before the end of the manufacturer transition period? Since the current volume control testing requirements are based on ATIS's request, is there a reason why manufacturers cannot meet ATIS's requested testing methodology by the end of a two-year transition period?[158]

92. In order to meet the 2019 ANSI Standard's requirements and related volume control requirements, is it simply a matter of testing existing hearing aid-compatible handset models under the new standards or is there reason to believe that handset models need to be redesigned to meet the new standards? If handset models have to be redesigned to meet the new standards, would this process already be underway? We note that the Task Force indicates that part of the reason it is supporting the 85/15% split is because the 2019 ANSI Standard's telecoil testing requirements are "more difficult" to meet than the 2011 ANSI Standard's telecoil requirements.[159] Given that the Task Force is accounting for the new telecoil testing standards in its proposed 85/15% split, why does this not support a two-year transition period for manufacturers? Commenters arguing that the new telecoil testing standard requires a longer transition period should explain why adjusting the split downward is not a better solution then drawing out the transition period.

(Continued from previous page)
Letter at 2 & n.4 (requesting clarification that the dates in the proposed rules will be adjusted to reflect the final timeline and that the current dates are variables).

[155] HAC Task Force Final Report at 22-25; CTIA Ex Parte Letter at 1-2 (urging adoption of the compliance timeline set forth in the HAC Task Force's Final Report).

[156] *2021 HAC Order*, 36 FCC Rcd at 4576, para. 22; *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, First Report and Order, 23 FCC Rcd 3406, 3440, para. 83 (2008); *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Third Report and Order, 27 FCC Rcd 3732, 3741, para. 22 (WTB/OET 2012) (*WTB/OET 2012 HAC Order*); *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Report and Order and Order on Reconsideration, 32 FCC Rcd 9063, 9068-69, paras. 12-13 (2017).

[157] ATIS Ex Parte Letter at 2.

[158] We note that if the Commission adopts a new volume control testing standard to replace the standard approved under WTB's waiver either during or after the transition period to 100% manufacturer compliance, the Commission may take the 100% requirement into consideration in determining an appropriate transition period for the revised standard.

[159] HAC Task Force Final Report at 20.

93. We seek comment on whether manufacturers and service providers can achieve compliance with a 100% requirement within the proposed timeframes, and if not, about potential alternative timeframes. We seek comment on the steps manufacturers and service providers must take to meet a 100% compliance standard and the scope and timeline of any necessary changes. What, if any, obstacles do manufacturers or service providers anticipate facing? Given the significant public interest in moving quickly to achieve 100% compliance as well as the current extensive availability of hearing aid-compatible handset models, any commenters proposing longer transition periods should provide specific information about why more time is needed.

94. We seek comment on how the two alternatives outlined above for reaching 100% compatibility (i.e., the grandfathering proposal or the 100% 2019 ANSI Standard approach) would impact transition times. Would the 100% 2019 ANSI Standard approach require a longer transition period to 100% hearing aid compatibility than our grandfathering proposal? What impact would that longer period have on consumers with hearing loss? If we require 100% of handset models to meet only certain aspects of the 2019 ANSI Standard (or future ANSI standards adopted by the Commission), is a 24-month transition period for manufacturers and a 30-month or 42-month transition period for service providers feasible? Alternatively, if we adopt the 100% 2019 ANSI Standard approach, should we impose the transition period proposed by the Task Force—four years for manufacturers and five years for service providers? Instead of a single timeline, should the Commission develop separate timelines for reaching different aspects of hearing aid compatibility, such as 100% compliance on acoustic coupling, as compared to reaching 100% compliance for "magnetic/wireless coupling" (i.e., the 85/15% proposal for telecoil coupling and Bluetooth connectivity), and another timeline for reaching 100% for volume control?

E. Handset Settings for Hearing Aid Compatibility

95. Our wireless hearing aid compatibility rules do not address whether a handset model by default must come out-of-the-box with its hearing aid compatibility functions fully turned on, or whether it is permissible for a manufacturer to require a consumer to turn these functions on by going into the handset's settings. Further, our rules do not address whether a handset model can have two different settings: one setting that turns on acoustic coupling and volume control, but not telecoil coupling, and a second separate setting that turns on the handset model's telecoil coupling capabilities. In addition, our rules do not address whether a handset model in telecoil mode has to continue to fully meet acoustic and volume control requirements.

96. While our hearing aid compatibility rules do not address this issue, staff has informally advised handset manufacturers that handset models cannot have separate selections for volume control compliance and another for RF interference and telecoil compliance.[160] Staff has stated that only one hearing aid compatibility selection is permitted and multiple selections are not permitted.[161] Recently, staff has been asked whether this informal advice could be modified to allow two hearing aid compatibility modes of operation in a handset model and whether a handset model in telecoil mode must continue to fully meet acoustic coupling and volume control requirements.

97. The HAC Task Force's Final Report does not address this hearing aid compatibility handset model setting issue. The Task Force does recommend, however, that the Commission require acoustic coupling in all handset models and adopt a Bluetooth connectivity requirement as an alternative coupling method to telecoil coupling in a certain percentage of handset models. If the Commission adopts this Bluetooth proposal, then a handset model certified as hearing aid compatible under the 2019

[160] FCC, Office of Engineering and Technology, Laboratory Division, Hearing Aid Compatibility, Frequently Asked Questions, at 4, Q10 (July 20, 2022). The document can be found at this link: https://apps.fcc.gov/kdb/GetAttachment.html?id=vuKe73LLxgCw4J24DvWvyQ%3D%3D&desc=285076%20D03%20HAC%20FAQ%20v01r06&tracking_number=36388.

[161] *Id.*

ANSI Standard would have to meet at least three hearing aid compatibility requirements. The handset model would have to meet acoustic coupling and volume control requirements and—depending on the handset model—would also have to meet either a telecoil coupling or Bluetooth connectivity requirement. It is also conceivable that a handset model might meet acoustic, telecoil, and Bluetooth coupling requirements as well as the volume control requirements that WTB recently addressed.

98. Given these potential alternative coupling methods and informal manufacturer requests that we allow more than one mode of operation for hearing aid compatibility in a handset model and detail what each mode of operation must include, we believe stakeholders would benefit from our establishing a rule, and seek comment on this issue. We propose that after the expiration of the manufacturer transition period, all handset models must by default come out-of-the-box with acoustic coupling and volume control certification requirements fully turned on. We further propose to permit handset models to have a specific setting that turns on the handset model's telecoil or Bluetooth coupling function, depending on the secondary capability included in a particular handset model. We seek comment on these proposals as well as whether a handset model operating in telecoil or Bluetooth coupling mode must also continue to meet acoustic coupling and volume control requirements or some aspects of these requirements.

99. In this regard, we seek comment on whether it is necessary for a handset model in telecoil or Bluetooth coupling mode to continue to fully meet acoustic and volume control requirements. Should we allow handset models operating in telecoil or Bluetooth coupling mode to automatically turn off acoustic coupling or the volume control function, or should we require these functions to remain on or some portion of these functions to remain on? Is it technically feasible for a handset model in telecoil or Bluetooth coupling mode to meet the 2019 ANSI Standard's acoustic and volume control requirements in full or even necessary from a consumer's perspective for a handset model in telecoil mode or Bluetooth coupling mode to meet these requirements? Should a handset model that meets all four hearing aid compatibility requirements be required to meet all aspects of acoustic and volume control requirements or only some part of those requirements when it is operating in telecoil or Bluetooth coupling mode? If it is technically feasible for a handset model to operate with telecoil and/or Bluetooth coupling at the same time as meeting the acoustic coupling and volume control requirements, should we require all available coupling options to be turned on in the handset model's default mode?

100. If we determine to allow more than one hearing aid compatibility mode of operation, we are concerned with how difficult it might be for consumers to discover these features and to understand their functionality. In this regard, should we establish standard hearing aid compatibility settings that would be consistent across all hearing aid-compatible handset models? Would it be helpful if the Commission were to establish uniform, industry-wide nomenclature for compatibility modes in handset models? If we allow a handset model to have two compatibility modes, what should we call these modes? Should the default mode be called HAC mode and the second mode be called Telecoil or Bluetooth mode, depending on the handset model? What if a handset model meets all four hearing aid compatibility requirements? Under these circumstances, should we allow three different modes of compatibility and, if so, what should we require each of these modes to be called, and what hearing aid compatibility functions should we require to be included in each mode?

101. Commenters should fully explain why they support or oppose our proposals for different modes of operations and why our proposals are in the public interest or not in the public interest. What are the costs and benefits of each of our proposals? What are the advantages and the disadvantages of our proposals in terms of their impact on handset manufacturers and consumers?

F. Consumer Notification Provisions

1. Labeling and Disclosure Requirements

102. We seek comment on whether to revise the labeling and disclosure requirements in section 20.19(f).[162] As stated above, we propose that, after the expiration of the applicable transition period for handset manufacturers, all handset models must be certified as hearing aid compatible. Further, we propose that at least 85% of these handset models must meet a telecoil coupling requirement and that at least 15% of these handset models must meet the Commission's new Bluetooth coupling requirement. We propose using either our grandfathering proposal or a 100% 2019 ANSI Standard alternative. Under either approach, we propose that all new handset models must be certified using the 2019 ANSI Standard's acoustic coupling requirements and the related volume control requirements, and that all new handset models must meet either the standard's telecoil coupling requirement or a Bluetooth requirement. If we adopt these proposed changes, we tentatively conclude that we should revise the package labeling provisions in section 20.19(f)(1) of the Commission's rules to reflect these changes. Specifically, we tentatively conclude that the handset model's package label must state whether the handset model includes telecoil coupling capability that meets certification requirements; includes Bluetooth connectivity as a replacement for meeting telecoil certification requirements; or includes both. We seek comment on whether revising the package labeling rule in this way would be sufficient to ensure that consumers can easily determine from looking at a handset model's package label whether the handset model has the coupling ability that meets their needs.

103. We also tentatively conclude that we should make a corresponding change to the package insert and handset user manual requirements in section 20.19(f)(2) to require information in a package insert or user manual about whether a handset model meets telecoil certification requirements; replaces this requirement with Bluetooth coupling ability; or includes both. Section 20.19(f)(2) establishes labeling and disclosure requirements for manufacturers and service providers and requires them to include certain information about the hearing aid compatibility of each handset model in a package insert or user manual for the handset.[163] For new handset models that use Bluetooth coupling rather than telecoil coupling to meet Commission requirements, we propose to require that the package insert or handset model user manual explain that the handset model does not meet telecoil certification requirements and instead couples with hearing aids using a Bluetooth standard and provide the name of that Bluetooth standard. We seek comment on whether revising the rule in this way would provide sufficient information for consumers.

104. Further, if we allow handset models to have default and secondary hearing aid compatibility modes of operation, we tentatively conclude that we should modify our handset package insert and user manual requirements to require an explanation of each of these modes, what each mode does and does not include, and how to turn these settings on and off. We seek comment on this proposal. How can we ensure that consumers can easily understand these modes of operation and what each mode of operation includes and does not include? Besides the name of the mode, how do we ensure that consumers can easily find these modes in a handset model's setting and that the modes are not buried in subheadings? Commenters supporting this modification should provide examples of what the package insert or user manual rule should state. Commenters supporting or opposing this change should explain why this change is or is not in the public interest and why this change is consistent or inconsistent with section 710(d) of the Act.

[162] 47 CFR § 20.19(f).

[163] Section 710(d) empowers the Commission with authority to "establish such requirements for the labeling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids." 47 U.S.C. § 610(d).

2. Digital Labeling Technology

105. As an additional proposed change to section 20.19(f)(2), we propose to permit manufacturers and service providers to provide the information required under this section to consumers through the use of digital labeling technology (e.g., quick response (QR) codes) on handset boxes rather than through a package insert or user manual. A QR code is a type of barcode that can be read easily by a digital device, such as a handset with a camera, and is typically used for storing Uniform Resource Locator (URL) information. Companies often use QR codes to link consumers to a company's webpage in order to provide consumers with additional information on a company product.

106. When the Commission adopted the requirement for package inserts, it considered requests from industry to give manufacturers and service providers more flexibility in the methods used to convey information on a handset model's hearing aid compatibility and volume control capabilities, including providing this information online rather than in the packaging insert or user manual.[164] The Commission found, however, that consumers may not necessarily visit service provider websites before going to a service provider's store and purchasing a hearing aid-compatible handset.[165] Therefore, the Commission required that package inserts and user manuals be provided with hearing aid-compatible handset models and that this information not just be provided online.[166]

107. We propose to reconsider the Commission's determination and allow manufacturers and service providers to meet the requirements of section 20.19(f)(2) through the use of digital labeling technology such as QR codes on handset boxes, or other accessible formats. When the Commission required manufacturers and service providers to include this information in package inserts or user manuals and declined to permit this information to be provided online, it based its decision on its finding that consumers may not necessarily visit service provider websites before going to a service provider's store and purchasing a hearing aid-compatible handset. By contrast, permitting service providers and manufacturers to include QR codes on handset packaging would not require consumers to visit a website before purchasing a handset and instead would provide consumers with access to relevant information at the point of sale while consumers are in stores making purchasing decisions. Further, permitting manufacturers and service providers to use QR codes on a handset model's package as an alternative to including a paper insert or user manual with the required hearing aid compatibility information could help ensure that consumers receive more up to date information, while saving paper and helping to streamline packaging.

108. We seek comment on this proposal and whether permitting the use of QR codes would be an effective alternative approach for ensuring that consumers with hearing loss receive relevant hearing aid compatibility information when purchasing their mobile devices. Would allowing the use of QR codes provide a more consumer friendly approach then continuing to require the use of paper inserts and user manuals? How familiar are consumers with QR codes? Are there enough consumers that are not familiar with QR codes that we should continue to require the use of paper inserts and user manuals in addition to allowing the use of QR codes? Do consumers have the ability to scan a QR code before purchasing a handset, or would they have to rely on store employees to scan the code for them so that they could read the information?

109. Do paper inserts and user manuals have benefits that QR codes cannot provide? If so, what are these benefits? Along these same lines, are there other types of digital labeling technology that the Commission should consider permitting as either an alternative to or in conjunction with the use of QR codes? What are these other digital labeling technologies? Further, if we allow the use of digital labeling technology as an alternative to paper inserts and user manuals, how can we ensure that these

[164] *2021 HAC Order*, 36 FCC Rcd at 4584, para. 42.

[165] *Id.*

[166] *Id.*

methods of labeling do not become obsolete before the Commission can update the labeling rules? Finally, what are the costs and benefits of permitting the use of QR codes or other types of digital labeling as an alternative to continuing to require the use of paper inserts and user manuals?

3. Handset Model Number Designation

110. We seek comment on whether to update the Commission's rule on handset model number designations. Section 20.19(g) of the Commission's rules requires that "where a manufacturer has made physical changes to a handset that result in a change in the hearing aid compatibility rating under the 2011 ANSI standard or an earlier version of the standard, the altered handset must be given a model designation distinct from that of the handset prior to its alteration."[167] We seek comment on how this rule should apply in cases where a handset model that has passed the 2011 ANSI Standard and has an assigned model number subsequently passes the 2019 ANSI Standard. Under the current rule, if there have been no physical changes to the handset model (i.e., no changes in hardware or software) a new model number would not be required, but the handset manufacturer may issue the handset model a new model number if it chooses to.

111. In these cases, where a handset model that is already certified as hearing aid compatible is re-certified under an updated ANSI standard, we seek comment on whether to revise the rule to require a manufacturer to issue a new model number even if there is no physical change to the handset model. Would revising the rule to require manufacturers to issue a new model number for such handset models benefit consumers with hearing loss by making it easier for them to identify the handset models that have been certified under updated standards? How would consumers be able to discern which models have been certified under updated standards otherwise? Would the costs or other burdens associated with such an approach be significant enough to outweigh the potential benefits for consumers?

G. Website, Record Retention, and Reporting Requirements

1. Website and Record Retention Requirements

112. After the end of the applicable transition periods, we tentatively conclude that we should require handset manufacturers and service providers to identify on their publicly accessible websites which handset models in their handset portfolios meet telecoil certification requirements. For those handset models that do not meet telecoil certification requirements, we tentatively conclude that handset manufacturers and service providers must affirmatively state that the handset model does not meet telecoil certification requirements and identify which Bluetooth connectivity standards the handset model meets instead. We also tentatively conclude that handset manufacturers and service providers must identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset model that they offer regardless of whether the handset model meets telecoil certification standards or includes Bluetooth connectivity instead. The posting of a handset model's conversational gain with and without hearing aids is consistent with the Commission's current handset model package label rule.[168] We believe that all of this information is essential for consumers to have access to in order to purchase handset models that meet their individual needs.

113. We seek comment on these tentative conclusions. Commenters opposing these tentative conclusions should clearly explain why these tentative conclusions are not in the public interest. What are the costs and benefits of these tentative conclusions? We note that if we allow the use of QR codes or other digital labeling technology as an alternative to paper inserts or user manuals, this may be the only way a consumer might be able to access some of this information. Further, consumers might research this information online before going to a store or may actually buy the handset online without going to the

[167] 47 CFR § 20.19(g).

[168] 47 CFR § 20.19(f)(1).

store. Commenters should provide a detailed explanation as to why they support or oppose these tentative conclusions.

114. Further, if we adopt a 100% hearing aid compatibility requirement, we seek comment on whether to streamline other components of the website and record retention requirements in the Commission's rules. In 2018, the Commission imposed new website posting requirements for service providers and required providers to retain information necessary to demonstrate compliance with the Commission's wireless hearing aid compatibility rules.[169] Under these requirements, each manufacturer and service provider that operates a publicly-accessible website must make available on its website a list of all hearing aid-compatible handset models currently offered, the ANSI standard used to evaluate hearing aid compatibility, the ratings of those handset models under the relevant ANSI standard, if applicable, and an explanation of the rating system.[170] In addition, service providers must post on their websites: a list of all non-hearing aid-compatible handset models currently offered, as well as a link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service providers' obligations. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible handset model currently offered.[171]

115. Service providers must also retain on their website a link to a third-party web site as designated by the Commission or WTB, with information regarding hearing aid-compatible and non-hearing aid-compatible handset models or, alternatively, a clearly marked list of hearing aid-compatible handset models that have been offered in the past 24 months but are no longer offered by that provider.[172] The rules also require that the information on a manufacturer's or service provider's website must be updated within 30 days of any relevant changes, and any website pages containing information so updated must indicate the day on which the update occurred.[173]

116. Further, the rules require service providers to retain internal records for discontinued handset models, to be made available upon Commission request of: (1) handset model information, including the month year/each hearing aid-compatible and non-hearing aid-compatible handset model was first offered; and (2) the month/year each hearing aid-compatible handset model and non-hearing aid-compatible handset model was last offered for all discontinued handset models until a period of 24 months has passed from that date.[174]

117. We seek comment on whether to streamline these requirements by eliminating the requirement to post or retain information about non hearing aid-compatible handset models. If we require that 100% of handset models be hearing aid compatible, we do not anticipate that there would continue to be a need for providers to post information about non hearing aid-compatible handset models on their websites. Do commenters disagree? Should we continue to require service providers to post information and keep records about the non-hearing aid-compatible handset models they offered previously? Would doing so provide useful information for consumers? If the Commission adopts the 100% compliance standard, would the website and record retention rules continue to be necessary to help ensure compliance with the hearing aid compatibility requirements?

[169] *2018 HAC Order*, 33 FCC Rcd at 11554-57, paras. 12-20.

[170] 47 CFR § 20.19(h)(1).

[171] *Id.*

[172] *Id.* § 20.19(h)(2).

[173] 47 CFR § 20.19(h)(4).

[174] *Id.* § 20.19(h)(5).

2. FCC Form 655 and 855

118. In this section, we tentatively conclude that after the handset manufacturer 100% transition period ends, we will revise the handset manufacturer annual reporting requirement by eliminating the requirement that a manufacturer use FCC Form 655 for reporting purposes and instead replace this requirement with the requirement that it use FCC Form 855 for reporting purposes. FCC Form 855 is the same form that service providers presently file to show compliance with the Commission's wireless hearing aid compatibility provisions. We also tentatively conclude that after the expiration of the manufacturer transition period, we will change the reporting deadline for handset manufacturers from July 31 each year to January 31 each year. Along with requiring handset manufacturers to file the same form as service providers, this change would align the filing deadline for handset manufacturers with the current filing deadline for service providers. We seek comment on these tentative conclusions below.

119. *Background*. Under section 20.19(i), handset manufacturers are presently required to submit FCC Form 655 reports on their compliance with the Commission's hearing aid compatibility requirements each year.[175] FCC Form 655 requires manufacturers to provide information on: (i) handset models tested since the most recent report, for compliance with the applicable hearing aid compatibility technical ratings; (ii) compliant handset models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number; (iii) for each compliant model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings for each frequency band and air interface under the ANSI standard (if applicable), the ANSI standard version used, and the months in which the model was available to service providers since the most recent report; (iv) non-compliant models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number; (v) for each non-compliant model, the air interface(s) over which it operates and the months in which the model was available to service providers since the most recent report; (vi) total numbers of compliant and non-compliant models offered to service providers for each air interface as of the time of the report; (vii) any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices were marketed under separate model name/numbers but constitute a single model for purposes of the hearing aid compatibility rules, identifying each device by marketing model name/number and FCC ID number; (viii) status of product labeling; (ix) outreach efforts, and (x) if the manufacturer maintains a public website, the website address of the page(s) containing the required information regarding handset models.[176]

120. Section 20.19(i) also requires that service providers submit FCC Form 855 each year certifying under penalty of perjury their compliance with the Commission's hearing aid compatibility requirements.[177] Certifications filed by service providers must include: (i) the name of the signing

[175] *Id.* § 20.19(i)(1). FCC Form 655 provides that certain manufacturers of wireless handsets are required to annually file a FCC Form 655 status report indicating their compliance with the Commission's hearing aid compatibility requirements. Specifically, this reporting requirement applies to manufacturers of wireless handsets used in the delivery of digital mobile service in the United States to the extent that the handsets offer terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, and such service is provided over frequencies in the 698 MHz to 6 GHz bands. *See id.* § 20.19(a)(2).

[176] *Id.* § 20.19(i)(3).

[177] *Id.* § 20.19(i)(1). FCC Form 855 provides that certain digital mobile service providers, including mobile virtual network operators ("MVNOs") and resellers, are required to annually file a FCC Form 855 certification with the Commission stating whether or not they are in full compliance with the Commission's hearing aid compatibility rules. Specifically, this certification requirement applies to "providers of digital mobile service in the United States to the extent that they offer terrestrial mobile service that enables two-way real-time voice communications among (continued….)

executive and contact information; (ii) the company(ies) covered by the certification; (iii) the FCC Registration Number (FRN); (iv) if the service provider maintains a public website, the website address of the page(s) containing the required information regarding handset models; (v) the percentage of handset models offered that are hearing aid compatible; and (vi) a statement certifying that the service provider was in or was not in full compliance with the hearing aid compatibility provisions for the reporting period.[178]

121. Prior to the *2018 HAC Order*, the Commission required service providers to show compliance with the Commission's wireless hearing aid compatibility provisions by filing FCC Form 655 just as handset manufacturers are presently required to do. In the *2018 HAC Order*, however, the Commission took steps to reduce regulatory burden on service providers by eliminating annual service reporting requirements and allowing service providers to instead file a streamlined annual certification stating their compliance with the Commission's hearing aid compatibility requirements.[179] The Commission found that many of the benefits of annual status reporting by service providers had become increasingly outweighed by the burdens that such information collection placed on those entities.[180] The Commission noted that the action it was taking would streamline "the Commission's collection of information while continuing to fulfill the underlying purposes of the current reporting regime."[181]

122. While the *2018 HAC Order* did not change the reporting requirements for handset manufacturers, the Commission noted that in the 100% hearing aid compatibility docket it was considering broader changes to the hearing aid compatibility rules that may be appropriate in the event it required 100% of covered handset models to be hearing aid compatible.[182] The Commission indicated that the website, record retention, and certification requirements it was adopting as part of the *2018 HAC Order* would remain in place unless and until the Commission took further action in the 100% hearing aid compatibility docket and that its decisions did not "prejudge any further steps we may take to modify our reporting rules in that proceeding."[183]

123. Currently, handset manufacturer compliance filings are due by July 31 each year and cover the reporting period from the previous July 1 to June 30. Service providers compliance filings are due by January 31 of each year and cover the previous calendar year—January 1 through December 31.[184]

124. *Discussion*. We seek comment on our tentative conclusions to require handset manufacturers to file FCC Form 855 instead of FCC Form 655 and to align the filing deadline for handset manufacturers to the January 31 deadline that currently applies to service providers. Is moving handset manufacturers to FCC Form 855 after the end of the manufacturer transition period consistent with a 100% hearing aid compatibility standard? If we require all handset models to be hearing aid compatible, would requiring manufacturers to submit information on the more detailed FCC Form 655 still be necessary? After the transition period expires, handset manufacturers will no longer be permitted to offer non-hearing-aid compatible handset models. Is there any reason why the Commission would need to

(Continued from previous page)
members of the public or a substantial portion of the public, including both interconnected and non-interconnected VoIP services, and such service is provided over frequencies in the 614 MHz to 6 GHz bands." *See id.* § 20.19(a).

[178] *Id.* § 20.19(i)(2).

[179] *2018 HAC Order*, 33 FCC Rcd at 11554, paras. 12-14.

[180] *Id.* at 11554, para. 13.

[181] *Id.*

[182] *Id.* at 11554, para. 15.

[183] *2018 HAC Order*, 33 FCC Rcd at 11554, para. 15.

[184] The service provider filing window opens the first business day in January and closes on January 31 each year. If January 31 falls on a weekend or holiday, then the filing widow closes on the next business day.

continue to collect information about handset models such as the marketing name or model number, air interface, or months offered?

125. Is it in the public interest to move handset manufacturers to FCC Form 855 once the handset manufacturer transition period ends? We seek comment on the relative costs and benefits of moving handset manufacturers to FCC Form 855 rather than continuing to require them to file FCC Form 655. Would moving manufacturers to FCC Form 855 be sufficient to emphasize to manufacturers the importance of compliance with our rules while reducing the burdens of gathering, formatting, and submitting data for FCC Form 655? Similarly, would aligning the manufacturer compliance filing deadline with the current January 31 deadline for service providers provide for efficiencies or create any difficulties for handset manufacturers or service providers?

126. As discussed above, as part of our proposal for a 100% hearing aid compatibility benchmark, we propose to require that at least 85% of handset models offered meet a telecoil coupling requirement and that at least 15% of handset models offered meet a Bluetooth connectivity requirement. If we adopt these proposed benchmarks, should we retain the FCC Form 655 reporting obligation for handset manufacturers so that we can monitor manufacturers' compliance, or would it be sufficient to require manufacturers to certify that they are in compliance with these requirements and all other requirements by filing under penalty of perjury FCC Form 855 as service providers presently do? Given our proposal that handset manufacturers would have to indicate on their websites which of their offered handset models meet telecoil certification standards and which do not, would such a requirement eliminate the need to require manufacturers to file FCC Form 655 and allow us to replace this requirement with a requirement that they file FCC Form 855?

127. In addition, if we adopt our grandfathering proposal for the 100% requirement, handset manufacturers would have in their handset portfolios handset models certified under different certification standards, including some handset models certified under the 2011 ANSI Standard and others certified under the 2019 ANSI Standard. Would maintaining the FCC Form 655 reporting requirement be necessary to obtain information about the different hearing aid-compatible handset models that manufacturers offer? In this regard, we note that handset manufacturers are required to indicate on their websites the ANSI standard under which a handset model is certified. Does this website posting requirement eliminate the need to file FCC Form 655 because of grandfathered handset models? Further, can the Commission gather relevant handset model information from equipment authorization reports instead of from FCC Form 655?

128. Finally, if we maintain the FCC Form 655 filing requirement for handset manufacturers after the end of the manufacturer transition period, are there any changes that the Commission should make to this form in regards to the information that the form collects? Further, are the any changes that the Commission should make to FCC Form 855 in regards to the information that this form collects either in terms of service providers or if we move handset manufacturers to this form, too?

3. Reliance on Accessibility Clearinghouse

129. We propose to decline the HAC Task Force's recommendation that the Commission permit service providers to rely on the information linked to in the Commission's Accessibility Clearinghouse as a legal safe harbor when making a determination of whether a handset model is hearing aid compatible for purposes of meeting applicable benchmarks.[185]

130. The HAC Task Force's Final Report recommends that service providers should be able to rely on the information reported in the Global Accessibility Reporting Initiative (GARI) database, which

[185] HAC Task Force Final Report at ii, 27. The Commission's Accessibility Clearinghouse can be found at https://www.fcc.gov/ach.

is linked at the Accessibility Clearinghouse website.[186] The Report asserts that the GARI database would provide a more up-to-date snapshot of hearing aid-compatible handset models than the annual FCC Form 655 report that manufacturers file.[187] Presently, the Commission allows service providers to rely on the information from a handset manufacturer's FCC Form 655 as a safe harbor.[188] In its Public Notice, WTB sought comment on the HAC Task Force's recommendation.[189] MWF commented that its GARI website had "gained global recognition" and that the database "is kept up to date with the available devices in the marketplace."[190] MWF also noted that for the GARI website, "all manufacturer statements" are "subject to the legal requirements for accuracy of representations to consumers."[191] The HAC Task Force, in its reply, argued that being able to rely on the GARI database "will provide a user-friendly experience for service providers to receive timely information, compared to the Form 655 reports and Equipment Authorization System."[192]

131. While handset manufacturers must certify to the accuracy of their FCC Form 655 reports, there is no similar requirement with respect to the information handset manufacturers submit to the GARI database. The GARI database is not a Commission-maintained database, and the Commission does not control who can access the database and what information is added to the database. The Commission has no means of ensuring that the information in the GARI database is accurate, timely, or complete. Further, the Commission already allows service providers to rely on the information from a handset manufacturer's FCC Form 655 as a safe harbor, and we are not convinced that it is necessary to allow service providers a second safe harbor that may not contain accurate information.

132. Accordingly, we propose to decline the Task Force's recommendation that would allow a service provider to rely on the information linked to in the Commission's Accessibility Clearinghouse to determine whether a handset model is hearing aid compatible for the purpose of meeting applicable benchmarks. We seek comment on our proposed determination. We also seek comment on whether, once the transition to 100% hearing aid compatibility is completed, our rules should continue to require service providers to either link to the GARI database on their publicly accessible websites or provide a list for the past 24 months of hearing aid-compatible handset models that they no longer offer.[193]

133. We also propose to decline the Task Force's recommendation that, if a handset model is not in the GARI database, the Commission "automatically and immediately upload" handset

[186] HAC Task Force Final Report at 26-28. GARI is a project of the Mobile & Wireless Forum populated by handset manufacturers and app developers with the objective of "helping consumers learn about the accessibility features of mobile devices and to identify devices with the features that may assist them with their particular needs"). *See* GARI, What Do You Want to Find? Gari.info, http://gari.info/ (last visited Sept. 10, 2023) (providing a search field to accessibility information, including handset model hearing aid compatibility information). GARI is an ongoing project of the Mobile and Wireless Forum, "an international association of companies with an interest in mobile and wireless communication. . . The MWF focuses on a range of issues concerning mobile and wireless devices including RF health and safety, certification testing standards and requirements, counterfeit, counterfeit issues and accessibility," GARI, Contact GARI, https://www.gari.info/contact.cfm (last visited Oct. 24, 2023).

[187] HAC Task Force Final Report at 27; *see* GARI, Home Page, https://www.gari.info (last visited Oct. 24, 2023).

[188] *2018 HAC* Order, 33 FCC Rcd at 11557, para. 20. We also note that, in 2018, the Commission determined that service providers may rely on the GARI database in meeting certain publicly accessible website posting requirements. *Id.* at 11555-56, para. 18.

[189] *HAC Public Notice* at para. 15.

[190] MWF Reply at 4-5.

[191] *Id.* at 5. MWF also argued that the Form 655 certification requirement does not add to a manufacturer's obligation to provide accurate product information. *Id*.

[192] HAC Task Force Reply at 8.

[193] 47 CFR § 20.19(h)(2).

manufacturers' FCC Form 655 reports to the Accessibility Clearinghouse after they are submitted to the Commission. The Commission already posts these reports on the Commission's wireless hearing aid compatibility website and links to that website on the Accessibility Clearinghouse website.[194] We seek comment on our proposed determinations.

4. Contact Information for Consumers

134. We tentatively conclude that we should modify our website posting requirements to require handset manufacturers and service providers to include on their publicly accessible websites a point-of-contact for consumers to use in order to resolve questions they have about a company's hearing aid-compatible handset models.[195] Under our tentative conclusion, handset manufacturers and service providers would provide the name of a department or a division that is staffed with knowledgeable employees and provide an email address, mailing address, and a toll free number that consumers could contact in order to find out information about a hearing aid-compatible handset model that the company offers or to ask questions about how a particular handset model links to the consumer's hearing device. We would expect manufacturers and service providers to be responsive to consumer questions and interact with consumers asking questions about hearing aid-compatible handset models in a manner consistent with the Consumer Code for Wireless Service that can be found on CTIA's website.[196]

135. Section 710(a) of the Act requires the Commission to "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing."[197] We seek comment on whether requiring handset manufacturers and service providers to post contact information on their publicly accessible websites is necessary in order to ensure that consumers with hearing loss have reasonable access to telephone service. We believe such a requirement might be beneficial to consumers in terms of getting their questions answered and may help handset manufacturers and service providers sell new handsets and services. Further, by requiring the contact information to be provided on publicly accessible websites, the information can be easily updated and is readily accessible to the public; a provider's website is also a place the public reasonably expects to find contact information for these types of inquiries.[198] Our website posting rules require websites to be updated within 30 days of a change.[199]

136. We seek comment on our tentative conclusion that handset manufacturers and service providers should be required to include contact information on their publicly accessible websites that consumers can use regarding questions that they might have on a company's hearing aid-compatible handset models. How can we ensure that handset manufacturers and service providers display contact information in a uniform fashion and in a uniform location on their websites? Should we require that this information be provided on the first page of their hearing aid compatibility webpages and in a particular

---

[194] *See* Filing Hearing Aid Compatibility Reports and Certifications | Federal Communications Commission (fcc.gov); Accessibility Clearinghouse, https://www.fcc.gov/ach (last visited Oct. 24, 2023) (linking at bottom of page to Hearing Aid Compatible Wireless Handsets Status Reports).

[195] 47 CFR § 20.19(h).

[196] *See* CTIA, Wireless Industry Commitment, Consumer Code for Wireless Service at https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service.

[197] 47 U.S.C. § 610(a). Moreover, section 710(d), which provides the Commission with authority to establish package labeling requirements for handset models, indicates a congressional intent in favor of promoting the availability of HAC information for consumers. *See id.* § 610(d).

[198] We note that consumers may contact the FCC's Disability Rights Office with questions concerning our hearing aid compatibility requirements. The Office's contact information can be found here: https://www.fcc.gov/accessibility. In addition, the Office has prepared a consumer guide on Hearing Aid Compatibility for Wireline and Wireless Telephones that can be found here: https://www.fcc.gov/consumers/guides/hearing-aid-compatibility-wireline-and-wireless-telephones.

[199] *See* 47 CFR § 20.19(h)(4) (website posting requirements for information on HAC compatible handset models).

location on this page, such as the upper right-hand corner? Should we require that this information be labeled as HAC Contact Information or something similar? How can we ensure that consumers can easily find the required contact information, and should we require additional information to be provided beyond what we are proposing?

137. We also seek comment on whether to require handset manufacturers and service providers both to provide this contact information on their publicly accessible websites, and also to provide this contact information in their FCC Form 655 and 855 filings. Under this alternative, we would modify these forms to provide a space where this contact information would be provided. These forms contain certification requirements to ensure the accuracy of the information that is provided; however, the forms are only due once a year and are not required to be updated within 30 days of a change as our website posting rule requires. Further, consumers might not be aware of these forms or where to access them but are likely familiar with company websites and understand how to access them. Moreover, consumers would expect to find this type of contact information on a company website.

138. Alternatively, we seek comment on whether we should require handset manufacturers and service providers to enter the required contact information in a Commission-maintained database. Under this approach, the Commission would create a database that would contain company point-of-contact information for consumers who have hearing aid compatibility questions related to a company's hearing aid-compatible handset models that they offer. Companies would be required to enter their contact information for hearing aid compatibility questions directly into the database and to update their contact information within 30 days of any changes. This database would operate similarly to the Commission's Recordkeeping Compliance Certification and Contact Information Registry.[200] This database could be used to search for a company's representatives who are knowledgeable about the company's hearing aid-compatible handset models that they offer and could answer consumer questions related to these models.

139. Commenters supporting or opposing the above approaches should explain why these proposals are consistent or inconsistent with statutory requirements. In addition, commenters should explain why these proposals are or are not in the public interest and what the costs and benefits of each of these proposals are. Is our website posting approach more beneficial to consumers in terms of getting questions answered and to companies in terms of selling new handsets and services then the other approaches outlined above? Are consumers familiar with FCC Form 655 and 855 filings, and do they know where to find these filings and how to access them? From a consumer's perspective is it necessary for consumers to be able to find this contact information on the certification forms or is being able to locate it on a company's website sufficient? Is the website posting approach more consumer friendly than adding the contact information to FCC Forms 655 and 855 or the database approach? If the Commission adopts a database approach, how would consumers know about the database or where to find it? Are consumers more likely to go to a company's website before exploring other options? Further, is there an existing Commission database that is accessible to consumers that the Commission could utilize for purposes of requiring handset manufacturers and service providers to list customer service contact information?

140. Finally, we propose to delete the last sentence of section 20.19(j) which provides that for state enforcement purposes the procedures set forth in part 68, subpart E of the Commission's rules should be followed.[201] The rules in part 68, subpart E relate to sections 255, 716, and 718 of the Communications Act rather than section 610 and we, therefore, propose to delete this sentence.[202]

[200] *See id.* § 68.418(b); https://apps.fcc.gov/rccci-search/search.action.

[201] 47 CFR § 20.19(j).

[202] 47 U.S.C. §§ 255, 716, 718.

H. Sunsetting the *De Minimis* Exception

141. In view of our tentative conclusion to require 100% of handset models to be hearing aid compatible after the expiration of the relevant transition periods, we tentatively conclude that we should remove the *de minimis* exception in section 20.19(e) of the rules. Under this tentative conclusion, once the applicable transition periods expire handset manufacturers and service providers will no longer be able to claim *de minimis* status.

142. Section 20.19(e) provides a *de minimis* exception to hearing aid compatibility obligations for those manufacturers and mobile service providers that only offer a small number of handset models.[203] Specifically, section 20.19(e)(1) provides that manufacturers and service providers offering two handset models or fewer in the United States over an air interface are exempt from the requirements of section 20.19, other than the reporting requirement.[204] Section 20.19(e)(2) provides that manufacturers or service providers that offer three handset models over an air interface must offer at least one compliant model.[205] Section 20.19(e)(3) provides that manufacturers or service providers that offer four or five handset models in an air interface must offer at least two handset models that are hearing aid compatible in that air interface.[206]

143. The Commission first adopted the *de minimis* rule together with the initial wireless hearing aid compatibility requirements in 2003, based on its recognition that the hearing aid compatibility requirements could have a disproportionate impact on small manufacturers or those that sell only a small number of digital wireless handset models in the United States, as well as on service providers that offer only a small number of digital wireless handset models.[207] In the *2005 HAC Order*, the Commission clarified that the *de minimis* rule applies on a per air interface basis, rather than across a manufacturer's or service provider's entire product line.[208] In 2010, the Commission modified the *de minimis* exception as applied to companies that are not small entities by deciding that, beginning two years after it offers its first handset model over an air interface, a manufacturer or service provider that is not a small entity, must offer at least one model that is hearing aid compatible.[209]

144. We seek comment on our tentative conclusion to remove the *de minimis* exception to our hearing aid compatibility rules. Maintaining a *de minimis* exception that would permit a manufacturer to certify less than 100% of its handset models as hearing aid compatible or would allow a service provider to maintain a handset portfolio that is less than 100% composed of hearing aid-compatible handset models would be inconsistent with our objective of developing a 100% compliance standard. While the *de minimis* exception served an important purpose when it was implemented two decades ago, today manufacturers and service providers are able to offer more easily a range of hearing aid-compatible handset models using a variety of technologies including Bluetooth. Considering the developments in

[203] 47 CFR § 20.19(e).

[204] *Id.* § 20.19(e)(1).

[205] *Id.* § 20.19(e)(2).

[206] *Id.* § 20.19(e)(3). "Air interface" refers to the technology that ensures compatibility between mobile radio service equipment, such as handsets, and a service provider's base stations. *WTB/OET 2012 HAC Order*, 27 FCC Rcd at 3733, para. 3 & n.2. Examples of air interfaces include GSM, CDMA, LTE, and Wi-Fi. *See generally* 2019 ANSI Standard.

[207] *See 2003 Hearing Aid Compatibility Order*, 18 FCC Rcd at 16781, para. 69; *see also Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221, 11244, para. 51 (2005) (*2005 HAC Order*).

[208] *2005 HAC Order*, 20 FCC Rcd at 11244, para. 53.

[209] *2010 HAC Order*, 25 FCC Rcd at 11182, para. 40.

hearing aid compatibility technologies, and the greater availability of hearing aid-compatible handset models, we seek comment on whether maintaining the *de minimis* exception is necessary. Are there reasons why smaller manufacturers cannot certify all of their handset models as hearing aid compatible or why smaller manufacturers or wireless providers cannot ensure that all of the handset models that they offer are hearing aid compatible? Do commenters believe that maintaining a *de minimis* exception would still be necessary to preserve competitive opportunities for small entities?

I. 90-Day Shot Clock for Waivers

145. The HAC Task Force's Final Report recommends that the Commission set a 90-day shot clock for the resolution of petitions for waiver of the hearing aid-compatibility requirements, which would include a public notice comment cycle.[210] In the Public Notice on the Task Force's recommendations, WTB sought comment on this proposal. In its reply comments, the Task Force reiterated its recommendation. No other commenters addressed this issue.

146. We propose to decline the Task Force's recommendation because we do not anticipate that establishing a shot clock would be necessary to ensure the timely resolution of potential future requests for waiver of the hearing aid compatibility rules or to ensure that the deployment of new technologies is not delayed. In addition, given the highly technical nature of the questions that arise in the hearing aid-compatibility proceedings, establishing a 90-day shot clock could limit public participation and negatively impact staff's ability to work with affected stakeholders to develop consensus solutions that serve the interest of consumers with hearing loss.[211] We note that not only is the 90-day proposal half of what the Commission sought comment on, but that the Commission also sought comment on whether there are situations in which the Commission should have the ability to extend the waiver deadline.[212] We also note that section 710(f) requires the Commission to periodically review the regulations established pursuant to the Hearing Aid Compatibility Act.[213] This statutory obligation should curtail the need for waivers. We seek comment on our proposed determination.

J. Renaming Section 20.19

147. Finally, we seek comment on whether the Commission should revise the heading of section 20.19 of the rules to better reflect the scope of its requirements. Section 20.19 is currently titled "Hearing aid-compatible mobile handsets." The rules, however, are intended to help ensure access to communications services for consumers who use hearing aids as well as other types of hearing devices such as cochlear implants and telecoils[214] as well as consumers who have hearing loss but do not use hearing devices. We seek comment on whether the Commission should revise the heading of section 20.19 to better reflect the scope of the requirements. If so, we seek comment on what heading the Commission should adopt. For example, should the Commission rename section 20.19 to "Accessibility for Consumers with Hearing Loss" or "Hearing Loss Interoperability Requirements?" Are there alternative headings the Commission should consider? Would revising the section heading create consumer confusion or provide needed clarity?

---

[210] HAC Task Force Final Report at ii, 30-31.

[211] 47 U.S.C. § 610(b)(3) (the Commission shall not grant a waiver unless the Commission determines on the basis of evidence in the record that granting a waiver is in the public interest and the Commission shall consider the effect of the waiver on hearing-impaired individuals).

[212] *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285, Fourth Report and Order and Notice of Proposed Rulemaking, 30 FCC Rcd 13845, 13880-81, para. 79 (2015).

[213] 47 U.S.C. § 610(f); *see also id.* § 610(b)(3) ("The Commission shall periodically review and determine the continuing need for any waiver granted . . . .").

[214] Lintz Comments, WT Docket No. 20-3 at 2-3 (filed Apr. 10, 2020) ("The FCC should make clear that hearing aid compatible means telecoil. I respectfully request the FCC to change the term HAC to telecoil or T-coil . . . .").

K. Promoting Digital Equity and Inclusion

148. To the extent not already addressed, the Commission, as part of its continuing effort to advance digital equity for all,[215] 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[216] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our inquiries may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

149. *Ex Parte Rules*. This 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, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. 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 47 CFR § 1.1206(b). In proceedings governed by 47 CFR § 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.

150. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[217] 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."[218] Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes

[215] 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.

[216] 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).

[217] *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).

[218] *Id.* § 605(b).

contained in this Notice of Proposed Rulemaking. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.

151. *Paperwork Reduction Act*. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

152. *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. Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on https://www.fcc.gov/proposed-rulemakings.

153. *Filing of Comments and Reply Comments*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Paper filings can be sent by first-class or overnight commercial or U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  (1) Filings by 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.

  (2) Filings by U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

  (3) 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.[219]

154. *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.

155. *Contact Person*. For further information about this proceeding, contact Eli Johnson, FCC, Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418-1395, Eli.Johnson@fcc.gov.

[219] *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

V. ORDERING CLAUSES

156. Accordingly, IT IS ORDERED that, pursuant to sections 1-4 and 641-646 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 641-646, this Notice of Proposed Rulemaking IS ADOPTED.

157. IT IS FURTHER ORDERED that WT Docket No. 15-285 IS HEREBY TERMINATED.

158. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

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

AUTHORITY: 47 U.S.C. 154, 160, 201, 251-254, 303, 332, and 710 unless otherwise noted.

2. Amend § 20.19 by revising paragraphs (b)(1)-(3), (c)(1)-(3), removing existing paragraph (e) and redesignating existing paragraphs (f)-(l) as paragraphs (e)-(k), and revising (e)(1)-(2), (g)(1), and (h)(1)-(2) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(b) *Hearing aid compatibility; technical standards*

(1) *Handset model compatibility on or after December 31, 2026*. In order to satisfy a manufacturer or service provider's obligations under paragraph (c) of this section, a handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility on or after December 31, 2026 must meet:

(i) the 2019 ANSI standard's acoustic coupling requirements;

(ii) the 2019 ANSI standard's volume control requirements; and

(iii) either the 2019 ANSI standard's telecoil coupling requirements or have Bluetooth connectivity technology as a replacement for or in addition to meeting the standard's telecoil coupling requirements.

(iv) All such new handset models must by default have their acoustic and volume control functions on. Such handset models may also have a secondary mode whereby the handset model's telecoil is turned on or, for those handset models that substitute Bluetooth connectivity for telecoil connectivity, the Bluetooth function is turned on.

(2) *Handset model compatibility before December 31, 2026*. In order to satisfy a manufacturer's or service provider's obligations under paragraph (c) of this section, a handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility before December 31, 2026 must meet either:

(i) the 2019 ANSI standard; or

(ii) the 2019 ANSI standard's acoustic coupling requirements, applicable volume control requirements, and either the standard's telecoil coupling requirements or have Bluetooth connectivity technology as a replacement for or in addition to meeting the standard's telecoil coupling requirements.

(3) *Handset models operating over multiple frequency bands or air interfaces*

(i) Beginning on December 31, 2026, a handset model is hearing aid-compatible if it meets the requirements of paragraph (b)(1) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard pursuant to § 2.1033(d) of this chapter.

(ii) Before December 31, 2026, a handset model is hearing aid-compatible if it meets the requirements of paragraph (b)(2) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard pursuant to § 2.1033(d) of this chapter.

* * * * *(c) *Phase-in of hearing aid-compatibility requirements*. The following applies to each manufacturer and service provider that offers handset models used to deliver digital mobile services as specified in paragraph (a) of this section.

(1) *Manufacturers—Number of hearing aid-compatible handset models offered*. After December 31, 2026, for each digital air interface for which it offers handset models in the United States or imported for use in the United States, one-hundred (100) percent of the handset models that the manufacturer offers must be certified as hearing aid-compatible.

(i) At least eighty-five (85) percent of those handset models must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard; and

(ii) At least fifteen (15) percent of those handset models must have Bluetooth connectivity technology as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standard.

(2) *Tier I carriers*. After June 30, 2027, for each digital air interface for which it offers handset models to customers, one-hundred (100) percent of the handset models that the provider offers must be certified as hearing aid-compatible.

(i) At least eighty-five (85) percent of those handset models must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard; and

(ii) At least fifteen (15) percent of those handset models must have Bluetooth connectivity technology as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standard.

(3) *Service providers other than Tier I carriers*. After *June 30, 2028*, for each digital air interface for which it offers handset models to customers, one-hundred (100) percent of the handset models that the provider offers must be certified as hearing aid-compatible.

(i) At least eighty-five (85) percent of those handset models must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard; and

(ii) At least fifteen (15) percent of those handset models must have Bluetooth connectivity technology as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standard.

* * * * *

(d) [Reserved]

(e) *Labeling and disclosure requirements for hearing aid-compatible handset models*.

(1) *Package label.* For all handset models certified to be hearing aid-compatible, manufacturers and service providers shall ensure that the handset model's package label states that the handset model is hearing aid-compatible and the handset model's actual conversational gain with and without a hearing aid if certified using a technical standard with volume control requirements. The actual conversational gain displayed for use with a hearing aid shall be the lowest rating assigned to the handset model for any covered air interface or frequency band. The label shall also state whether the handset model has a telecoil that meets certification requirements, includes Bluetooth connectivity as a replacement for meeting telecoil certification requirements, or includes both.

(2) *Package insert or handset manual.* For all handset models certified to be hearing aid-compatible, manufacturers and service providers shall disclose to consumers through the use of digital labeling (e.g., a QR Code) on the handset model's package label, or through the use of a package insert, or in the handset model's user manual: * * *

(ix) where applicable, an explanation that the handset model does not meet telecoil certification requirements and instead couples with hearing aids using a Bluetooth connectivity standard and provide the name of that Bluetooth standard. This explanation should also indicate that the handset model will, by default, have its acoustic and volume control functions on and that it may also have a secondary mode whereby the handset model's telecoil is turned on or, for those handset models that substitute Bluetooth connectivity for telecoil connectivity, the Bluetooth function is turned on. The explanation must include an explanation of each of these modes, what each mode does and does not include, and how to turn these settings on and off.

* * * * *

(g) *Website and record retention requirements*.

(1) Each manufacturer and service provider that operates a publicly-accessible website must make available on its website:

(i) A list of all hearing aid-compatible models currently offered, the ANSI standard used to evaluate hearing aid compatibility, the ratings of those models under the relevant ANSI standard, if applicable, and an explanation of the rating system. Each service provider must also include on its website: A list of all non-hearing aid-compatible models currently offered, as well as a link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service provider's obligations. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model currently offered.

(ii) In addition, each manufacturer and service provider must identify on their publicly accessible websites, for all handset models in their handset portfolios that are certified as hearing aid compatible under (b) of this section, which of those handset models meet telecoil certification requirements and which have Bluetooth connectivity technology. For those handset models that do not meet telecoil certification requirements, each manufacturer and service provider must affirmatively state that the handset model does not meet the telecoil certification requirements.

For handset models that have Bluetooth connectivity technology as a replacement to or in addition to telecoil, manufacturers and service providers must identify which Bluetooth connectivity standards these handset models include.

(iii) Each handset manufacturer and service provider must identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset model certified as hearing aid compatible that they offer regardless of whether the handset model meets telecoil certification standards or includes Bluetooth connectivity instead.

(iv) Each handset manufacturer and service provider must include on its website a point-of-contact for consumers to use in order to resolve questions they have about a company's hearing aid-compatible handset models. Handset manufacturers and service providers must provide the name of a department or a division that is staffed with knowledgeable employees and provide an email address, mailing address, and a toll free number that consumers could contact to find out information about a hearing aid-compatible handset model that the company offers or to ask questions about how a particular handset model couples with the consumer's hearing device.

* * * * *

(h) *Reporting Requirements*-

(1) *Reporting and certification dates.*

(i) On or after December 31, 2026, manufacturers and service providers shall submit Form 855 certifications on their compliance with the requirements of this section by January 31 of each year. Information in each certification and report must be up-to-date as of the last day of the calendar month preceding the due date of each certification and report.

(ii) Before December 31, 2026, service providers shall submit Form 855 certifications on their compliance with the requirements of this section by January 31 of each year. Manufacturers shall submit Form 655 reports on their compliance with the requirements of this section by July 31 of each year. Information in each certification and report must be up-to-date as of the last day of the calendar month preceding the due date of each certification and report.

(2) *Content of manufacturer and service provider certifications.*

* * * * *

(iv) If the company is subject to paragraph (g) of this section, the website address of the page(s) containing the required information regarding handset models;

(v) The percentage of handset models offered that are hearing aid-compatible (companies will derive this percentage by determining the number of hearing aid-compatible handset models offered across all air interfaces during the year divided by the total number of handset models offered during the year); and

(vi) The following language:

I am a knowledgeable executive [of company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements as a company covered by those requirements.

I certify that the company was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility handset model deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR 1.16 that the above certification is consistent with 47 CFR 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The Commission's hearing aid compatibility rules ensure that the millions of Americans with hearing loss will have access to the same types of technologically advanced telephone handsets as those without hearing loss. Both manufacturers and service providers, some of which are small entities, are required to make available handsets that meet specified technical criteria for hearing aid compatibility. The Commission issued the *Notice* to develop a record relating to a proposal submitted by the Hearing Aid Compatibility (HAC)Task Force on how the Commission can achieve its goal of requiring 100% of handsets offered by handset manufacturers and service providers to be certified as hearing aid compatible.

3. The *Notice* tentatively concludes that requiring 100% of all handsets to be certified as hearing aid compatible is an achievable objective under the factors set forth in section 710(e) of the Communications Act.[4] As part of this determination, the *Notice* seeks comment on adopting the more flexible "forward-looking" definition of hearing aid compatibility that the HAC Task Force recommends. This determination also includes a proposal to broaden the current definition of hearing aid compatibility to include Bluetooth connectivity technology and to require at least 15% of offered handset models to connect to hearing aids through Bluetooth technology as an alternative to or in addition to a telecoil. The *Notice* seeks comment on the Bluetooth technology the Commission should utilize to meet this requirement and how to incorporate this requirement into the wireless hearing aid compatibility rules. Additionally, the *Notice* proposes a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States. The *Notice* also seeks comment on certain implementation proposals and updates to the wireless hearing aid compatibility rules related to these proposals.

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1-4 and 641-646 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 641-646.

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] 47 U.S.C. § 610(e).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[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]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[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]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[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 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]

---

[5] *Id.* § 603(b)(3).

[6] *Id.* § 601(6).

[7] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 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 (1996).

[9] *See* 5 U.S.C. § 601(3)-(6).

[10] *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).

[11] *Id*.

[12] *See* 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. 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.

[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

(continued….)

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[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]

9. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[23] Examples of products made by these

(Continued from previous page)
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] *See* 5 U.S.C. § 601(5).

[16] *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.

[17] *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.

[18] *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.

[19] *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.

[20] *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.

[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 - 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, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334220&year=2017&details=334220.

establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[24] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[25] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[26] Of this number, 624 firms had fewer than 250 employees.[27] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

10. *Part 15 Handset Manufacturers*. Neither the Commission nor the SBA have developed a small business size standard specifically applicable to unlicensed communications handset manufacturers. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing[28] is the closest industry with a SBA small business size standard. The Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing industry is comprised of establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[29] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[30] The SBA small business size standard for this industry classifies firms having 1,250 or fewer employees as small.[31] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[32] Of this number, 624 firms had fewer than 250 employees.[33] Thus, under the SBA size standard the majority of firms in this industry can be considered small.

11. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[34] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and

[24] *Id*.

[25] *See* 13 CFR § 121.201, NAICS Code 334220.

[26] *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 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[27] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[28] *See* U.S. Census Bureau*, 2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[29] *Id*.

[30] *Id*.

[31] *See* 13 CFR § 121.201, NAICS Code 334220.

[32] *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 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[33] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[34] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517312 Wireless Telecommunications Carriers (except Satellite)*," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

wireless video services.[35] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[36] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[37] Of that number, 2,837 firms employed fewer than 250 employees.[38] 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.[39] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[40] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Wireless Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with a SBA small business size standard is Telecommunications Resellers.[41] 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.[42] Establishments in this industry resell telecommunications and they do not operate transmission facilities and infrastructure.[43] Mobile virtual network operators (MVNOs) are included in this industry.[44] Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees.[45] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year.[46] Of that number, 1,375 firms operated with fewer than 250 employees.[47] Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

[35] *Id.*

[36] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[37] *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.

[38] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[39] 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.

[40] *Id.*

[41] *See* U.S. Census Bureau*, 2017 NAICS Definition*, "*517911 Telecommunications Resellers*," https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[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 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&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.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

13. The Commission expects potential rule changes proposed in the *Notice*, if adopted, could impose some new reporting, recordkeeping, or other compliance requirements on some small entities. If the proposals in the *Notice* are adopted, small and other manufacturers and service providers would be required to certify that 100% of handsets offered are hearing aid compatible. Small and other manufacturers' and service providers' handset portfolios would be allowed to meet this 100% requirement, with grandfathered handsets, or in the alternative, could be required to have 100% of handsets meet aspects of the 2019 ANSI Standard. Additionally, small and other manufacturers' and service providers' could be subject to a compliance requirement that 85% of these handsets must meet the 2019 ANSI standard's telecoil coupling requirements and the remaining 15% of these handsets meet a new Bluetooth connectivity requirement as a replacement for meeting the standard's telecoil requirements.

14. If adopted, the transition period for compliance would allow a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers, which are typically small entities, to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States.

15. In addition, small and other handset manufacturers could be subject to compliance requirements should certain implementation proposals and updates to the wireless hearing aid compatibility rules be adopted. For example, a revision to the package labeling provisions in section 20.19(f)(1) of the Commission's rules could require handset manufacturers to have the handset package label state whether the handset has a telecoil that meets certification requirements or instead includes Bluetooth connectivity as a replacement for meeting telecoil certification requirements. Also, if a corresponding change to the package insert and handset manual requirements in section 20.19(f)(2) is adopted, manufacturers could be required to provide information in a package insert or user manual about whether a handset meets telecoil certification requirements or replaces this requirement with Bluetooth coupling ability.

16. If the proposed rules are adopted small and other handset manufacturers and service providers would be required to identify on their publicly accessible websites which handsets in their handset portfolios meet telecoil certification requirements. For those handsets that do not meet telecoil certification requirements, handset manufacturers and service providers would be required to identify which Bluetooth connectivity standards these handsets include. Handset manufacturers and service providers would also be required to identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset that they offer regardless of whether the handset meets telecoil certification standards or includes Bluetooth connectivity instead.

17. Additionally, after the expiration of the manufacturer transition period, all handsets would be required by default to have their acoustic and volume control functions on. Handsets would also be allowed to I have a secondary mode whereby the handset's telecoil is turned on or, for those handsets that substitute Bluetooth connectivity for telecoil connectivity, the Bluetooth function is turned on. In addition, proposed modifications of the handset package insert and user manual requirements could require an included explanation of each of these modes, what each mode does and does not include, and how to turn these settings on and off. In view of the proposal to require 100% of handsets to be hearing aid compatible, should it be adopted, the *de minimis* exception in section 20.19(e) of the rules would be removed.

18. Small entities may be required to hire attorneys, engineers, consultants, or other professionals to comply with the rule changes proposed in the *Notice,* if adopted. The Commission does not believe, however, that the costs and/or administrative burdens associated with any of the proposal rule changes will unduly burden small entities. While the Commission cannot quantify the cost of compliance with the potential rule changes and compliance obligations raised in the *Notice*, in our discussion of the

proposals we have requested comments from the parties in the proceeding including cost and benefit analyses which may help the Commission identify and evaluate relevant matters for small entities, such as compliance costs and burdens that may result from the proposed rules and the matters on which we have requested comments.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for such small entities."[48]

20. In the *Notice*, the Commission considers specific steps it could take and alternatives to the proposed rules that could minimize potential economic impact on small entities that might be affected by the proposed rule changes, as well as any other rule changes that may be required as a result of comments provided by interested parties. The Commission proposes a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers, which are typically small entities, to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States. The proposed transition periods would minimize some economic impact for small manufacturers and service providers since they would not have to immediately comply with the revised standard in the short term. In particular, the 42-month transition period would be particularly beneficial for non-nationwide providers, which are usually small entities. The Commission seeks comment on whether the proposed transition periods are reasonable timeframes to allow implementation of the 100% compliance standard. Alternatively, the Commission considered using the longer transition periods recommended by the HAC Task Force; however, the proposal in the *Notice* is both more in keeping with previous transition periods the Commission has utilized for new technical standards and serves the needs of consumers with hearing loss as soon as possible without negatively impacting product development cycles for manufacturers and service providers.

21. To limit any potential burdens regarding the impact of the proposed transition to a 100% compliance standard on previously manufactured wireless handsets, the Commission proposes to allow manufacturers and service providers to continue to offer handsets that are already certified as hearing aid compatible as part of their hearing aid-compatible handset portfolio. Under this proposal, handsets would be grandfathered and manufacturers and service providers can include these handsets in their 100% handset portfolios as long as the handsets are still being offered. This grandfathering proposal could minimize the burdens associated with implementing the new standard for small entities because they would not have to recertify previously approved handsets. In developing the proposal, the Commission considered discontinuing our grandfathering rule, in which case 100% of the handset models in a manufacturer's or service provider's handset portfolio would have to be certified as hearing aid-compatible using the 2019 ANSI Standard's requirements, as modified by a possible telecoil and Bluetooth connectivity split. The *Notice* seeks comment from small and other entities on the economic impact of adopting such an approach.

22. To reduce potential reporting burdens, the Commission seeks comment on whether to eliminate website and record retention requirements that may no longer be necessary if it adopts a 100% compliance standard. Specifically, the Commission seeks comment on whether to eliminate the requirement that service providers and manufacturers post or retain information about non hearing aid-

[48] 5 U.S.C. § 603(c)(1)-(4).

compatible handsets. Additionally, the Commission proposes to eliminate the annual service reporting requirements for manufacturers if the Commission adopts a 100% compliance standard. Alternatively, the Commission considered approaches that would retain website and record retention requirements as well as annual service reporting requirements, but believes the proposed approach would better serve the needs of small entities for the reasons stated above.

23. The Commission seeks to balance the potential economic impact and burdens that small entity manufacturers and service providers might face in light of the 100% compliance requirement with the need to ensure that Americans with hearing loss can access a wide array of handsets with emerging technologies. Therefore the *Notice* seeks comment on alternative obligations, timing for implementation, and other measures including costs and benefits analyses that will allow us to more fully consider and evaluate the economic impact on small entities. The Commission will review the comments filed in response to the *Notice* and carefully consider these matters as it relates to small entities before adopting final rules in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

24. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Achieving 100% Wireless Handset Model Hearing Aid Compatibility; Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket Nos. 23-388, 15-285 (terminated), Notice of Proposed Rulemaking (December 13, 2023)

Hearing loss is a big deal. More than 37 million Americans have some form of hearing difficulty. Among older adults it is especially prevalent, and it is also common among veterans, particularly those who served in Iraq and Afghanistan. But technology is also a big deal, and we can use it to make sure those struggling with hearing loss have access to modern communications.

While the agency has been at work on this for some time, today we reach a new milestone. That is because in this rulemaking we make clear that in the United States we believe it is possible for 100 percent of mobile wireless handsets to be fully compatible with hearing aids. That means every mobile handset that is imported or used in this country is accessible to everyone with hearing challenges. This is the right thing to do. It is also the right time to do it. Because access to hearing aids has never been easier. Just over a year ago, the Food and Drug Administration took steps to pave the way for a new category of over-the-counter hearing aids. This has made hearing aids more accessible and affordable than ever before. So now let's make wireless handsets work for those with hearing aids like never before.

I appreciate the educational and research institutions, equipment manufacturers, wireless carriers, and advocates for those with hearing loss who have worked with the Hearing Aid Compatibility Task Force to get us to this point. It is historic. And in a nod to the past, I want to acknowledge that it was 50 years ago this year that this kind of work on accessibility began in earnest when the Organization for the Use of the Telephone was founded by two senior citizens seeking to ensure public payphones were hearing-aid compatible. We follow in their footsteps.

Thank you also to the staff behind this rulemaking, including Saurbh Chhabra, Barbara Esbin, Garnet Hanly, Eli Johnson, Susannah Larson, John Lockwood, Jennifer Salhus, and Joel Taubenblatt from the Wireless Telecommunications Bureau; Robert Aldrich, Diane Burstein, Darryl Cooper, Alejandro Roark, and Suzy Rosen Singleton from the Consumer and Governmental Affairs Bureau; Ron Repasi, Justin Rison, Dana Shaffer, and Jim Szeliga from the Office of Engineering and Technology; William Huber, Michael Janson, Doug Klein, and Anjali Singh from the Office of General Counsel; Patrick Brogan, Judith Dempsey, Douglas Galbi, Kim Makuch, Catherine Matraves, Giulia McHenry, Molly Schwarz, Emily Talaga, and Weiren Wang from the Office of Economics and Analytics; and Michael Gussow, Joy Ragsdale, and Chana Wilkerson from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Achieving 100% Wireless Handset Model Hearing Aid Compatibility; Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket Nos. 23-388, 15-285 (terminated), Notice of Proposed Rulemaking (December 13, 2023)

Everyone in America deserves access to modern communications. That includes Americans with disabilities, and in particular those who are hearing impaired. That's why I'm proud to support today's notice of proposed rulemaking. This proposal puts us down a path to ensuring that every single smartphone sold in America can be used with hearing aids. Every model, all of them. 100 percent.

Reaching 100% compatibility will give hearing-impaired consumers more choice, and that's reason enough to invest in making it a reality. But our HAC efforts also show that we can absolutely achieve equal access to communications without compromise. It may take vision, hard work, time, innovation, commitment, resolve, and collaboration. But whether we're talking hearing-aid compatibility or the digital divide, don't ever tell me that 100% is simply impossible.

Speaking of hard work, this item was only made possible by years of collaboration among industry, consumer groups, standards organizations, and of course government. For all those who contributed—including our staff in the Wireless Telecommunications Bureau—thank you for your efforts, and for leading the way. As the technical matters raised in this item show, we have plenty left to do. We're counting on you to keep up the work.

This item has my full support.

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

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	
	)	

FOURTH REPORT AND ORDER, DECLARATORY RULING, AND THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: December 13, 2023 **Released: December 15, 2023**

Comment Date: February 13, 2024
Reply Comment Date: February 28, 2024

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. Access to a broadband connection is a necessity of modern life. With consumers more dependent than ever on fixed and mobile broadband networks for work, healthcare services, education, and social activities, the Commission remains committed to ensuring consumers across the nation have meaningful access to broadband. With the support of the Commission's universal service fund, the Infrastructure Investment and Jobs Act,[1] which included the largest ever federal investment in broadband, as well as other federal and state broadband deployment programs, more funding than ever is available to build the necessary infrastructure to bring much-needed broadband services to unserved and underserved

[1] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act).

areas in the United States.[2] Key to these broadband projects are the utility poles that support the wires and the wireless equipment that carry broadband to American homes and businesses.

2. Over the last several years, the Commission has taken significant steps in setting the "rules for the road" for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles,[3] with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments.[4] In this item, we take additional steps to speed broadband deployment by making the pole attachment process faster, more transparent, and more cost effective. Specifically, we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing communications providers with information about the status of the utility poles they plan to use as they map out their broadband builds. Additionally, as a follow-on to the pole replacement clarification issued in the *2021 Pole Replacement Declaratory Ruling*,[5] in the Declaratory Ruling below we provide further clarification regarding cost causation when a pole must be replaced for any reason other than lacking capacity to support a new attachment. Specifically, we clarify that a "red tagged" pole is one that the utility has identified as needing replacement for any reason other than the pole's lack of capacity, and we provide additional examples of when a pole replacement is not "necessitated solely"[6] as a result of a third party's attachment or modification request—i.e., when a pole already requires replacement at the time the new attacher makes a request. We also clarify the obligation to share easement information and the applicable timelines for the processing of attachment requests for 3,000 or more poles. Finally, we seek comment in the Further Notice on ways to further facilitate the processing of pole attachment applications and make-ready to enable faster broadband deployment.

---

[2] *See, e.g.*, NCTA Comments at i, 2 ("Broadband buildout to unserved and underserved areas has long been a top focus of the Commission and the federal government. This is more true than ever today, with Commission programs like the Rural Digital Opportunity Fund (RDOF), the Department of the Treasury's Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program, NTIA's broadband equity, access, and deployment (BEAD) program, and other similar programs all seeking to address broadband access issues in significant swaths of this country."); Charter Comments at 1; Altice USA Comments at 2; INCOMPAS Comments at 4-5.

[3] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*2018 Wireline Infrastructure Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936 (WCB 2020) (*2020 Declaratory Ruling*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd 776 (WCB 2021) (*2021 Pole Replacement Declaratory Ruling*).

[4] Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. 47 U.S.C. § 224(c). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd 6724 (WCB 2022) (*State Regulation Public Notice*). The Commission's pole attachment rules currently only apply to cable operators and providers of telecommunications services and therefore do not apply to broadband-only Internet service providers. *Restoring Internet Freedom et al.*, WC Docket No. 17-108 et al., Order on Remand, 35 FCC Rcd 12328, 12370-78, paras. 68-81 (2020) ("Section 224 applies to attachments of cable television systems and providers of telecommunications services, but not to providers of only information services."). We recently proposed to reclassify broadband Internet access service as a telecommunications service, which would, if completed, apply section 224 and the Commission's pole attachment rules to broadband-only Internet service providers. *See Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Notice of Proposed Rulemaking, FCC 23-83 (Oct. 20, 2023) (*Open Internet Notice*).

[5] *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 777, para. 3.

[6] 47 CFR § 1.1408(b).

II. BACKGROUND

3. In 1996, as part of its implementation of the pole attachment requirements located in sections 224(h)[7] and 224(i)[8] of the Act, the Commission determined that when a modification, such as a pole replacement, is undertaken for the benefit of a particular party, then under cost causation principles, the benefiting party must assume the cost of the modification.[9] The Commission also found that when a utility decides to modify a pole for its own benefit, and no other attachers derive a benefit from the modification, the utility must bear the full cost of the new pole.[10] The Commission further adopted a cost sharing principle for when an existing attacher uses a modification by another party as an opportunity to add to or modify its own attachments[11] and applied this principle to utilities and other attachers seeking to use modifications as an opportunity to bring their own facilities into compliance with safety or other requirements.[12] In the *2018 Wireline Infrastructure Order*, the Commission reiterated that application of the cost sharing principle.[13]

4. On July 16, 2020, NCTA—the Internet & Television Association (NCTA) filed a Petition asking the Commission to clarify its rules in the context of pole replacements.[14] Specifically, NCTA asked the Commission to declare that: (1) utilities must share in the cost of pole replacements in unserved areas pursuant to section 224 of the Act, section 1.1408(b) of the Commission's rules, and Commission precedent; (2) pole attachment complaints arising in unserved areas should be prioritized through placement on the Accelerated Docket under section 1.736 of the Commission's rules; and (3) section 1.1407(b) of the Commission's rules authorizes the Commission to order a utility to complete a pole replacement within a specified time frame or designate an authorized contractor to do so.[15] NCTA argued

[7] Section 224(h) states that "[w]henever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible." 47 U.S.C. § 224(h).

[8] Section 224(i) states that "[a]n entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way)." 47 U.S.C. § 224(i).

[9] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Report and Order, 11 FCC Rcd 15499, 16077, 16096, paras. 1166, 1211 (1996) (*Local Competition Order*) (subsequent history omitted).

[10] *Id.* at 16077, para. 1166.

[11] *Id.* ("Other parties with attachments would not share in the cost [of a modification], unless they expanded their own use of the facilities at the same time.").

[12] *Id.* at 16096-97, para. 1212 ("A utility or other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost.").

[13] *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, para. 121 (clarifying that new attachers "are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment").

[14] NCTA, Petition for Expedited Declaratory Ruling, WC Docket No. 17-84 (filed July 16, 2020), https://www.fcc.gov/ecfs/filing/107161552527661 (NCTA Petition).

[15] *Id.* at 9-31.

that without Commission action, the costs and operational challenges associated with pole replacements will inhibit attachers from deploying broadband services to Americans in unserved areas.[16]

5. In the *2021 Pole Replacement Declaratory Ruling*, although the Wireline Competition Bureau declined to act on NCTA's Petition, finding that "it is more appropriate to address questions concerning the allocation of pole replacement costs within the context of a rulemaking, which provides the Commission with greater flexibility to tailor regulatory solutions," it observed that the record developed in response to the NCTA Petition revealed inconsistent practices by utilities with regard to cost responsibility for pole replacements.[17] Accordingly, the Bureau clarified that, pursuant to section 1.1408(b) of the Commission's rules and prior precedent, "utilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted."[18] The Commission subsequently affirmed the Bureau's clarifications.[19]

6. Last year, the Commission issued a *Second Further Notice* in this proceeding seeking comment on the universe of situations where the requesting attacher should not be required to pay for the full cost of a pole replacement and the proper allocation of costs among utilities and attachers in those situations.[20] Specifically, the Commission sought comment on the applicability of cost causation and cost allocation principles in the context of pole replacements—e.g., when is a pole replacement not caused (necessitated solely) by a new attachment request, and when and how parties must share in the costs of a pole replacement.[21] The Commission also sought comment on the extent to which utilities directly benefit from pole replacements, including a utility's responsibility for the costs of pole upgrades and modifications unrelated to new attachments and the effect of early pole retirements on pole replacement cost causation and cost allocation calculations.[22] The *Second Further Notice* also sought comment on whether the Commission should require utilities to share information with potential attachers concerning the condition and replacement status of their poles and other measures that may help avoid or expedite the resolution of disputes between the parties, including whether to expand use of the Commission's Accelerated Docket for pole attachment complaints and the specific criteria that Commission staff should use in deciding whether to place a pole complaint on the Accelerated Docket.[23]

III. REPORT AND ORDER

7. In this Report and Order, we adopt measures to expedite resolution of pole attachment disputes that impede or delay broadband deployment. Specifically, we (1) establish an agency-wide rapid response team to provide coordinated review and assessment of such pole attachment disputes and to recommend effective dispute resolution procedures, and (2) adopt specific criteria to guide that team when considering whether a complaint (or portion thereof) should be included on the Enforcement Bureau's Accelerated Docket. We also require utilities to provide information regarding pole conditions and scheduled replacements to the extent that information is contained in cyclical pole inspection reports

[16] *Id.* at 5-9.

[17] *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 776, para. 2.

[18] *Id.* at 779, para. 6.

[19] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 4144, 4147, para. 7 (2022) (*Second Further Notice*). Unless otherwise noted, the citations herein to comments, replies, and *ex parte* presentations are to such documents filed in response to the *Second Further Notice* in WC Docket No. 17-84.

[20] *Id.* at 4148-65, paras. 9-34. To the extent that this Report and Order does not expressly address a topic that was subject to comment in the *Second Further Notice*, that issue remains pending.

[21] *Id*. at 4148-50, paras. 10-15.

[22] *Id*. at 4155-58, 4161-65, paras. 20-26, 29-34.

[23] *Id.* at 4165-66, paras. 35-36.

that utilities already create and maintain in the ordinary course of their business, or in pole inspection reports created between cyclical reports.[24]

A. Accelerating Resolution of Pole Attachment Disputes that Impede or Delay Broadband Deployment

8. We amend our rules to prioritize and expedite the resolution of pole attachment disputes that impede or delay broadband deployment by establishing a Commission intra-agency rapid response team—called the Rapid Broadband Assessment Team (RBAT)—to provide coordinated review and assessment of such disputes.[25] At the outset, we emphasize that we expect all parties to comply with the Commission's pole attachment rules and to negotiate in good faith to craft solutions that suit the needs of attachers and utilities to facilitate deployment projects.[26] We recognize, however, that in some instances disagreements arise as to the conduct of one or multiple parties, and we encourage parties in those instances to avail themselves of the Commission's dispute resolution processes to both facilitate the resolution of disputes and, when necessary, use the formal adjudication process to develop precedent upon which parties can rely to settle future potential disputes.[27] Today, we amend our rules to create the RBAT in an effort to make the Commission's pole attachment dispute resolution process more responsive and adaptable with the goal of facilitating deployment.

9. The RBAT will be charged with expediting the resolution of these disputes by swiftly engaging key stakeholders, gathering relevant information, distilling issues in dispute, and recommending to the parties, where appropriate, an abbreviated mediation process, placement of a complaint (or portion of a complaint) on the Accelerated Docket based on consideration of specified criteria, and/or any other action that the RBAT determines will help the parties resolve their dispute.[28]

---

[24] Both pole attachers and utilities made several other proposals, not addressed herein, regarding the process for pole attachments and replacements and ways they believe the process could be improved to reduce disputes and promote broadband deployment.

[25] We codify these amendments in Part 1, Subpart J, of the Commission's rules (i.e., Pole Attachment Complaint Procedures) by redesignating current section 1.1415 as section 1.1416, and adding a new section 1.1415, as reflected in Appendix A. These rule amendments apply only to disputes involving pole attachments of a cable television system or a provider of telecommunications service and do not apply to disputes involving pole attachments of a broadband-only Internet service provider. *Restoring Internet Freedom et al.*, 35 FCC Rcd at 12370-78, paras. 68-81. They also do not apply to disputes involving poles that are owned or controlled by a railroad, the Federal Government, a state (including a political subdivision thereof such as a municipality), or a cooperative association, *see* 47 U.S.C. § 224(a)(1)-(a)(3), or where the poles at issue are located in a state, or the District of Columbia, that has certified to the Commission that it regulates the rates, terms, and conditions of pole attachments in that state or jurisdiction pursuant to 47 U.S.C. § 224(c). *See supra* note 4. Should we adopt the proposal set forth in the *Open Internet Notice* to reclassify broadband-only Internet service as a telecommunications service, section 224 would once again apply to broadband-only Internet service providers deployments. *See Open Internet Notice* at paras. 104, 110.

[26] *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7711, para. 13 (stating that "parties are welcome to reach bargained solutions that differ from our rules. Our rules provide processes that apply in the absence of a negotiated agreement, but we recognize that they cannot account for every distinct situation and encourage parties to seek superior solutions for themselves through voluntary privately-negotiated solutions") (footnotes omitted); *2020 Declaratory Ruling*, 35 FCC Rcd at 7944-45, para. 15 (clarifying that parties have flexibility to negotiate 'superior solutions' to pole attachment issues in their agreements, but any deviations from the Commission's rules must be mutually beneficial") (footnote omitted).

[27] *See 2020 Declaratory Ruling*, 35 FCC Rcd at 7943, para. 13 (encouraging parties to resolve disputes, but reminding parties of the usefulness of the complaint process to facilitate dispute resolution, which can enable the Commission "to consider the legitimacy of a utility's generally-applicable pole attachment policies in the context of an access complaint proceeding where a record can be developed regarding the specific situation").

[28] SHLB suggests that creation of the RBAT may result in a needless administrative step and associated delay, and (continued….)

10. In the *Second Further Notice*, the Commission sought comment on NCTA's proposed adoption of policies "favoring the placement of pole attachment complaints arising in unserved areas on the [Commission's] Accelerated Docket[,]" a mechanism that requires the Commission to quickly resolve disputes between parties within 60 days.[29] It also sought comment on measures that would expedite the resolution of "pole replacement[]" disputes and on criteria for determining more generally "when pole attachment complaints should be placed on the Accelerated Docket."[30] Based on broad record support among attachers for further streamlining our processes as applied to disputes that impede or delay broadband deployment,[31] we conclude that the targeted measures outlined below are warranted and will advance the Commission's goal of timely broadband deployment.

11. As the Commission observed in the *Second Further Notice*, our current rules provide a 180-day deadline (or shot clock) for final action on pole access complaints "where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility."[32] In addition, a 270-day shot clock currently applies to final action on all other pole attachment complaints (i.e., those alleging unjust or unreasonable rates, terms, or conditions of attachment).[33] Several commenters assert that these timeframes are commercially unreasonable for attachers seeking to deploy broadband networks, particularly in rural or unserved areas.[34] NCTA submits that the need for expedited procedures has gained

---

suggests that the RBAT, if created, be vested with authority to resolve disputes without going through the additional step of a complaint process. Letter from John Windhausen, Jr., Exec. Dir., Schools, Health & Libraries Broadband (SHLB) Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (SHLB Dec. 7, 2023 *Ex Parte*)**.** We decline to adopt this approach. The RBAT is designed to assist parties in resolving their dispute expeditiously without need for litigation. But if parties are unable to reach a resolution, either through mediation or other means, our existing complaint procedures, including the Accelerated Docket, ensure a means of adjudicating the dispute in accordance with due process.

[29] *Second Further Notice*, 37 FCC Rcd at 4166, para. 36 & n.106 (citing NCTA Petition at 27-29). Under section 1.736(a), complaint proceedings on the Accelerated Docket "must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings." *See* 47 CFR § 1.736(a); *see also id.* § 1.736(a)-(j) (Accelerated Docket procedures); *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Report and Order, 33 FCC Rcd 7178, 7184, para. 19 (2018) (*2018 Rule Consolidation Order*) ("The new rule extends the option of requesting inclusion on the Accelerated Docket beyond currently authorized cases to include Section 224 pole attachment complaints.").

[30] *Second Further Notice*, 37 FCC Rcd at 4166, para. 36.

[31] *See, e.g.*, NCTA Comments at 38; INCOMPAS Reply at 8-9; Crown Castle Comments at 31; Charter Reply at 51-52; WIA Comments at 9; Altice USA Comments at 27.

[32] *See* 47 CFR § 1.1414(a) (establishing 180-day deadline for final action on "pole access complaints," "[e]xcept in extraordinary circumstances"). For purposes of this subsection, the Commission has defined a "pole access complaint" as a complaint "filed by a cable television system or a provider of telecommunications service that alleges a complete denial of access to a utility pole[,]" and clarified that "[the] term [pole access complaint] does not encompass a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of pole access." *Accelerating Wireline Broadband Deployment By Removing Barriers To Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11132, para. 9 n.21 (2017).

[33] *See* 47 CFR § 1.1414(b) (stating that "[a]ll other pole attachment complaints shall be governed by the review period in § 1.740," which establishes a 270-day deadline for final action on a formal complaint); *2018 Rule Consolidation Order*, 33 FCC Rcd at 7185-86, paras. 21-23 (adopting 270-day "shot clock" for disposition of pole attachment complaints alleging unjust or unreasonable rates, terms, or conditions of attachment).

[34] *See, e.g.*, ACA Connects Reply at 40-41 (arguing that the current complaint process is an uneconomical means of resolving disputes for smaller attachers that lack bargaining power *vis-a-vis* utilities); NCTA Reply at 29-30 (arguing that the current timeframes are "simply too long and costly to be an effective means for attachers to challenge pole owner actions").

greater urgency recently for "providers . . . receiving government funds to build out broadband under deadlines that afford no time for a lengthy complaint process."[35] A number of commenters therefore propose more routine use of the Accelerated Docket, with its 60-day shot clock, especially for pole attachment disputes involving time-sensitive deployments in unserved areas.[36] Several commenters also contend that the current Accelerated Docket rule does not sufficiently motivate utilities to comply with their obligation to allow pole access because it is unclear when Commission staff, in the exercise of their discretion under section 1.736(d) of our rules, will include a matter on the Accelerated Docket.[37] Crown Castle asserts that "without certainty that the complaint will be promptly resolved, the decision to bring a formal complaint to the Commission involves business decisions about whether the resolution will be too late to meaningfully assist the deployment."[38] On the other hand, other commenters argue that sweeping or widespread imposition of the Accelerated Docket rule, with its highly compressed timeframes, could raise potential fairness and due process concerns given the complexity of the issues raised in most pole attachment cases.[39] After considering these competing concerns, we find that the adoption of targeted dispute resolution reforms, as set forth below, will address the expressed need for quicker resolution of pole attachment disputes that may impede or delay broadband deployment while ensuring sufficient fairness and due process for all involved parties.

12. *Disputes Subject to RBAT Review and Assessment Procedures*. The Commission asked in the *Second Further Notice* whether any new dispute resolution procedures should be "limited to complaints that raise only discrete pole access issues" and do not require consideration of "whether a rate, term, or condition of attachment is unjust or unreasonable."[40] To address the need for timely broadband deployment, particularly in unserved or underserved areas, we apply the new procedures discussed below to any pole attachment dispute that a party alleges is impeding or delaying the deployment of broadband facilities. To provide greater clarity regarding when such a dispute would be eligible for placement on the Accelerated Docket, we also adopt below specific criteria that will guide the RBAT in determining when

[35] NCTA Reply at 29-30.

[36] *See, e.g.*, Charter Reply at 51 & n.137 (citing NCTA Comments at 37-38, Altice USA Comments at 25-27, Crown Castle Comments at 30-33). Charter asserts that the "[m]ere *existence*" of a path allowing more routine use of the Accelerated Docket "could help broadband providers resolve disagreements without the need for Commission intervention" by "provid[ing] attachers facing government-imposed construction deadlines with a more credible option of seeking relief, thereby reducing the one-sided leverage held by pole owners today." Charter Comments at 57 (emphasis in original).

[37] *See, e.g.*, ACA Connects Reply at 40-42; ALLvanza Reply at 8 & n.28; SHLB Comments at 11-12; *see also* 47 CFR § 1.736(d) ("Commission staff has discretion to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket.").

[38] Crown Castle Reply at 27.

[39] *See, e.g.*, Coalition of Concerned Utilities Comments at 43-44 (asserting that the 60-day Accelerated Docket process "is far too short to resolve most pole attachment disputes" and that, among other fairness issues, "widespread imposition of [that process] would raise due process concerns"); Pennsylvania PUC Comments at 5-6 (noting that "the proposed accelerated 60-day timeframe may represent a due process violation in Pennsylvania under the Pa. PUC's existing Chapter 52 procedural rules"). Other commenters question the necessity of new rules (1) due to the relative infrequency of requests for Accelerated Docket treatment, *see, e.g.*, Edison Electric Institute Comments at 54 (challenging the need to further expedite "denial of access" complaints based on "[t]he complete absence of [such] complaints before the Commission"), or (2) due to the lack of evidence of instances where dilatory actions of utilities have caused broadband grant recipients to lose access to such funding. *See, e.g.*, Coalition of Concerned Utilities Comments at 43. *But see* Charter Reply at 51 (asserting that the industry is anticipating "a dramatic expansion in coming years of new broadband deployment by third-party attachers . . . facing forfeitures and penalties if they fail to meet aggressive scheduling requirements[,]" such that the specific number of past complaints "is not a good indicator of the need for prompt resolution going forward").

[40] *Second Further Notice*, 37 FCC Rcd at 4166, para. 36.

a dispute is suitable for accelerated disposition.[41] In light of the strict time constraints of the Accelerated Docket, disputes raising relatively straightforward legal and evidentiary issues, as determined based on the RBAT's review of these criteria, are more likely to be considered appropriate for placement on the Accelerated Docket.

13. Although the record reflects differing views regarding which disputes should be subject to new dispute resolution procedures,[42] a significant proportion of commenters seeking such reforms ask that we limit the focus of any new procedures to disputes that are interfering with active broadband deployment plans or projects.[43] We adopt this suggestion based on our conclusion that focusing on pole attachment disputes that impede or delay a provider's ability to deploy new broadband facilities will align with, and advance most directly, the goal of timely broadband deployment.[44]

14. *RBAT Review and Assessment of Disputes that Impede or Delay Broadband Deployment*. To expedite the resolution of pole attachment disputes that impede or delay an active broadband deployment project, we amend our rules to establish the RBAT, which will be comprised of Enforcement Bureau and Wireline Competition Bureau staff with expertise in the Commission's pole attachment rules and orders.[45] We charge the RBAT with prioritizing the resolution of any pole attachment dispute that a party alleges is impeding or delaying the deployment of broadband facilities (including where the party is also seeking placement of the matter on the Accelerated Docket under section 1.736).[46] In performing this role, the RBAT will gather and promptly review all pertinent information submitted by the parties and provide guidance and advice on the most effective means of resolving the parties' dispute. Where appropriate, the RBAT will recommend to the parties an abbreviated mediation process, placement of a complaint, or portion of a complaint, on the Accelerated Docket, and/or any other action that the RBAT determines will help the parties resolve their dispute. The RBAT will recommend use of the Accelerated Docket where it determines, based upon a totality of the criteria outlined below, that a complaint, or portion thereof, is suitable for accelerated disposition.[47]

---

[41] *See infra* paras. 19-21 (discussing specific criteria).

[42] *See, e.g.*, Altice USA Comments at 27 ("all pole-related disputes" connected to broadband facilities construction in unserved areas); TechFreedom Reply at 8 ("only for [disputes] involving pole replacements"); Charter Comments at 6-7 (disputes "involv[ing] pole access or unreasonable conditions to obtain access" in unserved and broadband grant areas); Southern Company et al. (Electric Utilities) Reply at 52 ("true 'pole access complaints' as previously defined by the Commission").

[43] *See, e.g.*, NCTA Comments at 38; INCOMPAS Reply at 8-9; Crown Castle Comments at 31; SHLB Reply at 6; WIA Comments at 9; Altice USA Comments at 27.

[44] Several utilities argue that across-the-board application of dispute resolution reforms to an entire category of disputes would fail to account for complexities in individual cases. *See, e.g.*, Electric Utilities Reply at 50 (asserting that "non-access complaints," in particular, "often require the Commission to resolve complex technical and/or financial issues"). But such comments assume that Accelerated Docket treatment would automatically apply to all disputes within the identified category. In fact, under the reforms we adopt herein, such disputes will receive individualized assessment and review (by the RBAT) based on a totality of factors analysis. *See infra* paras. 18-20 (discussing specific criteria).

[45] *See* ACA Connects Comments at 8, 52 (urging adoption of an expedited process for smaller providers to resolve pole attachment disputes that is similar to the "Rapid Response Process" used by the Maine Public Utilities Commission).

[46] *See* 47 CFR § 1.736.

[47] The RBAT may recommend placement of a dispute on the Accelerated Docket in the exercise of the discretion afforded Commission staff "to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket." *See* 47 CFR § 1.736(d). A prospective complainant may accept the recommendation, with or without the consent of the other party or parties to the dispute, by moving forward with the agreed upon schedule and process established by Commission staff in the case. *See id.* § 1.736(f).

15. To request RBAT review and assessment of a dispute that a party to the dispute contends is impeding or delaying deployment of broadband facilities, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing.[48] The MDRD Chief will direct the party to a streamlined form on the MDRD website—Request for RBAT Review and Assessment—and to instructions for completing and electronically transmitting the form to the RBAT. The form will elicit information relevant to the scope and nature of the dispute, and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket.[49]

16. Upon receipt of the completed Request for RBAT Review and Assessment, the RBAT will schedule a meeting through a manner of the RBAT's choosing, with all parties as soon as practicable. The RBAT may request a written response from the other party or parties to the dispute with respect to one or more issues raised by the party seeking RBAT review. The RBAT also may request that one or both parties provide the RBAT with documentation or other information relevant to the dispute.[50] In the initial meeting, or in a meeting shortly thereafter, the RBAT will provide guidance and advice to the parties on the most effective means of resolving their dispute, including staff-supervised mediation, use of the Accelerated Docket, and/or other action.[51] To that end, the RBAT will attempt to distill the issues in dispute and identify issues that are most impacting a party's broadband deployment plans. For example, the RBAT may encourage parties to focus on the resolution of one or more threshold issues, or what appears to be the most urgent issue(s), if it finds that doing so may help the parties to narrow their dispute. Likewise, the RBAT may encourage parties, where appropriate, to streamline the proceeding by

[48] The RBAT review and assessment process will be available only to attachers and pole owners that are direct parties to such dispute (including any legal counsel retained to represent a party in that specific dispute). For parties seeking both RBAT review *and* inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, this initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under section 1.736(b). *See* 47 CFR § 1.736(b) ("A complainant that seeks inclusion of a proceeding on the Accelerated Docket shall submit a request to the Chief of the Enforcement Bureau's Market Disputes Resolution Division, by phone and in writing, prior to filing the complaint.").

[49] The form will require a submitting party to provide: information identifying the parties and the services they offer; the section(s) of the Act or Commission rule or order alleged to have been violated; a brief description of the parties' dispute (including how it relates to broadband deployment plans or projects, whether such plans or projects are subject to a deadline under a government funded broadband program, whether the dispute arises in an unserved or underserved area, what harm is occurring or is likely to occur as a result of the situation, and what aspects of the dispute require immediate redress); the specific relief sought; whether the parties have entered into a non-disclosure agreement; the steps the party has taken to resolve the matter with other parties to the dispute; a statement as to whether the parties are amenable to mediation; and a statement indicating whether the party intends to seek inclusion of the matter on the Accelerated Docket. The form also will elicit information relevant to whether the dispute is suitable for accelerated disposition including, for example, the number of poles in question, the number and complexity of claims at issue, and the likely need for discovery or expert affidavits. The RBAT may request additional information from the submitting party if more information is necessary to determine a course of action.

[50] NCTA suggests that we specify the information the respondent will be required to provide. *See* Letter from Pamela Arluk, Vice Pres. and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed Dec. 5, 2023) (NCTA Dec. 5, 2023 *Ex Parte*). We find this approach impracticable, as the information required in a response will depend on the complainant's allegations. We employ a more flexible approach that enables the RBAT to request relevant information and documentation from either party, as appropriate.

[51] Because mediation will be a prominent feature of the RBAT review, we decline to adopt INCOMPAS's proposal that the 180-day deadline for resolution of a pole access complaint be triggered by the submission of the request for RBAT Review and Assessment. *See* Letter from Christopher L. Shipley, Exec. Dir. of Public Policy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (INCOMPAS Dec. 7, 2023 *Ex Parte*) . If mediation succeeds, there will be no need for a complaint. If it does not, the filing of a complaint will commence review period deadlines under the relevant Commission rules. *See* 47 CFR §§ 1.736, 1.1414.

agreeing to focus on "test cases"—i.e., disputes over specific poles that the parties agree are representative of disputes over multiple poles. In this way, deciding the issue as to the test case will have broader impact.

17. Should the RBAT recommend staff-supervised mediation, it shall be conducted pursuant to section 1.737 of the Commission's rules.[52] Because section 1.737 generally contemplates that mediations will be conducted by MDRD staff, we delegate authority to the MDRD Chief, in consultation with the RBAT, to modify or waive the procedures or requirements of section 1.737 as appropriate in this context, or as needed in light of the facts or circumstances of a particular case.[53] The strict confidentiality requirements will apply to all written and oral communications prepared or made for purposes of a mediation pursuant to section 1.737(f), "including mediation submissions, offers of compromise, and staff and party comments made during the course of the mediation (Mediation Communications)."[54] Through mediation, the RBAT will make every effort to settle or narrow the issues in dispute as expeditiously as possible.

18. In the event that the parties are unable to settle their dispute, and a prospective complainant seeks placement of its complaint on the Accelerated Docket, the RBAT will decide whether the complaint or a portion of the complaint is suitable for inclusion on the Accelerated Docket based on the totality of the criteria set forth below.[55] Because of the very short deadlines that apply in Accelerated Docket proceedings, Commission staff historically have carefully evaluated whether a particular dispute is appropriate for expedited disposition, resulting in the placement of relatively few cases on the Accelerated Docket. In evaluating whether a matter is suitable for expedited disposition, the RBAT must similarly be mindful of the due process concerns raised by commenters, such as the Pennsylvania PUC, regarding affording parties "the opportunity to be heard at a meaningful time and in a meaningful manner."[56] In addition, although mediation is generally voluntary, the RBAT may require that the parties participate, if appropriate, in pre-filing settlement negotiations or mediation under rule 1.737 as a condition for including a matter on the Accelerated Docket.[57] Finally, if the RBAT determines that a matter is suitable for inclusion on the Accelerated Docket, the RBAT is authorized to send appropriate matters to the Commission's Administrative Law Judge (ALJ) for an expedited "minitrial" (i.e., trial-type hearing) as contemplated by section 1.736(h).[58]

19. *Criteria for Placement on the Accelerated Docket*. The Commission sought comment in the *Second Further Notice* on the adoption of specific criteria to guide Commission staff on "when pole

[52] *See* 47 CFR § 1.737.

[53] Waiver is appropriate for "good cause," 47 CFR § 1.3, and is warranted only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest. *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

[54] *See* 47 CFR § 1.737(f) ("Neither staff nor the parties may use, disclose or seek to disclose Mediation Communications in any proceeding before the Commission . . . or before any other tribunal, unless compelled to do so by law.").

[55] *See infra* paras. 19-21.

[56] Pennsylvania PUC Comments at 13 (citing *Montefiore Hosp. Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481 (Pa. Cmwlth. 1980); *see also* Pennsylvania PUC Comments at 14 (stating that, based on its own experience "adjudicating pole attachment cases [with six-month or 180-day deadlines], the Pa. PUC does not believe that due process can generally be provided in 60 days").

[57] *See* 47 CFR §§ 1.736(e) ("In appropriate cases, Commission staff may require that the parties participate in pre-filing settlement negotiations or mediation under § 1.737."); 1.737(a) ("Participation in mediation is generally voluntary, but may be required as a condition for including a matter on the Accelerated Docket.").

[58] *See* 47 CFR § 1.736(h) (stating that an ALJ may preside over a minitrial in Accelerated Docket proceedings).

attachment complaints should be placed on the Accelerated Docket."[59] Based on the requests of several commenters for greater predictability surrounding Accelerated Docket placement decisions with respect to pole attachment disputes that impede or delay broadband deployment,[60] we establish criteria to aid the RBAT in making determinations regarding the placement of such matters on the Accelerated Docket.

20. In light of the strict time constraints that apply in Accelerated Docket cases, we decline to adopt a "presumption," as suggested by some commenters,[61] that all pole access disputes for active deployments be placed on the Accelerated Docket and, instead, entrust the RBAT with this decision based on the criteria specified below. We agree with Dominion/Xcel that a "one-size-fits-all policy" would not adequately take into account the complexity of the issues in particular complaint proceedings.[62] We also agree with the Coalition of Concerned Utilities that the 60-day timeframe will be "too short" to resolve certain pole attachment disputes, and thus "blanket imposition" of the Accelerated Docket requirements would be unreasonable and "raise due process concerns" for utilities.[63] Although Charter argues that the presumption could simply be rebutted if a particular complaint raises unusually complex issues,[64] we reject this argument based on our experience with formal complaints. In particular, when parties oppose the operation of a presumption in a particular proceeding, these rebuttal efforts often lead to significant additional argumentation attendant to resolving the specific question of the presumption, thus unnecessarily complicating resolution of the underlying issues in dispute. To avoid the potential for unnecessary rounds of argumentation and to ensure that complaints accepted onto the Accelerated Docket are suitable for decision under the relevant time constraints, we reject proposals to create a presumption that all pole access disputes for active deployments be placed on the Accelerated Docket.

21. After careful consideration of the record on this issue,[65] we direct the RBAT to consider the factors below in determining whether to accept onto the Accelerated Docket a pole attachment dispute that is allegedly impeding or delaying a broadband facilities deployment plan or project. The RBAT shall determine eligibility for placement on the Accelerated Docket based on the totality of these factors:

- whether the prospective complainant states a claim for violation of the Act or a Commission rule or order that falls within the Commission's jurisdiction;

[59] *Second Further Notice*, 37 FCC Rcd at 4166, para. 36. For example, the Commission asked if its policy should "take into account the number and complexity of the claims, need for discovery, need for expert affidavits, and ability of the parties to stipulate to facts." *Id.*

[60] *See, e.g.*, ACA Connects Reply at 41-42; ALLvanza Reply at 8; Crown Castle Comments at 30-31.

[61] *See, e.g.*, SHLB Comments at 11-12; ALLvanza Reply at 8; INCOMPAS Reply at 9 (asking the Commission to adopt a presumption that all pole access disputes for active deployments be placed on the Accelerated Docket). *See also* INCOMPAS Dec. 7, 2023 *Ex Parte* at 2 (requesting that disputes of 300 or fewer poles rebuttably be presumed to be suitable for the Accelerated Docket). There is no basis for us to conclude that a dispute will be suitable for the Accelerated Docket simply based on the number of poles at issue as INCOMPAS's proposal suggests.

[62] Dominion/Xcel Reply at 21-22 (arguing that Commission staff, in deciding whether to place a complaint on the Accelerated Docket, should retain the discretion to consider "the complexity of the issues involved" as well as "the number of poles affected, the need for discovery, expert affidavits, mediation discussions, and other factors that can make it difficult to fairly resolve disputes within such a limited time").

[63] Coalition of Concerned Utilities Comments at 43-44; *accord* Pennsylvania PUC Comments at 5-6; Utilities Technology Council Reply at 11.

[64] *See* Charter Reply at 52.

[65] *See, e.g.*, Edison Electric Institute Comments at 55 (urging the Commission to consider the number and complexity of the claims raised, the need for discovery, the need for expert affidavits, and the ability of the parties to stipulate to facts); Dominion/Xcel Reply at 21-22.

- whether the expedited resolution of a particular dispute or category of disputes appears likely to advance the deployment of broadband facilities, especially in an unserved or underserved area;
- whether the parties to the dispute have exhausted all reasonable opportunities for settlement during any staff-supervised mediation;
- the number and complexity of the issues in dispute;
- whether the dispute raises new or novel issues versus settled interpretations of rules or policies;
- the likely need for, and complexity of, discovery;
- the likely need for expert testimony;
- the ability of the parties to stipulate to facts;
- whether the parties have already assembled relevant evidence bearing on the disputed facts;
- the willingness of the prospective complainant to seek a ruling on a subset of claims or issues (e.g., threshold or "test cases"); and
- such other factors as the RBAT, within its discretion, may deem appropriate and conducive to the prompt and fair adjudication of the complaint proceeding.

The first three of these criteria will help the RBAT to ensure appropriate use of the Commission's processes in support of the goal of timely broadband deployment and ensure that the parties have made a sufficient effort to resolve or, at a minimum, identify and narrow the disputed issues prior to filing a complaint. The remaining criteria will help the RBAT to determine if a dispute is suitable for decision under the strict time constraints of the Accelerated Docket, and also require it to consider whether including a matter on the Accelerated Docket would ensure the prompt and fair adjudication of the dispute.[66] By specifying the criteria that the RBAT must consider in making its determination, we hope to make the Accelerated Docket a more useful tool in the resolution of eligible pole attachment disputes and provide prospective complainants with greater certainty regarding which complaints will be deemed suitable for expedited resolution.

22. We will closely monitor the impact of the dispute resolution procedures adopted here and consider additional streamlining measures should we observe ongoing delay tactics or other unreasonable practices that hinder the ability of broadband providers to deploy new services or facilities.[67]

B. Increasing Transparency by Providing Attachers with Utility Pole Inspection Information

23. We next amend our pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports,[68] or any intervening, periodic reports created before the next cyclical inspection, for the poles

[66] A responding party's refusal to stipulate to facts or cooperate in the exchange of relevant information bearing on disputed facts will not itself defeat a request for acceptance of a pole attachment dispute on the Accelerated Docket.

[67] Two commenters suggest narrowing the list of criteria to avoid delay tactics by utilities. *See* Letter from D. Van Fleet Bloys, Managing Counsel, Crown Castle, to Marlene, H Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 6, 2023) (Crown Castle Dec. 6, 2023 *Ex Parte*); INCOMPAS Dec. 7, 2023 *Ex Parte* at 2-3. We find that eliminating criteria is unnecessary, however, as these criteria are holistic in nature, and no single one will be dispositive. Moreover, the RBAT is not required to credulously accept assertions from either party.

[68] The record demonstrates that utilities conduct inspections of their poles on a multi-year cycle, either as part of normal network management or as required by state law. *See, e.g.*, Letter from Brett Heather Freedson, Counsel to (continued….)

covered by a submitted attachment application, including whether any of the affected poles have been "red tagged" by the utility for replacement, and the scheduled replacement date or timeframe (if any). In the *Second Further Notice*, the Commission sought comment on requiring utilities to provide more information about their poles to prospective attachers, in order to reduce disputes.[69] Several attaching entities indicated pole inspection information would be helpful in planning deployments.[70] We believe this new requirement strikes a reasonable balance between additional transparency for prospective attachers and ensuring the utilities' expenditure of resources is no greater than necessary. As discussed below, however, we also strongly encourage utilities to voluntarily share pole-related information that is reasonably available and that they track in the normal course of business, both before and after receiving attachment applications, and we intend to continue to monitor the record in this proceeding to determine if additional information sharing mandates may be required.

24. For the purposes of the new transparency requirement, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the routine inspection of its poles during the utility's normal pole inspection cycle, while a periodic pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the inspection of any of its poles outside the utility's normal pole inspection cycle.[71] We note that this

Dominion Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 14, 2023) (Dominion Energy June 14, 2023 *Ex Parte*) ("[E]ach pole within the Company's pole plant is inspected on a 12-year cycle . . . . If any pole is determined upon inspection not to be safe and in serviceable condition [or not likely to remain in safe and serviceable condition for the entire next inspection cycle], it will be identified for replacement or restoration at the time of inspection."); Letter from Aryeh Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed May 8, 2023) (Edison Electric Institute May 8, 2023 *Ex Parte*); Letter from Robin F. Bromberg, Counsel to the Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 26, 2023) (Electric Utilities June 26, 2023 *Ex Parte*) ("[T]he Electric Utilities proactively inspect their pole networks on a cyclical basis . . . . Between 2019-2021, the Electric Utilities collectively inspected more than 4 million poles and replaced more than 100,000 poles at their own expense as a result of these inspections."); *see also, e.g.*, 52 Pa. Code § 57.198(n)(2) ("Distribution poles shall be inspected at least as often as every 10-12 years except for the new southern yellow pine creosoted utility poles which shall be initially inspected within 25 years, then within 12 years annually after the initial inspection."); *Proposal to Required Investor-Owned Electric Utilities to Implement a Ten-Year Wood Pole Inspection Program*, Docket No. 060078-EI, Order No. PSC-06-0144-PAA-EI, https://www.floridapsc.com/pscfiles/library/Orders/2006/01671-2006.PDF#search=PSC-06-0144-PAA-EI (Fla. Pub. Serv. Comm'n 2006) (requiring investor-owned electric utilities to establish an eight-year inspection cycle for wood pole strength, including the effects of pole attachments).

[69] *Second Further Notice*, 37 FCC Rcd at 4165, para. 35. Utilities did not challenge the Commission's general jurisdiction to require them to provide relevant information to prospective attachers, and ACA Connects asserted the Commission has such authority. *See* ACA Connects Comments at 44 & n.88.

[70] *See, e.g.*, ACA Connects Reply at 33-34 ("Information gathered during the most recent pole inspection, however long ago it occurred, would be valuable to cable operators and telecommunications providers as they plan their deployments, upgrades, and expansions."); Crown Castle Comments at 29-30 ("Crown Castle has been refused information regarding the status of utilities' poles in terms of scheduled replacement or whether they have been tagged for replacement."); NCTA Comments at 24 ("Cable operators and other attaching parties today are often denied access to critical and useful information about the poles in a utility's network. This withheld information includes . . . which poles have been red tagged."). This requirement applies only in the states that have not certified that they regulate pole attachments themselves. *See State Regulation Public Notice*, 37 FCC Rcd 6724. To the extent such reports may include sensitive or confidential network or financial information, we rely upon utilities and attachers to address the issue through redactions or non-disclosure agreements.

[71] Electric Utilities request that the new rule not require utilities to provide periodic pole inspection reports, arguing that the requirement will create confusion and invite disputes. Letter from Robin F. Bromberg, Counsel for Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 4, 2023) (Electric Utilities Dec. 4, 2023 *Ex Parte*). We find that the definition of "periodic inspection report" is sufficiently clear and note that no other utility commenters claimed the definition was vague or otherwise problematic. We further find that this requirement is an important aspect of the rule. Cyclical pole inspections typically occur several years apart,

(continued….)

new transparency requirement is consistent with the existing practices of certain utilities to prepare such reports.[72] When asking for information about the status of a utility's poles for a planned buildout, the attacher must submit its information request no earlier than contemporaneously with an attachment application. The utility will have ten business days to respond to the request.[73] This should allow sufficient time before the make-ready survey for the attacher to revise or amend its application as may be appropriate based on the information it receives.[74]

25. We recognize that in some situations, the information provided by utilities in their pole inspection reports may lead new attachers to amend their attachment applications. In order to ensure that utilities have enough time to review such applications, in situations when the utility receives an amended attachment application prior to granting or denying the original application, we will allow a utility the option to restart the 45-day period for responding to the application on the merits and conducting the survey.[75] Utilities electing to restart the 45-day application review and survey period in this manner must notify the attacher within 5 business days of receipt of the amended application or by the 45th day after the original application is considered complete, whichever is earlier.[76] To avoid unnecessary delays and

---

sometimes by ten or more years, *see, e.g.*, Letter from Brett Heather Freedson, Counsel to Dominion Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 14, 2023); Letter from Aryeh Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed May 8, 2023) (Edison Electric Institute May 8, 2023 *Ex Parte*); Letter from Robin F. Bromberg, Counsel to the Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 26, 2023) (Electric Utilities June 26, 2023 *Ex Parte*); *see also, e.g.*, 52 Pa. Code § 57.198(n)(2); *Proposal to Required Investor-Owned Electric Utilities to Implement a Ten-Year Wood Pole Inspection Program*, Docket No. 060078-EI, Order No. PSC-06-0144-PAA-EI, https://www.floridapsc.com/pscfiles/library/Orders/2006/01671-2006.PDF#search=PSC-06-0144-PAA-EI (Fla. Pub. Serv. Comm'n 2006), and periodic inspection reports will contain more recent inspection information. We also decline the Electric Utilities' request to seek further comment on transparency requirements in lieu of adopting a rule on report sharing. *See* Electric Utilities Dec. 4, 2023 *Ex Parte* at 1-2. We find that the record is sufficient to adopt an information sharing rule at this time and the rule we adopt strikes an appropriate balance between providing attachers with additional helpful information while not being overly resource-intensive for utilities. Indeed, several utility parties are supportive of the new transparency requirement. *See* Letter from Brett Heather Freedson, Counsel to Dominion Energy and Xcel Energy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-4 (filed Dec. 6, 2023) (Dominion/Xcel Dec. 6, 2023 *Ex Parte*); Letter from Aryeh Fishman, Associate General Counsel, Edison Electric Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 1, 2023) (Edison Electric Institute Dec. 1, 2023 *Ex Parte*).

[72] *See, e.g.*, Coalition of Concerned Utilities Comments at 12-13, 21 ("If [a pole] has been placed in the queue to be replaced, the attacher is already informed of that during the application process."); Edison Electric Institute Comments at 51-52 ("Attachers currently are alerted if a pole is scheduled for replacement at the time that an attachment request is made."); Electric Utilities Comments at 56 ("[T]he Electric Utilities also provide this information [on whether a pole had been red tagged] to attachers via their make-ready estimates.").

[73] The utility has the same amount of time to determine whether the application is complete. *See* 47 CFR § 1.1411(c)(1)(i) (giving utilities ten business days to determine whether an application is complete).

[74] "The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole." 47 CFR § 1.1402(o). After receiving a complete attachment application, a utility conducts a make-ready survey and provides a make-ready cost estimate to the attacher. 47 CFR § 1.1411(c)(3), (d). During the survey stage, "the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required." *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245 and GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5252, para. 22 (2011) (*2011 Pole Attachment Order*), *aff'd*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

[75] The option to restart the time period also applies to larger orders that are subject to a 60-day timeframe. *See* 47 CFR §§ 1.1411(c)(2), (c)(3)(i).

[76] *See* 47 CFR § 1.1411(c)(2), (c)(3)(i). For example, if an amended application was filed on the 42nd day following the utility's determination that the original application was complete, the utility would only have three days, not five business days, to notify the attacher that the utility is restarting the 45-day application review and survey.

costs, we strongly encourage attachers to notify utilities of their intent to file, and to file, amended applications as quickly as possible after receiving a pole inspection report from the utility. We also encourage utilities to exercise their right to restart this 45-day period judiciously and to review amended applications as quickly as possible even when electing to restart the 45-day application review and survey period.[77] Regardless of whether the utility elects to restart the 45-day response period, any additional survey costs necessitated by the amended application, such as a second survey after a survey for the original application has been completed, will be borne by the new attacher consistent with the new attacher's obligation to pay for make-ready costs associated with its application.[78]

26. In connection with the new transparency requirement we adopt today, we also require utilities to retain copies, in whatever form they were created, of any such cyclical or periodic pole inspection reports they conduct in the normal course of business, until such time as the utility completes a superseding cyclical pole inspection report covering the poles included in the attachment application. In creating these obligations, we reiterate that utilities are required to provide only the information they already possess and track in the normal course of conducting pole inspections at the time of the attacher's request for data. The new rule does not require utilities to collect or create new information for the sole purpose of responding to such requests or to provide all information they may possess on the affected poles outside their pole inspection reports.[79] We find this new limited requirement achieves a balance between a potential attacher's need for more information about the poles that it plans to use as part of a broadband buildout and the utility's interest in minimizing the burden of mandatory disclosures.

27. We conclude that requiring utilities to provide information about the state of their poles to attachers will help improve the attachment process and potentially reduce disputes. In particular, having such information early in the process will help attachers evaluate whether they want to adjust their plans in light of the poles' conditions.[80] At the same time, we recognize the potential burdens on utilities

[77] Several parties asked that we require an automatic restart of the 45-day response period or start the application process over in such instances by requiring an attacher to file a new application rather than an amended application. Letter from Thomas Magee, Keller & Heckman, Counsel for Coalition of Concerned Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 5, 2023); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 2-3; Electric Utilities Dec. 4, 2023 *Ex Parte* at 2-3. We decline these requests and find that the procedures we adopt are sufficiently tailored to account for the needs of utilities to review amended applications while not needlessly slowing deployment. Under the new rule, utilities will always have the option of electing to restart the 45-day review period; but given that there may be instances where an amendment is minor or otherwise will not require a restart of the 45-day period, we find it reasonable to require utilities to actually review an amended application to determine whether a restart is necessary given the specific circumstances.

[78] *See* 47 U.S.C. § 224(i); 47 CFR § 1.1408(b).

[79] Edison Electric Institute contends that "access to critical infrastructure by non-electric company personnel presents serious safety, reliability, and homeland security hazards," and that "existing law bars electric companies from releasing some information about system infrastructure." Edison Electric Institute Comments at 52 (citing, as an example, 6 CFR §§ 29.1-29.9 on Protected Critical Infrastructure Information); *see also* Lumen Comments at 32. It does not directly assert, however, that utilities would be barred from disclosing information contained in a pole inspection report. And it notes that most of the information is "already available" and an attacher "can readily learn the condition" of poles by driving a proposed route. Edison Electric Institute Comments at 51, 52. Although we do not know exactly what information utilities may include in their pole inspection reports, we anticipate that legal constraints on disclosure of critical infrastructure information can be addressed, to the extent that they arise, by the parties involved via appropriate redactions or use of a non-disclosure agreement. *See* Crown Castle Reply at 26 ("Pole owners can easily preserve any legitimate confidentiality concerns via confidentiality agreements in pole attachment agreements or separately."); Edison Electric Institute Reply at 37 ("It is reasonable for pole owners that agree to share proprietary information [sic] under non-disclosure agreements before providing access."). We do not intend our new rule to override laws precluding disclosure of certain information, but expect utilities to work in good faith to provide potential attachers with the information they can from their pole inspection reports.

[80] ACA Connects Comments at 6 ("The Commission's rules should ensure that prospective attachers can obtain such information from utilities so that they can better plan their deployments and expansions and avoid inefficient choices (continued….)

that would result from imposing a mandate to compile extensive information for every pole attachment application the utility receives.[81] We seek to strike a balance by (1) requiring utilities to provide such information as they already collect in the normal course of inspections done as part of managing their network and poles (which the record indicates include which poles have been identified as needing replacement),[82] rather than having to gather information solely for attachers or from many disparate sources, and (2) tying requests for such information to poles contained in submitted attachment applications.

28. In striking this balance, we agree with utilities that they should not be required by rule to gather and provide extensive pole-related data for every pole attachment application about matters they do not track in the normal course of business through their inspections.[83] The record shows that many utilities do not create specific maintenance or replacement schedules for poles.[84] It also shows that some utilities provide a range of pole-related information—including whether any poles are red-tagged or otherwise identified for replacement—when responding to an attachment application after conducting a

(e.g., paying application and sometimes large survey costs, only to find that the make-ready required, including pole replacements, would make a planned aerial build economically infeasible)."); Crown Castle Comments at 29 ("requiring record retention and increased information sharing by pole owners could . . . significantly increase the speed of deployment"); NCTA Reply at 20 ("Numerous examples provided by commenters in this proceeding demonstrate that pole-owner refusals to provide access to pole-related information has a material and adverse impact on broadband deployment.").

[81] *See, e.g.*, Electric Utilities Comments at 57 ("The Electric Utilities are not required to maintain, nor do they maintain, records on the "condition of" each individual pole. . . . Maintaining a database on the condition of all poles within the Electric Utilities' service territories would also be an incredibly expensive and burdensome endeavor. The administrative burden and expense of providing attaching entities with the 'condition of, and replacement plans for,' the Electric Utilities' poles would outweigh any supposed benefit of such information."); AT&T Reply at 31 ("Commenters ask for detailed rules requiring pole owners to provide attachers with information about the age of the pole, condition of the pole, replacement plans for each pole, outside plant records, detailed accounting records, financial records regarding pole related charges, and information needed to rebut presumptions in calculating pole attachment rates. But the cost and burdens associated with such reporting would far outweigh its value . . . . The costs to survey every pole across the country to confirm its specific location, availability, and age and to keep that information current would be prohibitive. Pole owners own millions of poles and some do not keep electronic records of availability for attachments. They would have to create such systems and records from scratch, at significant cost." (footnote omitted)); Dominion/Xcel Reply at 34-35 ("Aside from the prohibitive cost of [collecting, storing, and providing several types of data on poles] and the enormous burden on already scarce internal resources, . . . the time and resources that would be required for any pole owner to produce (or for any attacher to review) the volume of information contemplated by commenters' proposals would slow the pace of broadband deployment and increase deployment costs."); Edison Electric Institute Reply at 35-37 ("[T]he marginal benefits to attachers of having access to this type of information is outweighed by the substantial burden on electric companies of making this information available to attachers. This information is not useful or necessary for pole owners, and often is not kept by pole owners.") (footnote omitted); USTelecom Reply at 20 ("Requiring pole owners to collect data about even just the poles subject to Commission's rules under Section 224 would require substantial personnel hours and unprecedented costs.").

[82] *See* Dominion Energy June 14, 2023 *Ex Parte* at 2; Electric Utilities June 26, 2023 *Ex Parte* at 2; Letter from Morgan Reeds, Director, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed June 29, 2023) (USTelecom June 29, 2023 *Ex Parte*).

[83] *See* Electric Utilities Comments at 57; AT&T Reply at 31; Dominion/Xcel Reply at 34-35; Edison Electric Institute Reply at 35-37.

[84] AT&T Reply at 32 ("'Poles are replaced when they need to be replaced, not on some fixed schedule.' Thus, pole replacement plans do not exist and are not needed for all poles."); Coalition of Concerned Utilities Comments at 42 ("Unless a pole has been identified through regular inspections or otherwise as needing replacement, utilities cannot predict when poles will need to be replaced."); Edison Electric Institute Comments at 51-52 ("Electric company pole owners do not, in the ordinary course of business, prepare schedules for future pole maintenance, reinforcement, or replacement activity. . . . [P]oles are replaced when they need to be replaced, not on some fixed schedule.").

make-ready survey.[85] We agree with the commenters asserting that a pre-application survey conducted by the attacher, or a make-ready survey conducted by a utility in response to a specific attachment application, are often the best ways to ensure the potential attacher and utility have up-to-date, accurate information on the current state of poles.[86] We also agree with Dominion/Xcel, however, that the information contained in general survey or pole inspection reports can be useful to prospective attachers in some cases.[87] Therefore, although we decline at this time to impose broader duties on utilities to collect and provide more expansive pole-related information for every attachment application, we will require utilities to furnish already available information in pole inspection reports concerning specific poles upon request at the time an attachment application is submitted.[88]

29. While we do not at this time codify a requirement for utilities to provide new attachers with information about poles *prior* to the attacher submitting a pole attachment application, as requested by some commenters,[89] we understand that often utilities share pole information with attachers prior to the application process, particularly information not easily attained through visual inspection. We strongly encourage this pre-application collaboration and cooperation because there is value for both utilities and attachers in having the best available pole information to inform deployment forecasts and attachment requests.[90] Although we recognize that some potential attachers could benefit from obtaining

[85] *See* Coalition of Concerned Utilities Comments at 13, 21; Edison Electric Institute Comments at 51-52; Electric Utilities Comments at 56.

[86] Electric Utilities Comments at 57 ("Pole networks are dynamic, and the condition of the poles could change markedly in between their cyclical inspections. Therefore, even if the Electric Utilities kept records on the condition of all their poles, attachers would still need to visit and visually inspect the poles along a proposed route."); AT&T Reply at 31-32 ("Physical inspection of every pole remains the only means to verify or confirm all of the information attachers seek."); USTelecom Reply at 19 ("The Commission accounted for the dynamic nature of pole networks by including a survey stage in the make-ready process."). We recognize that a visual inspection may not necessarily provide all the information an attacher might desire. Letter from Jacqueline Clary, Altice USA, Inc., to Marlene, H, Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 6, 2023) (Altice Dec. 6, 2023 *Ex Parte*); Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 2-3. This supports requiring disclosure of pole inspection reports.

[87] *See* ACA Connects Reply at 34 ("Information gathered during the most recent pole inspection, however long ago it occurred, would be valuable to cable operators and telecommunications providers as they plan their deployments." For example, these reports my include the installation date of the pole, which never changes and would "inform prospective attachers of the general degree to which poles on a potential route are depreciated and . . . give them some sense as to the share of costs they might carry should pole replacements be required because of insufficient capacity . . . .").

[88] Some commenters support the balance struck in this new rule. Letter from David D. Rines Lerman Senter, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-2 (filed Dec. 7, 2023) (Dominion/Xcel Dec. 7, 2023 *Ex Parte*) (rule on inspection reports "represents a workable and fair compromise"); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 2; Letter from Nirali Patel, Senior Vice Pres., Policy & Advocacy, US Telecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 6-7 (filed Dec. 6, 2023) (USTelecom Dec. 6, 2023 *Ex Parte*). Electric Utilities, on the other hand, request that any consideration of a rule to require disclosure of pole inspection reports be deferred to a further notice of proposed rulemaking. Electric Utilities Dec. 4, 2023 *Ex Parte* at 1-2.

[89] ACA Connects Reply at 34-35; ExteNet Comments at 8; INCOMPAS Comments at 18; NCTA Comments at 24; Crown Castle Reply at 24-25. Several attachers requested that utilities be required to provide information about their poles upon request at any time, not only after a submitted attachment application. Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 2; Letter from Geoffrey G. Why, Counsel for ExteNet, and Michael Saperstein, Counsel for Wireless Infrastructure Ass'n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 7, 2023) (ExteNet/WIA Dec. 7, 2023 *Ex Parte*); INCOMPAS Dec. 7, 2023 *Ex Parte* at 3; SHLB Dec. 7, 2023 *Ex Parte* at 3.

[90] *See, e.g.*, ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 4.

pole-related information prior to submitting an application,[91] we decline to impose this requirement on utilities given that the underlying requests for information would be for preliminary build-out plans that may substantially change.[92] Furthermore, establishing a pre-application duty for utilities would require the Commission to create a new process and timeline prior to the codified make-ready process, which has always been triggered by the filing of an application.[93] Finally, given that prospective attachers also have the ability to gather information about poles on prospective routes through pre-application surveys and visual inspection of poles on a prospective route,[94] we find that imposing an additional pre-application requirement on utilities is not justified at this time.

30. We reject requests at this time that we mandate a variety of other disclosure requirements on utilities.[95] We agree with utilities that the most relevant information for purposes of an attachment

[91] *See, e.g.*, ACA Connects Comments at 6 ("The Commission's rules should ensure that prospective attachers can obtain such information from utilities so that they can better plan their deployments and expansions and avoid inefficient choices (e.g., paying application and sometimes large survey costs, only to find that the make-ready required, including pole replacements, would make a planned aerial build economically infeasible)."); Crown Castle Comments at 29 ("requiring record retention and increased information sharing by pole owners could . . . significantly increase the speed of deployment"); ExteNet Comments at 7-8; INCOMPAS Comments at 18.

[92] USTelecom Dec. 6, 2023 *Ex Parte* at 6 (stating that a duty to provide pole inspection reports in response to a submitted application strikes an appropriate balance because it "*expands* a pole owner's disclosure obligations while correctly tailoring the new disclosure requirements to poles that are subject to pending pole attachment requests, as any other standard would require pole owners to divert resources to address information requests that may never result in an actual deployment") (footnote omitted)). *But see* Crown Castle Dec. 6, 2023 *Ex Parte*, Attach.. A at 2 ("Crown Castle does not engage in speculative deployments[.]"); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 3 (stating that it "does not engage in speculative build-out plans that may never come to fruition").

[93] *See* 47 CFR § 1.1411.

[94] Through such visual inspection, an attacher typically can learn the age of a pole, whether it has been red tagged, when the most recent inspection occurred, and a pole's load and potential suitability for more attachments. Edison Electric Institute Comments at 51-52; Electric Utilities Comments at 56 (stating that because poles are physically red tagged when due for replacement, "if an attacher exercises its right to attend the field inspection, the attacher would learn in real time the condition of all poles along its proposed route"); AT&T Reply at 32 ("Pole attachers seeking information more quickly to plan their deployments are free to retain their own contractors to map and survey poles at their cost on the timelines that best suit them, rather than trying to impose those timelines and costs on pole owners."); Coalition of Concerned Utilities Reply at 13; Dominion/Xcel Reply at 40-41 ("A pole that is scheduled for replacement is physically marked as such (i.e., 'red tagged'), and can be identified by an attacher upon physical inspection."; "the year in which the pole was first installed [is] marked on the body of the pole"; "the year of a pole's most recent inspection is clearly marked on the body of the pole"; "pre-application inspection" allows an attacher to "determine a pole's specifications, current load, and suitability for new attachment"); Electric Utilities Reply at 26; Electric Utilities June 26, 2023 *Ex Parte* at 4 ("Where the Electric Utilities find poles in need of immediate replacement (or repair) during their cyclical inspections, they identify such poles by placing a physical 'tag' on the deficient pole. Attachers can see which poles have been tagged when they visit the pole line as part of planning their proposed routes—in other words, the documentation is literally on the pole (and evident during the field visit)."). As noted above, however, we also recognize that visual inspection alone may not always provide all the information an attacher may desire, thus supporting the new requirement that utilities provide attachers with cyclical and periodic pole inspection reports. For example, with regard to utility tags on poles, Crown Castle asserts that "not all poles are appropriately tagged or inspection tags may be missing, damaged, or unable to be interpreted without additional information from the pole owner." Crown Castle Dec. 6, 2023 *Ex Parte*, Attach, A at 3.

[95] Several attachers requested that utilities be required to provide any relevant requested information about their poles that they retain in the ordinary course of business, which would go beyond pole inspection reports. Letter from Jacqueline Clary, Altice USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. A at 2-4 (filed Dec. 6, 2023) (Altice Dec. 6, 2023 *Ex Parte with Attachment*); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 2-4; INCOMPAS Dec. 7, 2023 *Ex Parte* at 3; NCTA Dec. 5, 2023 *Ex Parte* at 3-4; Letter from Pamela Arluk, Vice Pres. & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. A at 1-4 (filed Dec. 7, 2023) (NCTA Dec. 7, 2023 *Ex Parte*); SHLB Dec. 7, 2023 *Ex Parte* at 3. While we encourage

(continued….)

request is whether the poles at issue are available or due for replacement.[96] For example, some attacher commenters ask the Commission to require utilities to create accessible databases (or establish a single database for all utilities) with information on things like pole age, condition, repair/replacement schedules, location, number of attachments, standard rate structure, and applicable engineering standards.[97] They also ask that utilities be required to provide data from the owners' periodic load analyses for poles;[98] the age, height, class, and condition of poles;[99] and data on current attachments and pending attachment requests for relevant poles.[100] And ACA Connects asks the Commission to require utilities to provide more details in their make-ready cost estimates to support those costs.[101] For the reasons discussed below, we decline to adopt these requirements. With respect to certain financial information requested by some commenters regarding pole rates, we do not adopt new disclosure requirements, but make clear that some financial information is already required to be disclosed under our rules.

31. Before addressing these specific proposals, however, we note some attachers express concern that, by adopting a requirement to provide pole inspection reports but not codifying additional mandates, we may be inadvertently discouraging utilities from voluntarily providing pole-related information before receiving an attachment application, which at least some utilities do today.[102] We stress that our actions today should not be understood to undermine or disincentivize such voluntary sharing. To the contrary, voluntary sharing of pole-related information is consistent with longstanding Commission policy favoring transparency in the pole attachment context, and we strongly encourage both utilities and attachers to collaborate and voluntarily share information with each other whenever such

parties to voluntarily share information, we find that codifying a broad disclosure requirement for all information collected in the ordinary course of business could force utilities to expend significant resources to gather such information and could lead to additional disputes and complaints related to information sharing.

[96] Coalition of Concerned Utilities Comments at 42 ("[D]ecisions by new attachers whether to attach are informed only by whether the pole is suitable for attachment or not. If the pole remains standing and has not been scheduled for replacement, it is suitable for attachment, provided there is sufficient capacity."). Some utilities suspect that the purpose of many of the attachers' requests is only to provide ammunition for rate disputes with utilities, not to improve the attachment process. *See, e.g.*, Dominion/Xcel Comments at 35-36; Coalition of Concerned Utilities Reply at 12.

[97] ACA Connects Comments at 41-44 ("ACA Connects urges the Commission to require utilities to provide electronic access to a subset of this information related to pole replacements, i.e. pole location, specifications, installation date, condition, and any planned replacements or reinforcements."); INCOMPAS Comments at 20 (asking the Commission to "either require or establish a subscription-based digitized utility database. Specific data such as a standardized rate structure, pole retirement and replacement plans, pole audit information, previous work order details, and safety and engineering standards can be regularly uploaded by pole owners and the database can be maintained by making this information available to users through a per report fee."); ACA Connects Reply Comments at 37-38; INCOMPAS Reply at 7.

[98] NCTA Comments at 34-35.

[99] ExteNet Comments at 8; NCTA Comments at 25; Crown Castle Reply at 24-25; NCTA Reply at 23.

[100] ExteNet Comments at 8; NCTA Comments at 25; Crown Castle Reply at 24-25.

[101] ACA Connects Comments, Attach. A, Breezeline Decl. at 4.

[102] Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 3-4 ("Many (although not all) utilities today share information about their poles prior to the submission of an application."; urging Commission to not "disincentivize this kind of information sharing, which is critical to the efficient planning and deployment of broadband."); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 3-4 (referring to "the current practice of some utilities sharing information prior to a pole application"; "often utilities share pole information with attachers prior to the application process"); INCOMPAS Dec. 7, 2023 *Ex Parte* at 3 (urging Commission not to "discourage" the "voluntary sharing that is occurring in the market"); NCTA Dec. 5, 2023 *Ex Parte* at 2-3 (referring to "the sharing of information that currently occurs between pole owners and attachers prior to the attacher submitting a pole application" and expressing concern that the pole inspection report disclosure requirement could disincentivize it); SHLB Dec. 7, 2023 *Ex Parte* at 3.

information is reasonably available and obtained in the normal course of business.[103] Voluntary sharing can be helpful to both attachers and utilities to promote more efficient buildouts by informing deployment forecasts, allowing more accurate applications, and decreasing disputes or delays after an application is submitted.[104] Having better and more accurate information prior to attachment applications will likely reduce make-ready costs, the frequency and severity of disputes, and improve the efficiency of the attachment process—benefiting both attachers and utilities.[105] We will continue to monitor the record in this proceeding and will take further action if it becomes clear that voluntary information sharing arrangements are insufficiently promoting broadband deployment.

32. *Database(s) of Pole Information*. We decline (1) to require that each utility create an accessible database with an array of data on all its poles, or (2) to establish a single pole-information database for all utilities.[106] The Commission rejected previous calls for a similar database requirement in 2011, in part based on the large burden outweighing potential benefits.[107] We find that the 2011 reasoning remains valid. In particular, we find that the record continues to demonstrate that the burdens and costs of creating such a database (if a utility does not already have one) would be very large given the number of poles many utilities own or jointly own and the scope of pole data attachers seek, and that the alleged benefits of requiring such a database would be reduced by the new requirement we adopt today that utilities provide information from their pole inspection reports.[108] Commenters contend that requiring such a pole-related database would help speed deployment by helping attachers plan better and avoid intermediate steps for both attachers and utilities.[109] Utilities, however, assert that due to the very

[103] *See, e.g.*, *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, CC Docket No. 78-144, First Report and Order, 68 F.C.C.2d 1585, 1587, 1595, paras. 7, 29 (1978) (citing S. Rep. No. 95-580, 95th Cong., 1st Sess., p. 22 (1977) ("The Committee desires that the Commission institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation.")); *see also* Altice Dec. 6, 2023 *Ex Parte* at 2 (describing Commission's information sharing precedent). We reject claims that our actions here are inconsistent with the policy of promoting transparency, as Crown Castle asserts. Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. 2 at 2. To the contrary, this Order increases transparency by adopting a new disclosure requirement. USTelecom Dec. 6, 2023 *Ex Parte* at 6.

[104] Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 3 (voluntary information sharing "is critical to the efficient planning and deployment of broadband"); ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 4; *see also id*. at 3 ("Earlier access to more transparent pole information reporting is likely to reduce the frequency and severity of attachment disputes . . . ."); INCOMPAS Dec. 7, 2023 *Ex Parte* at 3 (noting that pre-application sharing of information can help avoid the "substantial costs that a new attacher may incur if it is forced to amend or modify an attachment application once it receives pole inspection information from the pole owner"). Such voluntary sharing also is helpful because "not all pole owners conduct these denominated inspections," yet attachers still could benefit from receiving the kind of information that would have been included in such inspections had they occurred. NCTA Dec. 5, 2023 *Ex Parte* at 3; *see also* ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 3 (stating that "inspection reports do not always contain the types of information this requirement targets, while other readily available records created in the regular course of business do").

[105] *See, e.g.*, ExteNet/WIA Dec. 7, 2023 *Ex Parte* at 4.

[106] *See, e.g.*, ACA Connects Comments at 41-44; INCOMPAS Comments at 20; ACA Connects Reply Comments at 37-38; INCOMPAS Reply at 7.

[107] *2011 Pole Attachment Order*, 26 FCC Rcd at 5280-81, para. 89.

[108] *See, e.g.*, Electric Utilities Comments at 36, 57; Coalition of Concerned Utilities Reply at 14-15 (creating such a database would be "enormously expensive" and attachers would have to pay for it); Edison Electric Institute Reply at 36-37; Electric Utilities Reply at 27-28 ("Maintaining a database showing this level of detail for each pole would impose a crippling burden—both administratively and financially—on pole owners."); Utilities Technology Council Comments at 20-21; Verizon Reply at 10. Indeed, some individual utilities may own millions of poles. *See* AT&T Reply at 31; Edison Electric Institute May 8, 2023 *Ex Parte* at 2 (stating that Xcel Energy owns approximately 1.5 million distribution poles and FirstEnergy owns approximately 3.9 million distribution poles).

[109] ACA Connects Comments at 43; ExteNet Comments at 7-8; INCOMPAS Reply at 7.

large number of poles they own or co-own and the ever-changing nature of pole networks, maintaining a fully up-to-date database would be almost impossible, and so the information for any given group of poles in a database could easily be out of date when the attacher needs it.[110] One utility also submits that granting access to such voluminous pole information could result in the submission of incorrect applications.[111] We find that the benefits of a database requirement remain speculative at best given how difficult it would be to keep such a large database up-to-date.

33. While some commenters argue that circumstances have changed since 2011, with some state utility commissions adopting database requirements for pole-related information,[112] the states cited by these commenters are limited and, in any event, all regulate pole attachments at the state level pursuant to section 224(c) of the Act.[113] As a result, compliance with pre-existing state-specific database requirements would likely offer little, if any, relief in complying with a newly imposed federal database requirement. To the extent any utilities may have developed pole-related databases in states that do not regulate pole attachments,[114] the record indicates that attachers are interested in specific types of data, not merely access to existing databases,[115] which would require utilities to absorb additional, and potentially substantial, costs of either adding specific types of new data or searching databases for specific data of interest to attachers. Again, we agree with the utilities that the value of such database information to attachers is highly unlikely to outweigh those burdens, as the information may well be out of date by the time an attacher submits an attachment request.[116] Moreover, any added benefit would likely be minimal in light of the new information-sharing requirement we adopt today.

34. *Loading Studies.* According to NCTA, some utilities provide and allow attachers to rely on loading studies included in the utilities' cyclical pole inspection reports rather than making the attacher do its own loading study, but other utilities do not.[117] NCTA asserts that "[w]here such studies have been conducted, pole owners should be required to use that existing analysis rather than forcing a new attacher

[110] Electric Utilities Comments at 36; Coalition of Concerned Utilities Reply at 14-15; Edison Electric Institute Reply at 36-37; Electric Utilities Reply at 27-28.

[111] Dominion/Xcel Reply at 34-36 ("[I]t is impossible to comprehend how the ability to consider the immense quantity of detailed pole data requested by commenters would make the pole access process more expeditious or less contentious . . . . Xcel Energy has witnessed that attachers that rely on electronic resources to develop their deployment plans—particularly in lieu of preliminary field inspections—are most likely to submit incorrect applications that ultimately delay their access to poles."); *see also 2011 Pole Attachment Order*, 26 FCC Rcd at 5280-81, para. 89.

[112] *See* ACA Connects Comments at 41-43; ACA Connects Reply at 37-38; NCTA Reply at 22 n.84 (noting state database requirements in California, Connecticut, Maine, and Massachusetts).

[113] 47 U.S.C. § 224(c); *see also State Regulation Public Notice*, 37 FCC Rcd 6724.

[114] ACA Connects asserts that many utilities have developed pole-related databases since 2011, but it does not identify utilities that have done so in states that do not regulate pole attachments. ACA Connects Comments at 42.

[115] *See* ACA Connects Comments at 41-44 ("ACA Connects urges the Commission to require utilities to provide electronic access to a subset of this information related to pole replacements, i.e. pole location, specifications, installation date, condition, and any planned replacements or reinforcements."); INCOMPAS Comments at 20 (asking the Commission to "either require or establish a subscription-based digitized utility database. Specific data such as a standardized rate structure, pole retirement and replacement plans, pole audit information, previous work order details, and safety and engineering standards can be regularly uploaded by pole owners and the database can be maintained by making this information available to users through a per report fee.").

[116] Coalition of Concerned Utilities Reply at 14-15 (creating such a database would be "enormously expensive" and attachers would have to pay for it); Electric Utilities at 28 ("Maintaining a database showing this level of detail for each pole would impose a crippling burden—both administratively and financially—on pole owners.").

[117] NCTA Comments at 34-35.

to incur the expense and delay of performing a duplicative and redundant study."[118] We decline to adopt this proposal. To the extent pole inspection reports include loading studies,[119] attachers will have access to such information under the new rule we adopt today.[120] We will not, however, dictate when a utility can require a loading study, as NCTA seems to request, as we continue to believe, consistent with the *2018 Wireline Infrastructure Order*, that such studies "can be important tools to address safety, reliability, and engineering concerns."[121]

35. *Age, Height, Class, and Condition of Poles.* We reject attachers' request to require utilities to provide data on the age, height, class, and condition of their poles, or the last date the pole was inspected, make-ready was conducted, or a pre-existing violation on the pole was fixed.[122] The utilities state that they either routinely provide this type of data with make-ready estimates,[123] that the information is accessible to attachers through their own pre-application surveys or when the attacher accompanies the utility on a make-ready survey,[124] or that they do not track this data.[125] To the extent utilities' pole inspection reports include such data, that information would be covered by the new transparency requirement we adopt today and available to attachers upon request after an application is filed. Given that attachers can often obtain this information either from the utility or through their own survey or inspection, we reject any additional requirement for pole condition information beyond that which we have already outlined, but we strongly encourage utilities to share this information when it is readily available and collected in the normal course of business.

---

[118] *Id*. at 35.

[119] *See* Coalition of Concerned Utilities Reply at 13.

[120] In cases where the loading study is not part of the inspection report, we decline, at this time, to codify a requirement for a utility to provide an attacher with a loading study as NCTA requests, *see* NCTA Dec. 5, 2023 *Ex Parte* at 3, but strongly encourage utilities to provide such loading studies when reasonably requested and readily available.

[121] *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7745, para. 80. NCTA also asserts that a utility should have to bear the cost of a loading analysis where none has been performed but the utility believes a study is necessary before allowing an attachment, and that utilities can instead recover the costs of such loading studies through annual attachment rental fees. NCTA Comments at 35. As that issue relates to cost recovery rather than transparency, we do not address it here.

[122] ExteNet Comments at 8; INCOMPAS Comments at 11, 17-19; NCTA Comments at 24-25; ExteNet Dec. 6, 2023 *Ex Parte* at 2-3; NCTA Dec. 5, 2023 *Ex Parte* at 3; SHLB Dec. 5, 2023 *Ex Parte* at 3.

[123] Coalition of Concerned Utilities Reply at 12 ("Pole locations, height and class: This information is all already available as part of the pole attachment application process. There is no need to see this information beforehand, and making such information widely available raises security concerns."); Electric Utilities Reply at 26 ("Virtually all of the broadband commenters seek a rule that would require pole owners to collect and disclose information regarding the age and condition of [poles]. . . . [This] is entirely unnecessary because electric utilities already provide this information to new attachers during the application process.").

[124] AT&T Reply at 32 ("Potential attachers seeking information more quickly to plan their deployments are free to retain their own contractors to map and survey poles at their cost on the timelines that best suit them, rather than trying to impose those timelines and costs on pole owners."); Dominion/Xcel Reply at 50-51 ("the age of a pole" and "the year of a pole's most recent inspection" are "marked on the body of the pole" and thus visible during an attacher's own inspection); USTelecom Reply at 19 ("During the survey stage, 'the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required.' Pole owners should not be required to collect the information sooner, particularly when attachers may conduct their own field visits of poles at any time at their own cost to acquire information about existing attachers and conditions."). *But see* ExteNet Comments at 7 (denying that an attacher's visual inspection of poles is adequate for the information they need to plan attachment projects); ACA Connects Reply at 35 n.94 (same).

[125] Coalition of Concerned Utilities Reply at 13 ("Many utilities do not have this information [on when the last make-ready on a pole was performed or the last pre-existing violation was fixed].").

36. *Existing Attachments and Pending Attachment Requests.* We also decline to require that utilities provide data on the number of attachments or pending attachment applications for each pole covered by an attachment request.[126] As the utilities explain, pole networks are dynamic and pole conditions frequently change.[127] We find that the record sufficiently demonstrates that attempting to keep a fully up-to-date list of the number of attachments or pending applications on every pole would be a very time-consuming and expensive proposition.[128] Even if some utilities track this information, requiring them to compile the information and send it across a vast and shifting landscape of attachers and poles—and to keep that information updated—would be a considerable burden. Although attachers assert there would be some value in having this kind of data earlier, even if it is old,[129] we find that, as with the proposed pole attachment database discussed above, any purported benefit is outweighed by the potentially considerable cost utilities would have to bear in complying with such a requirement.

37. *Data Supporting Make-Ready Estimates.* With regard to the request that utilities be required to provide more detailed supporting data in their make-ready estimates,[130] particularly regarding the utility's costs, we again decline to adopt any new requirement. Current rules already require utilities to provide supporting cost details in their make-ready cost estimates.[131] If utilities are not complying with those rules, attachers remain free to invoke the complaint process or seek mediation.[132]

38. *Financial Records Regarding Poles.* We decline attachers' requests to create new obligations requiring utilities to provide additional financial data regarding poles and attachment rates, including outside plant records (also called continuing property records) as part of the rules being adopted at this time.[133] Attachers argue that such a duty for utilities to provide information will reduce rate

---

[126] *See* ExteNet Comments at 8; Crown Castle Reply at 24.

[127] *See, e.g.*, Electric Utilities Comments at 36; Electric Utilities Comments at 36; Coalition of Concerned Utilities Reply at 14-15; Edison Electric Institute Reply at 36-37; Electric Utilities Reply at 27-28.

[128] *See* AT&T Reply at 30-31 ("Pole owners own millions of poles and some do not keep electronic records of availability for attachments. They would have to create such records and systems from scratch, at significant cost."); Coalition of Concerned Utilities Reply at 13 ("many utilities do not have this information [about the number of attachments on each pole or applications pending]"). Some attachers also sought to require pole owners to produce information on utility transformers or voltage on a pole or the total attachment load on the pole, ExteNet Comments at 8; Crown Castle Reply at 24, but utilities either deny the usefulness of such information or state that they do not track it. *See* Coalition of Concerned Utilities Reply at 13-14.

[129] ACA Connects Reply at 32-33.

[130] ACA Connects Comments, Attach. A, Breezeline Decl. at 4.

[131] 47 CFR § 1.1411(d).

[132] *See* 47 CFR §§ 1.737, 1.1404; FCC EB – Market Disputes Resolution Division, *Section 224 Complaints* ("Before filing a Section 224 complaint, please contact MDRD staff to discuss the issues in dispute and explore the possibilities for resolution through pre-complaint mediation supervised by MDRD staff."), https://www.fcc.gov/enforcement/processes-services/section-224-complaints (last visited Aug. 26, 2023).

[133] Altice USA Comments at 23-25 & n.52 ("certain internal, pole owner-controlled information is needed to run the calculations and to rebut certain formula presumptions"; asking that pole owners be required to provide "[a]ll outside pole plant records relevant to poles, . . . [including] a detailed accounting of the units associated with FERC Account 364, which is used to report the utility's pole plant investment," and "[t]he pole owner's financial records related to poles"); NCTA Comments at 24-25 (asking that pole owners be required to provide "[f]inancial records related to poles than enable attachers to verify the accuracy and reasonableness of pole-related charges" and "[a]ny information used or necessary to rebut the FCC's presumptions in calculating pole-attachment rates"); NCTA Reply at 22-23. Continuing Property Records are "[o]utside plant records relevant to poles," typically "including a detailed accounting of the units associated with accounts used to report pole plant investment such as vintage height, class, etc." Coalition of Concerned Utilities Reply at 11 & n.20. Several attachers repeated these requests in later submissions, asking that utilities be required to disclose a range of information related to rates, rather than only the information the utility relied on in computing rates, to enable attachers to, for example, evaluate the validity of

(continued….)

disputes or make them easier to resolve.[134] Our focus here, however, is on deployment rather than rate disputes. Further, sections 1.1404(e) and (f) of the Commission's rules—which we do not alter here—already require that "pole owners, upon request of a cable operator or telecommunications carrier, provide the information they have relied on in calculating rates,"[135] and information an attacher seeks to rely on in establishing that a rate, term, or condition is not just and reasonable.[136] The Commission has explained that "it is critical that attaching entities have this information well in advance of executive-level discussions to ensure that those pre-complaint negotiations have a chance of success."[137] In light of these existing rules and the policy stated by the Commission in 2018, to the extent an attacher has a specific dispute with a utility, it already can seek and obtain certain financial data from the utility, prior to filing a complaint, under current rules. We therefore decline to impose a new, broader duty to disclose additional financial records related to poles.[138]

IV. DECLARATORY RULING

39. In this Declaratory Ruling, we: (1) clarify that for purposes of our pole replacement policies,[139] a "red tagged" pole is one that the utility has identified as needing replacement for any reason other than the pole's lack of capacity to accommodate a new attachment (e.g., the pole is on the utility's replacement schedule or there are safety and/or engineering concerns); (2) provide additional examples for when a pole replacement is not "necessitated solely"[140] as a result of a third party's attachment or modification request when a pole already requires replacement at the time that the new attacher's request is made; (3) clarify attachers' right to access documentation regarding utility easements; and (4) clarify that the first 3,000 poles in an attachment application are subject to the processing timeline set forth in section 1.1411(g)(3). In providing these clarifications, we resolve apparent controversies surrounding these issues.[141]

---

utilities' reliance on presumptions in the pole attachment rate formula. Letter from Jacqueline Clary, Altice USA, Inc., to Marlene, H, Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 (filed Dec. 1 2023); Altice Dec. 6, 2023 *Ex Parte*, Attach. 1 at 1-3; Letter from D. Van Fleet Bloys, Managing Counsel, Crown Castle, to Marlene, H Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 1, 2023); Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 5-6; NCTA Dec. 5, 2023 *Ex Parte* at 2-3.

[134] Altice USA Comments at 25; NCTA Comments at 25.

[135] *2018 Rule Consolidation Order*, 33 FCC Rcd at 7187, para. 24.

[136] 47 CFR § 1.1404(e), (f).

[137] NCTA contends the former language in section 1.1404(g) was inadvertently removed in a prior rule revision. NCTA Comments at 22-23; NCTA Reply at 23. We disagree. The Commission sought to "streamline the rules in section 1.1404" by removing the long list of information specified in that section but did not narrow the scope of information utilities must provide attachers. *2018 Rule Consolidation Order*, 33 FCC Rcd at 7187, para. 24; *see also* 47 CFR § 1.1404(f)-(g).

[138] USTelecom, whose members include both pole owners and attachers, argues that imposing a duty beyond current law "would *not* accelerate broadband deployment or reduce its costs, but would likely have the opposite effect by diverting broadband providers' capital away from their own broadband deployment to subsidize their competitors' builds." USTelecom Dec. 6, 2023 *Ex Parte* at 4; *see also* Dominion/Xcel Dec. 6, 2023 *ExParte* at 4 (arguing that current rule 1.1404 strikes an appropriate balance regarding disclosure of financial information related to rates).

[139] By policies, we mean the use of the term "red tagged" in both the *2018 Wireline Infrastructure Order* and the *2021 Pole Replacement Declaratory Ruling* when interpreting section 1.1408(b) of our rules. *See* 47 CFR § 1.1408(b); *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450; *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780 & n.25.

[140] 47 CFR § 1.1408(b).

[141] *Second Further Notice*, 37 FCC Rcd at 4148, para. 10 & n.27. We reject NCTA's recommendation that "the Commission add a sentence clarifying that new attachers would only rarely be responsible for 100% of the cost of a (continued….)

40. *"Red tagged."* While the Commission's previous use of the term "red tagged" focused narrowly on whether poles were marked as out of compliance with safety standards *and* placed on a utility's replacement schedule, we find that our use of the term "red tagged" should be understood more broadly to include poles that the utility identifies for replacement for any reason other than the pole's lack of capacity to accommodate a new attachment.[142] As an initial matter, we recognize that the practice of "red tagging" poles and the underlying reasons for doing so may vary from utility to utility and, indeed, some utilities may not actually red tag poles at all.[143] This Declaratory Ruling does not purport to regulate utilities' individual decisions regarding whether or how to "red tag" poles, and those decisions remain the sole responsibility of the utility.[144] Regardless of how utilities may engage in the practice of "red tagging" or how the term may be used by specific utilities, through this Declaratory Ruling, we clarify how the Commission's use of the term "red tagged" should be understood within the context of the Commission's pole replacement policies. In addition, we decline the requests of some commenters to formally codify a definition of "red tagged" given that the term is not otherwise used in our rules.[145]

41. In the *2018 Wireline Infrastructure Order*, the Commission found that "when a pole has been red tagged, new attachers are not responsible for the cost of pole replacement."[146] For purposes of that *Order*, the Commission defined a "red tagged" pole as one "found to be non-compliant with safety standards and placed on a [utility's] replacement schedule."[147] The Bureau used the same definition in the *2021 Pole Replacement Declaratory Ruling* when making clear that it is contrary to Commission rules and policies "to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is filed."[148] The Commission sought comment in the *Second Further Notice* on whether it should codify a definition of "red-tagging" or "other terminology that distinguishes between priority replacements that need to be performed immediately due to the status of a pole from non-priority replacements that may be implemented at a later time."[149]

42. We find that the Commission's previous use of the term "red tagged" was too restrictive, as it required that a pole be both non-compliant with safety standards *and* placed on a utility's replacement schedule.[150] We find that our new use of the term "red tag" expands the range of scenarios

---

new pole, such as when a pole has been very recently replaced," as it is unclear to us from the record whether that is, in fact, the case when examining the full universe of pole replacements.

[142] *See* Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3; Crown Castle Comments at 19 (arguing that "at a minimum, the Commission should clarify that its rules prohibiting the pole owner from imposing the entire cost on the new attacher apply to any pole where, based on an existing condition, the utility contends the pole must be replaced before any new attachment, or change to an existing attachment, may be made"); Wireless Infrastructure Association Comments at 8.

[143] *See* Crown Castle Comments at 22-23 ("The issue with referring to a particular tagging label (whether 'red tag' or something else) is that there is no universal meaning for the terms and, in practice, different utilities may include different poles within a particular label where another utility may not."); INCOMPAS Comments at 14; Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3; INCOMPAS Dec. 7, 2023 *Ex Parte* at 2.

[144] Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3.

[145] *See* NCTA Comments at 20; Electric Utilities Comments at 37; Altice USA Reply at 8-10.

[146] *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766, n.450.

[147] *Id*.

[148] *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8 (footnotes omitted). A footnote appended to the term "red-tagged" cited the definition of "red tagged" from the *2018 Wireline Infrastructure Order*. *See id.* at 780 n.25 (citing *Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450).

[149] *Second Further Notice*, 37 FCC Rcd at 4148, para. 10.

[150] *See 2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7766 n.450.

under which it would be impermissible for a utility to require an attacher to pay the entire cost of a pole replacement and best accommodates the cost causation and cost allocation policies as they relate to pole replacements—it still preserves the utility's right to deny a new attachment request for a lack of capacity on a pole, but it also prevents the utility from allocating all of the costs of a pole replacement to a new attacher when the utility determines that a pole will not accommodate a new attachment for reasons unrelated to the pole's capacity.[151]

43. We decline Altice's request that the Commission use the definition of "red tagged pole" adopted by the Kentucky Public Service Commission.[152] We find that the definition we adopt is more straightforward, and in any event, the Kentucky PSC's definition limits the scope of scenarios in which a pole can be considered "red tagged," while our definition provides that a pole is "red tagged" in any scenario where a utility determines that a pole must be replaced for a reason other than a lack of capacity.[153] Even though we do not adopt the Kentucky PSC's definition of what constitutes a "red tagged" pole, we note that the scenarios identified by the Kentucky PSC definition all appear to qualify as scenarios in which the utility cannot allocate all of the costs of a pole replacement to an attacher if the pole must be replaced given that the pole would need replacement for reasons that are not "necessitated solely" by the attachment request.[154] We also decline Altice's request to include in the definition of "red tagged" those poles that have been fully depreciated by the utility based on its deprecation rate and the pole's age.[155] We agree with USTelecom that the pole's depreciation status is not relevant to whether the pole needs replacement.[156]

44. We agree with Crown Castle that, for purposes of the Commission's use of the term "red tagged," whether the pole is out of compliance with the National Electric Safety Code (NESC) or any other safety code is irrelevant[157] because a utility's decision as to whether or not to "red tag" a pole (for an NESC violation or otherwise) remains the sole province of the utility.[158] The Commission's use of the

---

[151] *See* Edison Electric Institute Comments at 19; INCOMPAS Dec. 7, 2023 *Ex Parte* at 2 (stating that "the Commission's decision to broaden the term to include 'poles that the utility identifies for replacement for any reason other than the pole's lack of capacity to accommodate a new attachment' will prevent unnecessary costs from being imposed on new attachers, facilitate pole attachment disputes, and help speed more affordable deployment"); USTelecom Dec. 6, 2023 *Ex Parte* at 5 ("This straightforward definition is consistent with the Draft Order's adherence to cost-causation principles because it will prevent pole owners from charging an attacher the full cost of a pole replacement if, at the time of the pole replacement, the pole would have required replacement even if the new attachment were not made.").

[152] Altice Dec. 6, 2023 *Ex Parte with Attachment,* Attach. 1 at 4; 807 KAR 5:015, Section 1(10) (defining a "red tagged pole" as "a pole that a utility that owns or controls that: (a) Is designated for replacement based on the pole's non-compliance with an applicable safety standard; (b) Is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or (c) Would have needed to be replaced at the time of replacement even if the new attachment were not made").

[153] USTelecom Dec. 6, 2023 *Ex Parte* at 5-6 ("The Commission also should retain the straightforward definition from the Draft Order in lieu of the more complicated definition with subparts that the Kentucky Public Service Commission adopted because its subparts include ambiguities that could increase—rather than minimize—disputes." (footnote omitted)).

[154] *See 2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8.

[155] Altice Dec. 6, 2023 *Ex Parte* at 2.

[156] *See* USTelecom Dec. 6, 2023 *Ex Parte* at 1-2.

[157] 2023 National Electrical Safety Code (NESC), C2-2023, Institute of Electrical and Electronics Engineers (IEEE) (Aug. 1, 2022) (specifies best utility practices for the safety of electric supply and communication utility systems); *see also* Crown Castle Comments at 20-21.

[158] The same principle generally applies to the use of space-saving techniques, such as boxing and extension arms, that can be used to increase capacity on an existing pole. While we encourage utilities to use space-saving techniques when they can be accommodated, the discretion to allow such techniques lies with utilities, subject to the (continued….)

term "red tagged" includes any situation where the utility determines that a pole needs to be replaced for any reason other than a lack of capacity to accommodate a new attachment.[159] However, a utility may not evade application of our cost causation and cost replacement policies with respect to a particular pole replacement simply by failing to "red tag" a pole that has safety violations or is otherwise out of compliance with applicable utility construction standards.[160] We remind interested parties, as the Bureau noted in the *2021 Pole Replacement Declaratory Ruling*, "red tagging" a pole is just one of the possible situations where a utility cannot allocate all of the costs of a replacement pole to a new attacher—utilities may also not do so in any situation where the pole already requires replacement before a new attachment request is made, including when poles are out of compliance with current safety and utility construction standards (i.e., there is a preexisting condition preventing the addition of a new attachment to a pole).[161]

45. *"Necessitated Solely."* We further clarify the meaning of the phrase "necessitated solely" by providing additional examples of situations where, under section 1.1408(b) of the Commission's rules, a pole replacement is not "necessitated solely" by a new attachment or modification request "when a pole already requires replacement."[162] In the *2021 Pole Replacement Declaratory Ruling*, the Bureau clarified that "when section 1.1408(b) is applied to pole replacements, it would be contrary to the Commission's rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made."[163] The Bureau reasoned that even if the new attacher might benefit from the pole replacement, the pole replacement is not "necessitated solely" as a result of the new attachment, and therefore the utility may not use the cost causation language of section 1.1408(b) to impose all costs of that pole replacement on the new attacher.[164] The Commission adopted this

---

requirement that "utilities must allow attachers to use the same attachment techniques that the utility itself uses in similar circumstances, although utilities retain the right to limit their use when necessary to ensure safety, reliability, and sound engineering." *Implementation of Section 224 of the Act; A National Broadband Plan for our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, 11869-73, paras. 8-9, 11 (2010). The Commission previously found that "a pole does not have 'insufficient capacity' if it could accommodate an additional attachment using conventional methods of attachment that a utility uses in its own operations, such as boxing and bracketing." *Id*. at 11871-72, para. 14. However, we decline the requests of Altice and NCTA to adopt a more broad presumption that a pole should always be considered to have capacity when space-saving techniques are available, as utilities ultimately have the ability to determine under section 224(f)(2) of the Act whether such techniques are appropriate for a particular pole. 47 U.S.C. § 224(f)(2); NCTA Dec. 5, 2023 *Ex Parte* at 2; Altice Dec. 6, 2023 *Ex Parte* at 2.

[159] *See* Wireless Infrastructure Association Comments at 7 (arguing to eliminate use of the term "red tagged" and "instead make clear that a pole replacement is not necessitated by an attachment when the pole is identified by the owner for replacement under any circumstances, regardless of whether the replacement is necessary to bring the pole up to safety standards or simply due to age and maintenance concerns"). We disagree with Altice's suggestion that we caveat our use of the term "red tag" to include scenarios where the utility "should have identified" a pole as needing replacement for any reason other than a lack of capacity, Altice Dec. 6, 2023 *Ex Parte with Attachment*, Attach. 1 at 4, as we find that this caveat would interfere with the utility's expert discretion on pole management. We note, however, that utilities cannot allocate all of the costs of a pole replacement to an attacher simply by failing to "red tag" a pole that fails to meet applicable safety and construction standards.

[160] Crown Castle Reply at 19 (stating that "[t]he key is to avoid allowing pole owners to evade the rules by claiming that whatever they have done is not 'red tagging' or that a particular condition is not 'red tagging'"); *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8.

[161] *See 2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8; Crown Castle Comments at 22 (stating "the Second Further Notice correctly treats 'red tagging' and non-compliance as separate issues").

[162] *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8.

[163] *Id.* at 780, para. 8.

[164] *Id.* at 780-81, para. 8.

clarification in the *Second Further Notice*.[165] Because the Commission found "significant disagreement between utilities and attachers" regarding what constitutes "necessitated solely" for purposes of a pole replacement, it sought comment in the *Second Further Notice* on whether it should codify a definition of "necessitated solely" for the purposes of section 1.1408(b) of our rules and, if so, what that definition should be.[166]

46. Although we decline to codify a definition of the term "necessitated solely" as it relates to pole replacements,[167] we clarify the situations in which a pole replacement is not "necessitated solely" by an attachment request because the pole already requires replacement.[168] In the *2021 Pole Replacement Declaratory Ruling*, the Bureau used the examples of a pole being "red tagged" and a pole being out of compliance with current safety and utility construction standards.[169] To help utilities and attachers better understand when, under our cost-causation principles, a pole replacement is *not* "necessitated solely" by an attachment request, we provide the following additional examples: at the time an attachment request is made, (1) a pole replacement is required pursuant to applicable law;[170] (2) the current pole fails applicable engineering standards, such as those contained in the NESC;[171] (3) a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole;[172] (4) the pole is required to be replaced due to road expansion or moves, property development, in connection with storm hardening, or similar government-imposed requirements;[173] or (5) the current pole already is on the utility's internal replacement schedule, regardless of when the replacement is scheduled to take place.[174] Note that these examples are not exhaustive, but are illustrative examples to help the

[165] *Second Further Notice*, 37 FCC Rcd at 4147, para. 7.

[166] *Id.* at 4147, 4148, paras. 8, 10; *see also* Dominion/Xcel Reply at 20-21.

[167] Because pole replacements already are covered by section 1.1408(b), it is not necessary to codify a definition of "necessitated solely" for that purpose. *See 2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780-81, para. 8; *see also* Edison Electric Institute Comments at 19 (arguing against defining "necessitated solely").

[168] *See* Crown Castle Comments at 22 (stating that "the Commission should make clear that a safety violation is not the lone scenario for which sole cost responsibility for pole replacement may fall on the pole owner").

[169] *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 780, para. 8.

[170] *See, e.g.*, AT&T Comments at 15 (citing pole replacements necessitated by state and local requirements, such as road expansion or moves, or property development); NCTA Dec. 5, 2023 *Ex Parte* at 2; *see also* Altice Dec. 1, 2023 *Ex Parte* at 2 (requesting that pole replacements due to storm hardening requirements also be specified as "not necessitated solely" by a new attachment); USTelecom Dec. 5, 2023 *Ex Parte* at 2.

[171] Dominion/Xcel Reply at 21 (arguing that "a replacement or modification of a pole owner's facility or attachment is 'necessitated solely' as a result of a third party's attachment or modification request unless, at the time that the third party's request is made (i) replacement or modification of the pole owner's facility or attachment is required pursuant to the NESC or other applicable law or code; or (ii) the requested pole was already placed in queue for immediate replacement").

[172] Crown Castle Dec. 5, 2023 *Ex Parte* at 2 (stating that "a pole replacement is not 'necessitated solely' by a new attacher . . . where a pole replacement is required due to a utility changing its construction standard after the pole is constructed"). For instance, if a utility has "grandfathered' a pole from compliance with its updated construction standards, a pole replacement to bring that pole into compliance with those updated standards would not be "necessitated solely" by an attacher's request to attach to that pole.

[173] NCTA Dec. 5, 2023 *Ex Parte* at 2; *see also* Altice Dec. 1, 2023 *Ex Parte* at 2 (requesting that pole replacements due to storm hardening also be specified as "not necessitated solely" by a new attachment).

[174] Some commenters ask that the "replacement schedule" example be limited to poles that are scheduled for replacement in the "immediate future." *See* Electric Utilities June 26, 2023 *Ex Parte* at 4 (noting that "if a pole attachment application includes poles that have been identified by an electric utility as needing immediate replacement, the electric utility—and not the new attacher—bears the cost of replacing those poles"); Dominion/Xcel Reply at 21. We decline to adopt such a limitation, finding instead that when a pole has been

(continued….)

parties apply our "necessitated solely" cost-causation principle.[175] These examples also appear to be consistent with some commenter proposals and the practices of some commenters in the record.[176]

47. We disagree with Charter and the Electric Utilities that the "necessitated solely" cost-causation language in section 1.1408(b) does not apply to pole replacements.[177] We agree with the Bureau's analysis in the *2021 Pole Replacement Declaratory Ruling* that the cost-allocation and cost-causation provisions in section 1.1408(b) must be read together and, when doing so, stand for the proposition that "parties benefitting from a modification share proportionately in the costs of that modification, unless such a modification is necessitated solely as a result of an additional or modified attachment of another party, in which case that party bears the costs of the modification."[178] As a result, when specifically applied to pole replacements, the Bureau found that "it would be contrary to the Commission's rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement . . . at the time a request for a new or modified attachment is made. Even if the new attacher might 'benefit' from that pole replacement, the pole replacement is not 'necessitated solely as a result' of the new attachment, and therefore the utility may not use the cost-causation language of section 1.1408(b) to impose all make-ready costs of that pole replacement on the new attacher."[179] The Bureau based its application of both the cost-causation and cost-allocation language of section 1.1408(b) to pole replacements on Commission precedent dating back to the 1996 *Local Competition Order*,[180] and we continue to follow that precedent here.[181]

---

scheduled to be replaced by a utility, a subsequent new attachment request does not solely necessitate the replacement of the scheduled-to-be-replaced pole. *Accord* NCTA Comments at 20 (arguing to include in the definition of "red tagged" those poles that already have been designated for replacement at the time of the pole attachment application); Altice Dec. 6, 2023 *Ex Parte with Attachment*, Attach. 1 at 5.

[175] We decline, however, to include the following examples requested by Altice and NCTA: (1) if "the pole owner determines that the removed pole is unsalvageable, such that it cannot be reused for the same purpose in another location or sold for reuse"; (2) the pole is fully depreciated; or (3) the pole is older than 30 years. Altice Dec. 6, 2023 *Ex Parte with Attachment*, Attach. 1 at 5; NCTA Dec. 5, 2023 *Ex Parte* at 2. We find that these examples are not germane to whether a pole must be replaced at the time a new attachment request is made. USTelecom Dec. 6, 2023 *Ex Parte* at 6 (noting that these examples "will only serve to confuse, rather than clarify, matters" and "are incompatible with th[e] general overarching standard").

[176] *See* Dominion/Xcel Reply at 21; Dominion Energy June 14, 2023 *Ex Parte* at 2-3 (noting that "each pole within the Company's pole plant is inspected on a 12-year cycle, in accordance with the then-current NESC standards. If any pole is determined upon inspection not to be in safe and serviceable condition, it will be identified for replacement or restoration at the time of inspection. Additionally, any pole that is not likely to remain in safe and serviceable condition for the entire next inspection cycle (*i.e.*, for the 12 years that follow the date of inspection) will be identified for replacement or restoration at the time of inspection."); AT&T Comments at 15; ACA Connects Comments at 22-23.

[177] Charter Comments at 32-33; Electric Utilities Dec. 4, 2023 *Ex Parte* at 3.

[178] *2021 Pole Replacement Declaratory Ruling*, 36 FCC Rcd at 779-80, para. 7.

[179] *Id*. at 780-81, para. 8.

[180] *Id*. at 779-80, paras. 7-8 nn.22-23.

[181] *Id.* at 779-80 n.22 (citing *Local Competition Order*, 11 FCC Rcd at 16077, 16096, paras. 1166, 1211 ("[I]f . . . a cable operator seeks to make an attachment on a facility that has no available capacity, the operator would bear the full cost of modifying the facility to create new capacity, such as by replacing an existing pole with a taller pole. Other parties with attachments would not share in the cost, unless they expanded their own use of the facilities at the same time."); *id.* at 779 n.21 (citing *Local Competition Order*, 11 FCC Rcd at 16077, para. 1166 ("If the electric utility decides to change a pole for its own benefit, *and no other parties* derive a benefit from the modification, then the electric company would bear the full cost of the new pole." (emphasis added)); *id.* at 780 n.23 (citing *Local Competition Order*, 11 FCC Rcd at 16075-77, 16091, paras. 1161, 1163, 1166, 1200 ("When a utility cannot accommodate a request for access because the facility in question has no available space, it often must modify the facility to increase its capacity . . . . A utility pole filled to capacity often can be replaced with a taller pole.")).

48. We also disagree with the Electric Utilities that the phrase "necessitated solely" should be eliminated from section 1.1408(b) because of the confusion caused by use of the term.[182] The term "necessitated solely" is a key element in determining the causer of pole modification and replacement costs, and its use is consistent with the existing practices of certain electric and incumbent LEC pole owners.[183] For example, Dominion Energy has noted that a pole replacement is not "necessitated solely" by a new attachment request if the pole "is determined upon inspection not to be in safe and serviceable condition" or if the pole "is not likely to remain in safe and serviceable condition for the entire next inspection cycle (i.e., for the 12 years that follow the date of inspection)."[184] However, we agree with USTelecom that, based on cost causation principles, "the prospective attacher is responsible for the incremental cost of a taller or stronger pole needed to support its new facilities, not the cost to replace the defective or deteriorated pole with an equivalent-sized replacement pole" since the new attachment request solely necessitates the need for an incrementally taller or stronger pole.[185] We also clarify, as requested by Crown Castle, that the prospective attacher is generally not responsible for the make-ready costs associated with installing the replacement pole in this scenario,[186] unless the utility can sufficiently document that there are incremental make-ready costs specifically associated with having to install a stronger or heavier pole to accommodate the new attachment, in which case the utility is permitted to charge the prospective attacher for such incremental make-ready costs.

49. *Right-of-Way and Easement Information.* Crown Castle and ExteNet request that we require utilities to provide attachers with specifics about the utilities' rights-of-way or easements related to property where the poles covered by an attachment application are located.[187] They base this request on section 224(f) of the Act,[188] which requires utilities to grant access to their easements and rights-of-way, and the Commission's previous determination that an attacher's right of access to utility poles is limited by the scope of the utility's easement under state law.[189] An attacher therefore must be able to evaluate these easements to determine their scope; however, some utilities reportedly refuse to provide

[182] Electric Utilities Comments at 24-26.

[183] *See, e.g.*, Dominion Energy June 14, 2023 *Ex Parte* at 2-3 ("All costs incurred by DEV in connection with its scheduled inspection, restoration, and replacement of poles are borne solely by DEV, and are not apportioned to third-party attachers."); Edison Electric Institute May 8, 2023 *Ex Parte* at 3 ("Xcel Energy and FirstEnergy explained that it is their practice to bear the expense of replacing poles that have been red tagged or have otherwise already been identified for replacement at the time an attachment request is received."); Electric Utilities June 26, 2023 *Ex Parte* at 4; USTelecom June 29, 2023 *Ex Parte* at 1 (explaining that if a pole fails inspection and must be replaced, "its members do not delay replacement of such poles" and that "[i]f the replacement is pending when USTelecom members receive an application from a prospective attacher" or "if USTelecom members learn during the survey stage that the pole requires replacement due to defect or deterioration," its members "bear the cost to replace the defective or deteriorated pole with a pole of like height and class").

[184] Dominion Energy June 14, 2023 *Ex Parte* at 2; *see also* Electric Utilities June 26, 2023 *Ex Parte* at 4 (stating that "if a pole attachment application includes poles that have been identified by an electric utility as needing immediate replacement, the electric utility—and not the new attacher—bears the cost of replacing those poles"); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3.

[185] USTelecom June 29, 2023 *Ex Parte* at 1; Letter from Morgan Reeds, Director, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Oct. 6, 2023) ("USTelecom stated that the Commission could clarify that, in this scenario, the pole owner is responsible for the cost to replace the deteriorated or defective pole with a pole of similar height and class, and the new attacher is only responsible for the incremental cost associated with the need for a taller or stronger pole to support its facilities."); Edison Electric Institute Dec. 1, 2023 *Ex Parte* at 3.

[186] *See* Crown Castle Dec. 5, 2023 *Ex Parte* at 2.

[187] ExteNet Comments at 8; Crown Castle Reply at 24-25; Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 4-5.

[188] 47 U.S.C. § 224(f).

[189] *Local Competition Order*, 11 FCC Rcd at 16082, para. 1179 (1996) (subsequent history omitted).

copies of their easements on private property.[190] We thus clarify that in order to enable attachers to effectuate their right of access under section 224(f) of the Act, utilities must provide potential attachers with a copy of a utility's easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement. In making this clarification, we find that the section 224(f) right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher; it does not require the utility to alter the underlying easement or act in contravention of state law.

50. *Large Orders*. Finally, given concerns raised in the record,[191] we clarify that when an application is submitted requesting access to more than the lesser of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in section 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do.[192] We find this interpretation of our rules to be reasonable and consistent with the Commission's goal of promoting broadband deployment. We recognize that implementing the approach set forth in these clarifications, if not properly coordinated between attachers and utilities, could result in inefficiencies,[193] and we therefore strongly encourage parties to engage in mutually beneficial negotiations with the aim of balancing the challenges inherent in processing large applications and the needs of attachers for speedy deployment.

51. Several parties also proposed that the Commission adopt rules in the Fourth Report and Order that establish maximum timelines for large orders currently subject to section 1.1411(g)(4) of the Commission's rules,[194] which does not specify a make-ready timeline, but instead requires utilities to "negotiate in good faith" on a make-ready timeline.[195] While we recognize the importance of facilitating the deployment of large orders, we decline to adopt make-ready timelines for such orders at this time, finding the record insufficient to establish workable make-ready timelines for large orders especially given that the needs of utilities and attachers may vary greatly depending on the size of the application.[196] We thus instead seek comment on the timeline for large orders in the Further Notice below in order to develop a more fulsome record before we take further action on this issue.[197] While the Commission

[190] Crown Castle Dec. 6, 2023 *Ex Parte*, Attach. A at 5.

[191] *See* Charter Comments at 59; INCOMPAS Dec. 7, 2023 *Ex Parte* at 3-4; NCTA Dec. 5, 2023 *Ex Parte*, Attach. A at 4.

[192] 47 CFR § 1.411(g)(3).

[193] *See* USTelecom Dec. 6, 2023 *Ex Parte* at 8.

[194] 47 CFR § 1.411(g)(4).

[195] NCTA Dec. 5, 2023 *Ex Parte* at 4; *see also* Letter from John Windhausen, Jr., Exec. Dir., Schools, Health & Libraries Broadband (SHLB) Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Dec. 5, 2023) (SHLB Dec. 5, 2023 *Ex Parte*); NCTA Dec. 8, 2023 *Ex Parte*, Attach. A at 5-6; Letter from Robert Branson, Pres. & CEO, Multicultural Media and Internet Council, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 6, 2023); Letter from Reginal J. Leichty, Counsel for Consortium for School Networking and the State Educational Technology Directors Association, to Marlene H. Dortch, Secretary, FCC, Docket No. 17-84, at 1 (filed Dec. 7, 2023).

[196] *See* USTelecom Dec. 6, 2023 *Ex Parte* at 8 (stating that "based on USTelecom members' experience as both pole owners and attachers, a detailed factual record must be developed on the real-world ramifications associated with these issues before the Commission could address any specific proposals"). To reflect the Commission's commitment to continuing to examine additional ways to further broadband deployment, as requested by INCOMPAS, we set defined comment and reply comment dates of February 13 and 28, 2024. *See* INCOMPAS Dec. 7, 2023 *Ex Parte* at 4.

[197] *See* USTelecom Dec. 6, 2023 *Ex Parte* at 8; *see also* INCOMPAS Dec. 7, 2023 *Ex Parte* at 4 (noting that INCOMPAS "intends to recommend specific timelines for large pole orders in its comments in this proceeding").

considers timelines for large orders subject to the requirement in section 1.1411(g)(4), we make clear that a utility's obligation to "negotiate in good faith" regarding the timing of such requests necessarily implies an obligation by the utility to exercise reasonable efforts to accommodate the attachment needs, and utilities may not indefinitely delay or refuse to provide make-ready timelines in cases where section 1.1411(g)(4) applies.[198]

V. FURTHER NOTICE OF PROPOSED RULEMAKING

52. We recognize that Congress has undertaken a number of initiatives allocating funding to further the deployment of broadband to unserved and underserved areas of the United States.[199] In connection with this funding, broadband providers will have to deploy extensive facilities. This, in turn will require that they file significant numbers of applications seeking to attach these facilities to large numbers of poles.[200] To that end, we seek comment on ways to further facilitate the approval process for pole attachment applications and make-ready to enable speedier broadband deployment. In seeking comment on these areas, we emphasize that even when there is not a specific Commission rule or policy that governs a particular situation, it is our expectation that parties negotiate in good faith to resolve issues that may arise.

53. *Large Orders*. We tentatively conclude that we should adopt a defined make-ready timeline for orders that exceed 3,000 poles or 5 percent of the utility's poles in a state in order to facilitate the processing of pole attachment applications that are submitted in large numbers. We seek comment on this tentative conclusion. Our current make-ready rule requires make-ready in the communications space to be completed within 30 days after the utility sends a notification to all existing attachers on a pole.[201] The 30-day timeframe applies for communications space make-ready requests up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.[202] This make-ready timeframe is extended 45 extra days for requests up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state.[203] For requests exceeding 3,000 poles or 5 percent of the utility's poles in the state, the Commission's rules require that a utility shall negotiate the timing of the make-ready in good faith.[204] We tentatively

---

[198] *See* NCTA Dec. 5, 2023 *Ex Parte*, Attach. A at 4.

[199] *See, e.g.*, *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686 (2020) (established an auction framework to distribute up to $20.4 billion in support for connecting millions more homes and small businesses in rural areas to broadband networks); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 905(c), 134 Stat. 1182 (2020), as amended by the Infrastructure Act, § 60201 (providing up to $3 billion in funding for NTIA's Tribal Broadband Connectivity Fund); American Rescue Plan Act of 2021, § 604 Pub. L. No. 117-2, 135 Stat. 4 (2021) (granting $10 billion to the U.S. Treasury Department to allocate via its Capital Projects Fund to eligible governments to carry out critical capital projects that directly enable work, education, and health monitoring, including high-quality and affordable broadband infrastructure and digital connectivity projects); U.S. Dept. of Agriculture, Rural Development, *Telecom Programs*, Telecom Programs | Rural Development (usda.gov) (last visited Nov. 20, 2023) (various loan and grant funding programs for rural broadband infrastructure projects under the U.S. Department of Agriculture's Rural Utilities Service); Infrastructure Act, § 60401 (establishing grants for middle mile infrastructure); *id.* § 60502 (providing $14.2 billion to establish the Affordable Connectivity Program).

[200] *See, e.g.*, NCTA Comments at 28; Charter Comments at 58-59; Coalition of Concerned Utilities Reply at 18 (stating that "for large projects to provide broadband to unserved parts of the country, a carefully developed cooperative process is necessary that is managed by a healthy relationship between pole owners and attachers").

[201] 47 CFR § 1.1411(e)(1)(ii). The rule provides 90 days from attachments above the communications space. 47 CFR § 1.1411(e)(2)(ii).

[202] 47 CFR § 1.1411(g)(1).

[203] 47 CFR § 1.1411(g)(3).

[204] 47 CFR § 1.1411(g)(4). As we clarify in the Declaratory Ruling above, the first 3,000 poles of these large orders are subject to the timeline set forth in section 1.1411(g)(3).

conclude that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state and seek comment on this tentative conclusion.[205]

54. NCTA asserts that our rules do not at present sufficiently address the needs of attachers with these larger requests in the latter category.[206] For example, NCTA asserts that its members have faced situations where the utilities have imposed limits on (1) the number of poles that may be included in any one application, and (2) the number of applications an attacher may submit at a time.[207] NCTA states that these limitations "create problematic delays and jeopardize operators' ability to meet broadband build-out commitments."[208] At the same time, USTelecom notes the difficulties presented by these very large orders, noting that "make-ready requests involving more than 3,000 poles require flexibility that make-ready timelines cannot provide, given the many outside factors that impact the time required for make-ready for such large orders, including permitting delays, workforce shortages and staffing issues, and the coordination required among all the attachers to the poles."[209] Given these factors, would 90 additional days over the timeline set forth in section 1.411(e) be sufficient for processing these larger orders? Would some other amount of time be reasonable in all circumstances, or should the Commission create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles? If the Commission were to adopt additional make-ready timeline tiers, what would be an appropriate cut off number of poles for each tier? For instance, should the Commission add an additional number of days for application processing per 3,000 poles? Does the ability to deviate from the timelines specified in section 1.1411[210] provide utilities with enough flexibility such that imposing a 90 additional day limit would be reasonable?

55. We also seek comment on NCTA's proposal that the Commission revise its rules to prohibit utilities from limiting "the size of an application or the number of poles included in an application so as to avoid the timelines."[211] How prevalent are situations of the type described by NCTA? Are the reasons underlying utilities' imposition of such limitations as laid out by USTelecom valid, and do other reasons exist for these limitations?[212] Would prohibiting utilities from imposing such limitations

[205] *See* NCTA Dec. 7, 2023 *Ex Parte*, Attach. A at 6.

[206] *See* NCTA Comments at 28; *see also* INCOMPAS Dec. 7, 2023 *Ex Parte* at 3-4; SHLB Dec. 5, 2023 *Ex Parte* at 2.

[207] NCTA Comments at 28.

[208] *Id.* at 28.

[209] USTelecom Dec. 6, 2023 *Ex Parte* at 8.

[210] *See* 47 CFR § 1.1411(h).

[211] *Id.* at 29.

[212] Coalition of Concerned Utilities at 18 (noting that the processing of attachment applications for large projects requires attachers (and utilities) "to plan well in advance, and coordinate well in advance with utility pole owners, to develop a process whereby sufficient time is allotted for pole inventory to be increased, sufficient time is allotted for engineering and construction crews to become mobilized and committed, sufficient time is allotted to receive all necessary local permits, sufficient time is allotted to plan and conduct necessary service outages affecting electricity customers, sufficient time is allotted to address electric utility safety and reliability concerns, and sufficient time is allotted in anticipation of seasonal and other weather events"); AT&T Reply at 34 (stating that "the volume of applications, and poles or conduit they implicate, fluctuates significantly over time and by location, creating manpower challenges, especially when multiple large orders are received"); Charter Comments at 59 (noting that the purpose of the rules surrounding the processing of large attachment orders "is to ensure that pole owners are not overwhelmed and held to impossible standards," but "not to throttle the pace of broadband deployment"); Electric Utilities Reply at 28-29 (noting that "where delays occur under high-volume applications, it is due to the fact that labor and materials are finite resources"); Edison Electric Institute Reply at 38-39 ("The challenges related with reviewing applications for large pole attachment orders are even more complex than those related to smaller projects due to the number of poles involved and the type of attachments required.").

in fact speed up the attachment process, or would the same delays still exist for other reasons (e.g., lack of qualified workers, shortages in materials, etc.)[213] or even, as USTelecom alleges, "ultimately slow—rather than—accelerate deployment"?[214] Specifically, NCTA proposes adding additional time to the existing timelines for these "larger" orders,[215] for which our rules require that utilities negotiate the timing in good faith.[216] Would NCTA's proposed new timing requirements for larger orders facilitate the pole attachment process for such orders? Utilities have raised multiple concerns with such requirements.[217] For example, they assert that compliance with expanded timelines may not be possible "if many permit applications by multiple attachers are submitted at approximately the same time, or if the contractor's workload is already heavy."[218] They also assert that given constraints on workforce availability, utilities would be forced to "choose between providing safe, reliable and affordable power to electric customers (which is mandated by the states), and performing requested pole replacements in an unreasonable and likely unattainable amount of time."[219] Are these concerns valid? Are there any other reasons why NCTA's proposed new timing requirements for larger orders would not work? What are the respective costs and benefits of such potential requirements? What other steps could we take to facilitate the pole attachment process for larger orders?

56. *Self-help and Use of Contractors.* Should the Commission consider modifying its self-help rules to enable prospective attachers to access poles more quickly? NCTA also asserts that it has faced issues with utilities failing to process attachment applications in a timely manner.[220] NCTA therefore proposes that utilities notify attachers in advance of survey and make-ready deadlines if the utility will be unable to complete a portion of the process.[221] For instance, NCTA proposes that the utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period so that the attacher can elect self-help for the survey sooner.[222] NCTA also proposes making self-help available for the estimate process, which is not contemplated under current

[213] Coalition of Concerned Utilities Reply at 18 (arguing that creating new timelines for processing large attachment orders "would have the opposite effect that NCTA and Charter would like"); Electric Utilities Reply at 32-33 (noting that "electric utilities will typically impose limitations on the number of poles that can be included within an application, and these smaller applications can then be allocated across multiple contractors depending on their capacity for work. This practice does not hinder broadband deployment as NCTA contends; instead, it promotes broadband deployment by enabling electric utilities to assign the survey and make-ready work out in a much more efficient manner (than just sending a large application to a single contractor."); Edison Electric Institute Reply at 39 (noting that "prescribing more a more stringent the application review process, especially for larger projects, can cause greater concerns, including but not limited to those related to significant safety and compliance problems").

[214] USTelecom Dec. 6, 2023 *Ex Parte* at 8.

[215] NCTA Comments at 31; NCTA Dec. 7, 2023 *Ex Parte*, Attach. A at 6.

[216] 47 CFR § 1.1411(g)(4).

[217] *See, e.g.*, Edison Electric Institute Reply at 38-40; Coalition of Concerned Utilities Reply at 18; Electric Utilities Reply at 36-37.

[218] Edison Electric Institute Reply at 38-39; *see also* Electric Utilities Reply at 36-37; USTelecom Dec. 6, 2023 *Ex Parte* at 8.

[219] Coalition of Concerned Utilities Reply at 18.

[220] *See* NCTA Comments at 31-32.

[221] *Id.* at 32.

[222] *See id.* at 40.

Commission rules.[223] We seek comment on NCTA's proposal.[224] How prevalent is the issue cited by NCTA? Can utilities feasibly be required to inform attachers within 15 business days of receiving a completed application that they will be unable to conduct a survey, estimate, or make-ready within the required time period? Do sufficient contractors exist that meet the minimum qualification requirements set forth in our rules[225] such that adoption of NCTA's proposal would have the desired effect of speeding broadband deployment? What are the respective costs and benefits of adopting NCTA's proposal? Are there other ways to assist utilities in processing the larger number of applications they will likely receive in the coming months and years based on the funding initiatives in place for accelerating broadband deployment to unserved and underserved areas?

57. We also seek comment on the impact of contractor availability when attachers seek to use their own contractors when conducting self-help or one-touch make-ready for surveys and make-ready work. Specifically, do we need to amend the Commission's rules to make it easier for attachers to use their own contractors to do self-help and one-touch make-ready surveys and make-ready work when there are no contractors available from a utility list? Utility commenters point out the labor constraints in the contractor workforce;[226] given such constraints, do our current rules provide adequate relief to attachers to timely identify and use qualified contractors to do self-help and one-touch make-ready work? If not, what can the Commission do to change this dynamic?

58. Pursuant to our rules, an attacher can do its own work when (1) completing surveys and make-ready work when the utility misses the deadlines for these activities, or (2) electing to use the one-touch make-ready process.[227] When conducting self-help or one-touch make-ready work, the attacher must use a utility-approved contractor.[228] For self-help surveys and make-ready work that is complex[229] or is above the communications space on a pole, our rules require that a utility make available and keep up to date a reasonably sufficient list of contractors that it authorizes to perform such work.[230] Attachers can request to add contactors to the utility's list—provided the contractor meets the minimum qualifications in the Commission's rules[231]—and the utility cannot unreasonably withhold its consent.[232]

---

[223] *See id.*

[224] We decline NCTA's request to adopt rules in the Fourth Report and Order regarding self-help and the use of contractors. NCTA Dec. 5, 2023 *Ex Parte* at 4-5. We find that these issues would be better addressed after a more comprehensive record is developed.

[225] 47 CFR § 1.1412(c).

[226] Dominion-Xcel Reply at 49; Electric Utilities Reply at 29; Edison Electric Institute Reply at 39 ("From a practical standpoint, there may also simply not be enough qualified additional workers to hire. There is currently a shortage of properly trained technicians to do supply space line work. Training additional workers is not an easy task.").

[227] 47 CFR §§ 1.1411(i)-(j). Note that there are no attacher self-help remedies for pole replacements. *Id.* § 1.1411(i)(3).

[228] 47 CFR § 1.1412(a)-(b).

[229] The term "complex make-ready" means transfers and work within the communications space on a pole that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex. 47 CFR § 1.1402(p).

[230] 47 CFR § 1.1412(a).

[231] *See* 47 CFR § 1.1412(c).

[232] 47 CFR § 1.1412(a); *2018 Wireline Infrastructure Order*, 33 FCC Rcd at 7725, 7757, paras. 38, 107 ("To be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.").

Further, a utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready.[233] If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work.[234] Again, attachers may request the addition to the list of any contractor that meets the minimum qualifications in the Commission's rules, and the utility cannot unreasonably withhold its consent.[235] However, if the utility does not provide a list of approved contractors for surveys or simple make-ready work or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor who meets the Commission's minimum requirements.[236] Utilities retain the right to disqualify such contractor, but disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the Commission's minimum qualifications or to meet the utility's publicly available and commercially reasonable safety or reliability standards.[237] The utility must provide notice of this objection to the attacher and must identify at least one available qualified contractor that the attacher can use instead to perform simple surveys and make-ready work.[238]

59. Given that our current rules allow for attachers to choose their own contractors for one-touch make-ready and for self-help when the utility fails to meet the Commission's deadlines (provided such contractors meet the minimum qualifications set forth in our rules), we seek comment on whether attachers are availing themselves of this option. Have attachers faced any obstacles from utilities when seeking to invoke this option? While a utility cannot be blamed for a lack of available contractors in an area due to workforce constraints, are utilities seeking to use their discretion set forth in the rules to disqualify otherwise-qualified contractors whom attachers may seek to bring in from outside of an area? We note that, at least for surveys and simple make-ready work, our current rules already require the utility to designate an available contractor if it properly exercises its discretion to disqualify one chosen by an attacher[239]—is this not being done? If not, is it due to labor constraints for which the utility should not be held responsible? In the instance where no qualified contractors are available for a project, how could the Commission help to solve that problem?

VI. PROCEDURAL MATTERS

60. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[240] 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."[241] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Fourth Report and Order on small entities. The FRFA is set forth in Appendix C.

61. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in the Further Notice on small entities. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. Comments must be filed by the

[233] 47 CFR § 1.1412(b).

[234] *Id.*

[235] 47 CFR §§ 1.1412(b)-(c).

[236] 47 CFR §§ 1.1412(b)-(c).

[237] 47 CFR § 1.1412(b)(2).

[238] *Id.*

[239] *Id.*

[240] 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).

[241] 5 U.S.C. §§ 605(b).

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.

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

63. *Paperwork Reduction Act*. This document may contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Specifically, the rules adopted in 47 CFR §§ 1.1411, 1.1415, and 1.1416 may require new or modified information collections. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the information collection burdens on small entities.[242]

64. The Further Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.[243] 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,[244] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[245]

65. *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.

66. *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

[242] *See infra* Appx. C at paras. 60-61.

[243] Pub. L. No. 104-13.

[244] Pub. L. No. 107-198.

[245] 44 U.S.C. § 3506(c)(4).

Commission's Electronic Comment Filing System (ECFS) or by paper. Commenters should refer to WC Docket No. 17-84 when filing in response to the 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.[246]
- 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.

67. *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.[247] Accordingly, the Commission will publish the required summary of this Further Notice of Proposed Rulemaking on https://www.fcc.gov/proposed-rulemakings.

68. *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).

69. *Contact Person.* For further information about this proceeding, please contact Michele Berlove, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-1477, or michele.berlove@fcc.gov, or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418-0357 or michael.ray@fcc.gov.

VII. ORDERING CLAUSES

70. Accordingly, IT IS ORDERED that pursuant to sections 1-4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 201, 202, 224, and 303(r), the Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking hereby IS ADOPTED and Part 1 of the Commission's Rules, 47 CFR Part 1, IS AMENDED as set forth in Appendix A.

71. IT IS FURTHER ORDERED that the Fourth Report and Order shall become effective 30 days after publication in the Federal Register, except that the amendments to section 1.1411(c)(4) and new section 1.1415, 47 CFR §§ 1.1411(c)(4), 1.1415, which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements 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 section 1.1411(c)(4) and new section 1.1415 by subsequent Public Notice.

---

[246] *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.

[247] 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.

72. IT IS FURTHER ORDERED that the Declaratory Ruling and the obligations set forth therein ARE EFFECTIVE upon release of this document.

73. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Fourth Report and Order will commence on the date that a summary of this Fourth Report and Order is published in the Federal Register, and the period for filing petitions for reconsideration or petitions for judicial review of this Declaratory Ruling will commence upon release of this document.

74. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Fourth Report and Order, Declaratory Ruling, and Third 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.

75. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Fourth 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 part 1 of Title 47 of the Code of Federal Regulations as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.1411 by adding paragraph (c)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(c) * * *

(4) ***Information from cyclical pole inspection reports.***

(i) Upon submitting its attachment application, a new attacher may request in writing that the utility provide, as to the poles covered by such attachment application, the information regarding those poles contained in the utility's most recent cyclical pole inspection reports, or, if available, any more recent pole inspection report. The utility shall provide the new attacher with this information within ten (10) business days of the new attacher's written request.

(ii) Utilities shall retain copies of their pole inspection reports, in the form they are created, until a superseding report covering the poles included in the attachment application is completed.

(iii) For purposes of this section, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility's normal pole inspection cycle.

(iv) After requesting and receiving pole inspection information from a utility related to poles covered by its application, a new attacher may amend an attachment application at any time until the utility grants or denies the original application.

(A) A utility that receives such an amended attachment application may, at its option, restart the 45-day period (or 60-day period for larger orders) for responding to the application and conducting the survey.

(B) A utility electing to restart the 45-day period (or 60-day period for larger orders) shall notify the attacher of its intent to do so within five (5) business days of receipt of the amended application or by the 45th day (or 60th day, if applicable) after the original application is considered complete, whichever is earlier.

* * * * *

3. Redesignate § 1.1415 as § 1.1416 to read as follows:

* * * * *

4. Add § 1.1415 to read as follows:

§ 1.1415 Dispute Resolution Procedures for Pole Attachment Disputes that Impede or Delay Broadband Deployment; Functions of the Rapid Broadband Assessment Team.

(a) An inter-Bureau team, to be known as the Rapid Broadband Assessment Team (RBAT), shall be established to prioritize and expedite the resolution of pole attachment disputes that are alleged to

impede or delay the deployment of broadband facilities and to provide coordinated review and assessment of such disputes. The RBAT shall consist of one or more staff from the Enforcement Bureau and one or more staff from the Wireline Competition Bureau. Senior staff in the Enforcement Bureau and the Wireline Competition Bureau shall designate individuals from their respective bureaus to serve on the RBAT.

(b) The RBAT shall prioritize the resolution of a pole attachment dispute that a party seeking RBAT review has alleged is impeding or delaying an active broadband deployment project, including where the party is also seeking placement of the dispute on the Accelerated Docket pursuant to § 1.736. The RBAT shall gather and promptly review all pertinent information submitted by the parties and shall have discretion to decide the most appropriate process for resolving the dispute, including recommending an RBAT-supervised mediation process pursuant to § 1.737, use of the Accelerated Docket, and/or other appropriate action. Although RBAT-supervised mediation is generally voluntary, the RBAT may require that the parties participate in pre-filing settlement negotiations or mediation under § 1.737 as a condition for including a matter on the Accelerated Docket. The RBAT may recommend to the parties use of the Accelerated Docket where it determines, based upon a totality of the criteria outlined in paragraph (e) of this section, that a complaint, or a portion of a complaint, is suitable for inclusion on the Accelerated Docket.

(c) A party to a pole attachment dispute, prior to filing a formal complaint, may request RBAT review and assessment of such dispute if the party believes the dispute is impeding or delaying the deployment of a broadband facilities project. The party seeking RBAT review and assessment shall first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) by phone and in writing of the request. The MDRD Chief shall direct the requesting party to the location of a form on the MDRD website—FCC-5653, Request for RBAT Review and Assessment—and to instructions for completing and electronically transmitting the form to the RBAT.

(d) Upon receipt of the completed Request for RBAT Review and Assessment, the RBAT shall schedule a meeting, through a manner of the RBAT's choosing, with all parties as soon as practicable. The RBAT may request a written response from the other party or parties to the dispute with respect to one or more issues raised by the party seeking RBAT review. The RBAT also may request that the party seeking RBAT review or any other party or parties to the dispute provide the RBAT with documentation or other information relevant to the dispute. In the initial meeting, or shortly thereafter, the RBAT shall provide guidance and advice to the parties on the most effective means of resolving their dispute, including RBAT-supervised mediation pursuant to § 1.737; use of the Accelerated Docket; and/or any other appropriate action. If the parties seek RBAT-supervised mediation, the MDRD Chief, in consultation with the RBAT, may waive the procedures or requirements of § 1.737 as appropriate in this context, or as needed in light of the facts or circumstances of a particular case.

(e) The RBAT shall have discretion to decide whether a complaint, or a portion of a complaint, involving a dispute that a party alleges to be impeding or delaying the deployment of broadband facilities is suitable for inclusion on the Accelerated Docket pursuant to § 1.736. In determining whether to accept a complaint, or a portion of a complaint, on the Accelerated Docket, the RBAT shall base its decision on a totality of the factors from the following list:

(1) whether the prospective complainant states a claim for violation of the Act, or a Commission rule or order that falls within the Commission's jurisdiction;

(2) whether the expedited resolution of a particular dispute or category of disputes appears likely to advance the deployment of broadband facilities or services, especially in an unserved or underserved area;

(3) whether the parties to the dispute have exhausted all reasonable opportunities for settlement

during any staff-supervised mediation;

(4) the number and complexity of the issues in dispute;

(5) whether the dispute raises new or novel issues versus settled interpretations of rules or policies;

(6) the likely need for, and complexity of, discovery;

(7) the likely need for expert testimony;

(8) the ability of the parties to stipulate to facts;

(9) whether the parties have already assembled relevant evidence bearing on the disputed facts;

(10) willingness of the prospective complainant to seek a ruling on a subset of claims or issues (*e.g.*, threshold or "test cases"); and

(11) such other factors as the RBAT, within its discretion, may deem appropriate and conducive to the prompt and fair adjudication of the complaint proceeding.

APPENDIX B

Proposed Rules

The Federal Communications Commission amends part 1 of Title 47 of the Code of Federal Regulations as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.1411 by revising paragraph (g)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(g) For the purposes of compliance with the time periods in this section:

* * *

(4) A utility may add 90 days to the make-ready periods described in paragraph (e) of this section to all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

APPENDIX C

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 *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Second Further Notice of Proposed Rulemaking* (*Second Further Notice*) released in March of 2022.[2] The Commission sought written public comment on the proposals in the *Second Further 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 Fourth Report and Order

2. In the *Fourth Report and Order*, the Commission adopts rules and policy changes that will make the pole attachment process faster and cheaper, particularly when poles have to be replaced during broadband buildouts. In the last five years, the Commission took significant steps in setting standards for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles,[4] with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments.[5] In the *Fourth Report and Order*, we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing telecommunications companies with information about the status of the utility poles they plan to use as they map out their broadband builds.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Second Further Notice* IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business

[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] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 4144, 4170, App. A (2022) (*Second Further Notice*).

[3] 5 U.S.C. § 604.

[4] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*2018 Wireline Infrastructure Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936 (WCB 2020) (*2020 Declaratory Ruling*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd 776 (WCB 2021) (*2021 Pole Replacement Declaratory Ruling*).

[5] Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. 47 U.S.C. § 224(c). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd 6724 (WCB 2022).

Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[6] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[7] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "mall 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]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[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 33.2 million businesses.[13]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[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

---

[6] 5 U.S.C. § 604(a)(3).

[7] *See id.* § 604(a)(4).

[8] *See id.* § 601(6).

[9] *See id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[10] *See* 15 U.S.C. § 632.

[11] *See* 5 U.S.C. § 601(3)-(6).

[12] *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).

[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 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

(continued….)

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]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[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]

---

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.

[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 -

(continued….)

1. Internet Access Service Providers

9. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[25] 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.[26] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[27] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[28] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[29] Of this number, 2,964 firms operated with fewer than 250 employees.[30]

10. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.[31] 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*,[32] we believe that the majority of wireline Internet access service providers can be considered small entities.

11. *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.[33] The SBA small business size standard for this industry classifies firms with

---

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] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[26] *See* 47 CFR § 1.7001(a)(1).

[27] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[28] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[29] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[30] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[31] *See* 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. 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.

[32] *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*).

[33] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

annual receipts of $35 million or less as small.[34] 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.[35] Of those firms, 1,039 had revenue of less than $25 million.[36] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

12. *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.[37] 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.[38] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[39] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[40]

13. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[41] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[42] Of this number, 2,964 firms operated with fewer than 250 employees.[43] 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.[44] Of these providers, the Commission estimates that 4,146

---

[34] *See* 13 CFR § 121.201, NAICS Code 517919.

[35] *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.

[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. 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.

[37] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[38] *Id.*

[39] *Id.*

[40] 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.

[41] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[42] *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.

[43] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[44] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022),
(continued….)

providers have 1,500 or fewer employees.[45] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *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[46] is the closest industry with an SBA small business size standard.[47] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[48] 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 4,590 providers that reported they were fixed local exchange service providers.[52] Of these providers, the Commission estimates that 4,146 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. *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[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

https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[45] *Id.*

[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[47] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[48] 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.

[49] *Id.*

[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.*

in this industry that operated 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 1,212 providers that reported they were incumbent local exchange service providers.[59] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[60] 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.

16. *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.[61] Wired Telecommunications Carriers[62] 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.[63] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[64] Of this number, 2,964 firms operated with fewer than 250 employees.[65] 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.[66] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[67] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications

---

[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.

[60] *Id.*

[61] 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.

[62] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[63] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[64] *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.

[65] *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.

[66] 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.

[67] *Id.*

Carriers[68] is the closest industry with an SBA small business size standard.[69] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[70] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[71] Of this number, 2,964 firms operated with fewer than 250 employees.[72] 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.[73] 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.

18. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers.[74] The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[75] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[76] Of this number, 2,964 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 20 providers that reported they were engaged in the provision of operator services.[78] Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.[79] Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

19. *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

---

[68] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[69] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[70] *Id.*

[71] *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.

[72] *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.

[73] 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.

[74] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[75] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[76] *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.

[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.

[79] *Id.*

providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers[80] is the closest industry with an SBA small business size standard.[81] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[82] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[83] Of this number, 2,964 firms operated with fewer than 250 employees.[84] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.[85] Of these providers, the Commission estimates that 87 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.

3. Wireless Providers—Fixed and Mobile

20. The broadband Internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services.[87] Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

21. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[88] 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.[89] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[90] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this

---

[80] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[81] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[82] *Id.*

[83] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&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] This includes, among others, the approximately 800 members of WISPA, including those entities who provide fixed wireless broadband service using unlicensed spectrum. *See* WISPA, *About WISPA,* https://www.wispa.org/About-Us/Mission-and-Goals (last visited June 27, 2019). We also consider the impact to these entities today for the purposes of this FRFA, by including them under the "Wireless Providers – Fixed and Mobile" category.

[88] *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.

[89] *Id.*

[90] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry that operated for the entire year.[91] Of that number, 2,837 firms employed fewer than 250 employees.[92] 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.[93] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[94] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[95] Wireless Telecommunications Carriers (*except* Satellite)[96] is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[97] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[98] Of this number, 2,837 firms employed fewer than 250 employees.[99] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[100]

24. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the

---

[91] *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.

[92] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[93] 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.

[94] *Id.*

[95] *See* 47 CFR §§ 27.1 – 27.1607.

[96] *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.

[97] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[98] *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.

[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] *See* 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

25. *1670–1675 MHz Services*. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.[101] Wireless Telecommunications Carriers (except Satellite)[102] is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[103] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[104] Of this number, 2,837 firms employed fewer than 250 employees.[105] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

26. According to Commission data as of November 2021, there were three active licenses in this service.[106] The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670-1675 MHz service band, a "small business" is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[107] The 1670-1675 MHz service band auction's winning bidder did not claim small business status.[108]

27. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

---

[101] *See* 47 CFR § 27.902.

[102] *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.

[103] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[104] *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.

[105] *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.

[106] Based on a FCC Universal Licensing System search on November 8, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[107] *See* 47 CFR § 27.906(a).

[108] *See 1670–1675 MHz Band Auction Closes; Winning Bidder Announced*; *FCC Form 600s Due May 12,2003,* Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

28. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[109] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[110] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[111] Of this number, 2,837 firms employed fewer than 250 employees.[112] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[113] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[114] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

29. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[115] The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).[116] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[117] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[118] Of this number, 2,837 firms employed fewer than 250 employees.[119] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

30. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.[120] The Commission's small business size standards with respect

---

[109] *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.

[110] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[111] *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.

[112] *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.

[113] 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.

[114] *Id.*

[115] *See* 47 CFR § 24.200.

[116] *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.

[117] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[118] *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.

[119] *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.

[120] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[121] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[122]

31. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

32. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite)[123] is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[124] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[125] Of this number, 2,837 firms employed fewer than 250 employees.[126] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers.[127] Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.[128] Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.[129]

---

[121] *See* 47 CFR § 24.720(b).

[122] *See* Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, https://www.fcc.gov/auctions.

[123] *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.

[124] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[125] *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.

[126] *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.

[127] 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.

[128] *Id.*

[129] We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

33. Based on Commission data as of December 2021, there were 3,924 active SMR licenses.[130] However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

34. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[131] Wireless Telecommunications Carriers (*except* Satellite)[132] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[133] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[134] Of this number, 2,837 firms employed fewer than 250 employees.[135] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

35. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[136] The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has

---

[130] Based on a FCC Universal Licensing System search on December 15, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match radio services within this group", Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[131] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44/factsheet, https://www.fcc.gov/auction/49/factsheet, https://www.fcc.gov/auction/60/factsheet.

[132] *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.

[133] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[134] *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.

[135] *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.

[136] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

average gross revenues not exceeding $3 million for the preceding three years.[137] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[138] twenty-six winning bidders claiming a small business classification won 214 licenses,[139] and three winning bidders claiming a small business classification won all five auctioned licenses.[140]

36. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

37. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.[141] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[142] Wireless Telecommunications Carriers (*except* Satellite)[143] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[144] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[145] Of that number, 2,837 firms employed fewer than 250 employees.[146] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be

[137] *See* 47 CFR § 27.702(a)(1)-(3).

[138] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[139] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[140] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

[141] *See* 47 CFR § 27.4.

[142] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73/factsheet. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[143] *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.

[144] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[145] *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.

[146] *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.

considered small.

38. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[147] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[148] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[149]

39. *Air-Ground Radiotelephone Service*. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.[150] A licensee may provide any type of air-ground service (i.e., voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.[151]

40. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[152] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[153] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[154] Of this number, 2,837 firms employed fewer than 250 employees.[155] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

41. Based on Commission data as of December 2021, there were approximately four

---

[147] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[148] *See* 47 CFR § 27.502(a).

[149] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

[150] 47 CFR § 22.99.

[151] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/65/factsheet.

[152] *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.

[153] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[154] *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.

[155] *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.

licensees with 110 active licenses in the Air-Ground Radiotelephone Service.[156] The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[157] In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.[158]

42. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

43. *3650–3700 MHz band*. Wireless broadband service licensing in the 3650-3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).[159] Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.[160] Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)[161] industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.[162] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[163] Of this number, 2,837 firms employed fewer than 250 employees.[164] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

44. The Commission has not developed a small business size standard applicable to 3650–

---

[156] Based on a FCC Universal Licensing System search on December 20, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[157] *See* 47 CFR § 22.223(b).

[158] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf.

[159] *See* 47 CFR §§ 90.1305, 90.1307.

[160] *See id.* § 90.1309.

[161] *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.

[162] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[163] *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.

[164] *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.

3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small Internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band.[165] However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

45. *Fixed Microwave Services.* Fixed microwave services include common carrier,[166] private-operational fixed,[167] and broadcast auxiliary radio services.[168] They also include the Upper Microwave Flexible Use Service (UMFUS),[169] Millimeter Wave Service (70/80/90 GHz),[170] Local Multipoint Distribution Service (LMDS),[171] the Digital Electronic Message Service (DEMS),[172] 24 GHz Service,[173] Multiple Address Systems (MAS),[174] and Multichannel Video Distribution and Data Service (MVDDS),[175] where in some bands licensees can choose between common carrier and non-common carrier status.[176] Wireless Telecommunications Carriers (*except* Satellite)[177] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[178] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[179] Of this number, 2,837 firms employed fewer than 250 employees.[180] Thus under the SBA size standard, the Commission

[165] Based on an FCC Universal Licensing System search on November 19, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[166] *See* 47 CFR Part 101, Subparts C and I.

[167] *See id*. Subparts C and H.

[168] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[169] *See* 47 CFR Part 30.

[170] *See* 47 CFR Part 101, Subpart Q.

[171] *See id*. Subpart L.

[172] *See id*. Subpart G.

[173] *See id*.

[174] *See id.* Subpart O.

[175] *See id*. Subpart P.

[176] *See* 47 CFR §§ 101.533, 101.1017.

[177] *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.

[178] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[179] *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.

[180] *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.

estimates that a majority of fixed microwave service licensees can be considered small.

46. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[181]

47. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

48. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"[182] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[183] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[184]

49. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[185] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[186] U.S. Census Bureau data for 2017 show that there were

[181] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[182] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

[183] *See* 47 CFR § 27.4; *see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[184] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[185] *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.

[186] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

2,893 firms that operated in this industry for the entire year.[187] Of this number, 2,837 firms employed fewer than 250 employees.[188] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

50. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[189] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[190] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[191] One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[192]

51. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[193] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small

---

[187] *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.

[188] *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.

[189] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[190] *See* 47 CFR § 27.1218(a).

[191] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.

[192] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[193] *See* 47 CFR § 27.1219(a).

business size standard.

4. Satellite Service Providers

52. *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."[194] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small.[195] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[196] Of this number, 242 firms had revenue of less than $25 million.[197] 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.[198] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[199] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

53. *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.[200] 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.[201] 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.[202] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[203] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry

---

[194] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[195] *See* 13 CFR § 121.201, NAICS Code 517410.

[196] *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.

[197] *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.

[198] 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.

[199] *Id.*

[200] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[201] *Id.*

[202] *Id*.

[203] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

that operated for the entire year.[204] Of those firms, 1,039 had revenue of less than $25 million.[205] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

5. Cable Service Providers

54. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

55. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[206] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[207] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[208] The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small.[209] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[210] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[211] Based on this data, the Commission estimates that a majority of firms in this industry are small.

56. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[212] Based on industry

---

[204] *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.

[205] *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.

[206] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[207] *Id.*

[208] *Id.*

[209] *See* 13 CFR § 121.201, NAICS Code 515210.

[210] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[211] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[212] 47 CFR § 76.901(d).

data, there are about 420 cable companies in the U.S.[213] Of these, only seven have more than 400,000 subscribers.[214] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[215] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[216] Of these, about 639 have more than 15,000 subscribers.[217] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

57. *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."[218] 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.[219] Based on industry data, only six cable system operators have more than 498,000 subscribers.[220] 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.[221] 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.

6. All Other Telecommunications

58. *Electric Power Generators*, *Transmitters*, *and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power.[222] Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation

---

[213] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[214] 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).

[215] 47 CFR § 76.901(c).

[216] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[217] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[218] 47 U.S.C. § 543(m)(2).

[219] *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).

[220] 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).

[221] 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).

[222] *See* U.S. Census Bureau, *2017 NAICS Definition, "Sector 22- Utilities, 2211 Electric Power Generation, Transmission and Distribution,"* https://www.census.gov/naics/?input=2211&year=2017&details=2211.

facility or the transmission system to the final consumer."[223] This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.[224]

59. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees.[225] U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year.[226] Of this number, 1,552 firms had less than 250 employees.[227] Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

60. In the *Fourth Report and Order*, we (1) establish a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) adopt a new requirement that utilities retain copies of their cyclical pole inspection reports and, upon request, provide prospective pole attachers with the information included in the most recent report regarding the poles affected by a prospective attacher's submitted attachment application. Our new requirements are minimally burdensome as they merely require (1) parties seeking to have complaints placed on the Accelerated Docket to submit a form to the newly-established Rapid Broadband Assessment Team (RBAT) that will elicit information relevant to the scope and nature of the dispute and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket, and (2) utilities to provide information they already collect in the normal course of business for cyclical pole inspection reports.

61. Parties seeking both RBAT review and assessment of a dispute that a party contends is impeding or delaying deployment of broadband facilities, and inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing. This initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under section 1.736(b). Additionally, the RBAT may require that the parties participate, if appropriate, in pre-filing settlement negotiations or mediation under rule 1.737 as a condition for including a matter on the Accelerated Docket. We amend our pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been "red tagged" by the utility for replacement, and the scheduled replacement date or timeframe. The record indicates that utilities already prepare such reports, making this new transparency requirement consistent with the existing practices.

---

[223] *See id.*

[224] *Id*.

[225] *See* 13 CFR § 121.201, NAICS Codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122.

[226] *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 2211, https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[227] *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.

For these reasons, we believe that small and other utilities will not have an issue complying with the new obligation.

62. 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 with the *Fourth Report and Order*. While some small entities may have some unique burdens, the Commission anticipates the requirements for pole attachment disputes and data collection by utility companies will have minimal cost implications because many of these obligations are consistent with existing Commission regulations to file disputes, and existing practices by utilities to prepare pole inspection reports.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. 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."[228]

64. The Commission took steps to minimize significant economic impact on small entities and considered alternatives to new rules and processes adopted in the *Fourth Report and Order* that may impact small entities. By establishing RBAT, we addressed commenters' request that we expedite the resolution of pole attachment disputes, the delay of which may impose greater harm on small providers.[229] In considering alternatives to the rules, we declined to adopt certain proposals that are burdensome, unnecessary, or would impose significant costs on utilities with little or no benefit to broadband deployment. For example, we agreed with utilities that they should not be required to gather and provide pole-related data for matters they do not track in the normal course of business through their inspections. We also declined to require that small and other utilities provide new attachers with information about poles prior to the attacher submitting an application because this data would be speculative and the build-out may never occur. Additionally, we declined to establish a single pole-information database or require each utility to create a database of all its poles. Similar to our prior decisions on this matter, the record demonstrates that the burdens and costs of creating such a database are considerable given that many utilities own or jointly own poles.[230] Further, the scope of pole data attachers seek exists in information from pole inspection reports we require small and other utility companies to provide in the *Fourth Report and Order*. We considered and declined to require small and other utilities to provide financial data regarding poles and attachment rates because this would be overly burdensome for the utilities. We also considered but declined to require small and other utilities to provide information on the age or condition of the poles, or number of current or pending attachment applications for each pole because it could be burdensome, unnecessary, or unfeasible in some cases, and would impose significant costs on utilities with little or no benefit to broadband deployment. Finally, we declined to require small and other utilities to provide more detailed supporting data in their make ready estimates because the current complaint process should be sufficient to address a potential dispute on this matter.

G. Report to Congress

65. The Commission will send a copy of the *Fourth Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the

[228] 5 U.S.C. § 604(a)(6).

[229] ACA Connects Comments at 8, 52.

[230] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245 & GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5280-81, para. 89. (2011).

Congressional Review Act.[231] In addition, the Commission will send a copy of the *Fourth Report and Order and Declaratory Ruling*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fourth Report and Order* (or summaries thereof) will also be published in the Federal Register.[232]

[231] 5 U.S.C. § 801(a)(1)(A).

[232] *See id*. § 604(b).

APPENDIX D

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 *Third 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. The *Further Notice* seeks comment on proposals that might further facilitate the pole attachment process. The *Further Notice* specifically seeks comment on the tentative conclusion that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. It also seeks comment on a proposal from NCTA that the Commission revise its rules to prohibit utilities from limiting "the size of an application or the number of poles included in an application so as to avoid the timelines."[4] The *Further Notice* also seeks comment on a proposal that the Commission "establish a maximum time for a pole owner to review projects of any size." The Further Notice also seeks comment on whether the Commission should create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles. Additionally, the Commission seeks comment on a proposal that a utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period so that the attacher can elect self-help for the survey sooner. NCTA also proposes making self-help available for the estimate process.[5] Finally, the *Further Notice* seeks comment on the impact of contractor availability when attachers seek to use their own contractors for conducting self-help or one-touch make-ready for surveys and make-ready work and whether to amend the Commission's rules to make it easier for attachers to use their own contractors to do self-help and one-touch make-ready surveys and make-ready work when there are no contractors available from a pole owner list.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1-4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 201, 202, 224, and 303(r).

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, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

---

[1]

[2] 5 U.S.C. § 603(a).

[3] *Id.*

[4] NCTA Comments at 28-32.

[5] *Id.* at 41.

[6] 5 U.S.C. § 603(b)(3).

organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

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.[10] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[11] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[12]

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."[13] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[14] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[15]

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

[7] *Id.* § 601(6).

[8] *Id*. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] 15 U.S.C. § 632.

[10] *See* 5 U.S.C. § 601(3)-(6).

[11] *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).

[12] *Id*.

[13] *See* 5 U.S.C. § 601(4).

[14] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number 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.

[15] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

districts, with a population of less than fifty thousand."[16] U.S. Census Bureau data from the 2017 Census of Governments[17] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[18] Of this number, there were 36,931 general purpose governments (county,[19] municipal, and town or township[20]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[21] with enrollment populations of less than 50,000.[22] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[23]

1. Internet Access Service Providers

8. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[24] 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.[25] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[26] The SBA small business size standard for this industry

[16] *See* 5 U.S.C. § 601(5).

[17] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[18] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[19] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[20] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[21] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[22] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[23] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

[24] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[25] *See* 47 CFR § 1.7001(a)(1).

[26] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

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]

9. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.[30] 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*,[31] we believe that the majority of wireline Internet access service providers can be considered small entities.

10. *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.[32] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[33] 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.[34] Of those firms, 1,039 had revenue of less than $25 million.[35] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

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

---

[27] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[28] *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.

[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] *See* 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. 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.

[31] *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*).

[32] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[33] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[34] *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.

[35] *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.

infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[36] 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.[37] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[38] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[39]

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[40] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[41] Of this number, 2,964 firms operated with fewer than 250 employees.[42] 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.[43] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[44] 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[45] is the closest industry with an SBA small business size standard.[46] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[47]

---

[36] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[37] *Id.*

[38] *Id.*

[39] 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.

[40] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[41] *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.

[42] *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.

[43] 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.

[44] *Id.*

[45] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[46] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[47] 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.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[48] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[49] Of this number, 2,964 firms operated with fewer than 250 employees.[50] 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.[51] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[52] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *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[53] is the closest industry with an SBA small business size standard.[54] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[55] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[56] Of this number, 2,964 firms operated with fewer than 250 employees.[57] 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.[58] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[59] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

15. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services.

---

[48] *Id.*

[49] *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.

[50] *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.

[51] 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.

[52] *Id.*

[53] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[54] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[55] *Id.*

[56] *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.

[57] *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.

[58] 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.

[59] *Id.*

Providers of these services include several types of competitive local exchange service providers.[60] Wired Telecommunications Carriers[61] 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.[62] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[63] Of this number, 2,964 firms operated with fewer than 250 employees.[64] 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.[65] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[66] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[67] is the closest industry with an SBA small business size standard.[68] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[69] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[70] Of this number, 2,964 firms operated with fewer than 250 employees.[71] 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

[60] 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.

[61] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[62] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[63] *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.

[64] *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.

[65] 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.

[66] *Id.*

[67] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[68] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[69] *Id.*

[70] *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.

[71] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

fewer employees.[72] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

17. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers.[73] The SBA small business size standard 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 3,054 firms in this industry that operated for the entire year.[75] Of this number, 2,964 firms operated with fewer than 250 employees.[76] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services.[77] Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.[78] Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

18. *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[79] is the closest industry with an SBA small business size standard.[80] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[81] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[82] Of this number, 2,964 firms operated with fewer than 250 employees.[83] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were

[72] 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.

[73] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[74] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[75] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&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] 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.

[78] *Id.*

[79] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[80] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[81] *Id.*

[82] *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.

[83] *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.

90 providers that reported they were engaged in the provision of other toll services.[84] Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.[85] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

19. The broadband Internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services.[86] Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

20. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[87] 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.[88] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[89] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[90] Of that number, 2,837 firms employed fewer than 250 employees.[91] 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.[92] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[93] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Wireless Communications Services*. Wireless Communications Services (WCS) can be

---

[84] 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.

[85] *Id.*

[86] This includes, among others, the approximately 800 members of WISPA, including those entities who provide fixed wireless broadband service using unlicensed spectrum. *See* WISPA, *About WISPA,* https://www.wispa.org/About-Us/Mission-and-Goals (last visited June 27, 2019). We also consider the impact to these entities today for the purposes of this FRFA, by including them under the "Wireless Providers – Fixed and Mobile" category.

[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] *Id.*

[89] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[90] *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.

[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] 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.

[93] *Id.*

used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[94] Wireless Telecommunications Carriers (*except* Satellite)[95] is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[96] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[97] Of this number, 2,837 firms employed fewer than 250 employees.[98] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

22. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[99]

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *1670–1675 MHz Services*. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.[100] Wireless Telecommunications Carriers (except Satellite)[101] is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[102] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this

[94] *See* 47 CFR §§ 27.1 – 27.1607.

[95] *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.

[96] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[97] *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.

[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.

[99] *See* 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

[100] *See* 47 CFR § 27.902.

[101] *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.

[102] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry for the entire year.[103] Of this number, 2,837 firms employed fewer than 250 employees.[104] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

25. According to Commission data as of November 2021, there were three active licenses in this service.[105] The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670-1675 MHz service band, a "small business" is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[106] The 1670-1675 MHz service band auction's winning bidder did not claim small business status.[107]

26. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

27. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[108] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[109] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[110] Of this number, 2,837 firms employed fewer than 250 employees.[111] Additionally, based

---

[103] *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.

[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] Based on a FCC Universal Licensing System search on November 8, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[106] *See* 47 CFR § 27.906(a).

[107] *See 1670–1675 MHz Band Auction Closes; Winning Bidder Announced*; *FCC Form 600s Due May 12,2003,* Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

[108] *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.

[109] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[110] *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.

[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.

on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[112] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[113] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

28. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[114] The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).[115] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[116] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[117] Of this number, 2,837 firms employed fewer than 250 employees.[118] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

29. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.[119] The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[120] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[121]

30. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect

---

[112] 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.

[113] *Id.*

[114] *See* 47 CFR § 24.200.

[115] *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.

[116] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[117] *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.

[118] *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.

[119] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[120] *See* 47 CFR § 24.720(b).

[121] *See* Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, https://www.fcc.gov/auctions.

data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

31. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite)[122] is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[123] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[124] Of this number, 2,837 firms employed fewer than 250 employees.[125] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers.[126] Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.[127] Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.[128]

32. Based on Commission data as of December 2021, there were 3,924 active SMR licenses.[129] However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

33. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting

---

[122] *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.

[123] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[124] *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.

[125] *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.

[126] 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.

[127] *Id.*

[128] We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

[129] Based on a FCC Universal Licensing System search on December 15, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match radio services within this group", Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

services.[130] Wireless Telecommunications Carriers (*except* Satellite)[131] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[132] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[133] Of this number, 2,837 firms employed fewer than 250 employees.[134] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

34. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[135] The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[136] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[137] twenty-six winning bidders claiming a small business classification won 214 licenses,[138] and three winning bidders claiming a small business classification won all five auctioned licenses.[139]

35. In frequency bands where licenses were subject to auction, the Commission notes that as

---

[130] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44/factsheet, https://www.fcc.gov/auction/49/factsheet, https://www.fcc.gov/auction/60/factsheet.

[131] *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.

[132] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[133] *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.

[134] *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.

[135] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[136] *See* 47 CFR § 27.702(a)(1)-(3).

[137] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[138] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[139] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

36. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.[140] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[141] Wireless Telecommunications Carriers (*except* Satellite)[142] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[143] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[144] Of that number, 2,837 firms employed fewer than 250 employees.[145] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

37. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[146] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[147] Pursuant to these definitions, three winning bidders claiming very small

[140] *See* 47 CFR § 27.4.

[141] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73/factsheet. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[142] *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.

[143] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[144] *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.

[145] *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.

[146] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[147] *See* 47 CFR § 27.502(a).

business status won five of the twelve available licenses.[148]

38. *Air-Ground Radiotelephone Service*. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.[149] A licensee may provide any type of air-ground service (i.e., voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.[150]

39. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[151] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[152] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[153] Of this number, 2,837 firms employed fewer than 250 employees.[154] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

40. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.[155] The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[156] In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.[157]

---

[148] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

[149] 47 CFR § 22.99.

[150] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/65/factsheet.

[151] *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.

[152] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[153] *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.

[154] *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.

[155] Based on a FCC Universal Licensing System search on December 20, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[156] *See* 47 CFR § 22.223(b).

[157] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf.

41. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

42. *3650–3700 MHz band*. Wireless broadband service licensing in the 3650-3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).[158] Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.[159] Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)[160] industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.[161] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[162] Of this number, 2,837 firms employed fewer than 250 employees.[163] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

43. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small Internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band.[164] However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

44. *Fixed Microwave Services.* Fixed microwave services include common carrier,[165] private-operational fixed,[166] and broadcast auxiliary radio services.[167] They also include the Upper

---

[158] *See* 47 CFR §§ 90.1305, 90.1307.

[159] *See id.* § 90.1309.

[160] *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.

[161] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[162] *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.

[163] *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.

[164] Based on an FCC Universal Licensing System search on November 19, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[165] *See* 47 CFR Part 101, Subparts C and I.

[166] *See id*. Subparts C and H.

[167] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between

(continued….)

Microwave Flexible Use Service (UMFUS),[168] Millimeter Wave Service (70/80/90 GHz),[169] Local Multipoint Distribution Service (LMDS),[170] the Digital Electronic Message Service (DEMS),[171] 24 GHz Service,[172] Multiple Address Systems (MAS),[173] and Multichannel Video Distribution and Data Service (MVDDS),[174] where in some bands licensees can choose between common carrier and non-common carrier status.[175] Wireless Telecommunications Carriers (*except* Satellite)[176] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[177] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[178] Of this number, 2,837 firms employed fewer than 250 employees.[179] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

45. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[180]

46. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small

---

two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[168] *See* 47 CFR Part 30.

[169] *See* 47 CFR Part 101, Subpart Q.

[170] *See id*. Subpart L.

[171] *See id*. Subpart G.

[172] *See id*.

[173] *See id.* Subpart O.

[174] *See id*. Subpart P.

[175] *See* 47 CFR §§ 101.533, 101.1017.

[176] *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.

[177] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[178] *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.

[179] *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.

[180] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

business size standard.

47. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"[181] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[182] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[183]

48. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[184] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[185] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[186] Of this number, 2,837 firms employed fewer than 250 employees.[187] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

49. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[188] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has

[181] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

[182] *See* 47 CFR § 27.4; *see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[183] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[184] *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.

[185] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[186] *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.

[187] *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.

[188] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[189] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[190] One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[191]

50. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[192] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

4. Satellite Service Providers

51. *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."[193] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small.[194] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[195] Of this number, 242 firms had revenue of less than $25 million.[196] Additionally, based on Commission data in the 2022 Universal Service Monitoring

[189] *See* 47 CFR § 27.1218(a).

[190] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.

[191] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[192] *See* 47 CFR § 27.1219(a).

[193] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[194] *See* 13 CFR § 121.201, NAICS Code 517410.

[195] *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.

[196] *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.

Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[197] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[198] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

52. *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.[199] 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.[200] 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.[201] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[202] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[203] Of those firms, 1,039 had revenue of less than $25 million.[204] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

5. Cable Service Providers

53. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

54. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[205] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[206] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for

---

[197] 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.

[198] *Id.*

[199] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[200] *Id.*

[201] *Id*.

[202] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[203] *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.

[204] *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.

[205] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[206] *Id.*

transmission to viewers.[207] The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small.[208] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[209] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[210] Based on this data, the Commission estimates that a majority of firms in this industry are small.

55. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[211] Based on industry data, there are about 420 cable companies in the U.S.[212] Of these, only seven have more than 400,000 subscribers.[213] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[214] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[215] Of these, about 639 have more than 15,000 subscribers.[216] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

56. *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."[217] 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.[218] Based on industry data, only six cable system operators have

---

[207] *Id.*

[208] *See* 13 CFR § 121.201, NAICS Code 515210.

[209] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[210] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[211] 47 CFR § 76.901(d).

[212] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[213] 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).

[214] 47 CFR § 76.901(c).

[215] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[216] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[217] 47 U.S.C. § 543(m)(2).

[218] *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

(continued….)

more than 498,000 subscribers.[219] 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.[220] 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.

6. All Other Telecommunications

57. *Electric Power Generators*, *Transmitters*, *and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power.[221] Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."[222] This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.[223]

58. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees.[224] U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year.[225] Of this number, 1,552 firms had less than 250 employees.[226] Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

59. In the *Further Notice*, we seek comment on ways to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment. Some of these

---

publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice.. *See* 47 CFR § 76.901(e)(1).

[219] 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).

[220] 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).

[221] *See* U.S. Census Bureau, *2017 NAICS Definition, "Sector 22- Utilities, 2211 Electric Power Generation, Transmission and Distribution,"* https://www.census.gov/naics/?input=2211&year=2017&details=2211.

[222] *See id.*

[223] *Id*.

[224] *See* 13 CFR § 121.201, NAICS Codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122.

[225] *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 2211, https://data.census.gov/cedsci/table?y=2017&n=2211&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[226] *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.

proposals may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities. Specifically, we seek comment on a proposal that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. We also seek comment on whether NCTA's proposal to add additional time to the existing application timelines for larger orders and prohibit utilities from limiting the size of an application or the number of poles included in an application, to avoid these timelines, will facilitate the pole attachment process for such orders. Additionally, we seek comment on whether the Commission should create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles. We also consider whether to require that a utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period, making self-help available for the estimate process, which is not contemplated under current Commission rules. We also seek comment on whether attachers face any obstacles from utilities when seeking to invoke self-help options, which allows attachers to choose their own contractors for one-touch make-ready and for self-help when the utility fails to meet the Commission's deadlines. This information will help to inform whether potential rule changes are necessary. At this time, the Commission cannot quantify the cost of compliance for small entities with the approaches discussed in the *Further Notice*, or whether any compliance requirements will require small entities to hire professionals; however, the Commission requests information on the costs and benefits of the approaches discussed, such as the availability of qualified contractors and other workforce constraints that may impact the speed and cost of deployment for utilities and attachers.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

60. 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."[227]

61. The *Further Notice* seeks comment on whether the Commission should revise its rules to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment, including a tentative conclusion that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. The Commission's objective in requesting this information is to determine whether it can and should establish clear standards for when and how attachers and utilities must share the costs of a pole replacement precipitated by a new attachment request. Among the alternatives considered in the *Further Notice* is whether the Commission should allow additional time for the existing larger order timelines where our current rules require that utilities negotiate timing in good faith. We seek comment on whether requiring that the utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period would allow the attacher to elect self-help for the survey sooner. In the alternative, we inquire whether such expansion of time is reasonable for utilities if numerous permits are submitted around the same time or contractor workload is heavy. We also consider whether attachers are choosing to find their own contractors for one-touch make-ready and for self-help when utilities fail to meet the Commission's deadlines. Similarly, we request information on whether or not utilities designate an available contractor if it properly exercises its discretion to disqualify one chosen by an attacher. We also seek comment on how the Commission can help resolve situations where labor shortages may hinder utilities from meeting deadlines to respond to attachers. The Commission also seeks comment on and will consider the relative costs and benefits of any such revisions to its rules. Information submitted in response to these requests for comment will enable the Commission to evaluate

[227] 5 U.S.C. § 603(c)(1)–(4).

the impact that revising its pole attachment rules would have on smaller entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

62. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking (December 13, 2023)

In the Bipartisan Infrastructure Law, Congress made a historic $65 billion commitment to ensure that everyone, everywhere in the United States has access to broadband. Reaching 100 percent of us with high-speed service takes work and the details matter. Networks need to be designed. Rights of way need to be negotiated. And fiber optic cable needs to be attached to utility poles, which are often owned by local electric companies or telephone companies.

Under Section 224 of the Communications Act, the Federal Communications Commission has authority to oversee the rates, terms, and conditions of these pole attachments. Though under the law states may elect to take on this task themselves, more than half of the states have chosen to rely on the system the Commission has established under Section 224. Today, we update that system in order to ensure that the investment Congress made in the Bipartisan Infrastructure Law is fully modern and meets this moment.

First, we are creating a new process to resolve pole attachment disputes fast and effectively. If a company trying to build new broadband service gets into a disagreement with a pole owner, it can bog down deployment. So we are establishing a new intra-agency rapid response team—the Rapid Broadband Assessment Team—to speed dispute resolution.

Second, we are increasing transparency by expanding access to pole inspection reports. This means pole owners will have to share reports with new attachers deploying broadband so they have information about where poles have been identified for replacement. Those building broadband benefit from having these facts upfront and early.

Third, we update our policies to make clear when an attacher does not have to pay the full cost to replace an existing pole. Again, clarifying this can help with new deployment.

Finally, we ask for input on additional reforms to help speed processing applications for big projects, like the kind we expect to see with the funding from the Bipartisan Infrastructure Law.

Pole attachments do not always receive the attention they deserve. They are not the most glamorous part of broadband deployment. But they are an essential part of our effort to ensure that high-speed service reaches everyone, everywhere across the country. Our action today puts them in the spotlight and readies them for the real work that follows the Bipartisan Infrastructure Law to help close the digital divide.

I want to thank the staff who have worked on this effort, including Michele Berlove, Adam Copeland, Ty Covey, Trent Harkrader, Jodie May, Kiara Ortiz, and Michael Ray from the Wireline Competition Bureau; Lisa Boehley, Loyaan Egal, Pamela Gallant, Lisa Griffin, Rosemary McEnery, Lisa Saks, and Adam Suppes from the Enforcement Bureau; Richard Mallen, Anjali Singh, Derek Yeo, and Chin Yoo from the Office of General Counsel; Eric Ralph from the Office of Economics and Analytics; and Joycelyn James from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Rulemaking

Pole attachments are essential. For broadband to be deployed nationwide to all Americans, Internet Service Providers (ISPs) need access to this vital infrastructure, especially utility poles, that enables fast and cost-efficient access to consumers. We have seen significant investment and deployment nationwide by ISPs, to the tune of billions of dollars. And of course, Congress created the Broadband Equity, Access, and Deployment (BEAD) program and appropriated over $42 billion to expand high-speed Internet access nationwide. With the influx of so much broadband funding, it is imperative that we ensure that attachers can quickly get the attachments they need so that consumers have access to the broadband they want. So, on top of our efforts in the past to streamline the pole attachment process by adopting shot clocks and one touch-make ready, today we take additional steps that balance the needs of both pole attachers and pole owners, with consumers in mind.

Specifically, I strongly support the creation of the Rapid Broadband Assessment Team that should cut down disputes that threaten to impede broadband deployment. I also support clarification on the definition of a "red tagged" pole to minimize disputes going forward. Further, I'm glad that we take the opportunity in the Declaratory Ruling to clarify that for large attachment applications featuring more than 3,000 poles or 5% of a utility's poles in a state, the first 3,000 designated poles are subject to our 45-day make-ready timeline. These are smart steps that will make a big difference.

But there are two topics that I want to highlight that are crucial if BEAD and the other broadband funding programs are to succeed. First, I support the Order's amendments to our one touch-make ready rules, requiring utilities to provide attachers with information they have prepared about the poles covered in an attachment application.

I want to emphasize that this does not mean that additional information that has traditionally been shared to facilitate pole attachment agreements should no longer be shared. This is a floor, not a ceiling, and all parties should engage in further information sharing to facilitate the expeditious deployment of broadband. I'll be watching closely.

Second, we seek further comment on two very important issues that will come into play as BEAD funding is deployed – large attachment applications and the self-help rules. I hope the Commission can move quickly on both of the topics in the Further Notice to eliminate as many outstanding questions as possible before BEAD funding flows. I look forward to engaging further to make sure our rules are appropriately balanced for all interested parties.

I thank the Chairwoman for her leadership and FCC staff for their continued efforts on pole attachments. I approve.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking (December 13, 2023).

Utility poles are the unsung heroes of broadband deployment. In addition to bringing communities electricity, cable, and telephone service, these often-overlooked poles play a critical role in enabling efficient and widespread access to high-speed internet access service. Pole attachments are especially critical in rural areas—areas that are typically the hardest to serve and the last to be connected. Aerial deployment is often considered the fastest way to deploy broadband Internet access service and the most cost-effective. And while the idea of a "pole" may sound simple —I can assure you that it is anything but that.

We've just seen the largest investment in broadband in our nation's history and to ensure that this funding connects everyone in America to high-speed Internet, we are going to need a lot of partners, but in particular utilities companies. That is because these utility poles are often owned and controlled by the local electric or telephone companies. We must ensure that the infrastructure is in place and our rules are streamlined so that broadband can be deployed as quickly and as cost-effectively as possible.

This item brings us one step closer to meeting the moment and ensuring that everyone, everywhere in America has access to high-speed broadband Internet access service. Today's action takes important steps to increase transparency and provide clarity to pole owners and attachers, so that we are decreasing deployment times and reducing costs. Balancing the needs of both pole attachers and pole owners is crucial for a thriving and competitive telecommunications landscape, and this item strikes the right balance.

Thank you to the Chairwoman for her leadership on this item, and ensuring that we have policies that strike a fair balance by recognizing the legitimate interests of both pole owners and attachers. Thank you as well to the Wireline Competition Bureau and the Enforcement Bureau for their work on this item.

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

In the Matter of	)	
	)	
Promoting Telehealth in Rural America	)	WC Docket No. 17-310
	)	

THIRD REPORT AND ORDER

Adopted: December 13, 2023 **Released: December 14, 2023**

By the Commission: Chairwoman Rosenworcel issuing a statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. In this Third Report and Order, we continue the Commission's efforts to improve the effectiveness and efficiency of the Rural Health Care (RHC) Program. The RHC Program offers discounted rates for broadband and other communications services to health care providers who use these increasingly essential services to better treat patients in rural areas that may have limited resources, fewer medical professionals, and higher rates for these services than in urban areas. Broadband-enabled telehealth and telemedicine services in particular have proven to be critical tools for the effective delivery of health care to millions of patients in rural areas, as demonstrated by the heightened dependency on these services during the COVID-19 pandemic. Telemedicine and telehealth make the provision of high-quality health care a reality for patients regardless of location or ability to travel. The measures that we adopt today will enhance the provision of these vital services through the RHC Program.

2. We adopt four revisions to the RHC Program as proposed in the *Second Further Notice of Proposed Rulemaking* aimed at facilitating participation in and improving the administration of the Program.[1] First, we revise the RHC Program rules to permit conditional approval of eligibility for health

[1] *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, FCC 23-6, 2023 WL 1420076 (Jan. 27, 2023). (continued….)

care providers that expect to be eligible in the near future to allow them to initiate competitive bidding and request funding. Second, to give participants more flexibility with deadlines, we revise our rules to move back the RHC Program's Service Provider Identification Number (SPIN) change deadline to align with the invoice deadline. Third, we simplify the rules for determining urban rates by eliminating the seldom-used "standard urban distance" component of the urban rate rules. Fourth, in a separate action to provide more flexibility with deadlines, we revise the RHC Program rules to permit health care providers to request changes to the dates of their evergreen contracts following a funding commitment.

3. In addition to these revisions, we also on our own motion make two programmatic improvements to the administration of the RHC Program and Universal Service Fund. To reduce burdens and promote efficiency, we harmonize the RHC Program eligibility determination process by shifting to the use of a single universal eligibility form for all program participants. Finally, to free up for other uses unclaimed RHC Program support, we establish a deadline by which health care providers must submit invoices for any undisbursed funding commitments from funding year 2019 and prior that do not currently have an applicable invoice deadline.

II. BACKGROUND

4. The RHC Program consists of two component programs: (1) the Telecommunications (Telecom) Program and (2) the Healthcare Connect Fund (HCF) Program. The Telecom Program, established in 1997, subsidizes the difference between the rates for eligible telecommunications services in the health care provider's rural area and rates for comparable services available in urban areas within that state.[2] The HCF Program, created in 2012, promotes the use of broadband services and facilitates the formation of health care provider consortia that include both rural and urban health care providers[3] by providing a flat 65% discount on an array of advanced telecommunications and information services.[4]

5. The Commission commenced a significant retooling of the RHC Program in 2019 when it adopted the *Promoting Telehealth Report and Order*.[5] The reforms contained in that order furthered the goals of transparency and consistency in the RHC Program in various ways, including by prioritizing RHC Program support for rural areas in the event Program demand exceeds available funding[6] and ensuring competitive bidding is fair and open.[7] The *Promoting Telehealth Report and Order* also simplified the RHC Program application processes and clarified Program procedures.[8]

(Continued from previous page)
Subsequent references to this decision are as either *Promoting Telehealth Order on Reconsideration* when referring to the Order on Reconsideration, *Promoting Telehealth Second Report and Order* when referring to the Second Report and Order, or *Promoting Telehealth Second Further Notice* when referring to the Second Further Notice of Proposed Rulemaking.

[2] *See* 47 U.S.C. § 254(h)(1)(A); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-161, paras. 608-749 (1997) (*Universal Service First Report and Order*).

[3] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16680-81, paras. 1-2 (2012) (*Healthcare Connect Fund Order*).

[4] *See* 47 U.S.C. § 254(h)(2)(A); 47 CFR § 54.611; *Healthcare Connect Fund Order*, 27 FCC Rcd at 16680-81, paras. 1-3.

[5] *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335 (2019) (*Promoting Telehealth Report and Order*). In the *Promoting Telehealth Order on Reconsideration*, the Commission eliminated the Rates Database used to determine urban and rural rates, one of the reforms adopted in the *Promoting Telehealth Report and Order*, after finding anomalies in the median rates calculated using the database that called into question its accuracy and consistency. *See Promoting Telehealth Order on Reconsideration* at *4, para. 11. In lieu of the Rates Database, the Commission reinstated the mechanisms for calculating urban and rural rates that existed before adoption of the *Promoting Telehealth Report and Order*. *Id*. at *4, para. 9.

[6] *See* 47 CFR § 54.621(b); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7390-7403, paras. 116-43.

[7] *See* 47 CFR §§ 54.622-54.623; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7406-15, paras. 153-71.

6. In the *Promoting Telehealth Second Report and Order* adopted earlier this year, the Commission implemented additional reforms to promote RHC Program efficiency.[9] Most significantly, the Commission amended the Telecom Program invoice process to harmonize it with the HCF invoice process.[10] The Commission also amended the funding cap and prioritization rules to limit the application of the internal cap and to prioritize health care providers' current year financial need over their future year need when the internal cap is exceeded.[11] In the *Promoting Telehealth Second Further Notice* adopted with the *Promoting Telehealth Second Report and Order*, the Commission proposed additional RHC Program reforms, several of which we address in today's Third Report and Order.[12]

III. DISCUSSION

7. In this Third Report and Order, we continue to improve the RHC Program by facilitating health care provider participation in and improving the administration of the Program. Specifically, we revise the RHC Program rules to permit conditional eligibility for health care providers and eliminate the seldom-used "standard urban distance" component of the urban rate rule. We also make two changes relating to RHC Program administrative deadlines by aligning the SPIN change deadline with the existing invoice deadline and permitting health care providers to request a change to evergreen contract dates. We then amend our rules to shift to the use of the same form when determining Telecom and HCF Program eligibility. Finally, we establish a deadline by which invoices must be submitted for undisbursed funding commitments from before funding year 2020.

A. Conditional Approval of Eligibility for Future Eligible Health Care Providers

8. We first adopt amendments to the RHC Program rules to allow conditional approval of eligibility consistent with what the Commission proposed in the *Promoting Telehealth Second Further Notice*.[13] The amendments enable entities that do not meet all eligibility requirements at the time they seek eligibility determinations to obtain conditional approval of eligibility, conduct competitive bidding, and request funding prior to receiving formal approval of eligibility. With this change, entities granted such conditional approval may conduct competitive bidding and request funding before they receive formal eligibility approval, ensuring that they are able to participate in the RHC Program for the funding year in which they expect to receive a formal eligibility approval. However, entities with conditional approval will not receive funding commitments until they meet all eligibility requirements. The substantive standard used to determine full eligibility remains unchanged. This change ensures that health care providers that are not yet eligible during the application window, but expect to become eligible in the near future, are not locked out of much needed funding. All commenters who addressed

(Continued from previous page)

[8] *See* 47 CFR §§ 54.624-627; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7429-33, paras. 203-12.

[9] *See Promoting Telehealth Second Report and Order* at *1, para. 1.

[10] *See id*. at *19-20, paras. 55-59.

[11] *See id*. at *20-23, paras. 60-68.

[12] Except to the extent expressly addressed in this Third Report and Order, the issues upon which the Commission sought comment in the *Promoting Telehealth Second Further Notice* remain pending. In this Third Report and Order, we make certain targeted changes to RHC Program rules, and we do not elect to take on other issues suggested by some parties, instead leaving those for consideration or action as warranted in the future. *See, e.g.*, SHLB Dec. 7, 2023 Ex Parte Letter (requesting that the Commission issue blanket waivers of the SPIN change deadline for funding years predating the rule change in this Third Report and Order, adopt rules regarding the eligibility of network equipment that it previously sought comment on, and issue new rule proposals regarding inflation adjustments for cost thresholds in RHC Program rules).

[13] *Promoting Telehealth Second Further Notice* at *34-35, paras. 97-99.

this proposal supported it, and no commenters opposed this change.[14] This change will be effective for funding year 2025, the competitive bidding process for which begins in mid-2024.[15]

9. Eligible health care providers, as defined in section 254(h)(7)(B) of the Communications Act and implemented in the Commission's rules, are limited to the following categories: (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; (7) skilled nursing facilities; and (8) consortia of health care providers consisting of one or more entities falling into the first seven categories.[16] In addition, eligible health care providers must be non-profit or public.[17] In the Telecom Program, only eligible health care providers located in a "rural area" defined in section 54.600(e) of the Commission's rules can receive support.[18] The HCF Program, on the other hand, permits rural eligible health care providers as well as non-rural eligible health care providers participating in a majority-rural consortium to receive support.[19]

10. To allow health care providers to receive RHC Program funding as soon as they become eligible, we amend section 54.601 of our rules to permit entities that expect to meet all eligibility requirements before the end of a given upcoming funding year to request and receive a conditional approval of eligibility.[20] We also amend section 54.622(e)(1) of our rules to allow those entities to make the required certifications when filing a Request for Services to initiate competitive bidding.[21] The amendments we adopt today will enable entities that receive conditional approval of program eligibility to conduct competitive bidding and submit funding requests *prior* to receiving formal approval of

[14] *See* SHLB Comments at 8-9 ("This will ensure these HCPs can obtain support as soon as they open, instead of having to wait until the next funding year."); AANP/FH Comments at 2-3 ("We support this change, and believe it will improve flexibility for providers, and ensure they will not have to wait a subsequent funding year to receive RHC Program funding."); SHLB Reply Comments at 8 (believing that "this flexibility will, in turn, maximize the RHC Program's ability to provide much-needed funding for rural providers at a time when the need is high."); NETC Reply Comments at 2 ("This change will ensure support is available for sites that become eligible during a funding year with little risk for waste or abuse.").

[15] This change will take effect July 1, 2024, the date that competitive bidding for funding year 2025 begins. Competitive bidding commences one full year before the funding year begins. *See Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 175. Because competitive bidding for funding year 2024 has already begun and it is unlikely that the necessary reviews and approvals under the Paperwork Reduction Act will be obtained before funding year 2024 competitive bidding ends, this change will take effect for competitive bidding for funding year 2025.

[16] 47 U.S.C. § 254(h)(7)(B); 47 CFR § 54.600(b).

[17] 47 U.S.C. § 254(h)(1)(A), (h)(2)(A), (h)(4); 47 CFR § 54.601(a).

[18] *See* 47 U.S.C. § 254(h)(1)(A); 47 CFR § 54.602(a); *Universal Service First Report and Order*, 12 FCC Rcd at 9093-161, paras. 608-749.

[19] *See* 47 U.S.C. § 254(h)(2)(A); 47 CFR § 54.607; *Healthcare Connect Fund Order*, 27 FCC Rcd at 16680-81, paras. 1-3.

[20] *See* Appx. A, Final Rules, 47 CFR § 54.601(c) as adopted herein.

[21] *See* Appx. A, Final Rules, 47 CFR § 54.622(e)(1)(i)-(ii) as adopted herein. Consistent with the amendment to section 54.622(e)(1)(i) of our rules which will allow applicants with conditional approval of eligibility to certify that they expect to be public or non-profit health care providers under section 54.600, as was proposed in the *Promoting Telehealth Second Further Notice*, we add an amendment to section 54.622(e)(1)(ii) to allow such applicants to certify that they expect to be located in a "rural area" or expect to be a member of a majority-rural consortium. These amendments will allow applicants with conditional approval of eligibility to make the necessary certifications when filing a Request for Services as required by the program rules. *See* 47 CFR § 54.622(e)(1)(i)-(ii).

eligibility.[22] However, the substantive standard used to determine eligibility remains unchanged. Entities that receive conditional approval of eligibility will not receive funding commitments until they actually become eligible and receive the formal approval of eligibility under the existing substantive standard.[23] No RHC funding shall be committed or disbursed to an entity for any time period that is prior to the date the entity is formally approved as eligible.[24] We direct the Universal Service Administrative Company (Administrator or USAC), upon approval from the Wireline Competition Bureau (Bureau), to implement the conditional approval of eligibility mechanism as discussed in more detail further below.

11. This change is warranted given the change to a fixed application filing window in the RHC Program. Before funding year 2016, after an initial application filing window, the Administrator accepted applications on a rolling basis until the last day of the funding year.[25] Since funding year 2017, no applications have been accepted following the close of the initial application window.[26] Beginning in funding year 2021, the Commission's rules require the Administrator to open an initial filing window period with an end date no later than April 1 prior to the start of the funding year.[27]

12. In 2016, when applications were still accepted on a rolling basis and there were two application windows, the Bureau issued the *Hope Community Order*, which held that that if an entity had not demonstrated its eligibility at the time of its eligibility determination form submission for a funding year, it would be ineligible to receive RHC Telecommunications Program support for that funding year.[28]

---

[22] *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(2)-(3) as adopted herein.

[23] *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(3)-(4) as adopted herein.

[24] *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(4) as adopted herein.

[25] *See Wireline Competition Bureau Provides a Filing Window Period Schedule for Funding Requests under the Telecommunications Program and the Healthcare Connect Fund*, Public Notice, 31 FCC Rcd 9588, 9590 (WCB 2016) (*Filing Window Public Notice*) ("[The Administrator] has accepted funding requests for the Telecommunications and Health Care Connect Fund Programs until the last day of the funding year."); *see also* 47 CFR § 54.675(c)(4) (2013-2019) ("The deadline to submit a funding commitment request under the Telecommunications Program and the Healthcare Connect Fund is June 30 for the funding year that begins on the previous July 1."). The RHC Program funding year runs from July 1 of the current calendar year through June 30 of the next calendar year. 47 CFR § 54.600(a).

[26] For funding year 2016, the Administrator accepted applications during an initial filing window that ended before the start of the funding year, continued to accept applications on a rolling basis until the opening of a second filing window during the funding year, and then accepted applications during the second filing window that ended during the funding year. *See Filing Window Public Notice*, 31 FCC Rcd at 9590-91. In funding year 2017, demand exceeded the $400 million RHC Program funding cap by approximately $121 million, and the Commission took action to avoid proration reductions by increasing the funding cap to $571 million and applying it to funding year 2017. *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6577-78, paras. 7, 9 (2018). In each of funding years 2018, 2019, and 2020, gross demand for multi-year commitments and upfront payments during the initial filing window exceeded the internal cap on multi-year commitments and upfront payments, and the Commission took actions to avoid proration or prioritization reductions of the support for those funding requests. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4138, paras. 1, 9 (2019); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2659, 2662-63, para. 9 (2020); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 11696, 11699, para. 9 (WCB 2020). Starting with funding year 2021, section 54.621(a)(3) of the Commission's rules requires that "[a]ll funding requests submitted outside of a filing window will not be accepted unless and until the Administrator opens another filing window." 47 CFR § 54.621(a)(3). No second filing windows have been opened and no applications accepted after the initial filing window since funding year 2017.

[27] 47 CFR § 54.621(a)(1); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

[28] *Hope Community Resources, Inc.– Barrow MH, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 31 FCC Rcd 7883, 7887-88, para. 9 (WCB 2016) (*Hope Community Order*) ("while Hope Community asserts the Barrow site provides outpatient mental health services, the prospective language … indicate

(continued….)

The change we make today eliminates this limitation and allows health care providers to seek conditional eligibility approval so they can participate in the program in the year in which they expect to become fully eligible, even if they receive their full eligibility approval after the initial application window closes. Based on our experience administering the program, we find it appropriate to eliminate *Hope Community Order*'*s* requirement that a site be eligible for RHC Program support, which requires that it qualifies as one of the eligible health care providers defined by section 254(h)(7)(B),[29] at the time of its request for eligibility determination.[30] In funding year 2013, the funding year at issue in the *Hope Community Order*, the Administrator accepted applications on a rolling basis throughout the funding year, which permitted a health care provider to begin receiving funding for RHC Program supported services within a few months after it became an eligible entity under section 254(h)(7)(B).[31] Shortly after meeting eligibility requirements, the health care provider could receive its eligibility determination, engage in competitive bidding, file a Request for Funding during the rolling application window, and start to receive funding.

13. Absent the change we make today, with the current use of a fixed filing window, a health care provider might have to wait more than one year after becoming an eligible health care provider to receive RHC Program funding. For example, if a new medical provider is in the process of opening and expects to become eligible under section 254(h)(7)(B) on July 1, 2025, which is after the initial application filing window, it may not be able to receive RHC Program support for funding year 2025 because it could not have been approved as eligible until after the provider's July 1, 2025 opening date.[32] Permitting conditional approvals of eligibility will allow health care providers that are not yet eligible but expect to become an eligible health care provider in a given upcoming funding year to complete competitive bidding and file Requests for Funding so they are able to receive RHC Program funding as soon as they are fully designated as an eligible health care provider under the Commission's rules.

14. To protect the integrity and success of the RHC program and ensure that no RHC Program funding is disbursed for entities that are not yet fully approved as eligible, we adopt the following safeguards for conditional approvals of eligibility. First, to request conditional approval of eligibility, an applicant must submit an eligibility determination form and supporting documentation to the Administrator, which will include the estimated date that it expects to meet all eligibility requirements.[33] The documentation must show that the entity is or reasonably expects to qualify as a

(Continued from previous page)
that outpatient services will be provided at a future time," and "we affirm USAC's decision and find that Hope Barrow did not demonstrate that it was eligible as a 'community mental health center,' at the time of its FCC Form 465 submission for funding year 2013, and therefore was ineligible to receive RHC Telecommunications Program support.").

[29] *Hope Community Order*, 31 FCC Rcd at 7883-84, para. 1 (finding that the Hope Barrow facility was ineligible to receive RHC Program support for the time period at issue because it did not qualify as a "community mental health center," as defined by section 254(h)(7)(B)). In *Hope Community Order*, the site at issue sought eligibility as a "community mental health center" which requires it provide outpatient mental health treatment. *Id*. at 7884-85, para. 3.

[30] *See Hope Community Order*, 31 FCC Rcd at 7888, para. 9. The FCC Form 465, in addition to requesting for services, "certifies to USAC that the health care provider is eligible to participate in the RHC Program." *Id*. at 7884, para. 2.

[31] *See id.* at 7885, para. 4; 47 U.S.C. § 254(h)(7)(B).

[32] *See* 47 CFR § 54.621(a)(1) (requiring that the application filing window close by April 1 preceding the funding year).

[33] To facilitate the administration of conditional approvals, an applicant requesting conditional approval of eligibility may not submit the eligibility determination form (e.g., the FCC Form 460) more than one year prior to start of the funding year in which the applicant is estimated to meet all eligibility requirements. That is, the estimated eligibility date must be either in the same funding year as the date that the applicant requests the conditional approval of eligibility or in the next funding year of the date that the applicant requests the conditional approval of eligibility. *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(1)(iii) as adopted herein. For example, if an applicant requesting conditional approval of eligibility estimates that it will meet all eligibility requirements during funding year 2025,
(continued….)

public or non-profit health care provider defined in section 54.600(b) of the Commission's rules by the estimated eligibility date.[34] Additionally, if applying for the Telecom Program or if applying as an individual applicant in the HCF Program, the entity must be located or reasonably expect to be located in a rural area defined in section 54.600(e) of the Commission's rules by the estimated eligibility date, or, if not located in such a rural area, for purposes of applying for the HCF Program, be or plan to be a member of a majority-rural HCF Program consortium that satisfies the eligible rural health care provider composition requirement set forth in section 54.607(b) of the Commission's rules by the estimated eligibility date.[35]

15. Once the Administrator approves an applicant's conditional eligibility, the applicant can proceed to conduct competitive bidding for the conditionally-approved site(s). In order to provide notice of the applicant's conditional eligibility to potential bidders and service providers, an applicant engaging in competitive bidding with conditional eligibility must provide a written indication with its competitive bidding form indicating (1) that the eligibility is conditional, and (2) when the estimated expected eligibility date is.[36] After conducting competitive bidding and signing a service contract, the applicant can submit a funding request during the application filing window for a given funding year, provided that the applicant's estimated expected eligibility date is no later than the end of that funding year.[37] To ensure that no funding is committed or disbursed for health care providers that are conditionally eligible under section 254(h)(7)(B) or the RHC Program rules, entities with conditional approval of eligibility will not be able to receive funding commitments or disbursements until they meet all eligibility requirements and are granted a formal approval of eligibility.[38] This restriction is consistent with the Commission rule that RHC Program funding is provided to eligible health care providers for services for health care purposes.[39]

16. An applicant with conditional approval of eligibility is expected to notify the Administrator within 30 calendar days of its actual eligibility date and provide documentation confirming that it is actually eligible.[40] If the Administrator determines that the entity meets the requirements for a public or non-profit health care provider defined in section 54.600(b) and the requirements for rural

(Continued from previous page)
the eligibility determination form may not be submitted prior to the beginning of funding year 2024 (i.e., July 1, 2024). Entities seeking non-conditional eligibility approvals can continue to submit eligibility forms at any time.

[34] *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(1)(i) as adopted herein. For example, the supporting documentation could be a copy of the application for a state license for entities requesting conditional approval of eligibility as a not-for-profit hospital. Any official documentation that can reasonably show that the applicant expects to qualify as a public or non-profit eligible health care provider as defined in section 54.600(b) around the estimated eligibility date is acceptable.

[35] 47 CFR § 54.607(b); Appx. A, Final Rules, 47 CFR § 54.601(c)(1)(ii) as adopted herein. Requiring the submission of documentation for all three of the section 54.601(c)(1) criteria would pose a minimal incremental burden on applicants and is necessary to promote program integrity.

[36] *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(2) as adopted herein.

[37] *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(3) as adopted herein.

[38] *See id*.

[39] *See* 47 CFR § 54.602(d) ("Services for which eligible health care providers receive support from the Telecommunications Program or the Healthcare Connect Fund Program must be reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided.").

[40] *See* Appx A, Final Rules, 47 CFR § 54.601(c)(4) as adopted herein. The actual eligibility date is the date that the entity qualifies as a public or non-profit health care provider defined in section 54.600 of the Commission's rules and meets the rural location or majority-rural HCF consortium membership requirements set forth in sections 54.600(e) and 54.607(b) of the Commission's rules. The actual eligibility date can be a different date from the estimated eligibility date. *See id*.

location or majority-rural HCF consortium membership set forth in the Commission's rules,[41] the Administrator shall formally approve the applicant's eligibility and designate the applicant as an eligible health care provider.[42] The Administrator will then review the applicant's funding request and issue a funding commitment or denial in a timely manner. The funding commitment shall cover only a time period that starts no earlier than the applicant's actual approved eligibility date and that is within the funding year for which support was requested.[43] No funding shall be committed to ineligible entities or entities with only conditional approval and any support erroneously disbursed to ineligible entities or entities with only conditional approval must be recovered.[44] We direct the Administrator to implement these requirements in its procedures and delegate authority to the Bureau to issue further direction consistent with this Report and Order as necessary.

B. Alignment of the Service Provider Identification Number Change Deadline with Invoice Deadline

17. We next amend our rules to move back the Service Provider Identification Number (SPIN) change filing deadline to align with the invoice filing deadline, rather than the service delivery deadline. A SPIN is a unique number that the Administrator assigns to an eligible service provider seeking to participate in the universal service support programs.[45] An applicant under the HCF Program or Telecom Program may request either a "corrective SPIN change" (in cases not involving a change in the service provider associated with the applicant's funding request number) or an "operational SPIN change" (in cases involving a change to the service provider associated with the applicant's funding request number).[46] The current filing deadline to submit a SPIN change request is no later than the service delivery deadline, which, with limited exceptions, is June 30 of the funding year for which program support is sought.[47] The invoice deadline is 120 days after the later of the service delivery deadline or the date of a revised funding commitment letter.[48] In the *Promoting Telehealth Second Further Notice*, the Commission proposed to align the SPIN change deadline with the invoice deadline and commenters supported this change.[49]

---

[41] *See* 47 CFR §§ 54.600(e), 54.607(b).

[42] *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(4) as adopted herein.

[43] *See id*. For example, an applicant granted conditional approval of eligibility submits a funding request during the initial filing window for funding year 2025, and the applicant's actual eligibility date is October 1, 2025. The funding commitment may cover only the time period starting October 1, 2025 to the end of the funding year, but shall not cover any time period prior to October 1, 2025, because the applicant is not eligible prior to October 1, 2025.

[44] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 215.

[45] To obtain a SPIN, a service provider must file an FCC Form 498 with the Administrator, which refers to a provider's SPIN as its 498 ID. *See* USAC, *Obtain a 498 ID*, https://www.usac.org/rural-health-care/service-providers/step-1-participating-in-the-rhc-program/ (last visited Nov. 20, 2023).

[46] 47 CFR § 54.625(a), (b). For example, a corrective SPIN change is requested to correct ministerial errors or update a SPIN that resulted from a merger or acquisition of companies, and an operational SPIN change is requested when the applicant has a legitimate reason to change service providers, as in the case of a breach of contract. *Id.* The Commission adopted RHC Program SPIN change rules modeled after those of the E-Rate Program in the *Promoting Telehealth Report and Order*. *See Promoting Telehealth Report and Order*, 34 FCC Rcd at 7426-27, paras. 197-99.

[47] 47 CFR § 54.625(c). The service delivery deadline is defined in section 54.626(a) of the Commission's rules. *Id*. § 54.626(a).

[48] *See* 47 CFR § 54.627(a) (establishing that invoices must be submitted 120 days after the later of the service delivery deadline or the date of a revised funding commitment letter).

[49] S*ee Promoting Telehealth Second Further Notice* at *35-36, paras. 101-103. SHLB and NETC filed comments supporting the proposal as likely to reduce the number of waivers filed at the Commission and reduce unnecessary

(continued….)

18. We move back the deadline for requesting SPIN changes effective funding year 2023 in response to program participant requests asserting that the nature of corrective SPIN changes creates a "recurring hardship for applicants" unable to meet the deadline, which, in turn, results in deadline waiver requests filed with the Commission.[50] According to these participant comments, two commonly recurring situations support a change to the corrective SPIN change deadline: (1) mergers and acquisitions that can occur at any time during the funding year and (2) a service provider that assigns one of its multiple SPINs to a funding request without advising the healthcare provider as to the correct SPIN before invoicing begins, a situation that, in many instances, occurs after the service delivery deadline has passed.[51] These commenters maintain that changing the deadline to request a corrective SPIN change to match the invoice deadline will provide the Administrator with sufficient time to process the change request without the need for applicants to request deadline waivers from the Commission.[52] We agree with these commenters that the current deadline for requesting corrective SPIN changes imposes unnecessary burdens and challenges for program participants that a later-in-time deadline will largely eliminate.

19. We move back the SPIN change deadline to align with the invoice deadline, which, in most cases is 120 days after the close of the funding year,[53] to reduce the need for applicants to seek, and for the Commission to address, waivers of the current corrective SPIN change deadline. This change facilitates participation in and the administration of the program, while still maintaining an administratively reasonable date by which such change requests must be made. Aligning the SPIN change deadline with the invoice deadline will not cause Program participants to miss the invoice deadline because a SPIN change results in a revised commitment letter, which will create a new invoice deadline 120 days from the issuance of the revised commitment letter.[54]

C. Simplifying Urban Rate Calculations

20. In this section, we simplify the rules for calculating urban rates for the Telecom Program by eliminating the rarely-invoked "standard urban distance" provision from our rules. In the 2023 *Promoting Telehealth Order on Reconsideration,* the Commission eliminated the Rates Database and reinstated the long-standing rules for calculating urban rates.[55] These rules provide that the urban rate for an eligible service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state.[56] If, however, the service is provided over a distance greater than the standard urban distance, which is the average of the longest diameters of all cities with a population of 50,000 or more within a state, the urban rate is the rate no higher than the highest tariffed or publicly-available rate provided over the standard urban distance.[57] In the *Promoting Telehealth Second Further Notice*, the Commission proposed to simplify program rules by eliminating the distinction between services provided over and

(Continued from previous page)
hardships for program participants. SHLB Comments at 9-10; NETC Reply Comments at 2. No commenters opposed this change.

[50] SHLB Jan. 17, 2023 *Ex Parte* Letter at 4. Because the SPIN change deadline for funding year 2023 has not yet lapsed, this change can be effective for funding year 2023.

[51] *Id.* at 5.

[52] *Id.*

[53] *See* 47 CFR § 54.627.

[54] *See* 47 CFR § 54.627(a)(2) ("The date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request.").

[55] *See Promoting Telehealth Order on Reconsideration* at *8, paras. 23-24.

[56] *See id.* at Appx. A.

[57] *See id.*

within the standard urban distance and proposed to base all urban rates calculations on rates provided in a city, rather than over the standard urban distance.[58] It also sought comment on the extent to which health care providers rely on the standard urban distance distinction to calculate urban rates.[59]

21. Based on the record, we find that adopting our proposal to eliminate the standard urban distance provision from the urban rate rules will help simplify the calculation of urban rates in the Telecom Program. Eliminating it will make clearer the process for determining urban rates and there is no evidence that it will adversely impact health care providers because few, if any, Telecom Program participants calculate urban rates using this distinction. No commenters opined on the extent to which health care providers rely on the standard urban distance provision to calculate urban rates, which suggests that standard urban distance was not commonly invoked to calculate urban rates. The only commenter that addressed this proposal, the SHLB Coalition, supported this change.[60] Therefore, we adopt the proposal to base all urban rates calculations on rates provided in a city rather than over the standard urban distance. This change shall be applicable for funding year 2025.

D. Change of Evergreen Contract Dates

22. We next amend the RHC Program rules to permit health care providers to request a change in the evergreen contract dates following a funding commitment. Upon approving such a change, the Administrator will issue a revised funding commitment letter. This change will provide health care providers with the benefits of evergreen contract designation across the full length of the contract's term while also reducing the need for health care providers to seek relief from the Administrator in cases where a post-commitment evergreen contract date change is necessary. This new rule will become effective for funding year 2024.[61]

23. Evergreen contracts are multi-year agreements under which covered services are exempt from the competitive bidding requirements for the term of the contract, which may be extended by up to an aggregate of five years.[62] When the Administrator issues a funding commitment letter, it sets the period for an evergreen contract based on the estimated service start and end dates provided by the health care provider on the Request for Funding.[63] However, as we explained in the *Promoting Telehealth Second Further Notice*, services sometimes start after the estimated service start date, which means that the evergreen status of the contract expires before it would have if the evergreen designation period was based on the actual service start date.[64] In the *Promoting Telehealth Second Further Notice*, we sought comment on whether there should be a process for health care providers to change evergreen contract dates after a funding commitment has been made.[65] We also requested comment on how such a process could be accomplished.[66]

---

[58] *See Promoting Telehealth Second Further Notice* at *30, para. 88.

[59] *See id*.

[60] SHLB Comments at 6.

[61] Making this change effective for funding year 2024 will ensure that there is sufficient time for OMB approval under the Paperwork Reduction Act and changes of the Administrator's information technology systems.

[62] 47 CFR § 54.622(i)(3). To be designated an evergreen contract by the Administrator, a contract must be entered into as a result of competitive bidding, contain certain contractual terms, and meet other requirements. *Id*. § 54.622(i)(3)(ii). RHC Program participants may exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding provided, among other things, that the voluntary extension(s) do not exceed five years in the aggregate. *Id*. § 54.622(i)(3)(iii)(C).

[63] *See* SHLB Jan. 19, 2023 *Ex Parte* at 4-5.

[64] *Promoting Telehealth Second Further Notice* at *36, para. 104.

[65] *Id*.

[66] *Id*.

24. SHLB and NETC support, and no party opposes, allowing health care providers to request changes to their evergreen contract dates in cases when the contract supports those changes.[67] SHLB maintains that such requests should always be deemed timely and not precluded by expiration of the 60-day window for an appeal of the original funding commitment.[68] SHLB also suggests that the Commission clarify that the Administrator should defer to the parties' interpretation of a contract's start and end date unless it is "obviously inconsistent" with the language of the contract.[69]

25. We agree with SHLB and NETC that health care providers should be permitted to request evergreen contract changes following a funding commitment provided the contract supports a change. Aligning a contract's actual service start date with the start date that determines the duration of the evergreen contract period will exempt health care providers from the competitive bidding process for the full length of the contract, thereby providing certainty to RHC Program participants. This change will not alter rules or processes for multi-year commitments or other competitive bidding exemptions. Accordingly, we amend the RHC Program rules to allow health care providers to request changes to evergreen contract dates, subject to the following two requirements.[70]

26. First, we require that the terms of the evergreen contract support any requested date change. For example, an evergreen contract that specifies a start date effective upon signature of the contracting parties would not be eligible for a contract date change because the start date is a date established by the contract independent of the service start date. By contrast, an evergreen contract with terms specifying a start date tied to the commencement of services yet to be delivered would be eligible for a date change regardless of the date of signature. We make clear that any changes to the dates of the evergreen contract must be supported by the contract, and we decline to adopt SHLB's suggestion that the Administrator defer to the contracting parties' interpretation on the contract timing.[71] As in the case of "verification of discounts, offsets, or support amounts" as a general matter under section 54.707 of the Commission's rules, it will be incumbent upon applicants to ensure that the available evidence sufficiently justifies a given date change.[72]

27. Second, we require that health care providers request an evergreen contract change within 60 days of the date service commences. This 60-day window should provide health care providers with ample time to request a date change without having to resort to appealing the original funding commitment, which addresses the timing concern raised by SHLB and NETC.[73] We decline, however, to adopt SHLB's approach that all requests for evergreen contract changes be deemed timely.[74] Such an open-ended option would provide no incentive to health care providers to promptly notify the Administrator of evergreen contract date changes. To memorialize the changed evergreen contract dates, we direct the Administrator to issue a revised funding commitment letter to the health care provider

[67] *See* SHLB Comments at 11; NETC Reply Comments at 2.

[68] SHLB Comments at 11. *See also* NETC Reply Comments at 2 (the "failure to notify [the Administrator] of an error involving contracts dates in the funding commitment letter within the 60-day appeal window should not affect [the Administrator's] ability to correct that information").

[69] SHLB Comments at 11. *See also* NETC Reply Comments at 2 (agreeing with SHLB that the Administrator "should defer to the parties' interpretation of their own contract provisions unless it is unsupported by documentary evidence.").

[70] *See* Appx. A, Final Rules, 47 CFR § 54.622(i)(3)(iv) as adopted herein.

[71] *See* SHLB Comments at 11. If the parties' interpretation of the evergreen contract differs from that of the Administrator's, a health care provider has the option of appealing that interpretation with the Administrator and, should it be necessary, the Commission. *See* 47 CFR § 54.719.

[72] 47 CFR § 54.707(a).

[73] *See* SHLB Comments at 11; NETC Reply Comments at 2.

[74] *See* SHLB Comments at 11.

reflecting the changed dates. If the Administrator denies a requested change, we direct it to issue a letter to the health care provider explaining the basis for the denial. Finally, we direct the Administrator to develop procedures subject to prior Bureau approval for accepting changes to evergreen contract dates consistent with the amended section 54.622(i)(3), and to publicize instructions on requesting changes to evergreen contract dates with the stakeholder community.

E. Single Eligibility Form

28. To reduce burdens on Telecom Program applicants and improve the efficiency and operation of the RHC Program, we next harmonize the RHC Program eligibility determination process by establishing a single eligibility determination form for both the Telecom Program and the HCF Program that is required to be filed only once. Applicants must first be determined eligible under section 254(h)(7)(B) of the Communications Act and RHC Program rules to receive support from the RHC Program.[75] The Telecom Program and the HCF Program currently have different procedures for eligibility determinations. In the Telecom Program, applicants seeking eligibility determinations use the FCC Form 465 (Description of Services Requested and Certification Form), which is the same form used to initiate competitive bidding.[76] Thus, even though most Telecom Program applicants' eligibilities are very unlikely to change from year to year, they are required to provide, and the Administrator is required to review, information regarding their eligibility statuses every time there is a new competitive bidding process, which is generally every year.

29. In contrast, when the HCF Program was established in 2012, the Commission instituted a more efficient process for eligibility determinations by separating the process for eligibility determination from the process for competitive bidding.[77] In the HCF Program, applicants file an FCC Form 460 (Eligibility and Registration Form) to seek a one-time eligibility determination that remains in place unless there is a material change in the entity's eligibility.[78] After receiving this eligibility determination, the applicant may file an FCC Form 461 (Request for Services Form) to initiate competitive bidding.[79] Thus, applicants are able to know whether they are eligible before they spend time and resources planning competitive bidding.[80] Because the FCC Form 460 is filed only once, the eligibility determination process in the HCF Program improves efficiency and reduces costs and time for both health care providers and the Administrator.

30. Therefore, beginning funding year 2025, the FCC Form 460 will be used for eligibility determinations in the Telecom Program and the eligibility determination portion will be eliminated from the FCC Form 465.[81] As a result of this change, starting for funding year 2025, the FCC Form 465 will be

---

[75] 47 U.S.C. § 254(h)(7)(B); 47 CFR §§ 54.600(b), 54.601(a), 54.602(a), 54.607.

[76] *See* FCC Form 465; *Healthcare Connect Fund Order*, 27 FCC Rcd at 16772, para. 213; USAC, Rural Health Care Program, Telecommunications Program, Step 1: Determine Eligibility of Your Site, https://www.usac.org/rural-health-care/telecommunications-program/step-1-determine-eligibility-of-your-site/ (last visited Nov. 20, 2023).

[77] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214.

[78] *See id*.; USAC, Rural Health Care Program, Healthcare Connect Fund Program, Step 1: Determine Eligibility of Your Site, https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-1-determine-eligibility-of-your-site/ (last visited Nov. 20, 2023).

[79] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214; *see also* USAC, Rural Health Care Program, Healthcare Connect Fund Program, Step 2: Develop Bid Evaluation Criteria & Select Services, https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-2-develop-evaluation-criteria-select-services/ (last visited Nov. 20, 2023).

[80] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214.

[81] This change will take effect July 1, 2024, the date that competitive bidding for funding year 2025 begins. Competitive bidding commences one full year before the funding year begins. *See Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 175. Because this change to the single eligibility form will result in the

(continued….)

used solely for competitive bidding in the Telecom Program while the FCC Form 461 will continue to be used for competitive bidding in the HCF Program. Because there are certain differences in eligibility requirements between the Telecom Program and the HCF Program, applicants who are determined eligible in one program are not necessarily eligible in the other program even though one eligibility determination form is used for both programs. For example, non-rural public or non-profit health care providers[82] who are members of majority-rural consortia are eligible to receive support under the HCF Program, but not under the Telecom Program. Thus, in this example, applicants whose FCC Form 460s are submitted specifically for the HCF Program and approved on that basis are not automatically eligible for support in the Telecom Program and must seek eligibility determinations in the Telecom Program if they subsequently wish to demonstrate their eligibility for that program. We direct the Bureau to amend the FCC Form 460 for eligibility determinations for both the Telecom Program and the HCF Program and direct the Administrator to track whether a health care provider is eligible for the Telecom Program, the HCF Program, or both.

31. As part of adopting the FCC Form 460 for the Telecom Program, we also amend section 54.601(b) of our rules to extend it to the Telecom Program effective for funding year 2025.[83] Section 54.601(b) addresses the timing requirements for eligibility determinations in the HCF Program and requires health care providers to notify the Administrator of changes to their name, location, contact information, or eligible entity type. It was adopted when the Commission established the HCF Program in 2012 as a procedural rule for specifying the process for determining health care provider eligibility in the HCF Program.[84] There are no corresponding rules for the eligibility determination process in the Telecom Program where applicants previously had to make a new eligibility showing every year they wished to seek support. Since a single eligibility determination form will be used for both programs, and thus now in the Telecom Program, like the HCF Program, applicants will be required to file separate forms for eligibility determination and request for services, and findings of eligibility will remain in place absent a material change in circumstances, it is reasonable to amend section 54.601(b) to make it apply to both programs to provide greater clarity to program participants.[85]

(Continued from previous page)
eligibility determination portion being eliminated from the FCC Form 465 and the FCC Form 460 will be revised to include eligibility in the Telecom Program, revisions to both forms will be required. We expect that revisions to both forms will be available to RHC Program applicants when competitive bidding for funding year 2025 opens on July 1, 2024.

[82] The health care provider must fall into one of the categories under section 54.600(b) of the Commission's rules. 47 CFR § 54.600(b).

[83] *See* Appx. A, Final Rules, 47 CFR § 54.601(b), as adopted herein. The amendments to section 54.601(b) of our rules we adopt today are permissible without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules. *See* 5 U.S.C. § 553(b)(A). These amendments are procedural in nature because they extend an HCF Program procedural rule to the Telecom Program, but do not change the eligibility requirements or rights of eligible health care providers to receive RHC Program funding. *See JEM Broad. Co. Inc. v. FCC*, 22 F.3d 320, 326-27 (D.C. Cir. 1994) (noting that the "critical feature of the procedural exemption is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency" and explaining that the "critical fact here, however, is that the 'hard look' rules did not change the *substantive standards* by which the FCC evaluates license applications") (internal quotations omitted).

[84] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16866, Appx. D, 47 CFR § 54.601(b).

[85] In light of the conditional approval eligibility rules we adopt today, we delete the phrase "at any time" from section 54.601(b)(2) of our rules because section 54.601(c)(1)(iii) prohibits applicants seeking conditional approval of eligibility from submitting an FCC Form 460 more than one year prior to the start of the funding year in which the applicant is estimated to meet all eligibility requirements. *See* Appx. A, Final Rules, 47 CFR § 54.601(c)(1)(iii) as adopted herein. Applicants seeking a regular eligibility determination are still allowed to certify to the eligibility of particular sites at any time prior to filing a request for services.

32. To further reduce unnecessary burdens and ease the implementation of this change, we direct the Administrator to deem presumptively eligible for funding year 2025 and beyond any health care provider with an existing eligibility approval in the Telecom Program. Because the eligibility status of health care providers rarely changes, an additional up-front eligibility determination for funding year 2025 is unnecessary. This direction is consistent with the eligibility determination process in the HCF Program. We remind any health care providers with changes to conditions that might impact their eligibility status of the requirement to update the Administrator within 30 days of the change.[86] As before, health care providers in both the Telecom and HCF Programs are required to certify their eligibility when filing a Request for Services to initiate competitive bidding.[87]

33. We emphasize that our actions today do not change the substantive requirements for determining eligibility in the RHC Program. It is the RHC Program applicants' obligation to submit accurate information and certifications regarding their eligibility, including the obligation to notify the Administrator within 30 days of a material change in their eligibility information.[88] Because health care provider eligibility is limited by the Act, the Commission does not have discretion to waive eligibility requirements, and must recover any support erroneously disbursed to ineligible entities.[89]

F. De-Obligation of Undisbursed, Un-Invoiced Commitments

34. We establish a deadline of July 1, 2024 for Telecom Program participants to submit invoices for funding years 2019 and earlier, the period during which there was no invoice deadline in the Telecom Program.[90] After that date, funding commitments from funding year 2019 and earlier that have not yet been invoiced will be de-obligated and will not be able to be invoiced. The Commission established an invoice deadline for the Telecom Program effective funding year 2020 in the *Promoting Telehealth Report and Order*.[91] The Commission explained that this deadline of 120 days from the service delivery deadline supported the "harmonization of the invoice deadline for RHC programs" and provided "applicants with sufficient time to submit their invoices and seek reimbursements from the Administrator," while being "necessary for the efficient administration of the RHC program."[92]

35. There is currently $22.2 million in undisbursed, un-invoiced commitments from funding

[86] *See* Appx. A, Final Rules, 47 CFR § 54.601(b), as adopted herein.

[87] *See* 47 CFR § 54.622(e)(1)(i)-(ii). The required certifications provide additional safeguards in the event that an eligible health care provider becomes ineligible.

[88] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214; Appx. A, Final Rules, 47 CFR § 54.601(b), as adopted herein.

[89] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 215.

[90] As a procedural rule change, establishing a filing deadline for invoices for funding years 2019 and earlier properly can be done without prior notice and comment. *See* 5 U.S.C. § 553(b)(A). This rule change is procedural in nature because it specifies a deadline for when certain filings must be made, but does not change the substantive eligibility requirements or rights of eligible health care providers to receive RHC Program funding. *See JEM Broad. Co. Inc. v. FCC*, 22 F.3d 320, 326-27 (D.C. Cir. 1994) (noting that the "critical feature of the procedural exemption is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency" and explaining that the "critical fact here, however, is that the 'hard look' rules did not change the *substantive standards* by which the FCC evaluates license applications") (internal quotations omitted). Insofar as affected parties have already gone years without seeking the support they originally applied for—even assuming they could submit invoices—we are not persuaded of the significance of their interest in being able to receive that support at an indefinite time in the future. *See, e.g.*, *Mendoza v. Perez*, 754 F.3d 1002, 1024 (D.C. Cir. 2014) ("[T]he distinction between substantive and procedural rules is one of degree depending upon whether the substantive effect is sufficiently grave so that notice and comment are needed to safeguard the policies underlying the APA.") (citation and internal quote marks omitted).

[91] *Promoting Telehealth Report and Order,* 34 FCC Rcd at 7422-24, paras. 188-91; *see also* 47 CFR § 54.627.

[92] *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7423, para. 189.

year 2019 and earlier, when there was no invoice submission deadline.[93] Establishing an invoice submission deadline of July 1, 2024 for Telecom Program funding requests from funding year 2019 and earlier and de-obligating unused funding is appropriate for several reasons. It is highly unlikely, given the significant lapse of time, that a significant portion of this funding will ever be invoiced, and some of these commitments may be for services that were ultimately never used. At this point, the Administrator receives very few invoices for services from prior to funding year 2019.[94] Further, this deadline provides ample time for Program participants to assess whether they have undisbursed commitments requiring invoicing and to complete the invoicing process for those funding requests. Any funding de-obligated as a result of this change can be used for more useful purposes.

36. Therefore, all existing Telecom Program commitments from funding year 2019 and earlier must be invoiced by July 1, 2024. This decision does not affect the invoice deadline for Telecom Program funding requests for funding year 2020 and later, which are subject to the invoice deadlines established in section 54.627 of the Commission's rules. In the event that the Administrator issues a funding commitment in the future for a funding request for funding year 2019 or earlier,[95] invoices for that funding commitment must be submitted within 120 days of the issuance of a commitment letter.[96]

IV. PROCEDURAL MATTERS

37. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[97] requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[98] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning rule and policy changes in the Third Report and Order. The FRFA is set forth in Appendix B.

38. *Paperwork Reduction Act.* The Third Report and Order may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[99] All such new or modified requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. The Commission will publish a separate document in the Federal Register at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses in the FRFA in Appendix B.

---

[93] Letter from Mark Sweeney, Vice President, Universal Service Administrative Company, to Jodie Griffin, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau and Bryan Boyle, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, WC Docket 17-310 (filed Nov. 21, 2023).

[94] *See id.* (stating that the Administrator received nine Telecom Program invoices in calendar year 2023 through October 31, 2023 for service from prior to funding year 2019).

[95] The Administrator could potentially issue a funding commitment for a funding year 2019 or earlier funding request due to resolution of a pending appeal, among other reasons.

[96] *See* 47 CFR § 54.627(a)(2) (requiring invoices to be submitted within 120 days of a revised commitment letter).

[97] The RFA, *see* 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[98] 5 U.S.C. § 605(b).

[99] Pub. L. No. 104-13.

39. *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 Third Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

40. *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).

41. *Contact Person.* For further information about this proceeding, please contact Philip A. Bonomo, Assistant Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau Federal Communications Commission at (202) 418-7400.

V. ORDERING CLAUSES

42. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(j), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), 214, and 254 and section 1.429 of the Commission's rules, 47 CFR § 1.429, that this Third Report and Order IS ADOPTED.

43. IT IS FURTHER ORDERED, that pursuant to section 1.103 of the Commission's rules, the provisions of this Third Report and Order WILL BECOME EFFECTIVE thirty (30) days from the date of publication in the Federal Register unless indicated otherwise herein.

44. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective (30) days after the publication of the Third Report and Order in the Federal Register, except that sections 54.601(b), 54.601(c), 54.622(e)(1)(i)-(ii), and 54.622(i)(3)(iv), which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes any required review under the Paperwork Reduction Act. In addition, section 54.604 will not become effective until the later of: (1) 30 days after the publication of the Third Report and Order in the Federal Register; or (2) after the Office of Management and Budget completes any required review under the Paperwork Reduction Act associated with changes to that rule adopted in the *Promoting Telehealth Order on Reconsideration*.[100] The Commission directs the Wireline Competition Bureau to publish a notice in the *Federal Register* announcing completion of such reviews and the relevant effective dates.

45. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

[100] *Promoting Telehealth Order on Reconsideration*, FCC 23-6, 2023 WL 1420076, *45, para. 132 (amendments to section 54.604 adopted there will not take effect until any required OMB approval under the Paperwork Reduction Act); *see also* FCC, *Promoting Telehealth in Rural America*, 88 Fed. Reg. 17379, 17379, 17395 (Mar. 23, 2023).

46. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Third Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Amend § 54.601 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 54.601 Health care provider eligibility.

* * * * *

(b) *Determination of health care provider eligibility for the Rural Health Care Program*. (1) Before funding year 2025, health care providers in the Healthcare Connect Fund Program may certify to the eligibility of particular sites at any time prior to, or concurrently with, filing a request for services to initiate competitive bidding for the site. Applicants who utilize a competitive bidding exemption must provide eligibility information for the site to the Administrator prior to, or concurrently with, filing a request for funding for the site. Health care providers must also notify the Administrator within 30 days of a change in the health care provider's name, site location, contact information, or eligible entity type.

(2) Effective for funding year 2025, applicants in the Rural Health Care Program may certify to the eligibility of particular sites prior to, or concurrently with, filing a Request for Services to initiate competitive bidding for the site. Applicants who utilize a competitive bidding exemption must provide eligibility information for the site to the Administrator prior to, or concurrently with, filing a Request for Funding for the site. Health care providers must notify the Administrator within 30 days of a change in the health care provider's name, site location, contact information, or eligible entity type.

(c) *Conditional Approval of Eligibility*. Effective for funding year 2025, (1) An entity that does not yet meet all eligibility requirements under the Rural Health Care Program may request and receive a conditional approval of eligibility from the Administrator if the entity provides documentation showing that it satisfies the following requirements:

(i) The entity is or reasonably expects to qualify as a public or non-profit health care provider as defined in §54.600(b) of this subpart by an estimated eligibility date;

(ii) The entity is or reasonably expects to be physically located in a rural area defined in §54.600(e) of this subpart by the estimated eligibility date or, for the Healthcare Connect Fund Program only, is not located in a rural area but is or plans to be a member of a majority-rural Healthcare Connect Fund Program consortium that satisfies the eligible rural health care provider composition requirement set forth in §54.607(b) of this subpart by the estimated eligibility date; and

(iii) The estimated eligibility date is in the same funding year as or in the next funding year of the date that the entity requests the conditional approval of eligibility.

(2) An entity that receives conditional approval of eligibility may conduct competitive bidding for the site. An entity engaging in competitive bidding with conditional approval of eligibility must provide a written notification to potential bidders that the entity's eligibility is conditional and specify the estimated eligibility date.

(3) An entity that receives conditional approval of eligibility may file a request for funding for the site during an application filing window opened for a funding year that ends after the estimated eligibility date. The Administrator shall not issue any funding commitments to applicants that have received conditional approval of eligibility only. Funding commitments may be issued only after such applicants receive formal approval of eligibility as described in paragraph (c)(4) of this section.

(4) An entity that receives conditional approval of eligibility is expected to notify the Administrator, along with supporting documentation for the eligibility, within 30 days of its actual eligibility date. The actual eligibility date is the date that the entity qualifies as a public or non-profit health care provider as defined in §54.600(b) of this subpart and meets the requirements under paragraph (c)(1)(ii) of this section. The actual eligibility date may be a different date from the estimated eligibility date. The Administrator shall formally approve the entity's eligibility if the entity meets the requirements for a public or non-profit health care provider defined in §54.600(b) of this subpart and the requirements under paragraph (c)(1)(ii) of this section. Upon the entity receiving a formal approval of eligibility, the Administrator may issue funding commitments covering a time period that starts no earlier than the entity's actual eligibility date and that is within the funding year for which support was requested.

3. Amend § 54.604 by replacing paragraphs (a) – (d) to read as follows:

§ 54.604. Determining the urban rate.

(a) Effective funding year 2024

(1) If a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program that is to be provided over a distance that is less than or equal to the "standard urban distance," as defined in paragraph (a)(3) of this section, for the state in which it is located, the "urban rate" for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

(2) If a rural health care provider requests an eligible service to be provided over a distance that is greater than the "standard urban distance," as defined in paragraph (a)(3) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service provided over the standard urban distance in any city with a population of 50,000 or more in that state, calculated as if the service were provided between two points within the city.

(3) The "standard urban distance" for a state is the average of the longest diameters of all cities with a population of 50,000 or more within the state.

(4) The Administrator shall calculate the "standard urban distance" and shall post the "standard urban distance" and the maximum supported distance for each state on its website.

(b) As of funding year 2025, if a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program the "urban rate" for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

4. Amend § 54.622(e)(1)(i) – (ii) to read as follows:

§ 54.622 Competitive Bidding Requirements and Exemptions.

* * * * *

(e) * * *

(1) * * *

(i) The entity seeking supported services is a public or nonprofit health care provider that falls within one of the categories set forth in the definition of health care provider listed in § 54.600, or expects to be such a public or nonprofit health care provider before the end of the funding year for which the supported services are requested provided that the entity has received a conditional approval of eligibility pursuant to § 54.601(c) of this subpart.

(ii) The health care provider seeking supported services is physically located in a rural area as defined in § 54.600 of this subpart or is a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607(b) of this subpart. If an entity seeks supported services under a conditional approval of eligibility set forth in § 54.601(c) of this subpart, the entity expects to be located in a rural area defined in §54.600 of this subpart before the end of the funding year for which the supported services are requested, or plans to be a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607(b) of this subpart before the end of the funding year for which the supported services are requested.

* * * * *

5. Amend § 54.622(i)(3) by adding a new paragraph (iv) to read as follows:

* * * * *

(i) * * *

(1) * * *

(2) * * *

(3) * * *

(i) * * *

(ii) * * *

(iii) * * *

(iv) As of funding year 2024, if the date that services start under an evergreen contract differs from the date services were estimated to start, participants may request a change of the start date and end date of their evergreen contract within 60 days of the actual service start date provided the terms of the evergreen contract support such a change. Upon approving a requested change, the Administrator will issue a revised funding commitment letter to the health care provider reflecting the changed dates. If the Administrator denies a requested change, it will issue a letter to the health care provider explaining the basis for the denial.

* * * * *

6. Amend § 54.625 by replacing paragraph (c) to read as follows:

§ 54.625 Service Provider Identification Number (SPIN) changes.

* * * * *

(c) *Filing Deadline*. An applicant must file its request for a corrective or operational SPIN change with the Administrator no later than the invoice filing deadline as defined by section 54.627.

APPENDIX 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 *Promoting Telehealth in Rural America*, Order on Reconsideration, Second Report and Order, and Second Further Notice of Proposed Rulemaking, released in January 2023 (*Second Further Notice*).[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Third Report and Order

2. In the *Third Report and Order*, the Commission seeks to further improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers– especially small, rural healthcare providers (HCPs) – in the most equitable and efficient manner possible. Over the years, telehealth has become an increasingly vital component of healthcare delivery to rural Americans. Rural healthcare facilities are typically limited by the equipment and supplies they have and the scope of services they can offer, which ultimately can have an impact on the availability of high-quality health care. Therefore, the RHC Program plays a critical role in overcoming some of the obstacles healthcare providers face in delivering their services to rural communities. Considering the significance of RHC Program support, the Commission implements several measures to most effectively meet HCPs' needs while responsibly distributing the RHC Program's limited funds.

3. Additionally, the *Third Report and Order* adopts proposals from the January 2023 *Second Further Notice* that allow conditional approvals of eligibility to allow soon-to-be eligible providers to engage in competitive bidding, align the Service Provider Identification Number (SPIN) change deadline with the invoice deadline, simplify urban rate calculations, and allow health care providers to change evergreen contract dates.[4] We also harmonize the RHC Program eligibility determination process by establishing a single eligibility determination form for the Telecom Program and RHC program and announce a new deadline for the de-obligation of undisbursed, un-invoiced commitments.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically address the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as

[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] *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, FCC 23-6, 2023 WL 1420076 (Jan. 27, 2023) (*Second Further Notice*).

[3] 5 U.S.C. § 604.

[4] *Second Further Notice* at paras 71-115.

a result of those comments.[5] 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.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[9]

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[10] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[11] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[12]

8. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[13] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[14] Nationwide, for tax year 2020, there

---

[5] 5 U.S.C. § 604(a)(3).

[6] 5 U.S.C. § 604 (a)(4).

[7] 5 U.S.C. § 601(6).

[8] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] *See* 15 U.S.C. § 632.

[10] *See* 5 U.S.C. § 601(3)-(6).

[11] *See* SBA, Office of Advocacy, "What's New With Small Business?,"

https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023)

[12] *Id*.

[13] *See* 5 U.S.C. § 601(4).

[14] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number 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.

were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[15]

9. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[16] U.S. Census Bureau data from the 2017 Census of Governments[17] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[18] Of this number, there were 36,931 general purpose governments (county,[19] municipal, and town or township[20]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[21] with enrollment populations of less than 50,000.[22] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[23]

---

[15] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[16] *See* 5 U.S.C. § 601(5).

[17] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[18] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[19] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[20] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[21] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[22] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[23] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

1. Healthcare Providers

10. *Offices of Physicians (except Mental Health Specialists)*. This industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery.[24] These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[25] The SBA small business size standard for this industry classifies a business having annual receipts of $14 million or less as small.[26] The 2017 Economic Census indicates that 137,366 firms operated in this industry for the entire year.[27] Of this number, 126,098 firms had revenue of less than $10 million.[28] Based on this data, we conclude that a majority of firms operating in this industry are small under the SBA size standard.

11. *Offices of Dentists*. This industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery.[29] These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[30] They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry.[31] The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small.[32] The 2017 Economic Census indicates that 113,795 firms operated in this industry for the entire year.[33] Of that number, 112,332 firms had revenue of less than $5 million.[34] Based on this data, we conclude that a majority of dental businesses are small entities.

---

[24] *See* U.S. Census Bureau, *2017 NAICS Definition, "621111 Offices of Physicians (except Mental Health Specialists),"* https://www.census.gov/naics/?input=621111&year=2017&details=621111.

[25] *Id*.

[26] *See* 13 CFR § 121.201, NAICS Code 621111.

[27] *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 621111, https://data.census.gov/cedsci/table?y=2017&n=621111&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[28] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[29] *See* U.S. Census Bureau, *2017 NAICS Definition, "621210 Offices of Dentists,"* https://www.census.gov/naics/?input=621210&year=2017&details=621210.

[30] *Id.*

[31] *Id.*

[32] *See* 13 CFR § 121.201, NAICS Code 621210.

[33] *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 621210, https://data.census.gov/cedsci/table?y=2017&n=621210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

12. *Offices of Chiropractors*. This industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic.[35] These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[36] The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small.[37] The 2017 Economic Census indicates that 34,414 firms operated in this industry for the entire year.[38] Of that number, 34,366 firms operated with revenue of less than $5 million per year.[39] Based on this data, we conclude that a majority of chiropractors are small.

13. *Offices of Optometrists*. This industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry.[40] These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions.[41] Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy.[42] They operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses.[43] The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small.[44] The 2017 Economic Census indicates that 17,879 firms operated in this industry for the entire year.[45] Of this

(Continued from previous page)

[34] *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.

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "621310 "Offices of Chiropractors,"* https://www.census.gov/naics/?input=621310&year=2017&details=621310.

[36] *Id.*

[37] *See* 13 CFR § 121.201, NAICS Code 621310.

[38] *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 621310, https://data.census.gov/cedsci/table?y=2017&n=621310&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[39] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[40] *See* U.S. Census Bureau, *2017 NAICS Definition "621320 Offices of Optometrists,"* https://www.census.gov/naics/?input=621320&year=2017&details=621320.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *See* 13 CFR § 121.201, NAICS Code 621320.

[45] *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 621320, https://data.census.gov/cedsci/table?y=2017&n=621320&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

number, 16,792 firms had revenue of less than $5 million.[46] Based on this data, we conclude that a majority of firms in this industry are small.

14. *Offices of Mental Health Practitioners (except Physicians)*. This industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress.[47] These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[48] The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small.[49] The 2017 Economic Census indicates that 19,316 firms operated in this industry for the entire year.[50] Of that number, 13,318 firms had revenue of less than $5 million.[51] Based on this data, we conclude that a majority of mental health practitioners who do not employ physicians are small.

15. *Offices of Physical, Occupational and Speech Therapists and Audiologists*. This industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems.[52] These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[53] The SBA small business size standard for this industry classifies a business having annual

---

[46] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[47] *See* U.S. Census Bureau, *2017 NAICS Definition, "621330 Offices of Mental Health Practitioners (except Physicians),"* https://www.census.gov/naics/?input=621330&year=2017&details=621330.

[48] *Id.*

[49] *See* 13 CFR § 121.201, NAICS Code 621330.

[50] *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 621330, https://data.census.gov/cedsci/table?y=2017&n=621330&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[52] *See* U.S. Census Bureau, *2017 NAICS Definition, "621340 Offices of Physical, Occupational and Speech Therapists and Audiologists,"* https://www.census.gov/naics/?input=621340&year=2017&details=621340.

[53] *Id.*

receipts of $11 million or less as small.[54] The 2017 Economic Census indicates that 22,402 firms in this industry operated for the entire year.[55] Of that number, 21,712 firms had revenue of less than $5 million.[56] Based on this data, we conclude that a majority of businesses in this industry are small.

16. *Offices of Podiatrists*. This industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry.[57] These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[58] The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small.[59] The 2017 Economic Census indicates that 6,673 firms operated in this industry for the entire year.[60] Of that number, 6,235 firms had revenue of less than $5 million.[61] Based on this data, we conclude that a majority of firms in this industry are small.

17. *Offices of All Other Miscellaneous Health Practitioners*. This industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists).[62] These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[63] The SBA small business size standard for this industry classifies firms having annual receipts of $9 million or less as small.[64] The 2017 Economic Census indicates that 14,194 firms in this industry operated the entire year.[65]

---

[54] *See* 13 CFR § 121.201, NAICS Code 621340.

[55] *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 621340, https://data.census.gov/cedsci/table?y=2017&n=621340&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[56] *Id*. The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[57] *See* U.S. Census Bureau, *2017 NAICS Definition, "621391 Offices of Podiatrists,"* https://www.census.gov/naics/?input=621391&year=2017&details=621391.

[58] *Id.*

[59] *See* 13 CFR § 121.201, NAICS Code 621391.

[60] *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 621391, https://data.census.gov/cedsci/table?y=2017&n=621391&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[62] *See* U.S. Census Bureau, *2017 NAICS Definition, "621399 Offices of All Other Miscellaneous Health Practitioners,"* https://www.census.gov/naics/?input=621399&year=2017&details=621399.

[63] *Id.*

[64] *See* 13 CFR § 121.201, NAICS Code 621399.

Of that number, 10,874 firms had revenue of less than $5 million.[66] Based on this data, we conclude the majority of firms in this industry are small.

18. *Family Planning Centers*. This industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy.[67] The SBA small business size standard for this industry classifies firms having annual receipts of $16.5 million or less as small.[68] The 2017 Economic Census indicates that 1,339 firms in this industry operated for the entire year.[69] Of that number, 1,014 firms had revenue of less than $10 million.[70] Based on this data, we conclude that the majority of firms in this industry is small.

19. *Outpatient Mental Health and Substance Abuse Centers*. This industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse.[71] These establishments generally treat patients who do not require inpatient treatment.[72] They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary.[73] The SBA small business size

(Continued from previous page)

[65] *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 621399, https://data.census.gov/cedsci/table?y=2017&n=621399&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[67] *See* U.S. Census Bureau, *2017 NAICS Definition, "621410 Family Planning Centers,"* https://www.census.gov/naics/?input=621410&year=2017&details=621410.

[68] *See* 13 CFR § 121.201, NAICS Code 621410.

[69] *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 621410, https://data.census.gov/cedsci/table?y=2017&n=621410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[70] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[71] *See* U.S. Census Bureau, *2017 NAICS Definition, "621420 Outpatient Mental Health and Substance Abuse Centers,"* https://www.census.gov/naics/?input=621420&year=2017&details=621420.

[72] *Id.*

[73] *Id.*

standard for this industry classifies a firm as small if it has $16.5 million or less in annual receipts.[74] The 2017 Economic Census indicates that 5,637 firms operated for the entire year.[75] Of this number, 4,534 firms had of less than $10 million.[76] Based on this data, we conclude that a majority of firms in this industry are small.

20. *HMO Medical Centers*. This industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care.[77] These establishments are owned by the HMO.[78] HMO establishments that both provide health care services and underwrite health and medical insurance policies are also included in this industry.[79] The SBA small business size standard for this industry classifies firms having $39 million or less in annual receipts as small.[80] The 2017 U.S. Economic Census indicates that 17 firms in this industry operated for the entire year.[81] However, the 2017 Economic Census does not provide disaggregated financial information for this industry, therefore the Commission cannot determine how many of the firms in this industry are small under the SBA small business size standard.[82]

21. *Freestanding Ambulatory Surgical and Emergency Centers*. This industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (e.g., orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (e.g., setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis.[83] Outpatient surgical establishments have specialized facilities, such as operating and recovery

---

[74] *See* 13 CFR § 121.201, NAICS Code 621420.

[75] *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 621420, https://data.census.gov/cedsci/table?y=2017&n=621420&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. The U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[77] *See* U.S. Census Bureau, *2017 NAICS Definition, "621491 HMO Medical Centers,"* https://www.census.gov/naics/?input=621491&year=2017&details=621491.

[78] *Id.*

[79] *Id.*

[80] *See* 13 CFR § 121.201, NAICS Code 621491.

[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 621491, https://data.census.gov/cedsci/table?y=2017&n=621491&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[82] *Id.* The U.S. Census Bureau withheld publication of the sales/value of shipments/revenue information for firms in this industry to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue). 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] *See* U.S. Census Bureau, *2017 NAICS Definition, "621493 Freestanding Ambulatory Surgical and Emergency Centers,"* https://www.census.gov/naics/?input=621493&year=2017&details=621493.

rooms, and specialized equipment, such as anesthetic or X-ray equipment.[84] The SBA small business size standard for this industry classifies firms having annual receipts of $16.5 million or less as small.[85] The 2017 U.S. Economic Census indicates that 3,888 firms in this industry operated for the entire year.[86] Of that number, 3,132 firms had revenue of less than $10 million.[87] Based on this data, we conclude that a majority of firms in this industry are small.

22. *All Other Outpatient Care Centers*. This industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers).[88] Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (i.e., Doctor of Medicine and Doctor of Dental Medicine) are included in this industry.[89] The SBA small business size standard for this industry classifies a business with annual receipts of $22.5 million or less as small.[90] The 2017 U.S. Economic Census indicates that 5,524 firms operated in this industry for the entire year.[91] Of this number, 4,584 firms had revenue of less than $10 million.[92] Based on this data, we conclude that a majority of firms in this industry are small.

23. *Blood and Organ Banks*. This industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs.[93] The SBA small business size standard for this industry classifies firms having annual receipts of $35 million or less as small.[94] The 2017 U.S. Census Bureau data indicate that 293 firms operated in this

[84] *Id.*

[85] *See* 13 CFR § 121.201, NAICS Code 621493.

[86] *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 621493, https://data.census.gov/cedsci/table?y=2017&n=621493&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[87] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than $100,000, and $100,000 to $249,999, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[88] *See* U.S. Census Bureau, *2017 NAICS Definition, "621498 All Other Outpatient Care Centers,"* https://www.census.gov/naics/?input=621498&year=2017&details=621498.

[89] *Id.*

[90] *See* 13 CFR § 121.201, NAICS Code 621498.

[91] *See* U.S. Census Bureau, *2017 Economic Census of the United States, 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 621498, https://data.census.gov/cedsci/table?y=2017&n=621498&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[92] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[93] *See* U.S. Census Bureau, *2017 NAICS Definition*, *"621991 Blood and Organ Banks,"* https://www.census.gov/naics/?input=621991&year=2017&details=621991.

[94] *See* 13 CFR § 121.201, NAICS Code 621991.

industry for the entire year.[95] Of that number, 219 firms operated with revenue of less than $25 million.[96] Based on this data, we conclude the major of firms that operate in this industry are small.

24. *All Other Miscellaneous Ambulatory Health Care Services*. This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks).[97] The SBA small business size standard for this industry classifies businesses having annual receipts of $18 million or less as small.[98] 2017 U.S. Bureau Census data show that 2,968 firms operated in this industry for the entire year.[99] Of that number, 2,810 firms had revenue of less than $10 million.[100] Based on this data, we conclude that a majority of the firms in this industry are small. This industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner.[101] The SBA small business size standard for this industry classifies a business as small if it has annual receipts of $36.5 million or less.[102] 2017 U.S. Census Bureau data indicate that 2,799 firms operated in this industry for the entire year.[103] Of this number, 2,640 firms had revenue of less than $25 million.[104] Based on this data, we conclude that a majority of firms that operate in this industry are small.

25. *Medical Laboratories*. This industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner.[105] The SBA

---

[95] *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 621991, https://data.census.gov/cedsci/table?y=2017&n=621991&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[96] *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.

[97] *See* U.S. Census Bureau, *2017 NAICS Definition, "621999 All Other Miscellaneous Ambulatory Health Care Services,"* https://www.census.gov/naics/?input=621999&year=2017&details=621999.

[98] *See* 13 CFR § 121.201, NAICS Code 621999.

[99] *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 621999, https://data.census.gov/cedsci/table?y=2017&n=621999&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. 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.

[101] *See* U.S. Census Bureau, *2017 NAICS Definition, "621511 Medical Laboratories,"* https://www.census.gov/naics/?input=621511&year=2017&details=621511.

[102] *See* 13 CFR § 121.201, NAICS Code 621511.

[103] *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 621511, https://data.census.gov/cedsci/table?y=2017&n=621511&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. 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.

[105] *See* U.S. Census Bureau, *2017 NAICS Definition, "621511 Medical Laboratories,"* https://www.census.gov/naics/?input=621511&year=2017&details=621511.

small business size standard for this industry classifies a business as small if it has annual receipts of $36.5 million or less.[106] 2017 U.S. Census Bureau data indicate that 2,799 firms operated in this industry for the entire year.[107] Of this number, 2,640 firms had revenue of less than $25 million.[108] Based on this data, we conclude that a majority of firms that operate in this industry are small.

26. *Diagnostic Imaging Centers*. This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner.[109] The SBA small business size standard for this industry classifies firms having annual receipts of $16.5 million or less as small.[110] The 2017 U.S. Economic Census indicates that 3,556 firms operated in this industry for the entire year.[111] Of that number, 3,233 firms had revenue of less than $10 million.[112] Based on this data, we conclude that a majority of firms that operate in this industry are small.

27. *Home Health Care Services*. This industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.[113] The SBA small business size standard for this industry classifies a firm having annual receipts of $16.5 million or less as small.[114] The 2017 Economic Census indicates that 19,414 firms operated in this industry for the entire year.[115] Of that number, 18,291 firms had revenue of less than $10 million.[116] Based on this data, we conclude that a majority of firms that operate in this industry are small.

---

[106] *See* 13 CFR § 121.201, NAICS Code 621511.

[107] *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 621511, https://data.census.gov/cedsci/table?y=2017&n=621511&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. 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.

[109] *See* U.S. Census Bureau*, 2017 NAICS Definition, "621512 Diagnostic Imaging Centers,"* https://www.census.gov/naics/?input=621512&year=2017&details=621512.

[110] *See* 13 CFR § 121.201, NAICS Code 621512.

[111] *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 621512, https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621512&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false.

[112] *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.

[113] *See* U.S. Census Bureau, *2017 NAICS Definition, "621610 Home Health Care Services,"* https://www.census.gov/naics/?input=621610&year=2017&details=621610.

[114] *See* 13 CFR § 121.201, NAICS Code 621610.

[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 621610, https://data.census.gov/cedsci/table?y=2017&n=621610&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.

28. *Ambulance Services*. This industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care.[117] These services are often provided during a medical emergency but are not restricted to emergencies.[118] The vehicles are equipped with lifesaving equipment operated by medically trained personnel.[119] The SBA small business size standard for this industry classifies businesses having annual receipts of $20 million or less as small.[120] The 2017 U.S. Economic Census indicates that 2,744 firms operated in this industry for the entire year.[121] Of that number, 2,539 firms had revenue of less than $10 million.[122] Based on this data, we conclude that a majority of firms in this industry is small.

29. *Kidney Dialysis Centers*. This industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services.[123] The SBA small business size standard for this industry classifies firms having annual receipts of $41.5 million or less as small.[124] The 2017 U.S. Economic Census indicates that 378 firms operated in this industry for the entire year.[125] Of that number, 271 firms had revenue of less than $25 million.[126] Based on this data, we conclude that a majority of firms in this industry are small.

30. *General Medical and Surgical Hospitals*. This industry comprises "establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions.[127] These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements.[128] The hospitals have an organized staff of physicians and other

---

[117] *See* U.S. Census Bureau, *2017 NAICS Definition, "621910 Ambulance Services,"* https://www.census.gov/naics/?input=621910&year=2017&details=621910.

[118] *Id*.

[119] *Id.*

[120] *See* 13 CFR § 121.201, NAICS Code 621910.

[121] *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 621910, https://data.census.gov/cedsci/table?y=2017&n=621910&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[122] *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.

[123] *See* U.S. Census Bureau, *2017 NAICS Definition, "621492 Kidney Dialysis Centers,"* https://www.census.gov/naics/?input=621492&year=2017&details=621492.

[124] *See* 13 CFR § 121.201, NAICS Code 621492.

[125] *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 621492, https://data.census.gov/cedsci/table?y=2017&n=621492&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[126] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than $100,000, $100,000 to $249,999 and $500,000 to $999,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[127] *See* U.S. Census Bureau, *2017 NAICS Definition, "622110 General Medical and Surgical Hospitals,"* https://www.census.gov/naics/?input=622110&year=2017&details=622110.

medical staff to provide patient care services and usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services.[129] The SBA small business size standard for this industry classifies firms having annual receipts of $41.5 million or less as small.[130] The 2017 U.S. Economic Census indicates that 2,948 firms operated in this industry for the entire year.[131] Of that number, 705 firms had revenue of less than $25 million, while 709 firms had revenue between $25 million and $99,999,999 and 1,072 firms had revenue greater than $100,000,000.[132] Based on this data, we conclude that approximately one-quarter of firms in this industry are small.

31. *Psychiatric and Substance Abuse Hospitals*. This industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders.[133] The treatment often requires an extended stay in the hospital.[134] These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements.[135] They have an organized staff of physicians and other medical staff to provide patient care services.[136] Psychiatric, psychological, and social work services are available at the facility.[137] These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services.[138] The SBA small business size standard for this industry classifies a business having annual receipts of $41.5 million or less as small.[139] 2017 U.S. Census Bureau data indicate that 414 firms operated in this industry for the entire year.[140] Of this

(Continued from previous page)

[128] *Id.*

[129] *Id.*

[130] *See* 13 CFR § 121.201, NAICS Code 622110.

[131] *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 622110, https://data.census.gov/cedsci/table?y=2017&n=622110&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[132] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of $1,000,000 to $2,499,999, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[133] *See* U.S. Census Bureau, *2017 NAICS Definition, "622210 Psychiatric and Substance Abuse Hospitals,"* https://www.census.gov/naics/?input=622210&year=2017&details=622210.

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id. See* U.S. Census Bureau, *2017 NAICS Definition, "622210 Psychiatric and Substance Abuse Hospitals"*, https://www.census.gov/naics/?input=622210&year=2017&details=622210.

[139] *See* 13 CFR § 121.201, NAICS Code 622210.

[140] *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 622210, https://data.census.gov/cedsci/table?y=2017&n=622210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

number, 174 firms had revenue of less than $25 million.[141] We note that 195 firms had revenue between $25 million and $99,999,999 but we are unable to determine the number of firms in this group that have revenue of $41.5 million or less.[142] Thus, based on the available data, under the SBA size standard slightly more than one-third of the businesses in this industry are small.

32. *Specialty (Except Psychiatric and Substance Abuse) Hospitals*. This industry consists of "establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse)."[143] Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry.[144] These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements.[145] They have an organized staff of physicians and other medical staff to provide patient care services.[146] These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services.[147] The SBA small business size standard for this industry classifies businesses having annual receipts of $41.5 million or less as small.[148] 2017 U.S. Census Bureau data indicate that 346 firms operated in this industry for the entire year.[149] Of that number, 119 firms had revenue of less than $25 million, while 169 firms had revenue of $25 million or more.[150] Based on this data, we conclude the less than half of the firms in this industry are small.

33. *Emergency and Other Relief Services*. This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (e.g., wars).[151] The SBA small business size standard for

---

[141] *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.

[142] *Id*.

[143] *See* U.S. Census Bureau, *2017 NAICS Definition, "622310 Specialty (Except Psychiatric and Substance Abuse) Hospitals,"* https://www.census.gov/naics/?input=622310&year=2017&details=622310.

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] *See* 13 CFR § 121.201 NAICS Code 622310.

[149] *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 622310, https://data.census.gov/cedsci/table?y=2017&n=622310&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[150] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue between $2,500,000 to $4,999,999, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Based on the data provided however, the number of firms with sales/value of shipments/revenue between $2,500,000 to $4,999,999 can be calculated. 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".

[151] *See* U.S. Census Bureau, *2017 NAICS Definition, "624230 Emergency and Other Relief Services,"* https://www.census.gov/naics/?input=624230&year=2017&details=624230.

this industry classifies firms having annual receipts of $36.5 million or less as small.[152] The 2017 U.S. Economic Census indicates that 499 firms operated in this industry for the entire year.[153] Of that number, 413 firms had revenue of less than $25 million.[154] Based on this data, we conclude that a majority of firms in this industry are small.

2. Providers of Telecommunications and Other Services

a. Telecommunications Service Providers

34. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[155] is the closest industry with an SBA small business size standard.[156] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[157] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[158] Of this number, 2,964 firms operated with fewer than 250 employees.[159] 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.[160] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[161] 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.

35. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications

---

[152] *See* 13 CFR § 121.201, NAICS Code 624230.

[153] *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 624230, https://data.census.gov/cedsci/table?y=2017&n=624230&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[154] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than $100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[155] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[156] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[157] *Id.*

[158] *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.

[159] *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.

[160] 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.

[161] *Id.*

Carriers[162] is the closest industry with a SBA small business size standard.[163] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[164] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[165] Of this number, 2,964 firms operated with fewer than 250 employees.[166] 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.[167] 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.

36. *Competitive Access Providers*. Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to CAPs. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.[168] Under the SBA small business size standard a Wired Telecommunications Carrier is a small entity if it employs 1,500 employees or less.[169] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[170] Of that number, 2,964 firms operated with fewer than 250 employees.[171] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 659 CAPs and competitive local exchange carriers (CLECs), and 69 cable/coax CLECs that reported they were engaged in the provision of competitive local exchange services.[172] Of these providers, the Commission estimates that 633 providers have 1,500 or fewer employees.[173] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

37. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as

---

[162] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[163] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[164] *Id.*

[165] *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.

[166] *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.

[167] 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.

[168] *See,* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[169] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[170] *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.

[171] *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.

[172] 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.

[173] *Id.*

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.[174] 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.[175] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[176] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[177]

38. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[178] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[179] Of this number, 2,964 firms operated with fewer than 250 employees.[180] 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.[181] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[182] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

39. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[183] 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.[184] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[185] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this

[174] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[175] *Id.*

[176] *Id.*

[177] 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.

[178] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[179] *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.

[180] *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.

[181] 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.

[182] *Id.*

[183] *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.

[184] *Id.*

[185] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry that operated for the entire year.[186] Of that number, 2,837 firms employed fewer than 250 employees.[187] 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.[188] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[189] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

40. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[190] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[191] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[192] Of this number, 2,837 firms employed fewer than 250 employees.[193] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[194] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[195] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

41. *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."[196] 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.[197] U.S. Census Bureau data for 2017 show that 275

[186] *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.

[187] *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.

[188] 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.

[189] *Id.*

[190] *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.

[191] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[192] *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.

[193] *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.

[194] 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.

[195] Id.

[196] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[197] *See* 13 CFR § 121.201, NAICS Code 517410.

firms in this industry operated for the entire year.[198] Of this number, 242 firms had revenue of less than $25 million.[199] 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.[200] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[201] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

42. *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.[202] 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.[203] 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.[204] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[205] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[206] Of those firms, 1,039 had revenue of less than $25 million.[207] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

b. Internet Service Providers

43. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[208] 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

---

[198] *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.

[199] *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.

[200] 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.

[201] *Id.*

[202] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[203] *Id.*

[204] *Id.*

[205] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[206] *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.

[207] *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.

[208] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

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.[209] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[210] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[211] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[212] Of this number, 2,964 firms operated with fewer than 250 employees.[213]

44. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.[214] 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*,[215] we believe that the majority of wireline Internet access service providers can be considered small entities. .

45. *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.[216] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[217] 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.[218] Of those firms, 1,039

---

[209] *See* 47 CFR § 1.7001(a)(1).

[210] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[211] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[212] *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.

[213] *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.

[214] *See* 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. 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.

[215] *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*).

[216] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[217] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[218] *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.

had revenue of less than $25 million.[219] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

c. Vendors and Equipment Manufacturers

46. *Vendors of Infrastructure Development or "Network Buildout."* The Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are "Radio and Television Broadcasting and Wireless Communications Equipment"[220] with a SBA small business size standard of 1,250 employees or less,[221] and "Other Communications Equipment Manufacturing"[222] with a SBA small business size standard of 750 employees or less."[223] U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.[224] Of this number, 624 firms had fewer than 250 employees.[225] For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.[226] Of that number, 310 firms operated with fewer than 250 employees.[227] Based on this data, we conclude that the majority of firms in this industry are small.

47. *Telephone Apparatus Manufacturing*. This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.[228] These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data

---

[219] *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.

[220] *See* U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[221] *See* 13 CFR § 121.201, NAICS Code 334220.

[222] *See* U.S. Census Bureau, *2017 NAICS Definition, "334290 Other Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334290&year=2017&details=334290.

[223] *See* 13 CFR § 121.201, NAICS Code 334290.

[224] *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 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[225] *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.

[226] *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 334290, https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[227] *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.

[228] *See* U.S. Census Bureau, *2017 NAICS Definition, "334210 Telephone Apparatus Manufacturing,"* https://www.census.gov/naics/?input=334210&year=2017&details=334210.

communications equipment, such as bridges, routers, and gateways.[229] The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.[230] U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.[231] Of this number, 177 firms operated with fewer than 250 employees.[232] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

48. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[233] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[234] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[235] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[236] Of this number, 624 firms had fewer than 250 employees.[237] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

49. *Other Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).[238] Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.[239] The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.[240] U.S. Census Bureau data for 2017 show that 321 firms in this industry operated for the entire

---

[229] *Id.*

[230] *See* 13 CFR § 121.201, NAICS Code 334210.

[231] *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 334210, https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[232] *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.

[233] *See* U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[234] *Id*.

[235] *See* 13 CFR § 121.201, NAICS Code 334220.

[236] *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 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[237] *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.

[238] *See* U.S. Census Bureau, *2017 NAICS Definition, "334290 Other Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334290&year=2017&details=334290.

[239] *Id.*

[240] *See* 13 CFR 121.201, NAICS Code 334290.

year.[241] Of this number, 310 firms operated with fewer than 250 employees.[242] Based on this data, we conclude that the majority of firms in this industry are small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

50. The rules adopted in the *Third Report and Order* will result in modified reporting, recordkeeping, or other compliance requirements for small and other entities. Applicants that request conditional approval for eligibility must submit an eligibility determination and supporting documentation, along with an estimated date to meet all eligibility requirements. They must also be located in a rural area as defined in section 54.600(e) of the Commission's rules by the estimated eligibility date, or plan to be a member of a majority-rural Healthcare Connect Fund (HCF) Program consortium that satisfies the eligible rural health care provider composition requirement set forth in section 54.607(b) of the Commission's rules by the estimated eligibility date. An applicant with conditional eligibility that plans to engage in competitive bidding must indicate that the eligibility is conditional, and state the estimated date of eligibility on its competitive bidding form. Applicants with conditional approval of eligibility must also notify the Universal Service Administrative Company (Administrator) within 30 calendar days of its actual eligibility date and provide documentation confirming eligibility. Beginning funding year 2025, a single eligibility determination form for the RHC Program for both the Telecom Program and the HCF Program, FCC Form 469, will be required to be filed once. Applicants will use the FCC Form 460 for eligibility determinations in the Telecom Program and the eligibility determination portion will be eliminated from the FCC Form 465. We also amend section 54.601(b) to require health care providers in both programs to notify the Administrator of changes to their name, location, contact information, or eligible entity type. Telecom Program providers with invoices for funding years 2019 and earlier, must submit invoices by July 1, 2024, after which, any funding commitments for 2019 and earlier will be de-obligated and providers will not be able to invoice for services.

51. We expect the actions we take in the *Third Report and Order* will achieve the goals of improving the effectiveness and efficiency of the RHC Program without placing significant additional costs and burdens on small entities. At present, there is not sufficient information on the record to quantify the cost of compliance for small entities, however, we anticipate that the compliance obligations for small providers will be outweighed by the benefits of improving the RHC Program's capacity to distribute telecommunications and broadband support to rural health care providers.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. 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."[243]

53. In the *Third Report and Order,* we take steps to minimize the economic impact on small entities with the rule changes that we have adopted. For example, we allow conditional approval of

---

[241] *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 334290, https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[242] *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.

[243] 5 U.S.C. § 604(a)(6).

eligibility for RHC Program funding to allow soon-to-be eligible providers to begin competitive bidding and request funding so that they may receive support as soon as they become eligible. We align the SPIN change deadline with the invoice filing deadline to give small entities more time to complete SPIN changes. We simplify urban rate calculations by eliminating the standard urban distance provision, which will ease administrative burdens on small entities. We change evergreen contract dates to provide small entities with the benefits of evergreen contract designation across the full length of the contract's term. As a part of our reforms to use the same form for eligibility determinations in the Telecom and HCF Program, we allow small entities to continue using their existing eligibility determinations. Finally, in establishing an invoice deadline for funding year 2019 and earlier, we provide ample time for small providers and other entities to meet that deadline. These actions will promote efficiency and promote the goals of these programs, while strengthening protections against waste, fraud and abuse.

G. Report to Congress

54. The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[244] In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[245]

[244] *Id*. § 801(a)(1)(A).

[245] *Id.* § 604(b).

APPENDIX C

2023 Second Further Notice of Proposed Rulemaking
List of Commenters and Reply Commenters

Comments

Commenter	*Abbreviation*	*Date Filed*
American Association of Nurse Practitioners/Frank Harrington	AANP/FH	Apr. 24, 2023
GCI Communication Corp.	GCI	Apr. 24, 2023
National Rural Health Association	NRHA	Apr. 24, 2023
Schools, Health & Libraries Broadband Coalition	SHLB	Apr. 24, 2023
Rachel Untalan	Untalan	Apr. 20, 2023

Reply Comments

Commenter	*Abbreviation*	*Date Filed*
Advanced Data Services, Inc.	ADS	May 22, 2023
Alaska Communications Systems Group, Inc.	ACS	May 22, 2023
Alaska Native Tribal Health Consortium	ANTHC	May 22, 2023
Alaska Primary Care Association	APCA	May 16, 2023
GCI Communication Corp.	GCI	May 5, 2023
NCTA – The Internet and Television Association	NCTA	May 22, 2023
New England Telehealth Consortium	NETC	May 22, 2023
Collin Quigley	Quigley	May 2, 2023
Schools, Health & Libraries Broadband Coalition	SHLB	May 22, 2023
Uniti Fiber LLC	Uniti	May 22, 2023
USTelecom – The Broadband Association	USTelecom	May 22, 2023

***Ex Parte* Letters Cited**

Filer	*Abbreviation*	*Date Filed*
Schools, Health & Libraries Broadband Coalition	SHLB Jan. 17, 2023 *Ex Parte* Letter	Jan. 17, 2023
Schools, Health & Libraries Broadband Coalition	SHLB Jan. 19, 2023 *Ex Parte* Letter	Jan. 19, 2023
Schools, Health & Libraries Broadband Coalition	SHLB Dec. 7, 2023 *Ex Parte* Letter	Dec. 7, 2023

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Third Report and Order (December 13, 2023).

The Federal Communications Commission has been supporting telemedicine way before it was trendy. For more than 25 years, the agency's rural health care program has been a force for good, helping sustain telehealth services in some of the hardest-to-reach corners of this country. But post-pandemic telemedicine has moved into the medical mainstream. Virtual appointments, remote monitoring, and support for advanced medical imaging are now familiar to patients in rural America, urban America, and everything in between. It has been incredible to see such extraordinary change in healthcare and technology.

What does not change, however, is that this agency needs to update its rural health care program to ensure that it serves the places that need support with modern telehealth technology. That is why today we are taking steps to simplify our rules, speed access to the program for new providers, and free up millions of dollars of unused program funding.

These changes are vital. After all, there are forces out there—insurance limitations, licensing restrictions, resistance to Medicaid expansion, and court cases that can make it harder for patients to access healthcare. We will do all we can at this agency to ensure that despite these challenges, this program—like it has for more than a quarter of a century—continues to help provide first-class care in rural communities across the country.

Thank you to the staff who worked on this order, including Allison Baker, Phil Bonomo, Bryan Boyle, Cheryl Callahan, Callie Coker, Adam Copeland, Ross Fisher, Jodie Griffin, Trent Harkrader, Clint Highfill, Sonam James, Avis Mitchell, Kiara Ortiz, and Helen Zhang of the Wireline Competition Bureau; Marcus Maher, Rick Mallen, Derek Yeo, and Chin Yoo of the Office of General Counsel; and Eugene Kiselev, Eric Ralph, and Shane Taylor of the Office of Economics and Analytics.

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

In the Matter of	)	
	)	
Data Breach Reporting Requirements	)	WC Docket No. 22-21
	)	

REPORT AND ORDER

Adopted: December 13, 2023 **Released: December 21, 2023**

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements; Commissioners Carr and Simington dissenting and issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. Americans should have confidence that when they use communications services, their personal information is protected. These services are a ubiquitous feature of modern life, and they provide a vital lifeline for consumers. In providing these critical services, telecommunications carriers and interconnected Voice over Internet Protocol (VoIP) providers often collect large quantities of sensitive customer data. Information such as records of the telephone numbers a person has called, or mobile phone location data showing the places they have been, can provide insights into medical conditions, religious beliefs, personal associations, and many other aspects of an individual's private life.[1]

2. The Commission's breach notification rule provides an important protection against improper use or disclosure of customer data, helping to ensure that carriers[2] are held accountable and providing customers with the tools to protect themselves in the event that their data is compromised. However, in the 16 years since the Commission adopted its data breach reporting rule—designed to protect customers against the threat of "pretexting"[3]—data breaches have only grown in frequency and severity.[4]

3. Telecommunications companies may be particularly vulnerable to these attacks.[5] In response to these evolving threats, today we update the Commission's rule regarding data breach notifications. Because consumers may be harmed by the improper use or disclosure of sensitive customer data other than CPNI, we expand the scope of our breach notification rules to cover various categories of

[1] *See Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018) ("A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales."); *id*. at 2217 (cell phone location data "provides an intimate window into a person's life" revealing not only physical movements, but "familial, political, professional, religious, and sexual associations.").

[2] As in the *Data Breach Notice*, in this Order we refer to telecommunications carriers and interconnected VoIP providers collectively as "telecommunications carriers" or "carriers," consistent with our existing Part 64, Subpart U rules. *See Data Breach Reporting Requirements*, WC Docket No. 22-21, Notice of Proposed Rulemaking, FCC 22-102, 3, para. 3 n.12 (2023) (*Data Breach Notice*). In doing so, we do not address the regulatory classification of interconnected VoIP service or interconnected VoIP service providers. *See* 47 CFR § 64.2003(o) (defining *telecommunications carrier* or *carrier* for purposes of Subpart U to include an entity that provides interconnected VoIP service as that term is defined in 47 CFR § 9.3).

[3] Pretexting is a practice in which a scammer pretends to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records. *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, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6928, paras. 1-2 & n.1. (2007) (*2007 CPNI Order*); 47 CFR § 64.2011.

[4] According to an IBM report, the global average cost of a data breach has increased 15% over the last three years. *See* IBM, *Cost of a Data Breach Report 2023*, https://www.ibm.com/reports/data-breach (last visited Oct. 25, 2023); *see also* Confidentiality Coalition Comments at 1 (reporting a 118% increase from 2020 to 2021 in unauthorized access incidents, and a 44% increase in ransomware attacks impacting publicly traded companies).

[5] *See, e.g.*, Sam Sabin, *Wave of Telecom Data Breaches Highlight Industry's Weaknesses*, Axios (Mar. 17, 2023), https://www.axios.com/2023/03/17/telecom-data-breaches-t-mobile-att; Dan Goodin, *T-Mobile Discloses 2nd Data Breach of 2023, This One Leaking Account PINs and More* (May 1, 2023), https://arstechnica.com/information-technology/2023/05/t-mobile-discloses-2nd-data-breach-of-2023-this-one-leaking-account-pins-and-more/ (reporting that T-Mobile experienced breaches of its customers' data every year between 2018 and 2023, including a 2023 breach impacting 37 million customers); Catherine Reed, *Verizon Data Breaches: Full Timeline Through 2023*, Firewall Times (Oct. 5, 2023), https://firewalltimes.com/verizon-data-breaches (describing Verizon's data breach experienced earlier this year, which exposed the data of 7.5 million subscribers); Monica Alleven, *AT&T Alerts 9M Wireless Customers of Security Breach*, Fierce Wireless (Mar. 10, 2023), https://www.fiercewireless.com/security/att-informs-9m-wireless-customers-security-breach (noting how AT&T informed 9 million wireless customers that an unauthorized person accessed their customer proprietary network information (CPNI) through a vendor's system).

personally identifiable information (PII) that carriers hold with respect to their customers.[6] We also adopt the Commission's proposal to expand the definition of "breach" for both telecommunications carriers and telecommunications relay service (TRS) providers to include inadvertent disclosures of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a carrier or TRS provider, and such information is not used improperly or further disclosed. As proposed, we require carriers and TRS providers to notify the Commission of breaches, in addition to the United States Secret Service (Secret Service) and Federal Bureau of Investigation (FBI). We require such notice to be made as soon as practicable, and in no event later than seven business days, after reasonable determination of the breach.

4. In order to limit the potential burdens on carriers, TRS providers, and consumers from notifications that are unlikely to require protective action, we eliminate the requirement to notify customers of a breach in those instances where a carrier or TRS provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. And, to further support consumers' ability to act quickly to protect themselves following a breach for which there is a risk of harm, we eliminate the mandatory waiting period for carriers to notify customers, and instead require carriers and TRS providers to notify customers of breaches of covered data without unreasonable delay after notification to the Commission and law enforcement, and no later than 30 days after reasonable determination of a breach, unless a delay is requested by law enforcement. As discussed below, we find that these changes will better protect consumers from improper use or disclosure of their customer information and harmonize our rules with new approaches to protecting the public already deployed by our partners in federal and state government.

II. BACKGROUND

5. *Section 222 and Privacy of Telecommunications Customer Information.* Section 222 of the Communications Act of 1934, as amended (Communications Act or Act) requires telecommunications carriers to protect the confidentiality of customer information that they receive or have access to by virtue of their provision of a telecommunications service.[7] Section 222(a) requires carriers to protect the confidentiality of "proprietary information" of, and relating to, their customers.[8] Pursuant to section 222(c)(1), a carrier that receives CPNI by virtue of its provision of a telecommunications service may only use, disclose, or permit access to that information in limited circumstances: (1) if it is required by law; (2) with the customer's approval; or (3) in its provision of the telecommunications service from which such information is derived, or services necessary to or used in the provision of such telecommunications service,[9] subject to certain exceptions.[10] The Act defines CPNI as "(A) information

[6] *See* 47 U.S.C. § 222(a) (imposing a duty on carriers to protect "proprietary information" of customers, among other entities). For the purposes of this Report and Order and the rules adopted herein, we use the term "covered data" to refer collectively to both PII and CPNI. *See also* Appx. A.

[7] 47 U.S.C. § 222. *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket Nos. 96-115 et al., Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14419-20, paras. 12-14 (1999) (*1999 CPNI Reconsideration Order*).

[8] 47 U.S.C. § 222(a); *see also TerraCom, Inc. and YourTel America, Inc.*; *Apparent Liability for Forfeiture*, File No. EB-TCD-13-00009175, NAL/Acct. No. 201432170015, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325, 13330, para. 13 (2014) (*TerraCom NAL*). Section 222(b) provides that a carrier that receives or obtains proprietary information from other carriers in order to provide a telecommunications service may only use such information for that purpose and may not use that information for its own marketing efforts. 47 U.S.C. § 222(b).

[9] 47 U.S.C. § 222(c)(1).

[10] Section 222(d) delineates certain exceptions to the general principle of confidentiality, including, among other provisions, those permitting a carrier to use, disclose, or permit access to CPNI obtained from its customers to protect the rights or property of the carrier, or to protect telecommunications services users "from fraudulent, abusive, or unlawful use" of telecommunications services. *Id.* § 222(d)(2). Section 222(d)(4) also authorizes certain (continued….)

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."[11]

6. While the Commission has not and does not here articulate an exhaustive list of information that is CPNI, the Commission has determined that in practical terms, CPNI includes personally identifiable information derived from a customer's relationship with a provider of telecommunications services,[12] such as 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.[13] Information collected by a customer's device, such as lists of numbers called and calls received, and the locations from which calls have been made, is also considered CPNI when the collection is undertaken at the carrier's direction and the carrier has access to or control over the information.[14] In 2020, the Commission concluded in a Notice of Apparent Liability for Forfeiture and Admonishment that CPNI also includes customer location information derived by or made available to a carrier from the wireless mobile device of a customer regardless of whether the information was generated in connection with a call.[15] However, some types of sensitive data, such as a customer's name, address, and telephone number, are not considered CPNI.[16]

7. The Commission adopted its first rules to implement section 222 in 1998.[17] These initial rules established restrictions on telecommunications carriers' use and disclosure of CPNI, as well as a framework to require carriers to take effective steps to protect CPNI.[18] Under these rules, the Commission adopted safeguards such as requiring carriers to train their personnel on when they are and are not authorized to use CPNI[19] and to maintain records that track access to CPNI,[20] among other things.

---

uses of call location information in emergency situations, such as delivery to a public safety answering point for delivery of emergency services. *Id.* § 222(d)(4). 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 call location information concerning the user of a commercial mobile service other than in accordance with subsection (d)(4). *Id.* § 222(f).

[11] *Id.* § 222(h)(1).

[12] *2007 CPNI Order* at 6928, para. 1 n.2.

[13] *Id.* at 6930, para. 5.

[14] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Declaratory Ruling, 28 FCC Rcd 9609, 9609-10, paras. 2-4 (2013) (*2013 CPNI Declaratory Ruling*).

[15] *AT&T, Inc.*, File No.: EB-TCD-18-00027704, Notice of Apparently Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743, 1757, paras. 33-35 (2020).

[16] *1999 CPNI Reconsideration Order*, 14 FCC Rcd at 14486-88, paras. 145-47 (adopting the conclusions of the Common Carrier Bureau that customer names, addresses, and telephone numbers are not CPNI).

[17] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information et al.*, CC Docket No. 96-115 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (*1998 CPNI Order*).

[18] *Id.* at 8195, para. 193.

[19] 47 CFR § 64.2009(b); *see also 1998 CPNI Order*, 13 FCC Rcd at 8198, para. 198.

[20] 47 CFR § 64.2009(c); *see also 1998 CPNI Order*, 13 FCC Rcd at 8198-99, para. 199.

The Commission's rulemaking and enforcement regarding section 222 have evolved over time to keep pace with emerging threats to consumer privacy.[21]

8. *FCC Data Breach Notification Rule*. Spurred to act by the then-increasing problem of fraud perpetrated through "pretexting," in 2007 the Commission amended its rules to require carriers to notify law enforcement and customers of security breaches involving CPNI.[22] For the purpose of this rule, the Commission defined a "breach" as occurring "when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI."[23] Under this rule, telecommunications carriers must notify the Secret Service and the FBI through a central reporting facility no later than seven business days after a reasonable determination of a breach.[24] With limited exceptions,[25] the rule also prohibits telecommunications carriers from notifying affected customers or disclosing the breach publicly until seven business days following notification to the Secret Service and the FBI.[26] The Commission declined to specify the precise content of the notice that must be provided to customers in the event of a breach of CPNI, leaving telecommunications carriers discretion to tailor the language and method of notification to the circumstances.[27]

9. In 2013, the Commission adopted rules to protect the privacy of customer information relating to all relay services authorized under section 225 of the Act.[28] In that proceeding, the Commission applied CPNI protections to TRS providers, to protect the CPNI of TRS users.[29] The rules

[21] *See generally, e.g.*, *2007 CPNI Order*; *2013 CPNI Declaratory Ruling*.

[22] *2007 CPNI Order*, 22 FCC Rcd at 6943-45, paras. 26-32.

[23] 47 CFR § 64.2011(e). Note that section 222 of the Act and the Commission's CPNI rules (47 CFR § 64.2001, *et seq*.) related to "access" to customer information make no mention of and do not require that such information be copied, downloaded, exfiltrated, or otherwise acquired. *See generally id.* § 64.2001, *et seq*.; *see also id.* § 64.2010(a) (requiring carriers to "protect against attempts to gain . . . access" to customer information).

[24] *Id.* § 64.2011(b). Additionally, the Commission's rules require carriers to maintain a record of any discovered breaches, notifications to the Secret Service and the FBI regarding those breaches, as well as for a period of at least two years. This record must include, if available, the date that the carrier discovered the breach, the date that the carrier notified the Secret Service and the FBI, a detailed description of the CPNI that was breached, and the circumstances of the breach. *See id.* § 64.2011(d).

[25] Telecommunications carriers can immediately notify a customer or disclose the breach publicly only after consultation with the relevant investigative agency and only if the carrier believed that there was an extraordinarily urgent need to notify a customer or class of customers in order to avoid immediate and irreparable harm. *See id.* § 64.2011(b)(2) (requiring a telecommunications carrier to indicate its desire to notify its customer or class of customers immediately in the notice that it provides to the Secret Service and FBI).

[26] This waiting period for customer notification may be extended by law enforcement if "the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security." *See id.* § 64.2011(b)(3).

[27] *2007 CPNI Order*, 22 FCC Rcd at 6945, para. 32.

[28] *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8680, para. 155 (2013) (*2013 VRS Reform Order*); 47 CFR § 64.5111. In particular, the Commission "establish[ed] customer privacy requirements for TRS pursuant to the specific mandate of section 225(d)(1)(A) to establish 'functional requirements, guidelines, and operations procedures' for TRS," and also found that it had ancillary authority to adopt those rules as well as rules governing point-to-point video services handled over the VRS network. *2013 VRS Reform Order*, 28 FCC Rcd at 8685-87, paras. 170-71.

[29] *2013 VRS Reform Order*, 28 FCC Rcd at 8684, para. 164.

that the Commission adopted were modeled after the CPNI data breach reporting rule applicable to telecommunications services, with minor modifications to account for the unique nature of TRS.[30]

10. As part of a larger proceeding addressing privacy requirements for broadband Internet access service providers (ISPs), in 2016 the Commission revised its breach notification rule and required that those providers (and other telecommunications providers) notify the affected customers, the Commission, the FBI, and the Secret Service of data breaches unless the provider reasonably determined that no harm to customers was reasonably likely to occur.[31] In 2017, however, Congress nullified those 2016 revisions to the Commission's CPNI rules under the Congressional Review Act.[32]

11. *State and Federal Data Breach Notification Laws and Regulations.* The Commission's data breach rule is "not intend[ed] to supersede any statute, regulation, order, or interpretation in any state, except to the extent that such statute regulation, order, or interpretation is inconsistent with [its] provisions,"[33] and the Commission has explicitly rejected requests to preempt all state CPNI obligations, finding instead that states should also be allowed to create rules for protecting CPNI provided that they do not conflict with federal law.[34]

12. Currently, all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have laws requiring covered entities to notify individuals of data breaches.[35] Many state and

[30] *Id.* at 8684, para 165.

[31] *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Report and Order, 31 FCC Rcd 13911, 14019-33, paras. 261-91 (2016) (*2016 Privacy Order*). In 2015, the Commission classified broadband Internet access service as a telecommunications service subject to Title II of the Act, a decision that the D.C. Circuit upheld in *United States Telecom Ass'n v. FCC*. *See Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5733, para. 306 (2015), *aff'd*, *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016). As a result of classifying broadband Internet access service as a telecommunications service, such services were subject to section 222 of the Act. The rules the Commission adopted in the *2016 Privacy Order* applied to carriers and interconnected VoIP providers in addition to ISPs. *See 2016 Privacy Order*, 31 FCC Rcd at 13925, para. 39, 14033-34, para. 293. In 2017, the Commission reversed the 2015 classification decision so that many Title II obligations, such as section 222, no longer apply to ISPs. *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2017) (subsequent history omitted).

[32] *See* Joint Resolution, Pub. L. No. 115-22, 131 Stat. 88 (2017) (Resolution of Disapproval) ("*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress disapproves the rule submitted by the Federal Communications Commission relating to 'Protecting the Privacy of Customers of Broadband and Other Telecommunications Services' (81 Fed. Reg. 87274 (December 2, 2016)), and such rule shall have no force or effect."); 5 U.S.C. § 801(f) ("Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect."); *id.* § 801(b)(1) ("A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval . . . of the rule."); *see also Protecting the Privacy of Customers of Broadband and Other Telecommunications Services; Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, WC Docket No. 16-106, CC Docket No. 96-115, Order, 32 FCC Rcd 5442 (2017) (*2017 CRA Disapproval Implementation Order*).

[33] 47 CFR § 64.2011(f).

[34] *See 2007 CPNI Order*, 22 FCC Rcd at 6957-58, para. 60 (recognizing that many states have laws relating to the safeguarding of personal information such as CPNI, and to the extent those laws do not create a conflict with federal requirements, carriers are able to comply with both federal and state law); *see also id*. at 6945, para. 31; 47 CFR 64.2011(f).

[35] *See Data Breach Notice* at 5, para. 7 (citing Nat'l Conf. of State Legislatures, *Security Breach Notification Laws* (Jan. 17, 2022), https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx).

federal data breach frameworks have evolved since the Commission last visited this issue in 2007.[36] Some states, such as California, Virginia, and Colorado, have enacted comprehensive consumer privacy laws in recent years to protect consumers from, among other threats, the ever-growing harms of breaches of personal information.[37] Additionally, several sector-specific breach notification laws exist in the United States, such as the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach-Bliley Act (GLBA), and the Federal Trade Commission (FTC)-enforced Health Breach Notification Rule, which all have customer notification requirements for breaches of individual data.[38] In July of this year, the Securities and Exchange Commission (SEC) adopted rules requiring public companies to disclose any cybersecurity incident they determine to be material and to describe the material aspects of the incident's nature, scope, and timing, as well as its material impact or reasonably likely material impact on the registrant.[39]

13. *Notice of Proposed Rulemaking*. On December 28, 2022, the Commission adopted a Notice of Proposed Rulemaking (*Data Breach Notice*) seeking comment on several proposed updates to telecommunications carriers' and TRS providers' breach notification duties.[40] In the *Data Breach Notice*, the Commission noted that in the decade and a half since the data breach rule was adopted, breaches of customer information have increased in scale and sophistication, extending far beyond the "pretexting" practices that originally motivated the Commission to act.[41] Additionally, the Commission noted that both Congress and the states have since taken action to protect consumers from the dangers associated with breaches of personal information across sectors.[42] Accordingly, to better protect consumers from the dangers associated with security breaches of customer information and to ensure that our rules keep pace with modern challenges, the Commission proposed to strengthen and update its data breach rules for CPNI and TRS to provide greater protections to the public, and sought comment on how best to

[36] *See, e.g.*, American Recovery and Reinvestment Act, Pub. L No. 111-5, 123 Stat. 258, §§ 13400-13402 (2009); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law 111-203, 124 Stat. 1376, §1093 (2010); Cal. Civ. Code §§ 1798.82 (amended 2020); Del. Code § 12B-102 (amended 2017); Wash. Rev. Code § 19.252.01 (amended 2019).

[37] *See Data Breach Notice* at 7, para. 9 (citing Cal. Civ. Code §§ 1798.100.199; State of California Department of Justice, *California Consumer Privacy Act (CCPA)*, https://oag.ca.gov/privacy/ccpa (last visited Jan. 4, 2023); IAPP, *The California Privacy Rights Act*, https://iapp.org/resources/article/the-california-privacy-rights-act-of-2020 (last visited Jan. 4, 2023); Sarah Rippy, *Virginia Passes the Consumer Data Protection Act* (Mar. 3, 2021), https://iapp.org/news/a/virginia-passes-the-consumer-data-protection-act; GibsonDunn, *The Colorado Privacy Act: Enactment of Comprehensive U.S. State Consumer Privacy Laws Continues* (July 9, 2021), https://www.gibsondunn.com/the-colorado-privacy-act-enactment-of-comprehensive-u-s-state-consumer-privacy-laws-continues).

[38] *See* Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) (HIPAA); Gramm-Leach-Bliley Act (Financial Services Modernization Act of 1999), Pub. L. No. 106-102, 113 Stat. 1338 (1999) (GLBA); 16 CFR § 318.3. Furthermore, as the *Data Breach Notice* noted, the FTC has also brought actions under section 5(a) of the FTC Act raising allegations that companies acted unfairly by failing to protect consumer data thereby resulting in security breaches, and has published extensive guidance for businesses in the event of a security breach of customer information, including best practices after a data breach has occurred. *Data Breach Notice* at 5, para. 7.

[39] Press Release, SEC, *SEC Adopts Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies* (Jul. 26, 2023), https://www.sec.gov/news/press-release/2023-139. The disclosure will generally be due four business days after a registrant determines that an incident is material, but may be delayed if the United States Attorney General determines that immediate disclosure would pose a substantial risk to national security or public safety and notifies the SEC of such determination in writing. *Id.*

[40] *See generally Data Breach Notice*.

[41] *Id.* at 6, para. 8 (referencing several examples of serious data breaches involving major telecommunications carriers affecting millions of customers).

[42] *Id.* at 6-7, para. 9.

accomplish this, including on whether our rules should address breaches of other types of sensitive customer information beyond CPNI.[43]

III. DISCUSSION

14. In this Order, we adopt several of the *Data Breach Notice*'s proposals to modernize our data breach requirements.[44] We first expand the scope of our breach notification rules to cover not just CPNI, but all PII. We next adopt the Commission's proposal to expand our definition of "breach" for telecommunications carriers to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a carrier, and such information is not used improperly or further disclosed. We also adopt the Commission's proposal to require carriers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable, but no later than seven business days, after reasonable determination of a breach. We next eliminate the requirement that carriers notify customers of a breach in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. We also eliminate the mandatory waiting period for carriers to notify customers, and instead require carriers to notify customers of breaches of covered data without unreasonable delay after notification to federal agencies, and in no case more than 30 days following reasonable determination of a breach, unless a delay is requested by law enforcement. Finally, to ensure that TRS consumers enjoy the same level of protection under our rules as consumers of telecommunications services, we adopt equivalent requirements for TRS providers.

A. Defining "Breach"

1. Scope of Protected Consumer Information

15. In the *Data Breach Notice*, the Commission recognized that carriers possess proprietary information of customers other than CPNI, which customers have an interest in protecting from public exposure; the notice sought comment on requiring carriers to report breaches of such information.[45] We now conclude that carriers should be obligated to comply with our breach notification rule whenever such information is the subject of a breach, whether or not the information is CPNI.

16. The pervasiveness of data breaches and the frequency of breach notifications have evolved and increased since the Commission first adopted its breach notification rule in 2007. As discussed in the *Data Breach Notice*, our requirement is one of several sector-specific federal breach notification laws in the United States.[46] All state data breach notification requirements explicitly include

[43] *Id.* at 7-8, 12, 21, paras. 10, 22, 43.

[44] To the extent that this Report and Order does not expressly address a topic that was subject to comment in the *Data Breach Notice*, that issue remains pending.

[45] *Data Breach Notice* at 12, para. 22.

[46] *Id.* at 6-7, para. 9.

categories of sensitive personal information within their scope,[47] as do sector-specific federal laws.[48] We believe that the unauthorized exposure of sensitive personal information that the carrier has received from the customer (i.e., information "of the customer"), or about the customer (i.e., information "relating to" the customer), in connection with the customer relationship (e.g., initiation, provision, or maintenance, of service), such as social security numbers or financial records, is reasonably likely to pose risk of customer harm. Accordingly, any unauthorized disclosure of such information warrants notification to the customer, the Commission, and other law enforcement. Consumers expect that they will be notified of substantial breaches that endanger their privacy, and businesses that handle sensitive personal information should expect to be obligated to report such breaches.[49]

17. We require notification of breaches that involve PII, which is a well-understood concept and thus a readily administrable way of requiring breach notifications in the case of proprietary information.[50] The definition of PII is aptly described in OMB Circular A-130, "Managing Information

[47] *See, e.g.*, La. Rev. Stat. § 3073(4)(a) (defining "personal information" to mean the first name or first initial and last name of an individual in combination with any one or more of the following data elements, when the name or the data element is not encrypted or redacted: (i) social security number; (ii) Driver's license number or state identification card number; (iii) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; (iv) Passport number; (v) Biometric data); *see also* Ala. Code § 8-38-2(6); Alaska Stat. § 45.48.090(7); Ariz. Rev. Stat. § 18-551(7), (11); Ark. Code § 4-110-103(7); Cal. Civ. Code § 1798.29(g)-(h); Colo. Rev. Stat. § 6-1-716(1)(d); Conn. Gen. Stat. § 36a-701b(a); D.C. Code § 28-3851(3); Del. Code tit. 6, § 12B-101(7); Fla. Stat. § 501.171(1)(g); Ga. Code § 10-1-911(7); 9 GCA § 48.20(f); Haw. Rev. Stat. § 487N-1; Idaho Stat. § 28-51-104(5); 815 ILCS § 530/5; Ind. Code § 4-1-11-3; Iowa Code § 715C.1(11); Kan. Stat. § 50-7a01(g); KRS § 365.732(1)(c); KRS § 61.931(6); Me. Rev. Stat. tit. 10 § 1347(6); Md. Code Com. Law § 14-3501(e); Md. State Govt. Code § 10-1301(c); Mass. Gen. Laws § 93H-1(a); Mich. Comp. Laws § 445.63(q)-(r); Minn. Stat. § 325E.61 Subd. 1(e); Miss. Code § 75-24-29(2)(b); Mo. Rev. Stat. § 407.1500 1. (5)-(6), (9); Mont. Code § 2-6-1501(4); Mont. Code § 30-14-1704(4)(b); Neb. Rev. Stat. § 87-802(5); Nev. Rev. Stat. § 603A.040; N.H. Rev. Stat. § 359-C:19(IV); N.J. Stat § 56:8-161; N.M. Stat. § 57-12C-2(C); N.Y. Gen. Bus. Law § 899-AA(a)-(b); N.C. Gen. Stat § 75-61(10); N.C. Gen. Stat § 14-113.20(b); N.D. Cent. Code § 51-30-01(4); Ohio Rev. Code § 1347.12(A)(6); Ohio Rev. Code § 1349.19(A)(7); Okla. Stat. § 74-3113.1(D)(2); Okla. Stat. § 24-162(6); Oregon Rev. Stat. § 646A.602(12); 73 Pa. Stat. § 2302; 10 L.P.R.A. § 4051(a); R.I. Gen. Laws § 11-49.3-3(a)(8); S.C. Code § 39-1-90(D)(3); S.D. Cod. Laws § 20-40-19(4); Tenn. Code § 47-18-2107(a)(4); Tex. Bus. & Com. Code § 521.002(a)-(b); Utah Code § 13-44-102(4); 9 V.S.A. § 2430(10); Va. Code § 18.2-186.6(A); V.I. Code tit. 14, § 2208(e)-(f); Wash. Rev. Code § 19.255.005(2); W.V. Code § 46A-2A-101(6); Wis. Stat. § 134.98(1)(b); Wyo. Stat. § 40-12-501(a)(vii); Wyo. Stat. § 6-3-901(b).

[48] *See, e.g.*, GLBA Privacy Rule, 16 CFR § 313.3(o) (defining personally identifiable financial information as any information (i) that a consumer provides to the financial institution to obtain a financial product or service; (ii) about a consumer resulting from any transaction involving a financial product or service between the financial institution and a consumer; or (iii) the financial institution otherwise obtains about a consumer in connection with providing a financial product or service to that consumer).

[49] *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278 et al., Declaratory Ruling and Order, 30 FCC Rcd 7961, 8025, para. 132 (2015) (Calls reporting data breaches or conveying remediation information following a breach are "intended to address exigent circumstances in which a quick, timely communication with a consumer could prevent considerable consumer harms from occurring or, in the case of the remediation calls, could help quickly mitigate the extent of harm that will occur."); *TerraCom NAL*, 29 FCC Rcd at 13340-41, para. 43 ("We expect carriers to act in an abundance of caution . . . in their practices with respect to notifying consumers of security breaches.").

[50] We reject claims that we did not provide sufficient notice to define the scope of protected consumer information in this manner. *See, e.g.*, Letter from Avonne Bell, Director, Connected Life, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 10-11 (filed Dec. 6, 2023) (CTIA Dec. 6, 2023 *Ex Parte*); T-Mobile Dec. 6, 2023 *Ex Parte* at 4. In the *Data Breach Notice* we sought comment on "requir[ing] telecommunications carriers to report breaches of proprietary information other than CPNI under Section 222(a)," in which case commenters were asked to address "how broadly or narrowly [we should] define that category of information." *Data Breach Notice* at 12, para. 22. This provided notice that the Commission could define the scope of protected information to

(continued….)

as a Strategic Resource," as "information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual."[51] CPNI is a subset of PII.[52]

18. For the purposes of our breach notification rules, we further define the scope of covered PII as (1) first name or first initial, and last name, in combination with any government-issued identification numbers or information issued on a government document used to verify the identity of a specific individual,[53] or other unique identification number used for authentication purposes;[54] (2) user name or e-mail address, in combination with a password or security question and answer, or any other authentication method or information necessary to permit access to an account;[55] or (3) unique biometric, genetic, or medical data.[56] Moreover, dissociated data that, if linked, would constitute PII is to be

---

encompass all or any subset of the universe of proprietary information under section 222(a). And as we explain below, we conclude that the scope of customer information encompassed by section 222(a) is best interpreted to include PII, and define the scope of our breach notification rules to include PII subject to the additional limitations that we adopt below. *See infra* paras. 18, 70. We therefore conclude that there was sufficient notice for the approach we adopt.

[51] Off. of Mgmt. & Budget, *Managing Information as a Strategic Resource*, OMB Circular No. A-130 § 10(57) (2016) (OMB Circular No. A-130), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A130/a130revised.pdf.

[52] As discussed below, this approach of holding carriers responsible for reporting breaches of PII is supported independently and alternatively by construing the phrase "proprietary information of . . . customers" in section 222(a) as covering all information defined as PII, and by recognizing that section 201(b)'s just-and-reasonable-practices obligation requires protection of PII. *See infra* Section III.E.1-2; 47 U.S.C. § 222(a).

[53] Including, but not limited to, Social Security Number, driver's license number or state identification number, Taxpayer Identification Number, passport number, military identification number, Tribal identification card, or any other Federal or state government-issued identification card. *See, e.g.*, Ala. Code § 8-38-2(6)(a)(1)-(2); Alaska Stat. § 45.48.090(7)(B)(i); Ariz. Rev. Stat. § 18-551(11)(a); Ark. Code § 4-110-103(7)(A); Cal. Civ. Code § 1798.82(h)(1)(A); Colo. Rev. Stat. § 6-1-716(1)(g)(I)(A); Conn. Gen. Stat. § 36a-701b(a)(2)(A)(i); Del. Code tit. 6 § 12B-101(7)(a)(1); D.C. Code § 28-3851(3)(A)(i)(I); Fla. Stat. § 501.171(1)(g)(1)(a)(I); Ga. Code § 10-1-911(6)(A); 9 GCA § 48.20(f)(1); Haw. Rev. Stat. § 487N-1.

[54] Including, but not limited to, a financial institution account number, student identification number, or medical identification number. *See, e.g.*, Colo. Rev. Stat. § 6-1-716(1)(g)(I)(A); Wash. Rev. Code § 19.255.005(2)(a)(i)(F); Okla. Stat. tit. 24 § 162(6)(c); Oregon Rev. Stat. § 646A.602(12)(a)(A)(iv); 73 Pa. Stat. § 2302; 10 L.P.R.A. § 4051(a)(3); R.I. Gen. Laws § 11-49.3-3(a)(8)(iii); S.C. Code § 39-1-90(D)(3)(c); S.D. Cod. Laws § 22-40-19(4)(c); S.D. Cod. Laws § 22-40-19(5)(b); Tenn. Code § 47-18-2107(a)(4)(A)(iii); Tex. Bus. & Com. Code § 521.002(a)(2)(A)(iii); V.I. Code tit. 14, § 2209(e)(3); Utah Code § 13-44-102(4)(a)(ii); 9 V.S.A. § 2430(9)(A)(iii); Va. Code § 18.2-186.6(A); Wash. Rev. Code § 19.255.005(2)(a)(i)(C); W.V. Code § 46A-2A-101(6)(C); Wis. Stat. § 134.98(1)(b)(3); Wyo. Stat. § 40-12-501(a)(vii) (citing Wyo. Stat. § 6-3-901(b)(v)).

[55] Including, but not limited to, Personal Identification Numbers, private keys that are unique to an individual and are used to authenticate or sign an electronic record; unique electronic identifiers or routing codes, in combination with any required security code, access code, or password that would permit access to an individual's financial account; or shared secrets or security tokens that are known to be used for data-based authentication. *See, e.g.*, Ala. Code § 8-38-2(6)(a)(6); Ariz. Rev. Stat. § 18-551(7)(a)(ii), (11)(c); Cal. Civ. Code § 1798.82(h)(2); Colo. Rev. Stat. § 6-1-716(1)(g)(I)(A); Conn. Gen. Stat. § 36a-701b(a)(2)(A)(x); D.C. Code § 28-3851(3)(A)(ii); Del. Code tit. 6 § 12B-101(7)(a)(5); Fla. Stat. § 501.171(1)(g)(1)(b); 815 ILCS § 530/5; Md. Code, Com. § 14-3501(e)(1)(ii); Neb. Rev. Stat. § 87-802(5)(b); Nev. Rev. Stat. § 603A.040(1)(e); N.J. Stat. § 56:8-161; N.Y. Gen. Bus. Law § 899-aa(1)(b)(ii); N.C. Gen. Stat § 14-113.20(b)(8); Oregon Rev. Stat. § 646A.602(12)(a)(B); 10 L.P.R.A. § 4051(a)(4); R.I. Gen. Laws § 11-49.3-3(a)(8)(v); S.D. Cod. Laws § 22-40-19(5); Wash. Rev. Code § 19.255.005(2)(a)(i), (ii); Wyo. Stat. § 40-12-501(a)(vii) (citing Wyo. Stat. § 6-3-901(b)(ix)).

[56] Including, but not limited to, fingerprints, faceprint, a retinal or iris scan, hand geometry, voiceprint analysis, or other unique biometric data generated from a measurement or analysis of human body characteristics to authenticate or ascertain an individual's identity; genetic data such as deoxyribonucleic acid data; and medical records, or other

(continued….)

considered PII if the means to link the dissociated data were accessed in connection with access to the dissociated data, and any one of the discrete data elements listed above or any combination of the discrete data elements listed above is PII if the data element or combination of data elements would enable a person to commit identity theft or fraud against the individual to whom the data element or elements pertain.[57]

19. Our approach brings our definition of covered data in line with the approaches taken at the state level, and responds to concerns raised in the record by certain parties regarding harmonization with existing breach notification regimes.[58] In order to further harmonize our approach with analogous state law, we also adopt an exception from our definition of PII for publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.[59] Notwithstanding these limitations, we will monitor the data security landscape and will not hesitate to revisit and revise the list of data elements in a future rulemaking as necessary to ensure that carriers adequately protect sensitive customer data.

20. Without an FCC rule requiring breach notifications for the above categories of PII, there would be no requirement in federal law that telecommunications carriers report non-CPNI breaches to their customers. CTIA's objection that doing so would "[c]reat[e] a system of dual jurisdiction between the FCC and the FTC"[60] is unpersuasive. CTIA asserts that "[c]ustomers do not expect different privacy protections for the same data depending on which entity holds the data or the kind of product or service that is being marketed" but concedes the FTC's lack of authority in the common carrier context.[61] By the statutory design of the Communications Act and the FTC Act, Congress assigned differing areas of responsibility to the FCC and FTC, and CTIA identifies no grounds for the Commission to ignore its responsibilities with respect to common carriers. By ensuring that the same data breach notification requirements also apply to interconnected VoIP and TRS providers, we advance the interest of ensuring that consumers can have the same expectations regarding services that they view as similar. The approach we adopt today therefore not only reflects the practical expectations of consumers but also honors the intention of Congress.[62] Despite NCTA's suggestion that "there is no other 'proprietary

information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional. *See, e.g.*, Ariz. Rev. Stat. § 18-551(11)(i); Ark. Code § 4-110-103(7)(E); Cal. Civ. Code § 1798.82(h)(1)(F); Colo. Rev. Stat. § 6-1-716(1)(g)(I)(A); Conn. Gen. Stat. § 36a-701b(a)(2)(A)(ix); D.C. Code § 28-3851(3)(A)(i)(VI); Del. Code tit. 6 § 12B-101(7)(a)(8); 815 ILCS § 530/5; Iowa Code § 715C.1(11)(a)(5); La. Rev. Stat. § 51:3073(4)(a)(v); Md. Code, Com. § 14-3501(e)(1)(i)(6); Neb. Rev. Stat. § 87-802(5)(a)(v); N.M. Stat. § 57-12C-2(C)(1)(e); N.Y. Gen. Bus. Law § 899-aa(1)(b)(i)(5); N.C. Gen. Stat § 14-113.20(b)(11); Oregon Rev. Stat. § 646A.602(12)(a)(A)(v); Tex. Bus. & Com. Code § 521.002(a)(1)(C); 9 V.S.A. § 2430(9)(A)(v); Wash. Rev. Code § 19.255.005(2)(a)(i)(I); Wis. Stat. § 134.98(1)(b)(5); Wyo. Stat. § 40-12-501(a)(vii) (citing Wyo. Stat. § 6-3-901(b)(xiii)).

[57] *See, e.g.*, D.C. Code § 28-3851(3)(A)(i)(VII); N.J. Stat. § 56:8-161; Oregon Rev. Stat. § 646A.602(12)(a)(C)(ii); Wash. Rev. Code § 19.255.005(2)(a)(iii)(B).

[58] *See* Letter from Steven Morris, Vice President & Deputy General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 2-3 (filed Dec. 5, 2023) (NCTA Dec. 5, 2023 *Ex Parte*) at 2-3; CTIA Dec. 6, 2023 *Ex Parte* at 11-12; USTelecom Dec. 6, 2023 *Ex Parte* at 1-2.

[59] *See, e.g.*, Ala. Code § 8-38-2(6)(b)(1); Ariz. Rev. Stat. § 18-551(7)(b); Cal. Civ. Code § 1798.82(i)(1); Colo. Rev. Stat. § 6-1-716(1)(g)(II); Conn. Gen. Stat. § 36a-701b(2)(A)(x); Del. Code tit. 6 § 12B-101(7)(b); Ga. Code § 10-1-911(6)(E); ILCS § 530/5; La. Rev. Stat. § 51:3073(4)(b); Me. Rev. Stat. tit. 10 § 1347(6); Minn. Stat. § 325E.61 Subd. 1(f)).

[60] CTIA Reply at 7.

[61] *Id.* at 7; *see also* 15 U.S.C. § 45(a)(2).

[62] For example, as discussed in more detail below, Congress ratified the Commission's 2007 decision to extend section 222-based privacy protections for telecommunications service customers to the customers of interconnected (continued….)

information' between a provider and its customer that is not CPNI but is covered by Section 222,"[63] the Commission has investigated several instances of breaches involving sensitive personal information about customers held by telecommunications carriers that was not or may not have been CPNI.[64] The Commission has also in the past concluded that names, addresses, and telephone numbers are not CPNI, even when a customer has elected not to have them disclosed publicly, and that such information therefore would not be subject to the CPNI-specific restrictions on use in section 222(c).[65] We find that such information can be sensitive and warrants protection, including a requirement that the Commission, law enforcement, and customers be notified about breaches. Indeed, because consumers expect to be notified of substantial breaches that endanger their privacy, it better protects customers that breach notifications not turn on whether a particular breached element is or is not CPNI.

2. Inadvertent Access, Use, or Disclosure of Covered Data

21. Consistent with the *Data Breach Notice*'s proposal, we expand the Commission's definition of "breach" to include inadvertent access, use, or disclosure of covered data.[66] Specifically, we define "breach" as any instance in which a person, without authorization or exceeding authorization, has gained access to, used, or disclosed covered data.[67] While the practice of pretexting that spurred the Commission to act in 2007 necessarily involves an intent to gain access to customer information, the record before us here amply demonstrates that the inadvertent exposure of customer information can result in the loss and misuse of sensitive information by scammers and phishers, and trigger a need to inform the affected individuals so that they can take appropriate steps to protect themselves and their information.[68] We agree with the wide range of commenters that recognize that any exposure of customer

VoIP providers. *See infra* Section III.E.3. And ensuring equivalent protections for TRS subscribers advances Congress' directive to endeavor to ensure functionally equivalent service. *See infra* Section III.E.4.

[63] NCTA Comments at 13.

[64] *See, e.g.*, *TerraCom NAL*, 29 FCC Rcd at 13330-32, paras. 13-20.

[65] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information*, Order, 13 FCC Rcd 12390, 12395-96, paras. 8-9 (WCB 1998) (*1998 CPNI Clarification Order*) (finding that names, addresses, and telephone numbers are not CPNI and therefore that carriers may use such information for marketing purposes).

[66] *See Data Breach Notice* at 8-9, paras. 12, 14.

[67] *See infra* Appx. A.

[68] *See, e.g.*, EPIC Comments at 2; WISPA Comments at 2; NRECA Reply at 2; *cf., e.g.*, Shawn Snow, *Major Data Breach at Marine Forces Reserve Impacts Thousands*, Marine Corps Times (Feb. 28, 2018), https://www.marinecorpstimes.com/news/your-marine-corps/2018/02/28/major-data-breach-at-marine-forces-reserve-impacts-thousands (describing the accidental disclosure of highly sensitive data of more than 21,000 service members, including truncated social security numbers, electronic funds transfer and bank routing numbers, truncated credit card information, mailing and residential addresses, and emergency contact information, caused by the transmission of an unencrypted email with an attachment to the wrong distribution list); Jan Murphy, *Data Breach Put 360,000 Pa. Teachers, Education Department Staffers' Personal Information at Risk*, PennLive (Mar. 23, 2018), https://www.pennlive.com/politics/2018/03/data_breach_put_360000_pa_teac.html (reporting that human error led to the accidental exposure of highly sensitive information of approximately 360,000 current and retired teachers in Pennsylvania, including users' social security numbers); *Melbourne Student Health Records Posted Online in 'Appalling' Privacy Breach: Health and Medication Data Posted in Error on Strathmore Secondary College Intranet*, Guardian (Aug. 21, 2018), https://www.theguardian.com/australia-news/2018/aug/22/melbourne-student-health-records-posted-online-in-appalling-privacy-breach (reporting that in August 2018, the personal records of more than 300 students at Strathmore secondary college in Melbourne, Australia were accidentally published to the school's intranet service, resulting in the inadvertent disclosure of data relating to medical and mental health conditions, medications, and learning and behavioral difficulties for hundreds of high school students); Volodymyr "Bob" Diachenko, *Veeam Inadvertently Exposed Marketing Database with Hundreds of Millions of Records*, LinkedIn (Sept. 11, 2018), https://www.linkedin.com/pulse/veeam-inadvertently-exposed-marketing-info-hundreds-its-bob-diachenko (reporting on an exposed database that had been accidentally made available on the Internet by

(continued….)

data can risk harming consumers, regardless of whether the exposure was intentional.[69] As the Accessibility Advocacy and Research Organizations (AARO) argue, "[t]he Commission must adapt to an ever changing technological environment, which implicates all kinds of privacy concerns, and adopt measures that can effectively counter increasingly complex and evolving breaches."[70] In order to address these risks, carriers not only must reasonably protect covered information as required by the Act and our rules, but also must inform affected individuals so that they can take appropriate steps to protect themselves and their information where breaches occur.[71] In addition, notification of both intentional and unintentional breaches to the Commission and other federal law enforcement will aid investigations and help prevent new breaches or further harm to consumers.[72] We expect that our broadening of "breach" to include inadvertent exposure will encourage telecommunications carriers to adopt stronger data security practices, and will help federal agencies identify and address systemic network vulnerabilities.[73]

22. The record supports the Commission's observation in the *Data Breach Notice* that breaches have become more prevalent and more severe in recent years.[74] In 2021, the Identity Theft Resource Center "estimated a record-breaking 1,862 data breaches," and a survey from IBM has exposed "a recent decline in response capabilities" due to "informal or ad hoc" data security plans.[75] This rising tide of data breaches has affected the telecommunications sector as well. As the Electronic Privacy Information Center (EPIC) points out, the proprietary information of subscribers of each of the three largest carriers "has been breached at least once within the last five years."[76] Indeed, in February 2020, the Commission proposed more than $200 million in fines against AT&T, Sprint, T-Mobile, and Verizon, for apparently failing to adequately protect consumer location data.[77] In each case, the Commission found that the carriers' apparently lacked adequate oversight over third-party location aggregators' use of their phone subscribers' location data, leading to the disclosure of their respective customers' location

---

Veeam, a company that develops backup, disaster recovery, and intelligent data management software for virtual, physical, and multi-cloud infrastructures, which contained more than 200 gigabytes of customer records, including names, several hundred million email addresses, and IP addresses).

[69] *See, e.g.*, ACA Connects Comments at 4 ("[D]isclosures of CPNI can harm consumers whether or not intentional . . . ."); EPIC Comments at 2-3; NCTA Comments at 4; EPIC et al. Reply at 3-4; JFL Reply at 14 ("Potential harms exist whenever a data breach occurs, whether intentional or inadvertent."); *see also Data Breach Notice* at 8, para. 12 n.47.

[70] AARO Reply at 6.

[71] *Data Breach Notice* at 8, para. 12; EPIC Comments at 2.

[72] *Data Breach Notice* at 8, para. 12; *see also* EPIC Comments at 3 (agreeing "with the Commission's analysis that requirements to notify [for] accidental breaches will encourage carriers to adopt stronger data security practices and help the Commission identify and address systemic network vulnerabilities").

[73] *Data Breach Notice* at 8, para. 12; EPIC Comments at 3; NRECA Reply at 3; Letter from David Smith, Assistant Director, Office of Investigations, U.S. Secret Service, to Adam Copeland, Deputy Bureau Chief, FCC, WC Docket No. 22-21, at 1-2 (filed Nov. 7, 2023) (USSS Letter).

[74] *Data Breach Notice* at 1-2, para. 1; *see also* Confidentiality Coalition Comments at 2 (reporting a 118% increase from 2020 to 2021 in unauthorized access incidents, and a 44% increase in ransomware attacks impacting publicly traded companies); Lincoln Network Comments at 3.

[75] EPIC Comments at 3 (citing *Record Number of Data Breaches in 2021*, IAPP Daily Dashboard (Jan. 25, 2022), https://iapp.org/news/a/record-number-of-data-breaches-in-2021 (citing to ITRC report)); IBM Security, *Cyber Resilient Organization Study* at 8 (2020), https://www.ibm.com/account/reg/us-en/signup?formid=urx-45839.

[76] EPIC Comments at 3-4.

[77] Press Release, FCC, FCC Proposes Over $200 Million in Fines Against Four Largest Wireless Carriers for Apparently Failing to Adequately Protect Consumer Location Data (Feb. 28, 2020), https://www.fcc.gov/document/fcc-proposes-over-200m-fines-wireless-location-data-violations.

information, without consent, to third parties who were not authorized to receive it.[78]

23. Given these worrying trends, we agree with EPIC that our expansion of "breach" to include inadvertent exposures is a necessary first step to galvanize carriers to strengthen their data security policies and oversight of customer data. In particular, our broadening of the breach definition will better enable the marketplace to respond to the relative strengths of particular carriers' practices and enhance the Commission's ability to identify where additional regulatory oversight might be needed.[79] Removing the intent limitation in our breach reporting rule will reduce ambiguity regarding whether reporting a breach is necessary, and therefore decrease the risk of underreporting.[80] Finally, our expansion of "breach" to include inadvertent access, use, or disclosure of customer information brings our rules in line with the overwhelming majority of state and federal breach notification laws and regulations that lack such an intent limitation, ensuring that consumers nationwide—along with the Commission and other relevant federal authorities—likewise receive critical breach notifications in a timely manner.[81]

24. Notwithstanding these benefits, we acknowledge concerns expressed by carriers that our expansion of the "breach" definition to include inadvertent disclosures, on its own, could lead to "notice fatigue" for consumers,[82] deplete Commission and law enforcement resources,[83] or increase the burden of reporting obligations.[84] In response to these concerns, as discussed below, we exempt from our expanded

[78] *See, e.g.*, *AT&T, Inc.*, File No.: EB-TCD-18-00027704, Notice of Apparently Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743, 1744, para. 3 (2020).

[79] EPIC Comments at 3.

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

[81] The data breach laws in 49 states and four U.S. Territories have no intent limitation, and neither do the breach reporting requirements for federal agencies, established by the Office of Management and Budget (OMB), or the notification regulations for the Department of Health and Human Services and Federal Trade Commission. *See, e.g.*, Ala. Code § 8-38-2(1); Alaska Stat. § 45.48.090; Ariz. Rev. Stat. § 18-551(1)(a); Ark. Code § 4-110-103(1)(A); Cal. Civ. Code § 1798.82(g); Colo. Rev. Stat. § 6-1-716(1)(h); Conn. Gen. Stat. § 36a-701b(a); Del. Code tit. 6 § 12B-101(1)(a); D.C. Code § 28-3851(1); Fla. Stat. § 501.171(1)(a); Ga. Code § 10-1-911(1); 9 GCA § 48.20(a); Haw. Rev. Stat. § 487N-1; 815 ILCS § 530/5; Ind. Code § 24-4.9-2-2; Iowa Code § 715C.1(1); Kan. Stat. § 50-7a01(h); KRS § 365.732(1)(a); La. Rev. Stat. § 51:3073(2); Me. Rev. Stat. tit. 10 § 1347(1); Md. Code Com. Law § 14-3504(a)(1); Mass. Gen. Laws § 93H-1(a); Mich. Comp. Laws § 445.63(b); Minn. Stat. § 325E.61 Subd. 1(d); Miss. Code § 75-24-29(2)(a); Mo. Rev. Stat. § 407.1500(1)(1); Mont. Code § 30-14-1704(4)(a); Neb. Rev. Stat. § 87-802(1); Nev. Rev. Stat. § 603A.020; N.H. Rev. Stat. § 359-C:19(V); N.J. Stat. § 56:8-161; N.M. Stat. § 57-12C-2(D); N.Y. Gen. Bus. Law § 899-aa(1)(c); N.C. Gen. Stat § 75-61(14); N.D. Cent. Code § 51-30-01(1); Ohio Rev. Code § 1349.19(A)(1)(a); Ohio Rev. Code § 1354.01(C); Okla. Stat. tit. 24 § 162(1); Oregon Rev. Stat. § 646A.602(1); 73 Pa. Stat. § 2302; 10 L.P.R.A. § 4051(c); R.I. Gen. Laws § 11-49.3-3(a)(1); S.C. Code § 39-1-90(D)(1); S.D. Cod. Laws § 22-40-19(1); Tenn. Code § 47-18-2107(a)(1)(A); Tex. Bus. & Com. Code § 521.053(a); Utah Code § 13-44-102(1)(a); 9 V.S.A. § 2430(13)(A); Va. Code § 18.2-186.6(A); V.I. Code tit. 14, § 2208(d); Wash. Rev. Code § 19.255.005(1); W.V. Code § 46A-2A-101(1); Wis. Stat. § 134.98(2)(a)-(b); Wyo. Stat. § 40-12-501(a)(i); *Preparing for and Responding to a Breach of Personally Identifiable Information*, Office of Management and Budget, M-17-12, Memorandum for Heads of Executive Departments and Agencies at 9 (Jan. 3, 2017) (OMB M-17-12); 45 CFR § 164.402; 16 CFR § 318.2(a).

[82] *See, e.g.*, Blooston Rural Carriers Comments at 2; CCA Comments at 4; CrowdStrike Comments at 2; CTIA Comments at 26; Verizon Comments at 1-2, 8; WISPA Comments at 3; NRECA Reply at 3; Southern Linc Reply at 2.

[83] *See, e.g.*, Blooston Rural Carriers Comments at 2; CTIA Comments at 26; NTCA Comments at 4; WISPA Comments at 3; WTA Comments at 7; NRECA Reply at 4.

[84] *See, e.g.*, NTCA Comments at 4; Staurulakis Comments at 2-3; WISPA Comments at 3; WISPA Reply at 2. We are unpersuaded by the arguments of Lincoln Network, which goes even further and contends that data breach reporting requirements would implicate the major questions doctrine. Lincoln Network Comments at 7-8 (arguing that expanding notification requirements to include inadvertent breaches would greatly increase costs for carriers, implicating the major questions doctrine). Lincoln Networks focuses solely on the alleged economic impact of the (continued….)

definition of "breach" a good-faith acquisition of customer data by an employee or agent of a carrier where such information is not used improperly or further disclosed.[85] We also adopt a "harm-based notification trigger," such that notification of a breach to consumers is not required in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed.[86] As discussed below, we also find that our adoption of a minimum threshold for the number of customers affected to trigger our requirement to notify the Commission and other federal law enforcement regarding breaches where there is no reasonable likelihood of harm will further reduce carriers' reporting burdens, and make more efficient use of agencies' resources.[87] Although carriers' obligation to protect covered information under section 222 of the Act and our implementing rules is not limited just to scenarios where there is actual evidence of consumer harms, these common-sense limitations on our disclosure requirements are well-supported by the record,[88] and are consistent with most state and federal data breach notification regimes.[89] Taken together, we find that these carve-outs will mitigate any legitimate concerns expressed by commenters in the record regarding the potential for consumer notice fatigue and undue burdens on federal agencies and carriers by triggering the requirements in situations where we find disclosures most strongly justified.[90]

25. In the *Data Breach Notice*, the Commission also sought comment on whether it should "expand the definition of a breach to include situations where a telecommunications carrier or a third party discovers conduct that could have reasonably led to exposure of customer CPNI, even if it has not

requirement to the exclusion of other considerations, and even then provides no meaningful sense of the likely magnitude of such effects—citing total estimated economic costs of breaches and asserting in a conclusory manner that "it is reasonable to conclude that at least some of the cost per breach is assignable to notification," without quantifying the cost associated with such notifications, let alone any portion attributable specifically to FCC breach notification rules. *Id.* at 8. We thus are unpersuaded that the major questions doctrine is implicated here. In any case, we explain below why these rules fall comfortably within the Commission's statutory authority. *See infra* Section III.E.

[85] *See infra* Section III.A.3 (discussing good-faith exception).

[86] *See infra* Section III.C.1 (discussing harm-based customer notification trigger).

[87] *See infra* Section III.B.2 (discussing threshold trigger); *see, e.g.*, NRECA Reply at 4 (advocating for a threshold trigger for notifications to the Commission or federal law enforcement).

[88] *See, e.g.*, ACA Connects Comments at 4 n.8 (arguing in favor of a good-faith exception); Blooston Rural Carriers Comments at 2; CCA Comments at 4-5; CrowdStrike Comments at 3; CTIA Comments at 27; NCTA Comments at 2, 5; NTCA Comments at 5; Verizon Comments at 9-10; WISPA Comments at 4; NRECA Reply at 4.

[89] *Data Breach Notice* at 9, para. 14 n.50 (listing state notification laws that contain a good-faith exception); *id.* at 10, para. 16 n.53 (listing a selection of state notification laws that contain a harm-based notification trigger); *see also, e.g.*, Ala. Code § 8-38-5(a) (including a harm-based notification trigger); Del. Code tit. 6 § 12B-102(a) (same); Ind. Code § 24-4.9-3-1(a) (same); La. Rev. Stat. § 51:3074(I) (same); Mass. Gen. Laws § 93H-3(b) (same); Mich. Comp. Laws § 445.72(1) (same); Miss. Code § 75-24-29(3) (same); Mo. Rev. Stat. § 407.1500(2)(5) (same); N.Y. Gen. Bus. Law § 899-aa(2)(a) (same); Ohio Rev. Code § 1349.19(B)(1)(a) (same); Okla. Stat. tit. 24 § 163(A) (same); R.I. Gen. Laws § 11-49.3-4(a)(1) (same); S.C. Code § 39-1-90(A) (same); S.D. Cod. Laws § 22-40-20 (same); Utah Code § 13-44-202(1)(b) (same); Va. Code Ann. § 18.2-186.6(B) (same); Wash. Rev. Code § 19.255.010(1) (same); W.V. Code § 46A-2A-102(a) (same); Wis. Stat. § 134.98(2)(cm)(1) (same); Wyo. Stat. § 40-12-502(a) (same).

[90] *See* NCTA Comments at 2 ("If the Commission adopts a reasonable and objective harm-based trigger, NCTA further supports the Commission's proposal to include inadvertent access in the definition of 'breach.'"); *cf.* Sorenson Communications LLC Comments at 2 (Sorenson Comments).

yet determined if such exposure occurred."[91] Commenters generally oppose such an expansion,[92] arguing that it could result in over-notification to customers and to government entities,[93] impeding carriers' and the government's investigation of actual breaches,[94] and needlessly frightening consumers.[95] While we believe that notification of situations in which customer data are put at risk has value,[96] no commenter in the record provides evidence in support of such an approach. We nevertheless expect that in such situations, carriers will work reasonably and efficiently to confirm whether or not actual exposure has occurred. While we decline at this time to amend the definition of breach to include situations where a carrier or third party has not yet determined if an exposure of covered data has occurred, we also note that we do not prohibit carriers from providing notice in such situations to their customers if, for example, they determine that doing so is appropriate under the circumstances.[97] We also will continue to monitor how such situations impact customers, and reserve the ability to expand the breach definition to cover such situations in the future, should we find such an expansion is warranted.

3. Good-Faith Exception

26. We exclude from the definition of "breach" a good-faith acquisition of covered data by an employee or agent of a carrier where such information is not used improperly or further disclosed.[98] As noted above and in the *Data Breach Notice*,[99] the vast majority of state statutes include a similar

[91] *Data Breach Notice* at 10, para. 14.

[92] ACA Connects Comments at 4-5 n.10; USTelecom Comments at 5-6; WISPA Comments at 4; CTIA Comments at 27; Verizon Comments at 9-10; WTA Reply at 2 (contending that "conduct or security weaknesses that theoretically or potentially could have led to exposure of CPNI (but where there is no evidence that they actually did) are matters for carrier corrective actions and employee training . . .").

[93] *See, e.g.*, CTIA Comments at 27; USTelecom Comments at 5-6.

[94] WISPA Comments at 4.

[95] Verizon Comments at 10; WISPA Comments at 4.

[96] *See* Verizon, *Verizon Responds to Report: Confirms No Loss or Theft of Customer Information* (July 12, 2017), https://www.verizon.com/about/news/verizon-responds-report-confirms-no-loss-or-theft-customer-information (notifying the public that an employee of one of Verizon's vendors had put information in cloud storage with settings that could have allowed it to be exposed to the public even though it did not ultimately result in "a loss or theft of Verizon or Verizon customer information"); *cf.* OMB M-17-12, at 14 (requiring reporting of "suspected" breaches to prevent a delay that would undermine an "agency's ability to apply preventative and remedial measures to protect the PII or reduce the risk of harm to potentially affected individuals").

[97] While we have not expanded the definition of data breach to include situations where customer data is put at risk but not exposed, we note that the threshold for reporting a breach is separate from the obligation to "protect the confidentiality of proprietary information" and to "take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI." 47 U.S.C. § 222(a); 47 CFR § 64.2010(a). Not only may a breach that does not meet the reporting threshold still reflect a violation of section 222 of the Act or an unreasonable practice in violation of 64.2010(a) of the rules, but a carrier can violate section 222 of the Act or section 64.2010(a) of the rules even in the absence of any breach.

[98] *Data Breach Notice* at 9, para. 14. In the *Data Breach Notice*, we used the term "exemption" instead of "exception" when asking commenters whether we should exclude from the definition of "breach" a good-faith acquisition of covered data. *See id.* at 10, para. 14. For the purpose of clarity, we instead use the word "exception" here to describe this exclusion. While we make this exception to our definition of "breach," we nevertheless expect carriers to "take reasonable measures" in such scenarios to protect such customer information from improper use or further disclosure, which may, for example, involve requiring that such an employee or agent destroy the data upon realizing that the data was disclosed without, or in excess of, authorization. *Cf.* 47 CFR § 64.2010(a) (requiring telecommunications carriers to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI).

[99] *Data Breach Notice* at 9, para. 14.

exception from the definition of "breach,"[100] and commenters overwhelmingly agree that such an exception is appropriate.[101] As Blooston Rural Carriers argues, a good-faith exception will prevent carriers from "unnecessarily confus[ing] and alarm[ing] consumers" in such low-risk situations.[102] We also agree with National Rural Electric Cooperative Association (NRECA) that, without this exception, "more serious data breaches [will potentially] become lost in the 'noise' of multiple notifications."[103] We therefore find that our good-faith exception will help avoid excessive notifications to consumers, and reduce reporting burdens on carriers.[104]

27. We disagree with EPIC that our adoption of a good-faith exception would "weaken privacy and data security protections for consumers."[105] In support of these claims, EPIC cites instances in which employees, "either through bribery or inadequate training, were illegally disclosing consumer information to pretexters claiming to have authorization to access subscriber information."[106] We do not find that these situations justify taking a different approach; indeed, the exception we adopt today would not apply in the scenarios outlined by EPIC. First, our good-faith exception relieves carriers from reporting obligations only where customer information is not used improperly or further disclosed, and in EPIC's example, the information was, intentionally or not, further disclosed to a pretexter. Second, in circumstances where an employee improperly discloses consumer information due to bribery, the employee disclosing the information is, by definition, not acting in "good faith," and therefore such an incident would still be considered a breach under our rules.

---

[100] *See, e.g.*, Ala. Code § 8-38-2(1); Alaska Stat. § 45.48.050; Ariz. Rev. Stat. § 18-551(1)(b); Ark. Code § 4-110-103(1)(B); Cal. Civ. Code § 1798.82(g); Colo. Rev. Stat. § 6-1-716(1)(h); Del. Code tit. 6 § 12B-101(1)(a); D.C. Code § 28-3851(1); Fla. Stat. § 501.171(1)(a); Ga. Code § 10-1-911(1); 9 GCA § 48.20(a); Haw. Rev. Stat. § 487N-1; Idaho Stat. § 28-51-104(2); 815 ILCS § 530/5; Ind. Code § 4-1-11-2(b)(1); Iowa Code § 715C.1(1); Kan. Stat. § 50-7a01(h); KRS § 365.732(1)(a); La. Rev. Stat. § 51:3073(2); Me. Rev. Stat. tit. 10 § 1347(1); Md. Code Com. Law § 14-3504(a)(2); Mass. Gen. Laws § 93H-1(a); Mich. Comp. Laws § 445.63(b); Minn. Stat. § 325E.61 Subd. 1(d); Mo. Rev. Stat. § 407.1500(1)(1); Mont. Code § 30-14-1704(4)(a); Neb. Rev. Stat. § 87-802(1); Nev. Rev. Stat. § 603A.020; N.H. Rev. Stat. § 359-C:19(V); N.J. Stat. § 56:8-161; N.M. Stat. § 57-12C-2(D); N.Y. Gen. Bus. Law § 899-aa(1)(c); N.C. Gen. Stat. § 75-61(14); N.D. Cent. Code § 51-30-01(1); Ohio Rev. Code § 1349.19(A)(1)(b)(i); Ohio Rev. Code § 1354.01(C)(1); Okla. Stat. § 24-162(1); Oregon Rev. Stat. § 646A.602(1); 73 Pa. Stat. § 2302; R.I. Gen. Laws § 11-49.3-3(a)(1); S.C. Code § 39-1-90(D)(1); S.D. Cod. Laws § 20-40-19(1); Tenn. Code § 47-18-2107(a)(1)(B); Tex. Bus. & Com. Code § 521.053(a); Utah Code § 13-44-102(1)(b); 9 V.S.A. § 2430(13)(B); Va. Code § 18.2-186.6(A); V.I. Code tit. 14, § 2209(d); Wash. Rev. Code § 19.255.005(1); W.V. Code § 46A-2A-101(1); Wis. Stat. § 134.98(2)(cm)(2); Wyo. Stat. § 40-12-501(a)(i); *see also* CCA Comments at 5; NTCA Comments at 5; Verizon Comments at 9.

[101] *See, e.g.*, ACA Connects Comments at 4 n.8; Blooston Rural Carriers Comments at 2; CCA Comments at 5; CTIA Comments at 27; NCTA Comments at 2; NRECA Reply at 4; NTCA Comments at 5; Verizon Comments at 9; WISPA Comments at 4.

[102] Blooston Rural Carriers Comments at 2 (discussing "cases where there has been a simple mistake, and data is acquired in good faith by employees or agents but not used improperly or disclosed").

[103] NRECA Reply at 4.

[104] CTIA and NCTA's arguments about the Commission's allegedly overly broad definition of harm to trigger customer notifications of breaches of covered data, and their expressed concerns about excessive reporting to federal agencies, do not account for the fact that this good-faith exception removes an entire category of breaches from the scope of reporting covered by our rules as a threshold matter. *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 14-19; NCTA Dec. 5, 2023 *Ex Parte* at 2-3, 5-6. As a result, we are unpersuaded by these parties' cursory claims about possible notice fatigue, consumer confusion or frustration, and interference with data breach investigations. *See* CTIA Dec. 6, 2023 *Ex Parte* at 11, 19.

[105] EPIC et al. Reply at 4-5.

[106] *Id.*

B. Notifying the Commission and Other Federal Law Enforcement of Data Breaches

1. Requiring Notification to the Commission

28. As proposed in the *Data Breach Notice*,[107] we require telecommunications carriers to notify the Commission of a breach in addition to notification to the Secret Service and FBI.[108] The Commission will maintain a link to the reporting facility at http://www.fcc.gov/eb/cpni or a successor URL designated by the Wireline Competition Bureau (Bureau). As the Commission found when it adopted the current data breach rules, notifying law enforcement of a breach is consistent with the goal of protecting customers' personal data because it enables such agencies to investigate the breach, "which could result in legal action against the perpetrators," thus ensuring that they do not continue to breach sensitive customer information.[109] The Commission also anticipated that law enforcement investigations into how breaches occurred would enable law enforcement to advise providers and the Commission to take steps to anticipate and prevent future breaches of a similar nature.[110] Our addition of the Commission as a recipient of federal-agency breach notifications is consistent with other federal sector-specific laws, which require prompt notification to the relevant subject-matter agency.[111] As large-scale security breaches resulting from lax or inadequate data security practices and employee training have become more common since the *2007 CPNI Order*, notifying the Commission of breaches will provide Commission staff with important information about data security vulnerabilities and threat patterns that Commission staff can help address and remediate.[112] Commission notification will also shed light on carriers' ongoing compliance with our rules.[113] Consistent with the Commission's proposal and the record in response to the *Data Breach Notice*, we require carriers to notify the Commission of a reportable breach contemporaneously with the Secret Service and FBI.[114]

29. The majority of commenters support including the Commission in data breach notifications.[115] Many of these commenters agree, however, that this new notification requirement should

---

[107] *Data Breach Notice* at 12, 14, paras. 23, 28.

[108] We continue to require carriers to notify the Secret Service and the FBI because doing so enables law enforcement to investigate the breach, "which could result in legal action against the perpetrators, thus ensuring that they do not continue to breach CPNI." *2007 CPNI Order*, 22 FCC Rcd at 6943, para. 27. Moreover, law enforcement investigations into how breaches occurred would enable law enforcement to advise the carrier and the Commission to take steps to prevent future breaches of that kind. *See id.*; *Data Breach Notice* at 12, para. 24.

[109] *2007 CPNI Order*, 22 FCC Rcd at 6943, para. 27.

[110] *Id.* at 6943, para. 27.

[111] *Data Breach Notice* at 12, para. 23; *see, e.g.*, 45 CFR § 164.408; 16 CFR § 318.3(a)(2).

[112] *Data Breach Notice* at 13, para. 24; EPIC Comments at 11.

[113] *Data Breach Notice* at 13, para. 24.

[114] *Id.* at 14, para. 28. As stated in the *Data Breach Notice*, requiring carriers to notify the Commission, Secret Service, and FBI at the same time will minimize burdens on carriers, eliminate confusion regarding obligations, and streamline the reporting process, allowing carriers to free up resources that can be used to address the breach and prevent further harm. Commenters support a single, contemporaneous notification to the Commission, Secret Service, and FBI. *See, e.g.*, ACA Connects Comments at 9; NTCA Comments at 6 ("NTCA does not oppose requiring carriers to report CPNI breaches to the Commission simultaneously with the Secret Service and FBI, provided carriers only need to submit one report and the report can be submitted using the link already provided on the Commission's website for reporting CPNI breaches."); Southern Linc Reply at 5; WTA Comments at 6 (advocating for the same deadline for all federal-agency reports).

[115] *See, e.g.*, ACA Connects Comments at 9; CTIA Comments at 28-29; EPIC Comments at 11; NCTA Comments at 9; NTCA Comments at 6; WTA Comments at 4; NRECA Reply at 3; Southern Linc Reply at 5 (supporting adding the Commission as a recipient of data breach notifications as long as carriers only need to submit one report through a single portal). WISPA opposes contemporaneous notification to the Commission "[i]f the Commission were to require separate notice." WISPA Comments at 8. Because we are not requiring separate notification to the

(continued….)

not create new obligations which are duplicative or inconsistent with the preexisting requirement to notify law enforcement agencies, and should instead entail one notification sent to all three.[116] We agree with these suggestions, as we see no need for carriers to file separate or differing notifications to the Commission.[117] As discussed below, we delegate authority to the Bureau to coordinate with the Secret Service to adapt the existing central reporting facility for reporting breaches to the Commission and other federal law enforcement agencies.[118] Additionally, as discussed below, we do not impose differing content requirements for notifications to the different agencies.[119]

30. We disagree with commenters that oppose requiring breach notification to the Commission. For example, ITI and WISPA argue that the existing requirement to notify the Secret Service and the FBI is sufficient, and that notification to the Commission is unnecessary.[120] WISPA also argues that notification to the Commission would hinder law enforcement investigation efforts,[121] and attempts to distinguish the other federal regulations that require notification to sector-specific agencies as less burdensome than the Commission notification we adopt here.[122] We are unpersuaded by these arguments. First, as mentioned above, our requirement to notify the Commission of covered data breaches is necessary to ensure that Commission staff are informed of new types of security vulnerabilities that arise in today's fast-changing data security environment. Additionally, we disagree with WISPA that adding the Commission as a recipient of federal-agency notifications would hinder law enforcement investigation efforts, given the lack of impact the addition will have on the timing, content, or format of notification to the other law enforcement agencies. Indeed, the Secret Service is supportive of the Commission receiving such notifications.[123] Furthermore, our action here avoids adding any additional burden on filers by merely adding the Commission to the list of recipients of the same breach notifications Commission rules already require carriers to submit, and, as discussed in further detail below, further streamlines the filing process by adapting the existing reporting facility for submission.[124] For these reasons, we do not expect carriers of any size to experience increased regulatory burdens as a result of the Commission notification requirement. Moreover, to the extent that carriers are faced with any minimal burdens, such burdens are well justified by the value of these reports to federal law enforcement agencies and the Commission.[125]

Commission, but are merely adding the Commission as a recipient of breach notifications submitted through the preexisting central reporting facility, we expect that this should allay WISPA's concern.

[116] *See, e.g.*, ACA Connects Comments at 9 (supporting a single notification "disseminated to whichever such entities are designated to receive them"); CTIA Comments at 28-29; Southern Linc Reply at 5.

[117] *See Data Breach Notice* at 13-14, paras. 25, 27.

[118] *See infra* Section III.B.5.

[119] *See infra* Section III.B.4.

[120] ITI Comments at 4; WISPA Comments at 6.

[121] *See* WISPA Comments at 7.

[122] *See id.*.

[123] *See* USSS Letter at 2.

[124] This should also address WISPA's concern that a contemporaneous, but separate, notice to the Commission would impact initial efforts to assess a breach. *See* WISPA Comments at 8.

[125] *See 2007 CPNI Order*, 22 FCC Rcd at 6944, para. 27 ("Notifying law enforcement of CPNI breaches is consistent with the goal of protecting CPNI. Law enforcement can investigate the breach, which could result in legal action against the perpetrators, thus ensuring that they do not continue to breach CPNI. When and if law enforcement determines how the breach occurred, moreover, it can advise the carrier and the Commission, enabling industry to take steps to prevent future breaches of that kind. Because law enforcement will be informed of all breaches, it will be better positioned than individual carriers to develop expertise about the methods and motives

(continued….)

2. Threshold Trigger for Federal-Agency Notification

31. We require carriers to inform federal agencies, via the central reporting facility, of all breaches, regardless of the number of customers affected or whether there is a reasonable risk of harm to customers. For breaches that affect 500 or more customers, or for which a carrier cannot determine how many customers are affected, we require carriers to file individual, per-breach notifications as soon as practicable, but no later than seven business days, after reasonable determination of a breach.[126] As we describe below, these notifications must include detailed information regarding the nature of the breach and its impact on affected customers.[127] This same type of notification, and the seven business day timeframe for submission, will also be required in instances where the carrier has conclusively determined that a breach affects fewer than 500 customers unless the carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach.[128] For breaches in which a carrier can reasonably determine that a breach affecting fewer than 500 customers is not reasonably likely to harm those customers, we require the carrier to file an annual summary of such breaches via the central reporting facility, instead of a notification.[129] In circumstances where a carrier initially determines that contemporaneous breach notification to federal agencies is not required under these provisions, but later discovers information that would require such notice, we clarify that a carrier must report the breach to federal agencies as soon as practicable, but no later than seven business days of their discovery of this new information.[130]

32. Given our expansion of the definition of "breach" in today's Order to include inadvertent exposure of CPNI and other types of data, allowing carriers to file information regarding smaller, less risky breaches in a summary format on an annual basis will tailor administrative burdens on carriers to reflect those scenarios where reporting is most critical.[131] Our setting of a notification threshold is

---

associated with CPNI breaches. Again, this should enable law enforcement to advise industry, the Commission, and perhaps Congress regarding additional measures that might prevent future breaches.").

[126] *See infra* Section III.B.3 (discussing the timeframe requirement for breach notifications to federal agencies).

[127] *See infra* Section III.B.4 (discussing the content requirements for breach notifications to federal agencies).

[128] As discussed below, for breaches affecting fewer than 500 customers and which do not meet the harm-based trigger, we instead require carriers to submit an annual summary of such incidents. *See infra* Section III.B.3.

[129] *See infra* Section III.B.3 (discussing annual reporting requirement for breaches that meet these criteria). To ensure that carriers may be held accountable regarding their determinations of a breach's likelihood of harm and number of affected customers, we require carriers to keep records of the bases of those determinations for two years. *See infra*, Appx. A. We also note that carriers may voluntarily file notification of such a breach in addition to, but not in place of, this annual summary filing.

[130] For example, if a carrier initially determines that federal agency notification within seven business days is not required because a breach affects fewer than 500 customers and harm to customers is not reasonably likely to occur, but later discovers new information suggesting that more than 500 customers were affected, or that harm to customers has occurred, or is likely to occur, as a result of the breach, then the carrier must notify federal agencies as soon as practicable, but no later than within seven business days of this discovery.

[131] *See, e.g.*, CCA Comments at 6 ("[A] numerical threshold similar to those that states have adopted will help carriers efficiently direct their resources and avoid notification fatigue for the Commission, law enforcement, and consumers."); Verizon Comments at 2 ("A threshold trigger would curb excessive reporting and allow authorities to focus resources on more serious breaches with the potential to cause greater harm."); WISPA Comments at 9. We are unpersuaded by NCTA's contention that our rule for data breach reporting to federal agencies is "likely to tax resources and limit the regulator's ability to identify the most problematic practices and act to protect consumers" and result in harm due to lack of harmonization. NCTA Dec. 5, 2023 *Ex Parte* at 3; *see also id*. at 2, 6-7; Letter from Michele K. Thomas, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, at 5 (filed Dec. 6, 2023) (T-Mobile Dec. 6, 2023 *Ex Parte*) (supporting a harm-based trigger for federal-agency notifications). We are likewise unpersuaded by CTIA's similar contention that "the FCC is not currently equipped to 'become a repository for threat detection and monitoring'" and that the "flood of information threatens to distract FCC and Law Enforcement staff

(continued….)

consistent with many state statutes that similarly do not have an intentionality requirement and require notice to state law enforcement authorities.[132] Our adoption of a 500-affected-customer threshold is also consistent with an analogous breach of health records notification required by the Federal Trade Commission (FTC).[133]

33. The vast majority of commenters are supportive of the need for a threshold trigger generally,[134] but are divergent regarding what the numerical threshold should be.[135] NCTA supports a threshold of 500 affected customers for federal-agency notifications, noting that such a threshold would "minimize paperwork burdens on providers that wish to focus their resources on protecting customers," and cites a variety of state laws that use that threshold.[136] CTIA and Verizon, however, argue that we should set the threshold to be higher than 1,000 to reflect the larger customer bases of larger carriers.[137] CTIA and Verizon do not provide additional reasoning as to why the size of the carrier's customer base is relevant in determining the threshold for federal-agency notification. If the rationale for adopting a higher threshold for larger carriers is to reduce reporting burdens, we note that larger carriers likely have more resources than smaller carriers to respond to breach incidents. Verizon, for example, admits that it has "a team of more than 1,000 professionals dedicated to implementing corporate-wide security controls and constantly monitoring networks to identify and respond to threats."[138] Additionally, the Commission and other federal law enforcement agencies would likely have an investigative interest in breaches affecting 500 or more customers, regardless of the percentage of the overall customer base those customers represent.

34. We find that the reporting threshold we adopt will both enable the Commission to receive more granular information regarding larger breaches to aid its investigations while also being able to study trends in breach activity through reporting of smaller breaches in annual submissions.[139] Given that

---

from real and potentially harmful security threats." CTIA Dec. 6, 2023 *Ex Parte* at 15. These parties offer only generalized assertions in that regard without any evidence or analysis demonstrating concrete harms that are likely to result in practice. At the same time, NCTA and CTIA appear to neglect the potential we anticipate for federal agencies to gain useful insight into trends or particular activities that can lead to consumer harm even if, in a given instance, the reported breach happened not to involve consumer harm (whether under the standard set by our rules or in NCTA's and/or CTIA's own subjective judgment).

[132] *See, e.g.*, *Data Breach Notice* at 15, para. 30 nn.75-77; CCA Comments at 6 (supporting a numerical threshold "similar to those that states have adopted"); CTIA Comments at 25 ("[A]dopting a threshold for reporting to the Commission and law enforcement would increase harmonization with state breach notification statutes.").

[133] 16 CFR § 318.5(c); *see* WISPA Comments at 7.

[134] *See, e.g.*, Blooston Rural Carriers Comments at 4; CCA Comments at 6; CTIA Comments at 25; NCTA Comments at 7; NTCA Comments at 5; Verizon Comments at 2, 11-12; WISPA Comments at 9; WTA Comments at 7; NRECA Reply at 4-5; Southern Linc Reply at 6-7; USTelecom Reply at 7; USSS Letter at 2 (suggesting that a specific numerical threshold will "reduce the risks of CPNI breaches," and providing an example of a 500-affected-customer threshold); *see also* EPIC et al. Reply at 22 (taking no position on a threshold trigger, but providing an example of the FTC's proposed Standards for Safeguarding Customer Information which set a threshold of 1,000 impacted consumers to trigger the reporting requirement).

[135] *Compare* NCTA Comments at 7 (advocating for a 500-customer threshold) *with* WTA Comments at 7 (advocating for a 5,000-customer threshold).

[136] NCTA Comments at 8 (citing Cal. Civ. Code § 1798.82(f); Colo. Rev. Stat. §§ 6-1-716(2)(d), (f)(1); Fla. Stat. Ann. §§ 501.171(3)(a), (5)).

[137] CTIA Comments at 24; Verizon Comments at 2, 11-12.

[138] Verizon Comments at 3.

[139] *See* WTA Comments at 7; WTA Reply at 4 ("The critical factor here is not the difference between large and small service providers . . . ."); *accord* Blooston Rural Carriers Reply at 5; *see* NRECA Reply at 4-5.

a number of states have found such a balance with a 500-affected-customer threshold,[140] our adoption of this threshold also carries the additional benefit of "increas[ing] harmonization with state breach notification statutes."[141] We therefore also reject rural carriers' suggestion that we adopt a 5,000-affected-customer threshold.[142]

35. Finally, as supported by the record, we apply this threshold trigger only to notifications to federal agencies, and not to customer notifications.[143] Breaches affecting even just a few customers can pose just as much risk to those customers as could breaches with wider impact. For this reason, as discussed above, we continue to require carriers to notify federal agencies within seven business days of breaches that implicate a reasonable risk of customer harm, regardless of the number of customers affected. Doing so will permit federal agencies to investigate smaller breaches where there is a risk of customer harm, and also allow law enforcement agencies to request customer notification delays where such notice would "impede or compromise an ongoing or potential criminal investigation or national security," as specified in our rules.[144]

3. Notification Timeframe

36. We retain our existing requirement that carriers notify federal agencies of a reportable breach as soon as practicable, but no later than seven business days, after reasonable determination of the breach.[145] While the *Data Breach Notice* proposed eliminating the seven business day deadline,[146] based on the record in response, we find that the existing timeframe provides greater certainty for carriers and customers affected by breaches. We agree with ACA Connects that retaining the seven business day deadline properly balances the need to give carriers "reasonable time to prioritize remediation efforts before submitting notifications" with the need to ensure customers receive timely notifications regarding breaches affecting their data.[147] We also agree with NTCA that there is insufficient evidence that the current timeline "is inadequate to accomplish the Commission's goals."[148] Additionally, we agree with

---

[140] *See, e.g.*, Cal. Civ. Code § 1798.82(f); Colo. Rev. Stat. § 6-1-716; Del. Code tit. 6, § 12B-102(d); Fla. Stat. § 501.171(3)(a); R.I. Gen. Laws § 11-49.3-4(a)(2).

[141] CTIA Comments at 25.

[142] *See, e.g.*, WTA Comments at 7; Blooston Rural Carriers Reply at 5.

[143] *See* NCTA Comments at 8 ("[I]t would be reasonable for the Commission to require voice providers to notify affected customers of breaches whenever the harm-based trigger is met, even where less than the threshold minimum number of customers is impacted, so that those customers have the opportunity to prevent or mitigate the harm.").

[144] *See infra* Appx. A.

[145] As commenters point out, in the text of the *Data Breach Notice*, the Commission occasionally used the phrase "after discovery of a breach," rather than "after reasonable determination of a breach" when discussing the appropriate timeframe for federal-agency notification. *See, e.g.*, CTIA Comments at 34-35; ACA Connects Reply at 5; Southern Linc Reply at 6. However, as the Proposed Rules Appendix makes clear, "after discovery" was intended as shorthand, rather than a proposal to substantively change the existing "after reasonable determination of a breach" standard. *See Data Breach Notice* at Appx. A (proposing to require notification to federal agencies "[a]s soon as practicable *after reasonable determination of a breach*") (emphasis added); *see also id*. at 14, para. 28 (seeking comment on "an appropriate timeframe for notifying law enforcement *after reasonable determination* of a CPNI breach," and asking a number of questions about "when a carrier should be treated as having 'reasonably determined' that a breach has occurred") (emphasis added).

[146] *See Data Breach Notice* at 14, para. 28; *id.* at Appx. A.

[147] *See* ACA Connects Comments at 10; *see also* NTCA Comments at 6-7; NTCA Reply at 3-4.

[148] NTCA Comments at 7. Particularly given our historical experience with a seven day deadline, we are unpersuaded by conclusory assertions that meeting that deadline might not always be feasible. *See, e.g.*, CTIA Comments at 34-35 (arguing that the seven business day deadline for federal-agency notifications "is not always feasible or advisable, depending on the complexity of the incident").

NTCA that eliminating the seven business day deadline and only "requiring breaches to be reported 'as soon as practicable' can be interpreted differently by different carriers or even by law enforcement and the Commission, thereby placing carriers at risk of inadvertently violating the Commission's rules if they construe 'as soon as practicable' differently than the Commission."[149]

37. We disagree with the arguments of other commenters that removing the seven business day deadline is necessary to afford carriers of different sizes and means the flexibility to respond to an evolving breach situation and minimize consumer harm, while also providing accurate and detailed notifications to federal agencies.[150] Carriers have long been subject to the existing seven business day deadline, which was adopted in 2007,[151] and, as EPIC notes, some state jurisdictions require notification to the state attorney general within 3 days.[152] As we point out above, ACA Connects and NTCA—both associations of small-to-medium-sized carriers with presumably fewer resources than larger carriers such as Verizon[153]—support retaining the seven business day time limit. Even assuming, *arguendo*, that the seven business day deadline is a more burdensome or inflexible timeframe for small carriers with "limited personnel and/or resources,"[154] we still find that the countervailing interest in ensuring customers are notified quickly of breaches affecting them outweighs this tailored burden. For this reason, as discussed below, we also remove the seven business day mandatory waiting period between federal-agency notification and customer notification.[155] We lastly clarify that "reasonabl[y] determin[ing]" a breach has occurred does not mean reaching a conclusion regarding every fact surrounding a data security incident that may constitute a breach. Rather, a carrier will be treated as having "reasonabl[y] determin[ed]" that a breach has occurred when the carrier has information indicating that it is more likely than not that there was a breach.

38. While we set this outer bound for federal-agency notifications, we expect that larger carriers with significant resources and staffing will routinely be providing notification of breaches to the Commission well within the seven business day deadline, and that other carriers should strive to do so as well. Indeed, the "as soon as practicable" standard may require such notifications be made in *fewer* days than the seven business day deadline, and a failure to swiftly report breaches may, depending on the circumstances,[156] be untimely and unreasonable, even if within the seven business day deadline. The Enforcement Bureau will continue to investigate carriers that have neglected to provide timely

[149] NTCA Reply at 4.

[150] *See* Verizon Comments at 6 & n.16; Blooston Rural Carriers Comments at 4; WISPA Comments at 8; Southern Linc Reply at 5-6; USTelecom Reply at 6. Given agencies' ability to calibrate their resources based on the volume of notifications, and our practical experience dealing with investigations at a stage where information might only be preliminary or incomplete, we reject arguments that burdens on the Commission and other law enforcement agencies justify eliminating the seven day reporting deadline. *See, e.g.*, ITI Comments at 3 ("Changing the required reporting time to law enforcement from seven days to 'as soon as practicable' after the discovery of a breach is a workable time frame to prevent overloading regulatory institutions with incomplete or inaccurate information before the incident has been properly analyzed or addressed.")

[151] *2007 CPNI Order*, 22 FCC Rcd at 6944, para. 29.

[152] EPIC Comments at 11.

[153] *See* Verizon Comments at 3 (admitting that it has "a team of more than 1,000 professionals dedicated to implementing corporate-wide security controls and constantly monitoring networks to identify and respond to threats").

[154] Blooston Rural Carriers Comments at 4.

[155] *See infra* Section III.C.2.

[156] For example, if a carrier has made all the determinations necessary to conclude that a breach should be reported to law enforcement after only a few days, it would be inconsistent with the "as soon as practicable" standard for the carrier to wait until the seventh business day—merely because that is the outer limit—before providing the required notice.

notification to federal agencies after a breach incident pursuant to its delegated authority.

39. *Annual Reporting of Certain Small Breaches.* We require carriers to submit, via the existing central reporting facility and no later than February 1, a consolidated summary of breaches that occurred over the course of the previous calendar year which affected fewer than 500 customers, and where the carrier could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach.[157] We delegate authority to the Bureau to coordinate with the Secret Service regarding any modification to the portal that may be necessary to permit the filing of this annual summary. We also delegate authority to the Bureau, working in conjunction with the Public Safety and Homeland Security Bureau, and based on the record of this proceeding—or any additional notice and comment that might be warranted—to determine the content and format requirements of this filing and direct the Bureau to release a public notice announcing these requirements. We instruct the Bureau to minimize the burdens on carriers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. At a minimum, the Bureau should develop requirements that are less burdensome than what is required for individual breach submissions to the reporting facility, and consider streamlined ways for filers to report this summary information. The first annual report will be due the first February 1 after the Office of Management and Budget (OMB) approves the annual reporting requirement under the Paperwork Reduction Act. The first report should cover all breaches between the effective date of the annual reporting requirement and the remainder of the calendar year.[158]

40. We disagree with CTIA's argument that "there is no regulatory goal served by mandating record keeping" for incidents affecting fewer customers than the notification threshold.[159] Breaches that are limited in scope may still reveal patterns or provide evidence of security vulnerabilities at an early stage. As noted in the *Data Breach Notice* and the *2007 CPNI Order*, notification of all breaches, regardless of the number of customers affected or a carrier's determination of harm, "could allow the Commission and federal law enforcement to be 'better positioned than individual carriers to develop expertise about the methods and motives'" associated with breaches.[160] We therefore find that this annual summary of smaller breaches will continue to enable the Commission and our federal law enforcement partners to investigate, remediate, and deter smaller breaches.

41. We also disagree with NTCA and Southern Linc who argue that "requiring carriers to maintain records of any breaches that fall below the notification threshold 'will place an unnecessary burden on carriers . . . .'"[161] On the contrary, we find that any burdens associated with the annual reporting requirement are likely to be well justified by the countervailing benefits discussed above. Nor do commenters objecting to the burden of our rules as unwarranted provide a quantification of their anticipated burdens that would overcome the benefits anticipated from those rules. Moreover, this single annual report containing a summary of such breaches will likely end up replacing numerous smaller breach notifications individually submitted via the central reporting facility throughout the year.

---

[157] *See Data Breach Notice* at 15, para. 30.

[158] *See* CTIA Dec. 6, 2023 *Ex Parte* at 16-17 (asking that the Commission explicitly state the due date of the first annual report and that such report shall cover "events that occur on or after the effective date of the new rules").

[159] CTIA Comments at 25; *see also* NRECA Reply at 4-5 ("Incidents below [the reporting threshold] likely do not warrant federal government involvement."); Southern Linc Reply at 6-7 (arguing that "requiring carriers to maintain records of any breaches that fall below the notification threshold 'will place an unnecessary burden on carriers . . . .'") (quoting NTCA Comments at 6); CTIA Reply at 16; Letter from Angela Simpson, Senior Vice President & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 2 (filed Dec. 8, 2023) (CCA Dec. 8, 2023 *Ex Parte*). NCTA argues that the annual reporting requirement would "not provide the Commission with meaningful information to serve its goals of identifying data breach patterns," but does not provide more detail as to why such information would not be helpful. NCTA Dec. 5, 2023 *Ex Parte* at 5.

[160] *Data Breach Notice* at 15, para. 30; *2007 CPNI Order*, 22 FCC Rcd at 6943, para. 27.

[161] Southern Linc Reply at 6-7 (quoting NTCA Comments at 6).

Additionally, our rules already require carriers to "maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI."[162] The first part of this requirement encompasses all disclosures of CPNI to third parties resulting from a data breach,[163] and thus is broader than the small-breach reporting requirement we adopt today, at least with regard to CPNI.

4. Notification Contents

42. We maintain our existing requirements regarding the contents of data breach notifications to federal law enforcement agencies,[164] with a minor modification as noted below,[165] and apply these same requirements to notifications to the Commission. We agree with comments submitted by WISPA arguing that "the information currently submitted through the FBI/Secret Service reporting facility is largely sufficient and that generally the same information should be reported" under our updated rules.[166] We also take this opportunity to codify these categories of information in our rules to improve the ease of identifying the information that will be needed by regulated entities.[167] Specifically, we require carriers to report, at a minimum, information relevant to the breach, including: carrier address and contact information; a description of the breach incident;[168] the method of compromise; the date range of the incident;[169] the approximate number of customers affected; an estimate of financial loss to the carrier and customers, if any; and the types of data breached.[170] We believe that these disclosures are sufficient to give the Commission and other federal law enforcement agencies the information needed to determine appropriate next steps, such as, for example, conducting an investigation, determining and advising on how such a breach may be prevented in the future, and informing future rulemakings to protect consumers and businesses from harm.[171] Carriers must update their initial breach notification report if: (1) the carrier learns that, in some material respect, the breach notification report initially submitted was incomplete or incorrect; or (2) additional information is acquired by or becomes known to the carrier after the submission of its initial breach notification report.

43. A number of carriers request changes to, or elimination of, certain fields contained in the notification.[172] As discussed below, we are unpersuaded by these arguments, and decline to alter the fields of information collected through the notification portal.

---

[162] 47 CFR § 64.2009(c).

[163] *See also* CTIA Comments at 3-4 ("Verizon maintains records of breaches, notification to law enforcement, and customer notification for at least two years.").

[164] *Data Breach Notice* at 13, para. 27.

[165] *See infra* note 180 (removing field that asks carriers whether there is an extraordinarily urgent need to notify customers before the seven business day waiting period elapses).

[166] WISPA Comments at 7; WTA Comments at 5 (acknowledging that "[m]ost of the Commission's existing requirements regarding the contents of data breach notifications to federal law enforcement agencies are generally reasonable"); *see also* EPIC Comments at 11 (supporting the requirement to share "a detailed description of the breach to the Commission").

[167] *See infra* Appx. A.

[168] *See* EPIC Comments at 11.

[169] *See* EPIC et al. Reply at 22 (supporting requiring an estimated date range of when a security incident occurred rather than requiring providers to determine the precise date).

[170] *See Data Breach Notice* at 13-14, para. 27; *2007 CPNI Order*, 22 FCC Rcd at 6944, para. 29.

[171] *See* EPIC Comments at 11.

[172] ACA Connects Comments at 11-12; CTIA Comments at 30-31; WTA Comments at 5; CTIA Reply at 22-23; *see also* CCA Comments at 7 (stating that, while it "does not take a position on the specific contents that should be included in all notifications to law enforcement, to the Commission, or to customers[,] . . . . [t]he detailed

(continued….)

44. *Customer Billing Addresses.* ACA Connects, CTIA, and WTA request elimination of the requirement to include the billing addresses of affected customers in notifications.[173] ACA Connects states that this reporting requirement has unclear investigative value, and its elimination would "minimize the personal information reported to the Commission and law enforcement agencies."[174] While we acknowledge that federal agencies have been directed to minimize the collection, use, storage, and disclosure of personal information to only that which is relevant and necessary to accomplish an authorized purpose,[175] carriers are not in a position to know, in the absence of input from law enforcement agencies in this proceeding, which fields hold investigative value. Furthermore, because the portal was designed by law enforcement agencies themselves, we must assume that their inclusion of this field reflects a determination that such information holds some investigative value. Finally, we note that the field is not currently marked as a required field. For this reason, the field does not present a reporting burden to carriers, but instead gives carriers an opportunity to provide federal agencies more detail, should they wish to do so or find such detail relevant. WTA argues that "billing names and addresses . . . are not classified as CPNI," and thus should be omitted from the form.[176] Our expansion of covered data to include information beyond CPNI renders this argument moot.[177]

45. *Estimate of Financial Loss.* WTA argues that "estimated financial loss" is "impossible to determine or predict with any degree of accuracy during the brief and chaotic period immediately following discovery of a data breach."[178] We decline to modify or remove this field. While we understand that estimating financial loss is a complex and context-specific calculation, we emphasize the critical importance of this data point in helping federal agencies allocate their resources.[179] Additionally, while carriers should strive to provide in their notifications as accurate a value as possible, we note that even a ballpark estimate or a range of quantities can help agencies determine an incident's priority for the purposes of opening or conducting investigations, and understand the magnitude of future risk posed by certain vulnerabilities.

46. *Other Fields.* CTIA identifies two fields which it argues are no longer necessary given our change to the reporting threshold for federal-agency notifications, as discussed below.[180] Specifically,

---

information currently reported to law enforcement for purposes of investigation and potential criminal charges is significantly broader than what is necessary and appropriate for the Commission's use. Indeed, over-reporting of such information outside the law enforcement context can introduce additional data-security risks and privacy concerns"). We note that CCA does not provide further detail on "what is necessary and appropriate" in support of its argument or to aid our consideration. *See id.*

[173] ACA Connects Comments at 11-12; CTIA Comments at 31; WTA Comments at 5; CTIA Reply at 22.

[174] ACA Connects Comments at 11-12; *accord* CTIA Comments at 31; *see also* WTA Comments at 5 ("[T]here does not appear to be any need to send [such addresses] to multiple government databases as part of the initial incident notice before law enforcement and other agencies determine whether such addresses are relevant and required for their investigations.").

[175] *See* OMB, To the Heads of Executive Departments and Agencies, *Managing Information as a Strategic Resource*, Circular No. A-130, App. II, Section 3(d) (2016); *see also*, *e.g.*, CCA Comments at 7 ("[O]ver-reporting of [broader than necessary] information . . . can introduce additional data-security risks and privacy concerns."); EPIC et al. Reply at 18 (urging the Commission to "promote the principle of data minimization as a means of ensuring data security").

[176] WTA Comments at 5.

[177] *See supra* Section III.A.1.

[178] WTA Comments at 5.

[179] *See* ACA Connects Comments at 6 n.15; USTelecom Comments at 5.

[180] CTIA Comments at 31. CTIA also requests elimination of the field that asks whether "the carrier believes that there is an extraordinarily urgent need to notify any class of affected customers" before "7 full business days have passed." *Id.* at 31; 47 CFR § 64.2011(b)(1)-(2). CTIA argues that "[r]emoving this field is consistent [with] the (continued….)

CTIA requests that we remove the fields regarding whether the breach "resulted from a change of [a customer's] billing address" or was based on "a personal issue between two individuals."[181] We decline to do so. First, these fields are not marked as "required" on the form, and thus create no burden on reporting carriers that do not wish to complete them, while providing an opportunity for carriers to submit that information where applicable if they find it helpful or appropriate to do so. Second, under our revised rules, a breach stemming from a personal issue between two individuals or a change of a single customer's billing address may still trigger notification to federal agencies. Our reporting threshold only impacts the need to notify federal agencies of breaches affecting fewer than 500 customers that do not implicate harm. As stated below, even small breaches may cause harm for the few customers affected by them.[182]

47. *Harmonizing Reporting Contents with CIRCIA*. In the *Data Breach Notice*, the Commission sought comment on whether we should require telecommunications carriers to report, at a minimum, the information required under the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) as part of their notifications to federal agencies.[183] While a few commenters support the alignment or harmonization of these data breach notifications with the requirements under CIRCIA,[184] we decline to take action in this regard at this early stage. CIRCIA directs the Cybersecurity and Infrastructure Security Agency (CISA) to publish a notice of proposed rulemaking implementing its notification provisions by March 15, 2024.[185] The CISA must issue final rules no later than 18 months after the publication of the notice of proposed rulemaking.[186] At the time of this Order, the CISA has not yet released the notice of proposed rulemaking.[187] Therefore, we find it is too early to determine the precise contours of the final reporting requirements, and in the interest of preventing duplicative or inconsistent fields, and consistent with the approach advocated by ACA Connects, Blooston Rural Carriers, and CCA, we will refrain from making additional changes based on CIRCIA and continue to monitor whether such changes may be required in the future.[188]

NPRM's proposal to eliminate the seven-business-day waiting period." CTIA Comments at 31. We agree with this suggestion as our abrogation of the seven business day waiting period rule will cause such a field to be unnecessary.

[181] CTIA Comments at 31.

[182] *See infra* Section III.B.5.

[183] *Data Breach Notice* at 14, para. 27.

[184] *See, e.g.*, CrowdStrike Comments at 4; ITI Comments at 4, 6.

[185] Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 2242(b)(1), 136 Stat. 49, 1044.

[186] *Id.* § 2242(b)(2).

[187] *See* CISA, *Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA)*, https://www.cisa.gov/topics/cyber-threats-and-advisories/information-sharing/cyber-incident-reporting-critical-infrastructure-act-2022-circia (last visited Oct. 13, 2023) ("CISA is now reviewing the hundreds of comments received as we start to develop a draft rule. Per the standard rulemaking process, CISA will continue to consult with Federal interagency partners on the draft prior to its publication. CIRCIA requires that CISA publish the draft NRPM before the end of March 2024.").

[188] *See, e.g.*, ACA Connects Comments at 9-10 n.23 ("[A]t this juncture there is no way for the Commission to predict with any certainty whether, and if so to what degree, any revised data breach notification rules the Commission adopts would align with those ultimately adopted by CISA. . . . [T]he substance of the eventual CISA rules is too speculative for the Commission to consider harmonizing its data breach notification rules with CISA's cyber incident reporting rules at this time. Once both agencies adopt their respective incident notification rules, the Commission may further evaluate how to minimize potential duplicate reporting of CPNI breaches arising from cyber incidents, for instance by carving out reporting under the Commission's rules in favor of reporting to CISA where the incident is cyber-based."); Blooston Rural Carriers Comments at 4 (advocating for coordination of our data breach reporting requirements with the CISA "once data breach reporting under the recently-passed [CIRCIA] is in place"); CCA Comments at 3-4 ("The Commission should refrain from needlessly duplicating cyber incident reporting requirements currently being implemented by the [CISA].").

48. We do not find CTIA's comparison of our reporting trigger to that of the Critical Infrastructure Act of 2022 (CIRCIA) compelling.[189] CIRCIA is concerned with the category of "incidents."[190] CIRCIA does not define "breaches." But under federal guidance to agencies, a breach is a specific type of incident—an incident that involves the loss of control, compromise, unauthorized disclosure, unauthorized acquisition (etc.) of PII.[191] And it would not be inconsistent for only some incidents to be reportable under CIRCIA but for all breaches to be reportable under our rules. For example, for federal agencies, for an incident to qualify as a "major incident" it must be likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people.[192] But for a "breach" to qualify as a major incident, it can either satisfy that qualitative threshold, *or* it can involve the PII of 100,000 or more people.[193] Thus, the individual privacy concerns implicated by a breach justify a broader reporting trigger.

5. Other Issues

49. *Harm-based Trigger for Federal-Agency Notifications.* In the *Data Breach Notice*, the Commission sought comment on whether to forego requiring notification of a breach to customers or federal agencies in those instances where a telecommunications carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach.[194] While we adopt such a harm-based notification trigger for breach notifications to customers generally, as discussed below,[195] we decline to do so for federal-agency notifications of breaches that meet or exceed the 500-affected-customer threshold we describe above.[196] We do not believe that the rationale for adopting a harm-based notification trigger for customer notifications applies in the federal-agency context. Specifically, unlike customers, federal agencies do not have the same vulnerability to notice fatigue, confusion, stress, or financial hardship that would cause the burdens they experience from additional reporting to outweigh the

[189] *See* CTIA Dec. 6, 2023 *Ex Parte* at 12.

[190] 6 U.S.C. § 681(3), (5); *see also id.* § 650(12). We also disagree with CTIA's characterization of CIRCIA's incident reporting framework. CTIA argues that CIRCIA's reporting framework "only applies—in a risk-based way—to 'covered cyber incidents,' which must be 'substantial' and do not include all incidents.'" CTIA Dec. 6, 2023 *Ex Parte* at 12. This argument misconstrues the statute. Section 2242(c)(2)(A) of CIRCIA sets a *minimum* on the types of "substantial cyber incidents that constitute covered cyber incidents" and implicitly allows the CISA to expand the definition beyond that in the course of its rulemaking. 8 U.S.C. § 681b(c)(2)(A)(i). For example, one of those required minimums is to report "cyber incident[s] that lead[] to substantial loss of confidentiality, integrity, or availability of such information system or network, or a serious impact on the safety and resiliency of operational systems and processes." *Id.* While a rulemaking implementing CIRCIA is still pending, the CISA may define "loss of confidentiality" to include data breaches. We further note that the two statutory exceptions to "substantial cyber incidents that constitute covered cyber incidents" are narrow, and likely would not prevent the CISA from adopting implementing regulations that broaden the scope of covered cyber incidents that trigger the statute's reporting obligations. *See id.* § 681b(c)(2)(C).

[191] *See* OMB M-17-12, at 9.

[192] OMB M-22-05, at 10.

[193] *Id.* at 11.

[194] *Data Breach Notice* at 10, para. 15.

[195] *See infra* Section III.C.1.

[196] *See supra* Section III.B.2. For breaches that do not meet our reporting threshold of at least 500 affected customers, we do not require notification to federal agencies via the central reporting facility in those instances where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach.

benefits.[197] Additionally, as mentioned above, a report regarding a breach that does not result in harm to customers could nevertheless aid federal agencies in identifying patterns and potential vulnerabilities and develop expertise across the industry.[198] Commenters argue that we should adopt a harm-based notification trigger for all federal-agency notifications to avoid draining carrier resources.[199] While commenters are correct that a general harm-based trigger would likely serve to reduce carriers' reporting burdens, so too would a reporting threshold.[200] We find that our adoption of a reporting threshold is better tailored to reducing carriers' burdens in the federal-agency-notification context while maintaining appropriate benefits of reporting.[201] Our targeted application of a harm-based trigger to breaches affecting fewer than 500 customers ensures that federal agencies are notified before customers and thereby have an opportunity to request a delay if necessary.[202] This trigger also permits federal agencies to investigate small breaches that are harmful sooner after the breach incident than in a carrier's annual report, as described above.[203]

---

[197] *See Data Breach Notice* at 12, para. 20; EPIC et al. Reply at 22 (arguing that a minimum threshold for notification is only appropriate "in the context of reporting to regulators"); *cf.* ACA Connects Comments at 6 (supporting a harm-based notification trigger for federal-agency notifications, but admitting that "federal government entities are not prone to suffer 'notice fatigue' in the same manner as individual consumers"). CTIA argues that by not extending the harm-based trigger to federal-agency notifications, we risk that notifications will "inundate the Commission's breach reporting facility with information" and the "flood of information threatens to distract FCC and Law Enforcement staff from real and potentially harmful security threats." CTIA Dec. 6, 2023 *Ex Parte* at 15. As an initial matter, we note that, as private entities, CTIA and its members lack any particular insight into, or expertise regarding, the administrative burdens affecting federal agencies with respect to these rules. Contrary to CTIA's unsupported assertions, the agencies affected by these breach notification rules do not anticipate significant costs associated with the breach reporting requirements we adopt today. *See* USSS Letter at 2 ("While the Secret Service and FBI are primarily interested in reports related to suspected criminal activity, receiving a broader range of reports through the central reporting facility has not presented substantial costs or challenges."). While we agree that receiving notifications or reports of breaches that carriers have reasonably concluded do not trigger customer notification under the harm-based trigger will require the use of *some* resources by the Commission and law enforcement agencies, we find the value of enabling federal agencies to identify patterns and insecurities and monitor all breaches of covered data outweigh the marginal costs of receiving notifications or reports for breaches that fall in this category.

[198] *Data Breach Notice* at 15, para. 30; *2007 CPNI Order*, 22 FCC Rcd at 6943, para. 27.

[199] *See* ACA Connects Comments at 6; Blooston Rural Carriers Comments at 2; CCA Comments at 5; CTIA Comments at 21-22, 27; ITI Comments at 2; NCTA Comments at 1-2; NTCA Comments at 5; Staurulakis Comments at 7; WISPA Comments at 4-5; Blooston Rural Carriers Reply at 2-3; NCTA Reply at 1-2; USTelecom Reply at 3-4; WTA Reply at 3; CTIA Dec. 6, 2023 *Ex Parte* at 15; Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 3 (filed Dec. 6, 2023) (USTelecom Dec. 6, 2023 *Ex Parte*).

[200] For our discussion regarding the adoption of a 500-affected-customer threshold for federal-agency notifications, *see supra* Section III.B.2.

[201] Commenters also argue that a harm-based notification trigger is necessary to reduce burdens on government resources. *See, e.g.*, ACA Connects Comments at 6; CTIA Reply at 10; WTA Reply at 3. Even assuming, *arguendo*, that such burdens exist, they would likely be outweighed by the countervailing public interest in federal agencies receiving information concerning all breaches for investigative or trend analysis purposes. Our threshold trigger ensures that federal agencies receive breach information with the appropriate level of detail at the appropriate time given a breach's harmful impact or magnitude.

[202] *See* CCA Comments at 7 ("[I]t is important that the Commission's rules continue to allow law enforcement authorities an opportunity to provide feedback or request a delay of customer notices to allow proper investigation and other appropriate law-enforcement measures.").

[203] *See supra* Section III.B.3 (requiring carriers to submit to the Commission and other law enforcement an annual summary of breaches that occurred over the course of the previous calendar year that affected fewer than 500 customers and did not satisfy the harm-based notification trigger).

50. *Method of Notification*. In the *Data Breach Notice*,[204] the Commission proposed to create and maintain a centralized portal for reporting breaches to the Commission and other federal law enforcement agencies. After reviewing the record, we instead require carriers to use the existing data breach reporting facility for notifications to the Secret Service and FBI and delegate authority to the Bureau to coordinate with the Secret Service, the current administrator of the reporting facility, and the FBI, to the extent necessary, to ensure that the Commission will be notified when data breaches are reported and to implement the targeted modifications to the content of breach notifications that we adopt today.[205] Our decision to require the same content and timing for notification to the Commission as we require for notification to the Secret Service and FBI supports the use of a single portal for notifying all three agencies.[206] Consistent with the Secret Service's request,[207] we also delegate authority to the Bureau, working in conjunction with the Public Safety and Homeland Security Bureau and the Office of Managing Director, to collaborate with the Secret Service to explore the possibility of the Commission assuming control and responsibility for the reporting facility in the future, and to transition control of the facility to the Commission should the Bureau and Secret Service agree that such a transition is desirable.

51. Commenters widely supported the use of a single portal for all federal-agency notifications.[208] ACA Connects argues that using the preexisting portal for Commission notification will save government resources that would otherwise be spent developing a redundant portal.[209] NCTA also advocates for the use of the preexisting portal, noting that the portal "works well for service providers."[210] We agree with commenters' analysis and thus require carriers to submit their breach notifications to the Commission and other federal law enforcement agencies through the existing portal. We disagree with John Staurulakis' suggestion that the Commission should instead require carriers to maintain a summary of inadvertent breaches for inclusion in their annual CPNI certification.[211] We find that this approach would significantly delay notification of such breaches to federal agencies, preventing law enforcement from acting quickly to investigate inadvertent breaches that may have widespread, harmful impact on customers.

C. Customer Notification

1. Harm-Based Notification Trigger

52. We adopt a harm-based trigger for notification of breaches to customers so that they may focus their time, effort, and financial resources on the most important and potentially harmful incidents.[212] We agree with commenters that adopting a harm-based trigger serves the public interest by protecting customers from over-notification and notice fatigue, specifically in instances where the carrier has

[204] *Data Breach Notice* at 13, para. 25.

[205] *See, e.g.*, ACA Connects Comments at 10; NCTA Comments at 9; USSS Letter at 2. The existing data breach reporting facility is located at https://www.cpnireporting.gov.

[206] *See supra* Section III.B.4 (discussing adopting the same content requirements for Commission notifications as for notification to other federal agencies); *supra* Section III.B.1 (discussing requiring notifying the Commission contemporaneously with other federal agencies).

[207] USSS Letter at 2 ("[T]he Secret Service supports transitioning operation of the current reporting facility to the FCC.").

[208] *See, e.g.*, Blooston Rural Carriers Comments at 4; CCA Comments at 7; CTIA Comments at 28-29; NTCA Comments at 6; WTA Comments at 4; NRECA Reply at 3.

[209] *See* ACA Connects Comments at 10.

[210] NCTA Comments at 9; *see also id.* at 6 (generally supporting the use of the preexisting portal).

[211] Staurulakis Comments at 5-6.

[212] *Data Breach Notice* at 10, para. 15.

reasonably determined that no harm is likely to occur.[213] As the Commission recognized in the *Data Breach Notice*, it is not only distressing, but time consuming and expensive, to deal with a data breach, costing customers time, effort, and financial difficulty to change their passwords, purchase fraud alerts or credit monitoring, and freeze their credit in instances where the breach is not reasonably likely to result in any harm.[214] Therefore we find that adopting a harm-based notification trigger, along with our expanded definition of breach,[215] will ensure that customers are made aware of potentially harmful instances of breach, whether intentional or not, while preventing unnecessary financial and emotional difficulty in no-harm situations.[216] A harm-based trigger for notification to customers also allows carriers, particularly small and rural providers, to focus their resources on data security and mitigating any harms caused by breaches rather than generating notifications where harm was unlikely.[217] Our decision to adopt a harm-based notification trigger is also consistent with the majority of state laws, which generally do not require covered entities to notify customers of breaches when a determination is made that the breach is unlikely to result in harm.[218]

53. While the record overwhelmingly supports the adoption of a harm-based notification trigger,[219] some commenters worry that such a framework could result in legal ambiguity or lead to underreporting of breaches.[220] We take several actions to mitigate these concerns. First, we clarify that where a carrier is unable to make a reasonable determination of whether or not harm to customers is likely, the obligation to notify customers remains.[221] Stated differently, we establish a rebuttable

---

[213] *See, e.g.*, NCTA Comments at 1-2; ACA Connects Comments at 5; NRECA Reply at 4; Southern Linc Reply at 3; CTIA Comments at 21-22 ("If notification is required absent a reasonable risk of actual customer harm, customers may be inundated with notifications that are not meaningful or relevant. This poses the real risk of notice fatigue, which could lead to customers not taking notices about potential actual risk seriously."); Letter from Amanda E. Potter, Assistant Vice President – Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 3 (filed Dec. 6, 2023) (AT&T Dec. 6, 2023 *Ex Parte*); *see also* NRECA Reply at 4 ("Over-notification risks creating a general numbing effect for consumers, potentially unintentionally promoting less safe consumer behavior. For that reason, NRECA supports other commenters that call for a harm-based trigger for data breach notifications.").

[214] *Data Breach Notice* at 10, para. 16.

[215] We agree with those commenters that argue that the risk of notice fatigue to customers is important in light of our decision to expand the definition of breach. *See, e.g.*, USTelecom Reply at 3; Verizon Comments at 2. Our adoption of the harm-based notification trigger will ensure that customer notification is focused on the incidents which are likely to cause harm, whether the incident was the result of intentional or inadvertent conduct.

[216] *See* WISPA Comments at 4-5 ("A harm-based trigger would tailor the data breach notification rule to situations it is intended to protect—those that could have a harmful impact on consumers.").

[217] Blooston Rural Carriers Comments at 2; WISPA Comments at 5.

[218] *See, e.g.*, Ala. Code § 8-38-5(a); Alaska Stat. § 45.48.010(c); Ariz. Rev. Stat. §18-552(J); Ark. Code § 4-110-105(d); Colo. Rev. Stat. § 6-1-716(2); Conn. Gen. Stat. § 36a-701b(b)(1); *see also Data Breach Notice* at 10, para. 16 n.53; USTelecom Reply at 4; CTIA Reply at 11 ("[E]stablishing a harm-based trigger will align the CPNI rules with the many state data breach notification laws that include harm-based breach notification triggers, furthering harmonization between reporting frameworks."); *cf.* OMB M-17-12, at 29 ("When deciding whether or not to notify individuals potentially affected by a breach, agencies shall consider the assessed risk of harm . . . [which] shall inform the agency's decision of whether or not to notify individuals.").

[219] *See* ACA Connects Reply at 2.

[220] EPIC Comments at 8-10; JFL Reply at 3-5. Additionally, EPIC notes that "carriers have a strong incentive to classify any data security incidents they think they can get away with as non-harmful and only admit to harm where the reputational harm (or enforcement penalty) of an exposed cover-up would be greater." EPIC et al. Reply at 19-20.

[221] *Data Breach Notice* at 12, para. 21. In making this determination, we do not require carriers to consult federal law enforcement or the Commission, as suggested by some commenters. *See* ACA Connects Comments at 8.

(continued….)

presumption of harm and require carriers to notify customers of a breach in situations where the carrier is unable to reasonably determine that harm is reasonably unlikely to occur.[222] Second, as discussed above, we decline to adopt a harm-based trigger for notification to federal law enforcement agencies and the Commission for breaches affecting 500 or more customers. As such, carriers are required to provide notification for *all* incidents which meet the expanded definition of data breach and this affected-customer threshold to federal law enforcement agencies and to the Commission.[223] Moreover, under the rules we adopt today, breaches falling below this threshold must be compiled and reported to federal agencies annually.[224] We believe that this will serve as a backstop to any potential underreporting to customers, as the federal agencies will have an opportunity to act even in instances where the provider may have concluded that harm to the consumer was unlikely.

54. *Evaluating Harm to Customers*. To the extent that a provider has evidence of actual harm to customers, notification is required and the harm-based analysis is conclusive. In instances where there is no definitive evidence of actual harm, as suggested in the *Data Breach Notice*, we identify a set of factors that telecommunications carriers should consider when evaluating whether harm to customers is reasonably likely.[225] We believe that identifying these factors will promote consistency and further remedy concerns about ambiguity.

55. We find that "harm" to customers could include, but is not limited to: financial harm,

---

Rather, carriers must determine using the factors outlined below whether harm to customers is likely to occur. If a provider concludes that harm to customers was unlikely and therefore customer notification was not required, but the Commission finds that conclusion to be unreasonable, the Commission will notify the provider.

[222] *See* 45 CFR § 164.402(2) (establishing a rebuttable presumption of a "breach" that triggers the notification requirements under HIPAA except where covered entities demonstrate that there is a low probability that the protected health information in question has been compromised based on a risk assessment of four listed factors). ACA Connects argues that the Commission should decline to establish a rebuttable presumption of consumer harm because having to make filings in the interest of overcoming such a presumption would be burdensome for small providers. ACA Connects Comments at 8. However, we do not require any such filing. Rather, carriers must determine, based on the specific facts of a breach, whether consumer harm is reasonably unlikely to occur. We provide further guidance to carriers on what constitutes harm to consumers below. *See infra* paras. 54-55. We reject NCTA's proposal to limit the rebuttable presumption of harm to "instances where the breach involves a risk of tangible, financial harm, identity theft or theft of service." NCTA Dec. 5, 2023 *Ex Parte* at 5. NCTA's list is underinclusive in that it omits other harms that are significant. Nor does the record enable us to readily draw a line that separates the risks of some harms from others. We clarify that carriers do not need to disprove the potential for each type of harm in every instance to overcome the presumption, but must rather come to a reasonable fact-specific conclusion that, when considering all of the factors as a whole, harm is unlikely to occur.

[223] ACA Connects comments that the harm-based trigger should apply not only to customer breach notifications, but to federal-agency notifications as well. ACA Connects Comments at 6. We disagree. As ACA Connects notes, federal agencies are not prone to notice fatigue in the same way that consumers are. *See id*. Additionally, as discussed above, notifying federal agencies of all breaches allows the Commission and law enforcement agencies to identify patterns and potential vulnerabilities and develop expertise across the industry, thereby enabling them to respond in appropriate and targeted ways. *See Data Breach Notice* at 15, para. 30.

[224] *See supra* Section III.B.3.

[225] *Data Breach Notice* at 11, para. 18. WISPA and ACA Connects support the Commission adopting a set of factors to help guide providers in determining whether harm to consumers is reasonably likely. *See* WISPA Comments at 5; ACA Connects Comments at 7. We believe that establishing a set of guidelines and recommendations strikes the right balance between preventing ambiguity, versus adopting a rigid definition which is too inflexible. *Compare* EPIC Comments at 10 (arguing that "any standard based on 'likelihood' of harm is . . . highly malleable") *with* CTIA Comments at 23 ("There is no need for the Commission to identify a set of factors if it clearly defines harm to hone in on actual harm.").

physical harm, identity theft, theft of services, potential for blackmail, the disclosure of private facts,[226] the disclosure of contact information for victims of abuse, and other similar types of dangers.[227] Our broad approach to the privacy harms that merit customer notice has ample legal support. First, OMB has noted that "types of harms" that individuals affected by a breach can experience have evolved: "Identity theft can result in embarrassment, inconvenience, reputational harm, emotional harm, financial loss, unfairness, and, in rare cases, risks to public safety."[228] Second, our approach finds support from case law—e.g., decisions holding that reputational harm can confer Article III standing.[229] And third, our approach better reflects consumer expectations than a more cabined-approach to harm: Privacy harms that merit individual notice should be linked to those harms that individuals' experience, not those that carriers can most easily identify.[230]

56. We find that this broader conception of harm is consistent with previous Commission precedent,[231] and we disagree with commenters arguing that "harm" should only include the risk of identity theft or financial harm.[232] We find that adopting such a narrow definition of harm is not only inconsistent with the Commission's longstanding approach, but also could lead to underreporting of breaches, and disregards other important and potentially costly consequences of a breach to customers.[233]

---

[226] Some parties raise administrability concerns about including harms such as "disclosure of private facts" on the theory that they are too speculative for providers. NCTA Dec. 5, 2024 *Ex Parte* at 5; CTIA Dec. 6, 2023 *Ex Parte* at 18; USTelecom Dec. 6, 2023 *Ex Parte*; AT&T Dec. 6, 2023 *Ex Parte* at 3; CCA Dec. 8, 2023 *Ex Parte* at 2; Letter from Charles R. Moses, President, Ohio Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 3 (filed Dec. 6, 2023) (Ohio TA Dec. 6, 2023 *Ex Parte*); Letter from Glenn Hamer, President, Texas Association of Business, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 2 (filed Dec. 6, 2023). Beyond this bare assertion, these parties do not meaningfully explain what administrability problems would arise in practice. Additionally, they fail to account for the fact that providers only need make a *reasonable* determination of whether or not harm to customers is likely. Thus, even assuming *arguendo* that particular harms are challenging to evaluate in particular circumstances, a provider is not held to a standard of perfection, and any inherent challenges can be accounted for when evaluating the reasonableness of a given determination.

[227] *Data Breach Notice* at 11, para. 19.

[228] OMB M-17-12, at 7. While OMB was specifically describing harms arising from an identity theft, the fact that those harms go beyond financial supports our conclusion that other types of harm should be considered when assessing the risk of harm from a breach.

[229] *See, e.g.*, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) ("Various intangible harms can also be concrete. Chief among them are injuries with a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts. Those include, for example, reputational harms, disclosure of private information, and intrusion upon seclusion" (citations omitted)).

[230] *See generally* Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 B.U. L. Rev. 793, 830-861 (2022).

[231] *Data Breach Notice* at 11, n.56.

[232] *See, e.g.*, ITI Comments at 2; ACA Connects Comments at 7; CTIA Reply at 12; WTA Reply at 3-4; CCA Comments at 5 ("The Commission should limit the scope of 'harm' for this purpose to financial harm or identity theft, rather than broader and more amorphous concepts like 'emotional harm,' 'personal embarrassment,' or 'loss of control' over information."); NCTA Dec. 5, 2023 *Ex Parte* at 5; Letter from Michael Romano, Executive Vice President, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-21, at 1 (filed Dec. 6, 2023) (NTCA Dec. 6, 2023 *Ex Parte*). The limited types of harm suggested by these commenters is underinclusive in that it omits other harms that are significant, particularly in the aggregate.

[233] *See* JFL Reply at 5 ("[I]f a harm trigger rule is implemented, the Commission should adopt expansive definitions of harm and breach so that consumers receive notifications about unauthorized access to or use of their information in as many cases as possible. An expansive definition of harm would conform to the word's plain meaning and its ordinary usage and would encompass situations in which some people might reasonably be concerned about possible harm, such as when providers share information with law enforcement representatives or imposters without a lawful order and without following appropriate process."). Blooston Rural Carriers suggests that we adopt a tiered approach to defining harm. Blooston Rural Carriers Comments at 2-3. We believe that a tiered approach would be

(continued….)

While a broader definition of harm may be more difficult for carriers to apply in certain cases, we believe that carriers will be fully capable of understanding when to comply with our disclosure requirements in light of our decision to adopt a rebuttable presumption of harm.

57. When assessing the likelihood of harm to customers, carriers should consider the following factors. Consistent with the *Data Breach Notice*, we find that no single factor on its own is sufficient to make a determination regarding harm to customers.[234]

- **The sensitivity of the information (including in totality) which was breached**.[235] For example, the disclosure of a phone number is less likely to create harm than if the number of calls to that phone number, the duration of those calls, the name of the caller, the content of the conversations, and/or other layers of information is also disclosed.[236] Additionally, harm is more likely if financial information[237] or sensitive personal information[238] was included in the breach. The data's potential for reuse should also be considered. For example, if a password is compromised, it is possible that the information could be reused to attack other accounts. Finally, if information is not able to be changed, it is more sensitive than information that is changeable. For example, a customer could change their password for an account, but the customer is unable to change their social security number, for instance.
- **The nature and duration of the breach**.[239] For example, if the information was widely accessible online over a long period of time, harm is more likely than if the information

unnecessarily complicated for carriers to assess the various "levels" of harm. *See* CTIA Reply at 12-13 ("[s]uch an approach would be difficult for carriers to quantify when considering whether access or exposure rises to the level where reporting is required."). Nevertheless, many of the factors that Blooston Rural Carriers suggests as relevant to their proposed analysis (i.e., financial harm, encryption, risk of identity theft) are consistent with the approach that we adopt today.

[234] *Data Breach Notice* at 11, para. 18.

[235] *See* CrowdStrike Comments at 3; OMB M-17-12, at 22 ("Data Elements" and "Private Information"). NCTA proposes an alternative approach under which the rebuttable presumption of harm only would apply "where specific types of data are compromised." NCTA Dec. 5, 2023 *Ex Parte* at 6. But our framework already factors in the sensitivity of the data as part of the overall analysis of harm. And as indicated by our guidance for evaluating harm, we find multiple considerations should be evaluated collectively to accurately gauge the likelihood of consumer harm. Thus, we find that our approach already accounts for potential differences in the risk of harm associated with specific types of data, but does so more effectively than NCTA's proposal by calling for a consideration of the broader relevant context, as well.

[236] This contextual approach to gauging the sensitivity of customer information is consistent with the definition of PII we adopt above with respect to our breach notification rules, which considers whether information is disclosed in combination with other information which inherently increases the risk associated with the disclosure. *See supra* Section III.A.1 (breach notification requirements directed at disclosure of "first name or first initial, and last name, *in combination with* any government-issued identification numbers," or "user name or e-mail address, *in combination with* a password or security question and answer") (emphasis added).

[237] Commenters agree that a breach implicating financial information is likely harmful. *See* Blooston Rural Carriers Comments at 3; NTCA Comments at 5; Southern Linc Reply at 3-4.

[238] Some data elements are always considered sensitive, such as bank account numbers and Social Security Numbers. Other data elements (e.g., Date of Birth) become sensitive when paired with another data element (e.g., name, address, or phone number). And still other data elements may be sensitive in context (e.g., data identifying a subscriber in a TRS program, because confirmed participation may be sufficient to reveal an individual's hearing- or speech-related disability). Consistent with the approach we take in this order, carriers must consider each element and all of the elements taken together, in context, to determine whether sensitive information was revealed in a breach.

[239] OMB M-17-12, at 23-25 ("Permanence," "Format and Media," and "Duration of Exposure").

was only briefly accessible to a limited number of individuals. Information on a portable USB flash drive which does not require any special skill or knowledge to access is more likely to cause harm than information on a secured back-up device which is password protected. Covered data that was exposed for an extended period of time is more likely to have been accessed or used to the detriment of customers than data that was only briefly exposed.

- **Mitigations**.[240] How quickly the carrier discovered the breach, and whether it took actions to mitigate any potential harm to the customers, is also a factor.
- **Intentionality**.[241] In the case of an individual or entity intentionally obtaining access to covered data, such as by using the practice of pretexting, unauthorized intrusion into a physical or virtual space, theft of a device, or other similar activities, harm is more likely to occur. Conversely, an accidental breach, such as that resulting from a misdirected email, accidentally losing a device with covered data stored on it, or other similar activities, is less likely to result in harm.

58. *Encryption Safe Harbor*. As requested by a number of parties, we adopt a safe harbor under which customer notification is not required where a breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed.[242] For the purposes of this safe harbor, we define encrypted data as covered data that has been transformed through the use of an algorithmic process into a form that is unusable, unreadable, or indecipherable through a security technology or methodology generally accepted in the field of information security.[243] We agree with commenters that the risk of harm to customers is significantly reduced when the data was encrypted,[244] provided that the carrier has evidence that the encryption key has not been compromised.[245] We also agree with commenters that our decision to implement a notification exception for encrypted data will incentivize and encourage the use of encryption to the benefit of the public,[246] and further the goal of harmonization with state and other laws.[247] To the extent that a threat actor appears to have circumvented

[240] *See* CrowdStrike Comments at 3; 45 CFR § 164.402(2)(iv).

[241] OMB M-17-12, at 26 ("Intent").

[242] Comments in the record support establishing a notification exception for encrypted data. *See, e.g.*, NCTA Reply at 5; Sorenson Comments at 4; NCTA Dec. 5, 2023 *Ex Parte* at 6; USTelecom Dec. 6, 2023 *Ex Parte* at 3; AT&T Dec. 6, 2023 *Ex Parte* at 3; T-Mobile Dec. 6, 2023 *Ex Parte* at 5.

[243] *See* Appx. A.

[244] CTIA Comments at 23; Blooston Rural Carriers Comments at 2-3.

[245] While EPIC recommends that the Commission not exempt breaches solely involving encrypted data from its breach notification rules, EPIC does nonetheless acknowledge that "a typical breach of encrypted data may present a lower risk of harm to consumers", though "encrypted data can nevertheless be compromised if a third party obtains access to the requisite encryption keys or is able to identify and exploit an additional security vulnerability." EPIC Comments at 9. We agree. For those reasons, encrypted data is only exempted from the customer breach notification requirement where the carrier has definitive evidence that the encryption key was not compromised. Additionally, whether data was encrypted or not is irrelevant to the federal-government breach notification requirement. As such, carriers are still required to report *all* breaches of covered data, whether that data was encrypted or not, to the Commission and law enforcement agencies. As we have previously explained, data regarding breaches, even breaches with little or no risk of consumer harm, can be helpful to assist federal agencies to determine data security vulnerabilities and threat patterns. Stated differently, encryption does not exempt an incident from the Commission's definition of breach, but rather only limits the instances where notification to a customer may be necessary.

[246] CTIA Reply at 14; NCTA Dec. 5, 2023 *Ex Parte* at 6-7; CTIA Dec. 6, 2023 *Ex Parte* at 20-21.

[247] CTIA Dec. 6, 2023 *Ex Parte* at 20-21. Several states have established an exception for encrypted data from their breach notification requirements so long as the key has not been compromised or also breached. *See* Cal. Civ. Code
(continued….)

encryption, however, the carrier should conduct a harm-based analysis as if the data was never encrypted.

2. Customer Notification Timeframe

59. Consistent with the Commission's proposal in the *Data Breach Notice*,[248] we require telecommunications carriers to notify customers of covered data breaches without unreasonable delay after notification to federal agencies. We find that the current framework, which imposes a mandatory seven business day waiting period, is out-of-step with current approaches regarding the urgency of notifying victims about breaches of their personal information,[249] and that the public interest is better served by eliminating the waiting period and thereby increasing the speed at which customers can receive the important information contained in a notice.[250] At the same time, we recognize the importance of law enforcement's ability to investigate a breach, and understand that in certain situations, notification of a breach may interfere with a criminal investigation or national security.[251] Therefore, consistent with the Secret Service's request,[252] we will allow law enforcement to request an initial delay of up to 30 days[253] in those specific circumstances where one is warranted.[254]

60. We find that the "without unreasonable delay" standard encourages carriers to promptly notify customers of covered data breaches while offering the flexibility to be responsive to the specifics of

§ 1798.82(a) (unless "encryption key or security credential was, or is reasonably believed to have been, acquired by an unauthorized person and the person or business that owns or licenses the encrypted information has a reasonable belief that the encryption key or security credential could render that personal information readable or usable"); Colo. Rev. Stat. § 6-1-716(a.4) (unless "the confidential process, encryption key, or other means to decipher the secured information was also acquired in the security breach or was reasonably believed to have been acquired"); 9 GCA § 48.30(a)-(b) (unless "encrypted information is accessed and acquired in an unencrypted form, or if the security breach involves a person with access to the encryption key and the individual or entity reasonably believes that such breach has caused or will cause identity theft or other fraud to any resident of Guam"); Mich. Comp. Laws § 445.72(1); Okla. Stat. tit. 24 § 163(A)-(B); 73 Pa. Stat. § 2303(b); S.D. Cod. Laws § 22-40-19(1); Va. Code § 18.2-186.6(C); Wash. Rev. Code § 19.255.010(1); W.V. Code § 46A-2A-102(a)-(b). Additionally, in recent amendments to the Gramm-Leach-Bliley Act's Safeguards Rule, the FTC exempted encrypted data from its notification requirement. *See Standards for Safeguarding Customer Information*, Final Rule, 88 Fed. Reg. 77,499, 77,503 (Nov. 13, 2023).

[248] *Data Breach Notice* at 15-16, para. 31.

[249] *Id.* at 16, para. 32.

[250] Consumer Groups Comments at 2; CTIA Comments at 19-20; ITI Comments at 3; NCTA Comments at 3; USTelecom Comments at 6; Verizon Comments at 1 ("[T]he Commission should adopt its proposal to eliminate the existing seven-day customer notification rule. This rule harms consumers by delaying their ability to take steps to protect themselves in the event of a breach involving their customer proprietary network information ('CPNI'). The Commission should amend the rule, as proposed, so that providers may notify customers of breaches without unreasonable delay.").

[251] *See Data Breach Notice* at 16, para. 31 (citing *2007 CPNI Order*, 22 FCC Rcd at 6943-44, para. 28); *see also* CCA Comments at 7 ("CCA agrees that a strict rule requiring a delay of at least seven business days after notification to law enforcement is unnecessary. That said, it is important that the Commission's rules continue to allow law enforcement authorities an opportunity to provide feedback or request a delay of customer notices to allow proper investigation and other appropriate law-enforcement measures.").

[252] *See* USSS Letter at 2 (supporting the continued ability for law enforcement to request a delay of customer notification).

[253] CTIA Comments at 20.

[254] WISPA commented that the seven business day waiting period can be "crucial for law enforcement to effectively investigate the breach." WISPA Comments at 9. We agree that law enforcement requires an opportunity to investigate a breach, but do not find that a seven business day waiting period, applied to all breaches, is necessary. Under the framework that we adopt today, law enforcement may request a delay when one would be useful, but in the many circumstances where a delay is not necessary, this rule will allow carriers to more promptly notify customers, thereby empowering them to take action to mitigate any harms.

a situation.[255] This approach is consistent with many existing data breach notification laws that require expedited notice but refrain from requiring a specific timeframe.[256] As suggested by commenters, the "without unreasonable delay" standard could take into account factors such as the provider's size, as a small carrier may have limited resources and could require additional time to investigate a CPNI data breach than a larger carrier.[257]

61. In order to ensure that carriers notify customers quickly even in complex situations,[258] we require customer notification no later than 30 days after reasonable determination of a breach.[259] The 30-day maximum amount of time is consistent with many existing state laws.[260] Some commenters request that the Commission adopt a safe-harbor for customer notification after determination or discovery of a breach.[261] We decline to adopt such a safe harbor because we encourage providers to notify customers as quickly as possible in each individual instance. However, we do establish a requirement that carriers notify customers no later than 30 days after reasonable determination of a breach to provide a clear outer bound to the "without unreasonable delay" standard.[262]

3. Other Issues

62. *Content of Customer Breach Notification*. Consistent with our current rules, we decline to adopt specific minimum categories of information required in a customer breach notification.[263] We make clear, however, that a notification must include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that

[255] NCTA Reply at 2; ITI Comments at 3; WISPA Comments at 9-10; Southern Linc Reply at 7.

[256] *See Data Breach Notice* at 16, para. 33 (citing 12 CFR pt. 364, Appx. B, Supp. A § III(A)(1) (interpreting GLBA § 501(b)); Cal. Civ. Code § 1798.29(a); Va. Code Ann. § 18.2-186.6(B) ("without unreasonable delay"); D.C. Code § 28-3852(a) ("in the most expedient time possible and without unreasonable delay"); Wyo. Stat. Ann. § 40-12-502(a) ("notice shall be made in the most expedient time possible and without unreasonable delay"); FTC, Data Breach Response: A Guide for Business at 6 (2021), https://www.ftc.gov/system/files/documents/plain-language/560a_data_breach_response_guide_for_business.pdf (FTC Data Breach Guide)); *see also* USTelecom Comments at 7.

[257] ACA Connects Comments at 14; Blooston Rural Carriers Comments at 5-6; Blooston Rural Carriers Reply at 3 ("A reasonableness timeframe will allow service providers to respond more quickly when circumstances warrant, while at the same time allowing flexibility if a small service provider has limited personnel and/or resources available and is focused on addressing and minimizing harm to consumers.").

[258] While in many circumstances, the "without unreasonable delay" standard means that the customer will be notified in less than seven business days, we note that in some circumstances, this standard may lead to a longer waiting time than the previous seven days. *See, e.g.*, USTelecom Reply at 6 ("[A]llowing carriers to fully investigate an incident before providing notice of the breach reduces the risk of inaccurate or incomplete information. It also avoids circumstances in which premature customer notice could lead to further harm, such as when the breach is a result of a cybersecurity vulnerability. The Commission therefore should adopt its proposals to require providers to notify customers of breaches without unreasonable delay . . . after reasonable determination of a breach."). For that reason, we adopt the 30-day back-stop in order to prevent unnecessarily long delays, even in such instances as the one described by USTelecom, where the carrier is engaged in investigations of the incident.

[259] *Data Breach Notice* at 17, para. 34.

[260] *Id.* at 17, para. 34 (citing Colo. Rev. Stat. § 6-1-716; Fla. Stat. § 501.171(4)(a); Wash. Rev. Code § 19.255.010(8)). In the *Data Breach Notice*, we also considered adopting an "outside limit" of 45 or 60 days after discovery of a breach. *Id*. However, we find that 30 days offers providers enough flexibility while recognizing the urgency of notifying customers as quickly as possible and without unnecessary delays.

[261] *See* CTIA Comments at 35-36 (requesting a 45-day safe harbor); WTA Comments at 6-7 (requesting a 60-day safe harbor).

[262] *See* ACA Connects Comments at 14 (requesting Commission guidance as to the potential outer bounds of 'without unreasonable delay').

[263] *Data Breach Notice* at 18, para. 38.

such a breach affected or may have affected that customer's data. While all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have laws requiring private or governmental entities to notify individuals of breaches involving their personal information, not all of those entities impose minimum content requirements for those notices.[264] We agree with NTCA that adding requirements with the potential to differ from other customer notice requirements imposed by states or otherwise may create unnecessary burdens on carriers, particularly small ones,[265] as well as confusion among customers.[266] We also find persuasive arguments by commenters that specifying the required content of customer notifications beyond the basic standard described above would prevent carriers from having enough flexibility[267] to craft notifications that are more responsive to, and appropriate for, the specific facts of a breach, the customers, and the carrier involved.[268] Finally, imposing minimum requirements may delay a carrier's ability to timely notify customers, as it may take time to gather all of the necessary details and information even where it would be in the customer's best interest to receive notification more quickly albeit with less detail.

63. Instead, we adopt as recommendations[269] the following categories of information in security breach notices to customers: (1) the estimated date of the breach;[270] (2) a description of the customer information that was used, disclosed, or accessed; (3) information on how customers, including customers with disabilities, can contact the carrier to inquire about the breach; (4) information about how to contact the Commission, FTC, and any state regulatory agencies relevant to the customer and the service; (5) if the breach creates a risk of identity theft,[271] information about national credit reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring, credit reporting, or credit freezes the carrier is offering to affected customers; and (6) what other steps customers should take to mitigate their risk based on the specific categories of information exposed in the

[264] *See id.* at 19, para. 39; *see also* Blooston Rural Carriers Comments at 6 ("While some state laws specify minimum notice requirements, other states do not and the Commission should avoid adopting notice requirements that are more stringent than what individual states require.").

[265] NTCA Comments at 8; NTCA Reply at 6; USTelecom Comments at 8.

[266] CTIA Comments at 31-32.

[267] Southern Linc Reply at 7-8; USTelecom Comments at 2; Verizon Comments at 1; CTIA Reply at 23.

[268] CTIA Comments at 31-33; USTelecom Reply at 6. We find this argument particularly persuasive as it relates to small and rural carriers. *See* Staurulakis Comments at 6-7; Blooston Rural Carriers Reply at 4 ("Small and rural service providers have a strong connection to their customers and communities and should continue to have discretion to tailor notifications to the precise circumstances and to their customers' needs.").

[269] Beyond the basic standard set by our rules, we agree with commenters that adopting *guidance* (rather than *requirements*) fosters the goal of ensuring that the customer has access to pertinent information about a breach while affording carriers flexibility to tailor the contents of a customer notification to the specific circumstances at hand. ACA Connects Comments at 15.

[270] We agree with some commenters that carriers may not know, with certainty, the precise date of a breach. *Id.* at 16; NTCA Comments at 8. For that reason, we have modified this requirement from our original proposal by suggesting the estimated date of the breach.

[271] Breaches which involve data such as a social security number, birth certificate, taxpayer identification number, bank account number, driver's license number, and other similar types of personally identifiable information unique to each person create the highest level of risk of identity theft. *See* Am. Bar Ass'n, *Identity Theft and Fraud: How to Evaluate and Manage Risks* (Mar. 2020), https://www.americanbar.org/news/abanews/publications/youraba/2020/youraba-march-2020/identity-theft-and-fraud. While breaches involving the types of data listed here should be considered to create a risk of identity theft for customers, this is not an exclusive list and should not be considered as such. There may be other types of data not listed here that, either alone or in conjunction with other data, may potentially create a risk of identity theft for customers.

breach.[272] We believe that adopting recommendations will further the goals of consistently and sufficiently notifying customers of data breaches while maintaining some flexibility for carriers to tailor each notification to the specific facts and details of the breach.[273]

64. *Method of Customer Breach Notification*. We decline to specify at this time the method of customer breach notification, and instead allow the carriers to assess for themselves how to best notify their customers of a data breach incident.[274] Generally, carriers have pre-established methods of communicating with their customers about other important matters related to their service, such as outages and scheduled repairs.[275] These methods may differ among carriers based on their size, their unique relationship with their customers, the types of customers impacted, and other factors.[276] Therefore, we find that maintaining flexibility in the method of customer breach notification both reduces the burden on the carriers and prevents customer confusion that could arise if carriers were required to provide disclosures in a way that differed from how customers were used to receiving important information from their carriers.[277]

D. TRS Breach Reporting

65. In 2013, the Commission adopted privacy rules applicable to telecommunications relay services (TRS) providers, to protect the CPNI of TRS users.[278] In doing so, the Commission found that "for TRS to be functionally equivalent to voice telephone services, consumers with disabilities who use TRS are entitled to have the same assurances of privacy as do consumers without disabilities for voice telephone services."[279] The privacy rules for TRS include a breach notification rule that is equivalent to section 64.2011 in terms of the substantive protection afforded to TRS users.[280]

66. To maintain functional equivalency, we amend section 64.5111 so that it continues to provide equivalent privacy protection for TRS users in line with our amendments to section 64.2011. Thus, in this Order we apply our breach notification and reporting obligations for TRS providers to

---

[272] *Data Breach Notice* at 20, para. 40.

[273] While some commenters such as EPIC suggest that the Commission should adopt minimum content requirements, we believe that adopting recommendations furthers the same objective of "inform[ing] the consumer of the risks they face but also equip[ping] the consumer with options for immediate steps to reduce the downstream harms that may result" while also maintaining the flexibility that commenters overwhelmingly noted was important for effectively and quickly notifying customers. EPIC Comments at 8; *see also* JFL Reply at 6-7; WISPA Comments at 10.

[274] *Data Breach Notice* at 20, para. 41.

[275] Blooston Rural Carriers Comments at 6.

[276] CCA Comments at 8 (noting that a carrier may communicate differently, for example, with residential customers versus business customers); CTIA Reply at 24.

[277] USTelecom Comments at 2.

[278] *2013 VRS Reform Order*, 28 FCC Rcd at 8680-87, paras. 155-72; 47 CFR §§ 64.5101-64.5111. The adopted rules apply to all forms of TRS and point-to-point service over the facilities of a video relay service (VRS) provider using VRS access technology. Point-to-Point service is not compensated on a per-minute basis, because such calls are not relayed with the assistance of a communications assistant or technological equivalent, but are an essential aspect of ensuring individuals who are deaf, hard of hearing, deafblind, or who have a speech disability engage in communication in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services. *See* 47 U.S.C. § 225(a)(3).

[279] *2013 VRS Reform Order*, 28 FCC Rcd at 8683, para. 164.

[280] The texts of the two provisions are virtually identical, except for the substitution of the term "TRS provider" for "telecommunications carrier" in section 64.5111. *Compare* 47 CFR § 64.2011 *with id.* § 64.5111. The only substantive difference is that under the TRS rule, after a TRS provider notifies law enforcement of a breach, it "shall file a copy of the notification with the Disability Rights Office of the Consumer and Governmental Affairs Bureau at the same time as when the TRS provider notifies the customers." *Id.* § 64.5111(a).

covered data, including PII and CPNI. We also expand the definition of "breach" in section 64.5111 to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a TRS provider, and such information is not used improperly or further disclosed. We also require TRS providers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable, and in no event later than seven business days, after reasonable determination of a breach, except in cases where a breach affects fewer than 500 individuals, and a provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach.[281] Any breach affecting fewer than 500 individuals where there is no reasonable likelihood of harm to customers must be reported simultaneously to the Commission, Secret Service, and FBI in a single, consolidated annual filing. We further revise our rules to require TRS providers to report breaches to the Commission, Secret Service, and FBI contemporaneously via the existing centralized portal that providers already use and with which they are familiar. In terms of the content of such notifications, we mandate that notifications to the Commission, Secret Service, and FBI must, at a minimum, include: TRS provider address and contact information; a description of the breach incident; a description of the customer information that was used, disclosed, or accessed; the method of compromise; the date range of the incident and approximate number of customers affected; an estimate of the financial loss to providers and customers, if any; and the types of data breached. More specifically, we clarify that, if any data, whether partial or complete, on the contents of conversations is compromised as part of a breach—such as call transcripts—the compromise must be disclosed as part of the notification to the Commission, Secret Service, and FBI.

67. Regarding breach notifications furnished to TRS users, we introduce a harm-based trigger and eliminate the requirement to notify TRS users of a breach in those instances where a TRS provider can reasonably determine that no harm to TRS users is reasonably likely to occur as a result of the breach. We further revise our rules to eliminate the mandatory seven business day waiting period to notify TRS users and instead require TRS providers to notify TRS users of breaches without unreasonable delay after notification to law enforcement, and in no case later than 30 days after reasonable determination of a breach, unless law enforcement requests a longer delay. We also recommend minimum categories of information for inclusion in TRS user notifications. Notifications shall be provided in formats that are accessible to individuals with disabilities.

68. As with our revisions to section 64.2011, we find that these changes will best protect and inform TRS users without resulting in overreporting or excessively burdening TRS providers or federal agencies. These changes to our rules will also allow the Commission and its law enforcement partners to receive the information they require in a timely manner so that they can mitigate the harm and fallout of breaches while also taking action to deter future breaches.

1. Defining "Breach"

69. In this section, we apply our breach notification and reporting obligations for TRS providers to covered data, including PII and CPNI. We also take the opportunity to emphasize that covered data under the TRS data breach notification rule includes call content given the unique concerns that arise with respect to call content in the TRS context. And, we expand the definition of "breach" in section 64.5111 to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a TRS provider, and such information is not used improperly or further disclosed.

70. *Covered Data*. Consistent with the provisions we adopt above for carriers, we apply our breach notification and reporting obligations for TRS providers to covered data, including PII and CPNI.[282] We do so for the reasons discussed above with respect to our breach notification and reporting

[281] As with our breach reporting rules for telecommunications carriers, where a TRS provider is unable to reasonably determine that no harm to consumers is reasonably likely to occur as a result of the breach, it must promptly notify the relevant federal agencies regardless of the size of the breach. *See supra* Section III.C.1.

[282] *See supra* Section III.A.1; *infra* Appx. A (47 CFR § 64.5111(e) (defining "breach" for TRS providers).

obligations for carriers.[283] In addition, as discussed below,[284] section 225 of the Act directs the Commission to ensure that TRS are available to enable communication in a manner that is functionally equivalent to voice telephone services.[285] The Commission has found that applying the privacy protections of the Commission's regulations to TRS users advances the functional equivalency of TRS.[286] In order to ensure the functional equivalency of TRS, and to ensure that TRS users enjoy the same protections as customers of telecommunications carriers and interconnected VoIP providers, we apply our TRS data breach obligations to the same scope of customer information, including both PII and CPNI. We also incorporate, by reference, the scope of covered PII adopted above, for the same reasons as discussed above.[287]

71. We disagree with Hamilton Relay that the "assurances of privacy" that TRS users can expect "are limited to CPNI and should not be extended to other elements of personal information, including sensitive personal information."[288] In the *Data Breach Notice*, the Commission recognized that providers possess proprietary information of customers other than CPNI, which customers have an interest in protecting from public exposure.[289] This interest is particularly acute in the case of TRS users. TRS providers have access to the contents of customers' conversations, and, as AARO notes, any potential disclosure of TRS conversation content is a "grave privacy concern."[290] While section 225 and our TRS rules generally prohibit TRS providers from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call, that prohibition is not sufficient to protect TRS users from risks that may arise from data breaches.[291] For instance, if a breach were to expose transcripts of TRS calls that were in progress at the time of the breach, the breaching party could obtain conversation contents between a TRS user and medical professionals, romantic partners, family members, friends, or professional colleagues, and as such may include sensitive details, such as a user's medical history, disability status, financial situation, political views, relationship status and dynamics, and religious beliefs.[292] The disclosure of such information could lead to serious consequences, including embarrassment, ostracization from family and friends, and extortion by the breaching party or others who have gained access to the information.[293]

72. Indeed, information about call content is not commonly available to traditional voice service providers, and thus traditional voice service customers do not face the same privacy risks in this regard as TRS users. As a result, it is particularly important in the TRS context that we emphasize the need for breach notifications with respect to call content.[294] Consistent with the congressional directive

[283] *See supra* Section III.A.1.

[284] *See infra* Section III.E.4.

[285] 47 U.S.C. § 225(a)(3), (b)(1).

[286] *2013 VRS Reform Order*, 28 FCC Rcd at 8685-86, para. 170.

[287] *See supra* Section III.A.1.

[288] Hamilton Relay Comments at 9.

[289] *Data Breach Notice* at 12, para. 22.

[290] AARO Comments at 2.

[291] 47 U.S.C. § 225(d)(1)(F); 47 CFR § 64.604(a)(2)(i). Section 64.604(a)(2)(i) of our rules generally includes an exception where "authorized by section 705 of the Communications Act, 47 U.S.C. 605," and "a limited exception for STS CAs," who "may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user." 47 CFR § 64.604(a)(2)(i).

[292] AARO Comments at 2-3.

[293] *Id.* at 3.

[294] CPNI, PII, and the contents of calls are non-exclusive, and potentially overlapping, categories of information. *See supra* para. 17 (noting, for example, that CPNI is a subset of PII).

that the Commission's TRS rules guard against the disclosure of call content,[295] and to promote functional equivalence between TRS and traditional voice communications services,[296] we therefore make explicit in the text of section 64.5111 of our rules that a breach involving call content implicates those notification requirements.

73. Just as with telecommunications carriers, we believe that the unauthorized exposure of sensitive personal information that the provider has received from the customer or about the customer in connection with the customer relationship (e.g., initiation, provision, or maintenance, of service) is reasonably likely to pose risk of customer harm. Accordingly, any unauthorized disclosure of such information warrants notification to the customer, the Commission, and other law enforcement.[297] Consumers expect that they will be notified of substantial breaches that endanger their privacy, and businesses that handle sensitive personal information should expect to be obligated to report such breaches.[298]

74. We further disagree with Hamilton Relay's assertion that our privacy authority does not extend to other elements of personal information beyond CPNI, or that doing so would be inconsistent with the plain language of the Act or result in duplicative or inconsistent requirements between Commission rules and state laws.[299] We do so for the reasons discussed above,[300] and because of the principle of functional equivalency. By ensuring that the same data breach notification requirements we apply to traditional telecommunications carriers also apply to TRS providers, we advance the interest of ensuring that consumers can have the same expectations regarding services that they view as similar. Thus, the approach we adopt today not only reflects the practical expectations of consumers but also honors the intention of Congress.[301]

75. EPIC concurs with this approach.[302] We note that covered data would include PII that a TRS provider collects to register a customer in the TRS User Registration Database in order to provide services.[303] In November 2021 and March 2022 orders revoking the operating authority of certain telecommunications carriers, the Commission further stated that all communications service providers have "a statutory responsibility to ensure the protection of customer information, including PII and

[295] 47 U.S.C. § 225(d)(1)(F).

[296] *Id.* § 225(a)(3); *see also id.* § 225(d)(1)(A) (directing the Commission to "establish functional requirements, guidelines, and operations procedures for telecommunications relay services").

[297] *See supra* Section III.A.1.

[298] *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278 et al., Declaratory Ruling and Order, 30 FCC Rcd 7961, 8025, para. 132 (2015) (Calls reporting data breaches or conveying remediation information following a breach are "intended to address exigent circumstances in which a quick, timely communication with a consumer could prevent considerable consumer harms from occurring or, in the case of the remediation calls, could help quickly mitigate the extent of harm that will occur."); *TerraCom NAL*, 29 FCC Rcd at 13340-41, para. 43 ("We expect carriers to act in an abundance of caution . . . in their practices with respect to notifying consumers of security breaches.").

[299] Hamilton Relay Comments at 9.

[300] *See supra* Section III.A.1.

[301] For example, as discussed in more detail below, Congress ratified the Commission's 2007 decision to extend section 222-based privacy protections for telecommunications service customers to the customers of interconnected VoIP providers. *See infra* Section III.E.3. And ensuring equivalent protections for TRS subscribers advances Congress' directive to endeavor to ensure functionally equivalent service. *See infra* Section III.E.4.

[302] EPIC et al. Reply Comments at 5-11, 17.

[303] EPIC Comments at 7.

CPNI."[304]

76. Because TRS providers have access to proprietary information of customers other than CPNI, and customers have an interest in protecting that information from public exposure, we find that TRS providers should be obligated to comply with our breach notification rule whenever customers' personally identifiable information is the subject of a breach, whether or not the information is CPNI.

77. *Inadvertent Access, Use, or Disclosure*. We expand the definition of "breach" in section 64.5111 to include inadvertent access, use, or disclosure of covered data, except in those cases where such information is acquired in good faith by an employee or agent of a TRS provider, and such information is not used improperly or further disclosed.[305] Section 64.5111(e) of our rules currently defines a breach more narrowly as occurring "when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI."[306] As noted above, this construction was adopted in response to the practice of pretexting.[307] As discussed above, in the years since, numerous data breaches have shown that the inadvertent exposure—as much as intentional exposure—of customer information can and does result in the loss and misuse of sensitive information by scammers, phishers, and other bad actors, and can thus trigger a need to inform the affected consumers so that they can take appropriate action to protect themselves and their sensitive information.[308] Whether a breach was intentional may not be readily apparent, and continuing to require disclosure of only intentional breaches could thus lead to underreporting. It is moreover critical that the Commission and law enforcement be made aware of any unintentional access, use, or disclosure of covered data so that we can investigate and advise TRS providers on how best to avoid future breaches and so that we are prepared and ready to investigate if and when any of the affected information is accessed by malicious actors.[309] Requiring notification for accidental breaches will encourage TRS providers to adopt stronger data security practices and will help the Commission and law enforcement to better identify and address systemic network vulnerabilities, consistent with our analysis above.[310]

78. The record in this proceeding confirms the need for the Commission to expand the definition of "breach" in section 64.5111 to include inadvertent disclosures.[311] As AARO note in their comments, the Commission must keep pace with evolving threats to consumer privacy, and "adopt measures that can effectively counter increasingly complex and evolving breaches."[312] AARO further agrees with our assessment that an intentionality requirement would lead to legal ambiguity and underreporting.[313] According to AARO and EPIC, the industry will "continue to witness breaches unless companies that operate in this area" are required or incentivized to "make proper investments in their 'staff and procedures to safeguard the consumer data with which they have been entrusted.'"[314] We agree

---

[304] *Pacific Networks Corp. and Comnet (USA) LLC*, Order on Revocation and Termination, FCC 22-22, 37 FCC Rcd 4220, 2022 WL 905270, at *37, para. 82 (Mar. 23, 2022); *China Telecom (Americas) Corporation*, Order on Revocation and Termination, FCC 21-114, 36 FCC Rcd 15966, 16013-14, para. 72 (2021), *aff'd*, *China Telecom (Americas) Corporation v. FCC*, 57 F.4th 256 (D.C. Cir. 2022).

[305] *Data Breach Notice* at 21, para. 42.

[306] 47 CFR § 64.5111(e).

[307] *2007 CPNI Order*, 22 FCC Rcd at 6928, paras. 1-2 & n.1.

[308] *See supra* note 68.

[309] *Data Breach Notice* at 8, para. 12; *2007 CPNI Order*, 22 FCC Rcd at 6944, para. 27.

[310] *See supra* Section III.A.

[311] Accessibility Advocacy and Research Organizations Reply at 6 (AARO Reply).

[312] *Id.*

[313] *Id.*

[314] *Id.* at 7 (quoting EPIC Comments at 3); *see also* EPIC et al. Reply at 16.

with these commenters that expanding the definition of "breach" in section 64.5111 to include inadvertent access, use, or disclosure of covered data will help provide this incentive.[315]

79. *Good-Faith Exception*. While we expand the definition of "breach" in section 64.5111 to include inadvertent access, use, or disclosure of covered data, consistent with our approach to the carrier data breach rule, we carve out an exception for a good-faith acquisition of covered data by an employee or agent of a TRS provider where such information is not used improperly or further disclosed. No commenters opposed this amendment to our rules for TRS providers.[316] With only a handful of exceptions, the vast majority of state statutes include a similar provision excluding from the definition of "breach" a good-faith acquisition of covered data by an employee or agent of a company where such information is not improperly used or disclosed further,[317] and we see no reason not to include such an exception in the TRS rule. Our good-faith exception will help reduce overreporting and, by extension, will avoid worrying consumers unnecessarily.

2. Notifying the Commission and Other Federal Law Enforcement of Data Breaches

80. In this section, we require TRS providers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable, and in no event later than seven business days, after reasonable determination of a breach, except in those instances where a breach implicates fewer than 500 individuals and a TRS provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. Where a breach affects fewer than 500 individuals and the TRS provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach, we require that providers report such breaches annually to the Commission, Secret Service, and FBI in a single, consolidated annual filing. We also require TRS providers to report breaches to the Commission, Secret Service, and FBI contemporaneously via the existing centralized portal maintained by the Secret Service, and implement mandatory minimum content requirements for notifications filed with the Commission and law enforcement.

81. *Notification to the Commission and Law Enforcement*. We require TRS providers to notify the Commission, in addition to the Secret Service, and the FBI, of breaches through the central reporting facility. The Commission will maintain a link to the reporting facility at http://www.fcc.gov/eb/cpni or a successor URL designated by the Bureau. This requirement is consistent

[315] The only two commenters who opposed expanding the Commission's definition of "breach" in section 64.5111 to include inadvertent disclosures of customer information were Hamilton Relay and Sorenson, and both modified their opposition to state that they only opposed such an expansion *unless* accompanied by the introduction of a harm-based trigger for data breach notification. *See* Hamilton Relay Comments at 5; Sorenson Comments at 2. As we adopt a harm-based trigger for data breach notifications to consumers below, *see infra* Section III.D.3, there is no need to address these two comments further.

[316] We rejected more general criticisms of such a rule above. *See supra* Section III.A.3.

[317] *See, e.g.*, Ala. Code § 8-38-2(1); Alaska Stat. § 45.48.050; Ariz. Rev. Stat. § 18-551(1)(b); Ark. Code § 4-110-103(1)(B); Cal. Civ. Code § 1798.82(g); Colo. Rev. Stat. § 6-1-716(1)(h); Del. Code tit. 6 § 12B-101(1)(a); D.C. Code § 28-3851(1); Fla. Stat. § 501.171(1)(a); Ga. Code § 10-1-911(1); 9 GCA § 48.20(a); Haw. Rev. Stat. § 487N-1; Idaho Stat. § 28-51-104(2); 815 ILCS § 530/5; Ind. Code § 4-1-11-2(b)(1); Iowa Code § 715C.1(1); Kan. Stat. § 50-7a01(h); KRS § 365.732(1)(a); La. Rev. Stat. § 51.3073(2); Me. Rev. Stat. tit. 10 § 1347(1); Md. Code Com. Law § 14-3504(a)(2); Mass. Gen. Laws § 93H-1(a); Mich. Comp. Laws § 445.63(b); Minn. Stat. § 325E.61 Subd. 1(d); Mo. Rev. Stat. § 407.1500(1)(1); Mont. Code § 30-14-1704(4)(a); Neb. Rev. Stat. § 87-802(1); Nev. Rev. Stat. § 603A.020; N.H. Rev. Stat. § 359-C:19(V); N.J. Stat. § 56:8-161; N.M. Stat. § 57-12C-2(D); N.Y. Gen. Bus. Law § 899-aa(1)(c); N.C. Gen. Stat § 75-61(14); N.D. Cent. Code § 51-30-01(1); Ohio Rev. Code § 1349.19(A)(1)(b)(i); Ohio Rev. Code § 1354.01(C)(1); Okla. Stat. § 74-3113.1(D)(1); Okla. Stat. § 24-162(1); Oregon Rev. Stat. § 646A.602(1); 73 Pa. Stat. § 2302; R.I. Gen. Laws § 11-49.3-3(a)(1); S.C. Code § 39-1-90(D)(1); S.D. Cod. Laws § 20-40-19(1); Tenn. Code § 47-18-2107(a)(1)(B); Tex. Bus. & Com. Code § 521.053(a); Utah Code § 13-44-102(1)(b); 9 V.S.A. § 2430(13)(B); Va. Code § 18.2-186.6(A); V.I. Code tit. 14, § 2209(d); Wash. Rev. Code § 19.255.005(1); W.V. Code § 46A-2A-101(1); Wis. Stat. § 134.98(2)(cm)(2); Wyo. Stat. § 40-12-501(a)(i).

with other federal sector-specific laws, including HIPAA and the Health Breach Notification Rule, which require prompt notification to the Department of Health and Human Services (HHS) and the Federal Trade Commission (FTC), respectively.[318]

82. As the Commission found when it adopted the current data breach rules, notifying law enforcement of breaches is consistent with the goal of protecting customers' personal data because it enables such agencies to investigate the breach, "which could result in legal action against the perpetrators," thus ensuring that they do not continue to breach sensitive customer information.[319] The Commission also anticipated that law enforcement investigations into how breaches occurred would enable law enforcement to advise providers and the Commission to take steps to anticipate and prevent future breaches of a similar nature.[320] While this reasoning remains sound, in the years since our rules were adopted it has become apparent that large-scale security breaches need not be purposeful in order to be harmful. As we discuss above,[321] breaches that occur as a result of lax or inadequate data security practices and employee training can be just as devastating as those perpetrated by malicious actors.[322] Notification to the Commission of breaches, including inadvertent breaches, will provide Commission staff with critical information regarding data security vulnerabilities, and will help to shed light on TRS providers' ongoing compliance with our data breach rules.

83. The record in this proceeding supports requiring TRS providers to notify the Commission, the Secret Service, and the FBI of breaches. EPIC agrees that a breach impacting TRS users requires notification to the Commission in addition to the impacted user(s),[323] and no commenter opposed amending our rules to require notification to the Commission concurrently with the Secret Service and FBI in the specific context of TRS.[324]

84. *Reporting Threshold*. We require providers to inform federal agencies, via the central reporting facility, of all breaches, regardless of the number of customers affected or whether there is a reasonable risk of harm to customers. For breaches that affect 500 or more customers, or for which a TRS provider cannot determine how many customers are affected, we require providers to file individual, per-breach notifications as soon as practicable, but no later than seven business days after reasonable determination of a breach.[325] As we describe below, these notifications must include detailed information regarding the nature of the breach and its impact on affected customers.[326] This same type of notification, and the seven business day timeframe for submission, will also be required in instances where the TRS provider has conclusively determined that a breach affects fewer than 500 customers unless the provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach.

85. For breaches in which a TRS provider can reasonably determine that a breach affecting fewer than 500 customers is not reasonably likely to harm those customers, we require the provider to file an annual summary of such breaches with the Commission, Secret Service, and FBI via the central reporting facility, instead of a notification. TRS providers must submit, via the existing central reporting facility and no later than February 1, a consolidated summary of breaches that occurred over the course of

---

[318] 45 CFR § 164.408 ("A covered entity shall, following the discovery of a breach . . . notify the Secretary); 16 CFR § 318.3(a)(2).

[319] *2007 CPNI Order*, 22 FCC Rcd at 6943, para. 27.

[320] *Id.*

[321] *See supra* Section III.A.

[322] *Data Breach Notice* at 13, para. 24.

[323] EPIC et al. Reply at 16.

[324] We rejected more general criticisms of such a rule above. *See supra* Section III.B.1.

[325] *See infra* para. 88.

[326] *See infra* paras. 91-92.

the previous calendar year which affected fewer than 500 customers, and where the provider could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach.[327] In circumstances where a TRS provider initially determines that contemporaneous breach notification to federal agencies is not required under these provisions, but later discovers information that would require such notice, we clarify that a TRS provider must report the breach to federal agencies as soon as practicable, but no later than seven business days after their discovery of this new information.[328] We delegate authority to the Bureau to coordinate with the Secret Service regarding any modification to the portal that may be necessary to permit the filing of this annual summary. We also delegate authority to the Bureau, working in conjunction with the Public Safety and Homeland Security Bureau and the Disability Rights Office, and based on the record of this proceeding—or any additional notice and comment that might be warranted—to determine the content and format requirements of this filing and direct the Bureau to release a public notice announcing these requirements.[329] The first annual report will be due the first February 1 after the Office of Management and Budget (OMB) approves the annual reporting requirement under the Paperwork Reduction Act. The first report should cover all breaches between the effective date of the annual reporting requirement and the remainder of the calendar year.[330]

86. As we determined above,[331] this reporting threshold will enable the Commission to receive more granular information regarding larger breaches to aid its investigations while also being able to study trends in breach activity through reporting of smaller breaches in annual submissions. Such a reporting threshold is also consistent with many state statutes that require notice of breaches to state law enforcement authorities.[332] Moreover, given our expansion of the definition of "breach" in today's Order to include inadvertent exposure of CPNI and other types of data, allowing TRS providers to file information regarding certain smaller breaches in a summary format on an annual basis will tailor administrative burdens on TRS providers to reflect those scenarios where reporting is most critical.[333] At the same time, requiring TRS providers to report breaches that fall below the threshold in a single, consolidated annual filing will continue to enable the Commission and our federal law enforcement

[327] To ensure that TRS providers may be held accountable regarding their determinations of a breach's likelihood of harm and number of affected customers, we require providers to keep records of the bases of those determinations for two years. *See infra*, Appx. A. We also note that TRS providers may voluntarily file notification of such a breach in addition to, but not in place of, this annual summary filing.

[328] *See supra* Section III.B.2.

[329] As above with respect to carriers, we instruct the Bureau to minimize the burdens on TRS providers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. At a minimum, the Bureau should develop requirements that are less burdensome than what is required for individual breach submissions to the reporting facility, and consider streamlined ways for filers to report this summary information. *See supra* Section III.B.3.

[330] *See* CTIA Dec. 6, 2023 *Ex Parte* at 16-17 (asking that the Commission explicitly state the due date of the first annual report and that such report shall cover "events that occur on or after the effective date of the new rules").

[331] *See supra* Section III.B.3.

[332] *See, e.g.*, Cal. Civ. Code § 1798.82(f) (requiring entities to report data breaches affecting 500 residents or more to the state Attorney General); Colo. Rev. Stat. § 6-1-716 (requiring entities to report data breaches affecting 500 residents or more to the state Attorney General); Del. Code tit. 6, § 12B-102(d); Fla. Stat. § 501.171(3)(a); R.I. Gen. Laws § 11-49.3-4(a)(2) (requiring entities to report data breaches affecting 500 residents or more to the state Attorney General and major credit reporting agencies); *see also* 45 CFR § 164.408 (requiring notification to the Secretary of Health and Human Services for breaches of unsecured protected health information involving 500 or more individuals).

[333] *See supra* Section III.B.2.

partners to investigate, remediate, and deter smaller breaches.[334] As above, in circumstances where a TRS provider initially determines that contemporaneous breach notification to federal agencies is not required under these provisions, but later discovers information that would require such notice, we clarify that the TRS provider must report the breach to federal agencies as soon as practicable, but no later than within seven business days of their discovery of this new information.[335]

87. We apply this threshold trigger only to notifications to federal agencies, and not to customer notifications. Breaches affecting even just a few customers can pose just as much risk to those customers as could breaches with wider impact. For this reason, as discussed above, we continue to require TRS providers to notify federal agencies within seven business days of breaches that implicate a reasonable risk of customer harm, regardless of the number of customers affected. Doing so will permit federal agencies to investigate smaller breaches where there is a risk of customer harm, and also allow law enforcement agencies to request customer notification delays where such notice would "impede or compromise an ongoing or potential criminal investigation or national security," as specified in our rules.[336]

88. *Timeframe*. We retain our existing rule and require TRS providers to notify the Commission of a reportable breach contemporaneously with the Secret Service and FBI, as soon as practicable, and in no event later than seven business days, after reasonable determination of a breach. While we proposed eliminating the seven business day deadline in the *Data Breach Notice*,[337] the record we received convinces us that we should instead retain the more definite timeframe. We agree with AARO that the earlier TRS users are notified of breaches, the more time they will have to take actions to reduce the extent of the potential damage, and that eliminating the seven business day deadline would potentially extend the period between a breach and notification far beyond the current deadline, thus "leaving consumers unable to remediate harms."[338] We find that retaining the seven business day deadline properly balances the need to afford TRS providers sufficient time to conduct remediation efforts prior to submitting notifications with the need to ensure that customers receive timely notifications regarding breaches affecting their data.[339] There is insufficient evidence that the current timeline is inadequate to accomplish the Commission's goals, and requiring breaches to be reported "as soon as practicable" without a definite timeframe could potentially be interpreted differently by different TRS providers or even by law enforcement and the Commission, thereby placing TRS providers at risk of inadvertently violating the Commission's rules should they construct "as soon as practicable" to mean something different than the Commission.[340]

89. We do not believe it is necessary to shorten the existing timeframe of seven business days. As Sorenson notes, businesses with any Internet presence "must routinely investigate large numbers of potential security events," and find that a shorter deadline would put tremendous pressure on providers to report all potential security incidents before having time to determine whether a breach is reasonably likely to have occurred.[341] Such a result would distract providers from investigating and

---

[334] *Data Breach Notice* at 15, para. 30. We note that no commenter addressed this potential amendment to our rule for TRS providers in response to the *Data Breach Notice*, and we address more general comments in this regard in Section III.B.2, above.

[335] *See supra* Section III.B.2.

[336] *See infra* Appx. A.

[337] *See Data Breach Notice* at 21, para. 42; *id.* at Appx. A.

[338] AARO Reply at 8-9.

[339] *See supra* Section III.B.3.

[340] *See supra* Section III.B.3.

[341] Sorenson Comments at 5.

correcting any incident that may have occurred.[342] As Sorenson notes, the current reporting timeline of seven business days allows providers a reasonable opportunity to investigate potential incidents and determine whether a breach is reasonably likely to have occurred.[343]

90. We disagree with Hamilton Relay that the rigid structure in our current rules is "out of step" with other data breach notification obligations and "does not provide TRS providers with sufficient flexibility to address the different circumstances that surround data breaches."[344] To begin, numerous states as well as HIPAA, the Health Breach Notification Rule, and CIRCIA impose a specific time limit on when breach notifications must be made to the state or relevant federal agency.[345] Furthermore, there is nothing in the record beyond Hamilton Relay's unsupported assertion to indicate that TRS providers find the current seven day business deadline to be unduly burdensome or inflexible. Indeed, Sorenson advocates in favor of retaining the current seven business day deadline.[346] Even if we were to assume the seven business day deadline to be a more burdensome or inflexible standard than a more open-ended standard, we still find that the countervailing interest in ensuring customers are notified quickly of breaches affecting them outweighs this hypothetical burden.[347] As above, we clarify that a reasonable determination that a breach has occurred does not mean reaching a conclusion regarding every fact surrounding a data security incident that may constitute a breach.[348] Rather, a TRS provider will be treated as having "reasonabl[y] determin[ed]" that a breach has occurred when the provider has information indicating that it is more likely than not that there was a breach.[349]

91. *Content of Notification*. As currently structured, the existing central reporting facility requires TRS providers to report: information relevant to a breach, including TRS provider address and contact information; a description of the breach incident; the method of compromise; the date range of the incident and approximate number of customers affected; an estimate of the financial loss to providers and customers, if any; and the types of data breached.[350] The record supports the imposition of minimum content requirements for breach notifications to the Commission, Secret Service, and FBI.[351]

92. While we find that these existing content requirements are largely sufficient, we agree

---

[342] *Id.*

[343] *Id.*

[344] Hamilton Relay Comments at 7-8.

[345] *See e.g.*, Ala. Code § 8-38-6; Ariz. Rev. Stat. Ann. § 18-552(B); Ark. Code § 4-110-105(b)(2); Colo. Rev. Stat. § 6-1-716(f)(I); Conn. Gen. Stat. § 36a-701b(b)(2)(A); Del. Code tit. 6, § 12B-102(d); Fla. Stat. § 501.171(3)(b); Iowa Code § 715C.2(8); Md. Code Ann., Com. Law § 14-3504(h); N.M. Stat. § 57-12C-10; Or. Rev. Stat. § 646A.604(10); 10 L.P.R.A. § 4052; Tex. Bus. & Com. Code § 521.053(i); 9 V.S.A. § 2435(b)(3)(B)(i); Wash. Rev. Code § 19.255.010(7); 45 CFR § 164.408(c); 16 CFR § 318.4(a); 2242(a)(1)(A). Iowa requires notification within 5 days, HIPAA immediately, and CIRCIA within 72 hours. *See* Iowa Code § 715C.2(8); 45 CFR § 164.408(c); 2242(a)(1)(A); *see also* EPIC Comments at 11 (noting that, "in several states, entities are required to report incidents to the attorney general within three days") (citing Nat'l Conf. of State Legislatures, *Security Breach Notification Laws* (Jan. 17, 2022), https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx).

[346] Sorenson Comments at 5.

[347] *See supra* Section III.B.3.

[348] *See supra* Section III.B.3.

[349] *See supra* Section III.B.3.

[350] *Data Breach Notice* at 13-14, para. 27.

[351] *See* AARO Comments at 6; EPIC Comments at 10-11; AARO Reply at 1-3. Of the commenters who addressed this issue, only Hamilton Relay opposes minimum content requirements for TRS providers, and as their comments pertain specifically to the content of breach notifications to *customers*, we address them below. *See infra* Section III.D.3.

with AARO that the nature of TRS and the sensitive information involved warrants more granular clarification regarding the required disclosures as part of notifications in that context.[352] As AARO notes, TRS users face privacy risks that voice telephone service users do not face because TRS providers and their commercial partners collect particularly sensitive data about TRS users that could be accessed in a data breach.[353] In particular, TRS providers and their partners have direct access to call audio, transcripts, and other data on the contents of TRS users' conversations.[354] Given this, we find that providers must include a description of the customer information that was used, disclosed, or accessed as part of their notification, including whether data on the contents of conversations, such as call transcripts, are compromised as part of a breach.[355] We note that the actual call audio or transcripts themselves *should not* be disclosed as part of the notification, as doing so would be a violation of the Commission's rules.[356] Because of the unique nature of TRS technology, which often result in the creation of transcripts or similar artifacts, we find that clarifying these additional details of the disclosures will better protect consumers and better enable the Commission and our federal law enforcement partners to investigate, remediate, and deter breaches.

93. *Method of Notification*. Under our current rules, TRS providers are required to notify the Secret Service and FBI "through a central reporting facility" to which the Commission maintains a link on its website.[357] We retain this requirement and revise it slightly to clarify that notifications filed through the existing central reporting facility will be transmitted to and accessible by the Disability Rights Office (DRO) of the Commission's Consumer and Governmental Affairs Bureau (CGB), in addition to the Secret Service and FBI. We delegate authority to the Bureau, working in conjunction with CGB, to ensure that the central reporting facility sufficiently relays notifications to DRO. We find that retaining the existing central reporting facility, rather than creating and operating a new centralized reporting facility as contemplated in the *Data Breach Notice*,[358] will be the simplest and most efficient approach, and will not result in the unnecessary expenditure of resources needed to build and operate a new electronic reporting facility when one already exists. It will also reduce potential provider confusion and simplify regulatory compliance by allowing providers to continue filing notifications through the existing reporting facility.[359]

3. Customer Notification

94. In this section, we introduce a harm-based trigger and eliminate the requirement to notify customers of a breach in any instance where a TRS provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. We also eliminate the mandatory seven business day waiting period to notify customers and instead require TRS providers to notify customers of breaches without unreasonable delay after notification to the Commission and law enforcement, and in no case later than 30 days after reasonable determination of the breach, unless law enforcement requests a longer delay. We recommend minimum categories for information inclusion in customer notifications. We decline to specify the method that notifications to customers must take, instead leaving such a determination to the discretion of TRS providers, except that such notifications must be accessible to TRS

[352] AARO Comments at 5-6.

[353] *Id.* at 1.

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

[355] *Id.* at 6.

[356] 47 CFR § 64.604(a)(2)(i).

[357] *Id.* § 64.5111(b).

[358] *Data Breach Notice* at 13, para. 25.

[359] We note that no commenter addressed this potential amendment to our rule governing TRS providers in response to the *Data Breach Notice*, and we discuss more general comments regarding the method of disclosure to the Commission in Section III.B.5, above.

users.

95. *Harm-Based Notification Trigger*. Our current TRS data breach rule requires notification to customers in every instance where a breach of their information has occurred, regardless of the risk of harm.[360] We modify that standard and forego the requirement to notify customers of a breach in those instances where a TRS provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. In order to ensure the functional equivalency of TRS, and to ensure that TRS users enjoy the same protections as customers of telecommunications carriers and interconnected VoIP providers, we adopt here the same definition of "harm" as that adopted above in the context of telecommunications carriers, for the reasons stated above.[361]

96. In determining whether "harm" is likely to occur, providers should consider all the factors enumerated in our discussion above.[362] In situations where call content—including call audio, transcripts, or other data on the contents of TRS users' conversations—has been or has the potential to be disclosed as a result of a breach, a TRS provider must assume that harm has or is reasonably likely to occur, and the obligation to notify customers of a breach would remain. As with the rules we adopt for telecommunications services above, where a TRS provider is unable to make a determination regarding harm, the obligation to notify customers of a breach would remain.[363] For the reasons discussed above, and in order to ensure functional equivalency for TRS users, we also adopt a safe harbor under which customer notification is not required where a breach solely involves encrypted data and the TRS provider has definitive evidence that the encryption key was not also accessed, used, or disclosed.[364] To the extent that a threat actor appears to have circumvented encryption, however, the TRS provider should conduct a harm-based analysis as if the data was never encrypted.

97. We find that introducing a harm-based trigger for notifications to customers of TRS data breaches will benefit customers by avoiding confusion and "notice fatigue" with respect to breaches that are unlikely to cause harm. Given that it is not only emotionally distressing, but also time consuming and expensive to deal with the fallout of a data breach, we believe that introducing a harm-based trigger will spare customers the time, effort, and financial strain of changing their passwords, purchasing fraud alerts or credit monitoring, and freezing their credit in the wake of any breach that is not reasonably likely to result in harm. A harm-based notification trigger also has a basis in the data breach notification frameworks employed by states, many of which do not require covered entities to notify customers of breaches when a determination has been made that the breach is unlikely to cause harm.[365]

---

[360] 47 CFR § 64.5111(c), (e).

[361] *See supra* para. 55.

[362] *See supra* Section III.C.1 (enumerating the factors providers should consider when assessing the likelihood of harm to customers, including the sensitivity of the information (including in totality) which was breached, the nature and duration of the breach, mitigations, and intentionality).

[363] *See supra* Section III.C.1.

[364] *See supra* para. 58; *see infra* Appx. A.

[365] *See, e.g.*, Alaska Stat. § 45.48.010(c); Ariz. Rev. Stat. § 18-552(J); Conn. Gen. Stat. § 36a-701b(b)(1) (exempting entities from disclosing breaches when an investigation determines that no harm is likely); Ark. Code § 4-110-105(d) (stating that notice is not required if there is no reasonable likelihood of harm); Fla. Stat. § 501.171(4)(c) (stating that no notice is required if it is reasonably determined that breach has not and will not likely result in identity theft or any other financial harm); Iowa Code § 715C.2(6) (stating that no notice is required if no reasonable likelihood of financial harm has resulted or will result from the breach); Or. Rev. Stat. § 646A.604(8) (stating that no notice is required if no reasonable likelihood of harm has resulted or will result from the breach); N.J. Stat. Ann. § 56:8-163(a) (stating that notice is not required if it is determined that misuse of the information is not reasonably possible); 9 V.S.A. § 2435(d)(1); Md. Com. Law Code Ann. § 14-3504(b); *see also* OMB M-17-12, at 29 (granting federal agencies discretion on whether to notify individuals potentially affected by a breach when the assessed risk of harm is low, and advising agencies to "balance the need for transparency with concerns about over-notifying individuals").

98. We find further that employing a harm-based notification trigger will not only benefit customers, but also assist TRS providers by allowing them to better focus their resources on improving data security and ameliorating the harms caused by data breaches rather than providing notifications to customers in instances where harm is unlikely to occur. Nor will the introduction of a harm-based trigger overburden providers by saddling them with the task of determining whether particular breaches are reasonably likely to cause harm. By making the standard for notification a rebuttable presumption of harm, providers must assume that harm is reasonably likely to occur as a result of a breach except where they can reasonably determine otherwise.

99. When determining whether a breach is reasonably likely to result in harm, TRS providers should consider the same factors laid out in our discussion above.[366] In addition, in situations where call content—including call audio, transcripts, or other data on the contents of TRS users' conversations—has been or has the potential to be disclosed as a result of a breach, a TRS provider must assume that harm has or is reasonably likely to occur, and the obligation to notify customers of a breach would remain. TRS providers must construe "harm" in this context broadly.[367] Even in those instances where no harm to customers is reasonably likely to occur, and thus the requirement to notify customers of a data breach is not triggered, TRS providers must still notify the Commission, Secret Service, and FBI of any such breach affecting 500 or more customers as soon as practicable and in any event no later than seven business days after reasonable determination of the breach via the central reporting facility. In the case of such breaches affecting fewer than 500 customers, they must be reported annually in a single, consolidated filing to the Commission, Secret Service, and FBI. While a harm-based trigger will help reduce customer notice fatigue and spare customers the time, effort, and financial strain of dealing with the fallout of a breach that is not reasonably likely to result in harm, the Commission and our law enforcement partners can still garner critical information regarding data security vulnerabilities by analyzing larger breaches, even those that are not reasonably likely to result in harm to customers.

100. The record generally supports the adoption of a harm-based trigger for TRS consumer breach notifications.[368] AARO, however, argues that "harm-based triggers should not be used in the context of TRS breach reporting to customers . . . because of the inherent privacy risks faced by TRS users."[369] AARO goes on to argue that, because TRS involves the collection of data on the content of a user's conversation, the Commission should presume that any data breach of a TRS provider is harmful and require the disclosure of that breach to customers and law enforcement.[370] While we agree that the Commission and law enforcement should be apprised of all breaches, we disagree that customers must be made aware of breaches where no harm to customers is reasonably likely to result. While we agree that TRS users face heightened privacy risks because of the nature of the technology involved, such risk alone does not justify a requirement that customers receive notification of breaches in instances where a provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. TRS providers can and *must* take the heightened risks inherent to TRS users into account when determining whether harm is likely to result in the wake of a breach, and we reiterate that providers must assume, in every case, that harm is reasonably likely to occur as a result of a breach *except* where they can reasonably determine otherwise. Moreover, we reiterate that, in situations where call content—

[366] *See supra* Section III.C.1 (enumerating the factors providers should consider when assessing the likelihood of harm to customers, including the sensitivity of the information (including in totality) which was breached, the nature and duration of the breach, mitigations, and intentionality).

[367] *See* AARO Reply at 5 ("[B]ecause TRS involves such sensitive data, a breach that does not create financial or tangible harm may still cause dignitary harm to a TRS user. In that case, such a user has the right to notification. TRS users have no choice but to hand over extremely sensitive information to TRS providers. They should be empowered to know when that data is breached.").

[368] *See* Hamilton Relay Comments at 6-7; Sorenson Comments at 2-3; Convo Communications Reply at 8.

[369] AARO Comments at 5; *see also* AARO Reply at 3-4.

[370] AARO Comments at 5; *see also* EPIC et al. Reply at 16.

including call audio, transcripts, or other data on the contents of TRS users' conversations—has been or has the potential to be disclosed as a result of a breach, a TRS provider must assume that harm has or is reasonably likely to occur, and the obligation to notify customers of a breach would remain. We agree with AARO that, given the sensitive data at stake, "it is conceivable that a TRS user would want to be aware of a data breach, even if the harm of that breach is not fully determined, so that they can take remedial measures," which is why we impose a rebuttable presumption of harm that requires notification in cases where the harm of a breach cannot be fully determined, or where call content has been or has the potential to be disclosed.[371] We find that imposing a rebuttable presumption of harm, and requiring TRS providers to consider the heightened privacy risks experienced by TRS users when attempting to rebut this presumption, sufficiently addresses AARO's concerns without the need for mandatory consumer notifications that may result in notice fatigue and obligate consumers to expend time, effort, and resources dealing with the fallout of breaches that are not reasonably likely to result in harm.

101. We agree with Sorenson that, without a harm-based trigger, our rules could result in over-notification regarding non-critical security events without any corresponding benefit to consumers.[372] We also agree with Hamilton Relay that such over-notification could very well result in notice fatigue and consumer indifference,[373] which would perversely cause consumers to ignore or discount notifications, leading to failure to take action even in those instances where a breach is substantially likely to result in harm, and thus eliminating the main benefit of requiring consumer notifications. We therefore conclude that a harm-based trigger strikes the correct balance between keeping TRS users adequately informed, and reducing over-notification and notice fatigue while reducing the attendant burdens on TRS providers.

102. We disagree with EPIC that a harm-based trigger will lead to "legal ambiguity and underreporting," or that it will delay reporting "as it may take time to assess whether the minimum threshold for reportable harm has been met."[374] By adopting a rebuttable presumption of harm and requiring consumer notification except in those instances where a provider can reasonably determine that no harm to customers is reasonably likely to occur, we do not think that underreporting is a likely risk, as customers will still be made aware of breaches where protective action from the consumer is required. While we do not here include a specific definition of how or under what circumstances this presumption may be rebutted—finding that such an approach would be too prescriptive—we nevertheless provide guidance for evaluating customer harm, as outlined above.[375] And, as discussed below, we require notification to customers without unreasonable delay after notification to law enforcement, and in no case later than 30 days after reasonable determination of a breach unless law enforcement requests a longer delay.[376]

103. *Notifying Customers of Data Breaches Without Unreasonable Delay*. Our current TRS data breach rule prohibits TRS providers from notifying customers or disclosing a breach to the public until at least seven full business days after notification to the Secret Service and FBI.[377] We eliminate this mandatory waiting period and instead require TRS providers to notify customers of CPNI breaches without unreasonable delay after notification to law enforcement, and in no case later than 30 days after reasonable determination of a breach, unless law enforcement requests a longer delay.

---

[371] *See* AARO Reply at 5; *see also infra* Appx. A, § 64.5111(b).

[372] Sorenson Comments at 2-3; *see also* Convo Communications Reply at 8.

[373] Hamilton Relay Comments at 6-7.

[374] EPIC Comments at 8; *see also* AARO Reply at 4.

[375] *See supra* Section III.C (enumerating the factors providers should consider when assessing the likelihood of harm to customers, including the sensitivity of the information (including in totality) which was breached, the nature and duration of the breach, mitigations, and intentionality).

[376] *See infra* para. 103.

[377] 47 CFR § 64.5111(b)(1).

104. In adopting the current rule, the Commission concluded that once customers have been notified of a breach, it becomes public knowledge, "thereby impeding law enforcement's ability to investigate the breach, identify the perpetrators, and determine how the breach occurred."[378] The Commission found that "immediate customer notification may compromise all the benefits of requiring carriers to notify law enforcement of CPNI breaches," and that a short delay was thus warranted.[379]

105. As discussed above,[380] given the sheer volume of personal data at risk, and the proliferation of malicious schemes designed to exploit that data, we find that the need to notify victims of breaches as soon as possible has grown exponentially in the years since our rules were adopted. The rules we adopt in this Order will better serve the public interest by increasing the speed at which customers may receive the important information contained in a notification, except in those circumstances when law enforcement specifically requests otherwise.[381] We find that a requirement to notify customers of data breaches without unreasonable delay after discovery of a breach and notification to law enforcement appropriately balances legitimate law enforcement needs with customers' need to take swift action to protect their information in the wake of a breach.

106. Our revised rule is consistent with many existing data breach notification laws that require expedited notice but refrain from requiring a specific timeframe.[382] While requiring notification to customers without unreasonable delay will increase the speed at which customers receive important information related to a breach, we decline to adopt a specific timeframe, and find that such an approach would be overly prescriptive. Because each data breach is different, providers must be given sufficient latitude to address each breach separately, in the manner best befitting the nature of the breach. Even so, we find it appropriate to impose an outside limit on when customers must be notified of a breach. Requiring providers to notify customers no later than 30 days after reasonable determination of a breach, unless a longer delay is requested by law enforcement, will allow TRS providers sufficient flexibility to deal with each breach on an individual basis while simultaneously installing a backstop to ensure that customers are not made unaware of a breach indefinitely.

107. This approach is generally consistent with HIPAA, which requires notification to individuals "without unreasonable delay and in no case later than 60 calendar days after discovery of a breach,"[383] as well as the Health Breach Notification Rule, which requires notification to individuals

---

[378] *2007 CPNI Order*, 22 FCC Rcd at 6943-44, para. 28.

[379] *Id.* at 6944, para. 28.

[380] *See supra* Section III.C.2.

[381] *Cf., e.g.*, R.I. Gen. Laws § 11-49.3-4(a)(2), (b) (requiring notification to state Attorney General and major credit reporting agencies if more than 500 residents are affected by a breach, specifying that such notice should be made *without* delaying notice to affected residents, and permitting law enforcement to delay notification if necessary for investigation).

[382] *See, e.g.*, 12 CFR pt. 364, Appx. B, Supp. A § III(A)(1) (interpreting GLBA § 501(b)) (requiring customer notification "as soon as possible" after a determination that customer information has been misused or misuse is reasonably possible); Cal. Civ. Code § 1798.82(a) (requiring notification to "be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement"); Va. Code Ann. § 18.2-186.6(B) ("without unreasonable delay"); D.C. Code § 28-3852(a) ("in the most expedient time possible and without unreasonable delay"); Wyo. Stat. Ann. § 40-12-502(a) ("notice shall be made in the most expedient time possible and without unreasonable delay"); *see also* FTC Data Breach Guide at 6 (explaining that, "if you quickly notify people that their personal information has been compromised, they can take steps to reduce the chance that their information will be misused").

[383] 45 CFR § 164.404(b). For breaches involving more than 500 residents of a state or other jurisdiction, HIPAA also requires notification of "prominent media outlets serving the State or Jurisdiction" without unreasonable delay and no later than 60 calendar days after discovery of a breach. *Id.* § 164.406. For breaches involving 500 or more residents of a state or other jurisdictions, HIPAA also requires notification to the Secretary of Health and Human Services (HHS). *Id.* § 164.408.

"without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach of security."[384] Additionally, many states impose an outside limit on when customers must be notified of a breach following discovery of said breach.[385]

108. Consistent with our current rules implementing section 222, the rule we adopt today will allow law enforcement to direct a TRS provider to delay customer notification for an initial period of up to 30 days if such notification would interfere with a criminal investigation or national security.[386] We find that in those instances where a provider reasonably decides to consult with law enforcement, a short initial delay of no longer than 30 days pending such consultation is reasonable under the "without unreasonable delay" standard we adopt for customer notification. We note that HIPAA, the GLBA, and the Health Breach Notification Rule all allow for a delay of customer notification if law enforcement determines notification to customers would "impede a criminal investigation or cause damage to national security," but only if law enforcement officials request such a delay.[387] More specifically, both HIPAA and the Health Breach Notification Rule allow for notification delays of up to 30 days if orally requested by law enforcement.[388] Similarly, most, if not all, states permit delays in notifying affected customers for legitimate law enforcement reasons.[389] We find that the rule we adopt today strikes the appropriate balance between the needs of law enforcement to have sufficient time to investigate criminal activity and the needs of customers to be notified of data breaches without unreasonable delay.

109. The record supports reconfiguring our rules in this manner. As Hamilton Relay notes, TRS providers require flexibility when addressing data breaches,[390] and a standard requiring providers to notify customers of a breach as soon as practicable will allow TRS providers sufficient time to determine the nature of the incident, "including what consumer data may be implicated, if any.[391] And we agree with Sorenson that imposing a rigid timeline on providers without offering sufficient time to investigate runs the risk of placing "tremendous pressure on providers to report all potential security incidents before having time to determine whether a breach is reasonably likely to have occurred," and that such a result would not only overload the Commission but "also distract providers from investigating and correcting

---

[384] 16 CFR § 318.4(a).

[385] *See, e.g.*, Ala. Code § 8-38-5(b); Ariz. Rev. Stat. Ann. § 18-552(B); Colo. Rev. Stat. § 6-1-716; Del. Code Ann. Tit. 6, § 12B-102(c); Fla. Stat. § 501.171(4)(a); Md. Code Ann. § 14-3504(b)(3); N.M. Stat. Ann. § 57-12C-6(A); Ohio Rev. Code Ann. § 1349.19(B)(2); Or. Rev. Stat. § 646A.604(3)(a); R.I. Gen. Laws § 11-49.3-4(a)(2); S.D. Codified Laws § 22-40-20; Tenn. Code § 47-18-2107(b); Vt. Stat. Ann. Tit. 9, § 2435(b)(1); Wash. Rev. Code § 19.255.010(8).

[386] 47 CFR § 64.5111(b)(3).

[387] *See* 16 CFR § 318.4(c); 12 CFR part 364, Appx. B, Supp. A; 45 CFR § 164.412.

[388] 45 CFR § 164.412; 16 CFR § 318.4(c); *see also* 12 CFR part 364, Appx. B, Supp. A § III(A)(1) (allowing that "customer notice may be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the institution with a written request for a delay").

[389] *See, e.g.*, Alaska Stat. Ann. § 45.48.020 ("An information collector may delay disclosing the breach . . . if an appropriate law enforcement agency determines that disclosing the breach will interfere with a criminal investigation."); Ariz. Rev. Stat. Ann. § 18-552(D) ("The notifications required by subsection B of this section may be delayed if a law enforcement agency advises the person that the notifications will impede a criminal investigation."); Cal. Civ. Code § 1798.82(c) ("The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation."); Conn. Gen. Stat. Ann. § 36a-701b(d) ("Any notification required by this section shall be delayed for a reasonable period of time if a law enforcement agency determines that the notification will impede a criminal investigation and such law enforcement agency has made a request that the notification be delayed.").

[390] Hamilton Relay Comments at 7.

[391] *Id.* at 8-9; *see also* Convo Communications Reply at 8-9.

any incident that may have occurred."[392] We find that retaining our seven business day deadline for federal-agency notifications will allow TRS providers a reasonable opportunity to investigate potential incidents, determine whether a breach is reasonably likely to have occurred, and report it to the Commission and our law enforcement partners, if necessary,[393] while the elimination of the mandatory seven business day waiting period and imposition of a 30-day backstop will ensure that customers receive notification of any such breach in a timely fashion.

110. We disagree with AARO that the timeframe revisions we make will result in unwarranted delays of notifications to customers.[394] On the contrary, we find that our pairing of an unreasonable delay standard with our elimination of the mandatory seven business day waiting period between notification of law enforcement and notification of customers is more likely to result in consumers receiving notice of a breach more quickly than they would under our current rule in many instances. By requiring TRS providers to issue consumer notifications without unreasonable delay, but in no case later than 30 days after a breach has been detected unless a longer delay is requested by law enforcement, we believe that our revised rule balances the needs of law enforcement and TRS providers—to respond flexibly, with sufficient time to investigate data breaches—and customers—to take swift action in the wake of a breach.

111. *Content of Customer Breach Notification*. Consistent with our current TRS data breach rule, we decline to adopt specific minimum categories of information required in a customer breach notification.[395] We make clear, however, that a notification must include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that such a breach affected or may have affected that customer's data. While all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have laws requiring private or governmental entities to notify individuals of breaches involving their personal information,[396] of these, less than half impose minimum content requirements on the notifications that must be transmitted to affected individuals in the wake of a data breach.[397] As noted above regarding carriers, adding requirements with the potential to differ from such a high number of state requirements may create unnecessary burdens on small TRS providers.[398] We also find that specifying the required content of customer notifications beyond the basic standard described above would inhibit TRS providers from having the flexibility to craft notifications that are more responsive to, and appropriate for, the specific facts of a breach, the customers, and the provider involved. A stricter standard could conflict with other customer notice requirements—thus burdening providers and potentially sowing confusion among

[392] Sorenson Comments at 5.

[393] *Id.*

[394] AARO Reply at 8-9.

[395] 47 CFR § 64.5111.

[396] *See* Nat'l Conf. of State Legislatures, *Security Breach Notification Laws* (Jan. 17, 2022), https://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx.

[397] *See, e.g.*, Ala. Code § 8-38-5(d); Ariz. Rev. Stat. § 18-552(E); Cal. Civ. Code § 1798.82(d)(2); Colo. Rev. Stat. § 6-1-716(2)(a.2); 815 ILCS § 530/10(a)(1); Md. Code Com. Law § 14-3504(g), Md. State Govt. Code § 10-1305(g); Mass. Gen. Laws ch. 93H-1, § 3(b); Mich. Comp. Laws § 445.72(6)(c)-(g); N.Y. Gen. Bus. Law § 899-AA(7); Oregon Rev. Stat. § 646A.604(5); 9 V.S.A. § 2435(b)(5); Wash. Rev. Code §§ 19.255.010(6)(b), 42.56.590(6)(b); *see also* 45 CFR § 164.404(c)(1); Am. Bankers Ass'n, *Data Security & Customer Notification Requirements for Banks*, https://www.aba.com/banking-topics/technology/data-security/data-security-customer-notification; *Final Guidance on Response Programs: Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice*, Federal Deposit Insurance Corporation, Michael J. Zamorski, Director, Division of Supervision and Consumer Protection, Financial Institution Letters, FIL-27-2005 (Apr. 1, 2005), https://www.fdic.gov/news/financial-institution-letters/2005/fil2705.html (*GLBA Customer Notice Guidance*); FTC Data Breach Guide.

[398] *See supra* Section III.C.3.

consumers—and could delay providers' ability to timely notify their customers of a breach, since it could take time to gather all of the necessary details and information even in cases where it would be in customers' best interests to receive notification more quickly, albeit with less detail.[399]

112. Instead, we adopt as recommendations the following categories of information in security breach notifications to TRS customers: (1) the date of the breach; (2) a description of the customer information that was used, disclosed, or accessed; (3) whether data on the contents of conversations, such as call transcripts, was compromised as part of the breach;[400] (4) information on how customers can contact the provider to inquire about the breach; (5) information about how to contact the Commission, FTC, and any state regulatory agencies relevant to the customer and the service; (6) if the breach creates a risk of identity theft,[401] information about national credit reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring, credit reporting, or credit freezes the provider is offering to affected customers; and (7) what other steps customers should take to mitigate their risk based on the specific categories of information exposed in the breach.

113. We find that adopting recommendations for minimum consistent fields of information will further the goal of assisting customers in better understanding the circumstances and nature of a breach while retaining some flexibility for TRS providers to precisely tailor each notification, depending on the specific facts and details of each breach.[402] We agree with Hamilton Relay that the Commission should give providers the flexibility to craft breach notifications that include relevant information in an accessible format,[403] depending on the circumstances of each breach. While we acknowledge arguments by AARO and EPIC supporting the imposition of minimum content requirements for customer breach notifications,[404] we are wary of imposing specific requirements that could conflict with many state regulations, and of attempting to impose a one-size-fits-all solution for all providers and all data breaches. Rather, we find that the seven categories of information we recommend appropriately balance our goal of empowering consumers to take the necessary steps to protect themselves and their information in the wake of a data breach while simultaneously enabling TRS providers to respond flexibly to data breaches as they occur, and to issue customer notifications as swiftly as possible without the need to delay as they gather all of the information needed to satisfy a rigidly prescribed set of predetermined informational categories.

114. *Method of Customer Breach Notification*. We decline to specify the form that notifications to customers must take, instead leaving such a determination to the discretion of TRS providers, except to require that such notifications be provided in a format accessible to individuals with disabilities. In this proceeding, commenters were uniform in their insistence that the method of customer

[399] *See supra* Section III.C.3.

[400] AARO Comments at 6.

[401] Breaches which involve data such as a social security number, birth certificate, taxpayer identification number, bank account number, driver's license number, and other similar types of personally identifiable information unique to each person create the highest level of risk of identity theft. *See* Am. Bar Ass'n, *Identity Theft and Fraud: How to Evaluate and Manage Risks* (Mar. 2020), https://www.americanbar.org/news/abanews/publications/youraba/2020/youraba-march-2020/identity-theft-and-fraud. While breaches involving the types of data listed here should be considered to create a risk of identity theft for customers, this is not an exclusive list and should not be considered as such. There may be other types of data not listed here that, either alone or in conjunction with other data, may potentially create a risk of identity theft for customers.

[402] *See supra* Section III.C.3.

[403] Hamilton Relay Comments at 3-4.

[404] AARO Comments at 5-6; EPIC Comments at 8, 10-11; AARO Reply at 1-2.

breach notification be left to the discretion of providers where it is not specified in state law.[405] As CCA notes, the "best means for reaching business customers and residential customers . . . can differ significantly, and carriers are best positioned based on their experience and contact with consumers to know customers' preferred way of receiving notifications."[406] CTIA argues further that mandating the manner of customer CPNI incident notifications could "reduc[e] carrier flexibility to provide the most up-to-date information to customers in fluid situations."[407] As Hamilton Relay points out, "TRS providers do not have standard billing information for their customers because . . . most if not all TRS users do not pay for the service."[408] Because this lack of standard billing information may complicate notifications to such users, we agree with Hamilton Relay that the Commission should grant TRS providers the discretion to take all reasonable steps necessary to provide the required information to their customers in a "usable and readily understandable format" whenever a breach occurs.[409] We thus decline to specify the manner that accessible notifications to customers must take, and leave such a determination to the discretion of TRS providers where the manner of customer breach notifications is not specified by applicable state law.

115. *TRS User Registration Information*. In their comments, Sorenson notes that "TRS customers must undergo intrusive identity and address verification that other voice telephone customers do not,"[410] and that data retention requirements of TRS providers put customers who rely on these critical services at heightened risk.[411] Sorenson thus recommends that our revised rules permit TRS providers to delete sensitive customer information, such as copies of users' driver's licenses/passports and other identity or address identifying information.[412] Convo Communications take this recommendation a step further, advocating that the Commission not just permit but *require* providers to destroy identifying records regarding TRS users after a user is successfully registered in the TRS User Registration Database (TRS URD).[413]

116. We decline to adopt these recommendations at this time. The requirements to collect and retain user registration information for registration in the TRS User Registration Database are outside the scope of this proceeding. The TRS User Registration Database is a centralized system of registration records established to protect the TRS Fund from waste, fraud, and abuse and to improve the Commission's ability to manage and oversee the TRS program.[414] A necessary component of the administration and oversight of the TRS User Registration Database and the TRS program in general, is the ability of the Commission, the TRS User Registration Database administrator, and the TRS Fund administrator to review and audit the registration information of TRS users and the registration practices of TRS providers. Any consideration of changes to the rules concerning TRS providers retaining required registration information for TRS users must include an assessment of the impact of the ability of the Commission and relevant administrators to review the data upon which users were verified in the database. The record in this proceeding is incomplete as the Commission did not seek comment on this issue. We therefore do not take action on this issue at this time.

---

[405] *See* Blooston Rural Carriers Comments at 6; CCA Comments at 8; CTIA Comments at 31-32; USTelecom Comments at 2, 8; CTIA Reply at 24.

[406] CCA Comments at 8.

[407] CTIA Comments at 32.

[408] Hamilton Relay Comments at 4-5.

[409] *Id.* at 5.

[410] Sorenson Comments at 6.

[411] *Id.* at 6-8.

[412] *Id.* at 8.

[413] Convo Communications Reply at 4-7; *see also* AARO Reply at 10.

[414] 47 CFR § 64.601(a)(48); *id.* § 64.611(a), (j).

E. Legal Authority

117. We find that sections 201(b), 222, 225, and 251(e) provide us with authority to adopt the breach notification rules enumerated in this Order. We conclude further that we have authority to apply these revised rules to interconnected VoIP providers. Lastly, we find that Congress' nullification of the Commission's revisions to its data breach rules in the *2016 Privacy Order* pursuant to the Congressional Review Act (CRA) does not now preclude us from adopting the rules set forth in this Order.[415]

1. Section 222

118. Section 222 of the Act provides authority for the requirements we adopt and revise today.[416] Section 222(a) imposes a duty on carriers to "protect the confidentiality of proprietary information of, and relating to" customers, fellow carriers, and equipment manufacturers.[417] Section 222(c) imposes more specific requirements on carriers as to the protection and confidentiality of customer proprietary network information.[418] Both subsections independently provide us authority to adopt rules requiring telecommunications carriers and interconnected VoIP providers to address breaches of customer information, but the breadth of section 222(a) provides the additional clarity that the Commission's breach reporting rules can and must apply to all PII rather than just to CPNI.

119. The Commission has long required carriers to report data breaches as part of their duty to protect the confidentiality of customers' information.[419] The revisions to the Commission's data breach reporting rules adopted in this Order reinforce carriers' duty to protect the confidentiality of their customers' information, including information that may not fit the statutory definition of CPNI. Data breach reporting requirements also reinforce the Commission's other rules addressing the protection of customer information by meaningfully informing customer decisions regarding whether to give, withhold, or retract their approval for carriers to use or disclose their information. Moreover, requiring carriers to notify the Commission in the event of a data breach will better enable the Commission to identify and confront systemic network vulnerabilities and help investigate and advise carriers on how best to avoid future breaches, while simultaneously assisting carriers in fulfilling their duty pursuant to section 222(a) to protect the confidentiality of their customers' information.[420]

120. We reject Lincoln Network's argument that section 222 does not grant us authority to adopt rules requiring telecommunications carriers and interconnected VoIP providers to address breaches of covered data.[421] Section 222 explicitly imposes a duty on telecommunications carriers to "protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment

---

[415] *See Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Report and Order, 31 FCC Rcd 13911, 14019-33, paras. 261-91 (2016) (*2016 Privacy Order*); Resolution of Disapproval ("*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress disapproves the rule submitted by the Federal Communications Commission relating to 'Protecting the Privacy of Customers of Broadband and Other Telecommunications Services' (81 Fed. Reg. 87274 (December 2, 2016)), and such rule shall have no force or effect."); 5 U.S.C. § 801(f) ("Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect."); 5 U.S.C. § 801(b)(1) ("A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval . . . of the rule."); *see also 2017 CRA Disapproval Implementation Order*.

[416] *See Data Breach Notice* paras. 46-47.

[417] 47 U.S.C. § 222(a); *see* H.R. Rep. No. 104-458 at 205 ("New subsection 222(a) stipulates that it is the duty of every telecommunications carrier to protect the confidentiality of proprietary information of and relating to other carriers, equipment manufacturers and customers . . . .").

[418] 47 U.S.C. § 222(c).

[419] *See 2007 CPNI Order*, 22 FCC Rcd at 6943-45, paras. 26-32.

[420] 47 U.S.C. § 222(a).

[421] *See generally* Lincoln Network Comments.

manufacturers, and customers."[422] To argue, as Lincoln Network does, that section 222 does not grant the Commission "clear authority to protect the security of data"[423] contravenes the clear language and intent of section 222.[424] Ever since it began implementation of the 1996 Act, the Commission has understood section 222(a) as a source of carriers' duties and as a source of Commission rulemaking authority.[425] To the extent that the Commission has described its section 222 authority as coextensive with the definition of CPNI, we disavow such an interpretation. In those proceedings, the Commission was not examining the distinction between CPNI and other sensitive personal information, and it never explicitly decided that section 222(a) does not reach other forms of personal information. In fact, the Commission in 2007 described section 222(a)'s duty as extending to "proprietary or personal customer information,"[426] and more recent enforcement actions have affirmed that carriers' duty to protect customer information extends beyond CPNI.[427] To find that carriers have no duty to protect the confidentiality of non-CPNI PII would be inconsistent with the plain language of section 222(a)'s use of the term "proprietary information of, and relating to, . . . customers" and is not the best interpretation of that provision. Instead, consistent with those recent Commission actions, we find that the phrase "information of, and relating to, . . . customers" in section 222(a) is naturally—and indeed best—interpreted to have the same definition as PII, subject to the additional limitation that the information be "proprietary" to the carrier—i.e., obtained in connection with establishing or maintaining a communications service.[428] Finally, given the larger context discussed below,[429] to the extent that an obligation to take reasonable measures to protect all PII were not derived directly from section 222(a), that would be because Congress understood it already to be based in section 201(b)'s prohibition on unjust or unreasonable practices.

121. Some commenters contend that section 222(a) simply sets out high-level principles the substantive details of which are specified elsewhere.[430] But even beyond our foregoing analysis, that

[422] 47 U.S.C. § 222(a).

[423] Lincoln Network Comments at 1-2.

[424] 47 U.S.C. § 222(a).

[425] *See 1998 CPNI Order*, 13 FCC Rcd at 8196, para. 194 ("[S]ection 222(a) specifically imposes a protection duty . . . ."); *id.* at 8200, para. 203 ("The Commission in the *Notice* focused on issues relating to the implementation of sections 222(c)-(f). Based on various responses from parties, we now seek further comment on three general issues that principally involve carrier duties and obligations established under sections 222(a) and (b) of the Act.").

[426] *2007 CPNI Order*, para. 64.

[427] *TerraCom NAL*, 29 FCC Rcd at 13330-32, paras. 14-20. As noted below, the general interpretation of section 222 in the *TerraCom NAL* also was confirmed by the Commission in a subsequent rulemaking order. *See infra* note 442. And as noted above, in November 2021 and March 2022 orders revoking the operating authority of certain telecommunications carriers, the Commission further stated that all communications service providers have "a statutory responsibility to ensure the protection of customer information, including PII and CPNI." *See supra* note 304.

[428] NCTA asserts that "most PII . . . is not 'proprietary information," but does not justify why we should adopt an understanding of that term different than the one here. NCTA Dec. 5, 2023 *Ex Parte* at 2.

[429] *See infra* Section III.E.2 (discussing authority under section 201(b)).

[430] *See, e.g.*, CTIA Comments at 11-12; NCTA Dec. 5, 2023 *Ex Parte* at 4; CTIA Dec. 6, 2023 *Ex Parte* at 2-3. We reject NCTA's claim that "legislative history supports an interpretation of Section 222 that does not impose an affirmative obligation under Section 222(a), which shows that Congress deliberately chose not to use 'personally identifiable information' in Section 222." NCTA Dec. 5, 2023 *Ex Parte* at 4. NCTA cites a statement from the conference report that "'the new section 222 strives to balance both competitive and consumer privacy interests with respect to CPNI.'" NCTA Dec. 5 *Ex Parte* at 4 (quoting H.R. Conf. Rep. No. 104-458, at 205 (Jan. 31, 1996) (Conf. Rep.)). But as even commenters opposed to our interpretation of section 222(a) recognize, section 222 applies to more than just CPNI, undercutting any understanding of that statement as reflecting the full scope and contours of section 222. *See, e.g.*, CTIA Comments at 11 (observing that section 222(b) imposes certain obligations on carriers with respect to the proprietary information of other carriers). NCTA also cites a House Report discussing earlier (continued….)

interpretation of section 222(a) is at odds with the fact that section 222(a) lists "equipment manufacturers" among the classes of entities owed confidentiality protections as part of a carrier's "general" duty.[431] Given that section 222 never otherwise mentions confidentiality protections owed to those entities, this reinforces our view that section 222(a) is best read as imposing enforceable obligations on telecommunications carriers separate and apart from the requirements of section 222(b) and (c).[432] Nor does section 222(a) otherwise include textual indicia at odds with our understanding. Section 222(a) employs regulatory terminology in imparting a general "duty" on telecommunications carriers. Section 222(a)'s heading of "In General" also is fully compatible with our understanding of that provision as imposing a general duty—in contrast to alternative headings such as "Purpose" or "Preamble" that would indicate that the "duty" announced by such a provision is merely precatory or a "statement of purpose" with no legal force of its own.

122. Contrary to some commenters' claims,[433] our interpretation of section 222(a) also otherwise is compatible with the remainder of section 222. We read section 222(a) as imposing a broad duty that can and must be read in harmony with the more specific mandates set forth elsewhere in the statute.[434] Provisions such as sections 222(b) and (c) directly impose specific requirements on telecommunications carriers to address concerns that were particularly pressing at the time of section 222's enactment, which continue to control over the more general duty in section 222(a) to the extent of any overlap. Our interpretation of section 222(a) thus preserves the role of each of these provisions within the section 222 framework. And given the more detailed statutory specification of carriers' requirements regarding CPNI in section 222, it is understandable the Congress made a point of establishing express exceptions from those requirements in section 222(d).[435] Part of interpreting section 222(a) in harmony with section 222 as a whole includes interpreting it in harmony with section 222(d). Thus, we do not interpret the grounds for disclosure authorized by section 222(d) as violating carriers' obligation to protect the confidentiality of proprietary information imposed by section 222(a). Our analysis is the same regarding other provisions of section 222, such as the subscriber information

---

statutory language considered by the House, which would have specified a different scope of covered information. NCTA Dec. 5 *Ex Parte* at 4 (citing H.R. Rep. No. 104-204, Pt. I, 104th Cong., 1st Sess., at 23 (July 24, 1995) (July 24, 1995 House Rep.)). But that alternative definition also was part of a statutory provision that different in many other ways from section 222 as ultimately adopted, *see* July 24, 1995 House Rep., at 22-23, and section 222 as enacted ultimately was based on the Senate version. Conf. Rep. at 205. In sum, we see nothing in the legislative history that would persuade us to depart from what we see as the best interpretation of section 222(a) based on the statutory text.

[431] 47 U.S.C. § 222(a).

[432] Admittedly, as CTIA points out, *see* CTIA Comments at 12, section 273(d)(2) separately prohibits "[a]ny entity which establishes standards for telecommunications equipment or customer premises equipment, or generic network requirements for such equipment, or certifies telecommunications equipment or customer premises equipment . . . from releasing or otherwise using any proprietary information, designated as such by its owner, in its possession as a result of such activity, for any purpose other than purposes authorized in writing by the owner of such information." 47 U.S.C. § 273(d)(2). But CTIA fails to demonstrate that the entities that are the focus of section 222(a)—i.e., telecommunications carriers—are fully subsumed by (or even substantially overlap with) the entities that are the focus of section 273(d)(2)—e.g., entities that establish equipment standards or requirements or certify such equipment. The significant mismatch between sections 222(a) and 273(d)(2) thus gives us no reason to question our understanding of section 222(a).

[433] *See, e.g.*, CTIA Comments at 12-14; NCTA Dec. 5, 2023 *Ex Parte* at 4; CTIA Dec. 6, 2023 *Ex Parte* at 3.

[434] This understanding of section 222(a) also accords with the fact that the Commission generally has relied on a "reasonableness" standard when evaluating carriers' protection of information under section 222. *See, e.g.*, *2007 CPNI Order*, 22 FCC Rcd at 6959, para. 63 (in the event of a breach a carrier "must demonstrate that the steps it has taken to protect CPNI from unauthorized disclosure, including the carrier's policies and procedures, are reasonable" under the circumstances).

[435] 47 U.S.C. § 222(d).

disclosure requirements in section 222(e) and (g).[436] Thus, we do not interpret section 222(a) to impose obligations inconsistent with those disclosure requirements, either. Because we read section 222(a) in harmony with the remainder of section 222 there is no incompatibility in our approach. And the mere omission of section 222(a) from provisions like section 222(d), (e), and (g) would have been an oblique and indirect way of dictating an interpretation of section 222(a) that runs counter to its plain meaning: a reasonable person would not interpret "a duty to protect the confidentiality" of customer information as prohibiting its use for billing, for example, as is permitted by section 222(d)(1).

123. Lincoln Network attempts to draw a distinction between security and confidentiality that is unavailing.[437] Lincoln Network itself appears to recognize that something that could be characterized as a "security" breach can result in loss of confidentiality for data or information.[438] Thus, even assuming *arguendo* that breaches of security and breaches of confidentiality are not coextensive, that would matter only if the Commission were attempting to act beyond the scope of section 222's statutory grant of authority with respect to confidentiality—which is not the case here. Based on relevant textual indicia, we conclude that "confidentiality" within the meaning of section 222 encompasses impermissible access to, use of, and/or disclosure of covered information.[439] Our data breach reporting requirements focus on "breaches," which occur when "a person, without authorization or exceeding authorization, gains access to, uses, or discloses covered data."[440] The "covered data" is defined in terms of the statutory categories of proprietary information and customer proprietary network information, and the focus on access, use, and disclosure of those data fits comfortably within our section 222 authority.

2. Section 201(b)

124. Section 201(b) of the Act requires practices of common carriers to be just and reasonable and declares any unjust or unlawful practices to be unlawful.[441] The Commission concluded in the *TerraCom NAL* that section 201(b) was violated when carriers failed to notify customers whose personal information had been breached by the carriers' inadequate data-security policies.[442] The *TerraCom NAL* explicitly put carriers "on notice that in the future we fully intend to assess forfeitures for such violations"

---

[436] 47 U.S.C. § 222(e), (g).

[437] *See, e.g.*, Lincoln Network Comments at 2-4 (discussing terminology used in certain industry publications); *id*. at 8-9 (citing other federal laws that use both "confidentiality" and "security" or refer to "security" when describing requirements that Lincoln Network sees as analogous to the Commission's data breach reporting requirements).

[438] *See, e.g.*, Lincoln Network Comments at 2 (stating that "[d]ata breaches are cybersecurity attacks that result in the loss of confidentiality of consumer personal information"); *id*. at 4 (citing an industry report as taking the position that "security incidents, . . . may conclude with data breaches"); *id*. (stating that "not all security incidents are data breaches, but all data breaches are security incidents").

[439] Section 222(a) establishes carriers' "duty to protect the confidentiality of proprietary information . . . ." 47 U.S.C. § 222(a). Section 222(b), in turn, is entitled "[c]onfidentiality of carrier information," and limits carriers' "use" of proprietary information. 47 U.S.C. § 222(b). Section 222(c) is entitled "[c]onfidentiality of customer proprietary network information" and limits how carriers "use, disclose, or permit access to" individually identifiable CPNI. 47 U.S.C. § 222(c)(1). "Although section headings cannot limit the plain meaning of a statutory text, 'they supply cues' as to what Congress intended." *Merit Management Group v. FTI Consulting*, 138 S. Ct. 883, 893 (2018) (citation omitted). Against that backdrop we reject Lincoln Network's attempts to rely on isolated examples of terminology uses from recent industry reports or the like. *See, e.g.*, Lincoln Network Comments at 2-4.

[440] *See infra* Appx. A, 47 CFR § 64.2011(e)(1); *see also id*., 47 CFR § 64.5111(f)(1).

[441] 47 U.S.C. § 201(b).

[442] *TerraCom NAL*, 29 FCC Rcd at 13329-30, para. 12, 13335-37, paras. 31-35. In a subsequent Report and Order adopting Lifeline rules, the Commission "confirm[ed] the general interpretation of sections 201 and 222 reflected in the *TerraCom NAL*." *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., 30 FCC Rcd. 7818, 7846, para. 65 n.168 (2015).

under section 201(b).[443] We therefore conclude that our authority to prohibit unjust and unreasonable practices[444] and to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of" the Act pursuant to section 201(b) provides independent authority for us to consider PII as protected consumer information and to require carriers to notify customers, law enforcement, and the Commission about breaches as discussed throughout this Report and Order.[445]

125. CTIA provides no explanation for its conclusory assertion that carriers' data privacy and security practices are not practices "in connection with" communications services.[446] Certainly any information collected from a customer or prospective customer related to establishing or maintaining the provision of a communications service would qualify. As discussed above, it is well established that carriers have come into possession of, and sometimes suffered breaches of, sensitive personal information that may not be CPNI.[447] Nor does the canon of statutory construction about specific provisions governing general ones apply here.[448] Section 222, adopted as part of the Telecommunications Act of 1996 (1996 Act), was not intended to narrow carriers' privacy duties or the Commission's authority to oversee carriers' privacy practices.[449] The Commission regulated carriers' privacy practices under its

[443] *TerraCom NAL*, 29 FCC Rcd at 13341, para. 43 n.97; *see* EPIC et al. Reply at 11. As NCTA points out, the Commission did not propose a forfeiture under section 201(b), NCTA Reply at 10-11, but that was because it was the first time the Commission had declared a carrier's practices related to its failure to notify consumers of a data breach to be a violation of section 201(b). The Commission made explicit that, in the future, such violations would be penalized under section 201(b). *TerraCom NAL*, 29 FCC Rcd at 13341, para. 43 n.97 ("Because this is the first time we declare a carrier's practices related to its failure to adequately notify consumers in connection with a security breach unjust and unreasonable in apparent violation of Section 201(b), we do not propose to assess a forfeiture for the apparent violations here. However, through our action today, carriers are now on notice that in the future we fully intend to assess forfeitures for such violations, taking into account the factors identified above."). We now make that clear again here.

[444] *See* EPIC Comments at 7; EPIC et al. Reply at 9-11; *Ambassador, Inc. v. United States*, 325 U.S. 317, 323 (1945) (holding that "the supervisory power of the Commission is not limited to rates and services, but . . . [includes] 'charges, practices, classifications, and regulations for and in connection with such communication service'"); *see also, e.g.*, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221, 15233-34, para. 37 (2020).

[445] *1998 CPNI Order*, 13 FCC Rcd at 8066, para. 15 ("Based on the Act's grant of jurisdiction, the Commission has historically regulated the use and protection of CPNI by AT&T, the BOCs, and GTE, through the rules established in the *Computer III* proceedings. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt any rules it deems necessary or appropriate to carry out its responsibilities under the Act, so long as those rules are not otherwise inconsistent with the Act.").

[446] *See* CTIA Comments at 15. We are no more persuaded by arguments that take a different tack and contend that the carrier actions at issue in this proceeding are not "charges," "practices," "classifications," or "regulations" within the meaning of section 201(b). *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 6. This argument relies on the theory that the Supreme Court has held "that activity is not covered by Section 201(b) unless it '*resembles* activity that . . . transportation and communications agencies have long regulated.'" CTIA Dec. 6 *Ex Parte* at 6 (quoting *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc*., 550 U.S. 45, 55–58 (2007) (*Global Crossing*)). But in that decision, the Supreme Court did not so hold; it merely considered that factor in support of its threshold determination that the activity at issue there "easily fits within the language of the statutory phrase" as understood "in ordinary English." *Global Crossing*, 550 U.S. at 55. We see no reason why a carrier's privacy and data breach notification practices with respect to customer PII that it has by virtue of its service relationship with them would not easily fit within the ordinary understanding of that statutory phrase, as well. Independently, we also observe that the Commission has, in fact, historically regulated carriers' privacy practices under its section 201(b) authority. *See supra* note 442 and accompanying text.

[447] *See supra* para. 20.

[448] *See* CTIA Comments at 15.

[449] We reject contrary arguments premised on the fact that section 222 does not itself include a savings clause expressly preserving the Commission's authority under section 201, in contrast to section 251 of the Act. *See, e.g.*,

(continued….)

general Title II authority even before enactment of the 1996 Act,[450] and the 1996 Act codified the privacy duty and enacted specific restrictions for the new competitive environment that the Act was intended to promote.[451] As the Commission stated in 1998, "Congress … enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition."[452]

CTIA Dec. 6, 2023 *Ex Parte* at 5. The 1996 Act made clear that "the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments." Telecommunications Act of 1996, Pub. L. 104-104, § 601(c)(1) (1996) (codified at 47 U.S.C. § 152 nt). Nothing in section 222 expressly modifies, impairs, or supersedes the Commission's authority under section 201(b) to act to ensure that carriers' practices are just and reasonable. While it is not entirely clear why Congress felt the need for an additional savings clause in section 251(i), it might simply have done so "to be doubly sure," *Barton v. Barr*, 140 S. Ct. 1442, 1453 (2020), particularly given the responsibilities assigned to the states in the implementation of sections 251 and 252 of the Act. *See generally* 47 U.S.C. §§ 251, 252. Nor are we persuaded by contrary claims based on high-level statements in legislative history about the balancing various interests underlying various legislative alternatives that eventually led to section 222 of the Act. *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 5-6. Such high-level statements in legislative history do not persuade us to depart from what we see as the best interpretation of the statutory text. Nor is it even clear that the relevant balancing of interests in the cited legislative history necessarily is relevant to the particular exercise of section 201(b) authority at issue here. *See, e.g.*, H.R. Rep. No. 103-559, at 60 (June 24, 1994) (discussing the "careful balance of competing, often conflicting, considerations" of consumers' need "to be sure that information about them that carriers can collect is not misused" with consumers' expectation that "the carrier's employee will have available all relevant information about their service," which "argues for looser restrictions on internal use of customer information").

[450] *See, e.g.*, *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corp.*, Report and Order, 9 FCC Rcd 4922, para. 45 (1994) ("Our CPNI requirements reflect a careful balancing of customer privacy, efficiency, and competitive equity interests.").

[451] *See* H.R. Rep. No. 104-458, Joint Explanatory Statement of the Committee of Conference, 104th Cong., 2d Sess. 203-05. In the course of rejecting a request that carriers be compelled to share customer information with certain other carriers to protect against discrimination against competitors under sections 201(b) and 202(a) of the Act, the Commission stated that "the specific consumer privacy and consumer choice protections established in section 222 supersede the general protections identified in sections 201(b) and 202(a)." *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information et al.*, CC Docket No. 96-115 et al., Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14491, para. 153 (1999) (*1999 Order on Reconsideration*); *see also e.g.*, *Implementation of the Telecommunications Act of 1996, et al.*, CC Docket No. 96-115, *et al.*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8073, para. 14 (1998) (*1998 Second Report and Order*) ("Congress established a comprehensive new framework in section 222, which balances principles of privacy and competition in connection with the use and disclosure of CPNI and other customer information."). Understood in context, that simply stands for the proposition that where consumer privacy issues addressed specifically in section 222 are implicated, the requirements of section 222 are controlling over more general protections in section 201(b) and 202(a) that are unrelated to privacy—such as advancing competitive neutrality. *See, e.g.*,*1999 Order on Reconsideration*, 14 FCC Rcd at 14491, para. 153 (explaining that "requiring the disclosure of CPNI to other companies to maintain competitive neutrality" under sections 201(b) and 202(a) "would defeat, rather than protect, customers' privacy expectations and control over their own CPNI" in contravention of "the specific consumer privacy and consumer choice protections established in section 222"). We similarly reject attempts to rely on statements about section 222 that the Commission made in analogous statutory contexts where it rejected pro-competition requirements under statutory provisions like sections 272 or 274 in light of the privacy requirements of section 222. *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 6 (citing *1998 Second Report and Order*, 13 FCC Rcd at 8066-67, para. 4 (discussing the interplay of section 222 with sections 272 and 274) and *1999 Order on Reconsideration*, 14 FCC Rcd at 14485, para. 142 (discussing the interplay of sections 222 and 272)). More generally, to the extent that the Commission has made statements that its section 222 authority supersedes its authority under section 201(b), we disavow such an interpretation for the reasons stated in this section. Independently, with particular respect to data breach notification requirements, we do not find either section 201(b) or section 222 to be a more specific provision. And even assuming *arguendo* that section 222 were controlling within its self-described scope, our rules are fully consistent with that authority as well. *See supra* Section III.E.1.

[452] *1998 CPNI Order*, 13 FCC Rcd at 8061, para. 1.

For the reasons discussed throughout this Report and Order, notification to customers, law enforcement, and the Commission are essential to the Commission's oversight of carriers' privacy practices.

126. The structure of the Communications Act and its relationship with the Federal Trade Commission Act also demonstrate that this Commission has authority to make rules governing common carriers' protection of PII. The FTC has broad statutory authority to protect against "unfair or deceptive" acts or practices, but that authority is limited by carving out several exceptions for categories of entities subject to oversight by other regulatory agencies, one of which is common carriers subject to the Communications Act.[453] The clear intent is that the expert agencies in those areas will act based on the authorities provided by those agencies' statutes. It is implausible that Congress would have exempted common carriers from any obligation to protect their customers' private information that is not CPNI.[454]

3. Interconnected VoIP

127. We find that section 222 and our ancillary jurisdiction grant us authority to apply the rules we adopt today to interconnected VoIP providers. Interconnected VoIP providers have been explicitly subject to the Commission's data breach rules since 2007, when the Commission first adopted the data breach notification rule.[455] In the *2007 CPNI Order*, the Commission recognized that if interconnected VoIP services were telecommunications services, they self-evidently would be covered by section 222 and the Commission's implementing rules.[456] But because the Commission generally had not classified interconnected VoIP, the Commission also exercised its Title I ancillary jurisdiction to extend its CPNI rules to interconnected VoIP services, finding that "interconnected VoIP services fall within the subject matter jurisdiction granted to [the Commission] in the Act," and that "imposing CPNI obligations is reasonably ancillary to the effective performance of the Commission's various responsibilities."[457]

128. We proceed under the same alternative bases here, and conclude that legal and factual bases for the findings relied on in the *2007 CPNI Order* have only grown more persuasive since then. The Commission observed at the time that "interconnected VoIP service 'is increasingly used to replace

---

[453] 15 U.S.C. § 44 (defining "Acts to regulate commerce" as including "the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto"); *id.* § 45(a)(2) (exempting from FTC authority "common carriers subject to the Acts to regulate commerce").

[454] Insofar as some parties contend that section 222 establishes a comprehensive scheme of privacy regulation for carriers to the exclusion of section 201(b), yet also contest our interpretation of section 222(a), *see, e.g.*, NCTA Dec. 5, 2023 *Ex Parte* at 2-5; CTIA Dec. 6, 2023 *Ex Parte* at 2-6, they effectively ask us to accept that the supposedly comprehensive privacy scheme that Congress enacted intentionally left the non-CPNI PII of carriers' customers unprotected by federal law. As we discuss, we not only find that view contrary to the statutory text, but find it implausible more generally.

[455] *See 2007 CPNI Order*, 22 FCC Rcd at 6954-57, paras. 54-59; *see also* 47 CFR § 64.2003(o) (defining "telecommunications carrier or carrier" for purposes of the data breach rules to include interconnected VoIP providers).

[456] *2007 CPNI Order*, 22 FCC Rcd at 6954-55, para. 54. Although the Commission has not broadly addressed the statutory classification of interconnected VoIP as a general matter, it has consistently recognized that a provider may offer VoIP on a Title II basis if it voluntarily "holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements." *IP-Enabled Services*; *E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10268, para. 38 n.128 (2005), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18143-44, para. 1389 ("[S]ome providers of facilities-based retail VoIP services state[d] that they are providing those services on a common carrier basis . . . .").

[457] *See 2007 CPNI Order*, 22 FCC Rcd at 6955, para. 55; *see also United States v. Southwestern Cable*, 392 U.S. 157, 177-78 (1968) (setting forth the two-part "ancillary jurisdiction" test); *Comcast Corp. v. FCC*, 600 F.3d 642, 654 (D.C. Cir. 2010) (holding that ancillary jurisdiction must be "necessary to further its regulation of activities over which [the Commission] does have express statutory authority").

analog voice service.'"[458] This trend has continued. Interconnected VoIP now accounts for a far larger share of the residential fixed voice services market than legacy switched access services, and "fixed switched access continues to decline while interconnected VoIP services continue to increase."[459] Therefore, as the Commission found in 2007, today's consumers should reasonably 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."[460] We likewise think interconnected VoIP subscribers should reasonably expect their other information to also be protected and treated confidentially consistent with the other protections that apply under section 222. Furthermore, extending section 222's protections to interconnected VoIP service customers remains "necessary to protect the privacy of wireline or wireless customers that place calls to or receive calls from interconnected VoIP customers."[461] Indeed, following the *2007 CPNI Order*, Congress ratified the Commission's decision to apply section 222's requirements to interconnected VoIP services, adding language to section 222 that applied provisions of section 222 to users of "IP-enabled voice service."[462] These revisions to section 222 would not make sense if the privacy-related duties of subsections (a) and (c) did not apply to interconnected VoIP providers.[463]

129. In the case of interconnected VoIP providers that have obtained direct access to telephone numbers, we conclude that section 251(e) also gives us authority to condition that access on those providers' compliance with privacy requirements equivalent to those that apply to telecommunications carriers. The Commission previously exercised its authority under section 251(e) to ensure, for example, that an interconnected VoIP provider receiving direct access to numbers "possesses the financial, managerial, and technical expertise to provide reliable service."[464] Ensuring that interconnected VoIP providers remain on the same regulatory footing as telecommunications carriers with respect to customer privacy—as was the case when direct access to numbers for interconnected VoIP providers began—will ensure a level competitive playing field and ensure that consumers' expectations are met regarding the privacy of their information when using the telephone network.[465]

4. Legal Authority to Adopt Rules for TRS

130. We find that we have separate and independent authority under sections 225 and 222 to amend our data breach rule for TRS to ensure that TRS users receive privacy protections equivalent to those enjoyed by users of telecommunications and VoIP services. Section 225 of the Act directs the Commission to ensure that TRS are available to enable communication in a manner that is functionally

[458] *See 2007 CPNI Order*, 22 FCC Rcd at 6956, para. 56.

[459] *Communications Marketplace Report*, GN Docket No. 22-203, FCC 22-103, at 120-21, para. 170 (2022) ("As of December 2021, residential fixed voice connections were about 28% switched access and 72% interconnected VoIP, with residential switched access connections comprising only 12.2% of all fixed retail voice connections.").

[460] *2007 CPNI Order*, 22 FCC Rcd at 6956, para. 56.

[461] *Id.* at 6956, para. 57.

[462] *See* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (2008) (NET 911 Act); *see also* 47 U.S.C. § 222(d)(4), (f)(1), (g) (applying provisions of section 222 to "IP-enabled voice service" and 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)"); *id.* § 615b(8).

[463] We note that no commenter chose to address this issue in the course of this proceeding.

[464] 47 CFR § 52.15(g)(3)(i)(F); *see also Numbering Policies for Modern Communications et al.*, WC Docket Nos. 13-97 et al., Report and Order, 30 FCC Rcd 6839, 6849-50, 6878-80, paras. 24, 78-82 (2015) (*2015 Direct Access to Numbering Order*).

[465] *See, e.g.*, *2015 Direct Access to Numbering Order*, 30 FCC Rcd at 6850-51, 6852-53, paras. 25, 28 (citing competitive neutrality as a benefit of the Commission's approach to providing interconnected VoIP providers direct access to numbers); *id*. at 6861, para. 47 (seeking to take account of customers' expectations).

equivalent to voice telephone services.[466] In the *2013 VRS Reform Order*, the Commission found that applying the privacy protections of the Commission's regulations to TRS users advances the functional equivalency of TRS.[467] The Commission concluded further that the specific mandate of section 225 to establish "functional requirements, guidelines, and operations procedures for TRS" authorizes the Commission to make the privacy protections included in the Commission's data breach regulations applicable to TRS users.[468]

131. The Commission also found that extending its privacy—including data breach—regulations to TRS users was ancillary to its responsibilities under section 222 of the Act to telecommunications service subscribers that place calls to or receive calls from TRS users, because TRS call records include call detail information concerning all calling and called parties.[469] The Commission moreover determined that applying data breach requirements to point-to-point video services provided by VRS providers[470] is ancillary to its responsibilities under sections 222 and 225, including the need to protect information that VRS providers had by virtue of being a given customer's registered VRS provider—even in the context of point-to-point video service—and to guard against the risk to consumers who are likely to expect the same privacy protections when dealing with VRS providers, whether they are using VRS or point-to-point video services.[471]

132. We conclude that, for the same reasons cited in the *2013 VRS Reform Order*, these sources of authority for establishing the current data breach rule for TRS now authorize the Commission to amend this rule to ensure that TRS users continue to receive privacy protections equivalent to those enjoyed by users of telecommunications and VoIP services. The record in this proceeding supports this conclusion. As AARO states, the Commission has "ample legal authority" to amend its data breach rule for TRS under sections 222 and 225.[472]

5. Impact of the Congressional Disapproval of the *2016 Privacy Order*

133. In 2016, the Commission attempted to revise its breach notification rules as part of a larger proceeding addressing privacy requirements for broadband Internet service providers (ISPs).[473] The rules the Commission adopted in the *2016 Privacy Order* applied to telecommunications carriers and interconnected VoIP providers in addition to ISPs, which had been classified as providers of telecommunications services in 2015.[474] In 2017, however, Congress nullified those 2016 revisions to the

[466] 47 U.S.C. § 225(a)(3), (b)(1).

[467] *2013 VRS Reform Order*, 28 FCC Rcd at 8685-86, para. 170.

[468] *Id.* at 8685-86, para. 170 & n.430 (citing 47 U.S.C. § 225(d)(1)(A)).

[469] *2013 VRS Reform Order*, 28 FCC Rcd at 8685-86, para. 170.

[470] Such point-to-point services, while provided in association with VRS, are not themselves a form of TRS.

[471] *2013 VRS Reform Order*, 28 FCC Rcd at 8686-87, para. 171.

[472] AARO Comments at 4; *see also* Hamilton Relay Comments at 9 (stating that section 225 "provides sufficient authority to impose CPNI data breach notification obligations on TRS providers"); EPIC et al. Reply at 17.

[473] *2016 Privacy Order*, 31 FCC Rcd at 14019-33, paras. 261-291. In 2015, the Commission classified broadband Internet access service as a telecommunications service subject to Title II of the Act, a decision that the D.C. Circuit upheld in *U.S. Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016). *See Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5733-34, paras. 306-308 (2015), *aff'd*, *U.S. Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016). As a result of classifying broadband Internet access service as a telecommunications service, such services were subject to sections 201 and 222 of the Act.

[474] *See 2016 Privacy Order*, 31 FCC Rcd at 13925, para. 39, 14033-34, para. 293. In 2017, the Commission reversed the 2015 classification decision so that Title II obligations, including section 222, no longer apply to ISPs. *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC

(continued….)

Commission's privacy rules under the CRA.[475] Pursuant to the language of the Resolution of Disapproval, the *2016 Privacy Order* was rendered "of no force or effect."[476] That resolution conformed to the procedure set out in the CRA, which requires agencies to submit most rules to Congress before they can take effect and provides a mechanism for Congress to disapprove of such rules. Pursuant to the operation of the CRA, the *2016 Privacy Order* "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule."[477]

134. In analyzing the impact of the Resolution of Disapproval of the *2016 Privacy Order*, we first explain our understanding of the CRA's prohibition on reissuance. We also show that, in any event, the revisions that we make here to the breach notification rule are different in substantial ways from those that were included in the *2016 Privacy Order*.

135. First, we conclude that the CRA is best interpreted as prohibiting the Commission from reissuing the *2016 Privacy Order* in whole, or in substantially the same form, or from adopting another item that is substantially the same as the *2016 Privacy Order*. It does not prohibit the Commission from revising its breach notification rules in ways that are similar to, or even the same as,[478] some of the revisions that were adopted in the *2016 Privacy Order*, unless the revisions adopted are the same, in substance, as the *2016 Privacy Order* as a whole.[479]

136. Congress's Resolution of Disapproval, by its terms, disapproved "the rule submitted by the Federal Communications Commission relating to 'Protecting the Privacy of Customers of Broadband and Other Telecommunications Services' (81 Fed. Reg. 87274 (December 2, 2016))."[480] This referred to the *2016 Privacy Order* in its entirety, which was summarized in the cited *Federal Register* document. The statutory term "rule," as used in the CRA, refers to "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[481] Thus, "rule"

Rcd 311 (2017), *aff'd in part and remanded in part*, *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019), *on remand*, Order on Remand, 35 FCC Rcd 12328 (2020), *ptns. for recon. pending*.

[475] *See* Resolution of Disapproval; 5 U.S.C. § 801(b)(1), (f); *see also 2017 CRA Disapproval Implementation Order*.

[476] Resolution of Disapproval.

[477] 5 U.S.C. § 801(b)(2).

[478] To be clear, although the CRA would permit the Commission to adopt a breach notification rule that is the same as the breach notification rule that was adopted by the *2016 Privacy Order*, the rule that we adopt here today has substantial differences.

[479] We reject arguments that there was insufficient notice for the Commission to adopt this interpretation of the effect of the CRA resolution of disapproval. *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 8. In pertinent part, notice under the APA requires "reference to the legal authority under which the rule is proposed" and "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b)(2), (3). The *Data Breach Notice* described the proposal to adopt expanded data breach notification requirements pursuant to its statutory authority under sections 222, 225, and other possible sources of authority. *See generally Data Breach Notice* at 1-26, paras. 1-61. In the course of this request for comment, the Commission sought specific comment regarding "the effect and scope of the Congressional disapproval of the *2016 Privacy Order*." *Id.* at 24, para. 52. This satisfies the requirements of the APA. Even beyond that, however, our interpretation flows from ordinary tools of statutory interpretation, first and foremost by focusing on the relevant statutory text and context. Contrary to the suggestion of some, *see* CTIA Dec. 6, 2023 *Ex Parte* at 8, we find nothing "novel" about this interpretive approach, providing additional grounds to conclude that the notice and comment requirements of the APA were satisfied here.

[480] Resolution of Disapproval.

[481] 5 U.S.C. § 804(3) (incorporating the definition of "rule" in 5 U.S.C. § 551, with exclusions); *id.* § 551(4) (defining "rule").

can and does refer to an entire decision that adopts rules.[482] The term "rule" can also refer to parts of such a decision, or to various requirements as adopted or amended by such a decision. In the context of the CRA's bar on reissuance, we must consider which rule is specified by that bar. The reissuance bar, 5 U.S.C. § 801(b)(2), provides that "a new rule that is substantially the same as such a rule may not be issued"—where "such a rule" refers to the rule specified in the joint resolution of disapproval as described in section 802.[483] As shown above, the joint resolution referred to the entirety of the *2016 Privacy Order*. Therefore, we conclude that the "rule" to which the reissuance bar applies is the entire *2016 Privacy Order* with all of the rule revisions adopted therein.[484]

137. We conclude that it would be erroneous to construe the resolution of disapproval as applying to anything other than all of the rule revisions, as a whole, adopted as part of the *2016 Privacy Order*. That resolution had the effect of nullifying each and every provision of the *2016 Privacy Order*—each of those parts being rules under the APA—but not "the rule" specified in the resolution of disapproval. By its terms, the CRA does not prohibit the adoption of a rule that is merely substantially similar to a limited portion of the disapproved rule or one that is the same as individual pieces of the disapproved rule.[485]

138. To prohibit an agency from making any of the individual decisions made in an entire disapproved rulemaking action would not only be contrary to the text of the resolution of disapproval, interpreted consistently with the CRA, but also would be contrary to the apparent intent of the CRA.

---

[482] In implementing Congress's resolution of disapproval, the Commission treated the *2016 Privacy Order* as a single rule. In a ministerial order, the Commission "simply recogniz[ed] the effect of the resolution of disapproval" should be that "the *2016 Privacy Order* 'shall be treated as though [it] had never taken effect.'" As a result, all of the changes that the *2016 Privacy Order* made to the Commission rules codified in the Code of Federal Regulations were reversed, with the result that all of the Commission rules in part 64, subpart U, were restored to how they read prior to their amendment by the *2016 Privacy Order*. *2017 CRA Disapproval Implementation Order*, 32 FCC Rcd at 5442-43 paras. 2, 3 (quoting 5 U.S.C. § 801(f)) (second alteration in original).

[483] 5 U.S.C. § 801(b)(2); *see also id.* § 802.

[484] Because it is contrary to our understanding of the appropriate focus under the CRA, we reject arguments that we must conduct the 5 U.S.C. § 801(b)(2) evaluation by reference specifically to the breach notification rule from the *2016 Privacy Order*. *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 7.

[485] *See generally* Michael J. Cole, *Interpreting the Congressional Review Act: Why the Courts Should Assert Judicial Review, Narrowly Construe "Substantially the Same," and Decline to Defer to Agencies Under* Chevron, 70 Admin. L. Rev. 53, 83-94 (2018) (arguing for a narrow interpretation of "substantially the same"). We reject arguments that because the CRA borrows from the APA's definition of "rule" as referring to the whole or a part of certain agency statements of general applicability and future effect, an agency cannot adopt a rule substantially similar to any part of an agency rulemaking decision that does not take effect due to a resolution of disapproval under the CRA. *See, e.g.*, CTIA Dec. 6 *Ex Parte* at 8. The key issue is not the definition of "rule" in the abstract, but the wording of 5 U.S.C. § 801(b)(2) (along with the wording of the resolution of disapproval itself). And 5 U.S.C. § 801(b)(2) is worded in singular terms—referring to "*A rule* that does not take effect (or does not continue) under paragraph (1) . . . " as opposed to saying "*Any rule* that does not take effect (or does not continue) under paragraph (1) . . . " or "*Rules* that do not take effect (or do not continue) under paragraph (1) . . . ." So even if there might be multiple APA rules that do not take effect as a result of a resolution of disapproval, the CRA's focus is on a singular "rule" that does not take effect. Since the whole *2016 Privacy Order* was the subject of the resolution of disapproval, and the whole *2016 Privacy Order* did not take effect as a result, we conclude that the whole *2016 Privacy Order* is the relevant "rule" for purposes of 5 U.S.C. § 801(b)(2). And although some commenters claim that our approach to interpreting the CRA could lead to uncertainty about what is subject to 5 U.S.C. § 801(b)(2), they do not identify any actual ambiguity as our approach is applied here—instead, they seemingly just dislike the outcome. *See, e.g.*, CTIA Dec. 6, 2024 *Ex Parte* at 8-9. Nor are we persuaded that Congress lacks the tools to address any concerns about the scope of a resolution of disapproval if any were to arise. *See* Dissenting Statement of Commissioner Carr at 1. For example, the record does not reveal why Congress could not specify the "relating to" criterion in the resolution of disapproval language required by 5 U.S.C. § 802(a) in more granular or detailed ways. Independently, Congress also always remains free to enact laws outside the CRA process that reject agency rules with as much detail and precision as they wish should ambiguity concerns become a practical problem.

When Congress adopted the CRA, it recognized that it would be necessary for agencies to interpret the scope of the bar on reissuance in the future. According to a floor statement that its authors intended to be authoritative,

> [t]he authors [of the CRA] intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.[486]

139. Accordingly, we observe that, in the floor debate on the resolution of disapproval in 2017, supporters of the resolution did not mention the breach notification provision apart from a brief reference.[487] Senators who spoke in favor of the resolution cited the *2016 Privacy Order*'s treatment of broadband providers and the information they hold as different from providers of other services on the internet.[488] The debate gives no reason to believe that the breach notification rule motivated those members of Congress who supported the resolution.[489]

140. As EPIC notes in its comments, Congressional disapproval of the *2016 Privacy Order* under the CRA was largely predicated on claims that the Order would create duplicative privacy authority

---

[486] Statement for the Record by Senators Nickles, Reid, and Stevens, 142 Cong. Rec. S3686 (Apr. 18, 1996) (post-enactment).

[487] *See Providing for Congressional Disapproval of a Rule Submitted by the Federal Communications Commission*, 163 Cong. Rec. S1925-55 (daily ed. Mar. 22, 2017), https://www.congress.gov/congressional-record/2017/3/22/senate-section/article/S1925-2; *Providing for Congressional Disapproval of a Rule Submitted by the Federal Communications Commission*, 163 Cong. Rec. H2478-86 (daily ed. Mar. 28, 2017), https://www.congress.gov/congressional-record/volume-163/issue-54/house-section/article/H2478-1. *But see* 163 Cong. Rec. H2479 (daily ed. Mar. 28, 2017) (statement of Rep. Burgess) (referencing the 2016 data breach consumer notice requirements among many other aspects of the *2016 Privacy Order*),

[488] *Id.*

[489] *See* Adam M. Finkel & Jason W. Sullivan, *A Cost-Benefit Interpretation of the "Substantially Similar" Hurdle in the Congressional Review Act: Can OSHA Ever Utter the E-Word (Ergonomics) Again?*, 63 Admin. L. Rev. 707, 740-41 (2011) (arguing that, because a resolution of disapproval must be all-or-nothing, a "far-reaching interpretation of 'substantially the same' would limit an agency's authority in ways Congress did not intend in exercising the veto"), *cited in* Cole, *supra* note 485, at 89. Although our conclusion that the whole *2016 Privacy Order* is the relevant "rule" for purposes of 5 U.S.C. § 801(b)(2) is fully justified even without considering the legislative history of the resolution of disapproval, we reject arguments that it is inappropriate to also look at that history and contentions that we are misinterpreting that history. *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 9; AT&T Dec. 6, 2023 *Ex Parte* at 2. In addition to legislative history of the CRA that indicates that the legislative history of each resolution of disapproval should be relevant, out of an abundance of caution given the lack of an authoritative determination specifying the details of how to evaluate whether a rule is substantially the same under 5 U.S.C. § 801(b)(2), we consider whether there are indicia from the legislative history of the resolution of disapproval here to inform that analysis. For instance, if the legislative history indicated that the resolution of disapproval of the *2016 Privacy Order* somehow hinged entirely or significantly on concern about some or all of the 2016 data breach reporting requirements, we then could consider whether and how to account for that in the 5 U.S.C. § 801(b)(2) analysis notwithstanding the fact that there is little practical overlap between this order and the entirety of the *2016 Privacy Order*. Although data breach notification issues occasionally appear to have been raised by of opponents of the resolution of disapproval, high-level statements by supporters of the resolution about "FCC overreach" or the like do not, without more, persuade us that the 2016 data breach notification requirements played a significant role in motivating the resolution of disapproval. Thus, we see nothing in the legislative history of the resolution of disapproval that would cause us to question our conclusion that our action here does not adopt substantially the same rule for CRA purposes.

with the Federal Trade Commission as relates to broadband Internet service providers.[490] A review of the Congressional record from 2017 reveals that this indeed appears to have been the animating justification for Congressional disapproval of the *2016 Privacy Order*.[491] Whatever the merits of such an argument, we find that it does not now preclude us from adopting the rules set forth in this Order. As EPIC notes, the rules we adopt today are not privacy measures directed at broadband Internet service providers, but rather, data security measures directed at providers of telecommunications, interconnected VoIP services, and TRS, and which build upon rules that have existed since 2007.[492] Thus, the primary animating justification behind Congressional disapproval of the *2016 Privacy Order* is irrelevant to the present case.

141. In addition, the revisions that we make here to the breach notification rule are different in substantial ways from those that Congress disapproved in 2017. The *2016 Privacy Order* was focused in large part on adopting privacy rules for broadband Internet access service, and also made a number of changes to the Commission's privacy rules more generally that, among other things, required carriers to disclose their privacy practices, revised the framework for customer choice regarding carriers' access, use, and disclosure of the customers' information, and imposed data security requirements in addition to data breach notification requirements.[493] When the *2016 Privacy Order* is viewed as a whole, it is clear that there is at most a small conceptual overlap between the adoption of data breach notification requirements at issue here and the many actions taken in that *Order* of which data breach notification requirements represented only a small fraction.

142. Independently, even assuming *arguendo* that the CRA were interpreted to require an evaluation on a more granular basis here, we are not persuaded that the requirements we adopt here are substantially the same as analogous requirements in the *2016 Privacy Order*.[494] For example, the customer notification requirement we adopt here is materially less prescriptive regarding the content and manner of customer notice than what the Commission adopted in 2016.[495] Further, the 2016 data breach notification rules for customer notifications and government agency notifications did not incorporate the good-faith exception from the definition of covered breaches that we adopt here.[496] With respect to the federal agency notification requirements, as compared to the 2016 rules, the rules we adopt here in that regard provide for the Commission and other law enforcement agencies to gain a much more complete picture of data breaches, including trends and emerging activities, consistent with the demonstrated need for such oversight.[497] Consequently, even assuming *arguendo* that one were to conduct the 5 U.S.C. § 801(b)(2) evaluation on a more granular basis, we are not persuaded that the data breach notification requirements we adopt here would be substantially the same as breach notification requirements adopted

---

[490] *See* EPIC Comments at 12; *Providing for Congressional Disapproval of a Rule Submitted by the Federal Communications Commission*, 163 Cong. Rec. H2489, H2489 (2017) (statement of Rep. Blackburn).

[491] *See, e.g.*, *Providing for Congressional Disapproval of a Rule Submitted by the Federal Communications Commission*, 163 Cong. Rec. H2489, H2489 (2017) (statement of Rep. Blackburn) (arguing that the Commission had "unilaterally swiped jurisdiction from the Federal Trade Commission [(FTC)]," that the "FTC has served as our Nation's sole online privacy regulator for over 20 years," and that "having two privacy cops on the beat will create confusion within the internet ecosystem and will end up harming consumers").

[492] EPIC Comments at 12.

[493] *See, e.g.*, *2016 Privacy Order*, 31 FCC Rcd at 13913-16, paras. 6-18 (summarizing the actions and decisions in the *2016 Privacy Order*).

[494] *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* Letter at 7.

[495] *See, e.g.*, *2016 Privacy Order*, 31 FCC Rcd at 14085, Appx. A (section 64.2006(a) specifying customer notification requirements).

[496] *See, e.g.*, *id*. at 14080, Appx. A (section 64.2002(c) defining "breach of security," "breach," or "data breach").

[497] *See, e.g.*, *id*. at 14085, Appx. A (section 64.2006(b), (c) providing for the Commission, FBI, and Secret Service to receive breach notifications, but only for breaches affecting 5,000 or more customers and only if the carrier does not reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach).

in the *2016 Privacy Order*.[498]

143. Nor are we adopting something substantially the same as the *2016 Privacy Order* as a whole through the aggregate effect of individual Commission actions.[499] For one, the theory that classification of broadband Internet access service as a telecommunications service will automatically subject those services to our privacy rules, including the data breach notification requirements adopted here, is belied by multiple considerations: (1) the Commission has simply sought comment on those classification issues in its *Open Internet Notice* and has not yet acted in that regard;[500] (2) the *2015 Open Internet Order* shows that the Commission is willing and able to decline to apply rules that might be triggered by a classification decision, having done so there, for example, by forbearing from all rules implementing section 222 pending consideration in a subsequent proceeding;[501] and (3) the *Open Internet Notice* sought comment on following the same approach to privacy that the Commission took in the *2015 Open Internet Order* and specifically noted the resolution of disapproval of the *2016 Privacy Order* as a relevant consideration bearing on how it proceeds there.[502] Our analysis also is not materially altered by arguments that the Commission otherwise has adopted "data security, customer authentication, employee training, and other requirements."[503] In addition to being unpersuaded that such requirements substantially "mirror provisions of the 2016 order,"[504] we independently are not persuaded that the aggregation of such requirements and the data breach notification requirements adopted here lead to such a significant overlap with the *2016 Privacy Order* as to render our collective actions substantially the same as the *2016 Privacy Order* as a whole.[505]

---

[498] Even assuming one were to conduct the 5 U.S.C. § 801(b)(2) evaluation at a more granular basis, we are not persuaded that the breach notification rule from the *2016 Privacy Order* is the right level of granularity, nor that the evaluation of whether rules are substantially the same should be conducted based on high-level policy similarities, as some commenters contend. *See, e.g.*, CTIA Dec. 6, 2023 *Ex Parte* at 7. For example, the customer notification requirement is itself a "rule" within the meaning of the APA, as is the federal agency notification requirement. Ultimately, however viewed, we are persuaded that the rules we adopt here are not substantially the same as a disapproved rule for purposes of the CRA.

[499] *See* Dissenting Statement of Commissioner Simington at 1.

[500] *See generally Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Notice of Proposed Rulemaking, FCC 23-83 (Oct. 20, 2023) (*Open Internet Notice*).

[501] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order, Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5823-24, para. 467 (2015) (*2015 Open Internet Order*).

[502] *Open Internet Notice*, FCC 23-83, para. 104 & n.352.

[503] Dissenting Statement of Commissioner Simington at 1.

[504] Dissenting Statement of Commissioner Simington at 1. For example, in the recent *SIM Swap Order*, the Commission adopted certain privacy requirements focused on wireless carriers' practices in the specific context of account transfers (or "swaps") from a device associated with one subscriber identity module (SIM) to a device associated with a different SIM on in connection with a wireless number being ported out. *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 (Nov. 16, 2023). That is a vastly different focus than the *2016 Privacy Order*, which focused on the general privacy practices of all carriers. *See generally 2016 Privacy Order*. Thus, even assuming *arguendo* some high-level conceptual similarities, the operation and practical effect is significantly different than even arguably analogous requirements that were part of the *2016 Privacy Order*.

[505] As discussed above, the primary focus of the *2016 Privacy Order* was privacy rules for broadband Internet access service, along with a number of changes to the Commission's privacy rules more generally that, among other things, required carriers to disclose their privacy practices, and revised the framework for customer choice regarding carriers' access, use, and disclosure of the customers' information. *See supra* note 493 and accompanying text. Given the other significant issues central to that decision, even assuming *arguendo* that there were some conceptual overlap between the issues addressed in the *2016 Privacy Order* and data security, customer authentication, and employee training requirements recently adopted by the Commission—and even considered in conjunction with the

(continued….)

IV. EFFECTIVE DATES

144. The revised recordkeeping and reporting requirements adopted in this Report and Order, including the revisions to 47 CFR §§ 64.2011 and 64.5111 set forth in Appendix A, are subject to approval by the Office of Management and Budget (OMB). Unless and until such time as OMB approves these new or modified requirements, the current, unmodified versions of 47 CFR §§ 64.2011 and 64.5111 shall continue to apply.

145. We direct the Wireline Competition Bureau to announce OMB approval and effective dates for the modified rules contained within this Order by subsequent public notice. Pursuant to this process, we anticipate that carriers of all sizes will have ample time to come into compliance with these requirements, and therefore reject CCA's request for a 12-month implementation timeline.[506]

V. PROCEDURAL MATTERS

146. *Final Regulatory Flexibility Analysis*. Pursuant to the Regulatory Flexibility Act of 1980 (RFA), as amended,[507] the Commission's Final Regulatory Flexibility Analysis is set forth in Appendix B. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[508]

147. *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 requirements will be submitted to OMB for review under section 3507(d) of the PRA.[509] OMB, the general public, and other federal agencies will be invited to comment on any new or

---

data breach notification rules we adopt here—we are not persuaded that the Commission has adopted substantially the same rule as the *2016 Privacy Order*. Separately, insofar as we consider the legislative history of the 2017 resolution of disapproval, data security, customer authentication, and employee training requirements likewise received only isolated mention, and then primarily with respect to broadband Internet access service. *See* 163 Cong. Rec. S1928 (daily ed. Mar. 22, 2017) (statement of Sen. Thune) (noting calls "for returning jurisdiction over broadband providers' privacy and data security practices to the FTC"); 163 Cong. Rec. H2485 (Mar. 28, 2017) (statement of Rep. Burgess) (including an op-ed in the record expressing concern about the loss of the FTC as "America's sole online privacy regulator" that enforced "privacy and data-security requirements"). Consequently, that legislative history does not reveal that the resolution of disapproval hinged entirely or significantly on concerns about such issues, even considered collectively. Thus, whether viewed alone or in the aggregate, we are not persuaded that we have adopted substantially the same rule as the *2016 Privacy Order* as a whole. *Cf.* Securities and Exchange Commission, *Disclosure of Payments by Resource Extraction Issuers*, 86 Fed. Reg. 4662, 4665 (Jan. 15, 2021) (ensuring that the new rule adopted there was not substantially the same as the rule previously subject to a resolution of disapproval under the CRA "is reasonably achieved by changing at least one of the two central discretionary determinations at the heart of the" previously disapproved rule and effectuating that by "requir[ing] less granularity in the payment disclosures than in the disapproved rule," which was itself "sufficient to comply with the CRA's requirements that the disapproved rule not be reissued in 'substantially the same form' and a new rule may not be 'substantially the same' as the disapproved rule."). And we note, of course, that Congressional disapproval of a particular rule implementing a statute does not nullify an agency's general authority under that statute. *Id.*; 142 Cong. Rec. S3686 (daily ed. Apr. 18, 1996) ("If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such rule, the agency may exercise its broad discretion to issue a substantially different rule. If the law that authorized the disapproved rule did not mandate the promulgation of any rule, the issuing agency may exercise its discretion not to issue any new rule. Depending on the law that authorized the rule, an issuing agency may have both options.").

[506] *See* CCA Dec. 8, 2023 *Ex Parte* at 3.

[507] *See* 5 U.S.C. § 603.

[508] *See id.* § 603(a).

[509] *See* NCTA Dec. 5, 2023 *Ex Parte* at 7 (requesting clarification as to which of the rules in the Order will be submitted to OMB for approval); CCA Dec. 8, 2023 *Ex Parte* at 2-3; *see also* CTIA Dec. 6, 2023 *Ex Parte* at 16 n.107.

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* 47 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.[510]

148. In this Report and Order, we have assessed the effects of (1) expanding the scope of the data breach notification rules to cover specific categories of PII that carriers hold with respect to their customers; (2) expanding the definition of "breach" to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a carrier, and such information is not used improperly or further disclosed; (3) requiring carriers to notify the Commission, in addition to Secret Service and FBI, as soon as practicable, and in no event later than seven business days after reasonable determination of a breach; (4) eliminating the requirement that carriers notify customers of a breach in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involved encrypted data and the carrier had definitive evidence that the encryption key was not also accessed, used, or disclosed; and (5) applying similar rules to TRS providers, and we find that the impact on small businesses with fewer than 25 employees will be minimal. While the Commission expanded the scope of the data breach notification rules, we also adopted a good-faith exception from the definition of breach which limits the reportable instances. Additionally, the Commission decided to utilize the existing reporting portal, which small carriers and TRS providers are already accustomed to using, for federal agency breach notifications rather than creating a new centralized portal. The Commission delegated authority to the Wireline Competition Bureau to coordinate with the Secret Service, the current administrator of the reporting facility, and the FBI, to the extent necessary, to ensure that the Commission will be notified when data breaches are reported, thereby ensuring that no additional burden would be imposed on small and other carriers and TRS providers from separate reporting requirements. We also exempted from the federal agency reporting requirement breaches that affect fewer than 500 customers and for which the carrier reasonably determines that no harm to customers is reasonably likely to occur, and instead require carriers to file with federal agencies an annual summary regarding all such breaches occurring in the previous calendar year. This annual reporting requirement is intended to minimize the burden of reporting such breaches to federal law enforcement and the Commission. In determining the content and format requirements of the annual report, the Commission instructed the Bureau to minimize the burdens on carriers and TRS providers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. Additionally, with the support of several small carriers, the Commission adopted a harm-based notification trigger for reporting breaches to customers, which allows small providers to focus their resources on data security and mitigation measures rather than generating notifications where harm to the consumer is unlikely.

149. *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).

150. *OPEN Government Data Act*. The OPEN Government Data Act,[511] requires agencies to make "public data assets" available under an open license and as "open Government data assets," *i.e.*, in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights,

[510] *See* 44 U.S.C. § 3506(c)(4).

[511] Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

and based on an open standard that is maintained by a standards organization.[512] This requirement is to be implemented "in accordance with guidance by the Director" of the OMB.[513] The term "public data asset" means "a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under [the Freedom of Information Act (FOIA)]."[514] A "data asset" is "a collection of data elements or data sets that may be grouped together,"[515] and "data" is "recorded information, regardless of form or the media on which the data is recorded."[516] We delegate authority, including the authority to adopt rules, to the Wireline Competition Bureau, in consultation with the agency's Chief Data Officer and after seeking public comment to the extent it deems appropriate, to determine whether to make publicly available any data assets maintained or created by the Commission pursuant to the rules adopted herein, and if so, to determine when and to what extent such information should be made publicly available. In doing so, the Bureau shall take into account the extent to which such data assets should not be made publicly available because they are not subject to disclosure under the FOIA.[517]

151. *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).

152. *Contact Person.* For further information, please contact Mason Shefa, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2494 or mason.shefa@fcc.gov.

VI. ORDERING CLAUSES

153. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 222, 225, 251, 303(b), 303(r), 332, and 705 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201, 202, 222, 225, 251, 303(b), 303(r), 332, 605, this Report and Order IS ADOPTED.

154. IT IS FURTHER ORDERED that part 64 of the Commission's rules IS AMENDED as set forth in Appendix A.

155. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective thirty (30) days after publication of the text or a summary thereof in the Federal Register, except that the amendments to 47 CFR §§ 64.2011 and 64.5111, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, will not be effective until the Office of Management and Budget completes any required review under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to publish a notice in the Federal Register announcing completion of such review and the relevant effective date. It is our intention in adopting the foregoing Report and Order that, if any provision of the Report and Order or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Report and Order and the rules not deemed unlawful, and the application of such Report and Order and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

156. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference

[512] 44 U.S.C. § 3502(20), (22) (definitions of "open Government data asset" and "public data asset"); *id.* § 3506(b)(6)(B) (public availability).

[513] OMB has not yet issued final guidance.

[514] 44 U.S.C. § 3502(22).

[515] *Id.* § 3502(17).

[516] *Id.* § 3502(16).

[517] *See, e.g.*, 5 U.S.C. § 552(b)(4), (6)-(7) (exemptions concerning confidential commercial information, personal privacy, and information compiled for law enforcement purposes, respectively).

Information Center, SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

157. 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, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed above, the Federal Communications Commission part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend Subpart U by revising the Subpart heading to read as follows:

Subpart U – Privacy of Customer Information

3. Amend § 64.2011 by revising paragraphs (a) through (e) to read as follows:

§ 64.2011 Notification of security breaches.

(a) *Commission and Federal Law Enforcement Notification.* Except as provided in paragraph (a)(3) of this section, as soon as practicable, but no later than seven business days, after reasonable determination of a breach, a telecommunications carrier shall electronically notify the Commission, the United States Secret Service (Secret Service), and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility on its website.

(1) A telecommunications carrier shall, at a minimum, include in its notification to the Commission, Secret Service, and FBI:

(i) the carrier's address and contact information;

(ii) a description of the breach incident;

(iii) the method of compromise;

(iv) the date range of the incident;

(v) the approximate number of customers affected;

(vi) an estimate of financial loss to the carrier and customers, if any; and

(vii) the types of data breached.

(2) If the Commission, or a law enforcement or national security agency, notifies the carrier that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the carrier when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security.

(3) A telecommunications carrier is exempt from the requirement to provide notification to the Commission and law enforcement pursuant to paragraph (a) of this section of a breach that affects fewer than 500 customers and the carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. In circumstances where a carrier initially determined that it qualified for an exemption under this subsection, but later discovers information such that this exemption no longer applies, the carrier must report the breach to federal agencies as soon as practicable, but no later than within seven business days of this discovery, as required in

paragraph (a).

(b) *Customer Notification.* Except as provided in paragraph (a)(2) of this section, a telecommunications carrier shall notify affected customers of a breach of covered data without unreasonable delay after notification to the Commission and law enforcement pursuant to paragraph (a) of this section, and no later than 30 days after reasonable determination of a breach. This notification shall include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that such a breach affected or may have affected that customer's data. Notwithstanding the foregoing, customer notification shall not be required where a carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed.

(c) *Recordkeeping.* All carriers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the Commission, Secret Service, and the FBI pursuant to paragraph (a) of this section, and notifications made to customers pursuant to paragraph (b) of this section. The record shall include, if available, dates of discovery and notification, a detailed description of the covered data that was the subject of the breach, the circumstances of the breach, and the bases of any determinations regarding the number of affected customers or likelihood of harm as a result of the breach. Carriers shall retain the record for a minimum of 2 years.

(d) *Annual Reporting of Certain Small Breaches.* A telecommunications carrier shall have an officer, as an agent of the carrier, sign and file with the Commission, Secret Service, and FBI, a summary of all breaches occurring in the previous calendar year affecting fewer than 500 individuals and where the carrier could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. This filing shall be made annually, on or before February 1 of each year, through the central reporting facility, for data pertaining to the previous calendar year.

(e) *Definitions.*

(1) As used in this section, a "breach" occurs when a person, without authorization or exceeding authorization, gains access to, uses, or discloses covered data. A "breach" shall not include a good-faith acquisition of covered data by an employee or agent of a telecommunications carrier where such information is not used improperly or further disclosed.

(2) As used in this section, "covered data" includes both a customer's CPNI, as defined by § 64.2003, and personally identifiable information.

(3) As used in this section, "encrypted data" means covered data that has been transformed through the use of an algorithmic process into a form that is unusable, unreadable, or indecipherable through a security technology or methodology generally accepted in the field of information security.

(4) As used in this section, "encryption key" means the confidential key or process designed to render encrypted data useable, readable, or decipherable.

(5) Except as provided in paragraph (e)(6) of this section, as used in this section, "personally identifiable information" means:

(i) An individual's first name or first initial, and last name, in combination with any government-issued identification numbers or information issued on a government document used to verify the identity of a specific individual, or other unique identification number used for authentication purposes;

(ii) An individual's user name or e-mail address, in combination with a password or security question and answer, or any other authentication method or information necessary to permit access to an account; or

(iii) Unique biometric, genetic, or medical data.

(iv) Notwithstanding the above:

(A) Dissociated data that, if linked, would constitute personally identifiable information is to be considered personally identifiable if the means to link the dissociated data were accessed in connection with access to the dissociated data; and

(B) Any one of the discrete data elements listed in paragraphs (e)(5)(i) to (iii) of this section, or any combination of the discrete data elements listed above is personally identifiable information if the data element or combination of data elements would enable a person to commit identity theft or fraud against the individual to whom the data element or elements pertain.

(6) As used in this section, "personally identifiable information" does not include information about an individual that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

* * * * *

4. Amend § 64.5111 by revising paragraphs (a) through (e) to read as follows:

§ 64.5111 Notification of security breaches.

(a) *Commission and Federal Law Enforcement Notification.* Except as provided in paragraph (a)(3) of this section, as soon as practicable, but not later than seven business days, after reasonable determination of a breach, a TRS provider shall electronically notify the Disability Rights Office of the Federal Communications Commission's (Commission) Consumer and Governmental Affairs Bureau, the United States Secret Service (Secret Service), and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility on its website.

(1) A TRS provider shall, at a minimum, include in its notification to the Commission, Secret Service, and FBI:

(i) the TRS provider's address and contact information;

(ii) a description of the breach incident;

(iii) a description of the customer information that was used, disclosed, or accessed;

(iv) the method of compromise;

(v) the date range of the incident;

(vi) the approximate number of customers affected;

(vii) an estimate of financial loss to the provider and customers, if any; and

(viii) the types of data breached.

(2) If the Commission, or a law enforcement or national security agency notifies the TRS provider that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the TRS provider not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the TRS provider when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the TRS provider, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by TRS providers.

(3) A TRS provider is exempt from the requirement to provide notification to the Commission and law enforcement pursuant to paragraph (a) of this section of a breach that affects fewer than 500

customers and the carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. In circumstances where a carrier initially determined that it qualified for an exemption under this subsection, but later discovers information such that this exemption no longer applies, the carrier must report the breach to federal agencies as soon as practicable, but not later than within seven business days of this discovery, as required in paragraph (a).

(b) *Customer Notification.* Except as provided in paragraph (a)(2) of this section, a TRS provider shall notify affected customers of breaches of covered data without unreasonable delay after notification to the Commission and law enforcement as described in paragraph (a) of this section, and no later than 30 days after reasonable determination of a breach. This notification shall include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that such a breach affected or may have affected that customer's data. Notwithstanding the foregoing, customer notification shall not be required where a TRS provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involves encrypted data and the provider has definitive evidence that the encryption key was not also accessed, used, or disclosed.

(c) *Recordkeeping.* A TRS provider shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the Commission, Secret Service, and the FBI pursuant to paragraph (a) of this section, and notifications made to customers pursuant to paragraph (b) of this section. The record shall include, if available, the dates of discovery and notification, a detailed description of the covered data that was the subject of the breach, the circumstances of the breach, and the bases of any determinations regarding the number of affected customers or likelihood of harm as a result of the breach. TRS providers shall retain the record for a minimum of 2 years.

(d) *Annual Reporting of Certain Small Breaches.* A TRS provider shall have an officer, as an agent of the provider, sign and file with the Commission, Secret Service, and FBI, a summary of all breaches occurring in the previous calendar year affecting fewer than 500 individuals and where the provider could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. This filing shall be made annually, on or before February 1 of each year, through the central reporting facility, for data pertaining to the previous calendar year.

(e) *Definitions.*

(1) As used in this section, a "breach" occurs when a person, without authorization or exceeding authorization, gains access to, uses, or discloses covered data. A "breach" shall not include a good-faith acquisition of covered data by an employee or agent of a TRS provider where such information is not used improperly or further disclosed.

(2) As used in this section, "covered data" includes (1) a customer's CPNI, as defined by section 64.5103 of this chapter; (2) personally identifiable information, as defined by section 64.2011(e)(5) of this chapter; and (3) the content of any relayed conversation within the meaning of § 64.604(a)(2)(i).

(3) As used in this section, "encrypted data" means covered data that has been transformed through the use of an algorithmic process into a form that is unusable, unreadable, or indecipherable through a security technology or methodology generally accepted in the field of information security.

(4) As used in this section, "encryption key" means the confidential key or process designed to render encrypted data useable, readable, or decipherable.

* * * * *

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 *Data Breach Reporting Requirements* (*Data* Breach *Notice*), released in January 2023.[2] The Commission sought written public comment on the proposals in the *Data Breach Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the *Report and Order*

2. The *Report and Order* takes several important steps aimed at updating the Commission's rules regarding data breach notifications, both to federal agencies and to customers, to better protect consumers from the dangers associated with data security breaches of customer information and to ensure that the Commission's rules keep pace with modern challenges.

3. First, the Commission expands the scope of the data breach notification rules to cover various categories of personally identifiable information (PII) that carriers hold with respect to their customers. Second, the Commission expands the definition of "breach" for telecommunications carriers[4] to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a carrier, and such information is not used improperly or futher disclosed. Third, we require carriers to notify the Commission, in addition to the United States Secret Service (Secret Service) and Federal Bureau of Investigation (FBI), as soon as practicable, and in no event later than seven business days after reasonable determination of a breach. Fourth, we eliminate the requirement that carriers notify customers of a breach in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach, or where a breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed. Fifth, we eliminate the mandatory waiting period for carriers to notify customers, and instead requires carriers to notify customers of breaches of covered data without unreasonable delay after notification to federal agencies, and in no case more than 30 days following reasonable determination of a breach, unless a delay is requested by law enforcement. Sixth, and finally, to ensure that telecommunications relay service (TRS) customers enjoy the same level of protections as customers of telecommunications carriers, we adopt equivalent requirements for TRS providers. By adopting these requirements we increase the the protection of consumers from improper use and/or disclosure of their information consistent with approaches to protect the public adopted by our federal and state government partners.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the Commission considered the general comments received about the potential impact of the rules proposed in the IRFA on small entities and took steps where

[1] 5 U.S.C. § 604. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See Data Breach Reporting Requirements*, WC Docket No. 22-21, Notice of Proposed Rulemaking, FCC 22-102 (2023) (*Data Breach Notice*).

[3] 5 U.S.C. § 604.

[4] As in the *Data Breach Notice*, in the *Report and Order* we refer to telecommunications carriers and interconnected VoIP providers collectively as "telecommunications carriers" or "carriers," consistent with our existing Part 64, Subpart U rules. *See Data Breach Notice,* at 3, para. 3 n.12. In doing so, the Commission does not address the regulatory classification of interconnected VoIP service or interconnected VoIP service providers. 47 CFR § 64.2003(o) (defining *telecommunications carrier* or *carrier* for purposes of Subpart U to include an entity that provides interconnected VoIP service as that term is defined in 47 CFR § 9.3).

appropriate and feasible, as discussed below, to reduce the compliance burden and the economic impact of the rules adopted in the *Report and Order* on small 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.[5] 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.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[8] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[10] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[11] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[12]

8. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[13] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual

---

[5] 5 U.S.C. § 604(a)(3).

[6] *See id.* § 604(a)(4).

[7] *Id.* § 601(6).

[8] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

[9] *See* 15 U.S.C. § 632.

[10] *See* 5 U.S.C. § 601(3)-(6).

[11] *See* SBA, Office of Advocacy, *Frequently Asked Questions, "What is a small business?"* (Mar. 2023), https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf.

[12] *Id*.

[13] *See* 5 U.S.C. § 601(4).

electronic filing requirements for small exempt organizations.[14] 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.[15]

9. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[16] U.S. Census Bureau data from the 2017 Census of Governments[17] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[18] Of this number there were 36,931 general purpose governments (county[19], municipal and town or township[20]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[21] with enrollment

[14] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[15] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[16] *See* 5 U.S.C. § 601(5).

[17] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7." *See also* U.S. Census Bureau, *About Census of Governments*, https://www.census.gov/programs-surveys/cog/about.html (last updated Nov. 2021).

[18] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[19] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[20] *See id. at* tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[21] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.[22] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[23]

1. Wireline Carriers

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[24] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[25] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[26] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[27]

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[28] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[29] Of this number, 2,964 firms operated with fewer than 250 employees.[30] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[31] Of these providers, the Commission estimates that 4,146

[22] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[23] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

[24] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[25] *Id.*

[26] *Id.*

[27] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[28] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[29] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[30] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[31] 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

providers have 1,500 or fewer employees.[32] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[33] is the closest industry with an SBA small business size standard.[34] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[35] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[36] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[37] Of this number, 2,964 firms operated with fewer than 250 employees.[38] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[39] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[40] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[41] is the closest industry with an SBA small business size standard.[42] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[43] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[44] Of this number, 2,964 firms

[32] *Id.*

[33] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[34] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[35] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[36] *Id.*

[37] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[38] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[39] 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.

[40] *Id.*

[41] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[42] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[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.

operated with fewer than 250 employees.[45] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[46] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[47] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

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[48] is the closest industry with an SBA small business size standard.[49] 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 in this industry that operated 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 1,212 providers that reported they were incumbent local exchange service providers.[53] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[54] 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 (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.[55] Wired Telecommunications Carriers[56] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having

---

[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] 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.

[47] *Id.*

[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] *Id.*

[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] 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.

[54] *Id.*

[55] 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.

[56] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

1,500 or fewer employees as small.[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 3,378 providers that reported they were competitive local exchange service providers.[60] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[61] 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[62] is the closest industry with a SBA small business size standard.[63] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[64] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[65] Of this number, 2,964 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 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.[67] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

16. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[68] 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

---

[57] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[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] 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.

[61] *Id.*

[62] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[63] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[64] *Id.*

[65] *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.

[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] 47 U.S.C. § 543(m)(2).

the definition of a small cable operator.[69] Based on industry data, only six cable system operators have more than 498,000 subscribers.[70] 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.[71] 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[72] is the closest industry with a SBA small business size standard.[73] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[74] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[75] Of this number, 2,964 firms operated with fewer than 250 employees.[76] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.[77] Of these providers, the Commission estimates that 87 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.

2. Wireless Carriers

18. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide

---

[69] *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).

[70] 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).

[71] 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).

[72] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[73] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[74] *Id.*

[75] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&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] 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

[78] *Id.*

communications via the airwaves.[79] 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.[80] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[81] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[82] Of that number, 2,837 firms employed fewer than 250 employees.[83] 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.[84] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[85] 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."[86] 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.[87] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[88] Of this number, 242 firms had revenue of less than $25 million.[89] 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.[90] Of these providers, the Commission estimates that approximately

[79] *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.

[80] *Id.*

[81] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[82] *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.

[83] *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.

[84] 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.

[85] *Id.*

[86] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[87] *See* 13 CFR § 121.201, NAICS Code 517410.

[88] *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.

[89] *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.

[90] 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 providers have 1,500 or fewer employees.[91] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

3. Resellers

20. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.[92] 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.[93] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[94] Mobile virtual network operators (MVNOs) are included in this industry.[95] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[96] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[97] Of that number, 1,375 firms operated with fewer than 250 employees.[98] 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.[99] Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.[100] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[101] 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.[102] Mobile virtual network operators (MVNOs) are included in this industry.[103] The SBA small business size standard for Telecommunications Resellers

---

[91] *Id.*

[92] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[93] *Id.*

[94] *Id*.

[95] *Id*.

[96] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[97] *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.

[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.

[99] 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.

[100] *Id.*

[101] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[102] *Id.*

[103] *Id*.

classifies a business as small if it has 1,500 or fewer employees.[104] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[105] Of that number, 1,375 firms operated with fewer than 250 employees.[106] 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.[107] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[108] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers[109] 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.[110] Mobile virtual network operators (MVNOs) are included in this industry.[111] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[112] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[113] Of that number, 1,375 firms operated with fewer than 250 employees.[114] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.[115] Of these providers, the Commission estimates that 61 providers have 1,500 or fewer

---

[104] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[105] *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.

[106] *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.

[107] 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

[108] *Id.*

[109] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[110] *Id.*

[111] *Id*.

[112] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[113] *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.

[114] *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] 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

employees.[116] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities. Other Entities

23. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[117] 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.[118] 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.[119] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[120] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[121] Of those firms, 1,039 had revenue of less than $25 million.[122] 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

24. In the *Report and Order*, we expanded the scope of the Commission's breach notification rules to cover various categories of customer PII held by telecommunications carriers. We also adopted a requirement that all telecommunications carriers notify the Commission, in addition to the Secret Service and the FBI, as soon as practicable, and in no event later than seven business days after reasonable determination of a breach of covered data. We exempted from this notification requirement breaches that affect fewer than 500 customers and for which the carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. Instead, we required carriers to sign and file with the Commission and other law enforcement an annual summary regarding all such breaches occurring in the previous calendar year. Carriers must also notify affected customers of breaches, with the exception of instances where a carrier can reasonably determine that no harm to such customers is reasonably likely to occur as a result of the breach. Additionally, we applied similar rules to TRS providers.[123]

25. Our review of the record included comments about unique burdens for small businesses that may be impacted by the notification requirements adopted in the *Report and Order*. Accordingly, the Commission considered, and adopted provisions to mitigate, some of those concerns. For example, the

---

[116] *Id.*

[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] *Id.*

[119] *Id.*

[120] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[121] *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.

[122] *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.

[123] The breach notification and reporting obligations for TRS providers to covered data which includes TRS call content, includes customer PII and Customer Proprietary Network Information (CPNI).

Commission decided to utilize the existing reporting portal, which small and other carriers and TRS providers are already accustomed to using to notify the Commission along with the Secret Service and FBI of breaches rather than creating a centralized reporting facility operated by the Commission to report breaches to the Commission and these agencies as proposed in the *Data Breach Notice*. As such, the Commission anticipates that the requirement to notify it of data breaches will have de minimis cost implications because small and other carriers and TRS providers are already obligated to notify the Secret Service and FBI of such breaches, and will use the existing portal to do so. The Commission delegated authority to the Wireline Competition Bureau to coordinate with the Secret Service, the current administrator of the reporting facility, and the FBI, to the extent necessary, to ensure that the Commission will be notified when data breaches are reported, thereby ensuring that no additional burden would be imposed on small and other carriers and TRS providers. The Commission also adopted a threshold trigger that permits carriers and TRS providers to forgo notifying federal agencies of breaches that are limited in scope and unlikely to pose harm to customers, instead requiring small and other carriers and TRS providers to maintain the information, and file an annual summary of such breaches. Additionally, with the support of several small carriers, the Commission adopted a harm-based notification trigger for reporting breaches to customers, which allows small and rural providers to focus their resources on data security and mitigation measures rather than generating notifications where harm to the consumer is unlikely.[124]

26. In the *Report and Order* we also adopted a "without unreasonable delay, but no later than 30 days after reasonable determination of the breach" timeframe for notifying customers of covered data breaches. Consistent with the comments in support of small carriers interests, we recognize that this reporting standard can take into account factors such as the provider's size, as a small carrier may have limited resources and could require additional time to investigate a data breach than a large carrier.[125] We note that many state laws similarly require breach notifications which are in line with the requirements that the Commission adopts today. Therefore, although the Commission cannot quantify the compliance costs, we do not expect the adopted rules to impose any significant cost burdens for small entities, or require these entities to hire professionals to meet their compliance obligations.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. 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."[126]

28. The Commission took steps and considered alternatives in this proceeding that may reduce the impact of the adopted rule changes on small entities. For example, our expansion of the definition of "breach" included consideration of whether to include situations where a telecommunications carrier, or a third party discovers conduct that could have reasonably led to exposure of customer CPNI, even if it has not yet determined if such exposure occurred.[127] Small and other

[124] Blooston Rural Carriers Comments at 2; WISPA Comments at 5.

[125] ACA Connects Comments at 14; Blooston Rural Carriers Comments at 5-6; Blooston Rural Carriers Reply at 3 ("A reasonableness timeframe will allow service providers to respond more quickly when circumstances warrant, while at the same time allowing flexibility if a small service provider has limited personnel and/or resources available and is focused on addressing and minimizing harm to consumers.").

[126] 5 U.S.C. § 604(a)(6).

[127] *Data Breach Notice* at 10, para. 14.

commenters generally opposed such an expansion,[128] and we ultimately declined to expand "breach" to include these situations. Conversely, although some commenters on behalf of small entities opposed requiring breach notification to the Commission, we were not persuaded by their arguments.[129] We disagreed that the existing requirement to notify the Secret Service and the FBI is sufficient and that adding the Commission to the list of recipients of the same breach notifications Commission rules already require carriers to submit would impose any additional burden on carriers. Several actions we take in the *Report and Order* will avoid imposing additional burdens on small and other carriers who have to file breach notifications with the Commission.

29. As an initial matter the Commission considered, and included a good-faith exception that excluded from the definition of "breach" a good-faith acquisition of covered data by an employee or agent of a carrier where such information is not used improperly or further disclosed.[130] We believe this exception will help avoid excessive notifications to consumers, and reduce reporting burdens on small and other carriers.[131] Furthermore, in the *Data Breach Notice*, the Commission proposed to create a new portal for reporting breaches to the Commission. However, in the *Report and Order* we decided instead to make use of the existing portal which small and other carriers and TRS providers are already accustomed to using for data breach reporting requirements to federal law enforcement agencies. Our decision to continue using a portal that small and other carriers and providers are already familiar and comfortable working with reduces the administrative burdens on small entities of learning a new mechanism and creating new reporting processes. Additionally, the contents of the notification to the Commission are the same fields that carriers and providers already report to the Secret Service and the FBI. We agreed with commenters on behalf of small entities that the breach notification information small and other carriers and providers are required to submit to the FBI and Secret Service is largely sufficient, and the Commission should generally require reporting of the same information.[132] As such, the impact of also reporting the breach to the Commission should be de minimis on small carriers and providers. The Commission considered adopting a lower reporting threshold for the affected-customer notification of no-harm-risk breaches to the federal agencies but ultimately decided to adopt a 500-customer threshold because that is consistent with many other state laws, and would therefore promote consistency and efficiency in compliance. A lower threshold could impose higher burdens on small and other carriers and providers, so we declined to adopt such a rule. Likewise for consistency and efficiency, we similarly declined to adopt a threshold of 5000 affected customers to trigger notification to federal

[128] ACA Connects Comments at 4-5 n.10; USTelecom Comments at 5-6; WISPA Comments at 4; CTIA Comments at 27; Verizon Comments at 9-10; WTA Reply at 2 (contending that "conduct or security weaknesses that theoretically or potentially could have led to exposure of CPNI (but where there is no evidence that they actually did) are matters for carrier corrective actions and employee training . . .").

[129] WISPA Comments at 6.

[130] *Data Breach Notice* at 9, para. 14. In the *Data Breach Notice*, we used the term "exemption" instead of "exception" when asking commenters whether we should exclude from the definition of "breach" a good-faith acquisition of covered data. *See id.* at 10, para. 14. For the purpose of clarity, we instead use the word "exception" here to describe this exclusion. While we make this exception to our definition of "breach," we nevertheless expect carriers to "take reasonable measures" in such scenarios to protect such customer information from improper use or further disclosure, which may, for example, involve requiring that such an employee or agent destroy the data upon realizing that the data was disclosed without, or in excess of, authorization. *Cf.* 47 CFR § 64.2010(a) (requiring telecommunications carriers to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI).

[131] Blooston Rural Carriers Comments at 2 (Arguing that a good-faith exception will prevent carriers from "unnecessarily confus[ing] and alarm[ing] consumers" in such low-risk situations); National Rural Electric Cooperative Association (NRECA) Reply at 4 (Arguing that without the exception, "more serious data breaches [will potentially] become lost in the 'noise' of multiple notifications.")

[132] WISPA Comments at 7 (Arguing that "the information currently submitted through the FBI/Secret Service reporting facility is largely sufficient and that generally the same information should be reported" under the Commission's updated rules).

agencies.[133] The Commission also considered ways to reduce the burden of the annual reporting requirement for breaches affecting fewer than 500 individuals and where the carrier or TRS provider could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. In determining the content and format requirements of the annual report, the Commission instructed the Bureau to minimize the burdens on carriers and TRS providers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. At a minimum, the Commission directed the Bureau to develop requirements that are less burdensome than what is required for individual breach submissions to the reporting facility, and to consider streamlined ways for filers to report this summary information.

30. The Commission also considered adopting minimum requirements for the contents of customer notifications for telecommunications carriers and TRS providers. However, we declined to impose such minimum requirements on carriers and TRS providers because doing so may create unnecessary burdens on carriers and TRS providers, particularly small ones. Specifically, we considered but declined to adopt minimum reporting requirements harmonizing content requirements for carriers with the information required under the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) as part of their notifications to federal agencies.[134] In the absence of final rules, and a potential for imposing duplicative or inconsistent fields,[135] by declining to adopt such a requirement we minimize the economic impact for small entities. Relatedly, we declined to adopt a specific method of notification for customers, instead deciding that carriers and TRS providers have pre-established methods of reaching their customers, each carrier or TRS provider is in the best position to know how best to reach their customers, and imposing a specific method would add unnecessary burdens to the industry. The Commission also considered requiring notification to all customers whenever a breach occurred. Such a requirement would lead to increased obligations to notify customers of every instance which qualified as a "breach" under the expanded definition and scope of the rules described in the *Report and Order*. However, by adopting the harm-based trigger, we limit the applicability of the customer-notification obligations to breaches which are likely to cause harm to customers, thereby reducing burdens on small and other telecommunications carriers and TRS providers. In addition, we also adopted a safe harbor under which customer notification is not required where a breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed, further reducing burdens on small and other carriers from the Commission's customer notification requirements.

31. The Commission's actions and the considerations discussed above lead us to believe that the new requirements adopted in the *Report and Order* are minimally burdensome, and small carriers and TRS providers should not have any increased regulatory burdens, or significant compliance issues with including these new breach notification requirements in their existing processes. Nevertheless, the importance of the breach notification requirements adopted in the *Report and Order* to safeguard the public against improper use or disclosure of their customer data, to hold telecommunications carriers and TRS providers accountable, and to ensure customers are provided with the necessary resources to protect

[133] WTA Comments at 7; Blooston Rural Carriers Reply at 5.

[134] *Data Breach Notice* at 14, para. 27.

[135] ACA Connects Comments at 9-10 n.23 ("[A]t this juncture there is no way for the Commission to predict with any certainty whether, and if so to what degree, any revised data breach notification rules the Commission adopts would align with those ultimately adopted by CISA. . . . [T]he substance of the eventual CISA rules is too speculative for the Commission to consider harmonizing its data breach notification rules with CISA's cyber incident reporting rules at this time. Once both agencies adopt their respective incident notification rules, the Commission may further evaluate how to minimize potential duplicate reporting of CPNI breaches arising from cyber incidents, for instance by carving out reporting under the Commission's rules in favor of reporting to CISA where the incident is cyber-based."); Blooston Rural Carriers Comments at 4 (advocating for coordination of our data breach reporting requirements with the CISA "once data breach reporting under the recently-passed [CIRCIA] is in place"); CCA Comments at 3-4 ("The Commission should refrain from needlessly duplicating cyber incident reporting requirements currently being implemented by the [CISA].").

themselves in the event their data through their association with a telecommunications carrier or TRS provider is compromised, outweighs any minimal burdens that telecommunications carriers and TRS providers may experience in providing information to the Commission, and federal law enforcement agencies.

G. Report to Congress

32. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[136] 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* (or summaries thereof) will also be published in the Federal Register.[137]

[136] *Id.* § 801(a)(1)(A).

[137] *See id*. § 604(b).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Data Breach Reporting Requirements*, WC Docket No. 22-21, Report and Order (December 13, 2023)

It has been sixteen years since the Federal Communications Commission last updated its policies to protect consumers from data breaches. Sixteen years! To be clear, that was before the iPhone was introduced. There were no smart phones, there was no app store, there were no blue and green bubbles for text. It was a long time ago. In the intervening years a lot has changed about when, where, and how we use our phones, and what data our providers collect about us when we do. But not the FCC's data breach rules; they remain stuck in the analog age.

Today we fix this problem. We update our policies to protect consumers from digital age data breaches. We make clear that under the Communications Act carriers have a duty to protect the privacy and security of consumer data.

First, we modernize our data breach rules to make clear they include all personally identifiable information. In the past, these rules have only prohibited the disclosure of information about who we call and when. But consumers also deserve to know if their carrier has disclosed their social security number or financial data or other sensitive information that could put them in harm's way. We fix that today—and it is overdue.

Second, we modernize our data breach rules to make clear they cover intentional and inadvertent disclosure of customer information. Consumers deserve protection regardless of whether the release of their personally identifiable information was intentional or accidental. Either way, they could find themselves in trouble, so our rules need to address both.

Third, we modernize our standards for notification. That means in the event of a data breach, your carrier has to tell the FCC and tell you in a timely way just what happened and what personal information may be at risk. Our old rules required carriers to wait seven business days before telling consumers what breaches had taken place. But there is no reason why consumers should have to wait that long before learning that their personal information has been stolen or misused.

Finally, we update reporting requirements associated with data breaches. We also make clear our policies apply to telecommunications relay service providers, so that those with disabilities get the same protections as everyone else.

These are necessary updates. Find a consumer with a phone anywhere and they would tell you every one of these changes make sense. What makes no sense is leaving our policies stuck in the analog era. Our phones now know so much about where we go and who we are, we need rules on the books that make sure carriers keep our information safe and cybersecure.

I want to thank the Commission's Privacy and Data Protection Task Force for their input into this effort and work to update our privacy and security policies across the board. I also want to note that with the help of the task force, for the first time ever the FCC has signed Memoranda of Understanding with Attorneys General from Pennsylvania, Illinois, Connecticut, and New York who are committing to work with us on privacy, data protection, and cybersecurity enforcement matters.

A thank you also goes to our colleagues at the U.S. Secret Service and Federal Bureau of Investigation for their input and support on this effort. Let me also commend staff at the agency for their work, including Callie Coker, Adam Copeland, Trent Harkrader, Melissa Kirkel, Jodie May, Kimia Nikseresht, Zach Ross, Mason Shefa, and John Visclosky from the Wireline Competition Bureau; Robert

Aldrich, Diane Burstein, Aaron Garza, Eliot Greenwald, Ike Ofobike, Alejandro Roark, Michael Scott, and Mark Stone from the Consumer and Governmental Affairs Bureau; Maureen Bizhko, John Blumenschein, Justin Cain, Michael Connelly, Debra Jordan, Nicole McGinnis, Erika Olsen, Austin Randazzo, and Chris Smeenk from the Public Safety and Homeland Security Bureau; Hunter Deeley, Loyaan Egal, Peter Hyun, Ryan McDonald, Victoria Randazzo, Phillip Rosario, Kristi Thompson, and Shana Yates from the Enforcement Bureau; Barbara Esbin, Garnet Hanly, and John Lockwood from the Wireless Telecommunications Bureau; Michael Janson, Douglas Klein, Marcus Maher, Richard Mallen, Royce Sherlock, Anjali Singh, and Elliot Tarloff from the Office of General Counsel; Mark Azic, Eugene Kiselev, Giulia McHenry, and Steven Rosenberg from the Office of Economics and Analytics; and Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities.

DISSENTING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: *Data Breach Reporting Requirements*, Report and Order, WC Docket No. 22-21.

In 2016, the FCC adopted a data breach notification rule in a partisan, 3-2 decision. In 2017, the House, the Senate, and the President all came together and nullified that rule by passing a joint resolution of disapproval under the Congressional Review Act (CRA). It was a rare rebuke of an agency rule. Indeed, in the 27 years since Congress enacted the CRA, the law has only been used 20 times. It is strong medicine, too. When a President signs a CRA into a law, it not only prohibits an agency from readopting the relevant rule, it also prohibits the agency from enacting a substantially similar rule in the future without specific legislative authorization from Congress. In other words, when an agency earns the distinction of having a rule nullified by the CRA, the Legislative Branch and Executive Branch are joining together to take back the agency's rulemaking authority in the relevant area and, going forward, future regulation, if any, must come from Congress itself. As a constitutional matter, administrative agencies have an obligation to abide by these decisions.

Yet today, the Commission makes no real attempt to explain how the data breach rule we adopt today is not the same or substantially similar to the one nullified by the House, the Senate, and the President in the 2017 CRA.[1] This plainly violates the law.

The FCC's only real defense is one that reads the CRA out of the United States Code altogether. The Order notes that the 2016 FCC decision adopted several rules—all of which were nullified by the 2017 CRA. But in the Order's view, the CRA does not prohibit the FCC from putting any one of those rules (or even some combination of them) back in place here provided that the FCC does not put all of those 2016 rules back in place in this one decision. This creates an exception that swallows the CRA whole. Indeed, if the FCC's theory were correct, then agencies could insulate any one of their rules from the CRA (no matter how strongly the House, the Senate, and the President felt about the rule) simply by packaging that one rule together with other rules in a single document. Then, under the FCC's theory, the agency could always put that one rule back in place, provided it did not reenact those other rules that the agency packaged along with it. This is a sweeping theory that far exceeds the limits that the Legislative Branch and the Executive Branch have placed on agency decision making. Indeed, in a letter to the FCC this week, leaders in the Senate warned that the Commission's interpretation "would eviscerate the CRA".[2]

But the FCC's decision today violates more than the CRA. It also violates the APA. In the Notice of Proposed Rulemaking (NPRM) that launched this proceeding, the Commission expressly stated, in negotiated language, that the agency was not seeking comment on putting back in place or otherwise issuing a new rule that is the same as or substantially similar to the rule disapproved by Congress in 2017. Yet that is exactly what the FCC chooses to do with this data breach rule. Thus, while some have argued that any FCC violation of the CRA is unreviewable by the courts, an FCC violation of the APA is always reviewable.

[1] Through a set of late-round edits, the Order suggests that there are a couple of ways that this data breach rule may be different from the 2016 data breach rule. But the changes highlighted by the Order in this respect are not of the type or substance that would be necessary for this 2023 rule to fall outside the reach of the 2017 CRA.

[2] Letter from Sen. Ted Cruz, Ranking Member, Senate Committee on Commerce, Science, and Technology, et al., to Hon. Jessica Rosenworcel, Chair, FCC (Dec. 12, 2023) (stating the FCC "is defying clear and specific direction not to issue requirements that are substantially similar to parts of a rule disapproved by Congress." on behalf of 4 U.S. Senators).

The Order's problems only compound from there. Indeed, even if the CRA never passed, the FCC's decision would exceed the Commission's authority. For instance, instead of limiting the FCC's rule to the set of customer proprietary network information (CPNI) over which the agency has jurisdiction, the Order purports to expand the agency's CPNI framework to an expansive set of personally identifiable information (PII)—even though Congress never gave us authority to regulate PII in this manner and the Commission never sought comment on doing so.

In the end, the agency could have proceeded with a set of rules based on the NPRM that would have made progress on data breach issues while staying within the clear bounds Congress set on FCC action. However, I cannot support this expansive interpretation of the Commission's authority—especially in light of the clear constraints that the House, the Senate, and the President imposed on the agency through the 2017 CRA. Accordingly, I dissent.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Data Breach Reporting Requirements*, WC Docket No. 22-21, Report and Order

Unfortunately, we've all been there. You check your mail only to find a letter from a service provider announcing that your sensitive information has been leaked as part of a data breach. And, if it seems like these notifications and announcements are happening more frequently, you're right. According to a recent report, data breaches impacting US organizations are already at an all-time high. There were more breaches in the first three quarters of 2023 than in any prior year.[1] Another report states that the United States saw 1,802 data breaches in 2022 with 422.14 million records exposed and 298 million Americans impacted.[2]

This matters. Sensitive data breaches include the type of information that bad actors can exploit for identify theft, financial fraud and crimes, and scams, placing consumers at risk in a multitude of ways.

Congress recognized this too. Section 222 of the Communications Act gives us clear authority, and carriers a duty, to protect the confidentiality of proprietary information of and relating to consumers and others.[3] We first adopted our data breach rules 16 years ago in 2007, but the intervening years have shown that our data breach rules are badly in need of an update. The amount of data service providers now collect and retain has greatly expanded the risk profile for consumers and their carriers, as does the sophistication of bad actors who are constantly trying to access that data. So, I'm glad that we update our rules today in response to the reality that we need to do more to both protect sensitive consumer data and notify consumers and the authorities when a data breach occurs.

One overdue change is to properly expand the definition of "breach" beyond the intentional access, use, or disclosure of covered data. Many breaches are inadvertent, but harmful nonetheless, and the impact on consumers when their data is disclosed does not turn on the question of intent. At the same time, we recognize that breach notice fatigue is real. To avoid this risk, the Order properly adopts a harm-based notification trigger and an affected consumer trigger threshold that limits the consumer reporting requirement and balances the need for notice with the burden on consumers if harm is unlikely. We should also continue to work with our agency partners to coordinate filing obligations across the government over time, including as the Cybersecurity and Information Security Agency works on their Cybersecurity Incident Reporting rulemaking.

I also agree with the need for providers to encrypt their data, especially sensitive data. I can't emphasize it enough—at a minimum, providers should be encrypting the data they hold as a basic best practice. While we do not require encryption in this item, we adopt encryption as a safe harbor, recognizing it is a critical defense against data breaches and incentivizing providers to embrace it. Consumers trust providers with their most sensitive information, and the marketplace demands that carriers take these widely available steps to protect them, including measures like access controls, firewalls, intrusion detection and prevention, and security audits and updates to further defend against modern cyber threats.

I thank the Chairwoman for working with me on the edits that I suggested to help the item strike the right balance in defining the Personally Identifiable Information (PII) data that needs to be protected

[1] Stuart E. Madnick, Ph.D., *The Continued Threat to Personal Data: Key Factors Behind the 2023 Increase*, Dec. 2023, https://www.apple.com/newsroom/pdfs/The-Continued-Threat-to-Personal-Data-Key-Factors-Behind-the-2023-Increase.pdf.

[2] Ani Petrosyan, *Annual number of data compromises and individuals impacted in the United States from 2005 to 2022*, Statista Aug. 29, 2023, https://www.statista.com/statistics/273550/data-breaches-recorded-in-the-united-states-by-number-of-breaches-and-records-exposed/.

[3] *See* 47 U.S.C. § 222(a).

and the level of harm that triggers a reporting obligation. Data breaches will continue to be a problem, but by notifying consumers and the government we can take steps to mitigate the harm. I thank the Chairwoman for her leadership in updating our data breach rules and I thank the Commission staff for their hard work on this item. I approve.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *In the Matter of Data Breach Reporting Requirements*, WC Docket No. 22-21

My primary objection to the order we adopt today is not that it is necessarily bad policy—even though it could benefit from greater clarity and specificity, as well as better targeting—but that it is part of an effort to nullify the 2017 Congressional Review Act resolution that overturned the *2016 Privacy Order*, which this order reimplements various provisions of.

The CRA prohibits an agency from adopting a rule that is "substantially the same" as a previous rule that was overturned by a CRA resolution. A wooden reading of the statute—that an order does not reissue "substantially the same" rule unless the individual order has almost all of the same provisions of the overturned rule—would turn the CRA's prohibition into a nullity. An agency seeking to circumvent a previous CRA resolution could just split the desired regulations into several orders and pass it piecemeal. To give the CRA meaningful effect, we must look at not just the content of any one order, but the totality of related orders adopted subsequent to a CRA resolution.

Readopting the *2016 Privacy Order* in piecemeal is exactly what the Commission is doing. Today, we adopt a breach notification rule for Title II providers, which right now, mostly means telephone companies. But two months ago, this Commission began the process of reclassifying broadband as a Title II service, which when complete, will subject broadband providers to these new rules as well, just as the 2016 order did. Last month, we adopted data security, customer authentication, employee training, and other requirements that mirror provisions of the 2016 order.[1] And I have no doubt that this Commission will, if given the chance, adopt even more aspects of the 2016 order.

In a further similarity, the order we adopt today dramatically expands the kinds of data that the FCC has jurisdiction over, exactly like the *2016 Privacy Order*. And it relies on the same dubious legal theory as the 2016 order. Traditionally, the FCC's privacy authority has been limited to "Customer Proprietary Network Information" (CPNI), a term of art defined and used in Section 222's grants of authority. CPNI is limited to " quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service." The majority is not satisfied with jurisdiction over only this data, and instead asserts jurisdiction over all personally identifiable information (PII). To justify this, it relies on the omission of the word "network" from the introductory sentence at Section 222(a). But this interpretation is inconsistent with decades of FCC interpretation and practice. The best interpretation of Section 222(a) is that it is not an independent source of authority, but a high-level summary of the more specific provisions that follow it.

[1] The majority argues that the requirements imposed by our *SIM Swap Order* are substantially different from similar requirements in the 2016 order because they are motivated by the prevention of SIM swap and port-out fraud, while the 2016 order was motivated by more general privacy and data security concerns. But the purposes which motivate our rulemakings are irrelevant, and only the actual scope of the adopted rules matters. The *SIM Swap Order* requires that "employees who receive inbound customer communications" be unable to access CPNI until the customer has been "properly authenticated." Nothing about this requirement is limited to the prevention of SIM swap or port-out fraud, and it is very similar to the 2016 order's requirement for providers to "take reasonable measures to secure PI," which was accompanied by a list of practices the FCC deemed "exemplary of reasonable data security" that included "robust customer authentication." And while other elements of the *SIM Swap Order*, like employee training and customer notification requirements, are in fact limited to SIM swap and port-out procedures, they nonetheless mirror employee training and customer notification requirements in the 2016 order. Taken with this order today and likely future Commission action, this looks like exactly the kind of piecemeal readoption of the *2016 Privacy Order* that I am concerned is underway.

With this order today, has the Commission reissued "substantially the same" rule as the 2016 Privacy Order? Quite possibly. And I am sure that this item is at least a major step toward doing that, which I cannot support. Therefore, I must dissent.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Data Breach Reporting Requirements*, WC Docket No. 22-21, Report and Order (December 13, 2023).

Nearly a decade ago, a unanimous Supreme Court noted that "[m]odern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans 'the privacies of life.'"[1] Since 2014, the importance of mobile phones in our daily lives has only increased, and the data at risk has only become more sensitive. The sheer breadth and depth of information collected and stored by these devices underscore the increasing privacy and sensitivity of our digital footprints. As consumers rely more heavily on cell phones for daily activities, consumers expect that telecommunications providers will safeguard this sensitive data and their networks.

It is more than timely that we take a look at the Commission's existing data breach notification rules, and modernize them, where appropriate, aligning with the evolving landscape of cybersecurity threats. At the same time, we must be sure that in updating our rules and protecting consumers, we are striking the right balance of cost and benefit to implementing additional obligations on providers. We must be sure that our updates are intentional, and most importantly, that they benefit consumers.

To that extent, I am grateful to the stakeholders who have come in on this item and the discussions we've had on modernizing the data breach rules. We've made progress to ensure that these updates strike that balance between protecting consumers and refraining from imposing unnecessary burdens on providers. I thank the Chairwoman for taking my suggestions to reduce burdens on providers, while also maintaining strong safeguards to protect consumers. To the Wireline Competition Bureau, and the Public Safety and Homeland Security Bureau, thank you for your tireless work on this item.

[1] *Riley v. California*, 573 U.S. 373, 403 (2014).

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

In the Matter of	)	
	)	
Implementation of the Low Power Protection Act	)	MB Docket No. 23-126
	)	

REPORT AND ORDER

Adopted: December 11, 2023 **Released: December 12, 2023**

By the Commission:

TABLE OF CONTENTS

I. INTRODUCTION

1. In this *Report and Order*, we adopt rules to implement the Low Power Protection Act (LPPA or Act),[1] which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations.[2] With limited exceptions, the rules adopted herein are consistent with the

[1] Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023).

[2] LPPA Sec.2(b).

Commission's proposals in the *Notice of Proposed Rulemaking* (*NPRM*)[3] in this proceeding. In this Order, we further the implementation of the LPPA by establishing the period during which eligible stations may file applications for Class A status, eligibility and interference requirements, and the process for submitting applications.

II. BACKGROUND

A. Low Power Television Service

2. The Commission created the LPTV service in 1982 to bring television service, including local service, to viewers "otherwise unserved or underserved" by existing full power service providers.[4] From its creation, the LPTV service has been a secondary service, meaning LPTV stations may not cause interference to, and must accept interference from, full power television stations as well as certain land mobile radio operations and other primary services.[5]

3. Currently, there are 1,889 licensed LPTV stations.[6] These stations operate in all states and territories, and serve both rural and urban audiences.[7] LPTV stations were required to complete a transition from analog to digital operation in 2021, and all such stations must now operate in digital format.[8] As the name suggests, LPTV stations have lower authorized power levels than full power television stations.[9] Because they operate at reduced power levels, LPTV stations serve a much smaller geographic region than full power stations and can be fit into areas where a higher power station cannot be accommodated in the Table of TV Allotments.[10]

---

[3] *See Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Notice of Proposed Rulemaking, FCC 23-23 (rel. March 30, 2023) (*NPRM*).

[4] *Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, BC Docket No. 78-253, Notice of Proposed Rulemaking, 82 F.C.C.2d 47, para. 1 (1980) (*LPTV NPRM*); *Low Power Television Service*, Report and Order, 51 R.R.2d 476 (1982) (*LPTV Order*), *recon. granted in part*, 48 Fed. Reg. 21478 (1983). The low power television service consists of LPTV and TV translator stations. LPTV and TV translator stations differ only in the amount of programming they may originate. LPTV stations are not limited in the amount of programming they may originate. TV translators may originate only emergency warnings of imminent danger no longer or more frequent than necessary to protect life and property and, in addition, not more than thirty seconds per hour of public service announcements and material seeking and acknowledging financial support necessary to the continued operation of the station. *See* 47 CFR § 74.790 (Permissible service of TV translator and LPTV stations).

[5] *LPTV Order*, 51 R.R.2d at para. 17. As a result of their secondary status, LPTV stations can also be displaced by full power stations that seek to expand their service area, or by new full power stations seeking to enter the same area as an LPTV station.

[6] *See Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921 (rel. Oct. 3, 2023), available at https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf (http://fcc.gov).

[7] *See Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6357-58, para. 2 (2000) (*Class A Order*), *recon. granted in part*, 16 FCC Rcd 8244 (2001) (*Class A MO&O*).

[8] LPTV stations were required to complete their digital transition as of July 13, 2021. *See Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

[9] *See* 47 CFR §§ 74.735(a), 73.622(a)(1); *Class A Order*, 15 FCC Rcd at 6357, n.4; *NPRM* at n.8 (noting that LPTV signals typically extend approximately 20 to 40 miles from a station's transmission site, while the signals of full power stations can reach as far as 60 to 80 miles).

[10] Unlike full power stations, LPTV stations are not restricted to operating on a channel specified in a table of allotments.

B. Class A Television Stations

4. In 2000, the Commission established a Class A television service[11] to implement the Community Broadcasters Protection Act of 1999 (CBPA).[12] The CBPA allowed certain qualifying LPTV stations to become Class A stations, which provided those television stations primary status, and thereby a measure of interference protection from full service television stations.[13]

5. Congress sought in the CBPA to provide certain LPTV stations a limited window of opportunity to apply for primary status. Among other matters, the CBPA set out certain certification and application procedures for LPTV licensees seeking Class A designation and prescribed the criteria for eligibility for a Class A license. Specifically, under the CBPA, an LPTV station could qualify for Class A status if, during the 90 days preceding the date of enactment of the statute, the station: (1) broadcast a minimum of 18 hours per day; (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and (3) was in compliance with the Commission's requirements for LPTV stations.[14] In addition, the CBPA required that, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full power television stations.[15] As directed by the CBPA, within 60 days of the date of enactment of the CBPA, stations seeking Class A status were required to submit to the Commission a certification of eligibility based on the applicable qualification requirements.[16]

6. In addition to these qualifying requirements, the CBPA gave the Commission discretion to determine that the public interest, convenience, and necessity would be served by treating a station as a qualifying LPTV station under the CBPA, or that a station should be considered to qualify for such status for other reasons determined by the Commission, even if it did not meet the qualifying requirements in the statute discussed above.[17] In implementing the CBPA, the Commission concluded, however, that it would not accept applications under the CBPA from LPTV stations that did not meet the statutory criteria and that did not file a certification of eligibility by the statutory deadline, absent compelling circumstances.[18]

C. Low Power Protection Act

7. Like the CBPA, the LPPA is intended "to provide low power TV stations with a limited window of opportunity" to apply for primary status as a Class A television licensee.[19] The Act gives

[11] *See Class A Order*, 15 FCC Rcd 6355.

[12] Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 - 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

[13] *See Class A Order*, 15 FCC Rcd 6355, para. 1.

[14] 47 U.S.C. § 336(f)(2)(A)(i).

[15] 47 U.S.C. § 336(f)(2)(A)(ii).

[16] 47 U.S.C. § 336(f)(1)(B). In addition, the Commission required LPTV licensees seeking Class A designation to submit an application to the Commission within 6 months after the effective date of the rules adopted in the Class A proceeding. *See Class A Order*, 15 FCC Rcd at 6362, paras. 13-14.

[17] 47 U.S.C. § 336(f)(2)(B).

[18] *See Class A Order*, 15 FCC Rcd at 6361, para. 11.

[19] LPPA Sec.2(b).

LPTV stations one year to apply for a Class A license, from the date that the Commission's rules implementing the LPPA become effective.[20]

8. The LPPA sets forth eligibility criteria for stations seeking Class A designation that are similar to the eligibility criteria under the CBPA, as discussed above. Specifically, the LPPA provides that the Commission "may approve" an application submitted by an LPTV station if the station meets the following eligibility criteria:

- during the 90-day period preceding the date of enactment of the LPPA (i.e., between October 7, 2022 and January 5, 2023), the station satisfied the same requirements applicable to stations that qualified for Class A status under the CBPA, "including the requirements…with respect to locally produced programming;"[21]
- the station satisfies the Class A service requirements in 47 CFR § 73.6001(b)-(d) or any successor regulation;[22]
- the station demonstrates that it will not cause any interference as described in the CBPA;[23]
- during that same 90-day period, the station complied with the Commission's requirements for LPTV stations;[24] and
- as of January 5, 2023, the station operated in a Designated Market Area with not more than 95,000 television households.[25]

Finally, the LPPA requires that a station accorded Class A status must (1) be subject to the same license terms and renewal standards as a license for a full power television broadcast station (except as otherwise expressly provided in the LPPA) and (2) remain in compliance with the LPPA's eligibility criteria during the term of the station's license.[26]

---

[20] LPPA Sec.2(c)(2)(A). That provision states: "The rule with respect to which the Commission is required to issue notice under paragraph (1) shall provide that, during the 1-year period beginning on the date on which that rule takes effect, a low power TV station may apply to the Commission to be accorded primary status as a Class A television licensee under section 73.6001 of title 47, Code of Federal Regulations, or any successor regulation." LPPA Sec.2(c)(2)(A).

[21] Section 2(c)(2)(B) provides: "(B) Considerations. – The Commission may approve an application submitted under subparagraph (A) if the low power TV station submitting the application (i) satisfies – (I) section 336(f)(2) of the Communications Act of 1934…and the rules issued under that section, including the requirements under such section 336(f)(2) with respect to locally produced programming…." LPPA Sec.2(c)(2)(B)(i)(I) (citing 47 U.S.C. § 336(f)(2) of the CBPA).

[22] LPPA Sec.2(c)(2)(B)(i)(II). Sections 73.6001(b)-(d) of our rules set forth service requirements and other rules for Class A stations.

[23] LPPA Sec.2(c)(2)(B)(ii); 47 U.S.C. § 336(f)(7). *See also* Section III.B.3 *infra* (Eligibility Requirements - Interference Requirements).

[24] LPPA Sec.2(c)(2)(B)(ii). *See also* 47 U.S.C. § 336(f)(2)(A)(i)(III).

[25] LPPA Sec.2(c)(2)(B)(iii). The LPPA also requires the Commission "[n]ot later than 1 year after the date of enactment" of the LPPA to "submit to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report regarding the implementation" of the LPPA including: "(1) a list of the current, as of the date on which the report is submitted, licensees that have been accorded primary status as Class A television licensees; and (2) of the licensees described in paragraph (1), an identification of each such licensee that has been accorded the status described in that paragraph because of the implementation" of the LPPA. LPPA Sec.2(d).

[26] LPPA Sec.2(c)(3). Section 2(c)(3) in its entirety provides: "Applicability of License – A license that accords primary status as a Class A television licensee to a low power TV station as a result of the [rules adopted to

(continued….)

9. On March 29, 2023, the Commission adopted the *NPRM*, which sought comment on how to implement the window for LPTV stations to apply for primary spectrum use status as Class A television stations, consistent with Congressional direction in the LPPA.[27] We received over thirty comments in response to the *NPRM*.[28]

III. DISCUSSION

10. The rules and policies we adopt herein to implement the LPPA are largely consistent with the Commission's proposals in the *NPRM*, with one exception. We adopt the proposals regarding the application period, the definition of a low power TV station and eligibility criteria, applicable interference requirements, and use of the Nielsen Local TV Station Information Report (Local TV Report) to determine the DMA where the LPTV station's transmission facilities are located for purposes of eligibility. We do not, however, adopt in full the proposal to require that all licensees that convert to Class A status pursuant to the LPPA remain in compliance with the LPPA's DMA eligibility requirement for the term of their Class A license. Instead, we conclude that LPPA Class A stations will not be required to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount for specific reasons beyond the station's control. Finally, we adopt the *NPRM* proposals regarding the process for applying for Class A status pursuant to the LPPA, decline to amend our rules, as requested, to give LPPA Class A stations must carry rights equivalent to full service stations, and decline to adopt a requested *de minimis* exception to the LPPA's DMA eligibility requirement.

A. Application Period

11. For the reasons discussed in the *NPRM* and described below, we adopt the *NPRM's* proposals regarding the application period. In the *NPRM*, the Commission proposed to provide LPTV stations a period of one year to apply for Class A status under the LPPA.[29] The Commission also tentatively concluded that the public interest would not be served by providing for conversion to Class A status beyond the one year period contemplated by the LPPA.[30] The Commission proposed, however, that, similar to its approach in implementing the CPBA, if a potential applicant faces circumstances beyond its control that prevents it from filing by the application deadline, the Commission would examine

implement the LPPA] shall (A) be subject to the same license terms and renewal standards as a license for a full power television broadcast station, except as otherwise expressly provided in this subsection; and (B) require the low power TV station to remain in compliance with paragraph (2)(B) during the term of the license."

[27] *See generally NPRM.*

[28] A list of the comments and reply comments is attached as Appendix A. The Identical Comments (identified in Appendix A) support the adoption of Metropolitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs), as defined by the Office of Management and Budget, as an alternative to Designated Market Areas (DMAs), as defined by Nielsen Media Research, for determining eligibility pursuant to the LPPA. *See infra* Section III.B.4. (Eligibility Requirements- Designated Market Area). RCC argues that we should discount the Identical Comments on the ground that they do not provide information "regarding the person or persons directing the filing of [the] common comments." RCC Reply Comments at 1. We reject RCC's request. Each of the identical comments includes the name of the individual signing the comment, and the fact that the comments are identical is not grounds for the Commission to ignore them. We also reject RCC's argument that we should discount NAB's comments on the ground that "NAB does not claim to represent any LPTV licensees" and its comments "do not protect LPTV interests." RCC Reply Comments at 3. A party need not "represent" or seek to "protect" LPTV licensees in order to file comments in this proceeding. Moreover, NAB's comments set forth its interests in this proceeding. NAB Comments at 2-4. We therefore have considered all the comments filed in the docket.

[29] *NPRM* at para. 10.

[30] *Id*. at para. 11.

those instances on a case-by-case basis to determine the potential applicant's eligibility for filing.[31] No commenter addressed these issues.

12. The LPPA provides LPTV stations a period of one year to apply for Class A status.[32] The LPPA also provides that the Commission may approve an application for Class A status if the application satisfies section 336(f)(2) of the Communications Act of 1934, as amended (which codifies the CBPA).[33] This provision sets forth the eligibility criteria for stations qualifying for Class A status,[34] and gives the Commission discretion to determine whether a station that does not satisfy such criteria should otherwise qualify.[35] In the *Class A Order*, the Commission declined either to expand these eligibility criteria or to allow ongoing conversion to Class A status beyond the 6 month window contemplated in the CBPA.[36] The Commission reasoned that the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity to convert to Class A status.[37] The Commission also determined that the intent of Congress in enacting the CBPA was to establish the rights of a specific, already-existing group of LPTV stations, and that the public interest would not be served by the ongoing conversion of LPTV stations to Class A status under the CBPA in the future.[38] Absent comment on this issue, we find no reason to deviate from these prior determinations and the tentative conclusions in the *NPRM* that the application window will be limited to the one-year application window specified in the LPPA, but that we will examine on a case-by-case basis a potential applicant's claim that it was prevented from filing by the application deadline due to circumstances beyond its control.

B. Eligibility Requirements

1. Definition of Low Power TV Station

13. As proposed in the *NPRM*, we apply the Commission's recently updated definition of a "low power TV station" for purposes of determining which stations are eligible for Class A status under the LPPA.[39] The LPPA provides that the term "low power TV station" has the meaning given the term "digital low power TV station" in section 74.701 of our rules, or any successor regulation.[40] At the time the LPPA was enacted, section 74.701 contained a definition of the term "digital lower power TV station." As noted in the *NPRM*, after enactment of the LPPA, the Commission revised that rule to

[31] *Id*.

[32] LPPA Sec.2(c)(2)(A).

[33] LPPA Sec.2(c)(2)(B).

[34] 47 U.S.C. § 336(f)(2)(A) (providing that an LPTV station qualifies for Class A status pursuant to the CBPA if "(A)(i) during the 90 days preceding (the date of enactment of the CBPA) – (I) such station broadcast a minimum of 18 hours per day; (II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly-controlled low-power stations that carry common local programming produced within the market area served by such group; and (III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and (ii) from and after the date of its application for a class A license, the station is in compliance with the Commission's operating rules for full-power television stations…").

[35] 47 U.S.C. § 336(f)(2)(B) (providing that a station is a qualifying low-power television station if "(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission").

[36] *See Class A Order*, 15 FCC Rcd at 6361, para. 11. *See also Class A MO&O*, 16 FCC Rcd at 8250-52, paras. 15-18.

[37] *See Class A Order*, 15 FCC Rcd at 6361, para. 11; *Class A MO&O*, 16 FCC Rcd at 8251-52, para. 18.

[38] *Class A MO&O*, 16 FCC Rcd at 8251-52, para. 18. *See also NPRM* at para. 11.

[39] *NPRM* at para. 12.

[40] LPPA Sec.2(a)(3).

remove references to digital and analog television service, as all LPTV stations have ceased analog operations and there is no longer any need to differentiate between digital and analog in the rules.[41] In place of the prior section 74.701 definition, section 74.701(k) of our current rules defines a low power TV station as: "[a] station…that may retransmit the programs and signals of a television broadcast station, may originate programming in any amount greater than 30 seconds per hour… and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services."[42] No commenter addressed this proposal. We will apply this recently updated definition of an LPTV station for purposes of determining which stations are eligible for Class A status under the LPPA.

14. We adopt the tentative conclusion in the *NPRM* that television translator stations are unlikely to satisfy the eligibility requirements of the LPPA.[43] As explained in the *NPRM*,[44] translator stations "operate for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude,"[45] and thus, are not permitted to "originate programming" as defined in the rules.[46] While the LPPA does not expressly require that the locally produced content aired by a low power station be produced by that station itself, we noted that translators would be unlikely to qualify under the locally produced programming provisions of the LPPA due to the manner in which translators operate. Translator stations are generally located outside their primary station's noise limited contour in order to bring service to remote areas.[47] Thus, while a translator's primary station(s) may be airing programming produced in the primary station's noise limited contour, it is unlikely that programming was locally produced within the noise limited contour of the translator. In addition, as explained in the *NPRM*, under the CBPA the Commission specifically found that TV translator stations were not eligible for Class A status, and there is no indication that Congress intended to be more inclusive under the LPPA.[48] The sole commenter to address this issue, News-Press & Gazette Broadcasting (NPG), agrees that excluding television translator stations from eligibility under the LPPA "is a practical approach for most translators"

---

[41] The Commission recently revised its rules in Parts 73 and 74, *inter alia*, to eliminate rules that no longer have any practical effect given the completion of the DTV transition as well as the post-incentive auction transition to a smaller television band with fewer channels. *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 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, MB Docket Nos. 03-185 and 22-261, Report and Order, FCC 23-25 (rel. Apr. 17, 2023) (*Parts 73 and 74 Amendment Report and Order*). Among other revisions, the Commission eliminated all analog rules and references to analog and to out-of-core channels; updated information such as filing dates, locations, and form numbers; and reorganized and modified technical rules to make them more accessible to licensees and other users. *See id*. Any additional rule changes that are relevant to Class A stations will apply to stations that converted to Class A status pursuant to the CBPA and to stations that convert to Class A status pursuant to the LPPA.

[42] 47 CFR § 74.701(k).

[43] *NPRM* at para. 13.

[44] *Id*.

[45] 47 CFR § 74.701(a).

[46] *See* 47 CFR § 74.701(h) ("*Local origination.* Program origination if [sic] the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. *Transmission of TV program signals generated at the transmitter site constitutes local origination.* Local origination also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.") (emphasis added).

[47] 47 CFR § 74.787(a)(5).

[48] *NPRM* at para. 13.

but argues that "additional flexibility is warranted" for TV translator stations such as NPG's translator.

15. KXPI-LD, Pocatello, Idaho, retransmits the signal of full power station KIDK, (Fox), Idaho Falls, Idaho.[49] According to NPG, "KXPI-LD is classified in the Commission's records as a digital TV translator station, but it functions more like an originator of programming than a translator; it is a primary Fox Network affiliate providing local news, weather, and information to the Pocatello community. . . ."[50] NPG argues that KXPI-LD meets all of the LPPA's eligibility requirements, "except its ministerial technical classification as a digital TV translator."[51] NPG also argues that "the FCC's 'low power TV station' definition, Rule 74.701(k), encompasses stations like KXPI-LD that retransmit the signal of a TV broadcast station, and does not require program origination."[52] NPG urges that the Commission permit stations like KXPI-LD to be eligible for the Class A filing opportunity afforded by the LPPA.[53]

16. We affirm our tentative conclusion that translator stations are unlikely to satisfy the eligibility requirements of the LPPA. NPG's argument that the Commission's definition of a low power TV station encompasses stations like KXPI-LD that retransmit the signal of a TV broadcast station, and does not require program origination, is misplaced. LPAA section 2(c)(2)(B)(i)(I) requires that, during the 90-day eligibility period, an LPTV station must broadcast an average of at least three hours per week of programming produced within the market area served by the station.[54] As a translator station, KXPI-LD retransmits the programming feed it obtains from full-power station KIDK. NPG does not demonstrate that the KIDK programming that KXPI-LD is retransmitting was produced in KXPI-LD's own noise limited contour. Thus, NPG has failed to demonstrate how a translator station like KXPI-LD can satisfy the requirement of LPAA section 2(c)(2)(B)(i)(I) to broadcast an average of at least three hours per week of programming produced within the market area served by the translator station. [55]

17. Finally, consistent with the tentative conclusion in the *NPRM*, we confirm that LPTV stations that had not completed their digital transitions prior to the beginning of the eligibility period are not eligible to apply for Class A designation.[56] No commenter addressed this issue. Since analog television operations are no longer permitted, any LPTV station that has not converted to digital operation

[49] NPG Comments at 8-9.

[50] *Id*. at 9.

[51] *Id*. NPG's argument is incorrect. While stations can convert between the TV translator classification or the LPTV classification by notifying Commission staff of the station's intended status, each station must ensure that it properly informs the staff of the designation and can be designated only as either a TV translator or an LPTV station, not both.

[52] *Id*.

[53] *Id*.

[54] LPPA Sec.2(c)(2)(B)(i)(I).

[55] While we do not preclude a translator station from attempting to demonstrate how it satisfies the eligibility requirements of the LPPA, we also note that KXPI-LD is in the Idaho Falls-Pocatello-Jackson DMA (*see* https://ustvdb.com/seasons/2022-23/markets/) which had more than 95,000 TV households at the time the LPPA was enacted (*see* http://web.archive.org/web/20230605234252/https://ustvdb.com/seasons/2022-23/markets/). Therefore, the station is also not eligible for Class A status under the LPPA on that basis.

[56] A small number of analog LPTV stations had not yet completed construction of their digital facilities by July 13, 2021, the analog termination deadline, and were granted additional time to do so. *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Order and Sixth Notice of Proposed Rulemaking, 37 FCC Rcd 8173, 8174-45 at para. 4 and n.17 (2022). They have all either completed construction or are no longer licensees of the stations that went silent on or before the analog termination date.

is silent and must remain silent until such time as it completes construction of its digital facilities.[57] The LPPA requires that, to be eligible to convert to Class A status, an LPTV station must meet the statutory programming requirements for the 90-day period preceding the date of enactment of the LPPA.[58] As any LPTV station that was silent during this period would not meet these requirements, such stations are not eligible to apply for Class A designation under the LPPA.

2. Eligibility Criteria

18. As noted above,[59] the LPPA sets forth eligibility criteria for stations seeking Class A designation that are similar to the eligibility criteria under the CBPA. Specifically, the LPPA provides that the Commission "may approve" an application submitted by an LPTV station if the station, during the 90-day period preceding the date of enactment of the LPPA, meets the same requirements in section 336(f)(2) of the Communications Act applicable to stations that qualified for Class A status under the CBPA, "including the requirements…with respect to locally produced programming."[60] Thus, to qualify for Class A status, in the 90 days preceding the LPPA's January 5, 2023 effective date (between October 7, 2022 and January 5, 2023) an LPTV station must have met the following requirements: (1) the station must have broadcast a minimum of 18 hours per day;[61] (2) the station must have broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled LPTV stations that carry common local programming produced within the market area served by such group;[62] and (3) the station must have been in compliance with the Commission's requirements applicable to LPTV stations.[63] In addition, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full power television stations.[64]

19. Locally Produced Programming. We will define locally produced programming for purposes of the LPPA as that "produced within the predicted noise-limited contour (*see* § 73.619(c)) of a Class A station broadcasting the program or within the contiguous predicted noise-limited contours of any of the Class A stations in a commonly owned group." The *NPRM* proposed to define "locally produced programming" for purposes of the LPPA in the same manner as our rules that apply to stations that converted to Class A status pursuant to the CBPA.[65] As noted above, the LPPA requires that, during the 90-day eligibility period, LPTV stations must have broadcast an average of at least 3 hours per week of programming produced within the market area served by the station.[66] The *NPRM* noted that the Commission was in the process of updating its rules.[67] Since that time, in the *Part 73 Amendment R&O*, the Commission did update the definition of locally produced programming for Class A stations as that "produced within the predicted noise-limited contour (*see* § 73.619(c)) of a Class A station broadcasting the program or within the contiguous predicted noise-limited contours of any of the Class A stations in a

[57] *Id*. *See also* 47 CFR § 74.790(m).

[58] *See* LPPA Sec.2(c)(2)(B)(i)(I).

[59] *See supra* para. 8.

[60] LPPA Sec.2(c)(2)(B)(i)(I).

[61] 47 U.S.C. § 336(f)(2)(A)(i)(I).

[62] 47 U.S.C. § 336(f)(2)(A)(i)(II).

[63] 47 U.S.C. § 336(f)(2)(A)(i)(III). *See also supra* para. 8.

[64] LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

[65] *See NPRM* at para. 16.

[66] LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(i)(II).

[67] *See NPRM* at para. 16.

commonly owned group."[68] Block supports this proposed definition of "locally produced programming,"[69] and with the exception of REC's request for clarification addressed below, no other commenter addressed this issue. As proposed in the *NPRM*, we will apply this definition to define "programming produced within the market area served by the station" for purposes of determining eligibility for Class A status under section 2(c)(2)(B)(i)(I) of the LPPA.

20. We decline at this time to adopt REC's proposal that we clarify the definition of "locally produced programming" for purposes of the LPPA.[70] REC advocates that the Commission (1) clarify that local programming may not be repeated within the same week to satisfy the weekly locally produced programming requirement; (2) require that local programming be aired on the same programming stream and not aggregated among multiple streams to meet the minimum requirement; (3) clarify that the local programming requirement need only be satisfied on one programming stream of simultaneous video and related audio programming; and (4) require that the programming must be simultaneous video and audio programming where the audio portion of the programming directly relates to the video portion of the programming.[71] We note that the concerns underlying REC's proposed clarifications are equally applicable to existing Class A stations under the CBPA. Any change to the definition of "locally produced programming" to address such concerns should be considered with respect to all Class A stations, not just those stations that convert to Class A status pursuant to the LPPA. Because the Commission did not propose to revise the definition of locally produced programming for purposes of Class A stations generally, we find REC's proposals to be outside the scope of this proceeding. Accordingly, we decline to pursue REC's proposals at this time.

21. Operating Requirements. For the reasons contained in the *NPRM* and discussed below, we adopt the *NPRM's* proposals related to operating requirements. The *NPRM* tentatively concluded that all applicants seeking to convert to Class A status under the LPPA must certify that they have complied with the Commission's requirements for LPTV stations during the 90-day eligibility period.[72] The *NPRM* also proposed that a station applying to convert to Class A status must comply, beginning on the date of its application for a Class A license and thereafter, with the same Commission Part 73 operating rules that apply to Class A stations that converted pursuant to the CBPA.[73] This includes the requirement that existing Class A stations comply with children's programming and online public inspection file (OPIF) regulations.[74] No commenter opposed this approach. Absent objection, we adopt these proposals.

---

[68] *See Part 73 Amendment R&O*, at n.19 & Appx. A (Final Regulations) at section 73.6000.

[69] *See* Block Comments at 2.

[70] *See* REC Comments at 3.

[71] *Id*.

[72] *See NPRM* at para. 17. As noted in para. 8 above, to qualify for Class A status under the LPPA, an LPTV station must have been in compliance with the Commission's requirements for LPTV stations during the 90-day eligibility period. The LPTV requirements are set forth in Title 47, Part 74, Subpart G of our rules.

[73] *See NPRM* at para. 18. *See also* LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

[74] *See* 47 CFR § 73.6026 (listing broadcast regulations applicable to Class A television stations). This rule includes cross references to 47 CFR §§ 73.670 (Commercial limits in children's programming) and 73.671 (Educational and informational programming for children) as applying to Class A stations. *See also* 47 CFR § 73.3526 (Online public inspection file of commercial stations) which requires Class A licensees to maintain an online public file, including a political file. In the *Class A Order* that implemented the CBPA, the Commission determined certain Part 73 rules would apply to applicants for Class A status and to stations awarded Class A licenses. *See Class A Order*, 15 FCC Rcd at 6365, para. 23; 47 CFR § 73.6026 (listing Part 73 rules that do apply to Class A stations). Class A stations are not required to comply with certain other regulations that could not apply for technical reasons, such as the full power principal city coverage requirement currently set forth in 47 CFR § 73.625(a). Instead, Class A stations must comply with maximum power levels applicable to LPTV stations. *Class A Order*, 15 FCC Rcd at 6367-68, paras. 28-29. Some other examples of rules that cannot apply to Class A stations for technical reasons include, 47 CFR §§ 73.622(f)(5) (the so-called "largest station in the market" rule); 73.616 (Post-transition DTV station interference

(continued….)

Regarding our requirement that Class A TV applicants and licensees maintain an OPIF,[75] NPG notes that LPTV stations have no OPIF and are therefore unable to upload records to the system.[76] The Commission will activate an OPIF for LPTV stations that apply to convert to Class A status pursuant to the LPPA and inform applicants when that station's OPIF is ready for the applicant to upload documents required to be maintained in OPIF.[77]

22. We also require that all stations that receive a Class A license under the LPPA comply with all Class A regulations, as proposed in the *NPRM*.[78] As discussed in the *NPRM*, the LPPA requires that LPPA Class A stations "remain in compliance" with the Act's eligibility criteria[79] "during the term of the license."[80] This includes, among other things, the requirements to broadcast a minimum of 18 hours per day and to broadcast an average of at least three hours per week of locally produced programming each quarter.[81] In addition, the station must continue to comply with the interference requirements adopted herein.[82] Further, we adopt the tentative conclusion in the *NPRM*[83] that there is no reason to exempt LPTV stations converting to Class A status under the LPPA from other rules applicable to LPTV stations that converted to Class A status under the CBPA,[84] given that the service requirements in the LPPA closely track those in the CBPA and thus it makes sense for Class A rules generally to apply.[85] No commenter addressed these issues.

23. Finally, we conclude that the requirement to comply with the Class A eligibility requirements begins when an LPTV station's Class A application is submitted. The LPPA states that the "Commission may approve an application [for Class A status] if the low power TV station *submitting the application—satisfies—* paragraphs (b), (c), and (d) of 73.6001,"[86] which contains the requirements that Class A stations broadcast a minimum of 18 hours per day and broadcast an average of at least three

---

protection); and 73.622(f)(6)-(8) (allowable antenna heights and power levels for full power stations). The Commission recently amended its rules to relocate the text from certain Part 73 rules to new section and subsection numbers. *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 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not yet effective and, as such, we continue to make reference to the rule numbers as of the date of release of this *Report and Order*.

[75] *See* 47 CFR § 73.3526.

[76] NPG Comments at n.24.

[77] Consistent with current practice for other stations with OPIF obligations, the Commission will upload to the applicant's OPIF those documents that the Commission is responsible for uploading to OPIF. Broadcasters and other media entities must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically is imported to the online public file and updated by the Commission. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4540-41, para. 11 (2012); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526, 534, para. 17 (2016).

[78] *See NPRM* at para. 19.

[79] LPPA Sec.(2)(c)(2)(B).

[80] LPPA Sec.2(c)(3)(B).

[81] LPPA Sec.2(c)(2)(B). *See also* 47 CFR § 73.6001(b)-(c).

[82] *See NPRM* at para. 37. *See infra* Section III.B.3.

[83] *See NPRM* at para. 19.

[84] *See* 47 CFR §§ 73.6000-6029.

[85] *See NPRM* at para. 19; *supra* para. 8.

[86] LPPA Sec.2(c)(2)(B)(i)(II).

hours per week of locally produced programming each quarter. This requirement is distinct from the separate statutory obligation to meet the eligibility requirements during the 90-day eligibility period of October 7, 2022 to January 5, 2023.[87] In the *NPRM*, the Commission sought comment on how to interpret the statutory language, and specifically on whether the language should be interpreted to require an applicant for a Class A license to satisfy the requirements from the time it submits its application.[88] No commenter addressed this issue. As discussed above, the LPPA requires that applicants continue to broadcast a minimum of 18 hours per day and to broadcast an average of at least three hours per week of locally produced programming each quarter after a Class A license is granted.[89] We conclude that the language quoted above[90] would be rendered superfluous if we did not interpret it to apply these requirements from the time the Class A application is submitted.[91] Thus, the requirement to broadcast a minimum of 18 hours per day and broadcast an average of at least three hours per week of locally produced programming each quarter begins when a station submits an application to convert to Class A status pursuant to the LPPA and continues for the term of the Class A license.

24. License Application and Documentation. As proposed in the *NPRM*,[92] we will require an applicant to certify in its application that its station meets the operating and programming requirements of the LPPA. Specifically, the *NPRM* proposed, with respect to the statutory requirement that stations air 18 hours of programming each day during the 90-day eligibility period, that applicants must certify that the station was fully operational for at least 18 hours on each day during the 90-day eligibility period.[93] In addition, the *NPRM* proposed, with respect to the requirement that stations air three hours of locally produced programming, that an applicant must certify that it was broadcasting an average of at least three hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled LPTV stations that carry common local programming produced within the market area served by such group, on each day during the 90-day eligibility period.[94] No commenter objected to these proposals. We believe these certification requirements will assist us with the orderly processing of applications received under the LPPA, and thus we adopt the proposals. Finally, we also require that an applicant certify that it was in compliance with the Commission's requirements applicable to LPTV stations.[95]

25. Consistent with the tentative conclusion in the *NPRM*, we require an applicant to submit, as part of its application, documents to support its certification that it meets the operating and programming requirements of the LPPA.[96] As noted in the *NPRM*,[97] the Commission staff may later determine that additional documentation is needed to evaluate an application and may at that time require an applicant to submit additional, specific documentation during consideration of the application.[98] We

[87] LPPA Sec.2(c)(2)(B)(i)(I).

[88] *See NPRM* at para. 20.

[89] LPPA Sec.2(c)(3)(B). *See supra* para. 8.

[90] *See supra* n. 89 and accompanying text.

[91] *Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014) ("'a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous'") (*quoting Corley v. United States*, 556 U.S. 303, 314 (2009)).

[92] *See NPRM* at para. 21.

[93] *Id*.

[94] *Id*.

[95] 47 U.S.C. § 336(f)(2)(A)(i)(III).

[96] *See NPRM* at para. 22.

[97] *Id*.

[98] *See* 47 U.S.C. § 308(b).

believe this approach will ensure eligibility while preserving flexibility for applicants. We decline to permit applicants to certify that they meet operating and programming requirements without submission of supporting documentation, as Block suggests.[99] We believe such an approach would lack the information necessary for the Commission staff to undertake a sufficient review of the application in these circumstances. NAB suggests that we require stations to provide "a statement concerning the station's operating schedule and a list of locally produced programs" at the application stage.[100] We will adopt NAB's suggestion and require applicants to provide with their application a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 as well as a list of locally produced programs aired during that time period. We believe that requiring applicants to submit this basic information in support of their certification that they meet the LPPA's eligibility criteria will assist us in processing applications. In addition, an applicant should submit whatever additional documents available to the applicant that it believes best support its certification that it meets the operating and programming requirements of the Act. For example, to support its certification that the station was on the air at least 18 hours each day during the eligibility period, a station could provide electric power bills from a third party vendor that specify the station's broadcast facility location for the designated period,[101] and/or copies of any program guides, EAS logs, or agreements to purchase and air programming on the specified station during the times of operation in an amount sufficient to satisfy this operating requirement.[102] If the station was silent during any portion of the eligibility period, the station must identify any silent periods and the reasons why the station was silent.[103] To support its certification that a station aired an average of at least three hours of locally produced programming each week, the station could, for example, submit copies of any agreements to purchase and air such programming and/or

[99] *See* Block Comments at 3.

[100] *See* NAB Comments at 5. NAB also suggests that LPPA Class A stations include a list of locally produced programs as part of the station's issues/programs list. *Id*. *But see* RCC Reply Comments at 12 (arguing that NAB's suggestion "contravenes basic First Amendment principles and Congress's explicitly stated goal of fostering diverse voices through use of the Internet") and LPTVBA Reply Comments at 8 (arguing that existing requirements are sufficient to ensure compliance). We decline to require LPPA Class A stations to provide information regarding local programming as part of their issues/programs list, but note that all Class A stations must comply with the requirement that they place in their online public inspection file "documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth" in section 73.6001 of the Commission's rules. 47 CFR § 73.3526(e)(17). Section 73.6001(b) requires all Class A stations to broadcast a minimum of 18 hours per day and to broadcast an average of at least three hours per week of locally produced programming each quarter. 47 CFR § 73.6001(b). Thus, LPPA Class A stations must include in their public inspection file documentation sufficient to show that the station is continuing to meet these requirements. In light of this existing public inspection file requirement, we decline to require LPPA Class A stations to include a "specific statement detailing hours of operation" as part of the continuing eligibility documentation, as NAB suggests. *See* NAB Comments at 5.

[101] A significant fluctuation in the amount of power used on a monthly basis during the 90-day eligibility period could indicate that the station reduced its hours of operation for one or more months. In addition, for example, we would expect that a station operating at 15 kW, the maximum operating power for a UHF LPTV station, for 18 hours seven days a week, would be operating with a substantial amount of power, as opposed to an LPTV station that was airing programming sporadically.

[102] For example, if a station had contracts for at least 18 hours of programming from various program suppliers during the 90-day eligibility period, this would strongly indicate that the station was operating at least 18 hours per day during that time period.

[103] Section 74.735(b) of our rules provides that, in the event that causes beyond the control of a licensee make it impossible to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the Commission. Notification must be sent to the Commission no later than the 10th day of discontinued operation and, during such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, an informal written request should be made to the Commission no later than the 30th day for such additional time as may be deemed necessary. 47 CFR § 74.735(b).

identify the producer of any programming it claims is locally produced, the location where the programming was produced, and records of advertisements aired during locally produced programming showing that the programming was in fact aired.

26. Apart from a statement regarding the station's operating schedule and a list of locally produced programming aired during the 90 days preceding January 5, 2023, we decline to mandate the form of the additional documents that applicants submit to support their applications.[104] We recognize that some applicants may not have specific types of documentation, or that a specific document may not be in a form that supports the applicant's certification.[105] In light of that, we permit each applicant to provide with the station's application, documents that it has that best support its certification that it met the operational and programming requirements of the LPPA during the eligibility period. The Commission staff will review the documentation on a case-by-case basis and determine if it will need to request additional documentation before it can make a determination whether to grant a Class A license application.

27. Alternative Eligibility Criteria. As proposed in the *NPRM*, we will allow deviation from the strict statutory eligibility criteria under the LPPA only where deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation. No commenter disagreed with this approach.[106] As discussed above,[107] similar to the CBPA, the LPPA provides the Commission with additional discretion in evaluating applicants for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served by" or "for other reasons determined by the Commission" for treating the station as eligible for conversion to Class A pursuant to the LPPA.[108] In the *Class A Order*, the Commission determined that it would allow deviation from the strict statutory eligibility criteria in the CBPA "only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation."[109] The Commission gave as an example of such compelling circumstances "a natural disaster or interference conflict which forced the station off the air during the 90-day period before enactment of the CBPA."[110]

28. We conclude that, similar to the Commission's approach in implementing the CBPA, we will allow deviation from the strict statutory eligibility criteria in the LPPA only where such deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation.[111]

---

[104] REC argues that, to demonstrate that a station is on the air for 18 hours/day, applicants should be required to include utility bills, photos of the transmitting facility (including a powered-on transmitter), copies of any leases, and any programming grids and programming contracts. *See* REC Comments at 4-5. To demonstrate that the station met the local programming eligibility requirement, REC argues that applicants should be required to submit program logs including the name of the program, the air date, time and length of the program, the location where the program was produced, and a description of the program. *Id*. While we agree that such documents may be useful to support an application, for the reasons described herein we decline to mandate that all of these specific documents are required for every application and permit applicants to submit the documents they have that they believe best support their application.

[105] For example, Block notes that utility costs are often "baked into" a tower lease and that the tower owner may not be able to apportion electricity costs among different tower tenants. Block Comments at 3.

[106] Lockwood proposed that we adopt a *de minimis* exception to the LPPA's 95,000 TV household eligibility requirement. As discussed below, we reject that proposal. *See infra* paras. 54-56.

[107] *See supra* para. 12.

[108] 47 U.S.C. § 336(f)(2)(B).

[109] *Class A Order*, 15 FCC Rcd at 6369, para. 33.

[110] *Id*. The Commission also concluded that foreign language stations should have the same eligibility requirements as any other potential Class A station under the CBPA. *Id*. at paras. 33-35.

[111] *Class A Order*, 15 FCC Rcd at 6369, para. 33.

We will consider any such requests on a case-by-case basis. As the Commission tentatively concluded in the *NPRM*,[112] we believe that the LPPA provides precise and limited eligibility criteria and, except in very limited circumstances, we are not inclined to expand the specific qualifying criteria beyond that identified in the statute.

3. Interference Requirements

29. We adopt the tentative conclusions in the *NPRM* that our interference rules applicable to existing Class A stations, including requirements that were adopted subsequent to enactment of the CBPA in 1999,[113] will apply to stations that convert to Class A status pursuant to the LPPA.[114] The LPPA provides that the Commission may approve an application by an LPTV station if it demonstrates that "the Class A station for which the license is sought will not cause any interference described in section 336(f)(7) of the Communications Act . . . ."[115] Section 336(f)(7) describes the interference protection requirements for LPTV stations that sought Class A status under the CBPA with respect to full power television, LPTV, TV translator, and land mobile stations. As noted in the *NPRM*, LPTV stations that converted to Class A status pursuant to the CBPA in 2000 began their primary status as analog stations, and therefore, that section related to analog operations.[116] All television broadcast stations are now operating digital facilities.[117] While the LPPA specifically references the interference requirements "described in section 336(f)(7)," we affirm the tentative conclusion in the *NPRM* that inclusion of this language does not evince an intent by Congress to compel LPTV stations applying for Class A licenses under the LPPA to demonstrate compliance with outdated and superseded interference rules.[118] Rather, we affirm the *NPRM*'s tentative conclusion that requiring applicants to demonstrate compliance with current interference requirements relevant to digital facilities would guarantee the purpose of the statutory provision. This approach will ensure that LPTV stations converting to Class A status under the LPPA will not cause interference to the licensed or previously proposed facilities of digital broadcast stations, including full power, Class A, LPTV and TV translator stations.[119]

30. NPG generally supports that the current interference rule rather than the old analog rule should be applied. However, NPG would have us provide flexibility to permit interference beyond what is permitted in our current rules. NPG states that the Commission should adopt a "flexible approach" granting applications that would violate the rule "if the applicant is able to demonstrate no actual interference, acceptance by the licensee subject to such interference, or other showing that the public interest is served by the applicant obtaining Class A status."[120] We are not persuaded to grant this

---

[112] *NPRM* at para. 24.

[113] The digital-to-digital interference protection standards for LPTV stations converting to Class A status vis-à-vis LPTV and TV translator stations pursuant to the LPPA are now found in sections 74.792 and 74.793 of the rules. *NPRM* at para. 29.

[114] *NPRM* at paras. 27-29.

[115] LPPA Sec. 2(c)(2)(B)(ii).

[116] *NPRM* at para. 26.

[117] *See supra* para. 3 and n.8; DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (Full power stations largely completed their digital transition by June 12, 2009); *NPRM* at para 26.

[118] *NPRM* at para. 26, citing *Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 452-55 (1989) (noting that statutes are to be read in a manner that avoids absurd results); *City of Lincoln, Neb. v. Ricketts*, 297 U.S. 373, 376 (1936) (noting duty to give words their natural significance unless that leads to an unreasonable result plainly at variance with the evident purpose of the legislation).

[119] *NPRM* at para. 26.

[120] NPG Comments at 9-10. Class A and LPTV stations are permitted to cause interference to no more than 0.5 percent of the population served by full-power and Class A television stations, and no more than 2 percent of the population served by LPTV and TV translator stations. *See* 47 CFR §§ 73.6017, 73.6018, 73.6019, and 74.793.

request. First, we do not anticipate any scenarios where interference is predicted, but the applicant is able to demonstrate a lack of actual interference.[121] The *TVStudy* software used to prepare and process applications already considers the elements likely to cause actual interference. Specifically, *TVStudy* makes full use of terrain shielding and Longley-Rice terrain propagation methods to determine whether a proposed facility is predicted to cause impermissible interference consistent with OET Bulletin No. 69,[122] accounting for unique characteristics such as terrain.[123] For this reason, we do not believe there would be merit in accepting other methods of determining interference. Second, the Commission's rules already allow applicants and licensees to accept interference subject to Commission approval,[124] and the Media Bureau will continue to consider and accept interference agreements in processing Class A license applications filed pursuant to the LPPA without the need to adopt additional flexibility. Finally, we reject NPG's suggestion that waiver of television broadcast interference protection rules should be considered upon undefined public interest arguments.[125] NPG provides no example – and we can imagine none – where we have granted an LPTV station primary status that caused interference to a licensed (or previously proposed) broadcast facility entitled to protection. Congress clearly intended the LPPA to apply to a discrete number of LPTV stations that satisfy specific eligibility requirements and protect existing stations and previously proposed facilities. We decline to adopt an exception that would contravene this careful balance.

31. Protection of Land Mobile Stations. The LPPA provides that the Commission may approve an application by an LPTV station if it "demonstrates to the Commission that the Class A station for which the license is sought will not cause any interference described in section 336(f)(7) of the Communications Act of 1934. . . ."[126] Section 336(f)(7)(C) of the CBPA provides that the Commission may not grant a Class A license or modification of license where the Class A station will cause interference within the protected contour of land mobile stations.[127] We adopt the proposal in the *NPRM* that Class A applications will not be grantable where the Class A station will cause interference within the protected contour of land mobile stations which have been allocated the use of TV channels 14-20 in certain urban areas of the country, as well as channel 16 in the New York City metropolitan area.[128] We received no specific objection to this proposal. We note that in implementing the CBPA, the Commission

[121] NPG Comments at 9-10.

[122] *See Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software,* ET Docket No. 13-26, GN Docket No. 12-268, Public Notice, 28 FCC Rcd 950 (OET 2013) at 1. OET Bulletin No. 69 can be found at https://transition.fcc.gov/oet/info/documents/bulletins/oet69/oet69.pdf (OET Bulletin No. 69).

[123] *See* OET Bulletin No. 69 at 1. 47 CFR §§ 73.6018, 73.616(d)(1), 73.619(c)(2).

[124] *See, e.g.*, 47 CFR §§ 73.620(e) (Full power stations may operate with facilities that would result in more than 0.5 percent additional interference to another full power station if that station agrees, in writing, to accept the additional interference, and the Commission finds such action is in the public interest), 73.6022(a) (same with respect to Class A stations vis-à-vis full power, Class A, LPTV and TV translator stations, notwithstanding the interference standards set forth in the rules, if the Commission finds such action is in the public interest), 74.703(a) ("Except where there is a written agreement between the affected parties to accept interference," an application for a new LPTV station or modification of facilities must comply with interference rules).

[125] NPG Comments at 9-10.

[126] LPPA Sec. 2(c)(2)(B)(ii).

[127] 47 U.S.C. § 336(f)(7). Specifically, section 74.709 of our rules (47 CFR § 74.709) requires that, in order to protect land mobile stations, a low power TV or TV translator station cannot specify a site that is located within the protected contour of a co-channel or first adjacent land mobile assignment. Generally, the protected contour is 80 miles from the geographic center of the areas listed in 47 CFR §§ 22.625(b)(1), 90.303(b); for frequencies in the 470-512 megahertz band identified in 47 CFR §§ 22.621, 90.303(b), or in the 482-488 megahertz band in New York. In addition, a low power TV or TV translator station application cannot be granted where its proposed field strength limit calculated at the land mobile boundary exceeds the limits set forth in 47 CFR § 74.709(d).

[128] *NPRM* at para. 30.

implemented the same interference protections and procedures which are prescribed in section 74.709 of the rules, and these rules have not changed.[129]

32. We decline to adopt as both unnecessary and outside the scope of this proceeding, the County of Los Angeles, California's request that we incorporate by reference comments in a proceeding requested by the Land Mobile Communications Council regarding rules governing separation between land mobile stations and television stations located in the T-Band.[130] Unless and until there is a change in the applicable rules, we will apply our existing land mobile protection requirements in considering applications to convert to Class A status pursuant to the LPPA. We note that in limiting eligibility to LPTV stations operating in a DMA or an equivalent with not more than 95,000 television households, Congress intended to convey the benefits of Class A status under the LPPA to LPTV stations operating in smaller DMAs. T-band radio systems, which are used for public safety and industrial/business land mobile communications, operate on 470-512 MHz (television channels 14 through 20) in 13 large cities,[131] located in the largest DMAs with more than 1,000,000 television households. LPTV stations operating in larger DMAs or an equivalent television market are not eligible for Class A status under the LPPA and thus, it is unlikely that land mobile operations in the T-band will be affected by the LPPA..

4. Designated Market Area

33. The LPPA requires that an LPTV station must demonstrate that as of January 5, 2023, the station "*operates* in a Designated Market Area with not more than 95,000 television households."[132] The LPPA further states that DMA means "(A) a [DMA] determined by Nielsen Media Research or any successor entity; or (B) a [DMA] under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research . . ."[133] The Commission sought comment in the *NPRM* [134] on (1) the meaning of the word "operates" in the LPPA,[135] and (2) whether to adopt the Nielsen Local TV Station Information Report (Local TV Report) for determining DMAs or an equivalent alternative local market system.[136] We address each of these issues below.

34. "Operates" in the DMA. As proposed in the *NPRM*,[137] we conclude that "operates" means that the LPTV station applying for Class A status under the LPPA must demonstrate that its transmission facilities, which include the structure on which its antenna is mounted, are located within the qualifying DMA. No commenters addressed this issue. We find that this requirement is consistent with Congress's intent to limit Class A status to stations located in small DMAs, as evidenced by its limiting eligibility for Class A status under the LPPA to LPTV stations operating in a DMA or an equivalent with

[129] 47 CFR § 74.709; *NPRM* at para. 30.

[130] County of Los Angeles, California Comments at n.5, citing Public Notice, RM-11915, Report No. 3186 (rel. Jan. 12, 2022). The nearest DMA to Los Angeles County, CA impacted by implementation of the LPPA is more than 800 km away in Eureka, CA (*see infra* n 169), and could not result in interference in Los Angeles County.

[131] 47 CFR § 90.303.

[132] LPPA Sec.2(c)(2)(B)(iii) (emphasis added).

[133] LPPA Sec.2(a)(2)(A) and (B). The Nielsen Company (Nielsen) describes a DMA region as "a group of counties and zip codes that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed. There are 210 DMA regions, covering the entire continental U.S., Hawaii, and parts of Alaska." *See* Nielsen, DMA Regions, https://markets.nielsen.com/us/en/contact-us/intl-campaigns/dma-maps/ (rel. Oct. 24, 2022).

[134] *NPRM* at para. 32.

[135] LPPA Sec.2(c)(2)(B)(iii).

[136] *See* LPPA Sec.2(a)(2)(B).

[137] *NPRM* at para 31-34.

not more than 95,000 television households.[138] To make the necessary demonstration, we will require applicants to provide the following information as it existed on January 5, 2023, as proposed in the *NPRM*: (1) the coordinates of the station's transmission facilities (*i.e.*, the structure on which its antenna is mounted); (2) the city/town/village/or other municipality and county in which the transmission facilities are located; and (3) the qualifying DMA in which the station's transmission facilities are located.[139]

35. Use of Nielsen to Determine DMAs. We also adopt the proposal in the *NPRM* to use the Nielsen Local TV Report in determining the DMA where the LPTV station's transmission facilities were located as of January 5, 2023.[140] First, the decision is fully consistent with the LPPA which contemplates the use of Nielsen.[141] Furthermore, as explained in the *NPRM*, use of the Nielsen Local TV Report is consistent with the Commission's *Nielsen DMA Determination Update Order*,[142] which adopted Nielsen's monthly Local TV Report as the successor publication to Nielsen's Annual Station Index and Household Estimates and determined that the Local TV Report should be used to define "local market" as stated in other statutory provisions and rules relating to carriage, including retransmission consent, distant signals, significantly viewed, and field strength contour.[143] When the Commission sought comment on what publication to use for DMA determinations in that proceeding, commenters unanimously supported use the Local TV Report.[144] Thus, we note that the record in that proceeding indicated that the Local TV Report was the sole source of information regarding DMA determinations and that there was no company currently accredited to determine the local market area of broadcast television stations.[145] In addition, some commenters in this proceeding support our decision to use the Nielsen Local TV Report for purposes of implementing the LPPA. As NAB points out, the Commission and the television industry have long relied on Nielsen DMA data to define television markets.[146] REC notes that the Nielsen Local TV Report provides a "cut-and-dry" determination of a station's DMA, and that the "debate and development of any alternative system would further delay the process."[147]

36. While the LPPA defines a DMA as "a [DMA] determined by Nielsen Media Research or

[138] *Id*. at para. 32.

[139] *Id*. Starting in 2022, Nielsen began including broadband only (BBO) households, households that receive video programming on a TV/monitor only through a broadband connection, in its local market measurement. *See* Nielsen, Nielsen Announces "Impressions First Initiative" and the Integration of Broadband Only Homes Into Local Measurement in January 2022, *at* https://www.nielsen.com/news-center/2021/nielsen-announces-impressions-first-initiative-and-the-integration-of-broadband-only-homes-into-local-measurement-in-january-2022/ (Sept. 2021). Nielsen publishes annually, in the fall, an estimate of the number of TV households in each DMA. For purposes of implementing the LPPA, we will look at Nielsen's estimates of DMA TV households published in the fall of 2022 to determine the number of DMA TV households as of January 5, 2023 and therefore the estimates include BBO households.

[140] *NPRM* at para 33.

[141] LPPA Sec.2(a)(2)(A).

[142] *See Update to Publication for Television Broadcast DMA Determination for Cable and Satellite Penetration*, MB Docket No. 22-239, Report and Order, FCC 22-89 (rel. Nov. 16, 2022) at para. 1 (*Nielsen DMA Determination Update Order*). *See also id*. at para. 6 (reiterating Nielsen's clarification that it has "always told stations the DMAs to which they have been assigned upon request and free of charge").

[143] *Id*. at para. 4.

[144] *See Nielsen DMA Determination Update Order* at para. 1.

[145] *Id*. The Commission also noted that in the LPPA, which was enacted after release of the *Nielsen DMA Determination Update Order*, Congress chose to define DMA as determined by Nielsen Media Research. *NPRM* at n.112.

[146] NAB Comments at 3.

[147] REC Comments at 5. *But see* REC Reply Comments at 4 (stating that Comscore should be considered an alternative to Nielsen).

any successor entity," it also provides that a DMA may be "a [DMA] under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research. . . ."[148] The *NPRM* sought comment on alternatives to the Nielsen Local TV Report that would be "equivalent to the system established by Nielsen Media Research."[149] For the reasons discussed below, we decline to adopt any of the alternatives proposed. The *NPRM* specifically sought comment on the LPTV Broadcasters' Association (LPTVBA) requests that the Commission use Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by the Office of Management and Budget (OMB) using census data to implement the LPPA.[150] Some commenters support the suggestion.[151] Flood contends that MSA market definitions "more accurately reflect the characteristics of the LPTV station's service area that are pertinent to determining eligibility" under the LPPA.[152] Flood also argues that the Nielsen DMAs are "geographically overbroad" and group some of the most rural areas in the U.S. with distant major cities, rendering some stations in rural areas ineligible for Class A status.[153] Flood also notes that, under a DMA approach, similarly situated LPTV stations in immediately adjacent counties would receive inconsistent eligibility determinations, and, in some situations, stations in densely populated, larger counties would be eligible while those in adjacent, smaller, less densely populated counties would be ineligible.[154] The Identical Commenters urge the Commission to "create a TV market definition system that relies on … MSAs as the primary criteria for determining a set of geographic areas equivalent to the Nielsen DMA metric of 95,000 households or fewer."[155] They also note that the Nielsen DMA system does not include LPTV stations in its assessments and that "Nielsen's data is private and requires costly fees for access."[156]

37. We decline to use market classifications based on Census data, such as MSAs or RSAs, for purposes of implementing the LPPA. The LPPA specifically directs that the Commission use either Nielsen DMAs or a "system of dividing television broadcast station licensees into local markets" that is

[148] LPPA Sec.2(a)(2)(A) and (B).

[149] LPPA Sec.2(a)(2)(B); *NPRM* at para 34. The Commission asked that any commenter suggesting an alternative publication to the Nielsen Local TV Report to identify the publication as well as the similarities and differences in assigning stations to television markets, and explain why the alternative publication is preferable. *Id*.

[150] *NPRM* at para. 34. *See id*. (citing E-mail from Frank Copsidas, President and Founder, LPTV Broadcasters' Association, to Holly Saurer, Chief, Media Bureau, FCC (Feb. 27, 2023) (Copsidas Feb. 27 Letter)). Among other things, the LPTVBA makes a number of accusations regarding the character and business dealings of Nielsen Media Research. As we explain above and as we explained in the *NPRM*, Congress chose to define DMA as determined by Nielsen Media Research in the LPPA, and despite its lack of accreditation, the Commission found based on the record of the *Nielsen DMA Determination Update* proceeding that Nielsen is the sole source of information regarding DMA determinations. *See NPRM* at para. 33.

[151] *See* Flood Comments at 1-12; Identical Comments at 1-3; Communications Technologies Comments at 1-2; LPTVBA Reply Comments at 1-6; Flood Reply Comments at 1-4. Flood uses the term MSA to refer to both Metropolitan and Micropolitan Statistical Areas (mSA). *See* Flood Comments at 1, n. 2. LPTVBA argues that Metropolitan and Micropolitan Statistical Areas are two types of core based statistical areas (CBSAs) and urges the Commission to use CBSAs as an alternative local market system for purposes of the LPPA. *See* LPTVBA Reply Comments at 2-3.

[152] Flood Comments at 1. *See also* LPTVBA Reply Comments at 2. LPTVBA argues that any area not designated an MSA or a mSA should automatically be considered an RSA, and a station located in an RSA should be eligible under the LPPA population limit. LPTVBA Reply Comments at 2.

[153] Flood Comments at 5-7. *See also* LPTVBA Reply Comments at 3, n. 9.

[154] Flood Comments at 5-7. Flood provides examples of stations in adjoining DMAs that would receive different eligibility treatment under the LPPA. *Id*. at 5-7. *See also* LPTVBA Reply Comments at 3, n. 9.

[155] Identical Comments at 2 (citing the Copsidas Feb. 27 Letter).

[156] *Id*. at 2-3 (citing the Copsidas Feb. 27 Letter). *See also* Communications Technology Comments at 2.

"equivalent" to the system established by Nielsen.[157] Census classifications are not a "system of dividing television broadcast station licensees into local markets," and thus cannot be considered "equivalent" to the system established by Nielsen. Such classifications do not reflect television stations in the market, the reach of those local stations, the location of the populations they serve, or local viewing patterns.[158] On the other hand, a Nielsen DMA is an "exclusive geographic area in which the home market television stations hold a dominance of total hours viewed" and ties specifically to television viewing markets.[159] Thus, we conclude census-based categories are not "equivalent" to the system established by Nielsen.[160] In addition, we note that classifications based on Census data are based on population and group urban areas (the population "nucleus") with outlying counties "that have a high degree of integration" with the population nucleus based on commuting trends.[161] OMB itself warns that such classifications do not themselves adequately differentiate between urban and rural areas.[162] Thus, these census classifications do not address the concerns raised by those commenters who argue that Nielsen DMAs are geographically overbroad.[163] We also note that the kind of inconsistent eligibility results that some commenters argue would occur using Nielsen DMAs are inevitable with any system that divides the country into geographic markets, and are not unique to Nielsen.[164] Furthermore, we decline Identical Commenters' invitation that the Commission fabricate a new classification system based on Census data[165] because we find that such an exercise is unnecessary due to the availability of Nielsen data which is appropriate for this purpose. We also believe that such an exercise would significantly delay our ability to implement the LPPA. We also do not believe the failure of Nielsen to assign LPTV stations to DMAs is relevant[166] because the eligibility requirement is that the station "operate" in the DMA (that is, its transmission facilities are located within the qualifying DMA), not that it be assigned to the DMA. Finally, reference to the fact that Nielsen is a private company that charges for some of its materials[167] is

[157] LPPA Sec.2(a)(2)(A) and (B).

[158] For this reason, we disagree with LPTVBA that classifications based on Census data are preferable because they reflect "economic markets based on actual population behavior." LPTVBA Reply Comments at 3.

[159] *See supra* n. 133. NAB agrees that Census definitions like MSAs and RSAs have nothing to do with market assignment information or determining television broadcast markets, unlike Nielsen. *See* NAB Comments at 3. REC notes that Census data does not reflect "television households," the term used in the LPPA's DMA eligibility requirement ("not more than 95,000 television households"). *See* REC Reply Comments at 3; LPPA Sec.2(c)(2)(B)(iii). RCC opposes the use of MSAs because "they represent huge populations and areas" and would exclude many LPTV stations from converting to Class A. RCC Reply Comments at 5.

[160] NAB agrees that using MSA or RSA definitions would be "establishing alternative market definitions that are wildly different from those established by Nielsen and are not 'equivalent to' Nielsen DMAs as the LPPA requires." NAB Comments at 3. While we agree with LPTVBA that the Act permits us to consider local market definitions that differ from Nielsen DMAs, *see* LPTVBA Reply Comments at 4-5, we believe that the Act's requirement that any alternative system be "equivalent" the system established by Nielsen requires such alternative system to relate in some fashion to television markets and viewing patterns.

[161] *NPRM* at para. 34. *See generally* OMB, *2020 Standards for Delineating Core Based Statistical Areas,* 86 FR 37770, 37771 (July 16, 2021) (*2020 CBSA Standards*), available at https://www.federalregister.gov/documents/2021/07/16/2021-15159/2020-standards-for-delineating-core-based-statistical-areas.

[162] *2020 CBSA Standards*, 86 FR at 37772 (warning MSA "delineations do not produce an urban-rural classification, and confusion of these concepts has the potential to affect the ability of a program to effectively target either urban or rural areas, if that is the program goal").

[163] *See supra* para. 36.

[164] Flood Comments at 5-7.

[165] Identical Comments at 2 (citing the Copsidas Feb. 27 Letter).

[166] *Id*. at 2-3 (citing the Copsidas Feb. 27 Letter). *See also* Communications Technology Comments at 2.

[167] *Id*. at 2-3 (citing the Copsidas Feb. 27 Letter). *See also* Communications Technology Comments at 2.

not a barrier to our decision here. Nielsen has represented that it will provide to stations at no charge information about the DMA to which the station is assigned,[168] and information about the number of TV households in each DMA is publicly available.[169]

38. We also reject RCC's argument that our proposed adoption of an approach that limits eligibility under the LPPA to LPTV stations in DMAs with no more than 95,000 TV households is "nonsensical."[170] This commenter points out that, under this approach, only thirty-three Nielsen DMAs would qualify under the LPPA (in other words, only 33 out of 210 DMAs),[171] amounting to only 1.6% of TV households.[172] As a result, RCC argues that Congress could not have intended for use of Nielsen DMAs.[173] We disagree. Congress clearly intended that eligibility under the LPPA be limited, as the Act expressly provides that eligibility is limited to DMAs with no more than 95,000 TV households. As NAB notes, elevating LPTV stations from secondary to primary Class A status comes at the cost of "effectively block[ing] coverage and service improvements by full-service stations."[174] In turn, Congress sought to allow certain LPTV stations in only smaller DMAs (not all small LPTV stations or all LPTV stations in rural areas) to elevate to primary status. We decline to read the LPPA as promoting maximum elevation of LPTV stations to primary status; rather, Congress adopted a much more balanced approach.

39. We also decline to use Comscore data as an alternative to the Nielsen Local TV Report for purposes of the LPPA, as advocated by several commenters.[175] Like Nielsen, Comscore is a media analytics company that produces a list of television market areas and a calculation of the number of television households in each market.[176] Because Comscore, like Nielsen, has a proprietary market

---

[168] *See supra* n. 142 (citing *Nielsen DMA Determination Update Order* at paras. 1, 6 (reiterating Nielsen's clarification that it has "always told stations the DMAs to which they have been assigned upon request and free of charge")). We interpret Nielsen's commitment in this regard to mean it will inform LPTV stations seeking to convert to Class A status pursuant to the LPPA, at no charge, the DMA in which the station's transmission facilities are located. *See supra* para. 34. Any LPTV station seeking to file an application pursuant to the LPPA that needs further information in this regard may contact the Commission staff.

[169] *See* http://web.archive.org/web/20230605234252/https://ustvdb.com/seasons/2022-23/markets/. Thirty-three Nielsen DMAs had fewer than 95,000 TV households as of January 5, 2023. These DMAs are: Elmira-Corning, Watertown, Bend, Alexandria, Marquette, Jonesboro, Bowling Green, Laredo, Butte-Bozeman, Lafayette, IN, Grand Junction-Montrose, Twin Falls, Lima, Great Falls, Meridian, Parkersburg, Greenwood-Greenville, Eureka, Cheyenne-Scottsbluff, San Angelo, Casper-Riverton, Mankato, Ottumwa-Kirksville, Saint Joseph, Fairbanks, Zanesville, Victoria, Helena, Presque Isle, Juneau, Alpena, North Platte, and Glendive. Commission staff will review and confirm DMA information in all applications filed pursuant to the LPPA.

[170] RCC Comments at 6.

[171] RCC Comments at 5. *See also* REC Comments at 5 (noting that only LPTV stations in DMAs ranked 178 (Elmira-Corning, New York) through 210 (Glendive, Montana) would qualify for Class A status under the LPPA).

[172] *See* RCC Comments at ii.

[173] *Id*. at 4 (stating that Congress "would [not] waste its time for the purpose of affecting such a marginal impact"). *See also* Flood Comments at 2 (urging use of MSAs to "maximize eligibility for stations" to elevate to Class A status).

[174] NAB Comments at 4.

[175] *See* Lockwood Comments at 1-3; NPG Comments at 4-6; REC Reply Comments at 3-4.

[176] Comscore uses its own proprietary system for geographic market definitions and number of TV households. Comscore, Local Market Definitions, *at* https://www.comscore.com/Products/Television/Local-Market-Definitions (last visited Oct. 2, 2023). For instance, we note that Nielsen defines a TV household as follows: TV households must have at least one operable TV/monitor with the ability to deliver video via traditional means of antennae, cable set-top-box or satellite receiver and/or with a broadband connection. *See* Nielsen, Nielsen Estimates 120.6 Million TV Homes in the U.S. for the 2019-2020 TV Season (Aug,. 2019), *at* https://www.nielsen.com/insights/2019/nielsen-estimates-120-6-million-tv-homes-in-the-u-s-for-the-2019-202-tv-

(continued….)

system and requires payment for access, LPTVBA opposes adoption of Comscore data as an alternative local market system.[177] REC comments that "the debate and development of any alternate system" to Nielsen "would further delay the process and could defeat the purpose of limiting" Class A conversions to rural areas,[178] but also noted that Comscore markets "could be" comparable to Nielsen DMAs and should be considered.[179] While it is possible that Comscore could qualify as a "system of dividing television broadcast station licensees into local markets" that is "equivalent" to the system established by Nielsen,[180] we find that the record here does not establish any material benefits from use of Comscore either in addition to or in place of Nielsen for purposes of the LPPA, nor that any such benefits would outweigh the uncertainty and delay that use of Comscore would have in issuing Class A licenses. In particular, we are concerned about introducing uncertainty into the application review process, in the instance where Comscore's market classifications may differ from Nielsen. The lack of a compelling reason to select a different classification system instead of Nielsen weighs in favor of our decision to use Nielsen Local TV Report for purposes of implementing the LPPA.

40. Finally, we decline the requests of three other commenters who argue in favor of other alternatives to Nielsen DMAs. One Ministries advocates that the Commission should allow LPTV stations to demonstrate that the geographic area covered by the station is a subset of a larger DMA, such as when the station is in a hyphenated DMA, *i.e.* Chico-Redding.[181] One Ministries argues that Nielsen identifies Chico and Redding separately for purposes of radio markets, that LPTV stations cover roughly the same area as radio stations, and that no LPTV station in Chico-Redding covers both of those cities.[182] The LPPA directs that the Commission define DMA using Nielsen or an "equivalent" system of local TV markets, and dividing Nielsen hyphenated markets into separate markets for purposes of the LPPA would not be "equivalent" to the system established by Nielsen. As NAB notes,[183] more than 40 percent of Nielsen markets are hyphenated, and allowing these markets to be treated as separate markets would create a system that is dramatically different from the current Nielsen DMA market definitions.[184] JB Media Group argues that Nielsen DMAs do not account for variables such as interference that "can significantly impact viewership" and urges "an alternative approach that takes into account interference,

---

season/#:~:text=Nielsen's%20national%20definition%20of%20a,Audience%20measurement%20TV. Comscore states that it has "the largest and most representative TV viewing measurement footprint covering 1-in-3 homes across 75 million TV screens in over 30M households." Comscore, National TV Measurement, *at* https://www.comscore.com/Products/Television/National-TV-Measurement (last visited Oct. 2, 2023).

[177] *See* LPTVBA Reply Comments at 4. Apart from that issue, LPTVBA notes that it has "no reason to question the veracity of Comscore data." *Id*.

[178] REC Comments at 5.

[179] REC Reply Comments at 3 (explaining that Comscore, like Nielsen, has 210 market areas, and that only Comscore markets 164 through 210 would meet the 95,000 television household criteria).

[180] LPPA Sec.2(a)(2)(B).

[181] *See* One Ministries Comments at 2.

[182] *Id*.

[183] *See* NAB Comments at 3. *See also* https://ustvdb.com/seasons/2022-23/markets/.

[184] NAB agrees that allowing some or all of the hyphenated DMAs to become separate television markets for purposes of the LPPA would create a set of alternative markets that are "radically different" from Nielsen DMAs. NAB Comments at 3. NAB also argues that authorization of new Class A stations could impede the transition to ATSC 3.0. *See* NAB Comments at 4. We agree with LPTVBA and Flood that we should not consider the impact of the LPPA on the ATSC 3.0 transition. *See* LPTVBA Reply Comments at 5-6, Flood Reply Comments at 5-6. We conclude that Congress did not intend that we consider the impact of the LPPA on the transition to ATSC 3.0. In the LPPA, Congress created specific, limited eligibility requirements that created a balanced approach to elevate certain LPTV stations in smaller DMAs to primary status. We do not believe Congress intended that we further limit eligibility under the Act by considering hypothetical limitations potentially imposed on stations in the future in connection with the transition to ATSC 3.0.

actual households, and signal power under different weather conditions."[185] We find that it would be impractical and lead to delay in implementing the LPPA for Commission staff to define markets based on factors such as weather and actual viewership, and JB Media Group does not offer an existing alternative market definition based on these factors. Finally, RCC argues that the Commission should allow all LPTV stations whose "Section 307(b) community of license has fewer than 95,000 TV households" to convert to Class A status.[186] We conclude that such a system of defining local TV markets would be very different than the one required by the LPPA to be "equivalent" to the system established by Nielsen, which defines larger geographic regions than community of license.[187]

5. License Standards (Ongoing Eligibility Requirements)

41. We will not require LPPA Class A stations to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount as a result of changes beyond the station's control. In the *NPRM*, the Commission stated its belief that the LPPA requirement that stations remain in compliance with the Act's eligibility requirements for the term of the Class A license[188] means that stations that convert to Class A status must continue to operate in DMAs with not more than 95,000 television households in order to maintain their Class A status.[189] The Commission noted that, under this interpretation of the Act, a station that converted to Class A status pursuant to the LPPA would no longer be eligible to retain Class A status if the population in its DMA later grows to more than 95,000 television households.[190]

42. All of the commenters that addressed this interpretation of the Act oppose requiring LPPA Class A stations to remain in DMAs that meet the threshold population restriction, at least without some exceptions. Commenters argue that if the Commission were to require continued compliance with this restriction, licensees would lack regulatory certainty to pursue Class A status, which would undermine the economic viability of Class A stations, and thus fewer stations would likely apply.[191] Commenters also contend that it would be unfair to mandate that a station lose rights through no fault of its own if the population rose above the 95,000 threshold,[192] that the proposal would limit a licensee's ability to modify its facilities in the future (*e.g.*, by relocating),[193] and that the proposal would impose

---

[185] JB Media Group Comments at 1-2.

[186] RCC Comments at 6. RCC further argues that the Commission's reliance on a privately created DMA definition renders the LPPA unconstitutional as it adopts an "unconstitutional industrial code … to license protected Class A TV broadcast stations." *Id*. at 18. We reject this argument. Congress does not run afoul of subdelegation principles because it permits an agency to use an outside entity's market definition for a particular purpose specified in the statute. There is no assignment of unguided or unchecked authority here. Finally, we also reject RCC's argument that the LPPA "prohibits the Commission from displacing any LPTV licensee, regardless of whether the license contains a Class A designation, for the purpose of selling that LPTV spectrum at auction." RCC Comments at 17. The LPPA is silent with respect to the issue of auctioning broadcast spectrum, and there is no evidence that Congress intended that we consider this issue as part of our implementation of the LPPA.

[187] RCC also argues that "the Commission's proposed licensing rules improperly removes LPTV stations from their 47 U.S.C. § 307(b) communities of license and reassigns them to much larger DMA markets in the name of 'protecting' those small LPTV stations." RCC Comments at 3. We disagree with this characterization of our decision to use Nielsen DMAs for purpose of the LPPA. Our decision is consistent with the LPPA, relates only to implementation of the LPPA, and does not affect the communities LPTV stations are licensed to serve.

[188] *See* LPPA Sec.2(c)(3)(A)-(B).

[189] *See NPRM* at para. 38.

[190] *Id*.

[191] *See* Flood Comments at 12-14; Identical Comments at 3-5; Lockwood Comments at 4-6; NAB Comments at 5; NPG Comments at 7-8. *See also* Flood Reply Comments at 4; LPTVBA Reply Comments at 6-7.

[192] *Id*.

[193] *See* Identical Comments at 4.

different license terms for LPPA Class A stations than for existing Class A stations, which face no similar possible loss of their Class A status.[194]

43. Commenters also argue that the Commission proposal is not required by the statute.[195] Section 2(c)(2)(B)(iii) of the LPPA states that the Commission may approve conversion to Class A status for a station that "as of the date of enactment of this Act, operates in a Designated Market Area with not more than 95,000 television households."[196] While Section 2(c)(3)(B) directs that a converted station is to remain in compliance with paragraph (2)(B)'s eligibility requirements during the term of the license, commenters argue that this language is properly interpreted to require only that a station be in compliance with the DMA requirement "as of" the date of enactment of the LPPA (January 5, 2023), not that it remain in compliance going forward.[197]

44. We are persuaded by commenters who argue that a station, once it converts to Class A status pursuant to the LPPA, should not later lose eligibility and therefore be required to revert back to an LPTV station with secondary spectrum use status as a result of changes beyond the station's control.[198] We conclude that Congress did not intend for LPPA Class A stations to subsequently lose Class A status through DMA changes that are not under the control of the station because Congress intended that the communities served by these stations should be able to rely on uninterrupted service from the stations.[199] Accordingly, we will not require LPPA Class A stations to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount as a result of changes beyond the station's control. We find that the reasons that a station may no longer comply with the 95,000 TV household threshold that are beyond the station's control are a change in the market size through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount.

45. We will not, however, permit an LPPA Class A station to maintain its Class A status if the size of the market it serves increases beyond 95,000 television households due to a change within the control of the station. For instance, we will not permit an LPPA Class A station to initiate a move to a different DMA that does not meet the LPPA population threshold at the time of the move and still retain the station's Class A status. We interpret the LPPA's continuing compliance mandate to preclude changes under the station's control that would result in the station's failure to continue to comply with the Act's eligibility requirements. We disagree with those commenters who argue that the Act requires only that the station be in compliance with the DMA requirement as of January 5, 2023.[200] This reading of section 2(c)(2)(B)(iii) of the Act is contrary to the language of section 2(c)(3)(B), which does not carve out the 95,000 TV household threshold requirement from the continuing compliance mandate. Such an interpretation would also undercut the purpose of the LPPA to strengthen protections for TV stations

[194] *See* Flood Comments at 13-14.

[195] *See* Lockwood Comments at 4-5; Identical Comments at 4-5; NPG Comments at 7.

[196] LPPA Sec.2(c)(2)(B)(iii).

[197] Lockwood also notes that the FCC measures the number of TV households for purposes of its national TV, local TV, and local radio ownership cap "at the time of grant" of the application, and that divestiture is not required if a licensee later exceeds the threshold audience reach or market size/ranking. *See* Lockwood Comments at 5-6.

[198] *See*, *e.g.*, REC Comments at 6 (arguing that if Nielsen changes a DMA designation or the population of the DMA grows beyond the threshold amount, it should have no impact on the status of the Class A station if they remain in the same community).

[199] *See* Activity Report of the House Committee on Energy and Commerce, Low Power Protection Act, H.R.117-702 (Jan 2, 2023) (introduced as S. 3405) (stating the statute "would afford [low power television stations] with protections against harmful interference and ensure the communities served by such stations can receive news, emergency information, and other broadcasts without disruption").

[200] *See supra* para. 43.

located in smaller DMAs,[201] as it would allow LPPA Class A stations to move to DMAs with larger populations, depriving smaller DMAs of the service these stations provide. We also disagree with those commenters who argue that stations that convert to Class A status pursuant to the LPPA should be able to initiate later site changes that would move the station to a non-qualifying DMA.[202] The language of the Act requires that LPPA Class A licensees remain in compliance with the LPPA's eligibility requirements for the term of their Class A license, including the requirement that they operate in a DMA with no more than 95,000 TV households. Apart from changes to a DMA that are beyond the station's control, we will require that LPPA Class A licensees remain in compliance with the 95,000 TV household threshold DMA requirement for the term of the Class A license. Stations that choose to pursue a non-compliant modification may do so, but will have to surrender their Class A status.

C. Application Process

46. As proposed in the *NPRM*, we will evaluate applications to convert to Class A status pursuant to the LPPA as a modification of the LPTV station's existing license. No commenters addressed this issue. For purposes of the LPPA, applications to convert to Class A status will be limited to the conversion of existing LPTV facilities as they exist at the time of application, without consideration of any pending modifications to those facilities or unbuilt construction permits.[203] This approach will allow for expeditious consideration of all applications, and will eliminate delays that could arise from the possibility of mutual exclusivity between a Class A conversion application and other licensed full power or Class A facilities, were we to entertain license modifications during the application window. A licensed LPTV station holding a construction permit to modify its facilities will either need to license those permitted facilities before applying to convert to Class A status, or may apply for a new modification after the Commission has processed the applications from the window.[204]

47. When implementing the CBPA, the Commission required stations applying for Class A status to provide local public notice of applications for Class A status "since the nature of the underlying service is changing from secondary to primary service."[205] We adopt the tentative conclusion in the *NPRM*, that for the same reason we will require an applicant seeking Class A status pursuant to the LPPA to provide local public notice of the application. No commenters addressed this issue.

48. Application Form. As proposed in the *NPRM*, we will require that applications for modification of an LPTV station's existing license to convert to Class A status pursuant to the LPPA be filed using FCC Form 2100, Schedule F.[206] Such applications must be filed electronically and must

---

[201] LPPA Sec.2(c)(2)(B)(iii) (limiting eligibility for Class A status to stations operating in a DMA with not more than 95,000 TV households).

[202] *See*, *e.g.*, Communications Technologies Comments at 2-3 (arguing that it would be more equitable to require that stations operate for a fixed period of time (*e.g.*, one year) before proposing a site change to a non-qualifying DMA and adopt other criteria that would evaluate the public interest in terms of the number of other services available in the area currently served by the station versus the proposed new area); REC Comments at 6 (arguing that an LPPA Class A station should be permitted to retain its Class A status if a modification proposed by the station, and any subsequent modifications, "still result in the station providing a noise limited contour within at least 50 percent of the noise limited contour the station had at the time the station it was granted a conversion to Class A status." This would "prevent the station from making multiple 'hops' to move the station to a more desirable market while still affording stations the flexibility to adapt to changing situations" regarding tower siting, etc.).

[203] In other words, stations will not be permitted to seek technical modification of their facilities in conjunction with their Class A conversion application. This avoids potential confusion regarding the facilities to be protected as a Class A station.

[204] This ensures that any later-filed modification is properly flagged in our database as a Class A record.

[205] *Class A R&O*, 15 FCC Rcd at 6398, para. 108.

[206] The Commission will add to its Licensing Management System database (LMS) as part of FCC Form 2100, Schedule F, portions of the existing FCC Form 302-CA (Application for Class A Television Broadcast Station

(continued….)

include the required filing fee.[207] No commenters addressed these issues.[208]

D. TV Broadcast Incentive Auction, Post-Auction Transition, and Reimbursement

49. We affirm the tentative conclusion in the *NPRM* that nothing in the LPPA or in our implementation of the Act can or will affect the Commission's work related to the Broadcast Incentive Auction.[209] No commenters addressed this issue.

E. Digital Equity and Inclusion

50. The Commission sought comment in the *NPRM* on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility. Only one commenter, REC, addressed this issue. In REC's view, the overall impact to digital equity and inclusion of the LPPA "is slightly negative" as some LPTV stations on channels 5 and 6 could obtain primary status, thus limiting the ability in some areas to implement full-service FM broadcasting as a part of REC's WIDE-FM proposal, which REC asserts would increase the number of radio voices.[210] While REC notes that the language of the Act is outside the Commission's control,[211] REC asserts that its proposals in response to the *NPRM* will help ensure that rural LPTV stations that provide a minimal level of locally originated programming will be given "a level of expectation of longevity" as a result of changing from secondary to primary status, which "could help persons who live in rural or Tribal areas" to continue to receive local TV service.[212] In addition, REC comments that requiring LPPA Class A stations to comply with full service rules will allow the Commission to better measure diversity in broadcast ownership and, through the public file process, require stations to be more accountable to their local audiences.[213]

51. We appreciate receiving REC's views and have considered them fully in reaching our conclusions herein regarding implementation of the LPPA. We acknowledge the importance of advancing diversity, equity, inclusion, and accessibility, and we believe that the LPPA itself, and the rules we adopt herein implementing the Act, will advance those aims.

F. Other Issues

52. Must Carry Rights. Two commenters, RCC and Dockins, argue that the Commission should amend its rules to give Class A stations must carry status.[214] RCC argues that the Commission should "clarify" that Class A stations are incorrectly classified as "low power stations," whose carriage is limited as provided in section 76.55(d)[215] of our rules, but should instead be classified as "local commercial television stations" which are entitled to more expansive carriage rights as provided in section 76.555(c).[216] Dockins asserts that "there is no logical reason why the Commission cannot amend

---

Construction Permit or License). That form was developed for use by LPTV stations applying to convert to Class A status under the CBPA. Once an LPTV station obtains Class A status, it can file for minor modification of license using FCC Form 2100, Schedule E.

[207] The filing fee for an application for a "new license" for a Class A station is $ 425.00. *See* 47 CFR § 1.1104.

[208] We direct the Media Bureau to implement necessary updates to the form and issue a Public Notice announcing availability at the appropriate time.

[209] *See NPRM* at para. 43.

[210] REC Comments at 6.

[211] *Id*.

[212] *Id*. at 7.

[213] *Id*.

[214] *See* RCC Comments at 15-16; Dockins Comments at 3-4. *See also* RCC Reply Comments at 8.

[215] 47 CFR § 76.55(d).

[216] 47 CFR § 76.55(c). *See* RCC Comments at 15.

the rules to allow must-carry status for Class A stations" and that the "historic failure" of the Commission to give Class A stations must-carry rights "appears to be an oversight" that should be corrected.[217]

53. Consistent with the Commission's conclusion in the *Class A MO&O* with respect to LPTV stations that converted to Class A status pursuant to the CBPA, we conclude that LPPA Class A stations have the same limited must carry rights as LPTV stations, and do not have the same must carry rights as full service commercial television stations under section 76.55(c) of our rules.[218] In the *Class A MO&O*, the Commission noted that both the language of the CBPA and the accompanying legislative history were silent with respect to the issue of must carry rights for Class A stations, and concluded that it is unlikely that Congress intended to grant Class A stations full must carry rights, equivalent to those of full-service stations, without addressing the issue directly.[219] The LPPA is also silent with respect to the issue of must carry rights, and we similarly conclude therefore that Congress did not intend to confer full must carry rights on LPPA Class A stations equivalent to full-service stations, and different from the rights of CBPA Class A stations, without addressing the issue in the statute. Instead, we find that Congress intended LPPA Class A stations to have the same limited must carry rights as LPTV stations and existing Class A stations. We thus decline to revise our rules as RCC and Dockins request.

54. *De Minimis* Exception to the 95,000 TV Household Requirement. We also decline to adopt a *de minimis* exception to the LPPA's 95,000 TV household eligibility requirement, as proposed by Lockwood.[220] Lockwood argues that the Commission should adopt an exception of up to 5 percent to the 95,000 TV household amount to "further the underlying purpose" of the LPPA to afford eligibility for Class A protection to LPTV stations serving smaller DMAs.[221] Lockwood also argues that such an exception would afford flexibility in the case of fluctuations in the number of TV households in the DMA due to the methodology used to make the calculation or changes related to seasonal tourism or college/university populations.[222] Finally, Lockwood argues that the Commission has implemented *de minimis* exceptions to other of its regulatory requirements and has discretion to do so with respect to the LPPA as the Act expressly permits the Commission to select the appropriate system for determining

[217] Dockins Comments at 4.

[218] *See Class A MO&O*, 16 FCC Rcd at 8259-60, paras. 39-43. Section 614 of the Communications Act of 1934, as amended, establishes different sets of must carry eligibility requirements for local commercial television stations and for "qualified low power stations." 47 U.S.C. § 534. Under very narrow circumstances, low power stations can become "qualified" and eligible for must carry. 47 U.S.C. § 534(h)(2). For example, if a full power station is located in the same county or other political subdivision (of a State) as an otherwise qualified low power station, then the low power station will not be eligible for cable must-carry status. *See* 47 U.S.C. § 534(h)(2)(F). *See also Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2983, para. 67 & n.211 (1993) (*Must Carry Order*). Moreover, an otherwise qualified LPTV station qualifies for cable carriage only if the community of license of that station and the franchise area of the cable system on which it seeks carriage are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of the community of license on that date did not exceed 35,000. *See* 47 U.S.C. § 534(h)(2)(E).

[219] The Commission noted in the *Class A MO&O* that its conclusion with respect to Class A must carry rights was consistent with the view expressed by the Commission in its Report and Order implementing the Satellite Home Viewer Improvement Act of 1999. *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999, Broadcast Signal Carriage Issues, Retransmission Consent Issues*, Report and Order, 16 FCC Rcd 1918 (2000). In that Order, the Commission concluded that Class A stations are low power stations for mandatory carriage purposes, and are therefore not entitled to mandatory satellite carriage.

[220] *See* Lockwood Comments at 6.

[221] *Id*.

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

DMAs.[223]

55. The language of the Act clearly requires that, to be eligible for Class A status, a station must operate in a DMA with no more than 95,000 TV households.[224] The Act also requires that LPPA Class A licensees remain in compliance with the LPPA's eligibility requirements for the term of their Class A license.[225] With respect to the Act's DMA limit, as discussed above we interpret this continuing compliance mandate to preclude changes under the station's control that would result in the station's failure to continue to comply with the 95,000 TV household threshold.[226]

56. As discussed above, while the LPPA provides the Commission with additional discretion in evaluating applicants for Class A status to treat a station as qualifying for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served" or "for other reasons determined by the Commission,"[227] we are not inclined to expand the specific qualifying criteria beyond that identified in the statute.[228] The LPPA provides precise and limited eligibility criteria and, except in very limited circumstances, we are not inclined to expand the specific qualifying criteria beyond that identified in the statute. Accordingly, we decline to adopt a blanket *de minimis* exception to the DMA eligibility requirement. As discussed above, we will allow deviation from the strict statutory eligibility criteria in the LPPA only on a case-by-case basis where such deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation.[229]

IV. PROCEDURAL MATTERS

57. *Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),[230] 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."[231] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

58. *Final Paperwork Reduction Act Analysis*. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[232] The 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 information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),[233] we will seek specific comment on how the

---

[223] *Id*.

[224] LPPA Sec.2(c)(2)(B)(iii).

[225] LPPA Sec.2(c)(3)(B).

[226] *See supra* paras. 44-45.

[227] *See supra* para. 27. *See also* 47 U.S.C. § 336(f)(2)(B).

[228] *See supra* para. 28.

[229] *Id*.

[230] *See* 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).

[231] *See* 5 U.S.C. § 605(b).

[232] The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[233] The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). *See* 44 U.S.C. § 3506(c)(4).

Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

59. *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 these rules are non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

60. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 2, 4(i), 4(j), 303, 307, 309, 311, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 309, 311, 336(f), and the Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023), this *Report and Order* **IS ADOPTED**, effective thirty (30) days after the date of publication in the *Federal Register*.

61. **IT IS FURTHER ORDERED** that the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B and such amendments will be effective 30 days after publication in the Federal Register, except for 47 C.F.R. §§ 73.6030(c), 73.6030(d), and 73.3580(c)(7), which contain new or modified information collection requirements that require review by OMB under the PRA. The Commission directs the Media Bureau to announce the effective date of that information collection in a document published in the Federal Register after the Commission receives OMB approval.

62. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. 155(c), the Media Bureau is granted delegated authority for the purpose of amending FCC Form 2100 as necessary to implement the licensing process adopted herein and to establish the one-year application filing window once the revised form is available for use by applicants, and for the purpose of submitting the report to Congress required pursuant to the Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193, Sec. 2(d) (2023).

63. **IT IS FURTHER ORDERED** that the Media Bureau is granted delegated authority for the purpose of activating an OPIF for LPTV stations that apply to convert to Class A status pursuant to the LPPA and of informing applicants when their OPIF is ready for the applicant to upload documents required to be maintained in OPIF.

64. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

65. **IT IS FURTHER ORDERED** that 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

List of Commenters

Comments

Block Communications, Inc. (Block)

Communications Technologies

County of Los Angeles, California

Dockins Communications, Inc. (Dockins)

Flood Communications (Flood)

Channel 23 WXWZ, JB Media Group, Jose Berrios Diaz (JB Media Group)

Lockwood Broadcasting, Inc. (Lockwood)

LPTV Broadcasters Association (LPTVBA)

National Association of Broadcasters (NAB)

News-Press & Gazette Broadcasting (NPG)

One Ministries, Inc.

Radio Communications Corporation, LPTV Station W24EZ-D Formerly Class A Station W28AJ (RCC)

REC Networks (REC)

KFLA-LD; Data Wave, LLC; M&C Broadcasting Corporation – WCEA-LD; The Videohouse Inc.; ATV Holdings, Inc.; G.I.G., Inc.; Michael Karr; Caribevision Holdings; Tycke Media, LLC; America CV Station Group, Inc.; Viper Communications, Inc.; Lowcountry 34 Media, LLC; Paramount Broadcasting Communication LLC; Look Media; Lawrence F. Loesch; Agape Broadcasters Inc; Richardson Broadcasting; King Forward Inc; KADO/Word of Life Ministries, Inc; Dockins Broadcast Group (collectively referred to herein as "Identical Comments")

Reply Comments

Flood Communications

LPTV Broadcasters Association

Radio Communications Corp.

REC Networks

APPENDIX B

Final Rules

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Amend Section 73.3580 by revising paragraph (c) to add new paragraph (c)(7) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

(c) Applications requiring local public notice. The following applications filed by licensees or permittees of the following types of stations must provide public notice in the manner set forth in paragraphs (c)(1) through (7) of this section:

(7) Applications by LPTV stations to convert to Class A status pursuant to the Low Power Protection Act. The applicant shall both broadcast on-air announcements and give online notice.

2. Section 73.6030 is adopted as follows.

§ 73.6030 Low Power Protection Act

(a) Definitions. For purposes of the Low Power Protection Act, a low power television station's Designated Market Area (DMA) shall be defined as the DMA where its transmission facilities (i.e., the structure on which its antenna is mounted) are located. DMAs are determined by Nielsen Media Research. A low power television station shall be defined in accordance with § 74.701(k).

(b) Eligibility Requirements. In order to be eligible for Class A status under the Low Power Television Protection Act, low power television licensees must:

(1) have been operating in a DMA with not more than 95,000 television households as of January 5, 2023;

(2) have been broadcasting a minimum of 18 hours per day between October 7, 2022 and January 5, 2023;

(3) have been broadcasting an average of at least three hours per week of locally produced programming between October 7, 2022 and January 5, 2023;

(4) have been operating in compliance with the Commission's requirements applicable to low power television stations between October 7, 2022 and January 5, 2023;

(5) be in compliance with the Commission's operating rules for full-power television stations from and after the date of its application for a Class A license; and

(6) demonstrate that the Class A station for which the license is sought will not cause any interference described in 47 U.S.C. 336(f)(7).

(c) Application Requirements. Applications for conversion to Class A status must be submitted using FCC Form 2100, Schedule F within one year beginning on the date on which the Commission issues notice that the rules implementing the Low Power Protection Act takes effect. The licensee will be required to submit, as part of its application, a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 and a list of locally produced programs aired during that time period. The applicant may also submit other documentation, or may be requested by Commission staff to submit other documentation, to support its certification that the licensee meets the eligibility requirements for a Class A license under the Low Power Protection Act.

(d) Licensing Requirements. A Class A television broadcast license will only be issued under the Low Power Protection Act to a low power television licensee that files an application for a Class A Television license (FCC Form 2100, Schedule F), which is granted by the Commission.

(e) Service Requirements. Stations that convert to Class A status pursuant to the Low Power Protection Act are required to meet the service requirements specified in § 73.6001(b)-(d) of this chapter for the term of their Class A license. In addition, such stations must remain in compliance with the programming and operational standards set forth in the Low Power Protection Act for the term of their Class A license. In addition, such stations must continue to operate in DMAs with not more than 95,000 television households in order to maintain their Class A status unless the population in the station's DMA later exceeds 95,000 television households through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds 95,000 television households. LPPA Class A stations will not be permitted to initiate a move to a different DMA with more than 95,000 television households at the time of the move and still retain their Class A status.

(f) Other regulations. From and after the date of applying for Class A status under the Low Power Protection Act, stations must comply with the requirements applicable to Class A stations specified in subpart J of this part (§§ 73.6000 through 73.6029) and must continue to comply with such requirements for the term of their Class A license.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Act Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* (*NPRM*) released March 30, 2023.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. The *Report and Order* adopts rules to implement the Low Power Protection Act (LPPA or Act),[4] which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a "limited window of opportunity" to apply for primary spectrum use status as Class A television stations.[5] The rules adopted herein reflect most of the Commission's proposals in the *Implementation of the Low Power Protection Act*, *Notice of Proposed Rulemaking* (*NPRM*)[6] in this proceeding, with limited exceptions.[7] We establish herein the period during which eligible stations may file applications for Class A status pursuant to the LPPA, clarify eligibility and interference requirements, and establish the process for submitting applications for Class A status pursuant to the Act. Our rules provide eligible LPTV stations with a limited opportunity to apply for primary spectrum use status as Class A television stations, consistent with Congress's directive in the LPPA.

3. We conclude that the application window will be limited to the one year application window contemplated by the Act, and that an application filed for Class A status must demonstrate that the LPTV station operated in a Designated Market Area (DMA) with not more than 95,000 television households on January 5, 2023. We also conclude that LPTV stations that convert to Class A status under the LPPA must comply with the interference protection standards set forth in section 336(f)(7) of the Communications Act of 1934, with the exception of those provisions that are now obsolete given the transition of all television stations from analog to digital operations. We apply the Commission's recently updated definition of an LPTV station for purposes of determining which stations are eligible for Class A status under the LPPA and codify in our rules the eligibility criteria set forth in the LPPA. We also implement provisions of the LPPA which provide that licenses issued to stations that convert to Class A status are subject to full power television station license terms and renewal standards, with certain exceptions. We conclude that LPPA Class A licensees are required to remain in compliance with the LPPA's eligibility requirements for the term of their Class A license, except for changes to the station's DMA that are beyond the control of the station. We conclude that we will evaluate Class A status to eligible LPTV stations as a modification of the station's existing license, and that nothing in the LPPA, or

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Notice of Proposed Rulemaking, FCC 23-23 (rel. March 30, 2023) (*NPRM*).

[3] 5 U.S.C. § 604.

[4] Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023).

[5] LPPA Sec.2(b).

[6] *See Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Notice of Proposed Rulemaking, FCC 23-23 (rel. March 30, 2023) (*NPRM*).

[7] We received over thirty comments in response to the *NPRM*. Twenty of these commenters filed identical comments supporting the adopting of MSAs as an alternative local market methodology for determining eligibility under the LPPA

our rules implementing the Act, affects the Commission's work related to the Broadcast Incentive Auction. We address how our actions implementing the LPPA advance diversity, equity, inclusion, and accessibility and, lastly, decline to amend our rules to afford Class A stations must carry rights equivalent to full service stations and decline to adopt a de minimis exception to the LPPA's DMA eligibility requirement.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

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.[8]

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

D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] 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.[12] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

8. *Television Broadcasting*. This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[13] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[14] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small

[8] 5 U.S.C. § 604(a)(3).

[9] 5 U.S.C. § 603(b)(3).

[10] *Id*. § 601(6).

[11] *Id*. § 601(3) (incorporating by reference the definition of "small-business concern" in 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." 5 U.S.C. § 601(3).

[12] 15 U.S.C. § 632.

[13] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[14] *Id.*

business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[15] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[16] Of that number, 657 firms had revenue of less than $25,000,000.[17] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

9. As of September 30, 2023, there were 1,377 licensed commercial television stations.[18] Of this total, 1,258 stations (or 91.4%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of September 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 380 Class A TV stations, 1,889 LPTV stations and 3,127 TV translator stations.[19] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. In implementing the LPPA, the *Report and Order* adopts new or additional reporting, recordkeeping or other compliance requirements for small and other entities. For example, the LPPA requires that, to be eligible for Class A status, during the 90 days preceding the date of enactment of the LPPA an LPTV station must have broadcast a minimum of 18 hours/day and an average of at least 3 hours per week of programming produced within the "market area" served by the station[20] and have been in compliance with the Commission's requirements for LPTV stations.[21] The rules also require that small and other applicants seeking to convert to Class A status under the LPPA certify in their application for Class A status that they have complied with these eligibility requirements during the 90 days preceding the January 5, 2023 enactment of the statute. An applicant must submit, as part of its application, a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 and a list of locally produced programs aired during that time period. The applicant may also submit other documentation to support its certification that the licensee meets the eligibility requirements for a Class A license under the Low Power Protection Act. In addition, the Commission staff may also request additional documentation if necessary during consideration of the application.

11. Beginning on the date of its application for a Class A license and thereafter, a station

---

[15] *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[16] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[17] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[18] *Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921 (rel. Oct. 3, 2023) (*October 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf.

[19] *Id*.

[20] LPPA Sec.2(c)(2)(B)(i)(I), 47 U.S.C. § 336(f)(2)(A)(i)(II).

[21] LPPA Sec.2(c)(2)(B)(i)(I), 47 U.S.C. § 336(f)(2)(A)(i)(III).

"must be in compliance with the Commission's operating rules for full-power stations."[22] We will apply to small and other applicants for Class A status under the LPPA, and to stations that are awarded Class A licenses under that statute, all Part 73 regulations except for those that cannot apply for technical or other reasons. For example, Class A stations must comply with the requirements for informational and educational children's programming, the political programming and political file rules, and the public inspection file rule.

12. The LPPA requires that a station that converts to Class A status pursuant to the statute continue to meet the eligibility requirements of the LPPA during the term of the station's Class A license. To be eligible under the LPPA, in addition to other eligibility requirements, section 2(c)(2)(B)(iii) of the Act requires an LPTV station must "as of the date of enactment" of the LPPA operate in a DMA with not more than 95,000 television households.[23] Section 2(c)(3)(B) of the Act, however, requires that stations that convert to Class A status under the LPPA "remain in compliance" with paragraph (2)(B) "during the term of the license."[24] We interpret section 2(c)(3)(B) to require that stations that convert to Class A status, including small entities, remain in DMAs with not more than 95,000 television households in order to maintain their Class A status except for situations in which the population in the station's DMA later exceeds the threshold amount through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount. LPPA Class A stations will not be permitted to initiate a move to a different DMA with more than 95,000 television households at the time of the move and still retain their Class A status. In addition, licensed Class A stations must also continue to meet the minimum operating requirements for Class A stations.[25] Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or that elect to revert to low power television status, must promptly notify the Commission, in writing, and request a change in status.[26] The *Report and Order* also requires that stations that convert to Class A status pursuant to the LPPA comply with all rules applicable to existing Class A stations, including interference requirements.

13. The *Report and Order* requires small and other stations seeking to convert to Class A designation pursuant to the LPPA to submit an application to the Commission within one year of the effective date of the rules adopted in this proceeding. The *Report and Order* concludes that the Commission will not continue to accept applications to convert to Class A status under the LPPA beyond the one-year application period set forth in the statute. In addition, we will allow deviation from the strict statutory eligibility criteria under the LPPA only where deviations are insignificant or where there are compelling circumstances such that equity mandates a deviation.[27] In the *NPRM*, we noted that one example of such compelling circumstances might be "a natural disaster or interference conflict which

---

[22] LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

[23] LPPA Sec.2(c)(2)(B)(iii).

[24] LPPA Sec.2(c)(3)(B).

[25] 47 CFR § 73.6001(c).

[26] *Id.* § 73.6001(d).

[27] The LPPA provides that the Commission may approve an application for Class A status if the application satisfies section 336(f)(2) of the Communications Act of 1934, codified as part of the CBPA. LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A). The CBPA provided the Commission with additional discretion in evaluating applicants for Class A status if "the Commission determines that the public, interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission." 47 U.S.C. § 336(f)(2)(B). In the *Class A Order*, the Commission determined that it would allow deviation from the strict statutory eligibility criteria in the CBPA "only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation." *Class A Order*, 15 FCC Rcd at 6369, para. 33.

forced the station off the air" during the 90-day period preceding enactment of the statute.

14. We expect the actions we have taken in the *Report and Order* achieve the goals of implementing the LPPA without placing significant additional costs and burdens on small entities. At present, 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 rules. However, we anticipate that the compliance obligations for small stations will be outweighed by the benefits provided through the LPPA's granting of a limited opportunity for LPTV stations to apply for primary status as a Class A television licensee.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

15. 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."[28]

16. Through comments provided by interested parties during the rulemaking proceeding, the Commission considered various proposals from small and other entities. The adopted rules reflect the Commission's efforts to implement the LPPA by balancing the Commission's proposals in the *NPRM* with alternative proposals provided by the commenters and weighing their benefits against their potential costs to small and other entities. As discussed above, the LPPA provides a limited window of opportunity for an LPTV station to attain primary status as a Class A TV station, if the LPTV station meets the eligibility criteria set forth in the LPPA. The *Report and Order* adopts most of the Commission's proposals in the *NPRM*, with one significant exception. We do not adopt the proposal to require that all licensees that convert to Class A status pursuant to the LPPA remain in compliance with the LPPA's requirement that the station be in a DMA with no more than 95,000 TV households for the term of their Class A license. Instead, we conclude that LPPA Class A stations will not be required to continue to comply with the 95,000 TV household threshold if the population in the station's DMA later exceeds the threshold amount either through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount. This one change to our approach in implementing the LPPA may minimize a potentially significant impact on a small entity in circumstances where the station is in a DMA that later exceeds the threshold TV household eligibility amount for reasons beyond the station's control. We also considered but did not, however, permit an LPPA Class A station to initiate a move to a DMA that does not meet the 95,000 TV household eligibility requirement and still retain its status as a Class A station.

17. Additionally, in the *Report and Order* the Commission adopted a simplified license application approach regarding the documentation stations are required to submit as part of their application for a Class A license. Rather than mandating that an applicant provide specific additional documents to support its application, the Report and *Order* permits an applicant to provide whatever additional documentation the applicant has that best support its certification that it met the operational and programming requirements of the LPPA during the eligibility period. This flexibility minimizes the impact on small LPTV stations, some of which may have difficulty providing specific mandated documents because they do not have the necessary documents or lack the resources necessary to provide the document in a form that supports their certification. We also took the step of reducing a potential economic burden to small LPTV stations by adopting the proposal to use data from the Nielsen Local TV Station Information Report (Nielsen Local TV Report) in order to determine the DMA where the LPTV station's transmission facilities are located for purposes of eligibility. The Commission considered proposed alternatives such as using census data for Metropolitan Statistical Areas (MSAs) and Rural

[28] 5 U.S.C. § 604(a)(6).

Service Areas (RSAs), or Comscore data. However, we have determined that using the Nielsen Local TV Report would be less burdensome to small and other LPTV stations based on current industry practices and because certain data, such as DMA station assignment information, can be provided to stations at no cost.

G. Report to Congress

18. 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.[29] 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*.[30]

[29] *See Id.*. § 801(a)(1)(A).

[30] *See Id.* § 604(b).

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

In the Matter of	)	File No: EB-SED-22-00034112
	)	NAL/Acct. No.: 202432100002
Sound Around, Inc.	)	FRN: 0028317733
	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 12, 2023 **Released: December 14, 2023**

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION

1. We propose a penalty of $1,202,454 against Sound Around, Inc. (Sound Around or Company) for apparently violating section 302 of the Communications Act of 1934, as amended (the Act) and section 2.803 of the Commission's rules through the marketing of noncompliant radio frequency devices and for failing to comply with Commission orders. Following an extensive investigation, the Commission finds that Sound Around marketed 33 radio frequency device models before the models had been authorized in accordance with the Commission's rules. These apparent violations are compounded by the fact that the Company had earlier been cited and investigated for violations of the Commission's equipment authorization and marketing requirements multiple times, with an earlier investigation resulting in a Forfeiture Order in 2022. Instead of complying with the Commission's rules, Sound Around continued to market noncompliant radio frequency devices. Additionally, Sound Around provided incomplete responses to the Bureau's inquiries in this investigation, thereby obstructing the Bureau's investigation into the Company's marketing practices and apparently violating two Commission orders. Accordingly, we propose a significant fine.

II. BACKGROUND

A. Legal Background.

1. Equipment Marketing Requirements

2. The Act, and the Commission's equipment marketing rules collectively require marketers of radio frequency devices to ensure, prior to advertising or selling such devices, that they will not cause harmful interference to authorized radio communications.[1] Specifically, section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."[2] The Commission has long-standing regulations, including technical and authorization requirements, designed to prevent interference from devices that emit radio frequency energy and to inform users that the equipment has been properly authorized.

3. Section 2.803(b)(1) of the Commission's rules provides that no person may market a radio frequency device that is subject to certification unless the device has been authorized in accordance with the rules and is properly identified and labeled.[3] Section 2.803(b)(2) bars the marketing of a device subject to authorization under a Supplier's Declaration of Conformity (SDOC) until "the device complies with all technical, labeling, identification and administrative requirements."[4] In the context of the Commission's equipment marketing rules, the term "marketing" means the "sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease."[5]

4. Intentional radiators must be properly authorized and labeled in accordance with the Commission's equipment certification process prior to marketing.[6] Certification is an equipment authorization process that uses third-party Commission-recognized Telecommunication Certification Bodies to evaluate applications submitted by responsible parties (e.g., manufacturers or importers) to determine whether the device meets the technical requirements for authorization.[7] If a subsequent device model is electronically identical to a model that was originally tested and authorized, then the authorization of the originally tested model may attach to the subsequently marketed model.[8]

5. Unintentional radiators can be authorized with a certification or an SDOC authorization.[9] The procedure to obtain an SDOC is one in which the responsible party, as defined in section 2.909 of the Commission's rules,[10] tests the device to ensure that the device complies with the appropriate technical

[1] 47 U.S.C. § 302a(b); 47 CFR § 2.803; *see Sound Around, Inc.,* Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 3478 (2020) (*Sound Around 2020 NAL*), Forfeiture Order, 37 FCC Rcd 9907 (2022) (*Sound Around 2022 Forfeiture Order*); *see also ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com, and Indubitably, Inc. d/b/a/ HobbyKing Corp., HobbyKing USA LLC, HobbyKing and HobbyKing.com*, Forfeiture Order, 35 FCC Rcd 7441, 7442, para. 5 (2020).

[2] 47 U.S.C. § 302a(b).

[3] *See* 47 CFR § 2.803(b)(1).

[4] *Id.* § 2.803(b)(2).

[5] *Id*. § 2.803(a).

[6] *See id*. § 15.201(b). An intentional radiator is "[a] device that intentionally generates and emits radio frequency energy by radiation or induction." *Id*. § 15.3(o).

[7] *Id*. § 2.907. The equipment certification procedures can be found in 47 CFR §§ 2.1031-2.1060.

[8] *See id*. §§ 2.907(b), 2.908.

[9] *Id*. § 15.3(z) ("Unintentional radiator. A device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signals by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction."); *id*. § 15.101(a) (unintentional radiators require certification or Supplier's Declaration of Conformity authorization).

requirements.[11] Equipment is also subject to labeling requirements based on the equipment authorization procedure prescribed in the specific Commission rules that apply to the product.[12]

2. Duty to Provide Complete Responses to Enforcement Bureau Inquiries

6. The Commission's authority to conduct investigations and to compel entities to provide information and documents sought during investigations is well established.[13] Section 403 of the Act grants the Commission "full authority and power to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act."[14] The Commission possesses broad investigatory authority and has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations.[15] The Enforcement Bureau (Bureau) similarly has been delegated by the Commission authority to "conduct investigations . . . on its own initiative" of potential violations of the Act or the Commission's rules.[16]

7. Thus, Companies that receive letters of inquiry (LOIs) must timely file complete and accurate responses to the Bureau's questions because the LOI is an order of the Commission. Section 503(b)(1)(B) of the Act, in part, provides that a person who willfully or repeatedly fails to comply with a Commission rule or order shall be liable for a forfeiture penalty.[17] Therefore, failure to respond fully and in a timely manner to the Bureau's inquiries is punishable by a forfeiture.[18] The Commission and the

(Continued from previous page)
[10] *Id*. § 2.909.

[11] *See id.* § 2.906(a) ("Supplier's Declaration of Conformity (SDoC) is a procedure where the responsible party, as defined in § 2.909, makes measurements or completes other procedures found acceptable to the Commission to ensure that the equipment complies with the appropriate technical standards and other applicable requirements.").

[12] *Id*. §§ 2.925, 2.1074, 15.19(a)(3)-(5), 18.209(b).

[13] Section 4(i) of the Act authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Section 4(j) states that "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." *Id*. § 154(j). Section 403 grants the Commission both the authority to institute inquiries and "the power to make and enforce any order or orders" relating to its inquiries into compliance with the Act. *Id*. § 403. Section 0.111(a)(17) of the Commission's rules delegates this authority to the Bureau. *See* 47 CFR § 0.111(a)(17) (granting the Enforcement Bureau the authority to "[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 220, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office").

[14] 47 U.S.C. § 403; *see, e.g.*, *Lyca Tel, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 12125 (2016).

[15] *See ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com, and Indubitably, Inc. d/b/a/ HobbyKing Corp., HobbyKing USA LLC, HobbyKing and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530 (2018), *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020), *recon. denied*, Memorandum Opinion and Order, 36 FCC Rcd 10688 (2021) (imposing a $39,278 forfeiture for failure to fully respond to an LOI); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (*Net One*), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 1021 (EB 2015).

[16] 47 CFR § 0.111(a)(17); *see also* 47 U.S.C. § 155(c)(3) ("Any order . . . or action made or taken pursuant to any [ ] delegation . . . shall have the same force and effect . . . and [be] enforced in the same manner, as orders . . . of the Commission.").

[17] 47 U.S.C. § 503(b)(1)(B).

[18] *See* 47 U.S.C. §§ 154(i), 154(j), 403, 503(b)(1)(B); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599-7600, paras. 23-28 (2002) (*SBC*); *Message Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 8214, 8216-17, paras. 9-12 (EB 2014); *Calling Post Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 8208, 8210-11, paras. 8-11 (EB 2014).

Bureau have repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules.[19]

B. Factual Background

1. Prior Investigations

8. Sound Around, d/b/a Pyle Audio, is a privately held company located in Brooklyn, New York, that sells a variety of electronic products, including audio and video electronics and accessories for the home, car, professional users, and marine audio/video products through its own websites, as well as websites of third-party retailers such as Amazon.[20]

9. In 2011, the Bureau's Spectrum Enforcement Division (Division) cited the Company for marketing wireless microphones that were capable of operating in frequency bands other than those authorized and warned the Company to ensure its wireless microphones complied with the Commission's rules going forward.[21] During this investigation, Sound Around admitted that as far back as 2009 it had imported and marketed wireless devices from a company based in China, including devices that operated within a restricted frequency band.[22]

10. In 2016, the Bureau again began investigating whether the Company was marketing noncompliant wireless microphones. This investigation ultimately resulted in the Commission's issuance of the *Sound Around 2020 NAL* on April 3, 2020, which proposed to fine the Company $685,338 for marketing 32 apparently noncompliant models of wireless microphones.[23] The wireless microphones were either unauthorized or operated contrary to their claimed authorization.[24] As found in the *Marketing Citation*, the Company marketed the microphones through its websites and other online sources.[25]

---

[19] *See, e.g.*, *SBC*, 17 FCC Rcd at 7599-7600, paras. 23-28 (target violated a Commission Order when it failed to provide a sworn verification to a letter of inquiry issued by the Enforcement Bureau); *see also Net One*, 29 FCC Rcd at 267, para. 9 (target violated a Commission Order when it provided an incomplete response to a letter of inquiry issued by the Enforcement Bureau), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 1021 (EB 2015); *AllCom*, Notice of Apparent Liability for Forfeiture and Order, 25 FCC Rcd 9124, 9126-27, paras. 6-10 (EB 2010) (target violated a Commission Order when it provided no response to a letter of inquiry issued by the Enforcement Bureau); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7601-02, paras. 6-8 (EB 2008), Order and Consent Decree, 28 FCC Rcd 12587 (EB 2013) (target violated a Commission Order when it provided incomplete responses to letters of inquiry issued by the Enforcement Bureau and provided no sworn verification supporting its incomplete responses).

[20] *See* Letter from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau at 1, 3 (Oct. 3, 2022) (LOI Response) (on file in EB-SED-22-00034112); *see also NAL*, 35 FCC Rcd at 3480, para. 6.

[21] *See Sound Around Inc.*, Citation, 26 FCC Rcd 9474, 9477, para. 10 (EB 2011) (*Marketing Citation*). The *Marketing Citation* noted that Sound Around engaged in unlawful marketing in 2009, 2010, and 2011. *Id.* at 9475-76, paras. 4-6. In the *Marketing Citation*, the Division found that the Company previously marketed four wireless microphone models that were ineligible for certification and therefore could not be marketed in compliance with the Commission's rules in the United States because they operated within restricted frequency bands listed in section 15.205(a) of the Commission's rules. *Id.* at para. 9. Sound Around also previously marketed a wireless microphone that was capable of operating within the 700 MHz frequency band, which is prohibited by section 74.851(g) of the Commission's rules. *Id.*

[22] *Id.* at 9475, para. 4.

[23] *See Sound Around 2020 NAL*, *supra* note 1, at 3484, para. 17.

[24] *Id*.

[25] *See id*. at para. 6.

11. On July 10, 2020, Sound Around filed a response to the *Sound Around 2020 NAL*.[26] After reviewing this response, the Commission issued the *Sound Around 2022 Forfeiture Order* on August 1, 2022, which upheld the *Sound Around 2020 NAL* and assessed the $685,338 forfeiture previously proposed.[27] The *Sound Around 2022 Forfeiture Order* also directed the Bureau to begin a new investigation based on apparent evidence that the Company continued to market noncompliant devices.[28] To date, Sound Around has not paid the $685,338 forfeiture.[29]

2. New Investigation

12. On August 2, 2022, the Bureau issued a letter of inquiry to Sound Around seeking equipment authorization and marketing information for all electronic devices marketed by the Company, not just wireless microphones.[30] In response to the LOI, the Company provided an incomplete LOI Response[31] and then submitted four additional incomplete responses.[32] Each of the responses purported to update or correct prior filings; however, all of them contained errors and incomplete, sometimes contradictory information. For example, some of the issues identified by the Bureau included the fact that the Company provided conflicting information regarding authorization dates, marketing dates, and product descriptions for nine FCC IDs identified in its various responses.[33] The issues with the Company's responses also included problems with seven test reports it submitted, such as test reports that were not relevant to our investigation because they showed compliance with European Union and Food and Drug Administration regulations, and test reports for devices that were not included on spreadsheets provided by Sound Around that purportedly included all electronic devices marketed by the Company.[34] In addition, Bureau staff collected independent evidence indicating that the responses were incomplete. This evidence included Sound Around's Amazon webpage, which showed the marketing of at least 45 models that were not disclosed in the Company's responses, and the Commission's equipment authorization database, which showed that Sound Around apparently obtained FCC authorizations that were also not disclosed in its LOI responses.[35]

---

[26] *Sound Around, Inc.*, Response to Notice of Apparent Liability (filed July 10, 2020) (NAL Response) (on file in EB-SED-17-00024010).

[27] *See Sound Around 2022 Forfeiture Order*, *supra* note 1, at 9925, para. 43.

[28] *Id.* at para. 47.

[29] We are not using the fact of the unpaid *Sound Around 2020 NAL* or *Sound Around 2022 Forfeiture Order* against the Company in this item, however, the Commission finds the underlying facts of those items and the prior investigations relevant to the present proceeding involving the Company. *See Infinity Radio Operations, Inc.*, Order on Review, 22 FCC Rcd 9824, 9827, para. 9 (2007).

[30] *See* Letter from Spectrum Enforcement Division, FCC Enforcement Bureau, to Sound Around, Inc., and Wilkinson Barker Knauer LLP (Aug. 2, 2022) (LOI) (on file in EB-SED-22-00034112).

[31] *See* LOI Response, *supra* note 20.

[32] *See* E-mail from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 2, 2022, 20:05 EDT) (on file in EB-SED-22- 00034112); E-mail from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 15, 2022, 18:57 EST) (on file in EB-SED-22-00034112); E-mail from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (Dec. 15, 2022, 17:25 EST) (on file in EB-SED-22-00034112); and E-mail from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 13, 2022, 15:23 EST) (on file in EB-SED-22-00034112).

[33] *See* E-mail from Spectrum Enforcement Division, FCC Enforcement Bureau, to Wilkinson Barker Knauer LLP (Dec. 19, 2022, 12:16 EST) (on file in EB-SED-22-00034112).

[34] *See id.*

[35] *See* Letter from Spectrum Enforcement Division, FCC Enforcement Bureau, to Wilkinson Barker Knauer LLP at 1-2 (Mar. 16, 2023) (Further LOI) (on file in EB-SED-22-00034112). For example, the Company did not provide (continued….)

13. Thus, in order to clarify the operative facts of the investigation, the Bureau sent the Further LOI to Sound Around on March 16, 2023, documenting the failure to respond fully to the LOI, and noting that the Company needed to respond in full and to take due diligence in ensuring the accuracy of the filing.[36] Subsequently, Bureau staff granted the Company's request for an extension of time to respond to the Further LOI, and Sound Around submitted its Further LOI Response on May 31, 2023.[37] Upon reviewing Sound Around's Further LOI response, Bureau staff identified additional deficiencies in the response, including omitted information about models the Company marketed, and sent a Deficiency Letter to the Company on August 2, 2023.[38] The Deficiency Letter identified areas of the Company's responses to the Commission inquires that were incomplete and requested further information on models and FCC IDs for which the Company provided incomplete information. Sound Around responded to that letter on August 9, 2023, and provided additional information on models marketed by the Company that had been previously omitted.[39] The Company then responded to an email from the Bureau[40] seeking clarification on certain models on September 22, 2023.[41]

III. DISCUSSION

14. We find that Sound Around apparently willfully and repeatedly violated section 302 of the Act and section 2.803(b)(1) of the Commission's rules when it marketed 33 radio frequency models prior to obtaining an equipment authorization or that were not authorized.[42] Three models had no authorization and thirty models were marketed by Sound Around prior to being authorized.[43] Sound Around's apparent violations of the Act and the Commission's rules occurred notwithstanding the previously issued *Marketing Citation* and subsequent investigations documented in the *Sound Around 2020 NAL* and *Sound Around 2022 Forfeiture* Order that addressed the same type of violations by the Company, its marketing of noncompliant radio frequency devices. Additionally, we find that Sound Around apparently violated two Commission orders when it provided incomplete responses to the LOI and the Further LOI. Accordingly, the Commission proposes a forfeiture of $1,202,454.

A. Sound Around Apparently Violated Section 302 of the Act and Section 2.803 of the Commission's Rules

15. Devices that unintentionally or intentionally emit radio frequency energy typically must be authorized in accordance with the Commission's rules prior to their being advertised or sold in the United States.[44] Specifically, section 302(b) of the Act provides that "[n]o person shall manufacture,

(Continued from previous page)
information on model PBMKRG155, advertised as a Bluetooth speaker, in any of its LOI responses prior to the issuance of the Further LOI. *See id*., Appendix A. The LOI had specifically identified Bluetooth speakers as a type of device that should be disclosed. *See* LOI, *supra* note 30, at 2.

[36] *See* Further LOI at 2.

[37] *See* E-mail from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (May 31, 2023, 23:38 EDT) (Further LOI Response) (on file in EB-SED-22-00034112).

[38] *See* Letter from Spectrum Enforcement Division, FCC Enforcement Bureau, to Wilkinson Barker Knauer LLP (Aug. 2, 2023) (Deficiency Letter) (on file in EB-SED-22-00034112).

[39] *See* Letter from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 9, 2023) (Deficiency Letter Response) (on file in EB-SED-22-00034112).

[40] E-mail from Spectrum Enforcement Division, FCC Enforcement Bureau, to Wilkinson Barker Knauer LLP (Sept. 15, 2023, 13:35 EDT) (on file in EB-SED-22-00034112).

[41] E-mail from Wilkinson Barker Knauer LLP, to Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 22, 2023, 16:09 EDT) (Clarification E-mail) (on file in File No. EB-SED-22-00034112).

[42] 47 U.S.C. § 302a(b); 47 CFR § 2.803(b)(1)-(2).

[43] *See infra* Appendix (for example, entry 1 involves a model that was marketed prior to obtaining an authorization and entries 29, 31, and 32 involve models for which no authorization had apparently been obtained).

import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."[45] Section 2.803(b)(1)-(2) of the Commission's rules provide that no person may market a radio frequency device that is subject to certification or SDOC unless the device has previously been authorized in accordance with the rules and is properly identified and labeled.[46]

16. Based on the Company's filings in this investigation, Sound Around marketed 33 radio frequency models that were not authorized at the time they were being marketed or sold. The subject device models, which are listed in the Appendix, required an authorization, either a certification or SDOC, based on the operational characteristics of each device, also identified in the Appendix. The Bluetooth devices, wireless microphones, and FM transmitters advertised and sold by Sound Around required certification as intentional radiators.[47] The non-wireless devices, e.g., digital keyboards, listed in the Appendix required an SDOC or certification as unintentional radiators.[48]

17. As shown in the chart contained in the Appendix, Sound Around marketed devices that required an authorization prior to obtaining that authorization or without ever obtaining an authorization. Rows 1 to 24 of the Appendix reflect devices that are intentional radiators and required a certification based on the capabilities of the devices (e.g., Bluetooth, wireless microphones, FM transmitters), but Sound Around admits to marketing these devices for periods of time, sometimes months, prior to obtaining an authorization. For example, row 1 shows that Sound Around marketed model PDWR62BTBK starting on October 31, 2021, but acknowledges that it only obtained an authorization with FCC ID 2A5J3-HYB1065B5 on April 6, 2022, for its Bluetooth capability, reflecting several months of marketing an unauthorized device. Rows 25 to 30 show the Sound Around models that required SDOC prior to marketing as unintentional radiators but were marketed prior to that authorization.[49] Finally, the devices listed in rows 31 to 33 were never authorized; Sound Around admits that it did not obtain an authorization, the FCC ID provided does not apply to the device, or the FCC ID provided does not cover the full capabilities of the device.

18. For rows 3, 8, 10, 19, and 20 of the Appendix, Sound Around's claimed date of first marketing is contradicted by evidence on the Amazon product webpage for the same device that shows earlier marketing. Sound Around has not adequately explained how the Amazon "Date First Available," which indicates the date the device was first available for sale on Amazon, is not an accurate documentation of when the Company first marketed the device.[50] We find where the Amazon "Date First Available" precedes the date of authorization, the Company marketed the devices prior to authorization.

(Continued from previous page)

[44] *See* 47 CFR Part 2, Subpart I.

[45] 47 U.S.C. § 302a(b).

[46] 47 CFR § 2.803(b)(1), (b)(2).

[47] *See supra* para. 4; *see also* Fed. Commc'ns Comm'n, *Equipment Authorization – RF Device*, available at https://www.fcc.gov/oet/ea/rfdevice (last visited Oct. 20, 2023).

[48] *See supra* para. 5.

[49] The Company provided the dates associated with the SDOC devices in rows 25-30 indicating when the SDOC process was complete and authorization was obtained. *See supra* note 11. Devices cannot be marketed until the appropriate authorization is obtained. 47 CFR § 2.803(b).

[50] *See* Clarification E-mail, *supra* note 41. Sound Around states that the Amazon "Date First Available" "does not necessarily reflect when the current version of a product was first sold by Sound Around." *Id*. Sound Around fails to explain, however, the difference between the "current" and the earlier versions of the product, including FCC authorizations, when those earlier versions were sold, whether Sound Around sold those earlier versions of the product itself or whether they were sold to Amazon or to a third party that sold those versions on Amazon at an earlier date than claimed. *See id*.

Accordingly, we find that Sound Around unlawfully marketed 33 radio frequency devices in the United States in apparent violation of section 302 of the Act and section 2.803 of the Commission's rules.

B. Sound Around Apparently Violated Commission Orders with Incomplete LOI Responses

19. Sound Around also apparently willfully and repeatedly violated Commission orders by failing to respond fully to the LOI and Further LOI. Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to respond timely and fully to the Bureau's inquiries violates a Commission order setting a deadline in which to provide all relevant information. A violation of a Commission order is punishable by a forfeiture penalty under the Act.[51] The Commission has delegated authority to the Bureau to request information, and the failure to provide a complete response hinders the Bureau's ability to investigate and therefore fundamentally affects the Bureau's ability to operate.[52]

20. Sound Around failed to respond fully to the LOI and Further LOI. Initially, the Company provided an incomplete response to the August 2, 2022 Letter of Inquiry, in which it noted that it was still compiling information and would submit a supplemental response by November 15, 2022.[53] Sound Around then submitted four additional incomplete responses to the LOI.[54] Each of the responses updated or corrected prior filings, and all of them contained errors, were incomplete, and at times contained contradictory information.[55]

21. Evidence developed independently by the Bureau also showed that the Company's responses were incomplete and necessitated the issuing of the Further LOI. First, Sound Around's Amazon page showed the marketing of at least 45 models that were not disclosed in the Company's responses.[56] Second, the Commission's equipment authorization database showed that the Company had obtained at least three FCC authorizations that were not disclosed in its LOI responses.[57] Additionally, the Company disclosed FCC IDs in LOI responses but failed to provide the required information on the marketing of the models covered by the FCC IDs, such as the dates on which the Company began and ceased advertising the models in the United States, the dates on which the Company began and ceased importing the models into the United States, and the dates on which the Company began and ceased sales of the models in the United States.[58]

22. In addition, Sound Around's response to the Further LOI was incomplete. Specifically, Inquiry 1 requested that Sound Around identify all radio frequency device models marketed by the Company.[59] Bureau staff discovered models that the Company appeared not to have disclosed in any of its responses, including its response to the Further LOI. The Company admitted in its response to the

[51] 47 U.S.C. § 503(b)(1)(B).

[52] *See* 47 U.S.C. §§ 154(i), 154(j), 403, 503(b)(1)(B); *see also supra* notes 13-19 and accompanying text.

[53] *See* LOI Response, *supra* note 20.

[54] *See id*.

[55] *See supra* para. 12.

[56] *See* Further LOI, *supra* note 35, at 1. The Bureau reviewed the Amazon page for Sound Around products comparing the models listed there with the models identified in the LOI Response. The Bureau identified at least 45 models on the Amazon page that Sound Around had not disclosed in the LOI Response.

[57] *See id.* at 1-2.

[58] *See id.* at 2. The LOI required the Company to report when marketing began for the Company's devices and this was not reported in the LOI Response for devices with FCC IDs 2A5X5-APBUTTON, 2A5X5-APOLLOV1, 2A5UW-PGMC3WPS4, 2A5UW-PGMC2WPS4, 2ASQDPDWM2135, 2ASQDPDWM2145. This information was not supplied by the Company until the Deficiency Letter Response.

[59] *See* Further LOI Response, *supra* note 37, at 4.

Deficiency Letter that it omitted models that should have been included in the earlier responses.[60] The Bureau also had to seek further clarifications after reviewing the Deficiency Letter Response. The information provided by the Company was incomplete because the FCC IDs provided by Sound Around for six devices did not cover the devices' wireless operations, and for three devices, the images and descriptions of the devices as advertised on Amazon did not match the device descriptions contained in the Commission authorizations.[61]

23. The Commission has consistently held that entities must provide timely and complete responses to an Enforcement Bureau inquiry.[62] Sound Around's failure to provide a complete response to the LOI and the Further LOI harmed the Commission by delaying the investigation and wasting Commission resources. Accordingly, we find that Sound Around apparently willfully and repeatedly violated two Commission orders by failing to respond fully to the LOI and Further LOI.

C. Proposed Forfeiture

24. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."[63] Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Sound Around of up to $23,727 for each violation or each day of a continuing violation, up to a statutory maximum of $177,951 for a single act or failure to act.[64] In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[65] In addition, the Commission has established forfeiture guidelines, which provide base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[66] Under these guidelines, we may adjust a

[60] Deficiency Letter Response, *supra* note 39, at 1-2.

[61] *See id.*.

[62] *See* 47 U.S.C. § 403; *see also, e.g.*, *Lyca Tel, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 12125 (2016). Despite Sound Around's incomplete responses, the Bureau was able to determine that Sound Around was marketing noncompliant radiofrequency devices as described in the section above.

[63] 47 U.S.C. § 503(b). Sound Around is a holder of Commission authorizations; certifications such as the one associated with FCC ID 2A5X5-PDWR54BTB, which was granted to SOUND AROUND INC. *See, e.g.*, Appendix, row 6; *see also* Fed. Commc'ns Comm'n, FCC ID Search, available at https://www.fcc.gov/oet/ea/fccid (last visited Oct. 20, 2023). Sound Around was also previously issued a Citation for equipment marketing. *See Marketing Citation*, *supra* note 21. As explained in detail in the *Sound Around 2022 Forfeiture Order*, because Sound Around previously was issued a citation for the type of conduct at issue in this investigation (i.e., radio frequency equipment marketing), even if Sound Around did not hold Commission authorizations the Commission could proceed to issue a notice of apparent liability for forfeiture in this matter without needing to first issue another Citation. *Sound Around 2022 Forfeiture Order*, *supra* note 1, at 9917-18, paras. 24-29 (*citing* 47 U.S.C. § 503(b)(5)).

[64] *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(D) of the Act ($10,000 per violation or per day of a continuing violation and a statutory maximum of $75,000 for a single act or failure to act). *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356 (EB Dec. 23, 2022); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 5, 2023, as the effective date for the increases).

[65] 47 U.S.C. § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(11); *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, 17100–17101, para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

[66] 47 CFR § 1.80(b)(11), Table 3; *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[67]

25. Section 1.80(b) of the Commission's rules sets a base forfeiture of $7,000 for marketing of unauthorized equipment for each violation or each day of a continuing violation.[68] Sound Around has been marketing 33 apparently noncompliant radio frequency models during the statute of limitations period based on information provided by the Company during the investigation. Accordingly, a base forfeiture for each of the 33 apparent violations would result in a total proposed base forfeiture of $231,000 (33 x $7,000).

26. In addition, given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we propose a significant upward adjustment for Sound Around's: (i) intentional marketing of apparently noncompliant radio frequency devices; (ii) history of prior violations of the Act and the Commission's rules; (iii) repeated and continuous noncompliant marketing; and (iv) ability to internalize the costs of more modest proposed forfeitures (i.e., ability to pay).[69]

27. *First*, Sound Around intentionally marketed apparently noncompliant radio frequency devices justifying a significant upward adjustment. The Company has marketed numerous noncompliant devices for years despite numerous warnings from the Commission and Bureau. The record reflects that Sound Around acknowledges having marketed noncompliant wireless devices for more than 14 years[70] and continued to do so despite the issuance of the *Marketing Citation* and the subsequent investigation that led to the *Sound Around 2020 NAL* and the *Sound Around 2022 Forfeiture Order*.[71] The Company continued to market apparently noncompliant devices after the *Sound Around 2020 NAL* and the *Sound Around 2022 Forfeiture Order*.[72] Therefore, the Company's further marketing of 33 apparently

[67] 47 CFR § 1.80(b)(11), Table 3; *see Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22 (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

[68] 47 CFR § 1.80(b)(11), Table 1; *see Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1826, para. 19 (2006) (forfeiture paid); *C.T.S. Technology Co., Limited*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 8107, 8112, para. 14 (2014), Forfeiture Order, 31 FCC Rcd 6126 (2016).

[69] *See Forfeiture Policy Statement*, 12 FCC Rcd at 17100–17101, para. 27; 47 CFR § 1.80(b)(11), Table 3 (upward adjustment criteria includes the following: egregious misconduct; ability to pay/relative disincentive; intentional violation; substantial harm; prior violations; substantial economic gain; and repeated or continuous violation).

[70] *See, e.g., Marketing Citation*, *supra* note 21, at 9475, para. 4, nn.6-9 (in its LOI response, Sound Around admitted to importing and marketing four models of wireless microphones that operate on restricted frequency bands and are therefore noncompliant); *id*. at 9474, para. 3, n.4 (documenting evidence from the Company's website of noncompliant wireless microphones being marketed between 2009 and 2011); *Sound Around 2020 NAL*, *supra* note 1, at 3481-82, paras. 10-11, nn.30-31, 33-35 (in its 2019 LOI Response, Sound Around provided documentation showing marketing of 32 models of wireless microphones that were either operating on unauthorized frequencies or were not certified, as evidenced by lack of an FCC identification number); *Sound Around 2022 Forfeiture Order*, *supra* note 1, at 9914, para. 17 (documenting the Company's LOI responses with evidence of marketing noncompliant wireless microphones); Further LOI Response, *supra* note 37, Updated Spreadsheet (Sound Around provided a spreadsheet containing, among other information, the dates on which it began marketing radio frequency devices and dates on which the devices were authorized, which showed marketing of several devices prior to authorization).

[71] *See supra* paras. 9-11.

[72] *See* Appendix (documenting admitted marketing of noncompliant devices in 2022, after the *Sound Around 2020 NAL* and the *Sound Around 2022 Forfeiture Order*); *see also* Further LOI Response, *supra* note 37, Updated Spreadsheet (Sound Around provided a spreadsheet containing, among other information, the dates on which it began marketing radio frequency devices and dates on which the devices were authorized, which showed marketing of several devices prior to authorization and after the *Sound Around 2020 NAL*).

noncompliant models demonstrates: (i) a complete disregard for the Commission's regulatory authority and (ii) that its failure to comply with section 302 of the Act and section 2.803 of the Commission's rules was intentional.[73] These reasons support an upward adjustment of 100 percent of the base amount of $7,000 for each of the 33 violations.[74]

28. *Second*, we propose an upward adjustment based on the Company's prior conduct. Sound Around has a history of violating the same provisions of the Act and the Commission's rules, section 302 of the Act and section 2.803 of the Commission's rules, that we are proposing to fine the Company for here. Initially, in 2011, the Division issued the *Marketing Citation* against Sound Around notifying the Company of its violations of the equipment marketing requirements.[75] Subsequently, a multi-year investigation showed that Sound Around marketed 32 models of wireless microphones without proper authorization.[76] Moreover, the current investigation is itself a direct outgrowth of Sound Around's earlier conduct.[77] For this reason, an upward adjustment of 100% of the base amount of $7,000 for each of the 33 violations also appears to be warranted based on these prior violations.[78]

---

[73] We rely on the facts from the first investigation to support this upward adjustment assessment. *See Patrick Keane a/k/a the St. Map Co.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13757, 13764, n.26 (2012) (the Commission may consider the facts that underlie prior NALs in determining the appropriate forfeiture amount, including where a target has been told their conduct violates the law but continues the violative conduct), Forfeiture Order, 28 FCC Rcd 6688 (2013), Order on Reconsideration, 29 FCC Rcd 8075 (EB 2014). Section 504(c) of the Act prohibits the Commission from using the issuance of a Notice of Apparent Liability for Forfeiture against a party in one proceeding to the prejudice of that party in another proceeding, until either the party pays the forfeiture or a court issues a final order that it do so. 47 U.S.C. § 504(c). However, this prohibition does not restrict the Commission from considering the *facts* that underlie prior NALs. *Patrick Keane,* 27 FCC Rcd at 13764, n.26 (citing *Forfeiture Policy Statement*, 12 FCC Rcd at 17102-17104, paras. 33-36); *see also St. George Cable, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 11447, 11458, n.45 (2012), Consent Decree, 31 FCC Rcd 3663 (EB 2016). Thus, consideration in the current item of Sound Around's past conduct that led to our earlier enforcement actions is fully consistent with section 504(c) of the Act. *See Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion and Order, 15 FCC Rcd 303, 304-305, paras. 3-5 (1999).

[74] *Presidential Who's Who DBA Presidential Who's Who, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8989, 8994, paras. 12-13 (2011) (proposing a 103 percent upward adjustment where the company continued violative conduct "deliberately, given its disregard for the Commission's previous warnings" after the company received a citation and notices of apparent liability), Forfeiture Order, 29 FCC Rcd 3451 (2014); *Rocky Mountain Radar,* Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1334, 1339, para. 14 (EB 2007) (proposing an upward adjustment where the company intentionally continued marketing noncompliant devices following a citation and failed challenge of the citation at the Commission and the U.S. Court of Appeals for the Tenth Circuit), Forfeiture Order, 22 FCC Rcd 15174 (EB 2007); *Ramko Distributors Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7161, 7169, para. 23 (2007) (proposing an upward adjustment where company intentionally continued marketing noncompliant devices following a citation); *Pilot Travel Centers, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23113, 23117, para. 17 (2004) (proposing an upward adjustment where company intentionally continued marketing noncompliant devices following nine citations and devices had the potential to interfere with authorized devices), Order and Consent Decree, 21 FCC Rcd 5308 (2006).

[75] *See supra* para. 9.

[76] *Sound Around 2022 Forfeiture Order*, *supra* note 1, at 9911, para. 12.

[77] *See supra* para. 11.

[78] *Cunningham Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 2022 WL 4445690, FCC 22-70, para. 17 (2022) (explaining that the Commission's proposed forfeitures were warranted due to, *inter alia*, licensee's "lengthy history of prior offenses for similar violations"); *Patrick Keane a/k/a The Street Map Co.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13757, 13762, para. 13 (2012) (providing a proposed maximum penalty for target's "egregious," "intentional," and "repeated," violations, as well as "history of prior offenses"); *Union Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 18588, 18590, para. 10 (EB 2004) (explaining that prior rule violations warranted an upward adjustment).

29. *Third*, an upward adjustment to the proposed forfeiture is also appropriate given Sound Around's repeated and continuous marketing of noncompliant devices, since at least 2009—a pattern of behavior spanning over 14 years. The Company previously advertised and sold noncompliant wireless microphones as far back as 2009 based on its own admissions.[79] Further, as reflected in facts underlying the *Sound Around 2020 NAL* issued on April 3, 2020, the Commission found that Sound Around advertised and sold 32 models of noncompliant wireless microphones in 2019-2020, including two models that were operating within the aviation band in apparent violation of section 302 of the Act and sections 2.803 and 74.851 of the Commission's rules.[80] The Company admitted in 2020 to marketing noncompliant microphones in its response to a consumer question submitted on the Amazon.com product page.[81] This repeated and continuous noncompliant marketing also justifies a proposed 100 percent upward adjustment.[82]

30. *Lastly*, an upward adjustment appears to be warranted due to Sound Around's ability to pay. Based on the Company's financial documentation, Sound Around and its affiliated companies reported tens of millions in gross revenues for the years 2021 and 2022.[83] An additional upward adjustment of 100 percent of the base amount of $7,000 for each of the 33 alleged violations is warranted to deter the Company from treating the proposed fine as merely a cost of doing business.[84]

31. Therefore, after applying the four upward adjustment factors discussed above, we propose to assess an overall forfeiture for the apparent equipment marketing violations in the amount of $1,155,000 (33 x $35,000).[85]

---

[79] *Marketing Citation*, *supra* note 21, at 9475, para. 4, nn.6-9 (in its LOI response, Sound Around admitted to importing and marketing four models of wireless microphones that operate on restricted frequency bands and are therefore noncompliant).

[80] *See Sound Around 2020 NAL, supra* note 1, at 3484, para. 17. Also, Sound Around provided documentation showing that it marketed 32 models of wireless microphones that were either operating on unauthorized frequencies or were not certified. *See id.* at 3481-82, paras. 10-11, nn.30-31, 33. Moreover, statements provided by Sound Around in its LOI responses in our earlier investigation, as well as evidence obtained by the Commission (screenshots), showed that the Company was marketing noncompliant wireless microphones during the inquiry period. *See Sound Around 2022 Forfeiture Order*, *supra* note 1, at 9914, para. 17.

[81] *Sound Around 2022 Forfeiture Order*, *supra* note 1, at 9924, para. 40.

[82] *ABC Fulfillment Servs. LLC d/b/a Hobbyking USA LLC & Hobbyking.com; & Indubitably, Inc. d/b/a Hobbyking Corp., Hobbyking USA LLC, Hobbyking, & Hobbyking.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5540–41, para. 22 (2018), affirmed, Forfeiture Order, 35 FCC Rcd 7441, 7442, para. 5 (2020) (upward adjustment for repeated and continuous marketing of noncompliant devices for several years). Some apparent violations are not actionable due to the expiration of the statute of limitations period, however, the Commission may consider facts arising before the expiration date in determining an appropriate forfeiture amount for acts that occurred inside of the statute of limitations period. *See Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000).

[83] LOI Response, *supra* note 20, at Attachments, Bates Nos. 000041 to 000051; Bates Nos. 000052 to 000064 (2021 tax returns); Deficiency Letter Response, *supra* note 39, at Attachments, 2022 Financial Statements.

[84] *See, e.g.*, *Viacom, Inc.*, Forfeiture Order, 30 FCC Rcd 797, para. 22 (2015) (noting that an upward adjustment is appropriate in light of Viacom's reported annual revenues and the revenues of ESPN's parent); *SBC Communications Inc.*, Order on Review, 17 FCC Rcd 4043, 4052, para. 20 (2002) ("[A] large and highly profitable company . . . should expect . . . that the forfeiture amount" may "be above, or even well above, the relevant base amount."); *Acuity Brands, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 9524, 9527, para. 10 (EB 2017) (imposing an upward adjustment where company's net sales and gross profits were approximately $3.2 billion and $1.4 billion, respectively).

[85] The four upward adjustment factors result in a $28,000 upward adjustment to the $7,000 base forfeiture, or $35,000 per apparent violation. The amount of any forfeiture penalty for any continuing violation shall not exceed a total of $177,951 for any single act or failure to act. 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(10). Equipment

(continued….)

32. For Sound Around's apparent failure to respond fully to the LOI and to the Further LOI, section 1.80(b) of the Commission's rules sets a base forfeiture amount of $4,000 for each violation or each day of a continuing violation for failure to respond to Commission communications.[86] Sound Around's failure to respond fully to the LOI and Further LOI are also subject to upward adjustments for egregiousness.[87] As the Commission has stated, "[p]rompt and full responses to Bureau inquiry letters are essential to the Commission's enforcement function."[88] Sound Around's failure to provide complete information from the start delayed the Bureau's investigation and caused the Commission to expend significant resources reviewing and comparing numerous incomplete responses to determine discrepancies. A higher proposed forfeiture is thus appropriate given the extent of the Company's apparent violations and is consistent with our precedent.[89] Additionally, as noted above, Sound Around has the ability to pay based on the financial information the Company submitted.[90] As such, we propose an upward adjustment to the statutory maximum for an individual violation of $23,727 for each of the two apparent violations stemming from Sound Around's failure to respond fully to the LOI and Further LOI, resulting in an overall proposed forfeiture of $47,454 for the two apparent violations.

33. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none.

34. Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $1,202,454 ($1,155,000 plus $47,454), for which Sound Around is apparently liable.

IV. CONCLUSION

35. We have determined that Sound Around apparently willfully and repeatedly violated section 302 of the Act, section 2.803 of the Commission's rules, and orders of the Commission. As such, Sound Around is apparently liable for a forfeiture of $1,202,454.[91]

(Continued from previous page)
marketing violations are considered continuing violations when noncompliant marketing occurs over multiple days. *See e.g.*, *Sound Around 2020 NAL*, *supra* note 1, at para. 23. Here, the company admits to marketing the noncompliant models for multiple days, as shown in the Appendix where marketing began days or even months prior to the authorization, therefore we have some discretion and can propose to assess a forfeiture for an amount that does not exceed the continuing statutory maximum of $177,951. *See* 47 CFR §1.80(b)(8), note; *T-Mobile USA, Inc., A Subsidiary of T-Mobile US, Inc.*, Forfeiture Order, 29 FCC Rcd 10752, 10757-58, para. 14 (2014) ("[T]he agency—on both the Commission and Bureau levels— has repeatedly stated that it retains the discretion to depart from existing guidelines and issue forfeitures on a case-by-case basis, pursuant to its general forfeiture authority contained in Section 503 of the Act").

[86] 47 CFR § 1.80(b)(11), Table 1.

[87] *See Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074, 7081, para. 15 (EB 2010) (*Fox*) ("Misconduct of this type exhibits contempt for the Commission's authority and threatens to compromise the Commission's ability to adequately investigate violations of its rules."); *see also Quadrant Holdings, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-825, 2022 WL 3339390, *5, paras. 16-17 (EB Aug. 5, 2022) (proposing a $100,000 forfeiture because "[t]he egregiousness and intentional nature of [the] misconduct, as well as [the company's] ability to pay, considered in conjunction with the deterrent effect of the proposed forfeiture, dictate that [the company] be held liable for an amount significantly higher than the base forfeiture set for the relevant misconduct.").

[88] *Id*.

[89] *See, e.g.*, *Neon Phone Service, Inc*., Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7964, 7974-75, para. 24 (2017) (proposing an upward adjustment from $4,000 to $25,000 for egregiousness and intent); *Fox*, 25 FCC Rcd at 7081, paras. 15-16 (adjusting the proposed forfeiture from $4,000 to $25,000 for egregiousness).

[90] *See supra* para. 30.

V. ORDERING CLAUSES

36. 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, Sound Around, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one million two hundred and two thousand four hundred and fifty-four dollars ($1,202,454) for willful and repeated violations of section 302(b) of the Act, 47 U.S.C. § 302a(b), and section 2.803(b) of the Commission's rules, 47 CFR § 2.803(b), and Commission orders.

37. **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, Sound Around, Inc. **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 40 below.

38. In order for Sound Around, Inc. to pay the proposed forfeiture, the Company shall notify mailto:EB-SED-Response@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, Sound Around, Inc. shall send electronic notification of payment to Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at EB-SED-Response@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:[92]

- 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[93] or printed CORES form[94] 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).[95] 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

[91] 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.

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

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

[94] 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.

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

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.

39. 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.[96] 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.

40. 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(g)(3) of the Commission's rules.[97] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to EB-SED-Response@fcc.gov.

41. 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.[98] 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.[99]

[96] *See* 47 CFR § 1.1914.

[97] *Id.* §§ 1.16, 1.80(g)(3).

[98] 47 U.S.C. § 503(b)(2)(E).

[99] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina,* Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

42. **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 Zigmond Brach, Chief Executive Officer, Sound Around, Inc., 1600 63rd Street, Brooklyn, New York 11204, and to Timothy J. Cooney, Esq., and Suzanne M. Tetreault, Esq., Wilkinson Barker Knauer LLP, 1800 M Street NW, Suite 800N, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

	Model number	Other product identifier (e.g., UPC, SKU, or ASIN)	FCC ID or SDOC information provided by Sound Around	Date of Auth.	Mkting Began (earliest known date) per Sound Around	Why Auth. Needed
1	PDWR62BTBK	B01954Q4I8	2A5J3-HYB1065B5	4/6/2022	10/31/2021	Bluetooth required certification
2	PFA540BT	B01M9I1DO1	2A5PBPYLE	4/11/2022	3/10/2022	Bluetooth required certification
3	PMP20[100]	B00BQOFXAG	2A5ST-PMP52BT	4/10/2022	11/1/2021	Bluetooth required certification
	PMP42BT	B00NCPG5RW			8/1/2022 [date provided by Company appears inaccurate] Amazon Date First Available September 5, 2014	
	PMP52BT	B00NCPG5V8			9/22/2022 [date provided by Company appears inaccurate] Amazon Date First Available September 5, 2014	
4	SLNKMSG131	B09J15HXNM	2A5SZ-P6B19	12/1/2022	1/1/2022	Wireless remote required certification
5	PPHP28AMX	B07BKT59W3	2A5UW-PPHP28AMX	4/14/2022	7/7/2021	Bluetooth required certification
6	PWRC55BT	B07G7Q6WXW	2A5X5-PDWR54BTB	4/20/2022	7/7/2021	Bluetooth required certification
7	PLMR91UB	B01178KZ94	2A5X5-PLMR91UB	8/5/2022	7/27/2022	Bluetooth required certification
8	PLUTV46BTA	B07XQLB9B5	2A5X5-PLMRBT18	4/19/2022	10/21/2022 [date provided by Company appears inaccurate] Amazon Date First Available September 10,	Bluetooth required certification

[100] A proper FCC authorization can cover multiple models as long as the models are electronically identical. *See* 47 CFR §§ 2.906(b), 2.907(b), 2.908. Here, a single violation is assessed for multiple models covered by an FCC authorization.

	Model number	Other product identifier (e.g., UPC, SKU, or ASIN)	FCC ID or SDOC information provided by Sound Around	Date of Auth.	Mkting Began (earliest known date) per Sound Around	Why Auth. Needed
					2019	
	PLUTV48KBTR	B08FKRFDM1			10/21/2022 [date provided by Company appears inaccurate] Amazon Date First Available August 10, 2020	
9	PLCDBT65MRW	B01M7PFU2O	2A5X5-PLRVSD300	8/4/2022	4/15/2022	Bluetooth required certification
	PLCDBT75MRB	B01M9ANUVA			4/15/2022	
	PLCDBT85MRW	B01M2WZ31X			4/15/2022	
	PLCDBT95MRB	B01MA3F8EP			4/15/2022	
	PLMR14BW	B01MQCHPDT			4/15/2022	
	PLMRKT33WT	B002J9GHKC			4/15/2022	
	PLMRM4BTA	B01M0SB367			6/15/2022	
	PLRVST300	[none provided]			7/7/2021	
10	FU-Y28D-ZWUE	B09HV839J8	2A5Z2-SLFTRD18	4/8/2022	9/23/2022 [date provided by Company appears inaccurate] Amazon Date First Available October 6, 2021	Bluetooth required certification
	A1-OSCL-P6GF / SLFTRD26BT	B089QRZMNW			1/20/2022 [date provided by Company appears inaccurate] Amazon Date First Available June 5, 2020	
11	PRT202.75	B08JQS3TS6	2A6FC-PRT20275	4/17/2023	10/15/2022	Wireless microphone required certification
	PRT239.1WC	B08644MYKD			9/26/2022	
12	PMX3500PH	B08JMD4QMG	2A6FC-PT272AUBT	4/21/2022	10/15/2021	Bluetooth required certification
13	PCA3	B001P2R1RW	2A6FX-PCA3	4/28/2023	10/15/2021	Bluetooth required certification
14	PMDJAND10	B0BDFWVH1R	2ALVW-W-8303D	3/30/2023	7/20/2022	Wireless microphone required certification
	PMDJAND12	B0BDFS1VLH			9/27/2022	
	PMDJAND15	B0BDDQHT2G			8/25/2022	
	PPHP1251BW	B0B1JNK98G			10/20/2022	
	PPHP1274B	B09HSGYNKF			10/10/2022	

	Model number	Other product identifier (e.g., UPC, SKU, or ASIN)	FCC ID or SDOC information provided by Sound Around	Date of Auth.	Mkting Began (earliest known date) per Sound Around	Why Auth. Needed
	PPHP2645B	B09HV4Z6B8			9/16/2022	
	PPHP265B	B09HV4TKBV			8/25/2022	
	PPHP2694B	B0BBJQLH14			10/10/2022	
	PPHP2814B	B0B1KV3LHY			10/22/2022	
	PPHP2818B	B0B1JN6MK5			10/23/2022	
	PPHP2845B	B09HSFM7Z5			8/25/2022	
	PPHP2894B	B0BBHDP415			6/3/2022	
	PPHP818B	B09MDM2MFM			10/10/2022	
	PPHP81LTB	B0B1JR3QCN			10/24/2022	
	PPHP874B	B09HSDJSPF			8/25/2022	
	PPHP87TLB	B0B1KL3NFT			10/10/2022	
	PWMA1099A	B0B4PQ2WMY			10/10/2022	
	PWMA899A	B0B4PQ55CK			9/16/2022	
15	PHPD212A	B0B4XYVPQP	2AQ8H-PPHP652B	3/22/2022	10/15/2021	Bluetooth required certification
16	PPHP1042B	B08PL4PSZF	2AQ8H-PPHP844B	3/23/2022	10/15/2021	Bluetooth required certification
17	PPHP1299WU.5	B07QH7VBW7	2AS6U-PPHP1599WU	4/22/2022	10/25/2021	Bluetooth required certification
18	PCM20A	B002UL5WM8	2ASQD-PDA20BT	4/18/2022	10/15/2021	Bluetooth required certification
19	PDWM2115	B00K3SNRP4	2ASQDPDWM2135	9/21/2022	7/29/2022	Wireless microphone required certification These wireless microphones were at issue in the NAL
	PDWM2135	B00TOKTBL6			10/15/2021	
	PDWM2140	B00TJ2FE2E			8/18/2022	
	PDWM2145	B00TJ2FKZK			10/15/2022 [date provided by Company appears inaccurate based on responses received in earlier case that led to the NAL].	
20	PMX466	B08BWRW5SL	2ASQDPMXU88BT	4/5/2022	10/10/2023 [date provided by Company appears inaccurate] Amazon Date First Available: June 26, 2020	Bluetooth required certification
21	PLRD146	B07KGFMD33	2BAIZPLHRDVD101KT	3/16/2023	8/29/2022	Wireless FM Transmitter
	PLDHR926KT	B07CDJNX89			6/25/2022	

	Model number	Other product identifier (e.g., UPC, SKU, or ASIN)	FCC ID or SDOC information provided by Sound Around	Date of Auth.	Mkting Began (earliest known date) per Sound Around	Why Auth. Needed
	PLHRDVD101KT	B07CD9Q967			11/4/2022	required certification
	PLHRDVD103	B07BSLRGXS			11/3/2022	
	PLHRDVD108KT	B07KGFGGTY			11/3/2022	
	PLHRDVD904	[none provided]			12/15/2022	
	PLRV1525	[none provided]			12/15/2022	
	PLRV1725	B07D21XZPS			6/25/2022	
22	PLHRDVD90KT	B07BSMLVG1	2BAIZPLHRDVD101KT	03/16/2023	8/2/2022	FM Transmitter required certification
23	PSBT105A	B07XZJJ2J1	2AQAW-PSBT65A 2A5X5-PSBT125A	8/2/2018 for wireless Microphone functions (2AQAW-PSBT65A) 05/16/2023 for Bluetooth operation (2A5X5-PSBT125A)	7/19/2022	Bluetooth operations of speakers required certification (earlier authorization only covered wireless microphone operations)
	PSBT125A	B07XZJ8KNN			7/19/2022	
	PSBT62A	B08BTYTX1M			8/25/2022	
	PSBT62A.5	B08VJLLNFT			8/25/2022	
	PSBT65A	B0783S9CJ4			8/19/2022	
	PSBT65A.5	B07HNC29KW			11/15/2022	
	PSBT85A	B07XZFNZ5D			10/15/2021	
24	PT260A	[none provided]	2A5X5-PT260A	12/19/2022	06/25/2022	Bluetooth required certification
25	PKBRD37WT	[none provided]	SDOC	4/2/2023	2/1/2023	Unintentional radiator required certification or SDOC
	PKBRD4112	[none provided]			2/1/2023	
	PKBRD4113	B09F5142L3			4/15/2022	
	PKBRD4911PK	[none provided]			2/1/2023	
	PKBRD4912PK	[none provided]			2/1/2023	
	PKBRD6111	B07P2DW2KW			4/15/2022	
	PKBRD6112	B09F4WVG9K			4/15/2022	
26	PEGKT30	BOBKLPCYW6	SDOC	4/24/2023	8/10/2022	Unintentional radiator required certification or SDOC
	PUKTEAK74	[none provided]			3/15/2023	
27	PTEDK86	B0BDG7M9KS	SDOC	4/12/2023	2/10/2023	Unintentional radiator required certification or SDOC

	Model number	Other product identifier (e.g., UPC, SKU, or ASIN)	FCC ID or SDOC information provided by Sound Around	Date of Auth.	Mkting Began (earliest known date) per Sound Around	Why Auth. Needed
28	PGTAMPL100	B09YZ1Z6HY	SDOC	5/22/2023	12/1/2022	Unintentional radiator required certification or SDOC
29	PDIGPRDP22	B0BGSXHY3C	SDOC	2/28/2023	10/25/2022	Unintentional radiator required certification or SDOC
30	PHQBS52	B0B4PST6D5	SDOC	4/17/2023	8/20/2022	Unintentional radiator required certification or SDOC
	PSUB8A	B09P49JHB9			7/1/2022	
31	PDWMKHRD23	B084HGG55S	2AMZ9-PDWMKHRD23	11/27/2019 for wireless Microphone functions. Bluetooth operations need a certification as well.	9/27/2022	FCC ID provided by Sound Around does not cover Bluetooth operations of speakers (it covers wireless microphone)
32	PLMRMB4CB	B072BMP3YG	none	none	2/15/2022	Product is listed on Sound Around's Amazon page. Bluetooth operations but no FCC ID.
33	PHCD55.5	B0BL1WM654	2A5UW-PKRK270BT	4/8/2022	6/15/2023	Product is listed on Sound Around's Amazon page. FCC ID provided does not match the Sound Around device.

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

In the Matter of	)	
	)	
Modifying Emissions Limits for the 24.25-24.45 GHz and 24.75-25.25 GHz Bands	)	ET Docket No. 21-186
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: December 12, 2023 **Released: December 22, 2023**

Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 45 days after publication in the Federal Register

By the Commission: Chairwoman Rosenworcel and Commissioner Gomez issuing separate statements; Commissioners Carr and Simington dissenting and issuing separate statements.

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking* (Notice), we propose to implement certain decisions regarding the 24.25-27.5 GHz band made in the World Radiocommunication Conference held by the International Telecommunication Union (ITU) in 2019 (WRC-19). Specifically, we propose to align part 30 of the Commission's rules for mobile operations with the Resolution 750 limits on unwanted emissions into the passive 23.6-24.0 GHz band that were adopted at WRC-19. These proposed rule changes would help to facilitate the protection of passive sensors used for weather forecasting and scientific research in the 23.6 GHz-24.0 GHz band, while continuing to promote flexible commercial use of the 24.25-24.45 GHz and 24.75-25.25 GHz bands (collectively, 24 GHz band). We also seek comment on alternatives to the proposals we make, and on other related issues.

II. BACKGROUND

2. The 23.6-24.0 GHz band is allocated to the Earth Exploration Satellite Service (EESS) (passive), Space Research Service (passive), and Radio Astronomy Service (RAS) on a primary basis.[1] EESS utilizes passive sensors located on satellites to measure the power level of naturally occurring radio emissions from water vapor and cloud liquid water molecules in the atmosphere, critical measurements for climatology science and weather forecasting.[2] The National Oceanic and Atmospheric Administration (NOAA) uses such passive sensors to measure moisture data and determine water vapor in its weather forecast models.[3] Because these naturally occurring emissions in the 23.6-24.0 GHz band are very weak, the passive sensors measuring them are sensitive and vulnerable to interference.[4] As these sensors receive

[1] 47 CFR § 2.106(a); *see also* CORF Comments at 9 (noting that EESS and RAS have co-primary allocations at 23.6-24.0 GHz).

[2] ITU Radiocommunication Bureau, Handbook on Use of Radio Spectrum for Meteorology: Weather, Water and Climate Monitoring and Prediction 75, 78 (2017 ed.), https://library.wmo.int/doc_num.php?explnum_id=3793; *see also* NTIA Comments at 3-4; CORF Comments at 4-5 (describing how observations in the 23.6-24 GHz band are critical to accurately measuring atmospheric humidity over oceans and water vapor in the lowest one kilometer in the atmosphere, which are important inputs to developing accurate weather forecasts). CORF notes that accurate weather forecasting is critical for safety of life and can reduce the costs of a natural disaster. *Id*. at 5.

[3] NTIA Comments at 4.

[4] *See* NTIA Comments at 3-4; *see also* CORF Comments at 3-4 (describing specifics of how interference in the 23.6–24 GHz band affects the overall observing system).

all natural and man-made emissions in general, passive sensors are not able to differentiate these two sources of signals.

3. The Commission first authorized service in the 24.25-24.45 GHz and 25.05-25.25 GHz bands in 1997, when it transitioned the Digital Electronic Messaging Service (DEMS) to these bands from the 18 GHz band.[5] In 2000, the Commission adopted competitive bidding and service rules for these bands and created a 24 GHz Service.[6] This 24 GHz Service had a total of 176 Economic Areas (EA) or EA-like service areas.[7] In 2004, the Commission held Auction 56, in which it made 880 24 GHz licenses available. Only seven of the 880 licenses were sold.[8] As of 2017, there were 33 active DEMS licenses in these bands.[9]

4. In 2017, the Commission authorized the 24 GHz band for Upper Microwave Flexible Use Services (UMFUS), and generally applied the same licensing and technical rules to UMFUS in the 24 GHz band that it applied to UMFUS in other upper microwave bands.[10] The UMFUS rules allow licensees flexibility as to the services they will deploy and the architecture of their networks. Under these rules, licensees are able to deploy mobile services,[11] but they also may implement fixed point-to-point and point-to-multipoint systems.[12] Among other things, the UMFUS rules specify that emissions outside of a licensee's assigned frequency block must be limited to –13 dBm/MHz.[13] With respect to the passive systems operating in the 23.6-24 GHz band, the Commission noted that ongoing international studies

[5] *See Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and To Allocate the 24 GHz Band for Fixed Services*, ET Docket No. 97-99, Order, 12 FCC Rcd 3471 (1997) (reallocating DEMS from the 18 GHz band to the 24 GHz Band), *reconsideration denied*, Memorandum Opinion and Order, 13 FCC Rcd 15147 (1998); *see also Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and To Allocate the 24 GHz Band for Fixed Services*, ET Docket No. 97-99, Order, 12 FCC Rcd 8266 (PSPWD 1997) (modifying DEMS-based licenses to change authorized band of operations from 18 GHz to 24 GHz).

[6] *See Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16937, para. 3 (2000) ("*24 GHz R&O*") (adopting competitive bidding and service rules for 24 GHz Band).

[7] *See* 47 CFR § 101.523 (2016).

[8] *See 24 GHz Service Spectrum Auction Closes, Winning Bidders Announced*, Public Notice, 19 FCC Rcd 14738 (WTB 2004).

[9] *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, IB Docket Nos. 15-256 and 97-95, WT Docket No. 10-112, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988, 10995, para. 16 (2017) (*Spectrum Frontiers 2nd R&O*). While the former DEMS licenses were converted to UMFUS licenses, they were subsequently cancelled. *See, e.g.*, *FiberTower Spectrum Holdings, LLC*, Order on Remand and Memorandum Opinion and Order, 33 FCC Rcd 253 (WTB BD 2018).

[10] *See* 47 CFR pt. 30, Subpart C. The Commission previously adopted licensing and technical rules for UMFUS services in the 27.5-28.35 GHz band, the 37.6-38.6 GHz band, and the 38.6-40 GHz band. *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al*., GN Docket No. 14-177, IB Docket Nos. 15-256 and 97-95, RM-11664, WT Docket No. 10-112, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8023-63, paras. 17-124 (2016) (*Spectrum Frontiers 1st R&O*).

[11] 47 CFR §§ 30.6(a), 30.202(a).

[12] 47 CFR pt. 30 Subpart E.

[13] 47 CFR § 30.203(a). In the bands immediately outside and adjacent to the licensee's frequency block, having a bandwidth equal to 10 percent of the channel bandwidth, the conductive power or the total radiated power of any emission shall be −5 dBm/MHz or lower. As the 23.6-24 GHz passive band is 250 megahertz away from the UMFUS bands, the −5 dBm/MHz does not apply within that passive band for UMFUS licensees.

included analyses to determine International Mobile Telecommunications (IMT)[14] unwanted emissions limits necessary to protect passive sensors, and it acknowledged that the Commission's UMFUS rules might be revisited once these international studies had been completed.[15]

5. WRC-19 allocated 24.25-25.25 GHz to mobile (except aeronautical) on a primary basis in Regions 1 and 2, globally identified the 24.25-27.5 GHz band for IMT, and established limits on unwanted emissions applicable to IMT in the 24.25-27.5 GHz band to protect EESS passive systems in the 23.6-24.0 GHz band from harmful interference.[16] To protect EESS passive systems, WRC-19 modified a footnote to the International Table of Allocations to add a new limit contained in Resolution 750 (Rev. WRC-19).[17] Resolution 750 specifies unwanted emissions limits in terms of Total Radiated Power (TRP)[18] as the amount of power that may be radiated into any 200 megahertz block of the 23.6-24.0 GHz passive band by IMT base stations and IMT mobile stations operating in the 24.25-27.5 GHz band. Resolution 750 sets emissions limits for current IMT devices as well as more stringent emissions limits for IMT devices that will be brought into use in the 24.25-27.5 GHz band on or after September 1, 2027.[19] These two sets of unwanted emissions limits are shown in Table 1.

Table 1: WRC-19 Resolution 750 Unwanted emissions permitted within any 200 megahertz in the 23.6-24 GHz passive band

Type of Station	Current TRP Limits	TRP Limits After Sept. 1, 2027
IMT Base Stations	–33 dBW	–39 dBW
IMT Mobile Stations	–29 dBW	–35 dBW

6. On April 26, 2021, the Office of Engineering and Technology and the Wireless Telecommunications Bureau issued a *Public Notice* that sought to develop a record on whether and how the Commission could implement the emissions limits contained in Resolution 750 for the active services in the 24 GHz band.[20] The *Public Notice* specifically sought comment on the possibility of amending part 30 of the Commission's rules to conform to the unwanted emissions limits into the passive 23.6-24.0

[14] IMT is the generic term used by the ITU to designate broadband mobile systems and encompasses IMT-2000, IMT- Advanced and IMT-2020. *See* https://www.itu.int/en/ITU-R/Documents/ITU-R-FAQ-IMT.pdf (last visited September 18, 2023).

[15] *Spectrum Frontiers 2nd R&O*, 32 FCC Rcd at 10997, para. 22; *see also Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, WT Docket No. 10-112, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 5576, 5581-82, para. 15 (2018) (recognizing the need to protect passive satellite operations that provide important data necessary for weather predictions and warnings, and stating that "[o]nce interference protection standards are agreed upon internationally we will, if necessary, consider through notice and comment whether any modification of our current out-of-band limits may be needed.")

[16] ITU Radio Regulations (2020), Resolution 750 (Rev.WRC-19), Table 1, Vol. 3 at 519, https://www.itu.int/en/myitu/Publications/2020/09/02/14/23/Radio-Regulations-2020. Resolution 750 specifies limits of unwanted emission power for IMT base stations and mobile stations.

[17] ITU Radio Regulations (2020), footnote 5.338A, Vol. 1 at 100.

[18] ITU Radio Regulations (2020), Resolution 750 (Rev.WRC-19), Note 5, Vol. 3 at 522.

[19] For IMT base stations and mobile stations brought into use prior to September 1, 2027, the more relaxed unwanted emissions limits will continue to apply. ITU Radio Regulations (2020), Resolution 750 (Rev.WRC-19), Table 1, Vol. 3 at 519, 522.

[20] *See Office of Engineering & Technology and the Wireless Telecommunications Bureau Seek Comment on Emission Limits for the 24.25-27.5 GHz Band*, Public Notice, 36 FCC Rcd 7561 (OET WTB 2021) (*Public Notice*).

GHz band that were adopted at WRC-19 and/or to add footnotes to the United States Table of Frequency Allocations at part 2 of the Commission's rules.[21]

7. The *Public Notice* sought comment regarding what level of emissions could be expected within the 23.6-24.0 GHz band from UMFUS transmitters, and whether and to what extent new 5G deployments at the current UMFUS emissions limits could cause harmful interference to passive systems operating in the 23.6-24.0 GHz.[22] It also asked how equipment intended for use under the UMFUS rules in the 24 GHz band could be reconfigured to conform to both the current and future Resolution 750 unwanted emissions limits. In addition, the *Public Notice* asked whether licensees could meet the Resolution 750 deadlines, as well as whether the Commission could help facilitate a more accelerated timeframe.[23] It also inquired whether such emissions limits should be measured as conducted power or total radiated power.[24]

8. The *Public Notice* also sought comment on the scope of operations that would be covered if the Commission were to adopt the emissions limits in Resolution 750 for the 24.25-27.5 GHz band. In particular, it sought comment on whether the Resolution 750 unwanted emissions limits should apply to (1) IMT mobile systems only, (2) all mobile systems, or (3) all systems, including fixed point-to-point and point-to-multipoint systems.[25] As noted above, the unwanted emissions limits of Resolution 750 apply only to IMT base stations and mobile stations. IMT standards are not specific technologies, but rather specifications and requirements for high-speed mobile broadband service.[26] The *Public Notice* noted that Resolution 750 specified TRP as the only means of measuring whether equipment met the required emissions limits.[27] It asked if there are any difficulties in performing over the air TRP measurements at such low signal levels in the 24.25-24.45 GHz and 24.75-25.25 GHz bands, and whether a conductive power methodology should be permitted as an alternative means of demonstrating compliance with the emissions limits for equipment certification.[28]

9. Comments on the *Public Notice* were due June 26, 2021, and reply comments were due July 26, 2021.[29] The Office of Engineering and Technology and Wireless Telecommunications Bureau received ten comments, and four reply comments. A list of commenters, reply commenters, and *ex parte* filers is contained in Appendix C.

III. DISCUSSION

A. Revision of Commission Rules to Adopt Resolution 750 Unwanted Emissions Limits

10. We propose to adopt the Resolution 750 unwanted emissions limits adopted at WRC-19, to apply them to all mobile systems in the 24 GHz band, and to incorporate those limits into our part 30 technical rules as well as codifying them in a new US footnote to the Table of Frequency Allocations

[21] *Public Notice*, 36 FCC Rcd at 7561, 7563 (citing 47 CFR § 2.106; 47 CFR pt.30).

[22] *Public Notice*, 36 FCC Rcd at 7563.

[23] *Public Notice*, 36 FCC Rcd at 7563. *See also infra*, para. 25 (seeking comment on adopting a timetable wherein deployments would be required to meet the first phase limits as of the effective date of any rules adopted, and deployments after September 1, 2027 would be required to meet the stricter second phase limits).

[24] *Public Notice*, 36 FCC Rcd at 7564.

[25] *Public Notice*, 36 FCC Rcd at 7564.

[26] *See* https://www.itu.int/en/ITU-R/Documents/ITU-R-FAQ-IMT.pdf (last visited Oct. 15, 2021). The Commission's rules do not define IMT and do not require that equipment complying with a particular technical standard be used in a band licensed under the UMFUS rules.

[27] *Public Notice*, 36 FCC Rcd at 7564.

[28] *Public Notice*, 36 FCC Rcd at 7564.

[29] *Emission Limits for the 24.25-27.5 GHz Band*, 86 Fed. Reg. 28522 (May 27, 2021).

(Allocation Table).[30] Under this proposal, as of the effective date of the rules, mobile operations in the 24 GHz band would be required to comply with the current TRP limits adopted at WRC-19. We seek comment on this proposal and on alternative limits, including the effect of any changes to existing limits on smaller entities. We also seek comment on the schedule for adoption of any revised limits, including adjustments that should be made for smaller entities to come into compliance. Appropriate out-of-band emissions limits in the 24.25-27.5 GHz band are important to protect passive sensing operations in the 23.6-24.0 GHz band, which are central to weather forecasting and scientific research.[31]

11. Based on the record before us, it appears that the proposed Resolution 750 unwanted emission limits likely strike the appropriate balance between protecting passive sensing and facilitating use of the 24 GHz band.[32] NTIA, AT&T, CTIA, Nokia, T-Mobile, Ericsson, Marcus & Jornet, and AGU/AMS/NWA support adopting these limits.[33] They argue that adopting these limits would provide important protection to extremely sensitive passive satellite operations,[34] would allow 5G to continue to develop and deploy in the U.S.,[35] would be consistent with U.S. policy as a signatory to the treaty of the text of the Radio Regulations,[36] and would promote international harmonization.[37] Moreover, NTIA asserts that adopting the rules would help to meet the Administration's goals for climate monitoring and climatological science, would enable the U.S. to maintain its position as a world leader in telecommunications, and would enable manufacturers to produce equipment marketable across the globe.[38] We ask parties that support adopting the Resolution 750 limits to quantify the benefits of these limits.

12. We note that, while equipment manufacturers support adopting the Resolution 750 limits,[39] Qualcomm, in its comments to the *Public Notice*, opposes adopting these limits because it alleges

[30] *See* Letter from Eddie Johnson, Chairwoman and Frank Lucas, Ranking Member, Congressional Committee on Science, Space, and Technology, to Jessica Rosenworcel, Acting Chairwoman, FCC, at 2 (Aug. 10, 2021) (on file in ET Docket No. 21-186) (Johnson & Lucas Congressional Letter) at 2 (advocating that the Commission enact changes to the 24 GHz technical standards through a formal rulemaking to amend the part 30 rules); *see also Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Servs. Notice & Filing Requirements, Minimum Opening Bids, Upfront Payments, & Other Procs. for Auctions 101 (28 GHz) & 102 (24 GHz) Bidding in Auction 101 Scheduled to Begin Nov. 14, 2018*, 33 FCC Rcd. 7575, 7619, para. 121 (2018) (reminding potential bidders that licenses are subject to changes in the conditions and regulations applicable to spectrum licenses, including by Commission rulemaking).

[31] *Public Notice*, 36 FCC Rcd at 7563.

[32] We note that, in 2017, the Commission provided notice that ongoing international studies included analyses to determine IMT-2020 OOBE limits necessary to protect passive sensors onboard weather satellites in the 23.6-24 GHz band, and that once the studies were completed, new rules might be necessary for protection of these operations. *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Servs.*, 32 FCC Rcd. 10988, 10997, para. 22 (2017).

[33] *See* NTIA Comments at 5-6; CTIA Comments at 2; Ericsson Comments at 5; Nokia Comments at 1; and T-Mobile Comments at 1; AGU/AMS/NWA Reply Comments at 4; AT&T Reply Comments at 2; CTIA Reply Comments at 1; Letter from Lexi Shultz, VP Science Policy & Gov. Relations, American Geophysical Union, Stella Kafka, Executive Director, American Meteorological Society, Janice Bunting, CEO, National Weather Association, and Antonio Busalacchi, President, University Corporation for Atmospheric Research to Marlene H. Dortch, Secretary, FCC, ET Docket No. 21-186 (filed Dec. 22, 2022) at 2 (AGU/AMS/NWA/UCAR *Ex Parte*).

[34] NTIA Comments at 2; CTIA Comments at 2; Ericsson Comments at 4, 6; Marcus & Jornet Comments at 1.

[35] NTIA Comments at 2; CTIA Comments at 2, 6; AT&T Reply Comments at 3-4.

[36] T-Mobile Comments at 3.

[37] NTIA Comments at 1-2; T-Mobile Comments at 3.

[38] NTIA Comments at 2, 4.

[39] Ericsson Comments at 5; Nokia Comments at 1.

that they will require equipment that uses the 24 GHz UMFUS band to operate with lower in-band power levels.[40] We seek comment on Qualcomm's concerns. In particular, we ask parties that argue that adoption of the Resolution 750 limits would increase network deployment costs to quantify these additional costs and to specify the impact on existing and future service. Commenters should separately discuss deployment costs associated with the current limits and limits recommended for implementation after Sept. 1, 2027.

13. We propose to adopt the limits set forth in Resolution 750. In doing so, we also seek comment on whether some changes to these limits may be appropriate to help strike the best balance and better serve the public interest in the United States while protecting EESS operations in the 23.6-24.0 GHz band. For example, CORF asserts that the WRC limits are not stringent enough to protect EESS operations, and it requests that the Commission should either adopt the European OOBE standard it offered going into WRC-19 (–42 dBW in 200 MHz)[41] or the World Meteorological Organization (WMO) proposal (–54 dBW in 200 MHz).[42] CORF also points out that although the primary focus of the *Public Notice* was protecting EESS, RAS also has a co-primary allocation at 23.6-24.0 GHz.[43]

14. AT&T, T-Mobile, and CTIA request that the Commission reject the more stringent limits suggested by CORF.[44] AT&T argues that the stricter limits may hinder the roll-out and growth of 5G services.[45] T-Mobile notes that the Resolution 750 limits from the ITU were carefully considered and are a product of extensive collaboration, and that CORF has not demonstrated why these limits are inadequate.[46] CTIA argues that adopting CORF's proposal would conflict with the notice that it asserts was given to bidders in the 24 GHz auction that the Commission would not adopt limits that are significantly stricter than what was agreed to at WRC-19.[47] We seek comment on CORF's proposal in the record. Parties supporting changes to the Resolution 750 unwanted emission limits should provide additional technical justification and explain why any stricter changes are necessary to protect EESS operations in the United States. While CORF also raises issues concerning RAS, we note that Resolution

[40] *See* Qualcomm Comments at 1-2.

[41] We note that after WRC-19, the European Union modified its stricter limits stating that "[t]he continued application of the current more stringent EU-harmonised protection limits in the single market would provide greater protection of the EESS (passive) across the territory of the Union. However the application of protection limits in the Union that differed from those applied in the rest of the world, in particular by being more stringent may affect the degree of equipment availability and choice, which in turn may have a negative impact on equipment costs and the scale of investments in high-capacity (5G) networks…" and concluded that "Decision (EU) 2019/784 should be amended in order to preserve the balance of Union policies on 5G deployment and the monitoring of the Earth's atmosphere and surface and to foster the Union's role as a leader in the global 5G ecosystem of equipment and services."). *See* EU Commission implementing Decision (EU) 2020/590 (24 April 2020) amending Decision (EU) 2019/784, at https://docdb.cept.org/download/167.

[42] CORF Comments at 11. IEEE neither supports nor rejects the WRC-19 limits but propose the alternative of supporting whichever limit allows for the least power to be emitted into the 23.6-24.0 GHz band. IEEE Comments at 4. IEEE also argues it is necessary to understand the filter roll-off characteristics of the equipment being used in order to calculate the amount of power that would be transmitted by that equipment into a 200 MHz block of the 23.6-24.0 GHz band, and therefore requests that the Commission delay making a decision on limits until the Commission has completed such an evaluation. *Id.* Assuming we adopt rules that will limit the amount of unwanted emissions into the EESS band, our licensees will be required to comply with those limits by any means necessary. Although we invite commenters to provide information on filter roll-off characteristics, we see no need to delay this proceeding pending such information.

[43] CORF Comments at 9.

[44] AT&T Reply Comments at 4; T-Mobile Reply Comments at 6; CTIA Reply Comments at 7.

[45] AT&T Reply Comments at 4.

[46] T-Mobile Reply Comments at 6.

[47] CTIA Reply Comments at 5.

750 was limited to protection of EESS, and RAS is outside the scope of this proceeding. We also note that RAS observations that are protected under US74 historically have received a lower level of protection than EESS.[48]

15. We propose to make any changes to the limits on emissions into the 23.6-24.0 GHz band by amending our part 30 rules and adding a footnote to the U.S. Table of Allocations.[49] Since our part 30 rules already contain a rule governing emissions limits,[50] it appears to be appropriate to incorporate any changes we make in this proceeding into that rule. CORF, CTIA, and T-Mobile all support incorporating any changes to our emissions limits into part 30 of the Commission's rules.[51] We seek comment on alternative approaches.

B. Services Subject to Resolution 750 Unwanted Emissions Limits

16. We propose to apply the Resolution 750 unwanted emissions limits to all mobile operations (as defined in Parts 2 and 20 of the Commission's rules)[52] in the 24 GHz band, not just to IMT operations. While WRC-19 only applied the unwanted emissions limits of Resolution 750 to IMT base stations and mobile stations, the Commission's rules do not define IMT and do not require that equipment complying with a particular technical standard be used in a band licensed under the UMFUS rules. Accordingly, attempting to treat non-IMT mobile operations differently than IMT mobile operations could cause confusion and difficulties with enforcing the limits. We also do not see a technical justification for applying different emissions limits to IMT and non-IMT mobile systems. NTIA believes that device and deployment density, along with pointing angles toward the satellite, are the predominant factors in causing interference to the passive satellite sensors, and these factors are not unique to IMT but common to all mobile systems.[53] Additionally, we note that NTIA, CORF, and various wireless industry commenters support applying any revised emissions limits to all mobile operations, while no commenter supports applying the Resolution 750 emissions limits to only IMT mobile operations.[54] We seek comment on this proposal. We also seek comment on NTIA's request that we apply the Resolution 750 unwanted emissions limits to fixed operations, including point-to-point and point-to-multipoint

[48] *Compare* United States Table of Allocations, 47 CFR § 2.106(c)(74) ("In the bands . . . 23.6-24.0 . . . GHz, the radio astronomy service shall be protected from unwanted emissions only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates.") *with id.* at (c)(246) ("No station shall be authorized to transmit in the following bands. . .").

[49] *See* Appendix A for the proposed rule text. The proposed footnote would require that stations in the mobile service in the 24.25-27.5 GHz band comply with the Resolution 750 emission limits.

[50] *See* 47 CFR § 30.203.

[51] *See* CORF Comments at 12; CTIA Reply Comments at 7-8; T-Mobile Reply Comments at 1; *see also* Johnson & Lucas Congressional Letter at 2 (advocating that changes to the 24 GHz emissions limits be made through amending the Part 30 UMFUS rules).

[52] *See* 47 CFR § 2.1 ("Mobile Service. A radiocommunication service between mobile and land stations, or between mobile stations."); *see also* 47 CFR § 20.3 ("Mobile Service. A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating 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 under part 24 of this chapter.")

[53] NTIA Comments at 11.

[54] *See* NTIA Comments at 11; CORF Comments at 13; CTIA Comments at 6-7; Qualcomm Comments at 1; T-Mobile Comments at 6; Johnson & Lucas Congressional Letter at 2. Qualcomm opposes the WRC limits and asks the Commission to maintain the existing –13 dBm/MHz OOBE standard, but to the extent the Commission will adopt the WRC limits, it asks that they apply only to mobile deployments. Qualcomm Comments at 2.

operations,[55] though we acknowledge that WRC-19 did not study fixed deployments. NTIA argues the Commission should apply the two-phased WRC-19 emissions limit timetable described below to fixed deployments.[56] It asserts that fixed services that cannot comply with the WRC-19 OOBE limits, or that cannot meet the phased approach, should be constructed to operate with no greater than 0 degree antenna up-tilt to protect satellite operations.[57] NTIA further submits that the applicability of OOBE limits to fixed deployments is an issue that could merit explicit study – perhaps jointly by the Commission and NTIA – to gain sufficient confidence to relax the rules for fixed services.[58] CORF and IEEE also want all potential UMFUS operations, mobile and fixed, to be subject to enhanced OOBE standards.[59]

17. We seek comment on whether it would be necessary to apply emissions limits stricter than –13 dBm/MHz to fixed operations in the 24 GHz band. Proponents of applying stricter limits as well as those arguing for maintaining the existing limits should provide specific technical data justifying their respective positions, as well as the costs and benefits of applying stricter limits or of keeping the existing limits.[60] We note that numerous point-to-point microwave links deployed by non-federal and federal operators in the 21.2-23.6 GHz band (which has propagation characteristics similar to the 24 GHz band and is immediately adjacent to the 23.6-24.0 GHz passive band) operate with the same unwanted emissions limits that apply under the UMFUS rules.[61] We seek comment on whether these existing deployments have caused harmful interference to passive sensors in the 23.6-24.0 GHz band, and on the likelihood that the tighter beams of fixed point-to-point systems will be detected by passive instruments in space. We also seek comment on whether there are material differences between existing fixed point-to-point systems and fixed point-to-point and point-to-multipoint systems that may be deployed in the 24 GHz band in the future and how such systems might impact emissions into the 23.6-24.0 GHz band. Further, we seek comment on NTIA's alternative suggestions of limiting the elevation angles of fixed deployments.[62]

18. Finally, we seek comment on Ericsson's and AT&T's proposal that indoor small-cell systems be exempt from the Resolution 750 limits.[63] We urge parties who support an exemption for indoor systems to include a technical justification for treating indoor small-cell systems differently. We note that indoor systems normally run at lower power and should have less difficulty meeting the Resolution 750 limits. Conversely, building attenuation would further reduce the likelihood of unwanted emissions in the 23.6-24 GHz passive band from indoor small cell transmitters.

C. Timetable for Application of WRC-19 Limits

19. We propose to apply the new Resolution 750 unwanted emissions limits on the timeframes adopted at WRC-19. Under this proposal, the first phase limits (–33 dBW for base stations, –

[55] Point-to-multipoint operations include transportable user equipment, where the user equipment is not intended to be used while in motion, but the equipment could be moved when not in operation. *See* 47 CFR § 30.2.

[56] NTIA Comments at 12.

[57] NTIA Comments at 12. NTIA further submits that the applicability of OOBE limits to fixed deployments is an issue that could merit explicit study—perhaps jointly by the Commission and NTIA—to gain sufficient confidence to relax the rules for fixed services. *Id.*

[58] NTIA Comments at 12.

[59] *See* CORF Comments at 13; IEEE Comments at 5; *see also* Johnson & Lucas Congressional Letter at 2 (advocating that the Commission should consider applying the WRC-19 OOBE limits to all fixed systems).

[60] We note the arguments that the scientific community is unable to determine whether data has been corrupted by low-level interference. *See* CORF Comments at 13-14.

[61] *See* 47 CFR § 101.111(a)(2)(ii) ("Attenuation greater than 56 decibels or to an absolute power of less than −13 dBm/1MHz is not required.")

[62] *See* NTIA Comments at 12.

[63] Ericsson Comments at 5-6; AT&T Reply Comments at 6-7.

29 dBW for mobile stations) would apply as of the effective date of the rules, and the second phase limits (–39 dBW for base stations, –35 dBW for mobile stations) would apply to all deployments after September 1, 2027. AT&T, CTIA, Ericsson, Nokia, and T-Mobile support adopting the WRC limits on the timeframes adopted by WRC-19.[64] We note that no party has alleged that there will be a problem complying with the first phase limits or has asserted that existing deployments in the 24 GHz band would be constrained by such limits. AT&T, Ericsson, and Nokia state they will have equipment that meets the interim Phase 1 standard, and that they are working on compliance with the 2027 standards, which will depend on advances in chipsets and significant research and development.[65] CTIA asserts that licensees and manufacturers have relied on the WRC-19 decisions in developing equipment and planning deployment, and it notes that the 3rd Generation Partnership Project (3GPP) standards development organization is adopting these limits into its standards for equipment operating in the band based on the timeframes determined at WRC-19.[66] We seek comment on this proposal.

20. One of the tools that the Commission uses to ensure compliance with our technical rules is our equipment authorization program for RF devices, which is codified in part 2 of our rules.[67] In general, and for 24 GHz band devices used for mobile services, RF devices must comply with the Commission's technical and equipment authorization requirements before they can be imported into or marketed in the United States.[68] Because the unwanted emission limits for base stations and mobile stations will change after September 1, 2027 under our proposal, equipment certifications based on compliance with the first phase limits would expire on that date. Any equipment remaining in the supply chain—i.e. in warehouses or in transit—would then be illegal to sell or install under our rules. To minimize this issue, we seek comment on whether we should prohibit the grant of new equipment certifications for, or the importation of, equipment not complying with the phase two unwanted emission limits at a date prior to September 1, 2027. For example, we could cease granting new equipment certifications or permitting importation of equipment certified as complying with only the first phase limits after March 1, 2027—six months before the implementation of the second phase limits. Adopting such a rule could help prevent equipment that does not comply with the phase two unwanted emission limits from being deployed after September 1, 2027. We would expect equipment manufacturers and distributors to manage their inventories to comply with the rules that we adopt.

21. IEEE asks that the U.S. apply the stricter Phase 2 standards on an accelerated schedule for new deployments and in 2027 for all deployments, consistent with the European Union.[69] We seek comment on the feasibility and appropriateness of accelerating the deadline for compliance with the Phase 2 standards. In that regard, we request that equipment manufacturers and 24 GHz licensees provide further information on timelines for mobile equipment availability and system deployment. As noted above, while equipment manufacturers are working on equipment that would comply with the Phase 2

[64] CTIA Comments at 7; Ericsson Comments at 4; Nokia Comments at 1-2; T-Mobile Comments at 5; AT&T Reply Comments at 3-4.

[65] Nokia states its equipment meets the current WRC limits and that it is devoting substantial resources to meet the stricter limits by, but not earlier than, September 1, 2027. Nokia Comments at 1-2. Likewise, Ericsson states it already designs its equipment to meet the current, phase 1 WRC-19 limits, but cannot guarantee meeting the stricter, phase 2 limits prior to September 2027. Ericsson Comments at 4. AT&T states its planning is designed to meet Phase 1, but Phase 2 is significantly more restrictive and will require research and development, arguing against accelerated deadlines. AT&T Reply Comments at 3-4.

[66] CTIA Comments at 7.

[67] *See* 47 CFR pt. 2, subpart J.

[68] *See* 47 CFR §§ 2.803, 30.201. Part 30 transmitters used for fixed point-to-point microwave and point-to-multipoint services do not require certification. *See also* 47 U.S.C. § 302a(b) (stating that no person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated under the Act).

[69] IEEE Comments at 4-5.

standards, it is not clear that equipment meeting the Phase 2 standards would be widely available on an accelerated time frame.[70] Furthermore, the Phase 2 standards anticipate ubiquitous deployment of mobile systems in the band, and it is not clear that widespread deployment of mobile systems will occur in the band before 2027. We also note that licensees in the band in the U.S. will not be required to demonstrate buildout before 2029.[71]

22. NTIA requests that the Commission incentivize early adoption of the 2027 WRC limits, asserting that the WRC limits are based on estimates of gradual 5G deployment, which is at odds with the United States' national priority of rapid 5G deployment.[72] Noting that rapid 5G deployment in a range of frequency bands covering high-band, mid-band, and low-band spectrum is a priority for many countries around the world, and that international 5G deployments are well underway, we seek comment on NTIA's request. What incentives would facilitate deployment of equipment that meets the Phase 2 limits?[73] Are there steps the Commission can take to encourage the development and deployment of equipment that meets the Phase 2 standards?

23. NTIA urges, and AGU/AMS/NWA agrees, that base stations and user equipment modified or replaced after September 1, 2027, should comply with the post-2027 (e.g., –39 dBW) OOBE levels.[74] CTIA argues this requirement is overly broad and would effectively prevent licensees from making any changes to existing deployments without purchasing and installing entirely new equipment; furthermore, it asserts the WRC-19 decision makes clear that the more stringent limits apply to equipment brought into use after September 2027, and that equipment brought into use before that date will continue to be subject to the initial emissions limits.[75] T-Mobile notes that equipment can be "modified" in a number of insignificant ways, and thus, the Commission should only treat base station modifications that affect the emissions characteristics as "modifications."[76] In contrast, AGU/AMS/NWA recommends that all legacy equipment installed prior to 2027 that does not meet the more stringent limits should be given a sunset date of September 1, 2028, for retrofit or replacement to comply with the Phase 2 limits.[77] CTIA and AT&T respond that the Commission should not apply a more stringent emissions limit to any equipment that is modified or replaced after September 2027.[78]

24. We seek comment on adopting a timetable that matches what was adopted at WRC-19; *i.e.*, deployments would be required to meet the first phase limits as of the effective date of any rules we adopt, and deployments after September 1, 2027 would be required to meet the stricter second phase limits. We note the concern that significant research and development will be required to meet the 2027 deadline in the U.S. We seek comment on rules for transitioning equipment deployed under the Phase 1

[70] *See* Ericsson Comments at 4; Nokia Comments at 2; AT&T Reply Comments at 4.

[71] *See* 47 CFR § 30.103 (buildout showing required with initial renewal application ten years after initial license grant). Most 24 GHz licenses were issued in 2019; for example, 2,912 licenses were offered at 24 GHz in Auction 102, out of which 29 bidders won a total of 2,904 licenses. *See Auction of 24 GHz Upper Microwave Flexible Use Service Licenses Closes*, Public Notice, 34 FCC Rcd 4294, 4294, para. 1 (OEA2019); *see also Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services*, Public Notice, 33 FCC Rcd 4103, 4105, para. 3 (OEA 2018) (explaining that Auction 102 would offer 2,912 licenses in the 24 GHz band).

[72] *See* NTIA Comments at 9.

[73] *See* Johnson & Lucas Congressional Letter at 2 (advocating that the Commission consider all available incentives to encourage operators in the 24.25-24.45 GHz or 24.75-25.25 GHz bands to meet the -39 dBW/200 MHz standard in equipment they deploy prior to September 1, 2027).

[74] NTIA Comments at 10; AGU/AMS/NWA Reply Comments at 5.

[75] CTIA Reply Comments at 6.

[76] T-Mobile Reply Comments at 4.

[77] AGU/AMS/NWA Reply Comments at 5.

[78] AT&T Reply Comments at 4-5; CTIA Reply Comments at 3-4.

limits, including the proposal of NTIA and others that parties modifying or replacing equipment after September 1, 2027 must meet the more stringent OOBE limit (e.g., –39 dBW).[79] We seek to understand what would constitute "replacement" or "modification" of equipment under such a proposal. What sort of technical changes would constitute a "modification" for this purpose? Would any alterations qualify, or only those which altered certain technical parameters, such as antenna height? To the extent that parties are correct that the U.S. would be better served by having its equipment ecosystem meet stricter emissions limits by 2024 as is required in Europe,[80] we seek comment on whether there are any steps we can take to facilitate early adoption of the 2027 limit. Additionally, as noted above, we seek comment on whether a different implementation schedule would be appropriate for smaller entities and if so, what would be the related costs and benefits.

D. Measurement of Unwanted Emissions

25. Currently, the UMFUS rules permit equipment manufacturers the flexibility of demonstrating compliance with the out-of-band emissions limits by using either a TRP or conductive methodology when obtaining equipment certification.[81] To the extent that we adopt new emissions limits to protect passive sensors in the 23.6-24.0 GHz band, we propose to allow compliance with the unwanted emissions limits for the 23.6-24.0 GHz band to be demonstrated using TRP measurements, and we seek comment on whether to permit use of conductive power measurements as well.

26. CTIA, Nokia, and AT&T support the Commission permitting use of either TRP or conductive power methodologies to measure emissions,[82] while NTIA, AGU/AMS/NWA, and Ericsson argue that only TRP should be allowed, consistent with the rules adopted at WRC-19.[83] CTIA urges the Commission to allow for measurement of emissions either in terms of TRP or conductive power to provide manufacturers the flexibility to determine the most feasible approach for a particular device without affecting compliance with the established limits.[84] Other commenters assert that the Commission should not permit the conductive power methodology to be used to measure emissions into the 23.6-24.0 GHz band. NTIA suggests that only TRP measurements should be permitted because the Resolution 750 unwanted emissions limits are based on the use of TRP and because conductive power, while useful, is presently less understood than TRP.[85] Ericsson adds that mobile terrestrial systems are increasingly relying on large arrays of active antenna elements in their design, and there are no physical connections to the antenna elements, making conductive power measurements unnecessary.[86] Ericsson does not anticipate encountering any difficulties in performing TRP measurements on low signal levels in the 24.25-24.45 GHz and 24.75-25.25 GHz bands in a controlled chamber environment, such as anechoic chambers, where reliable and repeatable power measurements can be taken at discrete sets of points from

[79] *See* Johnson & Lucas Congressional Letter at 2 (advocating that the Commission should clarify that base station and user equipment modified or replaced after September 1, 2027, must comply with the more stringent post-2027 OOBE limits).

[80] In Europe, the initial focus on licensing has been the 26.5-27.5 GHz band. *See, e.g., Global update on spectrum for 4G & 5G*, Qualcomm Corporation, December 2020, available at https://www.qualcomm.com/media/documents/files/spectrum-for-4g-and-5g.pdf at 11.

[81] *See* 47 CFR § 30.203.

[82] CTIA Comments at 7-8; Nokia Comments at 2; AT&T Reply Comments at 5.

[83] *See* NTIA Comments at 12; Ericsson Comments at 3-4; AGU/AMS/NWA Reply Comments at 7; *see also* Johnson & Lucas Congressional Letter at 2 (advocating that the Commission should require licensees to use TRP to measure compliance with these emission limits).

[84] CTIA Comments at 7-8.

[85] NTIA Comments at 12.

[86] Ericsson Comments at 3.

all directions from the antenna.[87] AGU/AMS/NWA recognize Ericsson's support for TRP and state that permitting multiple measurement techniques would make it difficult for the scientific community to use the measurement data from licensees to determine if those emissions may be detrimental to passive sensing measurements.[88]

27. We note that no party objects to including TRP measurements as an acceptable alternative. As the Commission stated in the Spectrum Frontiers proceeding, however, a TRP measurement of a device requires that EIRP measurements be made around a spherical surface surrounding the device for both polarizations, and as a result it can be time consuming and difficult.[89] Given the complexity of making TRP measurements, we seek comment on whether allowing equipment manufacturers to use conductive power or other measurement alternatives will result in the increased potential for harmful interference to occur to 23.6-24.0 GHz band passive sensors. We also seek comment on whether equipment with accessible connections to make conductive power measurements has been manufactured or will likely be manufactured for use in this band. To the extent that commenters advocate against use of conductive power methodology for measuring unwanted emissions into the 23.6-24.0 GHz band, we seek comment on how to distinguish its disallowance in this band from generally accepted use domestically and internationally in other bands.[90]

E. Other Matters

28. Marcus & Jornet support adopting the WRC limits but ask the Commission to consider alternative antenna technologies or standards that they believe would protect passive sensing. For example, they urge the Commission to entertain waiver requests for alternative antenna technologies that demonstrate that the resulting emissions will protect the passive satellites to the limits stated in Recommendation ITU-R RS.2017-0.[91] We will consider waiver requests in accordance with our normal practice if a specific request is filed, and in light of the specific circumstances, and do not see the need to seek comment on such requests here.[92]

29. Meanwhile, Choyu Networks offers a proposal for Real-time Geospatial Spectrum Sharing (RGSS) as a method to ensure the protection of EESS radiometers from interference while enabling adjacent and coincident radio frequency spectrum to be used for 5G/6G (or alternative) communication networks.[93] While the concept has potential interest, Choyu Networks admits that further research would be necessary to develop even a proof of concept RGSS system.[94] Accordingly, it would

[87] Ericsson Comments at 4.

[88] AGU/AMS/NWA Reply Comments at 7.

[89] *Spectrum Frontiers 1st R&O*, 31 FCC Rcd at 8120, para. 303; Tadahiro Watanabe et al., *Total Radiated Power Measurement above 1 GHz with Partially-Spherical Scanning of a Probe*, 2009 Proceedings of the Institute of Electronics, Information and Communication Engineers at 179 (http://www.ieice.org/proceedings/EMC09/pdf/21R3-3.pdf). As Ericsson has pointed out, this requires measurements to be made in a controlled environment, such as an anechoic or reverberation chamber. Ericsson Comments at 3-4.

[90] Resolution 750 specifies that the unwanted emissions for all other bands except for 23.6-24.0 GHz should be measured at the antenna port—i.e., they are conductive power limits. ITU Radio Regulations (2020), Resolution 750 (Rev.WRC-19), Table 1, Table 2 Vol. 3 at 519-524 https://www.itu.int/en/myitu/Publications/2020/09/02/14/23/Radio-Regulations-2020. The Commission's rules have traditionally specified out-of-band emissions limits in terms of conductive power and only permit TRP as an option in the UMFUS rules, which were adopted in 2016 and which also specify a conductive limit. 47 CFR § 30.203(a); *Spectrum Frontiers 1st R&O*, 31 FCC Rcd at 8119-21, paras. 301-304.

[91] Marcus & Jornet Comments at 6.

[92] *See* 47 CFR § 1.925(b)(3).

[93] Choyu Networks Comments at 5-11.

[94] Choyu Networks Comments at 10.

appear to be premature to develop proposed rules based on an RGSS system at this time, but we seek comment on this alternative proposal.

30. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,[95] 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[96] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

31. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B.

32. *Comment Period and Filing Requirements*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/ecfs/.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and

[95] 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.

[96] 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).

safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

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), 202-418-0432 (TTY).

34. The proceeding this Notice initiates 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.

35. *Paperwork Reduction Act.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. 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, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

36. For further information contact Simon Banyai of the Wireless Telecommunications Bureau, Broadband Division, at 202-418-1443 or by e-mail to Simon.Banyai@fcc.gov.

V. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 301, 302, 303(r), 308, 309, and 333 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 301, 302a, 303(r), 308, 309, 333, that this Notice of Proposed Rulemaking is HEREBY ADOPTED and is EFFECTIVE upon publication in the *Federal Register*.

38. IT IS FURTHER ORDERED that the Commission's Office of Managing Director, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 30 of Title 47 as follows:

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106(a) by revising paragraph (a) pages 54 and 55 in the Table of Frequency Allocations and adding paragraph (c)(146) to read as follows:

§ 2.106 Table of Frequency Allocations

(a) * * *

* * * * *

22-22.21 FIXED MOBILE except aeronautical mobile 5.149			22-22.21 FIXED MOBILE except aeronautical mobile US342		
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) 5.149 5.532			22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US342 US532		
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211		
22.55-23.15 FIXED INTER-SATELLITE 5.338A MOBILE SPACE RESEARCH (Earth-to-space) 5.532A 5.149			22.55-23.15 FIXED INTER-SATELLITE US145 US278 MOBILE SPACE RESEARCH (Earth-to-space) 5.532A US342		Satellite Communications (25) Fixed Microwave (101)
23.15-23.55 FIXED INTER-SATELLITE 5.338A MOBILE			23.15-23.55 FIXED INTER-SATELLITE US145 US278 MOBILE		
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE 5.150			24-24.05 5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE 5.150 US211	ISM Equipment (18) Amateur Radio (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.150			24.05-24.25 RADIOLOCATION G59 Earth exploration-satellite (active) 5.150	24.05-24.25 Amateur Earth exploration-satellite (active) Radiolocation 5.150	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
24.25-24.45 FIXED MOBILE except aeronautical mobile 5.338A 5.532AB	24.25-24.45 FIXED 5.532AA MOBILE except aeronautical mobile 5.338A 5.532AB RADIONAVIGATION	24.25-24.45 FIXED MOBILE 5.338A 5.532AB RADIONAVIGATION	24.25-24.45	24.25-24.45 FIXED MOBILE USxxx	RF Devices (15) Upper Microwave Flexible Use (30)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
24.45-24.65 FIXED INTER-SATELLITE MOBILE except aeronautical mobile 5.338A 5.532AB	24.45-24.65 FIXED 5.532AA INTER-SATELLITE MOBILE except aeronautical mobile 5.338A 5.532AB RADIONAVIGATION 5.533	24.45-24.65 FIXED INTER-SATELLITE MOBILE 5.338A 5.532AB RADIONAVIGATION 5.533	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533		RF Devices (15) Satellite Communications (25)
24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE MOBILE except aeronautical mobile 5.338A 5.532AB	24.65-24.75 FIXED 5.532AA INTER-SATELLITE MOBILE except aeronautical mobile 5.338A 5.532AB RADIOLOCATION-SATELLITE (Earth-to-space)	24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE MOBILE 5.338A 5.532AB	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)		
24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B MOBILE except aeronautical mobile 5.338A 5.532AB	24.75-25.25 FIXED 5.532AA FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE except aeronautical mobile 5.338A 5.532AB	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE 5.338A 5.532AB	24.75-25.25	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE USxxx NG65	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30)
25.25-25.5 FIXED 5.534A INTER-SATELLITE 5.536 MOBILE 5.338A 5.532AB Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE USxxx Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)	RF Devices (15)
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED 5.534A INTER-SATELLITE 5.536 MOBILE 5.338A 5.532AB SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space) 5.536A			25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE USxxx SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	25.5-27 SPACE RESEARCH (space-to-Earth) Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	
27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE 5.338A 5.532AB	27-27.5 FIXED 5.534A FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE 5.536 5.537 MOBILE 5.338A 5.532AB		27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE USxxx	27-27.5 Inter-satellite 5.536	
27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.517A 5.539 MOBILE 5.538 5.540			27.5-30	27.5-28.35 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30) Fixed Microwave (101)
				28.35-29.1 FIXED-SATELLITE (Earth-to-space) G165 NG527A	RF Devices (15) Satellite Communications (25)

* * * * *

(C) * * *

* * * * *

(146) USxxx In the bands 24.25-24.45 GHz and 24.75-27.5 GHz, the total radiated power (TRP) of emissions from stations in the mobile service in any 200 MHz of the band 23.6-24 GHz shall not exceed -33 dBW/200 MHz for base stations and -29 dBW/200 MHz for mobile stations, and for stations brought into use after September 1, 2027, TRP shall not exceed -39 dBW/200 MHz for base stations and -35 dBW/200 MHz for mobile stations.

* * * * *

The authority citation for part 30 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302, unless otherwise noted.

2. Amend § 30.203 by adding paragraph (d) to read as follows:

§ 30.203 Emission Limits.

* * * * *

(d) (1) In addition to the limits noted above, for licensees operating mobile equipment in the 24.25-24.45 GHz or 24.75-25.25 GHz bands, the total radiated power of emissions in any 200 MHz of the 23.6-24.0 GHz band shall not exceed -33 dBW (for base stations) or -29 dBW (for mobile stations).

(2) For mobile equipment placed in service after September 1, 2027, the total radiated power of emissions in any 200 MHz of the 23.6-24.0 GHz band shall not exceed -39 dBW (for base stations) or -35 dBW (for mobile stations).

APPENDIX B

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 this *Notice of Proposed Rulemaking* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM* for comments. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* 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 *NPRM*, the Commission proposes to implement certain decisions regarding the 24.25-27.5 GHz band made in the World Radiocommunication Conference held by the International Telecommunication Union (ITU) in 2019 (WRC-19). Specifically, the Commission proposes to adopt the Resolution 750 limits, apply them to all mobile systems, and incorporate those limits into our part 30 technical rules. We also propose to adopt the WRC-19 timeframes for the Resolution 750 emissions limits. Resolution 750 defines current unwanted emissions limits, measured in terms of Total Radiated Power (TRP), for IMT base and mobile stations and a stricter set of emissions limits for the same stations that will become effective after September 1, 2027. Consistent with Resolution 750, we propose to adopt the use of TRP to measure compliance with the unwanted emissions limits for the 23.6-24.0 GHz band. The Commission seeks comment on these proposals and invites comment on alternative proposals and approaches such as applying Resolution 750 limits to fixed operations or applying them on a more abbreviated timeframe, adopting stricter emissions limits, and permitting the use of conductive power to measure compliance with the unwanted emissions limits. The Commission also seeks comment on equipment manufacturers' capacity to meet the proposed timelines, and whether adoption of the Resolution 750 emissions limits would increase network deployment costs with the directive to commenters to quantify any additional costs that would be incurred and discuss what if any impact there would be on service. By adopting certain requirements consistent Resolution 750 and aligning them with part 30 of our rules, the Commission hopes to ensure the protection of Earth Exploration Satellite Service (EESS) passive operations in the 23.6-24.0 GHz band, which are critical for accurate climate monitoring and weather forecasting as well as for climatology science.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 301, 302, 303(r), 308, 309, and 333 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 301, 302a, 303(r), 308, 309, 333.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business,"

[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.* § 603(a).

[4] *See id.* § 603(b)(3).

"small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A "small business concern" is one 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.[7]

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 here, at the outset, three broad groups of small entities that could be directly affected herein.[8] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[9] These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.7 million businesses.[10]

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."[11] 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.[12] Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[13]

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 districts, with a population of less than fifty thousand."[14] U.S. Census Bureau data from the 2017 Census

[5] *See id.* § 601(6).

[6] *See id*. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[7] 15 U.S.C. § 632.

[8] *See* 5 U.S.C. § 601(3)-(6).

[9] *See* SBA, Office of Advocacy, "What's New With Small Business," https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf (Sept. 2019).

[10] *Id.*

[11] 5 U.S.C. § 601(4).

[12] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[13] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[14] 5 U.S.C. § 601(5).

of Governments[15] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[16] Of this number there were 36,931 general purpose governments (county[17], municipal and town or township[18]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[19] with enrollment populations of less than 50,000.[20] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[21]

8. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[22] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[23] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[24] Of this total, 955 firms had employment of 999 or

[15] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7." Census of Governments, https://www.census.gov/programs-surveys/cog/about.html (last visited September 19, 2023).

[16] *See* U.S. Census Bureau, 2017 Census of Governments – Organization, Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017 (providing the methodology for creating the table).

[17] *See id.* At Table 5, County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[18] *See id.* At Table 6, Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[19] *See id.* At Table 10, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017 (providing the methodology for creating the table).

[20] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[21] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments – independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments – Organizations Tables 5, 6, and 10.

[22] *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.

[23] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[24] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

fewer employees and 12 firms had employment of 1,000 employees or more.[25] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

9. *Fixed Microwave Services.* Microwave services include common carrier,[26] private-operational fixed,[27] and broadcast auxiliary radio services.[28] They also include the Upper Microwave Flexible Use Service,[29] the Millimeter Wave Service,[30] and the Local Multipoint Distribution Service (LMDS),[31] where licensees can choose between common carrier and non-common carrier status.[32] The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.[33] For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more.[34] Thus under this SBA category and the associated standard, the Commission estimates that the majority of fixed microwave service licensees can be considered small.

10. *Satellite Telecommunications.* This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[35] Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules.[36] For this category, U.S. Census Bureau data for 2012 show that there were a total of 275 firms that operated for the entire year.[37] Of this total, 299 firms had annual

[25] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[26] *See* 47 CFR pt. 10, subpart I.

[27] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[28] Auxiliary Microwave Service is governed by parts 74 and 78 of Title 47 of the Commission's rules. Available to licensees of broadcast stations, cable operators, and to broadcast and cable network entities. Auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes TV pickup and CARS pickup, which relay signals from a remote location back to the studio.

[29] *See* 47 CFR pt. 30.

[30] *See* 47 CFR pt. 101, subpart Q.

[31] *See* 47 CFR pt. 101, subpart L.

[32] *See* 47 CFR §§ 30.6, 101.1017.

[33] 13 CFR § 121.201, NAICS Code 517210.

[34] *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.

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications*," https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[36] *See* 13 CFR § 121.201, NAICS Code 517410.

[37] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series: Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012.

receipts of less than $25 million.[38] Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

11. *All Other Telecommunications*. The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[39] 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.[40] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."[41] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with annual receipts of $35 million or less.[42] For this category, U.S. Census Bureau data for 2012 show that there were a total of 1,442 firms that operated for the entire year.[43] Of these firms, a total of 1,400 firms had annual receipts of less than $25 million and 15 firms had gross annual receipts of $25 million to $49,999,999.[44] Thus, the Commission estimates that a majority of "All Other Telecommunications" firms potentially affected by our actions can be considered small.

12. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[45] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."[46] The SBA has established a small business size standard for this industry of 1,250 employees or less.[47] U.S. Census Bureau data for 2012 show that 841 firms operated in this industry in that year.[48] Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with

[38] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[39] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications*," https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[40] *Id.*

[41] *Id.*

[42] *See* 13 CFR § 121.201, NAICS Code 517919.

[43] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS Code 517919 https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&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] *See* U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*," https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[46] *Id.*

[47] *See* 13 CFR § 121.201, NAICS Code 334220.

[48] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012 NAICS Code 334220, https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false.

2,500 or more employees.[49] Based on this data, we conclude that a majority of manufacturers in this industry is small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

13. The proposal in the *NPRM* to adopt the Resolution 750 emissions limits, emissions limits measurement methodology and emissions limits effective date timetables will not impose any new reporting or recordkeeping requirements. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether, if adopted, the proposals in the *NPRM* will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Comments in response to the *Public Notice*[50] that sought to develop a record on how the Commission should implement the emissions limits contained in Resolution 750 for the active services in the 24 GHz band that raised concerns about increased costs if Resolution 750 emissions limits are adopted, have been taken into consideration, and commenters have been asked to quantify these costs and specify the impact on service in the *NPRM*. We expect the comments we receive on our proposals to include information addressing costs, service impacts, and other matters of concern, which should help the Commission identify and evaluate relevant issues for small entities including compliance costs and other burdens that may result from the matters raised in the *NPRM*, before adopting final rules.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[51]

15. Having data on the costs and economic impact of the proposals and approaches discussed in the *NPRM* will allow the Commission to better evaluate options and alternatives for minimization, should there be a significant economic impact on small entities if Resolution 750 emissions limits and effective date timetables are adopted. Accordingly, we expect to more fully consider the economic impact on small entities following our review of comments filed in response to the *NPRM* which as mentioned above in Section D includes a request for comments on the costs and service impacts associated with adoption of Resolution 750 emissions limits. Below we discuss actions taken and alternatives considered by the Commission relating to the proposals in the *NPRM*.

16. Based on the record from the *Public Notice* comments, our proposal to adopt Resolution 750 emissions limits seems to strike the appropriate balance between protecting passive sensing satellite operations and facilitating use of the 24 GHz band. The Commission could have developed and proposed its own emission limits and related requirements which may have included emissions limits that were stricter or not as strict as the Resolution 750 emissions limits. The Commission could have also simply maintained the existing rules. As discussed in the *NPRM* however, many of the industry participants support adoption of Resolution 750 emission limits to protect extremely sensitive passive satellite operations, facilitate the continued development and deployment of 5G in the U.S., promote international

[49] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[50] *See Office of Engineering & Technology and the Wireless Telecommunications Bureau Seek Comment on Emission Limits for the 24.25-27.5 GHz Band*, Public Notice, 36 FCC Rcd 7561 (OET WTB 2021) (*Public Notice*).

[51] 5 U.S.C. § 603(c)(1)-(4).

harmonization, enable equipment manufacturers to provide globally marketable equipment, and to be consistent with U.S. policy relating to Radio Regulations. Thus, the synchronicity between the Resolution 750 emissions limits and the Commission's part 30 rules appears to be the best course of action, although small entities that hold licenses subject to these rules may incur increased deployment costs to comply with the more stringent Resolution 750 emissions limits.

17. In the alternative, if the Commission were to propose and adopt its own emissions limits, particularly if the emissions limits were stricter than both the existing emission limits and Resolution 750 emission limits, small entities could be subjected to significantly increased compliance costs without any of the above-mentioned benefits. Further, if the Commission were to propose and adopt less stringent emissions limit requirements or if we simply maintained the existing requirements, our rules may not provide the necessary protections for passive satellite operations to operate in the 24GHz band and might make it difficult for EESS to make observations free from harmful interference, thereby jeopardizing the accuracy of critical weather forecasting and climatology science data. Instead, the Commission believes our proposal to adopt the Resolution 750 emission limits which were carefully considered and the product of extensive industry collaboration, is the right approach and any potential burdens are outweighed by the benefits of protecting passive observations in the 23.6-24.0 GHz band, including improvements in weather forecasting.

18. Finally, in addition to seeking comment on the costs and service impacts of the Commission's proposals, the *NPRM* provides small entities the opportunity to submit comments on a wide range of issues relating to the proposed emissions limits including but not limited to comment on alternative limits, including the effect that any changes to existing limits would have on smaller entities, comment on the schedule for adoption of any revised limits, including adjustments that should be made for smaller entities to come into compliance, and comment on other related matters that are not addressed in Resolution 750. The Commission’s evaluation of the information it receives will shape the final alternatives it considers, the final conclusions it reaches, and any additional steps it takes to minimize any significant economic impact that may occur on small entities as a result of the final rules it promulgates in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

19. None.

APPENDIX C

List of Commenters to *Public Notice*

Comments

The National Academy of Sciences, through its Committee on Radio Frequencies (CORF)
CTIA
Elliot Eichen, Ph.D. Principal, Choyu Networks
Ericsson
IEEE Geoscience and Remote Sensing Society (IEEE)
Mike Marcus and Josep Jornet (Marcus & Jornet)
Nokia
National Telecommunications and Information Administration (NTIA)
Qualcomm Incorporated (Qualcomm)
T-Mobile USA, Inc. (T-Mobile)

Reply Comments

American Geophysical Union, American Meteorological Society, and National Weather Association (AGU/AMS/NWA)
AT&T
CTIA
T-Mobile

Ex Parte

Letter from Eddie Johnson, Chairwoman and Frank Lucas, Ranking Member, Congressional Committee on Science, Space, and Technology
Letter from American Geophysical Union, American Meteorological Society, National Weather Association, and University Corporation for Atmospheric Research (AGU/AMS/NWA/UCAR)

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Modifying Emissions Limits for the 24.25-24.45 GHz and 24.75-25.25 GHz Bands*; ET Docket No. 21-186, Notice of Proposed Rulemaking (December 22, 2023)

Last month, I had the honor of being a part of the United States delegation at the World Radio Conference in Dubai. At these conferences, the world gathers to discuss opportunities for the harmonization of spectrum and the growth of wireless markets. Preparation for these discussions, which are held once every four years, requires a mix of Olympic energy and diplomatic skill. The gatherings themselves take weeks and the resolutions that result have treaty-like effect, obligating member states to make adjustments to their domestic spectrum policies.

At the most recent conference, the United States was able to secure significant victories, clearing the way for further development of unlicensed and licensed airwaves. To ensure that we reap the full benefit of these outcomes, however, two things are essential.

First, it is essential that Congress reinstate spectrum auction authority for the Federal Communications Commission. The expiration of this authority—for the first time in three decades—has tied our hands, constraining our ability to hold auctions and threatening our leadership in global wireless deployment.

Second, it is essential that we honor the resolutions from this conference and past ones, including the World Radio Conference held four years ago in Sharm el-Sheikh. Here, we take steps to implement specific policies from that last gathering by proposing to align our rules for 5G mobile services in the 24 GHz band with international protections for weather forecasting and climate research that takes place in adjacent bands. It is worth noting that the world followed our lead in adopting mobile operations in the 24 GHz band. Now with this rulemaking, we seek to fulfill our obligations in this band, and in doing so commit to strike the right balance between fostering mobile service and protecting resources for scientific research.

I am grateful for the Commission team that led our work at the World Radio Conference in Dubai, just as I am for those who have taken on this duty at conferences in the past. The demands on their time are extensive, the days they spend far from home are substantial, and the commitment they have to serving the public interest is extraordinary.

DISSENTING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: *Modifying Emissions Limits for the 24.25-24.45 GHz and 24.75-25.25 GHz Bands*; ET Docket No. 21-186, Notice of Proposed Rulemaking (December 22, 2023)

Backwards. When it comes to America's leadership in wireless, the Biden Administration is moving backwards.

Today's Notice of Proposed Rulemaking is just one example. In it, the FCC seeks comment on the Biden Administration's request that the agency impose new restrictions on 24 GHz spectrum that licensees bought and paid for all the way back in 2019. There is no apparent reason for this U-turn. Indeed, while the Notice discusses several potential rule changes that may be necessary for purposes of conforming our rules with the results of the 2019 World Radio Conference (WRC-19), these particular Biden Administration requests are asks that were either rejected or never even studied at WRC-19. Thus, WRC-19 provides no basis or justification for turning heel.

What's more, changing the rules of the game after an auction has already closed—years after in this case—is bad policy. It undermines the reasonable, investment-backed expectations held by licensees and potential licensees alike. And it injects uncertainty into the FCC's spectrum auction process, which makes it harder to attract capital as well as innovators. The FCC should be leading the world with clear, predictable, and reliable spectrum auctions.

This decision is also disappointing because it comes at a point in time when the U.S. needs to start generating forward movement on spectrum. Just last month, after three years of study, the Biden Administration released its much-anticipated National Spectrum Strategy. Except, President Biden's spectrum plan was missing one key ingredient: spectrum. Indeed, the plan commits to freeing up exactly zero MHz of spectrum. Instead, the Administration will continue to study the issue for years to come.

The Biden Administration's spectrum-less spectrum plan is a big miss because the rest of the world is not standing still. The U.S. now ranks 13th out of 15 leading markets when it comes to the availability of licensed mid-band spectrum. The U.S. now trails its peers by an average of almost 400 MHz in licensed mid-band spectrum. And the U.S. is now nearly 700 MHz behind China, according to some measures.

This marks a complete 180 from just a few short years ago. During the last Administration, the federal government worked to free up an unprecedented amount of spectrum for 5G and other next-generation wireless services. All told, our efforts freed up about 6,000 MHz of spectrum for licensed 5G services in addition to thousands of MHz of spectrum for unlicensed use. The Biden Administration only plans to study less than 2,800 MHz. In other words, the FCC moved more spectrum into the commercial marketplace for consumer use from 2017 through 2020 than the Biden Administration plans to study—and it is not even close.

The U.S. needs to right the ship. And it can start with (hopefully) rejecting the Biden Administration's misguided request to claw back spectrum rights that the FCC auctioned off in 2019. And it can accelerate with the Biden Administration putting forward an actual spectrum plan that will improve connectivity and capacity for Americans.

For my part, I cannot support this look backwards. Accordingly, I dissent.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Modifying Emissions Limits for the 24.25-24.45 GHz and 24.75-25.25 GHz Bands*; ET Docket No. 21-186, Notice of Proposed Rulemaking (December 22, 2023)

I respectfully dissent from this notice of proposed rulemaking (NPRM). As stated in the introductory paragraph, it was intended to "implement certain decisions regarding the 24.25-27.5 GHz band made in the World Radiocommunication Conference held by the International Telecommunication Union (ITU) in 2019 (WRC-19)." However instead of focusing only on those decisions made at WRC-19, the item unnecessarily delves into seeking comment on after-the-fact proposals about out-of-band emissions that conflict with the notice given to bidders in the 24 GHz auction that the Commission would not adopt limits that are significantly stricter than what was agreed to at WRC-19.

The NPRM also seeks comment on applying emissions limits to fixed operations deployed in the band, all the while acknowledging that WRC-19 did not study fixed deployments. Opening up these issues to question post-auction sets a bad precedent that could upend investments made by the bidders at auction. It also disrupts the deployment of fixed and mobile services that have been deployed in the band since the conclusion of the auction that may have been based on assumptions that the Commission would adopt emission limits consistent with WRC-19 Resolution 750.

For these reasons, I respectfully dissent.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Modifying Emissions Limits for the 24.25-24.45 GHz and 24.75-25.25 GHz Bands*; ET Docket No. 21-186, Notice of Proposed Rulemaking (December 22, 2023)

Every decision made at a World Radiocommunication Conference (WRC) represents years of collaboration and hard work between federal agencies, the telecommunications industry, and our regional and international partners.

Today, we propose to harmonize our domestic 24 GHz rules with the unwanted emission limits in Resolution 750 adopted at WRC-19, four years ago. This step furthers our domestic and international goals – continued wireless innovation and protection of critical services that creates economic prosperity for American consumers and businesses, and global collaborations that reflect our leadership internationally.

I look forward to working with all stakeholders to make the harmonization process a success.

Thank you to the Federal Communications Commission team that led these efforts in 2019 and to the Wireless Telecommunications Bureau for taking on the next stage of the work.

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

In the Matter of	)	
	)	
Reporting Requirements for Commercial	)	MB Docket No. 23-427
Television Broadcast Station Blackouts	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: December 19, 2023 **Released: December 21, 2023**

By the Commission: Commissioner Simington issuing a separate statement.

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]

I. INTRODUCTION

1. This Notice of Proposed Rulemaking proposes to amend the Commission's rules to require notification to the Commission when a blackout of a broadcast television station, or stations, occurs on a video programming service offered by a multichannel video programming distributor (MVPD) for 24 hours or more due to a breakdown in retransmission consent negotiations between broadcasters and MVPDs. The proposed reporting framework would require public notice to the Commission of the beginning and resolution of any blackout and submission of information about the number of subscribers affected (which we propose may be designated as confidential). By requiring timely notification of broadcast station blackouts in a centralized, Commission-hosted database, these proposed reporting requirements would ensure that the Commission and public receive prompt and accurate information about critical MVPD service disruptions involving broadcast stations when they occur.

II. BACKGROUND

2. The Communications Act of 1934, as amended (the Act), requires that cable operators, satellite TV providers, and other MVPDs obtain a broadcast TV station's consent to lawfully retransmit the signal of a broadcast station to subscribers.[1] Commercial stations may either give consent by demanding carriage (must carry) or seek to negotiate for compensation in exchange for carriage (retransmission consent), and may switch between these choices every three years.[2] If a former "must carry" station elects retransmission consent but is unable to reach agreement for carriage, or the parties to an existing retransmission consent agreement do not extend, renew, or revise that agreement prior to its expiration, the MVPD loses the right to carry the signal. The result is a "blackout" of that existing broadcast programming on the MVPD platform.[3] When these broadcast station blackouts occur, the MVPD's subscribers typically lose access through their MVPD service to the station's entire signal,

[1] 47 U.S.C. § 325.

[2] *Id.* § 325(b)(3)(B).

[3] Federal Communications Commission, *Retransmission Consent*, https://www.fcc.gov/media/policy/retransmission-consent (last updated Sept. 27, 2021).

including both the national and local programming provided by the broadcaster.[4] Thus, if the blacked-out broadcast station was owned by or affiliated with a national broadcast network—such as ABC, CBS, FOX, NBC, The CW, Telemundo, or Univision—subscribers would be unable to access through their MVPD service that broadcaster's network programming as well as the local news, traffic, weather, and emergency information programming provided by their local station.

3. Over the past decade, data indicates that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically. For the first 20 years of the retransmission consent regime, S&P Capital IQ reports that there were a total of 81 failed retransmission consent negotiations that resulted in blackouts of 447 broadcast TV stations in 365 markets, with two thirds of the impasses occurring just in the last three years of that period, from 2011 to 2014.[5] This increase in the number of blackouts has persisted for over a decade, and the impact of each individual blackout has increased as more stations are taken off the air for longer periods of time. In 2019 alone, just 18 retransmission consent impasses resulted in 272 station blackouts that spanned 205 markets and affected 26.5 million subscribers.[6] According to S&P Capital IQ, these blackouts "on average remained in effect for 171 days—higher than the 98-day average in 2018, 33 days in 2017 and 52 days in 2016."[7] Some MVPD subscribers in over half of television markets continue to experience blackouts every year.[8]

4. Members of Congress have expressed concern about the impact of broadcast station blackouts. After a March 2022 FCC oversight hearing, Rep. Clarke of New York noted that "[o]ver the last two years, there were an estimated 460 blackouts associated with retransmission consent impasses, resulting in consumers losing access to their favorite shows. Unfortunately, these blackouts may be used as leverage during retransmission negotiations by broadcasters at the expense of consumer access to television programming."[9] In addition, during high-profile retransmission consent disputes, the

[4] Although some MVPD subscribers may be able to view the blacked out local broadcast signals using over-the-air antennas or other equipment, not all live in locations that can receive over-the-air signals, and further not all would have the equipment necessary to do so. FCC, *DTV Reception Maps*, https://www.fcc.gov/media/engineering/dtvmaps (last visited Sept. 28, 2023) (showing over-the-air signal availability and noting that "[a]ctual signal strength may vary based on a variety of factors, including, but not limited to, building construction, neighboring buildings and trees, weather, and specific reception hardware," and that "signal strength may be significantly lower in extremely hilly areas").

[5] Atif Zubair, *History of Retrans Deals and Signal Blackouts, 1993-2014 YTD*, Market Intelligence, S&P Capital IQ Pro (Feb. 25, 2014) (reporting data from "publicly announced retrans agreements between broadcasters and multichannel operators" from 1993 through Feb. 25, 2014); *id*. ("Blackouts in our database show that signal disruptions have become more frequent during the past three years since 2011, contributing 54 of the total 81 blackouts in our database.").

[6] Atif Zubair, *Retrans Roundup 2019*, Market Intelligence, S&P Capital IQ Pro (Jan. 21, 2020) (reporting "2019 publicized broadcast signal disruptions" data as of Dec. 31, 2019 in Excel format accessible via link to "retrans agreement and signal disruptions databases" embedded in article).

[7] *Id*.

[8] Peter Leitzinger, *Retrans Roundup 2021*, Market Intelligence, S&P Capital IQ Pro (Jan. 28, 2022) (reporting 2020 and 2021 "publicized broadcast signal disruptions" data in Excel format accessible via link to "retrans agreement and signal disruptions databases" embedded in article); Peter Leitzinger, *Retrans Roundup 2022*, Market Intelligence, S&P Capital IQ Pro (Feb. 7, 2023) (reporting "2022 publicized broadcast signal disruptions" data as of Jan. 15, 2023 in Excel format accessible via link to "retrans agreement and signal disruptions databases" embedded in article). By MVPDs' own count, between 2010 and 2019 there have been more than 1,250 broadcast station blackouts since 2010. Eun-A Park, Rob Frieden, Krishna Jayakar, *Blackouts in Retransmission Consent Negotiations: Empirical Analysis of Factors Predicting their Frequency and Duration*, TPRC48: The 48th Research Conference on Communication, Information, and Internet Policy (December 17, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3749577.

[9] *Subcommittee on Communications and Technology Hearing on Connecting America: Oversight of the FCC*, 117th Cong., at 7 (Mar. 31, 2022), https://docs.house.gov/meetings/IF/IF16/20220331/114545/HHRG-117-IF16-Wstate-

(continued….)

Commission often receives letters from members of Congress urging the Commission to take action to prevent or end a broadcast station blackout.[10]

5. Added as part of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), section 325 of the Act prohibits broadcast television stations and MVPDs from "failing to negotiate [retransmission consent] in good faith,"[11] and the Commission's rules provide a framework for determining whether those negotiations are in fact conducted in good faith.[12] If a broadcast station or MVPD believes the other party has not acted in good faith, it may file a good faith complaint with the Commission either before or after a carriage agreement is signed.[13]

6. Congress has not, however, authorized the Commission to require that parties resolve retransmission consent disputes with carriage agreements, or to force carriage in the absence of an agreement.[14] While section 325 of the Act grants the Commission authority to establish regulations governing retransmission consent negotiations, the Commission has repeatedly determined that this authority does not extend to requiring carriage of a broadcast station during a retransmission dispute.[15] Given this limitation, the Commission's good faith rules focus on "develop[ing] and enforce[ing] a process" conducive to negotiation rather than "sit[ting] in judgment of the terms of every retransmission

(Continued from previous page)
RosenworcelJ-20220331-SD001.pdf (Subcommittee question posed in statement of the Honorable Jessica Rosenworcel, Chairwoman, FCC).

[10] *See, e.g.*, Letter from Rep. David Cicilline *et al.*, U.S. House of Representatives, to Jessica Rosenworcel, Chairwoman, FCC (Oct. 25, 2022), https://docs.fcc.gov/public/attachments/DOC-389144A2.pdf ("While we take no position as to the merits of this dispute, we believe that Rhode Islanders should not be caught in the middle and as a consequence be left without access to local news and programming. We encourage the Federal Communications Commission to do everything in its power to help bring the parties together so that negotiations can continue in good faith.").

[11] 47 U.S.C. § 325(b)(3)(C). In 1999, Congress enacted the Satellite Home Viewer Improvement Act (SHVIA), which required television stations to negotiate retransmission consent with MVPDs in good faith and included the "competitive marketplace considerations" provision. Pub. L. No. 106-113, 113 Stat. 1501 (1999). Although SHVIA imposed the good faith negotiation obligation only on broadcasters, in 2004 Congress made the good faith negotiation obligation reciprocal between broadcasters and MVPDs. Pub. L. No. 108-447, 118 Stat. 2809 (2004) (referred to as the Satellite Home Viewer Extension and Reauthorization Act (SHVERA)).

[12] 47 CFR § 76.65(b).

[13] *Id*. §§ 76.65(c), 76.65(e).

[14] *See, e.g.*, Letter from Jessica Rosenworcel, Chairwoman, FCC, to Rep. David Cicilline *et al.*, U.S. House of Representatives (Nov. 1, 2022), https://docs.fcc.gov/public/attachments/DOC-389144A1.pdf (responding to a letter from members of Congress urging FCC action after failed carriage negotiations between Nexstar and Verizon resulted in a blackout and emphasizing that "it is important to understand that the Commission's authority in this area is limited, as under Section 325 we cannot order or otherwise require carriage of a broadcast station during a dispute.").

[15] *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2720, para. 3 (2011) (*2011 Retrans Consent NPRM*) ("The Commission does not have the power to force broadcasters to consent to MVPD carriage of their signals nor can the Commission order binding arbitration."); *id*. at 2728, para. 18 ("[R]egarding interim carriage, examination of the Act and its legislative history has convinced us that the Commission lacks authority to order carriage in the absence of a broadcaster's consent due to a retransmission consent dispute. . . . We thus interpret section 325(b) to prevent the Commission from ordering carriage over the objection of the broadcaster, even upon a finding of a violation of the good faith negotiation requirement."); *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, CS Docket No. 99-363, First Report and Order, 15 FCC Rcd 5445, 5471, para. 60 (2000) (*Good Faith Order*) ("[W]e see no latitude for the Commission to adopt regulations permitting retransmission during good faith negotiation or while a good faith or exclusivity complaint is pending before the Commission where the broadcaster has not consented to such retransmission.").

consent agreement[.]"[16] Nevertheless, broadcast station blackouts have remained a cause for concern. In a 2011 action proposing amendments to the Commission's good faith rules, the Commission observed that "[i]n recent times, the actual and threatened service disruptions resulting from increasingly contentious retransmission consent disputes present a growing inconvenience and source of confusion for consumers."[17] Since the Commission made that observation, the number of retransmission consent impasses has continued to increase, causing service disruptions for consumers.[18]

7. In addition to establishing the retransmission consent regime, the 1992 Cable Act also bolstered the Commission's customer service authority over cable and satellite TV providers. Pursuant to sections 632(b) and 335(a), the Commission may adopt customer service requirements for cable operators and public interest regulations for DBS providers.[19] Section 632(b) of the Act directs the Commission to "establish standards by which cable operators may fulfill their customer service requirements" and specifies a set of minimum customer service areas that the adopted standards must cover.[20] In 1993, the Commission implemented this mandate in section 76.309 of its rules, adopting a single set of customer service requirements for cable operators in the areas Congress specified.[21] While at that time the Commission declined to adopt additional standards in areas not specified in the statute, it reserved the right to revise and supplement the standards.[22]

8. Similarly, section 335(a) authorizes the Commission to impose "public interest or other requirements for providing video programming" on DBS providers.[23] The statute directs the Commission to impose certain minimum obligations on DBS providers, including complying with the political programming requirements of sections 312(a)(7) and 315 of the Act.[24] It also directs the Commission to examine opportunities that may serve the principle of localism in the Act.[25] As with section 632, when implementing section 335 of the Act, the Commission declined to impose any additional public interest obligations on DBS providers beyond the minimum protections specified in the statute.[26] The Commission explained that DBS service "is still a relatively young industry and we decline to impose any additional obligations on the DBS industry before we see how DBS serves the public."[27]

9. Currently, neither broadcast stations nor MVPDs are under any obligation to report to the Commission MVPD service disruptions involving broadcast programming. Neither the Commission nor the public has a systematic method for learning of significant MVPD service disruptions involving

---

[16] *Good Faith Order*, 15 FCC Rcd at 5454-55, paras. 23-24.

[17] *2011 Retrans Consent NPRM*, 26 FCC Rcd at 2729, para. 20.

[18] *Supra* para. 3.

[19] 47 U.S.C. §§ 552(b), 335(a).

[20] 47 U.S.C. § 552(b).

[21] 47 CFR §§ 76.309(c)(1) (addressing cable system office hours and telephone availability), 76.309(c)(2) (addressing installations, outages, and service calls), 76.309(c)(3) (addressing communications between cable operators and cable subscribers); *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd 2892, 2901, para. 34 (1993) (*Cable Operator Customer Service R&O*) ("[W]e are adopting a single set of federal customer service standards which deal with the specific areas set out in section 632(b).").

[22] *Cable Operator Customer Service R&O*, 8 FCC Rcd at 2907, para. 69.

[23] 47 U.S.C. § 335(a).

[24] *Id*.

[25] *Id*.

[26] *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254, 23279-80, para. 64 (1998).

[27] *Id*. at 23280, para. 64.

broadcast programming.[28] When a party to a retransmission consent negotiation files a complaint with the Commission alleging a violation of the Commission's good faith negotiation rules, the complaint process requires the parties to provide the Commission with relevant details about the blackout and each party's assertions as to why the negotiation reached an impasse. Since the adoption of the good faith negotiation rules in 2000, there have been relatively few complaints alleging violations of the Commission's good faith negotiation rules despite an escalation in the number of stalled or failed retransmission consent negotiations resulting in blackouts.[29] The Commission usually learns of broadcast station blackouts on MVPD platforms through reports of disputes in the media or informal communication with staff. This ad hoc process does not provide the Commission, Congress, or the public[30] with timely or specific information regarding service disruptions.[31] Accordingly, we initiate this rulemaking.

III. DISCUSSION

10. In the discussion below, we propose to require that MVPDs report retransmission consent blackouts within 48 hours and notify the Commission within two business days of its resolution. We discuss the specific aspects of the proposed reporting obligations and our proposed rule, and we address the Commission's authority to adopt the proposed requirements. We request comment on all aspects of the proposal, including the proposed rule as set forth below in Appendix A.

A. Overview and Policy Considerations

11. Given the data discussed above, we are concerned about the increasing number and duration of broadcast station blackouts on MVPD platforms across the country and the Commission's lack of ready access to basic information about such service disruptions. Given that many broadcast station blackouts on MVPD platforms occur without either party filing a complaint with the Commission, we cannot rely on good faith complaints to inform us when a deal impasse has resulted in a blackout, nor can we consider such complaints an accurate sampling of significant service disruptions. In addition, members of Congress regularly ask the Commission for information on broadcast station blackouts when they occur. Often the Commission does not have access to this important information through a consistent, reliable, and systematic means. To close this information gap, we tentatively conclude that obtaining blackout information from MVPDs would be the most effective method for the Commission to gain important and timely information about broadcast station blackouts occurring across the country and better fulfill our statutory obligation involving the retransmission consent negotiation process.[32]

12. Access to a centralized source of information about where and when broadcast station

[28] While, as required by our rules, MVPDs notify subscribers when specific broadcast station channels are blacked out, we are not aware of any systematic method used by MVPDs or broadcasters to notify the general public of broadcast station blackouts. *Infra* note 31.

[29] *Id*. *See 2011 Retrans Consent NPRM*, 26 FCC Rcd at 2724, para. 12 (noting at the time that "[t]here have been very few complaints filed alleging violations of the Commission's good faith rules"); *DirecTV, LLC; AT&T Services, Inc., Complainants, v. Deerfield Media, Inc. et al.*, MB Docket No. 19-168, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695, 10699, para. 8 (2020) (noting that the Deerfield good faith complaint "is only the second good faith complaint that was not withdrawn, dismissed, or denied since the rules were established and the first one that the Commission has had the opportunity to consider").

[30] Section 76.1603 provides that cable operators must notify their subscribers "as soon as possible" when service changes occur due to failed retransmission consent or program carriage negotiations. 47 CFR § 76.1603(b).

[31] While S&P Capital IQ Pro's retransmission database is a helpful resource, it provides limited visibility into the retransmission consent marketplace on an ongoing basis. The database is typically published only in yearly intervals, excludes independent and class A TV stations, and only lists publicized blackouts. Therefore, we do not believe data collected by S&P is a suitable substitute for complete or timely information on service disruptions. *Supra* note 8.

[32] 47 U.S.C. § 325(b)(3)(A).

blackouts occur would be beneficial not only to the Commission, but also to consumers. To make informed decisions regarding video service, consumers must have access to easily available, accurate, and timely information about such services. While cable subscribers receive notice from their cable operator when an individual broadcast station blackout affects their own channel lineup and video service,[33] on a broader scale, consumers generally do not have access to a consolidated source of information about broadcast station blackouts occurring in aggregate. Such information would increase transparency about the frequency and duration of blackouts and help consumers understand the extent to which blackouts might be a problem not just in their own locality but in other areas of the country as well. For example, having aggregate data about blackouts may be a useful metric for consumers looking for a new MVPD service provider. For consumers that place a premium on continuity of service, having access to this data may enable them to investigate which MVPD service providers—as well as broadcast affiliates—have a stronger history of blackouts.

13. *Entities Responsible for Reporting.* We seek comment on requiring affected MVPDs that stop carrying broadcast signals pursuant to expired retransmission consent agreements, including cable operators and DBS providers (Reporting Entities),[34] to comply with the proposed blackout reporting requirements, as more fully discussed below. While both MVPDs and broadcasters are subject to the requirements of section 325 of the Act and the Commission's good faith rules, it is the responsibility of the MVPD, rather than the broadcaster, to stop retransmitting the broadcast station's signal, and thereby remove the programming that is subject to blackout from their MVPD platforms upon the expiration of a carriage agreement.[35] Thus, as a practical matter, it is the MVPD who has the most ready access to and first-hand knowledge of when and where a broadcast station blackout occurs and which subscribers are affected, thereby ensuring that the Commission would receive the most complete, accurate, and up-to-date information. Further, as it is the MVPD subscribers who are directly impacted by these blackouts, we believe it makes the most sense for MVPDs to be responsible for reporting blackout information through the reporting portal. As a result, we tentatively conclude it would be least burdensome on MVPDs to report this information promptly and accurately to the Commission.

14. We therefore propose requiring MVPDs to notify the Commission of any blackouts of a broadcast station or stations that occur on their systems due to a loss of retransmission consent, and we seek comment on this proposal. Under this proposal, MVPDs would report incidents during which broadcast programming is disrupted for over 24 hours as a result of an inability to obtain a broadcast station's consent to retransmit its signal. We seek comment on these understandings and this proposal. For example, are there circumstances in which the broadcaster, rather than the MVPD, removes the broadcast station(s) from the MVPD's platform?

15. Alternatively, we seek comment on whether we should impose the reporting obligation solely on broadcasters or impose a joint blackout reporting requirement on both MVPDs and broadcasters. Would adopting a broadcaster-only reporting requirement or imposing a joint reporting obligation on both MVPDs and broadcasters provide additional benefits to the public? Do broadcasters have access to different, additional, or more timely information about blackouts that would be beneficial for the public to see in real-time? If reporting obligations were the same for both parties, would the Commission need to address or attempt to resolve conflicting reports? Instead of requiring broadcasters to report blackouts, should we rely instead on broadcasters voluntarily providing additional information to

[33] 47 CFR § 76.1603(b).

[34] *See* 47 CFR § 76.64(d) ("A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming."); *infra* Appendix A—Proposed Rules, § 76.68(c)(1).

[35] 47 U.S.C. § 325(a).

supplement blackout notices submitted by MVPDs they believe contain inaccurate or incomplete information?

16. *Reporting Framework*. As discussed in more detail below, we propose requiring MVPDs to notify the Commission of both the start and conclusion of a broadcast station blackout. The initial notification would provide basic blackout information, both public and confidential, to the Commission within 48 hours of the start of a reportable broadcast station blackout (Initial Blackout Notification). The final notification, submitted no later than two business days after the end of the reportable broadcast station blackout, would publicly identify the date retransmission resumed (Final Blackout Notification). We propose that this information be collected through an online reporting portal designed, hosted, and administered by the Commission.[36] Under our proposal, we will delegate to the Media Bureau the authority to issue a public notice giving Reporting Entities notice of the specific reporting procedures to submit blackout information via the reporting portal and identifying the date on which the reporting requirement would become effective. Public blackout information collected through the portal would then be available on the Commission's website. We seek comment generally on this proposal and on the specifics below. In addition, to the extent we adopt a reporting requirement for broadcasters, we seek comment on whether this same reporting framework should be applied to broadcasters or whether a different approach is appropriate for broadcasters.

17. To streamline reporting, we propose creating an online reporting portal, modeled after the Commission's Network Outage Reporting System (NORS).[37] The proposed data to be reported would be filed with the Commission via this web-based system. As with NORS, this system would use an electronic template to promote the ease of reporting and encryption technology to ensure the security of the information fields. The proposed blackout information to be reported would be available to the public, except for more sensitive information regarding subscribers, which Reporting Entities may designate as confidential. We have aimed to tailor the proposed requirements so that they impose a minimal burden on Reporting Entities while still ensuring that the Commission and the public have access to critical information on service disruptions.[38] We seek comment on this approach.

18. We tentatively conclude that the timely provision and compilation of blackout information would allow the Commission and the public to systematically track and analyze information on broadcast station blackouts on MVPD platforms across the country. The availability of this information would also help the Commission determine the frequency and duration of blackouts nationwide and identify any statistically meaningful trends across blackouts. Without such reporting, the Commission will continue to have limited visibility into broadcast station blackouts.[39] In the long run, this impairs the Commission's ability to oversee the retransmission consent negotiation process as intended by Congress. The prompt provision of blackout information will allow the Commission to more effectively discharge its statutory responsibilities by better monitoring breakdowns in retransmission consent negotiations.[40] We seek comment on this analysis.

B. Proposed Reporting Requirements

19. We seek comment on the specific proposals that follow for implementing the proposed reporting requirements. In particular, we seek comment on whether reporting obligations should be

[36] *Supra* paras. 23, 27.

[37] Federal Communications Commission, *Network Outage Reporting System (NORS)*, https://www.fcc.gov/network-outage-reporting-system-nors (last updated Mar. 25, 2022).

[38] *Infra* para. 28.

[39] *Supra* note 31.

[40] We note that these reporting requirements would be separate from our good faith complaint procedure and are not intended to replace or inform the good faith complaint process.

mandatory or voluntary; the definition of a broadcast station blackout; the threshold for reporting a broadcast station blackout; how to submit the proposed filings; what information should be disclosed about broadcast station blackouts; what the costs and benefits of our proposed rule might be; and whether better alternatives exist, including a more streamlined rule for small entities.

20. *Mandatory Reporting*. We propose that blackout reporting be a mandatory obligation. Mandatory reporting would permit the Commission and the public to obtain a comprehensive, timely view of broadcast station blackouts occurring on MVPD platforms nationwide. This information would be beneficial to the Commission's efforts to keep abreast of the impact these blackouts have on viewers, local broadcasting, and MVPD service. In contrast, voluntary reporting would likely create substantial gaps in data that would significantly impair such efforts, as has been the Commission's experience in the past with voluntary reporting.[41] Considering these factors, we tentatively conclude that voluntary reporting would not sufficiently serve the information collection purposes of this reporting initiative. We seek comment on this tentative conclusion. Are there other regulatory alternatives the Commission should consider?

21. *Definition of Broadcast Station Blackout*. For the purposes of this reporting rule, we propose defining a "Broadcast Station Blackout" as "any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission."[42] With this definition, we seek to encompass all blackouts occurring as a result of a retransmission consent dispute, and thus, in the context of blackout reporting, include all commercial full power, class A, and low power television (LPTV) broadcast stations within the definition of a "commercial television broadcast station."[43] We tentatively conclude it is appropriate to include class A and LPTV stations within the definition of "commercial television broadcast station" here because these stations, like full power stations, are subject to the requirements of section 325 of the Act and the Commission's good faith rules.[44] We seek comment on this analysis and our proposed definition. Have there been or could there be instances in which, due to a retransmission consent dispute, MVPDs are required to cease retransmitting only some programming streams of a broadcast station and not others (for example, only the primary stream, but not the multichannel streams)?[45] If so, does the proposed definition adequately cover these scenarios? Are there any reasons why Broadcast Station Blackouts involving class A and LPTV stations should not be subject to the proposed reporting requirements?

---

[41] *See Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Notice of Proposed Rulemaking, 26 FCC Rcd 7166, 7189-90, para. 57 (2011) (summarizing the Commission's unsuccessful attempt at voluntary outage reporting prior to the adoption of NORS and the part 4 rules: "previous provider participation in voluntary network-outage reporting was 'spotty,' the 'quality of information obtained was very poor,' and there was 'no persuasive evidence in the record that . . . *all* covered communications providers would voluntarily file accurate and complete outage reports for the foreseeable future or that mandatory reporting is not essential to the development, refinement, and validation of best practices.' Hence, mandatory reporting was adopted to ensure timely, accurate reporting.") (quoting *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16851-52, paras. 37-39 (2004)).

[42] *Infra* Appendix A, § 76.68(c)(2).

[43] *Id*. § 76.68(c)(3).

[44] 47 U.S.C. § 325(a) (". . . nor shall *any* broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.") (emphasis added). *Compare* 47 U.S.C. § 325(b)(2)(A) ("This subsection shall not apply…to retransmission of the signal of a noncommercial television broadcast station.").

[45] 47 CFR § 76.64(j) (allowing retransmission agreements to "specify the extent of the consent being granted, whether for the entire signal or any portion of the signal").

22. *Reporting Threshold*. We propose requiring Reporting Entities to report all Broadcast Station Blackouts that last for over 24 hours. We tentatively conclude this reporting threshold will provide a sufficient level of information to build a more precise and complete picture of the state of blackouts that have a significant impact on consumers. Collecting information on all blackouts lasting over 24 hours will allow the Commission and the public to gain a better understanding of the frequency and duration of blackouts occurring in the retransmission consent marketplace. Blackouts lasting over 24 hours are more likely to cause consumer harm, whereas blackouts of shorter duration are more likely to have a lesser impact on viewers, and thus we propose that we should not impose reporting requirements on blackouts lasting less than 24 hours. We therefore tentatively conclude this threshold appropriately balances the burdens of Reporting Entities and the information needs of the Commission and consumers. We seek comment on the proposed reporting threshold and whether there should be any additional reporting thresholds. For example, should we also require reporting for blackouts based on a metric other than duration of the service disruption? If so, what metrics should be used to determine what would qualify as a reportable event? Do commenters believe the proposed reporting threshold is appropriate, or should reporting obligations be triggered by blackouts of longer or shorter duration? If proposing another reporting threshold, commenters should explain why they think it is more appropriate.

23. *Reporting Process*. Under our proposed rule, Reporting Entities would submit two notifications: an Initial Blackout Notification shortly after the beginning of a reportable Broadcast Station Blackout and a Final Blackout Notification after resumption of carriage. All information would be submitted to the Commission within a designated online reporting portal in accordance with procedures further specified in a Bureau-issued public notice following adoption of these proposed reporting requirements.[46] We seek comment on this proposed rule and the details discussed below.

24. *Initial Blackout Notification*. We propose that, in the event of a Broadcast Station Blackout lasting over 24 hours, after that threshold is met, the Reporting Entity must submit an Initial Blackout Notification as soon as practicable, but no later than 48 hours after the initial interruption to the broadcast station programming.[47] The following information would be reported in the Notification and available to the public: the name of the Reporting Entity; the station or stations no longer being retransmitted, including network affiliation(s), if any, of each affected primary and multicast stream; the name of the broadcast station group, if any, that owns the station(s); the Designated Market Areas in which affected subscribers reside; and the date and time of the initial interruption to programming.[48] Additionally, Reporting Entities would report the number of subscribers affected.[49] Critically, subscriber information is one of the key metrics by which a blackout's impact can be measured. We recognize that market-by-market subscriber data can be particularly sensitive and is information not routinely made public by MVPDs. Therefore we propose giving Reporting Entities the option to submit the subscriber data provided confidentially.[50] Reporting Entities would be able to opt for confidential treatment of the subscriber data provided by designating the data as confidential within the portal, rather than filing a separate request with the Commission.[51] We encourage Reporting Entities to submit an Initial Blackout

[46] *Infra* Appendix A, § 76.68(a); *infra* para. 27.

[47] *Infra* Appendix A, § 76.68(a)(1).

[48] *Id*. § 76.68(a)-(b).

[49] *Id*. § 76.68(a)(1)(vi).

[50] *Id*. § 76.68(b).

[51] 47 CFR § 0.459(a)(4) ("The Commission may use abbreviated means for indicating that the submitter of a record seeks confidential treatment, such as a checkbox enabling the submitter to indicate that the record is confidential. However, upon receipt of a request for inspection of such records pursuant to § 0.461, the submitter will be notified of such request pursuant to § 0.461(d)(3) and will be requested to justify the confidential treatment of the record, as set forth in paragraph (b) of this section"). Reporting Entities seeking confidential treatment of any other data requested pursuant to paragraphs (a)(1)(i) through (v) of the proposed rule must submit a request that the data be

(continued….)

Notification as soon as practicable, but do not believe that this proposed reporting obligation would require more than 24 hours to complete after a blackout becomes reportable. We tentatively conclude that the 48-hour reporting window reasonably balances the benefit of receiving prompt notice of a blackout with the burden of reporting by giving Reporting Entities a sufficient amount of time to gather and submit the proposed information.

25. We invite comment on this proposed information collection, the 48-hour reporting window, the public treatment of the non-subscriber data, and the confidential treatment of the subscriber data. Would it be beneficial to require entities to provide any additional information as part of the Initial Blackout Notification? Would it be beneficial to also have Reporting Entities identify the specific areas (for example, counties or cable communities) affected within the DMAs identified? If so, should entities report such information publicly or confidentially? Would any of the proposed disclosures be difficult for a Reporting Entity to provide within the proposed reporting window, and if so, why? Do commenters believe that the proposed 48-hour reporting window is sufficient, or do they believe a reporting window of longer or shorter duration would be more appropriate? If proposing another reporting window, commenters should explain why they think that time period is more appropriate. Is there any non-subscriber information disclosed in the Initial Blackout Notification for which Reporting Entities should be able to opt for confidential treatment by designating the data as confidential within the portal, rather than filing a separate request with the Commission? If so, why? Conversely, is there any reason why the subscriber information provided should not be given such confidential treatment?

26. *Final Blackout Notification*. No later than two business days after the resumption of carriage to subscribers, we propose that Reporting Entities submit a Final Blackout Notification, which would update the initial blackout notice provided.[52] The information in this Final Blackout Notification would be available to the public and would report the date on which retransmission resumed for each station included in the Initial Blackout Notification.[53] As an update to the Initial Blackout Notification, we envision that Reporting Entities will be able to easily update the information in the reporting portal for each station as it resumes retransmission. We request comment on this proposed Notification, including the information disclosures required, the proposed two-business-day reporting window, and the public treatment of the disclosures. In the event of a partial end to a reported blackout involving multiple stations (that is, the parties have resolved the retransmission consent dispute with respect to some of the blacked out stations, but not others), should reporting entities be required, as proposed, to timely report the resumption of carriage for each resumed station until all stations included in the Initial Blackout Notification have been accounted for? Or should Reporting Entities only be required to submit a report once the dispute has been resolved for all stations included in the initial notification (with different carriage resumption dates for different stations listed as appropriate)? Is there any other information we should request as part of this final notice? Would any of the proposed disclosures be difficult for a Reporting Entity to provide within the proposed reporting window? Are there any reasons why the final Notification should not be publicly available, and if so, why? Is there a point at which the Commission should consider a blackout to be permanent, or should we consider blackouts to be ongoing until a final notification is filed regardless of their duration?

27. *Submissions*. We propose providing an online reporting portal through which entities would be able to submit blackout notices to the Commission. We envision these notices would be made through a standardized form in the portal, fillable by the Reporting Entity, with fields for the various data categories. As noted above, the Bureau would announce specific instructions via public notice. We tentatively conclude that this approach to collecting data ensures that the Commission learns of reportable

(Continued from previous page)
treated as confidential with the submission of the Initial Blackout Notification, along with their reasons for withholding the information from the public, pursuant to 47 CFR § 0.459. *Infra* Appendix A, § 76.68(b).

[52] *Infra* Appendix A, § 76.68(a)(2).

[53] *Id*.

broadcast station blackouts in a timely manner and, at the same time, minimizes the amount of time and effort required to comply with the reporting requirements. We seek comment on how best to share the information collected from the Initial and Final Blackout Notifications with the public. For example, in addition to publicly posting the non-confidential portions of the blackout notices, should the web portal include a public-facing, searchable database of the information collected from the blackout notices? Or would it suffice for the Commission to publicly post the blackout notices by date of submission?

28. *Costs and Benefits*. We tentatively conclude this process is reasonable in light of the significant benefits to the Commission, Congress, and the public from having timely access to important and accurate information on service disruptions. As detailed above, we anticipate that the availability of this blackout information will have tangible benefits for the Commission and the public.[54] Moreover, we tentatively conclude that Reporting Entities already collect this information in the ordinary course of business for their internal use. Thus, we expect the only burden associated with the proposed reporting requirements would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations.[55] As a result, we expect that complying with our proposed reporting requirements would create a minimal administrative burden, and that, on balance, the benefits to the public resulting from compiling and analyzing this blackout information would outweigh any potential burden. We seek comment on the reasonableness of the proposed reporting process, and we request comment on relevant types of blackout information already being collected by cable operators, DBS providers, other MVPDs, and broadcast stations so that we can best align our metrics with what is already available to them. We invite comment on the burdens that might be imposed by the adoption of the proposed reporting requirements, and in particular welcome comments quantifying that burden and recommendations to mitigate it. Would collecting and reporting as proposed be more burdensome for small entities?[56] If so, why and to what degree? In addition, we seek comment on the benefits and drawbacks of treating the non-subscriber information disclosures in the Initial and Final Blackout Notification as public information. Is there any alternative reporting approach that would maximize the potential benefits and accomplish the proceeding's objectives in a less costly, less burdensome, and/or more effective manner? Should there be an additional or alternative reporting threshold for small entities? If so, what should that reporting threshold be and why is it necessary? Alternatively, is the burden of reporting outweighed by the benefits gained from the ability to better monitor and study reported blackouts?

29. *Digital Equity and Inclusion*. The Commission, as part of its continuing effort to advance digital equity for all,[57] 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[58] and

[54] *Supra* paras. 12, 18.

[55] *Supra* para. 27.

[56] *Infra* Appendix B, paras. 5-25.

[57] 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.

[58] 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,

(continued….)

benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

C. Legal Authority

30. We tentatively conclude the Commission has ample authority to adopt the proposed blackout reporting requirements. Section 325(b)(3)(A) of the Act grants the Commission broad authority to "establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent."[59] The Commission has previously concluded that "this provision grants the Commission authority to adopt rules governing retransmission consent negotiations[.]"[60] Separately and in addition, section 325(b)(3)(C) mandates that broadcasters and MVPDs negotiate retransmission consent in good faith.[61] The Commission has express statutory authority to adopt rules implementing this requirement.[62] In past actions it has recognized that "by imposing a good faith obligation, Congress intended that the Commission develop and enforce a process" conducive to good faith negotiations[63] rather than "dictate the outcome" of such negotiations.[64] We tentatively conclude the proposed blackout reporting requirements fall squarely within the Commission's oversight authority under both section 325(b)(3)(A) and section 325(b)(3)(C). Specifically, we tentatively find that timely notification about a blackout and access to accurate information about the surrounding circumstances is critical to carrying out our statutory mission. Reporting blackout information is the most efficient means for the Commission to obtain critical information needed to monitor ongoing blackout situations that could result in the filing of a retransmission consent complaint. Indeed, we expect that access to timely reporting information could result in tangible improvements to the retransmission consent negotiation process by allowing Commission intervention to get negotiations back on track if necessary, consistent with statutory requirements. In that way, protracted blackouts may be avoided. Thus, we tentatively find that requiring notification to the Commission when broadcast programming has gone dark on subscribers' MVPD service because of failed retransmission consent negotiations will allow the Commission to better govern the retransmission consent negotiation process as envisioned under the Communications Act.

31. The Commission also has broad information collection authority under section 403 of the Act, which grants the Commission discretion to require disclosures on matters, like retransmission consent, that fall within the Commission's jurisdiction.[65] We tentatively find that a retransmission

(Continued from previous page)
Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

[59] 47 U.S.C. § 325(b)(3)(A).

[60] *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3371, para. 30 (2014).

[61] 47 U.S.C. § 325(b)(3)(C).

[62] *Id*.

[63] *Good Faith Order*, 15 FCC Rcd at 5455, para. 24.

[64] *2011 Retrans Consent NPRM*, 26 FCC Rcd at 2721, para. 7 (quoting S. Rep. No. 92, 102nd Cong., 1st Sess. 1991, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1169); *Good Faith Order*, 15 FCC Rcd at 5454-55, para. 23.

[65] 47 U.S.C. § 403 ("The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter."); *Stahlman v. FCC*, 126 F.2d 124, 127 (D.C. Cir. 1942) ("[F]ull authority and power is given to the Commission with or without complaint to institute an inquiry concerning questions arising under the provisions of the Act or relating to its enforcement. This . . . includes authority to obtain the information necessary to discharge its proper functions, which would embrace an investigation aimed at the prevention or disclosure of practices contrary to public

(continued….)

consent-related blackout that lasts more than 24 hours warrants further inquiry by the Commission about the circumstances surrounding that blackout, to ensure that all parties are fulfilling their statutory obligation to negotiate in good faith. In addition, the Act grants the Commission broad authority to take the steps necessary to implement its mandates, and thus provides concurrent authority for the proposed blackout reporting rules. Sections 4(i) and 303 generally authorize the Commission to take any actions "as may be necessary" to ensure that the Commission can properly govern the retransmission consent negotiation process and thereby ensure that broadcasters and MVPDs fulfill their statutory obligation to negotiate retransmission consent in good faith.[66]

32. We also tentatively conclude that there is statutory support for the proposed reporting requirement in sections 632(b) and 335(a) of the Act.[67] Under section 632(b), the Commission can adopt customer service requirements for cable operators.[68] And, pursuant to section 335(a), the Commission has authority to impose on DBS providers public interest requirements for "providing video programming," which we tentatively conclude includes reports on video programming blackouts.[69] In addition, we tentatively conclude that informing the Commission and the public about the availability of broadcast signals both serves the public interest and helps consumers make informed choices concerning video programming services. Blackout reporting will give the public greater visibility into the breadth and impact of blackouts arising from negotiation disputes and provide a reliable source of information about the entities most frequently involved in blackouts. We tentatively conclude that the proposed reporting requirements are customer service and public interest requirements that squarely fall within our authority under sections 632(b) and 335(a). As the Commission recently explained, "Consumer access to clear, easy-to-understand, and accurate information is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services. The same information empowers consumers to choose services that best meet their needs and matches their budgets and ensures that they are not surprised by unexpected charges or service quality that falls short of their

(Continued from previous page)
interest.") (citing 47 U.S.C. § 403); *Barrier Communications Corp.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186, 10189, para. 8 (2020) ("Section 403 of the Communications Act . . . grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations."); *In re: James A. Kay, Jr.*, WT Docket No. 94-147, Memorandum Opinion and Order, 13 FCC Rcd 16369, 16372, para. 10 (1998) ("[U]nder 47 U.S.C. § 403, the Commission enjoys wide discretion to initiate investigations with or without a complaint and has a responsibility to investigate where there is reason to believe that a licensee is violating the Commission's rules or policies."). *See also* 47 CFR § 1.1 ("The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time . . . for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations.").

[66] *See* 47 U.S.C. § 154(i) (authorizing the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions"); 47 U.S.C. § 303(r) (the Commission shall "[m]ake 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 Act"); 47 U.S.C. § 325(b)(3)(A) (the Commission shall "establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection . . .").

[67] 47 U.S.C. § 552(b), 335(a).

[68] *Id*. § 552(b) ("The Commission shall . . . establish standards by which cable operators may fulfill their customer service requirements.").

[69] *Id*. § 335(a) ("The Commission shall . . . initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming."). Although section 335(a) requires that the Commission adopt certain statutory political broadcasting requirements for DBS providers, the statute is clear that this list is not exhaustive. 47 U.S.C. § 335(a) ("Any regulations prescribed pursuant to such rulemaking shall, *at a minimum*, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service …") (emphasis added).

expectations."[70] These are some of the same goals that the proposed reporting requirements intend to accomplish. We seek comment on our authority to adopt blackout reporting requirements for cable operators and DBS providers under these provisions.

33. To the extent we adopt blackout reporting requirements for broadcasters, we tentatively conclude that our authority under Title III allows us to adopt such requirements to serve the public interest objectives stated above. Title III endows the Commission with "expansive powers" and a "comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest.'"[71] This mandate is reinforced by section 307(b), which directs the Commission to "provide a fair, efficient, and equitable distribution" of service throughout the country.[72] Section 303 of the Act grants the Commission authority to establish operational obligations for licensees that further the goals and requirements of the Act if such obligations are necessary for the "public convenience, interest, or necessity" and are not inconsistent with other provisions of law.[73] In addition, sections 307 and 316 of the Act allow the Commission to authorize the issuance of licenses or adopt new conditions on existing licenses if such actions will promote public interest, convenience, and necessity.[74] Here, we tentatively conclude that the proposed reporting requirements would serve the public interest by informing the public about the availability of local broadcast signals on MVPD platforms and by providing the Commission and the public a systematic way to track broadcast station blackouts occurring on MVPD platforms. While some MVPD subscribers could replace the blacked out local broadcast signals with the broadcaster's own over-the-air transmission, not all subscribers would be able to do so because they either lack the necessary equipment or live in locations where they are unable to sufficiently receive the over-the-air transmission.[75] Therefore, over-the-air transmission of local broadcast signals may not be a reasonable substitute for the retransmission of local broadcast programming on MVPD platforms. We tentatively conclude that the proposed blackout reporting requirements would "encourage the larger and more effective use of radio in the public interest" and promote the fair, efficient, and equitable distribution" of service throughout the country by informing the Commission and the public about the disruption of local broadcast signal carriage on MVPD platforms. Therefore, we tentatively conclude that it serves the public interest for the Commission and the public to have a centralized database to be able to systematically monitor obstacles to signal and programming availability. We seek comment on these and other potentially relevant sources of authority.

IV. PROCEDURAL MATTERS

34. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[76] 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

[70] *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, 2022 WL 17100958, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86, at *1, para. 1 (Nov. 17, 2022).

[71] *Cellco Partnership v. FCC*, 700 F.3d 534, 541-42 (D.C. Cir. 2012) (quoting *NBC v. United States*, 319 U.S. 190, 219 (1943) and 47 U.S.C. § 303(g) ("The Commission from time to time, as public convenience, interest, or necessity requires, shall . . . (g) study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest[.]")).

[72] 47 U.S.C. § 307(b); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 173-74 (1968) ("Congress has imposed upon the Commission the 'obligation of providing a widely dispersed radio and television service, with a fair, efficient, and equitable distribution' of service among the 'several States and communities.'") (quoting S. Rep. No. 923, 86th Cong., 1st Sess. and 47 U.S.C. § 307(b)).

[73] 47 U.S.C. § 303.

[74] *Id*. §§ 307, 316; Cellco Partnership, 700 F.3d at 543.

[75] *Supra* note 4.

[76] *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).

substantial number of small entities."[77] Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is attached as Appendix B. Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.

35. *Initial Paperwork Reduction Act Analysis*. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.[78] In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.[79]

36. *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.[80] Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on: https://www.fcc.gov/proposed-rulemakings.

37. *Ex Parte Rules—Permit-But-Disclose*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[81] 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.

---

[77] *Id*. § 605(b).

[78] The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 of the U.S. Code).

[79] The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 of the U.S. Code). *See* 44 U.S.C. § 3506(c)(4).

[80] 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.

[81] 47 CFR §§ 1.1200 *et seq.*

38. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[82] 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).[83]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[84]
- 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.

39. *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).

40. *Additional Information*. For additional information, contact Brooke Olaussen, brooke.olaussen@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

V. ORDERING CLAUSES

41. **IT IS ORDERED**, pursuant to the authority found in sections 1, 4(i), 4(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 552, that this Notice of Proposed Rulemaking **IS HEREBY ADOPTED**.

[82] *Id*. §§ 1.415, 1419.

[83] *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

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

42. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 to read as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISON SERVICE

The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

1. Add § 76.68 to Subpart D to read as follows:

§ 76.68 Reporting Requirements for Commercial Television Broadcast Station Blackouts.

(a) Information Required. All information must be submitted to the Commission electronically in accordance with procedures specified by the Media Bureau by public notice.

(1) In the event of a Broadcast Station Blackout lasting over 24 hours, the Reporting Entity shall, within 48 hours of the initial interruption to programming, submit an Initial Blackout Notification. This Notification will be available to the public and shall identify:

(i) the name of the Reporting Entity;

(ii) the commercial television broadcast station or stations no longer being retransmitted, including network affiliation(s), if any, of each affected primary and multicast stream;

(iii) the name of the broadcast station group, if any, that owns the commercial television broadcast station(s)

(iv) the Designated Market Area(s) in which affected subscribers reside;

(v) the date and time of the initial interruption to programming; and

(vi) the number of subscribers affected.

(2) No later than 2 business days after the resumption of carriage to subscribers, the Reporting Entity shall submit a Final Blackout Notification. This Notification will be available to the public and shall state, with respect to each station identified in the Initial Blackout Notification, that retransmission has resumed and include the date on which retransmission resumed.

(b) Reporting Entities may request that subscriber data submitted pursuant to paragraph (a)(1)(vi) of this section be treated as confidential and be withheld from public inspection by so indicating on the notice at the time that they submit such data. Reporting Entities seeking confidential treatment of any other data requested pursuant to paragraphs (a)(1)(i) through (v) of this section must submit a request that the data be treated as confidential with the submission of the Initial Blackout Notification, along with their reasons for withholding the information from the public, pursuant to § 0.459 of this chapter.

(c) Definitions

(1) *Reporting Entity*. The entity reporting a Broadcast Station Blackout.

(2) *Broadcast Station Blackout*. Any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission.

(3) For the purposes of this section, a "commercial television broadcast station" includes all commercial full power, class A, and low power television broadcast stations.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Notice of Proposed Rulemaking* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *NPRM*, the Commission considers and seeks comment on a proposal to impose reporting requirements for broadcast television station blackouts that occur as result of a retransmission consent dispute. Over the past decade, S&P Capital IQ data indicates that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically, causing service disruptions for consumers. The Commission usually learns of broadcast station blackouts through reports of disputes in the media or informal communication with staff, which does not allow the Commission or the public access to timely information on these service disruptions. Under this proposal, cable operators, satellite TV providers, and other multichannel video programming distributors (MVPDs) would be required to notify the Commission when a broadcast station blackout lasting over 24 hours occurs on their system. The proposed reporting framework would require public notice to the Commission of the beginning and resolution of any blackout and submission of confidential information about its scope. We tentatively conclude that this proposed rule would ensure that the Commission receives prompt and accurate information about critical broadcast service disruptions when they occur. The availability of this information would also help the Commission determine the extent of blackouts nationwide, identify recurring problems, determine whether actions can be taken to help prevent future blackouts from occurring, and identify any statistically meaningful trends across blackouts.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 552.

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, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the

[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] 5 U.S.C. § 603(a).

[3] *Id*.

[4] 5 U.S.C. § 603(b)(3).

[5] *Id.* § 601(6).

same meaning as the term "small business concern" under the Small Business Act.[6] 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.[7]

5. *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.[8] 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.[9] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[10] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[11]

6. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[12] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[13] Of this number, 2,964 firms operated with fewer than 250 employees.[14] 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.[15] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[16] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

---

[6] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[7] 15 U.S.C. § 632(a)(1).

[8] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[9] *Id.*

[10] *Id.*

[11] 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.

[12] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[13] *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.

[14] *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.

[15] 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] *Id.*

7. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[17] Based on industry data, there are about 420 cable companies in the U.S.[18] Of these, only seven have more than 400,000 subscribers.[19] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[20] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[21] Of these, about 639 have more than 15,000 subscribers.[22] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

8. *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."[23] 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.[24] Based on industry data, only six cable system operators have more than 677,000 subscribers.[25] 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.[26] 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] 47 CFR § 76.901(d).

[18] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[19] 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).

[20] 47 CFR § 76.901(c).

[21] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[22] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

[23] 47 U.S.C. § 543(m)(2).

[24] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

[25] 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).

[26] 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).

9. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[27] Transmission facilities may be based on a single technology or combination of technologies.[28] 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.[29] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[30]

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[31] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[32] Of this number, 2,964 firms operated with fewer than 250 employees.[33] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service, DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[34] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

11. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.[35] The SBA small business size standard for Wired

---

[27] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[28] *Id.*

[29] *Id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[30] *Id*.

[31] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[32] 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.

[33] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[34] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5*,* 32 FCC Rcd 568, 595 (Jan. 17, 2017).

[35] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[36] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[37] Of this total, 2,964 firms operated with fewer than 250 employees.[38] Thus under the SBA size standard, the majority of firms in this industry can be considered small.

12. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.[39] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[40] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.[41] Of this total, 2,964 firms operated with fewer than 250 employees.[42] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

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 in this industry that operated for the entire year.[46] Of this number, 2,964 firms operated with fewer than

---

[36] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[37] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[38] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[39] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[40] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[41] 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.

[42] *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.

[43] 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.*

[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.

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 (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 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 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. *Competitive Access Providers (CAPs).* Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to CAPs. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.[57] Under the SBA small business size standard a Wired Telecommunications Carrier is a small entity if it employs 1,500 employees or less.[58] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry

[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] 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.*

[57] 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).

that operated for the entire year.[59] Of that number, 2,964 firms operated with fewer than 250 employees.[60] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 659 CAPs and competitive local exchange carriers (CLECs), and 69 cable/coax CLECs that reported they were engaged in the provision of competitive local exchange services.[61] Of these providers, the Commission estimates that 633 providers have 1,500 or fewer employees.[62] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Open Video Systems*. The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is "Wired Telecommunications Carriers."[63] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[64] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[65] Of this total, 2,964 firms operated with fewer than 250 employees.[66] Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

17. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"[67] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the

---

[59] 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.

[60] *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.

[61] 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.

[62] *Id.*

[63] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[64] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[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 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&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] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

Instructional Television Fixed Service (ITFS)).[68] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[69]

18. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[70] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[71] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[72] Of this number, 2,837 firms employed fewer than 250 employees.[73] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

19. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[74] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[75] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won four licenses, one bidder claiming the very

[68] 47 CFR § 27.4; *see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[69] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[70] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[71] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[72] 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.

[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] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[75] 47 CFR § 27.1218(a).

small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[76] One of the winning bidders claiming a small business status classification in the BRS license auction has an active license as of December 2021.[77]

20. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[78] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

21. *Fixed Microwave Services.* Fixed microwave services include common carrier,[79] private-operational fixed,[80] and broadcast auxiliary radio services.[81] They also include the Upper Microwave Flexible Use Service (UMFUS),[82] Millimeter Wave Service (70/80/90 GHz),[83] Local Multipoint Distribution Service (LMDS),[84] the Digital Electronic Message Service (DEMS),[85] 24 GHz Service,[86] Multiple Address Systems (MAS),[87] and Multichannel Video Distribution and Data Service (MVDDS),[88] where in some bands licensees can choose between common carrier and non-common carrier status.[89]

---

[76] Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.

[77] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[78] 47 CFR § 27.1219(a).

[79] 47 CFR Part 101, Subparts C and I.

[80] *Id*. Subparts C and H.

[81] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[82] 47 CFR Part 30.

[83] 47 CFR Part 101, Subpart Q.

[84] *Id*. Subpart L.

[85] *Id*. Subpart G.

[86] *Id*.

[87] *Id.* Subpart O.

[88] *Id*. Subpart P.

[89] 47 CFR §§ 101.533, 101.1017.

Wireless Telecommunications Carriers (*except* Satellite)[90] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[91] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[92] Of this number, 2,837 firms employed fewer than 250 employees.[93] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

22. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[94]

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[95] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[96] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[97] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[98] Of that number, 657 firms had revenue of less than $25,000,000.[99] Based on this data we

[90] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[91] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[92] 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.

[93] *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.

[94] 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[95] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,*" https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[96] *Id.*

[97] 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[98] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515120,

(continued….)

estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

25. As of June 30, 2023, there were 1,375 licensed commercial television stations.[100] Of this total, 1,256 stations (or 91.3%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 17, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,902 LPTV stations and 3,123 TV translator stations.[101] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. The proposed rule would require all MVPDs carrying broadcast programming pursuant to retransmission consent agreements, including cable operators and DBS providers (Reporting MVPDs or, more broadly, Reporting Entities),[102] to notify the Commission of both the start and conclusion of a broadcast station blackout lasting over 24 hours. The initial notification would provide basic blackout information, both public and confidential, to the Commission within 48 hours of the start of a reportable broadcast station blackout (Initial Blackout Notification). The final notification, submitted no later than two business days after the end of the reportable broadcast station blackout, would publicly identify the date retransmission resumed (Final Blackout Notification). We propose that this information be collected through an online reporting portal designed, hosted, and administered by the Commission. Reporting Entities would be given notice of the specific reporting procedures by public notice before being required to submit blackout information via the reporting portal. Public blackout information collected through the portal would then be available on the Commission's website.[103]

27. To streamline reporting, the *NPRM* proposes creating an online reporting portal, modeled after the Commission's Network Outage Reporting System (NORS), which Reporting Entities would use to report broadcast station blackouts occurring on MVPD platforms.[104] The proposed data to be reported would be filed with the Commission via this web-based system. As with the Commission's Network

(Continued from previous page)
https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. 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.

[100] *Broadcast Station Totals as of June 30, 2023*, Public Notice, DA 23-582 (rel. July 14, 2023) (*July 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-23-582A1.pdf.

[101] *Id*.

[102] 47 CFR § 76.64(d) ("A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming."); *infra* Appendix A—Proposed Rules, § 76.68(c)(1).

[103] *Supra NPRM,* Appendix A—Proposed Rules.

[104] Federal Communications Commission, *Network Outage Reporting System (NORS)*, https://www.fcc.gov/network-outage-reporting-system-nors (last updated Mar. 25, 2022).

Outage Reporting System (NORS), this system would use an electronic template to promote the ease of reporting and encryption technology to ensure the security of the information fields. The proposed blackout information to be reported would be available to the public, except for more sensitive information regarding subscribers, which Reporting Entities may designate as confidential.

28. The *NPRM* aims to tailor the proposed requirements so that they impose a minimal burden on small and other Reporting Entities while still ensuring that the Commission and the public have access to critical data on service disruptions. It is likely that small and other Reporting Entities already collect this information in the ordinary course of business for their internal use. As such, the operational cost of implementation associated with the proposed reporting requirements for small entities would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations.

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."[105]

30. The *NPRM* considers certain alternatives that may impact small entities. One such alternative discussed is whether mandatory blackout reporting is necessary and if voluntary reporting could support the Commission's efforts to stay informed on the frequency and impact of broadcast station blackouts. The *NPRM* concludes that based on experience with voluntary reporting in other contexts, this would likely create substantial gaps in data that would significantly impair the Commission's efforts and therefore not sufficiently serve the information collection purposes of this reporting initiative. The *NPRM* also considers the timeliness of the Final Blackout Notification reporting the resumption of carriage when multiple stations are involved in a blackout and whether Reporting Entities must report the partial end of a blackout as carriage for each station resumes, or report only after the dispute has been resolved for all the stations included in the Initial Blackout Notification.

31. We anticipate that complying with the proposed reporting requirements will create a minimal administrative burden on small entities and that, on balance, the benefits of compiling this information on service disruptions would outweigh any potential burden. We expect that Reporting Entities will have ready access to the basic blackout information that is proposed to be included in the required notices—when and where the blackout occurred and what subscribers were affected. As a result, we believe that, in the normal course of operations, the only potential burden associated with the reporting requirements contained in this *NPRM* will be the time required to complete the Initial and Final Notifications. We also anticipate that electronic submission should minimize the amount of time and effort that will be required to comply with the rule proposed in this *NPRM*. In addition, we do not anticipate that it will be costly or time consuming for Reporting Entities to fill out and submit the proposed notifications, each of which is quite brief. Given this reporting framework, we expect that the economic impact on small entities is not likely to be significant, and therefore believe that the proposed process is reasonable in light of the benefits to the Commission, Congress, and the public from having timely access to important and accurate information on service disruptions.

32. The *NPRM* seeks comment on the types of burdens small entities will face in complying with the proposed requirements and invites commenters to quantify that burden and recommend how to

[105] 5 U.S.C. § 603(c)(1)-(4).

mitigate it.[106] To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *NPRM*, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the reporting requirements described above can be minimized for small entities. Entities, especially small businesses and small entities, are encouraged to quantify the costs and benefits of the proposed reporting requirements. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM*.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

33. None.

[106] *NPRM* at para. 28.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Reporting Requirements for Commercial Television Broadcast Station Blackouts*, MB Docket No. 23-427, Notice of Proposed Rulemaking.

I approve this item, though I am skeptical of its tentative conclusion that the Commission has authority to enact the proposed reporting requirements under Section 632(b) of the Act. While there are other valid sources of authority for the reporting requirements this item proposes, Section 632(b) is a considerably narrower provision than recent Commission action suggests.

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Structure and Practices of the Video Relay Services Program	)	CG Docket No. 10-51
	)	
Petition for Rulemaking and Interim Waiver of Convo Communications, LLC	)	
	)	

REPORT AND ORDER AND ORDER

Adopted: December 19, 2023 **Released: December 20, 2023**

By the Commission:

I. INTRODUCTION AND SUMMARY

1. Today, the Commission continues its work of promoting improvement in the efficacy and quality of relay services supported by the Interstate Telecommunications Relay Services Fund (TRS Fund or Fund).[1] By increasing video relay service (VRS) providers' flexibility to hire communications assistants from a wider pool of qualified sign-language interpreters, we enhance their ability to offer high-quality services despite the current shortage of skilled labor in this sector. In the Report and Order, we modify our rules for VRS to: (1) increase from 50% to 80% the portion of monthly VRS minutes that may be handled by communications assistants (CAs) working at home;[2] (2) modify the amount of prior interpreting experience required of VRS CAs who work at home;[3] and (3) allow VRS providers to use

[1] Telecommunications relay services (TRS) are telephone transmission services that enable people with speech or hearing disabilities to communicate by wire or radio in a manner that is functionally equivalent to communication using voice services. 47 CFR § 64.601(a)(43).

[2] *See id.* § 64.604(b)(8)(i) (2023). As a housekeeping matter, we consolidate in one location, within section 64.604 of our rules, a number of existing provisions that relate specifically to VRS, including the VRS-specific rule provisions amended by this Report and Order. As of the effective date, these provisions are now located in section 64.604(d). *See infra* Appendix B (also renumbering the existing section 64.604(d) as 64.604(e)). The provisions affected by this change are those relating to eligibility for reimbursement from the TRS Fund (moved from section 64.604(c)(5)(iii)(N)(*1*) to section 64.604(d)(1)), call center reports (moved from section 64.604(c)(5)(iii)(N)(*2*) to section 64.604(d)(2)), compensation of CAs (moved from section 64.604(c)(5)(iii)(N)(*3*) to section 64.604(d)(3)), remote training session calls (moved from section 64.604(c)(5)(iii)(N)(*4*) to section 64.604(d)(4)), visual privacy screens / idle calls (moved from section 64.604(a)(6) to section 64.604(d)(5)), international calls (moved from section 64.604(a)(7) to section 64.604(d)(6)), and discrimination and preferences (moved from section 64.604(c)(12) to section 64.604(d)(8)). Thus, the cap on at-home minutes is moved from section 64.604(b)(8)(i) to section 64.604(d)(7)(i). *See infra* Appendix B.

[3] *See* 47 CFR § 64.604(b)(8)(ii)(A) (2023). This provision is moved to section 64.604(d)(7)(ii)(A). *See infra* Appendix B.

contract CAs, subject to conditions, for up to 30% of their monthly call minutes.[4] We also modify our rules to ensure that registered VRS users can easily place calls to the United States while traveling abroad.[5] In the Order, we extend the previously granted, partial waivers of certain rules amended by the Report and Order until the dates specified herein.[6]

II. BACKGROUND

2. Under section 225 of the Communications Act of 1934, as amended (the Act), the Commission must ensure that TRS is available "to the extent possible and in the most efficient manner" to persons "in the United States" who are deaf, hard of hearing, or deafblind, or who have speech disabilities, so that they can communicate by telephone in a manner that is functionally equivalent to voice communication service.[7] VRS, a form of TRS, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device.[8] The video link allows a CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.[9] Providers of VRS are compensated from the TRS Fund for service provided in accordance with applicable rules.[10] To be eligible to receive payment from the TRS Fund, a VRS provider must be granted certification by the Commission.[11] To allow consumers a choice of service, the Commission has authorized multiple VRS providers.[12]

3. *Anti-Fraud Rules*. More than ten years ago, a wave of fraud and abuse "plagued the [VRS] program and threatened its long-term sustainability."[13] Numerous uncertified entities were providing VRS or purporting to do so, without effective supervision, while using certified VRS providers as billing agents to obtain payment—sometimes fraudulently—from the TRS Fund.[14] In response, the Commission prohibited or restricted a number of VRS provider practices that it found had increased the likelihood of fraud and abuse.[15]

---

[4] *See* 47 CFR § 64.604(c)(5)(iii)(N)(*1*)(*iii*) (2023). This provision is moved to section 64.604(d)(1)(iii). *See infra* Appendix B.

[5] *See* 47 CFR § 64.604(a)(7) (2023). This provision is moved to section 64.604(d)(6). *See infra* Appendix B.

[6] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Petition for Rulemaking and Interim Waiver of Convo Communications, LLC*, CG Docket Nos. 03-123, 10-51, and 13-24, Report and Order, Notice of Proposed Rulemaking, Order, and Declaratory Ruling, FCC 22-51, para. 61 (June 30, 2022) (*Notice*, *June 2022 Order*, or *June 2022 Ruling*).

[7] 47 U.S.C. § 225(a)(3), (b)(1).

[8] 47 CFR § 64.601(a)(51).

[9] *Id*.

[10] *See id.* § 64.604(c)(5)(iii)(E), (F).

[11] *Id.* § 64.606.

[12] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-54, paras. 22-26 (2000) (*2000 VRS Authorization Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577, 20588, para. 21 (2005).

[13] *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5546, para. 1 (2011) (*2011 VRS Call Practices Order*).

[14] *See generally id*. at 5570-76, paras. 47-63.

[15] *Id.* at 5546-48, para. 1.

4. In 2011, along with other anti-fraud measures, the Commission amended its rules to prohibit the handling of VRS calls by CAs working at home.[16] Due to lack of direct supervision, the Commission found that allowing CAs to work at home increased the risk of VRS fraud and compromised the protection of confidentiality, service reliability, and service quality.[17] In addition, the Commission prohibited an eligible (i.e., FCC-certified) VRS provider from "contract[ing] with or otherwise authoriz[ing] any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible [VRS] provider."[18] In light of the proliferation of unauthorized "white label" entities providing VRS with insufficient supervision, via revenue-sharing arrangements with FCC-certified providers, the Commission found this rule necessary "to reduce fraud[,] establish better oversight of the VRS program, and address [such] unauthorized revenue sharing arrangements."[19]

5. Also in 2011, the Commission restricted compensation of VRS providers for calls to the United States from foreign locations.[20] The Commission found that a large number of VRS calls were placed from IP addresses indicating a non-U.S. location and that "many of these minutes are likely attributable to fraudulent or abusive activities."[21] Therefore, the Commission adopted a rule prohibiting TRS Fund compensation for such VRS calls—except for calls placed during travel by "a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers."[22] In a footnote to the *2011 VRS Call Practices Order*, the Commission added that "this exception is not intended to apply to calls made by individuals who remain outside the U.S. for extended periods of time, which we define as more than four weeks."[23]

6. *Subsequent Reauthorization of At-Home VRS Call Handling*. In 2017, recognizing that anti-fraud safeguards and advances in network technology appeared to have reduced the fraud and abuse risks associated with CAs working at home, the Commission authorized a pilot program whereby participating VRS providers could permit some CAs to work at home, so long as the provider complied with specified personnel, technical, and environmental safeguards, as well as monitoring, oversight, and reporting requirements.[24] In 2020, the Commission further amended its rules to allow at-home call-handling on a permanent basis, subject to safeguards similar to those of the pilot program.[25] Among other

[16] *Id.* at 5610, Appx. E (adopting 47 CFR § 64.604(b)(4)(iii) (2012)).

[17] *Id.* at 5556-59, paras. 16-20.

[18] *Id.* at 5612, Appx. E (adopting 47 CFR § 64.604(c)(5)(iii)(N)(1)(iii)).

[19] *Id.* at 5574, para. 57; *see also id.* at 5574, para. 58.

[20] *Id.* at 5609, Appx. E (adopting 47 CFR § 64.604(a)(7)). This restriction applies to VRS calls placed by *video* users located outside the United States to *voice* users in the United States but does not apply to VRS calls placed by *voice* users located outside the United States to *video* users in the United States. *Id.* at 5564, para. 32.

[21] *Id.* at 5564, para. 32.

[22] *Id.* at 5609, Appx. E (adopting 47 CFR § 64.604(a)(7)); *see also 2011 VRS Call Practices Order*, 26 FCC Rcd at 5564, para. 32.

[23] *2011 VRS Call Practices Order*, 26 FCC Rcd at 5564, para. 32 n.105.

[24] *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd 2436, 2455-61, paras. 46-54 (2017) (*2017 VRS Improvements Order*); 47 CFR § 64.604(b)(8) (2019) (pilot program rules).

requirements, the current rules also limit at-home call handling to a maximum of 50% of a provider's monthly VRS minutes and require that CAs working at home have at least three years of American Sign Language (ASL) interpreting experience.[26]

7. *COVID-19 Pandemic Waivers.* During the outbreak of the COVID-19 pandemic, VRS providers reported sharp increases in call volumes and decreases in call center staffing. Providers moved more CAs to home workstations to comply with social distancing requirements and stay-at-home orders.[27] In addition, travel became unpredictable, and some VRS users were stranded abroad.[28] To address these extraordinary circumstances, CGB, on its own motion, temporarily waived the following VRS rules: (1) the cap on the percentage of VRS providers' minutes that may be handled at home workstations;[29] (2) certain rules governing how at-home call handling is conducted and overseen by providers, including the requirement that CAs working at home have three years' interpreting experience;[30] (3) the prohibition on contracting for interpretation services with third parties who are not also certified VRS providers;[31] and (4) the restriction on compensation for VRS calls placed to the United States from abroad by registered VRS users.[32] Due to the pandemic's continuing impact on VRS operations, all the above waivers were extended for additional periods in successive orders.[33]

(Continued from previous page)

[25] *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, 35 FCC Rcd 831 (2020) (*2020 VRS At-Home Call-Handling Order*) (adopting 47 CFR §§ 64.604(b)(8), 64.606(a)(4)).

[26] 47 CFR § 64.604(b)(8)(i), (ii)(A) (2023).

[27] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 2715, 2715-16, para. 2 (CGB 2020) (*March 2020 TRS Waiver Order*).

[28] *See id*. at 2716-17, paras. 3-5; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 4894, 4896-97, para. 6 (CGB 2020) (*May 2020 TRS Waiver Order*).

[29] *March 2020 TRS Waiver Order*, 35 FCC Rcd at 2716-17, para. 3.

[30] *Id*.

[31] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 3018, 3018, para. 2 (CGB 2020) (*April 2020 TRS Waiver Order*).

[32] *March 2020 TRS Waiver Order*, 35 FCC Rcd at 2716-17, para. 5; *May 2020 TRS Waiver Order*, 35 FCC Rcd at 4896-97, para. 6 (modifying waiver). Provisions of other rules, not at issue in this proceeding, were waived for providers of other forms of TRS.

[33] *May 2020 TRS Waiver Order*, 35 FCC Rcd 4894; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 6432 (CGB 2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 35 FCC Rcd 9783 (CGB 2020); *Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10892, para. 54 (2020); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 36 FCC Rcd 4264 (CGB 2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 21-1064 (CGB Aug. 27, 2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG

(continued….)

8. *Convo Petition for Rulemaking*. On June 4, 2021, Convo Communications, LLC (Convo), filed a petition requesting that the Commission initiate a rulemaking proceeding to modify the rules limiting VRS minutes handled by CAs working at home and prohibiting the use of contract CAs.[34] Arguing that VRS providers' record of service under the pandemic waivers justifies allowing more flexibility on a permanent basis,[35] Convo urged the Commission to raise the percentage of permitted VRS at-home call-handling to 80% of a provider's monthly minutes and to allow a VRS provider to use contract CAs for up to 30% of its monthly minutes.[36] Convo also asked that the Commission continue to waive the relevant provisions of its current rules during the pendency of any rulemaking.[37]

9. *Notice of Proposed Rulemaking*. On June 30, 2022, the Commission released a Notice of Proposed Rulemaking to amend certain rules that had been partially waived due to the pandemic emergency. Citing the Convo Petition and *ex parte* submissions by VRS providers, the Commission proposed to: (1) increase from 50% to 80% the portion of monthly VRS minutes that may be handled by CAs working at home; (2) reduce or eliminate the requirement that VRS CAs who work from home must have at least three years of interpreting experience; (3) allow VRS providers to use contract CAs for up to 30% of their monthly call minutes; and (4) allow TRS Fund compensation for calls placed by registered VRS users to the United States from outside the country, for up to one year after leaving the country, as long as they notify their provider of such travel at any time before placing such a call.[38] In an accompanying order, to allow time for consideration of the proposed amendments, the Commission extended the partial waivers of these rules through June 30, 2023.[39] The Bureau subsequently extended the waivers through December 31, 2023.[40]

10. The Commission received comments on the *Notice* from three VRS providers, a coalition of Accessibility Advocacy and Research Organizations (AARO), and two VRS consumers,[41] and reply comments from three VRS providers and AARO.[42] All commenters except the two consumers supported

(Continued from previous page)
Docket Nos. 03-123 and 10-51, Order, DA 21-1653 (CGB Dec. 30, 2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 22-324 (CGB Mar. 25, 2022) (*March 2022 TRS Waiver Order*).

[34] Convo, Petition for Rulemaking and Interim Waiver, CG Docket Nos. 03-123 and 10-51 (filed June 4, 2021), https://www.fcc.gov/ecfs/document/1060430712576/1 (Convo Petition). By public notice issued June 17, 2021, the Commission sought comment on the petition. *See Request for Comment on Petition for Rulemaking and Interim Waiver of Convo Communications, LLC, Regarding Certain Video Relay Service Rules*, CG Docket Nos. 10-51 and 03-123, Public Notice, 36 FCC Rcd 9906 (CGB 2021) (*Convo Petition Public Notice*).

[35] Convo Petition at 2-3.

[36] *Id.* at 1.

[37] *Id.* at 2.

[38] *Notice*, paras. 25-60.

[39] *Id.*, paras. 61-66.

[40] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol (IP) Captioned Telephone Service; Petition for Rulemaking and Interim Waiver of Convo Communications, LLC*, CG Docket Nos. 03-123, 10-51, and 13-24, Order, DA 23-575, para. 7 (June 30, 2023) (*June 2023 Extension Order*).

[41] Sorenson Communications, LLC (Sorenson) Comments; Convo Communications, LLC (Convo) Comments; ASL Services Holding, LLC *dba* GlobalVRS (GlobalVRS) Comments; Accessibility Advocacy and Research Organizations (AARO) Comments; Kristy Stellato (Stellato) Comments; Bethany Miles (Miles) Express Comment.

[42] Sorenson Reply; Convo Reply; AARO Reply; ZP Better Together, LLC (ZP) Reply.

the proposed increase in VRS minutes handled by CAs at home.[43] The four VRS providers supported elimination or modification of the three years of ASL interpreting experience rule, while AARO opposed that change.[44] AARO and Convo supported removing the ban on contract interpreters, while the other three VRS providers opposed its removal.[45] Commenters universally supported the proposed change in the international calling rule.[46]

III. REPORT AND ORDER

A. CAs Working at Home

1. Cap on At-Home Minutes

11. We adopt the Commission's proposal to increase from 50% to 80% the percentage of a VRS provider's monthly minutes that may be handled by CAs working at home.[47] Raising the cap on at-home call handling will allow VRS providers to continue hiring from an expanded pool of interpreters when the current waivers expire. Such increased flexibility allows VRS providers to operate more efficiently and maintain or improve service quality.[48]

12. *Benefits*. The Commission allows CAs to work at home because this option lets VRS providers hire CAs from an expanded, nationwide pool of ASL interpreters, and thereby improve the efficiency and effectiveness of their services.[49] Providers can "attract and retain qualified CAs for whom working at the companies' call centers is not a practical option," and there is evidence that working at home "can reduce CA stress and improve productivity and performance."[50]

13. Based on the comments and our three years of experience with waivers of the at-home call handling cap, we conclude that these benefits can be increased by continuing to allow VRS providers more flexibility to let their CAs work at home.[51] Such hiring flexibility has taken on enhanced importance due to the continuing shortage of sign language interpreters willing to work as VRS CAs.[52] In

[43] Sorenson Comments at 2-3; Convo Comments at 5; GlobalVRS Comments at 4-8; AARO Comments at 2-3; ZP Reply at 1-2; Stellato Comments at 1; Miles Express Comment.

[44] Sorenson Comments at 5-7; Convo Comments at 5-6; GlobalVRS Comments at 8-11; AARO Comments at 5-7; ZP Reply at 4-7.

[45] AARO Comments at 7-9; Convo Comments at 5; Sorenson Comments at 7-8; GlobalVRS Comments at 12-17; ZP Reply at 7-9.

[46] Convo Comments at 7-11; Sorenson Comments at 8-9; GlobalVRS Comments at 17-18; ZP Reply at 9-10; Stellato Comments at 1.

[47] *See Notice*, para. 27; 47 CFR § 64.604(b)(8)(i) (2023); *infra* Appx. B (adding section 64.604(d)(7)).

[48] *See* Sorenson Comments at 2-3; Convo Comments at 5; GlobalVRS Comments at 4-8; AARO Comments at 2-3; ZP Reply at 1-2.

[49] *2020 VRS At-Home Call-Handling Order*, 35 FCC Rcd at 833-34, para. 7.

[50] *Id*.

[51] *See* GlobalVRS Comments at 5 (providers have been able to employ interpreters that would not otherwise have considered employment either due to the interpreter's geographic or personal circumstances that would have made working from a company call center full time impossible); Sorenson Comments at 3; Convo Comments at 5; ZP Reply at 1-2.

[52] *See* Convo Comments at 4; GlobalVRS Comments at 1, 3; ZP Reply at 4 n.12; *see also Notice*, para. 26 n.96; Rolka Loube, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program, Interstate Telecommunications Relay Services Fund, Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123, 10-51, at 13 (filed May 1, 2023) (2023 TRS Report) (noting that, according to provider cost reports, CA-related costs are projected to increase by an average of 26.22% between 2022 and 2023); Sorenson *Ex Parte*, CG Docket No. 10-51, at 2 (filed April 10, 2023) (hourly wages for sign language interpreters increased from 2021 to 2022 to "address the pressing need to

(continued….)

addition, the comments confirm that, post-pandemic, many VRS CAs have become acclimated to working at home and are reluctant to return to call centers.[53]

14. *Cost*. We conclude that additional costs resulting from this rule will be minimal. We note that, because TRS Fund compensation is set for multi-year periods, providers generally have an incentive to avoid or reduce unnecessary costs, as the increased profits that result can be kept and no offsetting rate reduction is likely before the end of the compensation period.[54] Therefore, VRS providers generally are unlikely to increase their reliance on CAs working at home unless doing so enables a net reduction in cost.[55] Further, as noted above, allowing more minutes to be handled by such CAs will expand the pool of potential job candidates and help alleviate the shortage of qualified interpreters available for VRS work. In addition, an expanded labor supply also would tend to limit the wages and benefits that VRS providers must offer to recruit qualified CAs.[56] We also conclude that the safeguards of our at-home rules are sufficient to prevent adverse effects on call confidentiality and service quality, and reduce the risk of waste, fraud, and abuse.[57] The anecdotal incidents cited by AARO and others in this regard,[58] which can be addressed through enforcement of the existing safeguards,[59] do not justify reimposing a cap that could constrict the available supply of qualified VRS CAs.[60]

(Continued from previous page)
fairly compensate video interpreters and keep them working in the VRS Program"); Convo *Ex Parte* at 5 (filed May 10, 2023) ("express[ing] its deep concern about the state of the pipeline for new interpreters"). *See also* National Deaf Center, *The ASL Interpreter Shortage and Its Impact on Accessibility in College Settings* (Dec. 2, 2022) ("the national shortage of American Sign Language interpreters has been especially challenging"), https://nationaldeafcenter.org/news-items/the-asl-interpreter-shortage-and-its-impact-on-accessibility-in-college-settings/; Vanessa Ontiveros, Yakima Herald-Republic, *Deaf students are entitled to an education, but there's a shortage of people qualified to teach them* (Feb. 19, 2023) (the shortage of sign language interpreters is a nationwide issue), https://www.yakimaherald.com/news/local/education/deaf-students-are-entitled-to-an-education-but-there-s-a-shortage-of-people-qualified/article_a76039e4-ae28-11ed-9cb3-fb9e753b7e50.html.

[53] *See* Convo Comments at 5 (increasing the at-home cap will enable VRS providers to retain CAs who may not wish to return to call centers); Sorenson Comments at 3 (reporting that many video interpreters have expressed a preference to continue working from home); ZP Reply at 1-2 (asserting that forcing CAs to commute to an office location would cause some CAs to opt for other employment opportunities); *see also Notice*, para. 28 & n.105.

[54] *Cf. 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-78 at 16-17, para. 33 (Sept. 28, 2023) (finding that, with multi-year compensation periods, providers can retain profits from reducing costs and are unlikely to spend money on wasteful or unnecessary research).

[55] *See 2020 VRS At-Home Call-Handling Order*, 35 FCC Rcd at 835, para. 9 ("To the extent that the provision of at-home call handling does not result in cost savings or revenue-enhancing benefits such as increased customer loyalty, it is less likely that VRS providers will choose to continue or expand this practice.").

[56] *See* Sorenson Comments at 3 ("At a time when it is already difficult to entice interpreters to commit time to VRS when community interpreting offers greater pay with more control over the work, the flexibility to offer video interpreters a work from home option has been important.") (footnote omitted).

[57] *See* 47 CFR § 64.604(b)(8) (2023); *infra* Appx. B (moving the at-home rule to section 64.604(d)(7)); Sorenson Comments at 2-3; Convo Comments at 5; GlobalVRS Comments at 4-8; AARO Comments at 2-3; ZP Reply at 1-2.

[58] AARO Comments at 3-4 (citing reports from consumers of alleged violations of the requirement that each home workstation reside in a separate, secure workspace); Miles Express Comment (alleging multiple privacy violations by interpreters working at home); Stellato Comments at 1 (stating that some interpreters who work at home do not have an absolutely private space).

[59] *See* AARO Comments at 4-5. The Commission enforces at-home VRS call handling safeguards through complaints, review of reports, audits, and other actions.

[60] A consumer expressed concerns that raising the cap would reduce the availability of in-person interpreting services in the community. Miles Express Comment. The Commission's mandate under the Act is to ensure that
(continued….)

15. *Alternative Proposal.* While we agree that, for the most part, VRS providers are unlikely to add more at-home CAs if doing so will detract from service quality,[61] we are unpersuaded that unlimited at-home interpreting should be allowed, as proposed by three VRS providers.[62] In light of past and present concerns in this area, we conclude the safer course is to require a minimum level of call center staffing.[63] Requiring that at least 20% of monthly minutes be handled in a call center provides assurance that each provider will continue to maintain sufficient call center staffing so that newly hired or inexperienced CAs can benefit from in-person supervision or mentoring by CAs with VRS experience.[64] Further, an 80% cap allows VRS providers ample flexibility to hire from an expanded pool of candidates and honor CAs' work preferences.[65] Indeed, the record provides no persuasive evidence that an 80% cap will adversely affect any provider's ability to hire qualified CAs or to provide high-quality service.[66] In the future, if such evidence emerges, this issue may be revisited.

16. We also decline GlobalVRS's suggestion that the rule should continue to apply a 50% cap to newly certified VRS providers pending their achievement of a record of compliance.[67] New applicants are required to demonstrate that they will comply with all applicable minimum TRS standards.[68] Any compliance concerns that the Commission may have regarding a particular applicant for

(Continued from previous page)
relay services are available to eligible users. 47 U.S.C. § 225. Expanding the opportunities for sign-language interpreters to work at home as VRS CAs will further that mandate. Further, such opportunities can encourage more entry into the field of sign-language interpreters—and encourage more qualified interpreters to continue in the profession—by enabling them to combine part-time work as VRS CAs with community interpreting assignments. ZP Better Together, for example, emphasizes on its recruitment website for new CAs that interpreters "can work a combination of VRS and Community assignments." *See* https://www.purplevrs.com/jointheteam (last visited Oct. 17, 2023). In addition, Convo, in its Petition, stated that many interpreters only want a short assignment or want to supplement their community-interpreting income by working limited shifts as a VRS CA. Convo Petition at 11.

[61] *See* Sorenson Comments at 4 ("The Commission's mandatory minimum standards already set the baseline for proper handling of VRS calls, and competition among providers further ensures that providers make staffing choices that enable them to handle calls appropriately.").

[62] GlobalVRS Comments at 8-11; Sorenson Comments at 2-5; ZP Reply at 2-4 (arguing that there is no empirical need to impose an artificial cap given there is no potential risk of service quality degradation).

[63] AARO Reply at 2-3 (supporting a cap because of past violations, and complexity of compliance does not mean the cap is not a proper safeguard for VRS quality); *see also 2011 VRS Call Practices Order*, 26 FCC Rcd at 5556-5559, paras. 16-20.

[64] *See* Sorenson Comments at 5 ("Sorenson intends to continue operating and relying on traditional call centers"); ZP Reply at 3 ("there are a good number of Vis who must, or would prefer, to work at a call center for various reasons, commonly due to not having a room at their residence suitable for at-home workstation use, or simply a matter of personal preference"). Although the cap has been waived for several years, no provider has relied exclusively on at-home CAs. Thus, arguments that service quality would be unaffected by complete removal of the cap, ZP Reply at 2-4, have not been empirically tested.

[65] *Cf.* Sorenson Comments at 2-5 (urging elimination of the cap to allow providers flexibility in managing their workforce).

[66] GlobalVRS claims that retention of a cap will introduce new challenges for balancing call distribution between at-home and call center interpreters. GlobalVRS Comments at 5-6. However, GlobalVRS provides no detail indicating the nature of such challenges, or why they would be any more difficult to address than the daily staff scheduling and call distribution challenges VRS providers routinely face. We note that the rule allows two alternative methods for calculating the at-home minutes cap, making compliance easier to achieve when total minutes cannot be accurately predicted for a given month. *See* 47 CFR § 64.604(b)(8)(i)(A), (B) (2023); *infra* Appx. B (amending and moving this provision to 47 CFR § 64.604(d)(7)(i)).

[67] *See* GlobalVRS Comments at 19-20; *Structure and Practices of the Video Relay Service Program*, Second Report and Order, CG Docket No. 10-51, 26 FCC Rcd 10898, 10914-15, para. 37 (2011) (*2011 TRS Certification Order*).

[68] 47 CFR § 64.606(a)(2), (b)(2).

new or renewed certification as a VRS provider may be addressed by adding appropriate conditions for the certification of that applicant.[69]

17. *Transitioning*. Given that the cap has been entirely waived since the onset of the COVID-19 pandemic, and that the current waivers are extended through the compliance date of this rule amendment,[70] we understand that some providers may currently have more than 80% of their CAs working at home.[71] Ending the current waiver immediately upon the effective date of the amended rule could require such VRS providers to immediately terminate the employment of some CAs for whom working at a call center may be impractical. In light of the shortage of CAs, we determine that a transition period of six months is needed to allow those VRS providers that currently exceed the cap an opportunity to bring their work forces into compliance with the 80% cap without terminating the employment of any CAs. We therefore establish a compliance date of six months after the effective date of this rule change.[72]

2. Experience Requirement for CAs Working at Home

18. We modify the prior experience requirement for VRS CAs working at home, reducing the required amount of ASL interpreting experience from three years to one year.[73] The year of experience may be acquired through professional ASL interpreting, either full-time or equivalent part-time, whether in a community, business, VRS, or other context.[74]

19. The record persuades us that this modification—in conjunction with increasing the cap on at-home minutes—will help ensure a sufficient supply of qualified VRS CAs after the current waivers expire.[75] Further, notwithstanding the concerns raised by AARO,[76] the record does not show that this change will significantly affect the quality of VRS. The rule will continue to require that any VRS CA allowed to work at home "has the experience, skills, and knowledge necessary to effectively interpret VRS calls without in-person supervision, has learned the provider's protocols for at-home call handling, and understands and follows the TRS mandatory minimum standards."[77] Further, VRS providers must provide at-home CAs with the same support and supervision as CAs in call centers.[78] These rules, coupled with the technical requirements for effective supervision,[79] provide assurance that teleworking

[69] *See, e.g.*, *2011 TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

[70] *See infra* Part IV (Order).

[71] *See* Letter from Amanda Montgomery, Chief Legal Officer, Convo Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123, 10-51, at 1 (filed June 1, 2023) (Convo June 2023 *Ex Parte*).

[72] The effective date of this rule change is 30 days after publication of the final rule in the Federal Register. *See infra* para. 52.

[73] *See Notice*, para. 34 (proposing to amend 47 CFR § 64.604(b)(8)).

[74] *2020 VRS At-Home Call-Handling Order*, 35 FCC Rcd at 836-37, para. 14.

[75] *See* Convo Comments at 5-7; GlobalVRS Comments at 8-11; Sorenson Comments at 5-7; ZP Reply at 4-7; *see also supra* para. 13 (discussing the shortage of CAs).

[76] AARO Comments at 5-7.

[77] *See infra* Appx. B (moving this provision to 47 CFR § 64.604(d)(7)(ii)(A)); *see also* 47 CFR § 64.604(a)(1), (1)(iv) (requiring VRS providers to ensure that their CAs are "able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary"); Sorenson Comments at 6.

[78] 47 CFR § 64.604(b)(8)(ii)(B) (2023); *see also infra* Appx. B (moving this provision to 47 CFR § 64.604(d)(7)(ii)(B)).

[79] *See* 47 CFR § 64.604(b)(8)(iii) (2023); *see also infra* Appx. B (moving this provision to 47 CFR § 64.604(d)(7)(iii)).

CAs will handle calls efficiently and effectively in the home environment.[80] In addition, retaining a one-year experience requirement provides a metric for further assurance that CAs working at home have a baseline level of practical field experience.[81] While AARO asserts that remote supervision does not provide "the same experience as in-person . . . supervision,"[82] providers' reports of their practices over the last three years, while the at-home experience requirement was waived,[83] support our belief that competition will help ensure that VRS providers continue to prioritize training and screening of CAs, including those they allow to work at home.[84] AARO does not convincingly explain its contrary view that providers have insufficient incentive to hire the most qualified applicants.[85] Finally, for the same reasons discussed above regarding the percentage cap on at-home minutes,[86] we find it unlikely that allowing providers more flexibility in hiring CAs will cause a net increase in the cost of VRS.

20. On the other hand, we share to some extent the concerns raised by AARO that, when interpreters are still learning their craft, training and supervision are generally more effective when conducted in person, rather than remotely.[87] Therefore, notwithstanding providers' arguments that a specific experience requirement is unnecessary,[88] we retain a requirement that CAs working at home have at least one year of interpreting experience. Retaining a one-year experience requirement ensures that CAs with very limited interpreting experience are subject to in-person supervision.[89]

[80] *See* Convo Comments at 5-6 (Convo agrees that other safeguards currently in the Commission's rules will ensure service quality and thereby further obviate the need for the three-year experience requirement).

[81] *Cf.* AARO Comments at 6 ("While flexible safeguards may be necessary so that they may evolve with technology, there should be an objective, easy-to-measure safeguard as well to preserve VRS quality.").

[82] AARO Comments at 6.

[83] *See, e.g.,* GlobalVRS Comments at 9 (explaining its practice of hiring CAs on the basis of the candidate's skills, experience, attitude, and professionalism, and then engaging in extensive initial and ongoing training of all CAs – all of which the CAs then apply when working at home); ZP Reply at 5; *id*. at 7 ("Years of experience in the VRS industry demonstrates that in-person supervision is not necessary and that remote teaming and supervision on demand has proven to be as effective as in-person supervision."); Letter from Gregory Hlibok, Chief Legal Officer, ZVRS Holding Company, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 3-4 (filed Mar. 15, 2022) (ZP March 15 *Ex Parte*) (ZP has an extensive onboarding process for new CAs, engages the deaf community and leaders in interpreting training to assess all candidates' skills, and employs an extensive training curriculum and call quality monitoring assessment.).

[84] *See Notice*, para. 36; ZP Reply at 5 ("It is the competition among providers that inherently further ensures they make staffing choices that enable them to handle calls appropriately just as they did throughout the pandemic"). We note that the VRS program is structured to promote service quality competition among VRS providers. *See 2017 VRS Compensation Order,* 32 FCC Rcd at 5907, para. 31 ("The Commission has consistently sought to encourage and preserve the availability of a competitive choice for VRS users, because it ensures a range of service offerings analogous to that afforded voice service users and because it provides a competitive incentive to improve VRS offerings."); *id*. at 5908-09, paras. 33-35.

[85] AARO Comments at 7 (asserting that "[i]f each provider is drawing from a similar pool of less-qualified applicants, there would not necessarily be competitive pressure to improve").

[86] *See supra* para. 14.

[87] AARO Comments at 5-7.

[88] *See* Sorenson at 6 (contending that the experience rule "is unnecessary because the Commission already has rules designed to ensure that interpreters are qualified"); ZP Reply at 7 ("Years of experience in the VRS industry demonstrates that in-person supervision is not necessary and that remote teaming and supervision on demand has proven to be as effective as in-person supervision.").

[89] *Cf.* AARO Comments at 6 ("While flexible safeguards may be necessary so that they may evolve with technology, there should be an objective, easy-to-measure safeguard as well to preserve VRS quality."); *see also*

(continued….)

21. We recognize that providers have allowed CAs with less than three years' experience to work at home while this requirement has been waived, and some of those CAs may not meet the one-year experience requirement as of the date the new rule goes into effect.[90] As proposed by Convo and to prevent disruption of the VRS industry and CAs' personal lives, we grandfather in those CAs working at home as of the effective date of this rule amendment, as long as they meet all other interpreter qualification and at-home requirements.[91]

22. We decline to convert the experience requirement into an equivalent number of minutes of calls handled, as AARO suggests.[92] The prior experience requirement can be met via full-time or equivalent part-time experience,[93] and part-time experience is typically quantified in hours. Timing a CA's prior experience in minutes would place an unnecessary burden on applicants for CA employment. We also decline to require that prior experience be acquired solely from in-person interpreting.[94] Because it is gained in a remote context analogous to VRS, VRI experience is relevant to a CA's qualifications to provide VRS, whether at-home or in a call center.[95]

3. Other Issues

23. In the *2020 VRS At-Home Call-Handling Order*, in response to a request for clarification of the home inspection requirements,[96] the Commission explained that the rule does not specify how home workplace inspections must be conducted, as long as such inspections are consistent with the provider's at-home compliance plan and are effective in determining whether the CA's home workstation and workspace are in compliance with the at-home safeguards.[97] Commenters on the *Notice* requested additional clarification whether these inspections should be conducted in-person or virtually.[98] We further clarify that such inspections may be conducted either in-person or virtually.

24. We do not require that CAs annually self-certify that they have complied with the FCC's at-home rules, as AARO recommends.[99] While AARO alludes to "gaps in implementation" of our existing rules governing at-home CAs and says, "it seems that certain CAs are either not properly informed of their responsibilities or do not have sufficient incentive to comply,"[100] AARO does not provide evidence or examples to substantiate these concerns. In 2020, the Commission deleted a rule requiring that, *before* working at home, CAs sign written certifications as to their understanding of and

(Continued from previous page)
Convo June 2023 *Ex Parte* at 2 (recognizing "the need to provide a measure of competency in response to consumer concerns regarding a screening process before interpreters handle calls in an at-home environment").

[90] *See* Convo June 2023 *Ex Parte* at 2.

[91] *See id.* The effective date of this rule amendment is 30 days after publication of the amended rule in the Federal Register. *See infra* para. 52.

[92] AARO Comments at 7.

[93] *2020 VRS At-Home Call-Handling Order*, 35 FCC Rcd at 836-37, para. 14.

[94] *See* AARO Comments at 7.

[95] *See 2020 VRS At-Home Call-Handling Order*, 35 FCC Rcd at 836-37, para. 14.

[96] 47 CFR § 64.604(b)(8)(iv)(A), (E) (requiring VRS providers to inspect each home workstation and its home environment before activating the workstation for use, and to conduct random and unannounced inspections of at least five percent (5%) of all home workstations, including their home environments, in each 12-month period); *infra* Appx. B (moving this provision to 47 CFR § 64.604(d)(7)(iv)(A), (E)).

[97] *2020 VRS At-Home Call-Handling Order*, 35 FCC Rcd at 840, para. 23.

[98] *See* Sorenson Comments at 9-10; ZP Reply at 10-11.

[99] AARO Comments at 4-5.

[100] *Id.* at 4.

commitment to comply with the Commission's TRS rules.[101] The Commission stated:

> VRS providers are required to effectively train and supervise at-home CAs and are responsible for their CAs' compliance with the minimum TRS standards. In light of the resulting incentives for VRS providers to ensure CA quality and rule compliance, additional regulation of providers' internal processes appears unnecessary.[102]

For the same reasons, we find that a retrospective CA certification of compliance would not significantly improve on the requirements already in place.

B. Contracting for CAs

25. The Commission adopts its proposal to modify the TRS rules' restriction on contracting for CA services, to allow VRS providers to contract for interpretation services for up to 30% of their monthly call minutes.[103]

26. The record confirms our belief that this change, like others adopted in this Report and Order, will help maintain efficient, effective relay service despite the continuing shortage of VRS CAs. Authorizing contractual CA service will allow providers flexibility to continue retaining the services of qualified ASL interpreters who prefer not to sign up as VRS provider employees.[104] Contract CAs also can help providers respond to short term fluctuations in both demand and CA availability.[105] By contrast, reinstating the ban on contract CAs, as several commenters urge,[106] may decrease the flexibility of VRS providers to meet demand, for example, when a weather event causes both a spike in traffic and the closing of a call center, potentially compromising the overall quality of service for many VRS users. [107]

27. In the three years during which the CA contracting restriction has been waived, the Commission has not received any evidence of resulting fraud, waste, or abuse. We conclude that, by limiting the percentage of a VRS provider's traffic handled by contractors and by adopting the safeguards discussed below, we can safely authorize limited use of contractors while preventing a recurrence of "the troubled history of subcontracting video interpreters from uncertified providers."[108] We also conclude that, as with the less restrictive at-home rules adopted herein,[109] the provider economic incentives inherent in a multi-year compensation plan make it unlikely that less restrictive contracting rules will result in higher VRS cost.

---

[101] *See 2020 VRS At-Home Call-Handling Order*, para. 16.

[102] *Id*. (footnotes omitted).

[103] *Notice*, para. 40. The current rules prohibit VRS providers from contracting for interpretation services with any party who is not also a certified VRS provider. 47 CFR § 64.604(c)(5)(iii)(N)(*1*)(*iii*) (2023).

[104] Convo Petition at 11 (many of the VRS interpreters it hires through a contractor "only want a short assignment or want to supplement their community-interpreting income by working limited shifts as a [VRS CA]").

[105] Convo Comments at 5 ("the ability to fall back on contract [CAs] can ensure adequate staffing levels in the event of a dramatic shift in demand"); AARO Comments at 8 ("contracting for CAs is a reasonable action to address the CA shortage"); *see also Notice*, paras. 42-43.

[106] GlobalVRS Comments at 12-17; Sorenson Comments at 7-8; ZP Reply at 7-9.

[107] AARO Reply at 2; Convo Reply at 9.

[108] Sorenson Comments at 2; *see also Notice*, para. 45; AARO Comments at 8 (agreeing that allowing contracting for CAs is a reasonable action if accompanied by registration and accountability requirements).

[109] *See supra* paras. 14, 19.

28. We find that adopting the following safeguards will enable the Commission to effectively oversee the use of contract CAs.[110] First, we require VRS providers to maintain and allow inspection by the Commission and TRS Fund Administrator of all records describing CA services provided under contract (in addition to the contracts themselves and any amendments),[111] including any invoices and correspondence regarding such services. Second, we require a VRS provider to identify, in its monthly call data reports, each entity with which it has contracted for interpretation services and the number of conversation minutes handled by each, as well as the CAs working on a contract basis.[112] Third, we require VRS providers, in their annual reports, to identify each entity with which it has contracted for interpretation services and the number of conversation minutes handled by each in the year covered by the report.[113]

29. To reduce incentives for fraud and abuse, a provision of our current rules prohibits VRS providers from providing compensation or other benefits to CAs in any manner that is based upon the number of VRS minutes or calls that the CA relays, "either individually or as part of a group."[114] We amend this provision to clarify that this prohibition applies to compensation or other benefits provided to an agency or other entity with which a VRS provider contracts for CA services. We also amend the rule to expressly prohibit VRS providers from paying contractors based on session or conversation minutes.[115]

30. We emphasize that current rules require that VRS must be offered in the name of —and billed to the TRS Fund by—the certified VRS provider, in a manner that clearly identifies that entity as the provider of the service.[116] Further, the Commission's rules governing CAs who work at home remain applicable when contract CAs are working at home.[117] If a VRS provider allows contract CAs to work at home, it is the VRS provider's responsibility to ensure compliance with each provision of paragraph (d)(7) of section 64.604 of this chapter, as well as all other applicable minimum TRS standards. To the extent that a VRS provider wishes to delegate certain oversight tasks to an agency that employs such CAs, it may do so, but the VRS provider must ensure compliance with the Commission's rules, whether by including specific oversight provisions in its contract with the agency, or otherwise.

---

[110] *See Notice*, paras. 46, 49; *see also* Convo Reply to Convo Petition Public Notice, at 9 (Aug. 3, 2021) ("If the Commission has concerns about permitting limited contract interpreting on a permanent basis …, Convo is amenable to the adoption of additional safeguards"); AARO Comments at 7-8 ("conditions could be imposed to limit the risk of waste, fraud, and abuse").

[111] *See infra* Appx. B (adding 47 CFR § 64.604(d)(1)(v)). The Commission's rules currently require that VRS providers' contracts with third parties be in writing and be made available to the Commission and the TRS Fund administrator upon request. 47 CFR § 64.604(c)(5)(iii)(N)(*1*)(*v*) (2023).

[112] *See infra* Appx. B (adding 47 CFR § 64.604(c)(5)(iii)(D)(*8*)).

[113] *See infra* Appx. B (adding 47 CFR § 64.604(d)(2)(iv)). We also note that a VRS provider must notify the Commission within 60 days after contract CAs begin handling calls in a facility operated by a contracting agency. *See* 47 CFR § 64.606(f)(2).

[114] 47 CFR § 64.604(c)(5)(iii)(N)(*3*).

[115] *See infra* Appx. B (adding 47 CFR § 64.604(d)(3)). Convo Petition Reply at 9. That is, a CA who contracted to work four hours on each of two days would receive a flat rate for each hour of availability, without regard to call minutes actually handled during those eight hours.

[116] *See* 47 CFR § 64.604(c)(5)(iii)(N)(*1*)(*ii*) (2023); *infra* Appx. B (moving this provision to 47 CFR § 64.604(d)(1)(ii)).

[117] For example, the monitoring and oversight obligations of the at-home rules also apply to home workstations of contract CAs, and these home workstations are subject to a VRS provider's obligation to conduct random and unannounced inspections of at least five percent of all home workstations, including their home environments, in each 12-month period. 47 CFR § 64.604(b)(8)(iv)(E) (2023). As another example, a VRS provider must ensure that each contract CA working at home "has learned the provider's protocols for at-home call handling, and understands and follows the TRS mandatory minimum standards set out in this section." *Id.* § 64.604(b)(8)(ii)(A).

31. We do not believe it is necessary for our rules to address the speculative concerns raised by GlobalVRS regarding potential disclosure by contractors of a provider's trade secrets and the application of tax law to contract CAs.[118] We do not require any VRS provider to use contract CAs, and we agree with Convo and AARO that VRS providers are responsible for complying with all federal and state laws on taxation or other matters affecting contracted CAs, as with their own employees.[119]

C. International Calling Restrictions

32. We adopt the proposed modification of the Commission's rule on VRS calls originating from international IP addresses and terminating in the United States.[120] As modified, the rule permits compensation for such international VRS calls during a travel period of up to one year, if the user's default VRS provider has been notified of the user's travel at any time prior to placing such calls.[121] The content of the required notification must include the specific regions of travel, the date of departure from the United States, and the approximate date when the individual intends to return to the United States. Commenters are universally in support of these revisions to the international calling restrictions.[122]

33. By allowing users to notify their providers any time before making the first compensable call from abroad (rather than before leaving the United States, as required by the current rule), this amendment aligns better with functional equivalence.[123] The current requirement to notify before leaving the country may unnecessarily restrict users from calling the United States while traveling abroad, for example, in unforeseen circumstances or emergencies when the user may not have anticipated needing to make a call.[124] The record does not indicate that the less restrictive approach we adopt will impose additional costs on VRS providers or users. By reducing the unnecessarily broad application of the international calling rule, our amendment may reduce administrative costs incurred by providers, the TRS Fund administrator, and Commission staff to implement the rule. Further, this change will not increase any risk of waste, fraud, or abuse, given the effective anti-fraud measures currently in place, as described below.[125]

34. This amendment also codifies the declaratory ruling issued by the Commission in June 2022, which interpreted the existing rule to allow compensation for international calls placed by a registered user who is traveling for up to one year.[126] As explained in the *June 2022 Ruling*, the prior interpretation of the rule, under which a VRS user's travel period could not exceed four weeks, imposed unnecessary restrictions on VRS use by consumers who are traveling internationally.[127] That interpretation was adopted at a time when the VRS program was plagued by fraud and abuse.[128] Since then, the Commission's anti-fraud measures, including requirements for call validation and user

[118] GlobalVRS Comments at 14-15.

[119] Convo Reply at 9; *see also* AARO Reply at 4-5.

[120] *See Notice*, paras. 51-60.

[121] *See infra* Appx. B (adding 47 CFR § 64.604(d)(6)(ii)). In other words, a VRS provider may request compensation for any such call placed after receiving the required notice from the user. The required notice need only be given once for each period of travel.

[122] Sorenson Comments at 8-9; Convo Comments at 7-10; GlobalVRS Comments at 17-18; ZP Reply at 9-10; Stellato Express Comment.

[123] Convo Comments at 8-9; Sorenson Comments at 9; ZP Reply at 10.

[124] *See* Convo Comments at 9.

[125] *See id.* at 8-9; Sorenson Comments at 9; ZP Reply at 10.

[126] *See Notice*, paras. 51-54; *June 2022 Ruling*, paras. 67-70.

[127] *Notice*, para. 53; *June 2022 Ruling*, para. 68.

[128] *Notice*, para. 53; *June 2022 Ruling*, para. 68.

verification in the TRS User Registration Database,[129] appear to have been effective in suppressing illegal VRS calling.[130] We also note that, prior to the *June 2022 Ruling* and pursuant to the pandemic waiver orders, the prohibition on calling the United States from abroad was largely waived;[131] in the three years since the outbreak of the pandemic, we have not received evidence of waste, fraud, or abuse resulting from this waiver.

35. No commenter disputes that one year is an appropriate maximum period for international travel and is consistent with section 225, which directs the Commission to ensure the availability of TRS to persons with hearing or speech disabilities "in the United States."[132] The Commission requires that compensable calls must either originate or terminate in the United States,[133] and that, to register for Internet-based TRS, a consumer must establish that he or she is a U.S. resident, at least on a temporary basis.[134] As explained in the *June 22 Ruling*, one year is long enough to cover most reasons why U.S. residents would be traveling abroad and is a reasonable "default" time limit to prevent the use of TRS funds to support VRS calls by persons who can no longer be considered U.S. residents.[135]

36. We further adopt the proposed exception to the one-year maximum time period for calls to or from the United States by registered VRS users who are U.S. military personnel, federal government employees, or federal contractors (or their accompanying immediate family members) temporarily stationed outside the United States.[136] Three VRS providers support this exception, describing circumstances in which such VRS users may need to be abroad for longer durations.[137] Under this exception, the content of the required notification to the default provider must include the specific regions of foreign assignment, the date of departure from the United States, the contemplated end date for the foreign assignment,[138] and confirmation that the user (or a family member of the user) is a member of the

[129] 47 CFR § 64.615(a)(1) (call validation); 47 CFR § 64.615(a)(6) (user verification).

[130] *Notice*, para. 53; *June 2022 Ruling*, para. 68.

[131] *June 2022 Ruling*, para. 68.

[132] 47 U.S.C. § 225(b)(1) ("the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.").

[133] *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, 25 FCC Rcd 1868, 1872, para. 9 (CGB 2010); *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 25 FCC Rcd 6012, 6024, para. 27 (2010). In this context, "United States" includes U.S. Territories. *See* 47 U.S.C. § 153(58).

[134] *See Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 10-51 and 03-123, Order, 30 FCC Rcd 4806 (CGB 2015) (*2015 Bureau VRS Order*) (waiving the requirement that VRS providers obtain the last four digits of a user's Social Security Number for persons in the United States without such identification); *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 30 FCC Rcd 1093, 1098-1100, paras. 13-14 (CGB 2015). Persons who may use TRS in the United States include temporary residents, such as foreign students attending colleges and universities in the United States.

[135] *See June 2022 Ruling*, para. 69.

[136] *See Notice*, para. 59. A family member would be eligible for this exception even if the federal military person, employee, or contractor does not use VRS.

[137] Convo Comments at 10; GlobalVRS Comments at 18; ZP Reply at 10. No commenters oppose the proposed exemption.

[138] If the user's foreign assignment does not contain an end date, the user may specify an end date that is one year after the date of departure. If the assignment lasts longer, the user may follow the extension procedures discussed herein.

military services, or is employed by a federal government agency or federal contractor, and is temporarily stationed outside the United States. This exception will apply for the duration of the user's (or family member's) foreign assignment plus an additional time period following the end of such assignment to allow the user additional time to travel abroad and return to the United States. If the foreign assignment is extended or a change in the foreign assignment adds another international region, the user must notify his or her default provider of the new end date or new region of the assignment to continue making VRS calls during such extension or new region (plus the permitted additional time period). Further, if the intended end date of the foreign assignment is not known or otherwise unavailable as of the time of notification to the default VRS provider, the notification may specify, as the end date, a date that is one year from the date of departure from the United States, or, for extensions beyond one year, in one-year intervals from the prior specified end date. We also apply this exception to individuals placing calls to the United States from U.S. military and government organizations with enterprise VRS registrations.[139]

37. However, we decline to expand this exception to include U.S. private-sector employees who are asked to work abroad by their U.S. employers, as well as the accompanying family members of such employees, as requested by Convo.[140] As noted above, one year is long enough to cover most reasons why U.S. residents would be traveling abroad, other than U.S. military and government workers for which extended time abroad is not uncommon. Further, enforcement of this limit with respect to U.S. military personnel, federal government employees, and federal contractors is relatively straightforward due to their official roles and well-documented assignments. Extending the exception to include private-sector employees and their family members is likely to pose more significant enforcement challenges, potentially increasing the risk of misuse or exploitation of the exception by individuals who are no longer U.S. residents by virtue of their extended time abroad.

D. Technical Correction to TRS Rules

38. We adopt a technical amendment of the Commission rules, proposed in December 2022, to clarify the inflation adjustment factor for IP Relay compensation.[141] No comments were received regarding this proposed correction.

39. The annual inflation adjustment factor for IP Relay compensation, adopted in June 2022, is based on the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services.[142] The Commission directed the TRS Fund administrator to specify in its annual TRS Fund report "the index values for each quarter of the previous calendar year and the last quarter of the year before that."[143] The Commission also directed the TRS Fund administrator to propose the IP Relay compensation level for the next TRS Fund year by adjusting the compensation level from the previous year by a percentage equal to the percentage change in the index between the fourth quarter of the calendar year ending before the filing of its annual report and the fourth quarter of the preceding calendar year.[144]

---

[139] *See* 47 CFR § 64.611(a)(6) (allowing enterprise registration for VRS users).

[140] Convo Comments at 7, 10-11.

[141] *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, 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97, paras. 47-48 (2022).

[142] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Petition for Rulemaking of Sprint Corporation*, CG Docket No. 03-123, RM-11820, Report and Order, FCC 22-48, at 16, para. 41 (June 30, 2022).

[143] *Id.* at 17, para. 43.

[144] *Id*.

40. The method of determining the inflation adjustment factor is codified in section 64.640(d) of the Commission's rules.[145] We revise the text of the rule to clarify the description of the inflation adjustment factor, to eliminate any ambiguity as to how the inflation adjustment factor is calculated. The relevant provision of the rules currently reads (italics added to highlight where the text of the rule is changed):

> (d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is *1/100 times the difference between* the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:
>
> (1) The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and
>
> (2) The fourth quarter of the preceding Calendar Year.[146]

As amended, this provision now reads (italics added to highlight changed text):

> (d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is *equal to the difference between the Initial Value and the Final Value, as defined herein, divided by the Initial Value. The Initial Value and Final Value, respectively, are* the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:
>
> (1) *Final Value.* The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and
>
> (2) *Initial Value.* The fourth quarter of the preceding Calendar Year.[147]

IV. ORDER

41. In this Order, we extend the current waivers of several rules amended in the *Report and Order* as follows: (1) the waiver of the 50% cap on at-home CA call minutes[148] is extended until the compliance date for the amended rule (six months after the effective date of the amended rule);[149] (2) the waiver of the requirement that CAs working at home have three years of experience as an ASL interpreter[150] is extended until the effective date of the amendment to this rule[151] (i.e., until 30 days after publication of the final rule in the Federal Register); and (3) the waiver of the ban on contracting with

[145] 47 CFR § 64.640(d).

[146] *Id.* § 64.640(d).

[147] *See infra* Appx. B.

[148] *See* 47 CFR § 64.604(b)(8)(i)).

[149] *See infra* Appx. B (adding 47 CFR § 64.604(d)(7)(i)). The effective date of the amendment is 30 days after publication in the Federal Register. *See infra* para. 52.

[150] *See* 47 CFR § 64.604(b)(8)(ii)(A)).

[151] *See infra* Appx. B (adding 47 CFR § 64.604(d)(7)(ii)(A)).

non-certified entities for VRS interpretation services[152] is extended until the effective date of the amendment to this rule[153] (i.e., until 30 days after publication of the final rule in the Federal Register).

42. *Background*. To prevent disruption in the provision of VRS during the pandemic, each of the rules listed above was waived, on an emergency basis, through June 30, 2022.[154] In June 2022, when proposing to amend these rules, the Commission extended those waivers, recognizing that termination of those waivers while proposed amendments were pending—and while there continued to be a shortage of qualified VRS CAs—would impose unwarranted costs and burdens on the provision of VRS.[155] In June 2023, the Bureau extended the waivers for an additional six months.[156]

43. *Waiver Standard*. A Commission rule may be waived for good cause shown.[157] In particular, waiver of a rule is appropriate where the particular facts make strict compliance inconsistent with the public interest.[158] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[159] Waiver of a rule is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest and will not undermine the policy underlying the rule.[160]

44. We find there are special circumstances establishing good cause for a further extension of the expiration date of these waivers, to avoid an undesirable lapse in their application of these waivers to VRS providers. Given the continuing shortage of VRS CAs,[161] allowing the current waivers to expire before the effective dates of these rule changes would needlessly impose costs on VRS providers to temporarily comply with rules that the Commission has determined are no longer necessary. Further, a longer extension is needed for the waiver of the cap on VRS minutes handled by CAs working at home. In the accompanying Report and Order, we recognize that some VRS providers currently exceed the amended 80% cap, and that a transition period of six months is needed to allow providers an opportunity to bring their work forces into compliance with the 80% cap without terminating the employment of any CAs.[162] Therefore, we find good cause to extend these temporary waivers, on our own motion, until dates specified above for each rule.

V. PROCEDURAL MATTERS

45. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[163] requires that an agency prepare a regulatory flexibility analysis for notice and comment

[152] *See* 47 CFR § 64.604(c)(5)(iii)(N)(1)(iii).

[153] *See infra* Appx. B (adding 47 CFR § 64.604(d)(1)(iii)).

[154] *See supra* paras. 7, 9.

[155] *June 22 Order*, paras. 61-66.

[156] *June 2023 Extension Order*, para. 7.

[157] 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for god cause shown).

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

[159] *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.

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

[161] *See supra* para. 13.

[162] *See supra* para. 17.

[163] 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).

[163] 5 U.S.C. § 601 *et seq*.

rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[164] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes and policy contained in this Report and Order on small entities. The FRFA is set forth in Appendix C.

46. *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 and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).[165]

47. *Paperwork Reduction Act Analysis.* The Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[166] It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.[167] OMB, the general public, and other Federal agencies are 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,[168] 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 Appendix C, we have assessed the effects of the required collection of information on these small entities.

48. *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.

49. *Additional Information.* For additional information on this proceeding, contact Joshua Mendelsohn, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-559-7304, or Joshua.Mendelsohn@fcc.gov.

VI. ORDERING CLAUSES

50. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225, the foregoing *Report and Order* IS ADOPTED, and the Commission's rules are hereby AMENDED as set forth in Appendix B.

51. IT IS FURTHER ORDERED that, pursuant to sections 225 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 225, 405, and section 1.429 of the Commission's rules, 47 CFR § 1.429, and pursuant to the authority delegated in sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361, the Petition for Rulemaking and Interim Waiver filed by Convo Communications, LLC, IS GRANTED to the extent of the rule amendments set forth above.

52. IT IS FURTHER ORDERED that the *Report and Order* and the amendments to the Commission's rules SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register, except that the amendments to section 64.604(c)(5)(iii)(D)(*8*), (d)(1)(iii)(C), (d)(2)(iv), and (d)(6) will not become effective until OMB completes any review that the Consumer and Governmental Affairs Bureau determines is required under the Paperwork Reduction Act and provides an effective date by subsequent Public Notice.

---

[164] 5 U.S.C. § 605(b).

[165] *Id.* § 801(a)(1)(A).

[166] Pub. L. No. 104-13, 109 Stat 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

[167] 44 U.S.C. § 3507(d).

[168] Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520 (2016).

53. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of the *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).

54. 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 associated Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

55. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, the foregoing *Order* IS ADOPTED.

56. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, and section 1.3 of the Commission's rules, 47 CFR § 1.3, the cap on at-home call minutes in section 64.604(b)(8)(i) of the Commission's rules, 47 CFR § 64.604(b)(8)(i), the three-year experience requirement for at-home CAs in section 64.604(b)(8)(ii)(A) of the Commission's rules, 47 CFR § 64.604(b)(8)(ii)(A), and the prohibition on contracting for VRS CAs in section 64.604(c)(iii)(5)(N)(*1*)(*iii*) of the Commission's rules, 47 CFR § 64.604(c)(iii)(5)(N)(*1*)(*iii*), are TEMPORARILY WAIVED, to the extent set forth in the *Order*.

57. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(2) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(2), 1.103(a), the *Order* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenting Parties

Comments

ASL Services Holding, LLC dba GlobalVRS (GlobalVRS)

Convo Communications, LLC (Convo)

Bethany Miles

National Association of the Deaf (NAD), Communication Service for the Deaf (CSD), Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC), Rochester Institute of Technology / National Technical Institute for the Deaf Center on Access Technology (RIT / NTID), Deaf Seniors of America (DSA), Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing at Gallaudet University (DHH-RERC), National Black Deaf Advocates (NBDA), National Association for State Relay Administration (NASRA), Cerebral Palsy and Deaf Organization (CPADO), Clear2Connet Coalition, Registry of Interpreters for the Deaf, Inc. (RID), and National Cued Speech Association (NCSA) (collectively, Accessibility Advocacy and Research Organizations, or AARO)

Sorenson Communications, LLC (Sorenson)

Kristy Stellato

Reply Comments

AARO

Convo

Sorenson

ZP Better Together, LLC (ZP)

APPENDIX B

Final Rules

The Federal Communications Commission amends Title 47 of the Code of Federal Regulations as follows:

Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. [to be completed prior to publication in the Federal Register], unless otherwise noted.

2. Amend section 64.604 by:

   a. Removing the prefatory language.

   b. Removing and reserving paragraphs (a)(6), (a)(7), (b)(8), (c)(5)(iii)(N), and (c)(12).

   c. Adding and reserving paragraph (c)(5)(iii)(D)(*8*).

   d. Revising paragraph (d) and adding paragraph (e) to read as follows:

§ 64.604 Mandatory minimum standards.

(a) * * *

(6) [Reserved]

(7) [Reserved]

(b) * * *

(8) [Reserved]

(c) * * *

(5) * * *

(iii) * * *

(D) * * *

(*8*) [Reserved]

* * * * *

(N) [Reserved]

* * * * *

(12) [Reserved]

* * * * *

(d) *Additional provisions applicable to VRS.*

(1) *Eligibility for reimbursement from the TRS Fund.*

(i) Only an eligible VRS provider, as defined in paragraph (c)(5)(iii)(F) of this section, may hold itself out to the general public as providing VRS.

(ii) VRS service must be offered under the name by which the eligible VRS provider offering such service became certified and in a manner that clearly identifies that provider of the service. Where a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible

VRS provider. Providers must route all VRS calls through a single URL address used for each name or sub-brand used.

(iii)(A) Except as otherwise provided in this paragraph (iii), an eligible VRS provider shall not contract with or otherwise authorize any third party to provide call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible provider.

(B) An eligible VRS provider may contract with third parties to provide interpretation services for up to a maximum of the greater of:

(*1*) Thirty percent (30%) of a VRS provider's total minutes for which compensation is paid in that month; or

(*2*) Thirty percent (30%) of the provider's average projected monthly conversation minutes for the calendar year, according to the projections most recently filed with the TRS Fund administrator.

(C) [Reserved]

(iv) To the extent that an eligible VRS provider contracts with or otherwise authorizes a third party to provide any other services or functions related to the provision of VRS other than interpretation services or call center functions, that third party must not hold itself out as a provider of VRS, and must clearly identify the eligible VRS provider to the public. To the extent an eligible VRS provider contracts with or authorizes a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, those VRS minutes are not compensable on a per minute basis from the TRS fund.

(v) All third-party contracts or agreements entered into by an eligible provider must be in writing. Copies of such agreements shall be made available to the Commission and to the TRS Fund administrator upon request.

(2) *Call center reports*. VRS providers shall file a written report with the Commission and the TRS Fund administrator, on April 1st and October 1st of each year for each call center that handles VRS calls that the provider owns or controls, including centers located outside of the United States, that includes:

(i) The complete street address of the center;

(ii) The number of individual CAs and CA managers; and

(iii) The name and contact information (phone number and e-mail address) of the manager(s) at the center. VRS providers shall also file written notification with the Commission and the TRS Fund administrator of any change in a center's location, including the opening, closing, or relocation of any center, at least 30 days prior to any such change.

(iv) [Reserved]

(3) *Compensation of CAs*. VRS providers shall not compensate, give a preferential work schedule to, or otherwise benefit a CA, or an agency or other entity with which a VRS provider contracts for interpretation services, in any manner that is based upon the number of VRS session or conversation minutes or calls that a CA relays, either individually or as part of a group.

(4) *Remote training session calls*. VRS calls to a remote training session or a comparable activity will not be compensable from the TRS Fund when the provider submitting minutes for such a call has been involved, in any manner, with such a training session. Such prohibited involvement includes training programs or comparable activities in which the provider or any affiliate or related party thereto, including but not limited to its subcontractors, partners, employees or sponsoring organizations or entities, has any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities.

(5) *Visual privacy screens/idle calls*. A VRS CA may not enable a visual privacy screen or similar feature during a VRS call. A VRS CA must disconnect a VRS call if the caller or the called party to a VRS call enables a privacy screen or similar feature for more than five minutes or is otherwise

unresponsive or unengaged for more than five minutes, unless the call is a 9–1–1 emergency call or the caller or called party is legitimately placed on hold and is present and waiting for active communications to commence. Prior to disconnecting the call, the CA must announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates continued engagement with the call.

(6) *International calls*. VRS calls that originate from an international IP address will not be compensated, with the exception of calls made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States.

(7) *At-home VRS call handling —*

(i) *Limit on minutes handled.* Beginning [**SIX MONTHS AND 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**], in any calendar month, a VRS provider authorized by the Commission to employ at-home CAs may be compensated for minutes handled from home workstations up to a maximum of the greater of:

(A) Eighty percent (80%) of a VRS provider's total minutes for which compensation is paid in that month; or

(B) Eighty percent (80%) of the provider's average projected monthly conversation minutes for the calendar year, according to the projections most recently filed with the TRS Fund administrator.

(ii) *Personnel safeguards*. A VRS provider shall:

(A) Allow a CA to work at home only if the CA is a qualified interpreter with at least one year of full-time or equivalent part-time professional interpreting experience, has the experience, skills, and knowledge necessary to effectively interpret VRS calls without in-person supervision, has learned the provider's protocols for at-home call handling, and understands and follows the TRS mandatory minimum standards set out in this section, except that any CAs working at home as of [**30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**] are not required to have at least one year of experience as long as they meet all other interpreter qualifications specified in this paragraph (A); and

(B) Provide at-home CAs equivalent support to that provided to CAs working from call centers, including, where appropriate, the opportunity to team-interpret and consult with supervisors, and ensure that supervisors are readily available to resolve problems that may arise during a relay call.

(iii) *Technical and environmental safeguards*. A VRS provider shall ensure that each home workstation enables the provision of confidential and uninterrupted service to the same extent as the provider's call centers and is seamlessly integrated into the provider's call routing, distribution, tracking, and support systems. Each home workstation shall:

(A) Reside in a separate, secure workspace where access during working hours is restricted solely to the CA;

(B) Allow a CA to use all call-handling technology to the same extent as call-center CAs;

(C) Be capable of supporting VRS in compliance with the applicable mandatory minimum standards set out in this section to the same degree as at call centers;

(D) Be equipped with an effective means to prevent eavesdropping and outside interruptions; and

(E) Be connected to the provider's network over a secure connection to ensure caller privacy.

(iv) Monitoring and oversight obligations. A VRS provider shall:

(A) Inspect each home workstation and its home environment to confirm their compliance with paragraph (d)(7)(iii) of this section before activating the workstation for use;

(B) Assign a unique workstation identification number to each VRS home workstation;

(C) Equip each home workstation with monitoring technology sufficient to ensure that off-site supervision approximates the level of supervision at the provider's call center and regularly analyze the records and data produced by such monitoring to proactively address possible waste, fraud, and abuse;

(D) Keep all records pertaining to home workstations, except records of the content of interpreted conversations, for a minimum of five years; and

(E) Conduct random and unannounced inspections of at least five percent (5%) of all home workstations, including their home environments, in each 12-month period.

(v) Commission audits and inspections. Home workstations and workstation records shall be subject to review, audit, and inspection by the Commission and the TRS Fund administrator and unannounced on-site inspections by the Commission to the same extent as call centers and call center records subject to the rules in this chapter.

(vi) Monthly reports. With its monthly requests for compensation, a VRS provider employing at-home CAs shall report the following information to the TRS Fund administrator for each home workstation:

(A) The home workstation identification number and full street address (number, street, city, state, and zip code);

(B) The CA identification number of each individual handling VRS calls from that home workstation; and

(C) The call center identification number, street address, and name of supervisor of the call center responsible for oversight of that workstation.

(8) *Discrimination and preferences*. A VRS provider shall not:

(i) Directly or indirectly, by any means or device, engage in any unjust or unreasonable discrimination related to practices, facilities, or services for or in connection with like relay service,

(ii) Engage in or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or

(iii) Subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(e) *Other standards*. The applicable requirements of § 9.14 of this chapter and §§ 64.611, 64.615, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 are to be considered mandatory minimum standards.

3. Delayed indefinitely, further amend section 64.604 by revising paragraphs (c)(5)(iii)(D)(8), (d)(1)(iii)(C), (d)(2)(iv), and (d)(6) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(D) * * *

(8) *Calls handled by contractors.* A VRS provider that contracts for interpretation services shall identify in its monthly call data reports each entity with which it has contracted for interpretation services, each CA working on a contract basis, and the number of conversation minutes handled by each such CA.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(C) A VRS provider that contracts for interpretation services shall maintain records of all services provided by contracting CAs or agencies. If a VRS provider allows contract CAs to work at home, the VRS provider remains obligated to comply with each provision of 47 CFR § 64.604(d)(7).

* * * * *

(2) * * *

(iv) The name and contact information (phone number and email address) of each individual, agency, and other entity with which it has contracted for interpretation services and the number of conversation minutes handled by each such contractor during the six-month period.

* * * * *

(6) *International calls*.

(i) VRS calls that originate from an international IP address shall not be compensated, except in accordance with this section. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States and its territories.

(ii) A VRS provider may seek TRS Fund compensation for VRS calls placed to the United States by a United States resident who is a registered VRS user, provided that:

(A) Such calls are placed one year or less after the VRS user departs the United States; and

(B) At any time prior to placing such calls, the VRS user notifies the user's default provider of the specific region(s) of travel, the date of departure from the United States, and the intended date of return to the United States.

(iii) A registered VRS user may request approval from the Commission's Disability Rights Office for an extension of the one-year international calling period. Such request shall specify the extended return date and include a showing that the user's primary residence remains in the United States, even though the user will remain outside the United States longer than one year. Upon approval of such an extension, the user shall notify the user's default VRS provider of the extended return date, and the provider may seek compensation for international calls placed by the user through the end of such extended return date.

(iv) A VRS provider may seek TRS Fund compensation for VRS calls placed to the United States, pursuant to an individual or enterprise VRS registration, by a United States resident who is a United States military or federal government employee or contractor temporarily stationed abroad, or a parent, spouse, or child of such employee or contractor, provided that:

(A) Such calls are placed either during the period of such foreign assignment or within 90 days after its end date; and

(B) At any time prior to placing such calls, the registered VRS user, or the Relay Official or other responsible individual designated in an enterprise registration, notifies the default VRS provider of the specific regions of foreign assignment, the date of departure from the United States, and the intended end date of the foreign assignment, and that the user (or a parent, spouse, or child of the user) is a United States military or federal government employee or contractor, and is temporarily stationed outside the United States. If the foreign assignment is extended, the registered VRS user, or the Relay Official or other responsible individual designated in an enterprise registration, shall notify the default VRS provider of the extended end date of such foreign assignment and of any change of the region where the employee or contractor is stationed.

(C) If the intended end date of the foreign assignment is not known or otherwise unavailable as of the time of notification to the default VRS provider, the notification may specify, as the end date, a date that

is one year from the date of departure from the United States, or, for extensions beyond one year, in one-year intervals from the prior specified end date.

* * * * *

4. Amend section 64.606 by revising paragraphs (a)(2)(ii)(A)(2) and (a)(4) as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

(*2*) Operating more than five call centers within the United States, a copy of each deed or lease for a representative sampling (taking into account size (by number of communications assistants) and location) of five call centers operated by the applicant within the United States, together with a list of all other call centers that they operate that includes the information required under § 64.604(d)(2).

* * * * *

(4) *At-home VRS call handling.* An applicant for initial VRS certification that desires to provide at-home VRS call handling shall include a detailed plan describing how the VRS provider will ensure compliance with the requirements of § 64.604(d)(7).

5. Amend section 64.640 by revising paragraph (d) to read as follows:

§ 64.640 Compensation for IP Relay.

* * * * *

(d) The inflation adjustment factor for a Fund Year (IF_{FY}), to be determined annually on or before June 30, is equal to the difference between the Initial value and the Final value, as defined herein, divided by the Initial value. The Initial value and Final value, respectively, are the values of the Employment Cost Index compiled by the Bureau of Labor Statistics, U.S. Department of Labor, for total compensation for private industry workers in professional, scientific, and technical services, for the following periods:

(1) *Final value*. The fourth quarter of the Calendar Year ending 6 months before the beginning of the Fund Year; and

(2) *Initial value*. The fourth quarter of the preceding Calendar Year.

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking released in June 2022 (*Notice*) in this proceeding.[2] The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA.[3] No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

A. Need for, and Objectives of, the *Report and Order*

2. The amended rules in the *Report and Order* increase Video Relay Service (VRS) providers' flexibility to provide efficient, effective relay service, supported by the Interstate Telecommunications Relay Services Fund (TRS Fund or Fund), for individuals with hearing and speech disabilities despite the continuing shortage of VRS communications assistants (CAs), without sacrificing the Commission's goals of reducing waste, fraud and abuse within the VRS industry. The *Report and Order* (1) increases from 50% to 80% the cap on call minutes that can be handled by VRS CAs from home work stations, (2) reduces the three-year experience requirement for at-home VRS CAs to one year (waiving the one-year requirement for VRS CAs working at home as of the effective date), and (3) allows VRS providers to contract for interpretation services from external sources for up to 30% of their monthly call minutes. The purpose of these changes is to increase the pool of available VRS CAs and allow VRS providers more flexibility in their internal operations. Related to the amended rules, the included *Order* extends partial waivers of these rules until the effective date of those amendments and allows an additional six months transition to the amended percentage cap on at-home VRS minutes.

3. The *Report and Order* also modifies the rule restricting compensation from the TRS Fund for VRS calls to the United States from foreign locations. Currently, to be able to place such calls, VRS users must notify their default VRS provider prior to departure from the United States.[5] Since the Commission adopted that rule, it has implemented the TRS User Registration Database (User Database) with detailed requirements for VRS user registration and identity verification. In the *Report and Order*, the Commission removes the pre-departure notification requirement, allowing VRS users to make calls to the United States as long as they notify their provider of their travel status any time prior to placing such calls. The Commission also codifies its earlier Declaratory Ruling that VRS providers may allow VRS calls to the United States by a registered user for up to one year while the user is abroad. As an exception to the one-year limitation, the *Report and Order* allows United State military personnel and federal government workers and contractors (and members of their immediate families) who are stationed abroad to make compensable VRS calls to the United States for the duration of their required service overseas.

---

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

[3] *See Notice*, App. E.

[4] 5 U.S.C. § 604.

[5] 47 CFR § 64.604(b)(6); *see also Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5564, para. 32 (2011) (*2011 VRS Call Practices Order*).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[6]

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

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[7] The RFA generally defines the term "small entity" as 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]

8. The rules adopted in the *Report and Order* will affect the obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications. There are currently four providers of VRS: Sorenson Communications, LLC, ZP Better Together, LLC, and Convo Communications, LLC, and ASL Services Holdings, LLC, d/b/a GlobalVRS.

9. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[11] 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.[12] 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.[13]

---

[6] 5 U.S.C. § 604(a)(3).

[7] *Id.* § 604(a)(4).

[8] *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] 15 U.S.C. § 632.

[11] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[12] *Id.*

[13] *Id.*

The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[14] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[15] Of those firms, 1,039 had revenue of less than $25 million.[16] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The amended rules adopted in the *Report and Order* modify the reporting, recordkeeping or other compliance obligations of certain small and other entities that provide VRS and are compensated from the Interstate TRS Fund. The Commission is not in a position to determine whether these new rules will require small entities to hire attorneys, engineers, consultants, or other professionals, but we note that the adopted rules primarily build upon existing compliance requirements VRS providers already perform.

11. In amending its rules on VRS providers' employment of CAs working at home, the Commission makes those rules less restrictive, increasing from 50% to 80% the percentage of a VRS provider's monthly call minutes that may be handled by at-home CAs. The rule's recordkeeping and reporting requirements, which require that records be kept on home workstations and that calls handled at home be identified in a provider's monthly call detail reports, are not changed.

12. The Commission also adopted a rule change removing the prior prohibition on VRS providers' employment of contract CAs and permitting contract CAs to handle up to 30% of a provider's total monthly call minutes. VRS providers who exercise this new option to employ contract CAs will be required to maintain records of interpretation services provided by contractors; identify, in their call detail reports, the VRS minutes handled by contract CAs; and include contractor data in their semiannual call center reports.

13. Additionally, the Commission codifies its Declaratory Ruling allowing VRS providers to be compensated from the TRS Fund when VRS users make calls to the United States from foreign locations while traveling for a period of up to one year,[17] provided that VRS users notify their default VRS providers of their travel plans any time before they start making such calls. As an exception to the one year limitation on each travel period, Federal employees, contractors, and their immediate family members who are stationed abroad can make VRS calls from foreign locations for the duration of their service assignment (plus an additional 90 days) after notifying their default VRS provider of such assignment. The amended rule includes modified recordkeeping and reporting requirements regarding these less restrictive requirements. Commenters on the proposed rule change universally supported these revisions.

14. Consistent with the above discussion, we believe that any costs or administrative burdens associated with these rule changes will not unduly burden small entities, and that any additional burdens are outweighed by the benefits of removing unnecessary restrictions on VRS providers and users.

---

[14] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[15] *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.

[16] *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.

[17] *See Notice*, paras. 51-54; *June 22 Ruling*, paras. 67-70.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. 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."[18]

16. Through comments provided during the rulemaking proceeding, the Commission has considered various proposals from small and other entities. Additionally, the Commission has considered alternative proposals and weighed their benefits against their potential costs to small and other entities. The adopted rules largely reflect consensus from those commenters and efforts to reduce burdens on small and other entities. The rule changes adopted in the *Report and Order* allow VRS providers greater flexibility in offering improved service to consumers, particularly in the areas of increasing work-from home capabilities for CAs, increased use of contract CAs and in revisions to international calling restrictions.

17. *CAs working from home*. The increase in the cap on monthly call minutes that may be handled by CAs working at home is designed to increase the pool of ASL interpreters available and willing to work as a VRS CA. Participation in the at-home call-handling program would continue to be optional for VRS providers. Small VRS providers will benefit from this rule change as it enlarges the pool of qualified ASL interpreters from which they can hire CAs. Further, the associated regulatory requirements are already required as part of the at-home call-handling program and have been found necessary to prevent waste, fraud, and abuse of the TRS Fund by ensuring that CAs are subject to proper supervision and accountability. The Commission considered proposals such as unlimited at-home call handling, but rejected it because of the need to ensure that each provider will continue to maintain sufficient call center staffing so that newly hired or inexperienced CAs can benefit from in-person supervision or mentoring by CAs with VRS experience.

18. *Use of contract CAs.* As with the cap increase for monthly minutes for at-home CAs, the rule modification to permit VRS providers to hire contract CAs is also designed to increase the pool of American Sign Language interpreters available and willing to work as VRS CAs. Hiring contract CAs, which will be optional for VRS providers, will provide flexibility to small entities seeking to control their staffing costs. While additional reporting and recordkeeping requirements will apply to VRS providers of all sizes that are using contract CAs, these steps are necessary to prevent waste, fraud, and abuse of the TRS Fund by ensuring that contract CAs are subject to proper supervision and accountability.

19. *International calls.* The codification of the one-year travel period for which VRS users may make compensated calls to the United States from foreign locations includes a modification of an existing rule requiring that VRS providers maintain information on VRS users who are traveling abroad. This tracking of data is an essential part of VRS providers' ability to obtain TRS Fund compensation. This codification through the adopted rules formalizes and provides clarity on the compliance obligations of VRS providers. The rule amendments also allow compensation for VRS calls placed to the United States by federal military, employees, contractors, and their immediate family members during their tours of duty abroad, even if longer than one year. The requirements as modified are necessary to prevent waste, fraud, and abuse of the TRS Fund by ensuring that only U.S. residents are permitted to make VRS calls to the United States from abroad. As an alternative, the Commission considered expanding the exception to include international calls placed by U.S. private-sector employees (and accompanying family members) asked to work abroad by their U.S employers; however, such a rule would lead to a more complex enforcement process and, by extension, create significant economic burdens for small entities that may lack the financial resources to effectively comply.

[18] 5 U.S.C. § 604(a)(6).

20. The Commission continues to adopt measures improving the effectiveness of VRS providers supported by the TRS Fund while remaining vigilant against potential waste, fraud and abuse. While doing so, the Commission recognizes small entities may incur costs, and seeks to reduce those costs if possible while providing benefits to the public that outweigh those costs.

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

In the Matter of	)	
	)	
2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 18-349

REPORT AND ORDER

Adopted: December 22, 2023 **Released: December 26, 2023**

By the Commission: Chairwoman Rosenworcel issuing a separate statement. Commissioners Carr and Simington dissenting and issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. With this Report and Order (Order), we bring to a close the 2018 Quadrennial Review proceeding.[1] In this Order, we retain the existing media ownership rules and adopt minor modifications that better tailor them to the current media marketplace. The record of this proceeding demonstrates that while the media industry has experienced both unforeseen challenges and substantial changes since the last quadrennial review, broadcasters retain a uniquely important role serving the American public in their local communities. The COVID-19 pandemic has underscored the importance of readily available and easily accessible news and information at the local community level, for which broadcast outlets remain a critical source. Despite the proliferation of new forms and sources of programming, broadcast television and radio remain essential to achieving the Commission's goals of competition, localism, and viewpoint diversity.

2. Based on our careful review of the record, we find that our existing rules, with some minor modifications, remain necessary in the public interest. Specifically, we retain the Dual Network Rule and the Local Radio Ownership Rule, the latter of which we modify only to make permanent the interim contour-overlap methodology long used to determine ownership limits in areas outside the boundaries of defined Nielsen Audio Metro markets and in Puerto Rico. We likewise retain the Local Television Ownership Rule with modest adjustments to reflect changes that have occurred in the television marketplace. The existing Local Television Ownership Rule ensures competition among local broadcasters while allowing for flexibility should the circumstances of local markets justify it. Accordingly, today we update the methodology for determining station ranking within a market to better reflect current industry practices, and we expand the existing prohibition on use of affiliation to circumvent the restriction on acquiring a second top-four ranked station in a market. We find that the modifications adopted today will enable the Commission to promote competition, localism, and viewpoint diversity more effectively going forward.

II. BACKGROUND

3. Consistent with the statutory requirement directing the Commission to review its media ownership every four years, the Commission initiated this Quadrennial Review on December 12, 2018, by adopting a Notice of Proposed Rulemaking (*NPRM*).[2] In the *NPRM*, the Commission sought comment on whether the three media ownership rules subject to this review—the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule—remain necessary in the public interest in their current forms or whether the rules should be modified or eliminated.[3]

4. At the time the *NPRM* was released, litigation was still pending as a result of the Report and Order that concluded the 2010 and 2014 Quadrennial Reviews (*2010/2014 Quadrennial Review Order*) and a subsequent Order on Reconsideration (*2010/2014 Quadrennial Review Order on Reconsideration*).[4] In the *2010/2014 Quadrennial Review Order*, the Commission resolved its 2010 and

---

[1] *See 2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 33 FCC Rcd 12111 (2018) (*2018 Quadrennial Review NPRM*); *Media Bureau Seeks to Update Public Record in the 2018 Quadrennial Regulatory Review*, Public Notice, 36 FCC Rcd 9363 (MB 2021) (*2021 Update Public Notice*).

[2] *See 2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12111, para. 1. The NPRM also incorporated comments from the July 2018 Public Notice that sought comment on the status of competition in the marketplace for delivery of audio programming. These comments are addressed below in our discussion of the Local Radio Ownership Rule. *See id.* at 12120-21, para. 20. *See also Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming*, MB Docket No. 18-227, Public Notice, 33 FCC Rcd 7316 (2018).

[3] *See 2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12111-12, para. 1.

[4] *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket Nos. 14-50 et al., Second Report and Order, 31 FCC Rcd 9864, 9960-10008, paras. 234-336 (2016) (*2010/2014 Quadrennial Review*

(continued….)

2014 proceedings and kept five structural ownership rules largely intact: the Local Television Ownership Rule, the Local Radio Ownership Rule, the Newspaper/Broadcast Cross-Ownership Rule, the Radio/Television Cross-Ownership Rule, and the Dual Network Rule. In addition, the *2010/2014 Quadrennial Review Order* reinstated the Commission's previous revenue-based eligible entity standard as a means to promote broadcast ownership by small businesses and new entrants.[5] Several parties filed Petitions for Reconsideration of the *2010/2014 Quadrennial Review*[6] while others sought judicial review in the D.C. Circuit Court of Appeals and the Third Circuit Court of Appeals.[7]

5. On November 16, 2017, the Commission responded to the Petitions for Reconsideration and adopted an *2010/2014 Quadrennial Review Order on Reconsideration*, which, among other things, reversed certain elements of the *2010/2014 Quadrennial Review Order*, most notably by repealing the Newspaper/Broadcast Cross-Ownership Rule and the Radio/Television Cross-Ownership Rule and revising the Local Television Ownership Rule.[8] Specifically, the Commission revised the Local Television Ownership Rule by eliminating the prior Eight-Voices Test and adopting a case-by-case review process for proposed transactions involving new combinations of top-four rated stations in a local market.[9] Though it declined to revise the market definition relied on in the Local Radio Ownership Rule, the Commission adopted a presumption for certain transactions involving embedded markets.[10] The Commission also eliminated the Television Joint Sales Agreement Attribution Rule[11] readopted in the

(Continued from previous page)
Order); *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket Nos. 14-50 et al., Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017) (*2010/2014 Quadrennial Review Order on Reconsideration*).

[5] Under this standard an "eligible entity" is any entity that qualifies as a small business under revenue-based standards established by the Small Business Administration. *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9979-84, paras. 279-286. In turn, the Commission's rules afford such qualified eligible entities additional flexibility, for example, by extending the time required to construct a broadcast facility or raising the threshold at which ownership strictures are triggered. *See, e.g.*, 47 CFR § 73.3598(a); 73.3555, Note 2(i)(2).

[6] *See* Petition of Connoisseur Media for Reconsideration of the 2010/2014 Quadrennial Review Order, MB Docket Nos. 14-50 et al. (filed Dec. 1, 2016) (Connoisseur Petition); Petition of the National Association of Broadcasters for Reconsideration of the 2010/2014 Quadrennial Review Order, MB Docket Nos. 14-50 et al. (filed Dec. 1, 2016) (NAB Petition); Petition of Nexstar Broadcasting, Inc. for Reconsideration of the 2010/2014 Quadrennial Review Order, MB Docket Nos. 14-50 et al. (filed Dec. 1, 2016) (Nexstar Petition).

[7] *See* Petition for Review of Prometheus Radio Project and Media Mobilizing Project, *Prometheus Radio Project et al. v. FCC*, No. 16-4046, Document No. 003112457854 (3d Cir. Nov. 3, 2016); Petition for Review of Multicultural Media, Telecom and Internet Council and the National Association of Black Owned Broadcasters, *Multicultural Media, Telecom and Internet Council et al. v. FCC*, No. 16-1398, Document No. 1646418 (D.C. Cir. Nov. 15, 2016); Petition for Review of News Media Alliance, *News Media Alliance v. FCC*, No. 16-1395, Document No. 1646214 (D.C. Cir. Nov. 14, 2016); Petition for Review of Bonneville International Corporation, *Bonneville Intl. Corp. v. FCC*, No. 16-1452, Document No. 1653313 (D.C. Cir. Dec. 28, 2016); Petition for Review of The Scranton Times, L.P., *The Scranton Times, L.P. v FCC*, No. 16-451, Document No. 1653302 (D.C. Cir. Dec. 28, 2016).

[8] *See 2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9803, para. 2.

[9] *Id.* at 9831, para. 66.

[10] *Id.* at 9841, para. 86. Embedded markets are smaller markets that are located within the boundaries of a larger Nielsen Audio Metro market. The *Order on Reconsideration* adopted a narrow presumption in favor of a waiver of the rule in certain circumstances involving the New York City and Washington, DC markets.

[11] *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket No. 14-50, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4527-45, paras. 340-72 (2014). A joint sales agreement (JSA) is an agreement that authorizes one station (the broker or the brokering station) to sell some or all of the advertising time on another station (the brokered station). The previous rule, adopted in 2014 and then
(continued….)

2010/2014 Quadrennial Review Order,[12] while retaining the Shared Services Agreement disclosure requirements adopted therein.[13] Further, the Commission adopted an Incubator Program and sought comment on how to structure and implement the program.[14]

6. On August 2, 2018, after notice and comment, including consultation with the Commission's Advisory Committee on Diversity and Digital Empowerment (ACDDE), the Commission adopted the *Incubator Order*, which established an incubator program for radio broadcasters designed to increase diversity by addressing the barriers to new and diverse station ownership, in particular lack of access to capital and operational expertise.[15] The *Incubator Order* provided a structure whereby established AM and FM broadcasters could offer financial, technical, and operational assistance to new and diverse entrants.[16] In return for successful incubation, established broadcasters could receive a limited waiver of the Local Radio Ownership Rule, allowing them to acquire another station in a market that would otherwise be prohibited by the Local Radio Ownership Rule, provided the market is "comparable" to the market in which the broadcaster successfully incubates another station.[17]

7. Several parties sought review of the *2010/2014 Quadrennial Review Order on Reconsideration* in the D.C. Circuit and Third Circuit Court of Appeals.[18] These petitions were consolidated before the Third Circuit Court of Appeals with the previously filed reviews of the *2010/2014 Quadrennial Review Order*.[19] On September 23, 2019, the Third Circuit vacated and remanded the bulk of the Commission's actions in the *2010/2014 Quadrennial Review Order on Reconsideration*, opining

(Continued from previous page)
re-adopted in 2016, stated that television JSAs that involve the sale of more than 15 percent of the weekly advertising time of a station (brokered station) by another in-market station (brokering station) are attributable under the Commission's ownership rules.

[12] In *Prometheus Radio Project v. FCC*, 824 F.3d 33, 60 (3d Cir. 2016) (*Prometheus III*), the Third Circuit vacated the Television JSA Attribution Rule that was adopted in 2014, stating that the Commission first needed to determine whether the Local Television Ownership Rule remained necessary pursuant to Section 202(h). With its determination in the *2010/2014 Quadrennial Review Order* that the Local Television Ownership Rule remained necessary, the Commission reinstated the Television JSA Attribution Rule that the Third Circuit previously vacated. *See 2010/2014 Quadrennial Review Order, 31 FCC Rcd* at 9888-90, paras. 60-64.

[13] *See 2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9846, para. 96.

[14] *See id.* at 9857, para. 121.

[15] *See Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, MB Docket No. 17-289, Report and Order, 33 FCC Rcd 7911 (2018) (*Incubator Order*).

[16] *Id.* at 7913, para. 6.

[17] *Id.* at 7913-14, para. 9. The Commission considered a market to be "comparable" to the market where the incubation relationship occurred "if, at the time the incubating entity seeks to use the reward waiver, the chosen market and the incubated market fall within the same market size tier under our Local Radio Ownership Rule and the number of independent owners of full-service, commercial and noncommercial radio stations in the chosen market is no fewer than the number of such owners that were in the incubation market at the time the parties submitted their incubation proposal to the Commission." *See id.* at 7938, para. 67.

[18] *See* Petition for Review of Prometheus Radio Project and Media Mobilizing Project, *Prometheus Radio Project and Media Mobilizing Project v. FCC*, No. 18-1092, Document No. 003112828343 (3d Cir. Jan. 16, 2018); Petition for Review of Independent Television Group, *Independent Television Group v. FCC*, No. 18-1050, Document No. 1719478 (D.C. Cir. Feb. 20, 2018); Petition for Review of Multicultural Media, Telecom and Internet Council, Inc. and the National Association of Black-Owned Broadcasters, *Multicultural Media, Telecom and Internet Council and National Association of Black-Owned Broadcasters v. FCC*, No. 18-1071, Document No. 1721291 (D.C. Cir. Mar. 7, 2018); Petition for Review of Free Press et al., *Free Press et al. v. FCC*, No. 18-1072, Document No. 1722268 (D.C. Cir. Mar. 8, 2018).

[19] *See* Order, *Prometheus Radio Project et al. v. FCC*, No. 17-1107, Document No. 003112514755 (3d Cir. Jan. 18, 2017).

that the Commission had failed to consider adequately how the rule changes would impact female and minority ownership.[20] On December 20, 2019, the Media Bureau issued an Order reinstating the rules as set forth in the *2010/2014 Quadrennial Review Order*.[21]

8. In the wake of the Third Circuit's decision, the Commission and broadcast industry petitioners filed separate Petitions for Writ of Certiorari before the Supreme Court, each asking the Supreme Court to review and overturn the Third Circuit's decision on different grounds.[22] On October 2, 2020, the Supreme Court granted the petitions for a writ of certiorari and consolidated the cases, ultimately hearing oral argument on January 19, 2021. On April 1, 2021, the Supreme Court, in a unanimous opinion, upheld the rules as adopted and eliminated in the Commission's *2010/2014 Quadrennial Review Order on Reconsideration*. The Supreme Court reaffirmed the Commission's "broad authority to regulate broadcast media in the public interest"[23] and stated that under the Administrative Procedure Act's arbitrary and capricious standard, a court may not substitute its own policy judgment for that of the agency so long as the action is reasonable and reasonably explained.[24] In this instance, the Supreme Court found that the Commission appropriately analyzed the evidence and data it had before it, and came to a reasonable conclusion that the rules no longer served the public interest.[25]

---

[20] *Prometheus Radio Project v. Federal Communications Commission*, 939 F.3d 567, 584 (3d Cir. 2019) (*Prometheus IV*). Specifically, the Third Circuit found that the Commission's decision to retain the Local Television Ownership Rule's Top-Four Prohibition in the *2010/2014 Quadrennial Review Order on Reconsideration* was not arbitrary and capricious. *See id.* at 581. It also held that the Commission's definition of "comparable markets" in the *Incubator Order* was adequately noticed and not arbitrary and capricious. *See id.* at 582. It also declined to hold that the Commission unreasonably delayed action on proposals to adopt a procurement rule to the broadcast industry. *See id. IV* at 582. However, the Third Circuit held that the Commission had not adequately considered the impact its rule changes could have on female and minority ownership in the *2010/2014 Quadrennial Review Order on Reconsideration*. *See id.* at 584. The Third Circuit pointed to the Commission's failure to provide any data on how female ownership would be impacted, identifying this as a failure by the Commission "to consider an important aspect of the problem." *See id.* at 585-86. The Third Circuit also took issue with the Commission's reliance on Form 323 and NTIA data to conclude that minority ownership would not be impacted by loosening the rules – critiquing the Commission's analysis of the data as "woefully simplistic." *See Prometheus IV*, 939 F.3d at 586. The Third Circuit was not persuaded by the Commission's argument that it was under no statutory obligation to produce empirical evidence and that it must only "justify its rule with a reasoned explanation." *See id.* at 587. Rather, the Third Circuit criticized the Commission for "confin[ing] its reasoning to an insubstantial statistical analysis of unreliable data" without analyzing gender data. *See id.* Further, the Third Circuit disagreed with the Commission that female and minority ownership was just one of the competing interests that the Commission must consider, opining that female and minority ownership was "an important aspect of the problem" and that any trade-off between the interests must come with a meaningful evaluation of the effect the change may have on the interests. *See id.*

[21] *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50 et al., Order, 34 FCC Rcd 12360 (MB 2019).

[22] *See* Petition for a writ of certiorari of the Federal Communications Commission, *Prometheus Radio Project et al. v. FCC,* Docket No. No. 19-1231, at 14-15 filed April 17, 2020 (*Commission Petition*) (arguing that the Commission was entitled to deference and that the Third Circuit was requiring it to meet an imprecise data threshold); Petition for a writ of certiorari of National Association of Broadcasters, et al., *Prometheus Radio Project et al. v. FCC,* Docket No. No. 19-1241, filed April 17, 2020; certiorari granted October 2, 2020 (*Industry Petition*) (arguing that the Third Circuit erred by raising atextual concerns of female and minority ownership above concerns over competition).

[23] *See FCC v. Prometheus Radio Project*, 141 S.Ct. 1150, 1154 (2021) (*FCC v. Prometheus*).

[24] *Id.* at 1158.

[25] *Id.* at 1159-1160. The Supreme Court also opined that it is not unusual for agencies to lack perfect empirical and statistical data in their day-to-day decision making and that the "the APA imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies." *Id.* at 1160. The Supreme Court further stated

(continued….)

Finally, the Court noted that it did not reach, and therefore left undisturbed, issues regarding whether section 202(h) authorizes or requires the Commission to consider, or prohibits the Commission from considering, minority and female ownership when it conducts its quadrennial reviews.[26]

9. Accordingly, the Supreme Court upheld the Commission's decision to eliminate the Newspaper/Broadcast Cross-Ownership and Radio/Television Cross-Ownership Rules and revise the Local Television Ownership Rule. It also upheld the Commission's decision to eliminate the Television Joint Sales Agreement Attribution Rule while retaining the Shared Services Agreement disclosure requirements. The Court likewise upheld the Commission's decisions on the "eligible entity" definition and the creation of a diversity incubator program.

10. On June 4, 2021, the Media Bureau adopted an order reinstating the *2010/2014 Quadrennial Review Order on Reconsideration*, the *Incubator Order*, as well as the revenue-based eligible entity definition from the *2010/2014 Quadrennial Review Order*.[27] Moreover, cognizant of how much time had passed since the original comment period closed, the Bureau released a public notice seeking to refresh the record in the 2018 Quadrennial Review proceeding and received extensive comment.[28] The Bureau asked commenters to review and comment on any materials that had been filed in the proceeding since the original comment period closed.[29] The Media Bureau also sought any new and relevant information, including new empirical and statistical evidence, proposals, and detailed analysis.[30] Additionally, the Bureau sought comment on how the media marketplace had evolved since early 2019 and whether new technological innovations had spurred noticeable trends or changed industry practices,[31] as well as how any trends had impacted how consumers obtain local and national news and information.[32]

(Continued from previous page)
that neither the Telecommunications Act nor any other statute requires the Commission to conduct its own studies before exercising its discretion under section 202(h). *See id.*

[26] *Id.* at 1160 n.3.

[27] *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50 et al., Order, 36 FCC Rcd 9354 (MB 2021).

[28] *See 2021 Update Public Notice*, 36 FCC Rcd at 9363-64. A few commenters in the 2022 Quadrennial Review proceeding (MB Docket No. 22-459) also submitted those filings in this proceeding after the official close of the comment cycle. *See* American Television Alliance (ATVA) Comments, MB Docket No. 22-459 (rec. Mar. 3, 2023); National Association of Black Owned Broadcasters (NABOB) Comments, MB Docket No. 22-459 (rec. Mar. 3, 2023); ATVA Reply Comments, MB Docket No. 22-459 (rec. Mar. 20, 2023); iHeartCommunications, Inc. Reply Comments, MB Docket No. 22-459 (rec. Mar. 20, 2023); Letter from David Oxenford and Keenan Adamchak, Counsel for Joint Commenters, Connoisseur Media, LLC et al., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349 (filed Nov. 9, 2023) (attaching their 2022 Quadrennial Review comments and reply comments). Nonetheless, we have reviewed those submissions and determined that they do not raise new legal or policy issues within the scope of this proceeding and so do not affect our conclusions in this docket. We will consider those filings further during the 2022 Quadrennial Review.

[29] *See 2021 Update Public Notice*, 36 FCC Rcd at 9366.

[30] *Id.*

[31] *Id.*

[32] *See id.* at 9367. The Media Bureau also sought comment on what impact, if any, the completion of the 2017 Incentive Auction and related repack of the television spectrum had on the industry as well as any legal or economic factors that should be considered in the context of its ongoing review. *Id.* at 9367-68.

III. STANDARD OF REVIEW

A. Introduction

11. We reaffirm in this proceeding the long-standing framework under section 202(h) of the Telecommunications Act of 1996, pursuant to which we examine the rules subject to the Quadrennial Review to determine if they remain necessary in service of our three traditional policy goals—competition, localism, and viewpoint diversity. We find that the language of the statute, judicial precedent, and the record in this proceeding support retaining our traditional multi-factor approach, and we reject suggestions that we re-interpret the statute as requiring solely a competition-centric review.[33] In addition, consistent with past Commission determinations, we find that section 202(h) grants us discretion to make rules more or less stringent to ensure they serve the public interest. We also conclude that under this approach, and consistent with past reviews, we will consider whether our existing rules are consistent with minority and female ownership and to evaluate potential harms, if any, to minority and female ownership that would result from any changes we make thereto.

B. Background

12. As stated above, the media ownership rules subject to this Quadrennial Review are the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule.[34] Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review these rules every four years to determine whether they "are necessary in the public interest as the result of competition" and to "repeal or modify any regulation [the Commission] determines to be no longer in the public interest."[35] Consistent with the guidance of the Third Circuit, the Commission has previously considered the language "necessary in the public interest" to be a '"plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable.'"[36] Furthermore, the Commission has applied the principle that there is no "presumption in favor of repealing or modifying the ownership rules,"[37] but rather, that the Commission has the discretion "to make [the rules] more or less stringent."[38] Accordingly, the Commission's review under section 202(h) focuses on

---

[33] *See, e.g., 2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9870, para. 16 (reiterating that the Commission's "longstanding policy goals of competition, localism, and diversity represent the appropriate framework within which to evaluate . . . [the] media ownership rules."); *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13627-45, paras. 17-79 (2003) (*2002 Biennial Review Order*) (containing a detailed analysis of the policy goals of competition, localism, and diversity).

[34] These rules are found, respectively, at 47 CFR §§ 73.3555(a), (b), and 47 CFR § 73.658(g).

[35] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) (1996 Act); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (Appropriations Act) (amending sections 202(c) and 202(h) of the 1996 Act). In 2004, Congress revised the then-biennial review requirement to require such reviews quadrennially. *See* Appropriations Act § 629, 118 Stat. at 100.

[36] *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 394 (3d Cir. 2004) (*Prometheus I*). The court also concluded that the Commission is required "to take a fresh look at its regulations periodically in order to ensure that they remain 'necessary in the public interest.'" *Id.* at 391.

[37] The court in *Prometheus I* determined that section 202(h) does not carry a presumption in favor of deregulation. *See Prometheus I*, 373 F.3d at 395 (rejecting the "misguided" findings in *Fox* and *Sinclair* regarding a "deregulatory presumption" in section 202(h)); *see also Prometheus Radio Project v. FCC*, 652 F.3d 431, 444-45 (3d Cir. 2011) (*Prometheus II*) (confirming the standard of review under section 202(h) adopted in *Prometheus I*).

[38] *Prometheus I*, 372 F.3d at 395; *see also Prometheus II*, 652 F.3d at 445. *See also 2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9866-67, para. 6; *2002 Biennial Review Order*, 18 FCC Rcd at 13722-23, para. 269 (noting that irrespective of whether section 202(h) creates a presumption that requires the Commission to justify the retention of a rule, any such presumption does not have the "effect of limiting the types of changes that [the Commission] may conclude are in the public interest").

determining whether there is a reasoned basis for retaining, repealing, or modifying each rule consistent with our long-standing public interest goals of competition, localism, and viewpoint diversity.[39]

13. Parties presented arguments related to the proper interpretation of section 202(h) to the Supreme Court in *FCC v. Prometheus*.[40] Subsequent to the Supreme Court's decision, in the *2021 Update Public Notice*, the Media Bureau sought comment on various issues, including whether there were any legal factors that the Commission should consider as part of its 2018 Quadrennial Review.[41] In response, several commenters opine regarding how the Commission should interpret section 202(h) going forward in the wake of *FCC v. Prometheus,* as well as their views regarding the impact of the Supreme Court's decision on the Commission's consideration of minority and female ownership in this proceeding.

C. Discussion

14. As we have many times in the past, and consistent with Congress's directive in section 202(h), we review the rules that are subject to the Quadrennial Review to determine whether they are necessary in the public interest as the result of competition and with the express statutory purpose of repealing or modifying any rule that is no longer in the public interest. In conducting that review, our determination as to whether the rules remain necessary in the public interest focuses primarily on our longstanding policy goals of competition, localism, and viewpoint diversity. In addition to those core policy goals, the Commission has also considered whether its rules are consistent with, and the effect, if any, changes to its rules would have on, minority and female ownership of broadcast stations, and we do so as well.

15. As noted above, the Supreme Court did not consider the Third Circuit's prior conclusions regarding the interpretation of section 202(h)—in fact, the Supreme Court explicitly declined to reach such issues. Therefore, as an initial matter, the Third Circuit's guidance, as well as the Commission's application of that guidance in past quadrennial reviews, continues to inform our analysis. Consistent with that precedent, and as discussed in more detail below, we reject calls to depart from precedent or to reinterpret section 202(h) in a manner that would abandon our traditional multi-factor framework in favor

[39] *See Prometheus I*, 373 F.3d at 395; *Prometheus II*, 652 F.3d at 445.

[40] *See, e.g.*, National Association of Broadcasters, et al. Petition for Writ of Certiorari, Supreme Court Docket No. 19-1241, at 15-17 (filed Apr. 17, 2020) (arguing that the purpose of section 202(h) is "to continue the process of deregulation" that "Congress set in motion" through the Act and that that the Third Circuit was raising atextual concerns above competition); Prometheus Radio Project, et al. Brief in Opposition, Supreme Court Docket Nos. 19-1231, 19-1241, at 15-16 (filed Jul. 21, 2020) (disagreeing that diversity is an atextual consideration in section 202(h), but rather part of a statutorily mandated analysis of whether the rules remain in the public interest); International Center for Law and Economics Amicus Brief, Supreme Court Docket No. 19-1241, at 4-5 (filed May 22, 2020) (contending that intent of section 202(h) was to establish "a pro-competitive, deregulatory national policy framework"); Southeastern Legal Foundation Amicus Brief, Supreme Court Docket Nos. 19-1231, 19-1241, at 3 (filed Nov. 23, 2020) (arguing Third Circuit erred by concluding that the section 202(h) public interest analysis reached beyond competition); Americans for Prosperity Amicus Brief, Supreme Court Docket Nos. 19-1231, 19-1241, at 8-9 (filed Nov. 23, 2020) (arguing the Third Circuit exceeded their judicial function by raising atextual concerns); Select Members of Congress Amicus Brief, Supreme Court Docket Nos. 19-1231, 19-1241, at 5-7 (filed Dec. 23, 2020) (writing that Congress has long-held that diversity is a crucial part of the public interest analysis and the Third Circuit correctly held section 202(h) should be interpreted broadly to include a review of any impact to female and minority ownership); Former FCC Commissioners Amicus Brief, Supreme Court Docket Nos. 19-1231, 19-1241, at 19-20 (filed Dec. 23, 2020) (arguing ownership diversity is a long-held part of the Commission's public interest analysis and the passage of section 202(h) did not change that analysis); The Leadership Conference on Civil and Human Rights, et al. Amicus Brief, Supreme Court Docket Nos. 19-1231, 19-1241, at 7-8 (filed Dec. 23, 2020) (arguing the Commission has adopted ownership diversity as an important public interest consideration and it cannot analyze based solely on competition).

[41] *2021 Update Public Notice*, 36 FCC Rcd at 9368.

of an approach focused solely on competition or that would permit only the relaxation or elimination of the rules.

16. First, consistent with the Third Circuit's guidance in *Prometheus I* and Commission precedent, we continue to find that "necessary in the public interest" is a "'plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable.'"[42] The Commission has applied this interpretation repeatedly in its previous quadrennial reviews, and we continue to find that this understanding of "necessary in the public interest" is the most reasonable and logical interpretation.[43]

17. Second, we decline NAB's invitation to re-interpret section 202(h) in order to find a presumption in favor of deregulation, and we disagree with the assertion that section 202(h) only allows for the repeal or relaxation of a rule.[44] Rather, as we have concluded in prior quadrennial reviews and the courts have upheld, we find that the Commission may "make [the rules] more or less stringent" after reviewing and considering the state of competition in the media marketplace.[45] As the Third Circuit held in *Prometheus I,* section 202(h) does not carry a presumption in favor of deregulation, nor is it a "one-way ratchet."[46] We continue to find that the iterative process established by section 202(h) compels us to "repeal or modify any regulation [the Commission] determines to be no longer in the public interest."[47] Based on the plain language of this directive, and the use of the word "modify," we reiterate that the Commission is not merely relegated to repealing or relaxing a rule that, over time, has become unnecessary or obsolete. Instead, where an existing rule as written is "no longer in the public interest," the Commission can modify that rule (for instance, by making it more or less restrictive, changing the structure of the rule, or closing loopholes) to ensure that the rule better serves the public interest.[48] Contrary to NAB's suggestion, the logic of a deregulatory presumption undercuts the references in section 202(h), in both its text and legislative history, to evaluating the rules in the public interest. We further believe that it would be counter to the public interest to deregulate by either repeal, relaxation, or

---

[42] *See Prometheus I*, 372 F.3d at 394. The court also concluded that the Commission is required "to take a fresh look at its regulations periodically in order to ensure that they remain 'necessary in the public interest.'" *Id.* at 391.

[43] *See, e.g., 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 23 FCC Rcd 2010, 2017, para. 10 (2008) (*2006 Quadrennial Review Order*) (applying the interpretation that "necessary in the public interest" is a "'plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable'"); *2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9866-67, para. 6 (reiterating the Third Circuit's determination about the meaning of "necessary in the public interest").

[44] *See* National Association of Broadcasters (NAB) Comments, MB Docket No. 18-349, at 38-55 (rec. Sept. 2, 2021) (NAB Update Comments). In *Prometheus I*, the Third Circuit also noted the D.C. Circuit's conclusion in *Cellco*, which clarified and contrasted the D.C. Circuit's earlier holdings in *Fox* and *Sinclair* that section 202(h) carries with it with a presumption of deregulation such that the Commission should repeal or modify the rules. *See Prometheus I*, 373 F.3d at 395 (rejecting the "misguided" findings in *Fox* and *Sinclair* regarding a "deregulatory presumption" in section 202(h)); *see also Prometheus II*, 652 F.3d at 444-45 (confirming the standard of review under section 202(h) adopted in *Prometheus I*). *See also Cellco Partnership v. Federal Communications Commission,* 357 F.3d 88, 97-99 (D.C. Cir. 2004).

[45] *See Prometheus I*, 372 F.3d at 395; *see also Prometheus II*, 652 F.3d at 445.

[46] *See Prometheus I*, 373 F.3d at 395; *see also Prometheus II*, 652 F.3d at 444-45.

[47] *See, e.g., 2006 Quadrennial Review Order*, 23 FCC Rcd at 2017-18, paras. 10-11.

[48] *See 2006 Quadrennial Review Order*, 23 FCC Rcd 2010, 2018-19, para. 13 (stating that "we make a modest change in the rule that has the primary effect of presuming that certain limited combinations of newspaper and broadcast facilities in the largest markets are in the public interest."); *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13691, para. 185 (choosing to modify local TV ownership restrictions, rather than eliminate them completely, in order to best serve the public interest).

inaction (e.g., by ignoring competitive developments that run counter to the public interest) to the point that a few entities may dominate a media market. There is no indication that it was Congress's intention when it passed the 1996 Telecommunications Act to adopt a presumption in favor of deregulation, or to alter the then established principle under the Administrative Procedure Act (APA) that if there is any presumption, it is not against regulation but against "changes in current policy that are not justified by the rulemaking record."[49]

18. Third, we agree with commenters who assert that *FCC v. Prometheus* reaffirmed our broad statutory authority to regulate broadcast stations in the public interest.[50] As the Supreme Court noted, agencies are entitled to deference assuming that they act in a "zone of reasonableness" and have "reasonably considered the relevant issues and reasonably explained the decision."[51] The Supreme Court held further in *City of Arlington, Tex. v. FCC,* that any statutory ambiguities should be "resolved, first and foremost, by the agency" so long as the agency stays "within the bounds of reasonable interpretation."[52] Accordingly, we conclude that the Commission has considerable latitude in our interpretation and application of section 202(h), and the Supreme Court's recent decision in *FCC v. Prometheus* only affirms this conclusion by underscoring the Commission's broad discretion.

19. Accordingly, we reaffirm that our assessment of whether the structural ownership rules remain in the public interest continues to focus on the Commission's longstanding policy goals of competition, localism, and viewpoint diversity. The Commission has long held that the public interest is furthered by promoting the principles of competition, localism, and viewpoint diversity to ensure that a small number of entities do not dominate a particular media market, a holding we reaffirm in this current Quadrennial Review.[53] Indeed, as early as the 1998 Biennial Review (the first review required by section 202(h)), the Commission rejected calls by commenters to consider only competition in the context of section 202(h) reviews.[54] Looking at the statutory language of section 202(h), the Commission noted at the time that the phrases "necessary in the public interest" and "as the result of competition" could not be separated and, read together, the language "appears to focus on whether the public interest basis for the rule has changed as a result of competition, and does not appear to be intended to limit the factors we

[49] *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.,* 463 U.S. 29, 41 (1983). As the Court noted, the APA "suggests no difference in the scope of judicial review depending upon the nature of the agency's action," and that ". . . the forces of change do not always or necessarily point in the direction of deregulation." *Id. See also Prometheus I*, 372 F.3d at 394-95 (noting that the Commission retains its rulemaking authority and that Congress gave no indication in section 202(h) that it intended to strip the Commission of its power to implement a determination that the public interest calls for a more stringent regulation).

[50] *See* iHeartCommunications, Inc. Comments, MB Docket No. 18-349, at 6 (rec. Sept. 2, 2021) (iHeart Update Comments); National Hispanic Media Coalition (NHMC) Reply Comments, MB Docket No. 18-349, at 5-6 (rec. Oct. 1, 2021) (NHMC Update Reply); musicFIRST Coalition and Future of Music Coalition Reply Comments, MB Docket No. 18-349, at 8 (rec. Oct. 1, 2021) (Music Coalition Update Reply). *See also FCC v. Prometheus* at 1154. *FCC v. Prometheus* was not the first time the Supreme Court found the Commission has broad authority to regulate in the public interest. *See FCC* v. *WNCN Listeners Guild*, 450 U.S. 582 (1981) (holding that the Commission could prioritize different aspects of the public interest when it stated that the Commission is "vested with broad discretion in determining how much weight should be given to that goal [diversity] and what policies should be pursued in promoting it"); *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (finding that "in these circumstances, the Commission was entitled to rely on its judgment based on experience").

[51] *See FCC v. Prometheus*, 141 S.Ct. at 1158.

[52] *See City of Arlington, Tex. v. FCC*, 569 U.S. 290, 296 (2013).

[53] *See FCC v. Prometheus*, 141 S.Ct. at 1155 (citing *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. at 780-81, 808; *2002 Biennial Review Order*, 17 FCC Rcd at 18515-27).

[54] *See 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35*, Biennial Review Report, 15 FCC Rcd 11058, 11063, para. 8 (2000) (*1998 Biennial Review Report*).

should consider."[55] Further, the Commission noted that, in the legislative history of the 1996 Telecommunications Act, Congress expressed diversity concerns regarding the media marketplace.[56] For example, the legislative history highlights the national need to promote "diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity" and twice pairs diversity with competition as factors for the Commission's consideration in its decisions regarding the marketplace.[57]

20. In light of our continued adherence to this approach, and based on the record, our discretion, and the text of section 202(h), we reject calls to revise the Commission's longstanding approach in favor of reading the statute narrowly to focus on, or elevate, either the reference to the "public interest" or the reference to "competition" individually and in the absence of the other.[58] Instead, we agree with commenters who suggest that we embrace a "'plain public interest' standard" that does not place emphasis on one public interest goal over another and continue to read the phrase "necessary in the public interest as the result of competition" in its entirety and in a manner that we find logically marries the two references.[59] We continue to find that such an interpretation appropriately recognizes the importance and meaning of the phrase "necessary in the public interest," which Congress affirmatively included and has long been read to encompass several important public policy goals, alongside the distinct term "competition," which is consistent with the larger thematic context of the 1996 Act.[60] The broader scope of the public interest inquiry is also reflected in the additional language in section 202(h), which defines the inquiry as whether these rules are "no longer in the public interest," a term not limited to a focus on effects on competition.[61] At some point, then, competition might reach a point where, *as the result of* such competition, certain of our rules would be "no longer in the public interest" to achieve the Commission's stated public interest goals. Quadrennial review is the forum in which the Commission takes account of that progress in light of all three of these goals.

---

[55] *Id.*

[56] *See* S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 163 (1996).

[57] *Id.* The Senate Conference Report states that "in the Commission's proceeding to review its television ownership rules generally, the Commission is considering whether generally to allow such local cross ownerships, including combinations of a television station and more than one radio station in the same service. The conferees expect that the Commission's future implementation of its current radio-television waiver policy, as well as any changes to its rules it may adopt in its pending review, will take into account the increased competition and the need for diversity in today's radio marketplace that is the rationale for subsection (d)." It also states that "the Commission may also permit VHF/VHF combinations where it determines that doing so will not harm competition and diversity."

[58] *See* NAB Update Comments at 38-41, 47-52 (asserting that competition is the preeminent factor the Commission is required to consider under section 202(h)); Comments of United Church of Christ, OC Inc., et al., MB Docket No. 18-349,at 13 (rec. Sept. 2, 2021) (UCC Update Comments) (emphasizing the references in section 202(h) to the "public interest"); Music Coalition Update Reply at 7 (asserting that "law and long-standing FCC policy require that the public interest is the sole criteria for applying [Section 202(h)]"); NHMC Update Reply at 6 (urging the Commission to "use its discretion to not eliminate or relax existing rules that are necessary to promote diversity for the public interest").

[59] *See* American Television Alliance (ATVA) Comments, MB Docket No. 18-349, at 25 (rec. Sept. 2, 2021) (ATVA Update Comments); *See* UCC Update Comments at 11-13.

[60] *See infra* note 43 (citing Orders supportive of the Commission's customary interpretation of the terms "necessary in the public interest" and "competition").

[61] Thus, throughout Quadrennial Reviews over the years, the Commission has modified and eliminated rules that it deemed to be "no longer in the public interest." Those inquiries have not been confined to effects on competition, but have included analyses of viewpoint diversity and localism as well. *See, e.g., 2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9806-08, 9824-25, paras. 8-10, 49; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2018-19, para. 13; *2002 Biennial Review Order*, 18 FCC Rcd at 13828, para. 539.

21. Accordingly, we disagree with NAB's interpretation that Congress intended to elevate competition as the "preeminent factor" to guide the Commission's review under section 202(h), and we reject the attempt to revisit this long-resolved issue.[62] We similarly disagree with NAB's contention that the tenets of statutory interpretation, including the reference to competition in section 202(h) (rather than any other specific public interest factors), support its interpretation that the Commission's section 202(h) review should consider competition as the primary factor in evaluating the rules.[63] As noted above, the text of section 202(h) requires the Commission to determine whether our rules remain "necessary in the public interest as the result of competition."[64] Congress envisioned a future where changes in the amount and type of competition could one day render some or all of our structural media ownership rules unnecessary. The crux of the phrase, and indeed of section 202(h), however, is whether these competitive market forces are satisfying the public interest objectives that our rules are intended to serve, such that our rules are "no longer necessary… *as the result* of competition."[65] Ultimately, we cannot ignore the fact that Congress included the words "public interest" in section 202(h), and those words need to be treated as prominently and with equal reverence as the mention of competition.[66] As we discuss in more detail below and with respect to our individual rules, this involves evaluating whether the media marketplace has delivered—and would continue delivering absent our rules—each of the public interest

[62] *See* NAB Update Comments at 38-41, 47-52; NAB Reply Comments, MB Docket No. 18-349, at 11-13 (rec. Oct. 1, 2021) (NAB Update Reply); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President Legal and Regulatory Affair, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 3 n.10 (filed Feb. 16, 2022) (NAB Feb. 16, 2022 *Ex Parte*); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President Legal and Regulatory Affair, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 2 (filed Oct. 30, 2023) (NAB Oct. 30, 2023 *Ex Parte*).

[63] *Id.*

[64] In the past, the Commission has consistently interpreted the reference in section 202(h) to the "public interest" as incorporating our traditional policy objectives under that standard, namely, competition, localism, and viewpoint diversity. *See, e.g., 2010/2014 Quadrennial Review Order*, 31 FCC Rcd 9864, 9870, para. 16; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2016-18, paras. 9-11; *2002 Biennial Review Order*, 18 FCC Rcd at 13627-45, paras. 17-79.

[65] *1998 Biennial Review Report*, 15 FCC Rcd at 11063, para. 8 (finding that the Commission's public interest determination under section 202(h) is "based on an examination of both competition and diversity issues in light of competitive marketplace conditions").

[66] For instance, had Congress wished to do so, it could have omitted the phrase "public interest" and simply directed the Commission to review its rules to determine whether "any such rules are necessary as the result of competition." Instead, Congress elected to include the concept of the "public interest" together with that of competition, knowing full well that service to public interest, convenience, and necessity is *the* foundation of the Commission's rules. And as noted above, it underscored that more general reference to the public interest analysis in describing the inquiry as whether rules are "no longer in the public interest." We conclude that there was a reason Congress used these references to the public interest, and that it is reasonable to interpret these references in light of all three of the well-established criteria for that public interest analysis. Similarly, NAB suggests that, had Congress chosen to, it could have omitted the phrase "as the result of competition" and simply instructed the Commission to determine whether a rule remains "necessary in the public interest," thereby making competition co-equal with other public interest goals. *See* NAB Update Comments at 38-39 n.105 (asserting that the Commission "for decades has included competition as one of the public interest goals of its broadcast ownership rules" and that competition is "already included in [the] use of the term 'public interest'" in the statute). NAB asserts that Congress's decision to do otherwise and to specifically mention competition was intended to single out one particular element of the public interest analysis. *Id.* Contrary to NAB's position, however, it does not follow that Congress's inclusion of the phrase "as the result of competition" indicates Congress intended to elevate competition among other traditional public interest goals. Rather, as we have explained, Congress's inclusion of the phrase "as the result of competition" reflects an ongoing statutory directive to the Commission to account for the results of an evolving competitive landscape in evaluating the continued necessity of its structural ownership rules to fulfill its public interest goals. This seems perfectly logical given the changes brought about, and envisioned, by the 1996 Act.

benefits of competition, localism, and viewpoint diversity that our rules seek to further. If not—that is, if the competitive marketplace would not deliver these benefits in the absence of our rules—we conclude that our rules still remain "necessary in the public interest," and we cannot conclude that such rules are "no longer in the public interest," even after accounting for the results of competition to date. Contrary to NAB's concerns, then, we do not interpret section 202(h) in a way that would ignore or read the word "competition" out of the statute; instead, we interpret it in a way that gives meaning to that word in context.[67] We find that this interpretation is consistent with how the Commission has applied the standard over time and best reconciles the two phrases within it—"necessary in the public interest" and "as the result of competition."[68] Moreover, despite NAB's interest in relitigating this issue, nothing in the Supreme Court's decision in *FCC v. Prometheus* warrants revisiting the Commission's established interpretation of section 202(h).[69]

22. To be clear, competition has always been, and remains, a key consideration in the Commission's Quadrennial Review process, but it is not the only consideration encompassed by the public interest standard or by section 202(h). As discussed below, we remain committed to examining the media marketplace, acknowledging new and additional forms of competition where they exist, and evaluating whether market forces—as they have evolved—satisfy public interest objectives, such that our rules as currently devised are no longer "necessary in the public interest as the result of competition."[70]

23. Finally, even as we reaffirm here that our traditional policy goals of competition, localism, and viewpoint diversity continue to serve as the lodestars to guide us in our Quadrennial Review

[67] *See* NAB Feb. 16, 2022 *Ex Parte* at 2-4; NAB Update Comments at 47-51. By contrast, we find that NAB's interpretation would read out the reference to the "public interest," which even at the time of the 1996 Act, was a longstanding and well-known term in the context of the Commission's media regulation. Over the years, the Commission has further fleshed out that term in the context of the Quadrennial Review to encompass three tangible public interest goals—competition, localism, and viewpoint diversity—which have been further interpreted, articulated, and defined with substantial detail through the Commission's Quadrennial Review notices and orders. *2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9870, para. 16; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2016, para. 9; *2002 Biennial Review Order*, 18 FCC Rcd at 13627-45, paras. 17-79. As such, contrary to NAB's arguments, we find that there is no non-delegation problem with our interpretation, because we are not interpreting our public interest mandate to be unmoored from any defined or articulable policy goal. Instead, we have articulated three clear and longstanding policy goals—competition, localism, and viewpoint diversity—that have long been aligned with the public interest standard applicable to the media marketplace. *See* NAB Feb. 16, 2022 *Ex Parte* at 3-4.

[68] Even if, for argument's sake, one accepts NAB's contention that section 202(h) is focused first and foremost on competition, it raises a subsequent question about what the threshold is for *how much* competition is necessary to justify elimination of a rule. Our consistent interpretation essentially speaks to that subsequent question, in that it asks if there is competition sufficient to produce the public interest benefits the Commission has traditionally looked to the rules to foster. Moreover, as we discuss below with regard to particular rules, we find that even under a competition-only standard, loosening our rules and allowing additional consolidation (or, under some proposals, unlimited consolidation) would cause substantial harm to the public interest.

[69] As commenters note, the Supreme Court decided *FCC v. Prometheus* on APA grounds and declined to address, let alone adopt, a competition-centric interpretation of section 202(h) that was proposed by the Industry Petitioners. *See* ATVA Update Comments at 25; iHeart Update Comments at 8-9; iHeartCommunications, Inc. Reply Comments, MB Docket No. 18-349, at 3-5 (rec. Oct. 1, 2021) (iHeart Update Reply); Music Coalition Update Comments at 8.

[70] We note that NAB recommends the Commission review each ownership rule based upon the public interest rationale at the time it was adopted to see if competition had rendered it no longer necessary, and, according to NAB, once a rule is deemed to no longer serve a particular goal, the Commission should no longer test the rule's relationship to that goal. *See* NAB Update Comments at 51-52. We do not think section 202(h) demands such a narrow approach—i.e., its quadrennial nature and the statutory reference to the "public interest" suggest an intent to be flexible in accounting for new, different, or changed rationales over time— and as NAB notes, historically, the rationales for certain rules have evolved over time as part of the quadrennial review process. *See id.* at 52 n.153.

proceeding, we note that the Commission has traditionally also considered other aspects of the public interest, including the impact of its ownership rules on minorities and women.[71] In particular, and as the Supreme Court noted in *FCC v. Prometheus*, "[t]he FCC has also said that, as part of its public interest analysis under section 202(h), it would assess the effects of the ownership rules on minority and female ownership."[72] While NAB challenges the notion of considering the impact of the media ownership rules on minority and female ownership in our quadrennial reviews, arguing that the Supreme Court did not say that the Commission *has* to consider minority and female ownership as part of the Quadrennial Review proceeding,[73] we continue to find that our public interest standard is broad and that the impact of our rules on broadcast ownership by minorities and women remains an important part of our multi-factor public interest inquiry.[74] Accordingly, as we have in the past, we continue to consider whether our current rules are consistent with (i.e., do not disserve) opportunities for minority and female ownership and whether any proposed changes to those rules would be likely to result in harm to minority and female ownership.[75]

24. In this way, consideration of the impact of our rules on minority and female ownership is related to, and consistent with, the broader aim of our structural ownership rules in ensuring the diffuse ownership of broadcast stations. As the Commission has noted in the past, a general policy goal of diversity may encompass different forms of diversity.[76] One central goal of our structural ownership rules, in particular, has been, and remains, promoting a diversity of viewpoints.[77] Our rules do so by limiting the aggregation of stations in any single entity's hands and thereby fostering a multiplicity of speakers.[78] The Commission, in general, also has recognized the disproportionately low number of stations owned by minorities and women and has embraced the objective of better understanding and addressing this situation. By limiting the aggregation of stations among a few owners, we continue to conclude that our existing ownership limits preserve ownership opportunities for many different types of owners, including minority and female owners.

25. As has always been the case in the Commission's application of section 202(h), the public interest analysis required by the statute has been conducted as a multi-factor review in which no one factor is controlling. To the extent there are conflicts between competing goals (e.g., a rule or rule change would promote one factor while harming another), the Commission weighs the effects and

---

[71] *2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9894-97, 9911-53, paras. 77-78, 82, 124, 215.

[72] *FCC v. Prometheus*, 141 S.Ct. at 1156; *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13627, 13634-37; *2010 Quadrennial Regulatory Review*, Notice of Inquiry, 25 FCC Rcd 6086, 6106 (2010); *Amendment of section 73.3555 [formerly sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 FCC 2d 74, 97 (1985); *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978).

[73] *See* NAB Feb. 16, 2022 *Ex Parte* at 5 n.19.

[74] Indeed, the Supreme Court did not say we *have* to consider any particular policy goal. In fact, as NAB notes and discussed above, the Supreme Court did not reach the question of section 202(h) interpretation at all. *See* NAB Feb. 16, 2022 *Ex Parte* at 4-5. Under this precedent, we are not bound to consider the three traditional policy goals of competition, localism, and viewpoint diversity. Moreover, we do not have to consider minority and female ownership as an important part of our larger public interest goal of diversity (which, most notably and historically, includes viewpoint diversity). Nonetheless, the Supreme Court did not alter the Commission's discretion to consider these factors, in the manner we choose, and we elect in this proceeding, as the Commission has previously, to do so.

[75] *2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9894-97, 9911-53, paras. 77-78, 82, 124, 215.

[76] *2002 Biennial Review Order*, 23 FCC Rcd at 2021, para. 18 (identifying viewpoint, outlet, program, source, and minority and female ownership as "five types of diversity pertinent to media ownership policy").

[77] *See, e.g., 2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9865, para. 3; *2002 Biennial Review Order*, 23 FCC Rcd at 2021-30, paras. 19-35.

[78] *See, e.g., 2002 Biennial Review Order*, 23 FCC Rcd at 2021-23, 2025-26, 2032-33, paras. 19-20, 26-27, 39.

determines whether, on balance, the rule serves the public interest. Consideration of minority and female ownership is no exception to that approach.

26. We conclude that the record in the current proceeding does not establish concrete, affirmative steps the Commission can or should take with respect to our structural ownership rules to address concerns regarding minority and female ownership, but we remain committed to examining barriers to minority and female ownership of broadcast stations and expect that the upcoming 2022 Quadrennial Review proceeding will provide an opportunity to examine more specifically what can or should be done within the context of our structural ownership rules.[79] In addition, we note that the Commission has taken several actions beyond its quadrennial reviews, such as improving its collection and analysis of broadcast station ownership information on FCC Form 323 and 323-E, and chartering the Communications Equity and Diversity Council (CEDC),[80] that are intended to provide the Commission with more information about the state of minority and female broadcast ownership and to promote the important goal of increasing such ownership. Moreover, we remain committed, as Free Press suggests, to analyzing how changes to broadcast ownership rules may impact future opportunities for women and minorities.[81] Indeed, the Commission's Office of Economics and Analytics recently conducted an analysis and released a white paper on minority ownership of broadcast television stations that will continue to inform our understanding of the television market and the diversity of ownership.[82] And, as discussed below with respect to our rules, we find in this proceeding that our existing rules remain consistent with the objective of improving ownership diversity, including minority and female ownership, and would cause no harm.[83]

---

[79] *See* Free Press Comments, MB Docket No. 18-349, at 20-21 (rec. Sept. 2, 2021) (Free Press Update Comments); UCC Update Comments at 11-12. We encourage commenters that would prefer for the Commission to consider their comments from this proceeding to update their positions and file them in the record for the 2022 Quadrennial Review to the extent that they have not already done so.

[80] *See* FCC, Communications Equity and Diversity Council, https://www.fcc.gov/communications-equity-and-diversity-council. Effective June 29, 2021, Chairwoman Rosenworcel chartered the CEDC for a two-year term. *See* CEDC Charter, https://www.fcc.gov/sites/default/files/cedc-charter-06292021.pdf. The Charter notes that the CEDC is "intended to enhance the Commission's ability to advance equity and diversity in the communications industry and carry out its statutory responsibility to promote policies favoring diversity of media voices, localism, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity." *Id.* The CEDC is specifically tasked with making recommendations to the Commission on how to accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees. *See FCC Seeks Nominations for Communications Equity and Diversity Council*, Public Notice, 36 FCC Rcd 10391 (2021). In addition, prior to the current CEDC, the Commission chartered the Advisory Committee on Diversity and Digital Empowerment (ACDDE), tasked with developing recommendations on how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries. *See FCC Seeks Nominations for Membership on Advisory Committee on Diversity and Digital Empowerment*, Public Notice, 34 FCC Rcd 4791 (2019). Among other work, the ACDDE convened a symposium on access to capital, specifically focused on exploring sources of funding, business strategies, and revenue streams for small and diverse broadcasters. *See Broadcaster Access to Capital Virtual Symposium November 6, 2020*, Public Notice, 35 FCC Rcd 11866 (2020).

[81] *See* Free Press Update Comments at 20-21. Free Press also asks that we consider tightening rules to remove barriers to entry for women and minorities. We decline to do so based on the lack of sufficient evidence in the record of this proceeding to support tightening to achieve such ends. Nonetheless, we do not foreclose the possibility of exploring such action in the future.

[82] Kim Makuch, Television Station Ownership Diversity, Office of Economics and Analytics Working Paper 54 (January 2023), https://www.fcc.gov/document/television-station-ownership-diversity.

[83] Because we do not retain any of our rules for the express purpose of promoting minority or female ownership, we do not reach NAB's argument that per *FCC v. Prometheus* one would need to show actual statistical proof of a

(continued….)

IV. MEDIA OWNERSHIP RULES

A. Local Radio Ownership Rule

1. Introduction

27. As explained below, we conclude that the Local Radio Ownership Rule—which limits both the total number of radio stations an entity may own within a local market and the number of radio stations within the market that the entity may own in the same service (AM or FM)[84]—remains necessary to promote the Commission's public interest goals of competition, localism, and viewpoint diversity, in accordance with our foregoing analysis. We therefore retain the current rule. The only modification we adopt is to make permanent the interim contour-overlap methodology long used to determine ownership limits in areas outside the boundaries of defined Nielsen Audio Metro markets and in Puerto Rico.[85]

28. We decline commenters' requests to modify our presumption regarding embedded markets adopted in 2017. Likewise, we reject calls to eliminate or ease the rule's ownership limits in an effort to help station owners stem the loss of listeners and advertising revenues. We take seriously the challenging circumstances confronting broadcast radio in today's media marketplace, but the record does not persuade us that further consolidation would meaningfully address the problems radio faces. Rather, additional consolidation within radio markets is not only likely to decrease competition, viewpoint diversity, and localism but also is inconsistent with our statutory mandate to disseminate licenses as widely as possible.[86] Ultimately, we find that allowing one entity to own more radio stations in a market than currently permitted would harm competition without achieving the benefit sought by some of enabling station owners to compete more effectively with social media companies and national advertising platforms like Google and Facebook.

2. Background

29. The Local Radio Ownership Rule allows an entity to own: (1) up to eight commercial radio stations in radio markets with at least 45 radio stations, no more than five of which may be in the same service (AM or FM)[87]; (2) up to seven commercial radio stations in radio markets with 30-44 radio stations, no more than four of which may be in the same service (AM or FM); (3) up to six commercial radio stations in radio markets with 15-29 radio stations, no more than four of which may be in the same service (AM or FM); and (4) up to five commercial radio stations in radio markets with 14 or fewer radio stations, no more than three of which may be in the same service (AM or FM), provided that the entity does not own more than 50% of the radio stations in the market unless the combination comprises not more than one AM and one FM station.[88] When determining the total number of radio stations within a market, only full-power commercial and noncommercial radio stations are counted for purposes of the

(Continued from previous page)
negative impact on female and minority ownership for a rule to be retained for that reason. *See* NAB Update Comments at 53-55.

[84] *See* 47 CFR § 73.3555(a).

[85] *See 2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12122-23, para. 25.

[86] *See* 47 U.S.C. § 309(j)(3)(B) (directing the Commission to avoid excessive concentration of licenses and to disseminate licenses among a wide variety of applicants); 47 U.S.C. § 307(b) (directing the Commission to distribute "licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same").

[87] The limitation on the number of stations an entity may own in a single service, AM or FM, is typically referred to as the subcap limit.

[88] 47 CFR § 73.3555(a). Overlap between two stations in different services is allowed if neither of those stations overlaps a third station in the same service.

rule.[89] Radio markets are defined by Nielsen Audio Metros where applicable, and the contour-overlap methodology is used in areas outside of defined and rated Nielsen Audio Metro markets.[90]

30. In its last quadrennial review, the Commission concluded that local radio ownership limits promote competition,[91] a public interest benefit that the Commission found to be a sufficient basis for retaining the current rule.[92] Additionally, the Commission affirmed its previous findings that competitive local radio markets help promote viewpoint diversity and localism, and it deemed the rule consistent with the Commission's goal of promoting minority and female broadcast ownership.[93] Accordingly, the Commission retained the rule without modification, although it provided several clarifications regarding the rule's implementation.[94] Subsequently, on reconsideration, the Commission adopted a presumption to use in evaluating transactions involving radio stations within embedded markets (i.e., smaller markets, as defined by Nielsen Audio, that are contained within the boundaries of a larger Nielsen Audio Metro market) where the parent market currently has multiple embedded markets (i.e., New York, NY and Washington, DC).[95] The presumption supports waiving the numerical ownership limits in existing parent markets where an applicant can demonstrate both compliance with the numerical ownership limits in the embedded market, as well as compliance with the ownership limit using the contour overlap method. The Commission stated that the presumption would apply pending further consideration of embedded market transactions in this 2018 quadrennial review.[96]

31. The *NPRM* asked generally whether the current Local Radio Ownership Rule remains necessary in the public interest to promote competition, localism, or viewpoint diversity.[97] It also sought comment on several specific issues regarding the radio rule, including whether to retain the rule's current market definition, market size tiers, numerical limits, and AM/FM subcap limits.[98] In particular, the *NPRM* sought comment on whether the Commission should make permanent use of the contour-overlap

[89] *Id.*

[90] *See 2002 Biennial Review Order*, 18 FCC Rcd at 13724-30, paras. 273-86 (replacing the contour-overlap methodology with Arbitron Metro—now Nielsen Audio Metro—market definitions, where available, and retaining a modified contour-overlap methodology on an interim basis for areas not defined by Nielsen Audio); *2006 Quadrennial Review Order*, 23 FCC Rcd at 2013, 2070-71, 2071-72, paras. 4, 111-12, 114 (affirming the use of Nielsen Audio Metro markets to define geographic markets); *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9898, para. 85 n.234 (finding no basis on which to revisit as part of its ownership review the interim contour-overlap methodology for non-Nielsen Audio Metro areas). An exception to this market definition approach is Puerto Rico, where the contour-overlap methodology applies even though Puerto Rico is a Nielsen Audio Metro market. *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9907, paras. 111-12.

[91] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9897, 9898-99, paras. 82, 87; *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13712-13, para. 239; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2069, para. 110.

[92] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9897, 9898-99, paras. 82, 87.

[93] *Id.*; *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13738, 13739, paras. 303, 305-06; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2075, 2077, paras. 124, 127.

[94] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9897, 9898-99, 9905-07, paras. 82, 87, 107-12.

[95] *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9841, 9845-46, paras. 86, 94-95. A transaction would qualify for the presumption if the applicants demonstrated: (1) compliance with the numerical ownership limits in each embedded market using the Nielsen Audio Metro methodology, and (2) compliance with the ownership limits in the parent market using the contour-overlap methodology applicable to undefined markets in lieu of the Commission's ordinary parent market analysis. *Id.* at 9842, para. 90 n.262; *see also id.* at 9841, para. 86 n.251.

[96] *Id.* at 9841, 9845-46, paras. 86, 95.

[97] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12118, para. 14.

[98] *Id.* at 12118-25, paras. 14-32.

methodology for areas not within Nielsen Audio Metro markets.[99] In addition, it asked about the treatment of embedded markets and the effect of the rule on minority and female ownership.[100]

3. Discussion

32. For the reasons discussed below, we find that the Local Radio Ownership Rule remains necessary in the public interest as the result of competition. There is no question that the broader media environment within which broadcast radio operates has changed dramatically since the radio rule was enacted in 1996. Consumer choice in audio entertainment has grown with the launch of satellite radio, the introduction of audio streaming services, and the proliferation of podcasts. There is no consensus in the record, however, regarding whether changes to the Local Radio Ownership Rule would enable radio owners to respond to these developments more effectively, or even, if so, whether those benefits would outweigh potential harms to competition, localism, or viewpoint diversity. The commenters were deeply divided in their responses to almost every issue raised in the *NPRM*. As discussed below, after considering the conflicting arguments in the record, and the split that exists even within the radio industry, we agree with those commenters asserting that loosening the rule would harm competition to the detriment of listeners.

33. *Market Definition.* As in the past, we continue to find that the relevant market to consider for purposes of the Local Radio Ownership Rule is the radio listening market.[101] We further find that due to the unique characteristics of broadcast radio, it would not be appropriate to include satellite or non-broadcast audio sources, such as Internet streaming services, in that market at this time. Notably, this finding is consistent with our findings in prior quadrennial reviews, where we looked at the unique characteristics of broadcast radio and the lack of substitutability with other audio sources, elements that remain fundamentally unaltered in spite of larger marketplace changes.[102]

34. Moreover, we find that the nature of the larger advertising market, in which advertising dollars have always flowed between different sectors in accordance with advertiser preferences, does not compel us to revise the way we view broadcast radio's unique place within the audio landscape or the distinct market within which radio stations operate. First, we note that the U.S. Department of Justice (DOJ) consistently has found broadcast radio advertising to constitute a distinct product market.[103] We recognize that some local businesses may have shifted increasing shares of their advertising budgets to Internet platforms, such as Facebook and Google, while at the same time buying fewer radio

[99] *Id.* at 12122-23, para. 25.

[100] *Id.* at 12125-27, paras. 33-37.

[101] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9899, para. 90.

[102] *See id.* at 9899-9901, paras. 88-94.

[103] *See* Competitive Impact Statement, *U.S. v. Entercom Communications Corp. and CBS Corp.*, No. 17-2268 (D.D.C. Nov. 1, 2017), https://www.justice.gov/atr/case-document/file/1008376/download (viewing local broadcast radio stations as the market); *see also* Complaint at 4, *U.S. v. Entercom Communications Corp. and CBS Corp.*, No. 1:17-cv-02268 (D.D.C. Nov. 1, 2017), https://www.justice.gov/atr/case-document/file/1008371/download (stating that the acquisition of CBS Radio, Inc. by Entercom Communications Corporation would substantially lessen competition for the sale of radio advertisements targeting English-language listeners in the Boston, Sacramento, and San Francisco markets); *U.S. v. Entercom Communications Corp. and CBS Corp.*, No. 17-2268, 2018 WL 6684626, at *1 (D.D.C. Jan. 31, 2018) (stating that the "essence of [the] Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition [within the radio market] is not substantially lessened"). We note that our definition of the radio market is consistent also with the positions taken by both the Department of Justice and the Federal Trade Commission in their recent actions against Google and Facebook, respectively, asserting that radio advertising is distinct from advertising offered by those Internet companies. Complaint at 32, *U.S. v. Google*, No. 1:20-cv-03010 (D.D.C. Oct. 20, 2020), https://www.justice.gov/opa/press-release/file/1328941/download; Amended Complaint at 16, *FTC v. Facebook*, No. 1:20-cv-03590-JEB (D.D.C. Aug. 19, 2021), https://www.ftc.gov/system/files/documents/cases/ecf_75-1_ftc_v_facebook_public_redacted_fac.pdf. *See also* iHeart Update Comments at 10-11; iHeart Update Reply at 6-7.

advertisements.[104] We also note, however, that the broader reach of radio advertising offers different benefits than the targeted advertising offered by Facebook and Google, such that at least some advertisers do not view them as substitutes.[105] In addition, recent data indicate that broadcast radio dominates listening among ad-supported audio sources.[106] We find that, within the broader advertising ecosystem, there still remains a distinct broadcast radio advertising market, such that our existing rule promotes competition among local radio stations through competition for advertising dollars, as well as along other dimensions that directly benefit listeners (e.g., quality, choice of offerings, innovation, among others). Moreover, for the reasons stated below, it is primarily as a result of this competition that broadcast radio stations are spurred continually to look for ways to improve service to the listening public.

35. Although we acknowledge, as commenters contend, that there is today a broader audio landscape that includes a variety of audio options for consumers, many of which did not exist a decade or two ago, we continue to find that within that broader landscape, free over-the-air broadcast radio maintains a unique place and that radio stations compete primarily with other radio stations for listeners.[107] Accordingly, we reject commenters' claims that we must revise our market definition to reflect the "expanding universe of content providers"[108] and should include non-broadcast sources of audio content such as Sirius XM/Pandora, Spotify, YouTube Music, Apple Music, and Amazon Music.[109] As the Commission previously has found, although the broader marketplace for the delivery of audio programming includes satellite and online audio sources, along with traditional broadcast radio, there are significant differences in the availability, reach, consumer engagement, and cost of these services, such that they deliver different value propositions to consumers.[110] Significantly, of the various options available in the broader audio marketplace, generally speaking, only terrestrial broadcast radio both is

[104] Connoisseur Media et al. Comments at 16-21; NAB Comments at 26-28; Connoisseur Media et al. Comments, MB Docket No. 18-349, at 20-28 (rec. Sept. 2, 2021) (Connoisseur Media et al. Update Comments); Connoisseur Media et al. Audio Marketplace Comments, MB Docket No.18-227, at 8-12 (rec. Dec. 21, 2018) (Connoisseur Media et al. Audio Marketplace Comments); NAB Audio Marketplace Comments, MB Docket No.18-227, at 19-23, 25-29 (rec. Dec. 21, 2018) (NAB Audio Marketplace Comments).

[105] *See, e.g.*, iHeart Comments at 11-12; iHeart Reply at 10-12; *but see* Connoisseur Media et al. Reply at 6-7 (arguing that radio also offers targeted advertising in that it provides advertisers access to a specific demographic).

[106] According to Edison Research's Q4 2021 Share of Ear Report, broadcast radio accounted for 76% of daily audio time spent with any ad-supported platform. Brittany Faison, *Edison Research's "Share Of Ear" Q4 2021: Among Registered Voters, AM/FM Radio Dominates Ad-Supported Listening, Podcasts and AM/FM Radio Streaming Surge, and AM/FM Radio Has an 88% Share in the Car* (Mar. 7, 2022), https://westwoodone.com/blog/2022/03/07/edison-researchs-share-of-ear-q4-2021-among-registered-voters-am-fm-radio-dominates-ad-supported-listening-podcasts-and-am-fm-radio-streaming-surge-and-am-fm-radio-has-a/.

[107] *See* iHeart Comments at 8-12; Urban One Comments at 4-5 (asserting that non-broadcast audio sources are complementary to, and not directly competitive with, broadcast radio); musicFirst/Future of Music Coalition (FMC) Comments at 3-12; Crawford Reply at 1-2; iHeart Reply at 4-12; musicFirst/FMC Reply at 4-5; Free Press Reply at 7-10 (arguing that NAB is trying to have it both ways by claiming that broadcast radio is special enough to save but also that it is substitutable for countless other audio services); Music Coalition Update Reply at 12-15.

[108] NAB Comments at 8.

[109] *See, e.g.*, *id.* at 7; Connoisseur Media et al. Comments at 3, 6-12; Galaxy Comments at 2; Reno Media Comments at 2-3; NAB Reply at 31-34; Connoisseur Media et al. Reply at 3-9; R Street Institute Comments, MB Docket No. 18-349, at 2-5 (rec. Sept. 2, 2021) (R Street Update Comments); NAB Update Comments at 61-63; Connoisseur Media et al. Audio Marketplace Comments at 3-8; Local Community Broadcasters Audio Marketplace Comments, MB Docket No.18-227, at 2-5 (rec. Dec. 21, 2018) (Local Community Broadcasters Audio Marketplace Comments); NAB Audio Marketplace Comments at 4-5, 12-19; NAB Audio Marketplace Reply Comments, MB Docket No.18-227, at 2-5 (rec. Dec. 21, 2018) (NAB Audio Marketplace Reply).

[110] *2022 Communications Marketplace Report*, GN Docket No. 22-203, Communications Marketplace Report, FCC 22-103, at 186, para. 318 (Dec. 30, 2022) (*2022 Communications Marketplace Report)*.

available without a paid subscription and does not require access to Internet service.[111] Not only does this accessibility make broadcast radio uniquely and widely available, it also makes it a lifeline for many Americans, especially in times of local emergencies.[112] As commenters observe, radio is a trusted and essential source of public safety information during emergencies and in times of crises.[113]

36. We also continue to find that the local nature of broadcast radio makes it unique within the broader audio landscape. In particular, we note that broadcast radio is alone within the audio landscape in having an affirmative obligation to serve the needs and interest of the local community.[114] Moreover, there is evidence that being local is *the* defining value proposition that many radio stations see themselves as providing to consumers. As commenters point out, radio programming includes offerings with a community focus, such as program hosts that are known within the locality, music by local bands, reporting on local sports teams, and sponsorship of neighborhood festivals, which other audio services do not provide.[115] As the Commission's *2022 Communications Marketplace Report* states, "promoting a

[111] iHeart Comments at 8-11; Free Press Comments at 11-13 (stating that broadcast is "uniquely free" and is relied upon disproportionately by low-income people and people of color); NHMC Comments at 9-10 (asserting that low income and communities of color rely on the free nature of radio); Triangle Access Comments at 1-3; musicFirst/FMC Comments at 9; Crawford Reply at 1; iHeart Reply at 3 (contending that other audio media are not substitutable for radio "based on localism, affordability, accessibility, trustworthiness of content, audience listening and advertising approaches and revenue"); Leadership Conference on Civil and Human Rights (LCCHR)Reply, MB Docket No. 18-349, at 4 (rec. Sept. 30, 2021) (LCCHR Update Reply); REC Networks Audio Marketplace Comments, MB Docket No.18-227, at 1-2 (rec. Sept. 24, 2018) (REC Networks Audio Marketplace Comments) (arguing that audio programming through the Internet is not available and/or affordable to many Americans). *But see* NAB Comments at 18-20 (arguing that it is the access to content within a local community that is the relevant factor, and not the local nature of the content); American General Media et al. Reply at 6 (noting that numerous sources of online audio content are free).

[112] In its Fourteenth Broadband Deployment Report, the Commission determined that despite significant gains in delivering access to broadband, in 2019, at least 14.46 million Americans, or about 4% of the population, still lacked access to fixed terrestrial broadband service at a standard speed of 25/3 Mbps. *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269, 2021 Broadband Deployment Report, 36 FCC Rcd 836, 854-55, para. 33 (2021) (*2021 Broadband Report*). Additionally, the Commission found that the adoption of fixed terrestrial broadband in the 10/1 Mbps speed tier was 67.2% among households in the quartile with the lowest poverty rate, versus 40.7% among households in the quartile representing the highest poverty rate. *See id.* at 866-67, para. 47. *See also* NHMC Comments at 10-11 (noting the high percentage of Latinos that do not have broadband at home); iHeart Comments at 9-10 (noting that not only is radio programming a free service, but a radio often costs less than $20 and is a one-time purchase that can last years); Triangle Access Comments at 2; Free Press Reply at 7; musicFirst/FMC Comments at 9-10.

[113] *See* iHeart Comments at 18-24, 33; Adams Radio Comments at 1; Salem Media Comments at 10.

[114] As part of their license obligations, each quarter, radio station licensees are required to submit a list of programs that treat issues faced by the local community. *See* 47 CFR §§ 73.3526(e)(12), 73.3527(e)(8). Such programs may include local news and public affairs programming.

[115] *See* iHeart Comments at 10 (stating that "[b]roadcast radio provides a completely different listening experience from other audio services. Broadcast radio provides the listener community and companionship. Broadcast radio is a DJ telling you about a new song and why she likes it; it is a group of personalities riding with you in the car, entertaining and informing you on the way to and from work; it is a voice you know providing critical updates in times of emergency; it is members of the same community who show up to cover a local food drive or festival. Consumers listen to radio for a completely different experience than they receive from other platforms like satellite radio, music streaming services, podcasts, etc."); Urban One Comments at 14 (stating that "[i]t is local news, accurate weather coverage, emergency information, the local appearances by radio personalities, the participation in community fund drives, the support of charity events, and the quality of programming oriented at addressing community issues, which differentiates radio stations to both listeners and advertisers"). Even advocates of a rule change tout the unique local aspect of radio. *See, e.g.*, Connoisseur Media et al. Comments at 22, 26 (acknowledging that "many of the new digital entrants are owned by massive companies like Google and Facebook that . . . do nothing to promote localism" and that "nearly 90% of radio listeners agreed that the primary advantage

(continued….)

local on-air personality as the 'face' of a station may be an important way for a station to distinguish or brand itself from other stations in its market."[116]

37. In addition, even with the emergence of new audio services and platforms, radio listenership remains strong and dominant within the broader audio marketplace in many key respects.[117] Certainly, commenters provide some evidence that time spent listening to broadcast radio has declined, especially among younger audiences.[118] Nonetheless, in 2018, Edison Research's "Share of Ear" report allocates the share of time spent listening to audio sources for Americans aged 13 years old and over as follows: 46% terrestrial broadcast radio, 14% streaming audio, 12% owned music, 11% YouTube, 7% SiriusXM satellite radio, 5% TV Music channels, 3% podcasts, and 2% other sources.[119] Similarly, a more recent Share of Ear report indicated that, in 2021, the total share of time spent listening to AM/FM radio remained the highest at 38%, and the share of time spent listening to podcasts had risen to only 5%.[120] Additionally, while the gap in usage between broadcast and online audio programming has declined over time, terrestrial broadcast radio remains dominant and the number of weekly listeners to broadcast radio in the United States remains relatively stable.[121] Moreover, historically, easy access to AM/FM radio inside automobiles has been a distinctive characteristic and advantage of broadcast radio, and in-car radio listening has rebounded as people return to their cars following the height of the pandemic.[122] By contrast, some commenters claim that radio's dominance over in-car listening is fading as Bluetooth and satellite radio capabilities become standard features in new cars.[123] While there is no question that consumers are increasingly finding new audio sources to consume while driving, broadcast radio remains the clear top choice.[124] Inside the home, we acknowledge there is a decreasing number of

(Continued from previous page)
to listening was 'its local feel,' up from only 77% three years ago"); American General Media et al. Reply at 19 (recognizing that "[l]ocal radio stations tend to have highly engaged audiences attracted by local content").

[116] *2022 Communications Marketplace Report* at 180, para. 305.

[117] Although commenters warn that the decline of radio listening during the pandemic is not likely to rebound to pre-pandemic levels, it is premature to determine whether the pandemic will have long-term effects on local radio. We find that forecasts of future declines of radio listenership and revenue are speculative, and therefore unreliable for the purposes of this review. *But see* NAB Update Comments at 75-84; NAB Update Comments at 64-68; Summit Media Reply Comments, MB Docket No. 18-349, at 3-4 (rec. Oct. 1, 2021) (Summit Update Reply); Alpha Media USA Reply Comments, MB Docket No. 18-349, at 2-3 (rec. Oct. 1, 2021) (Alpha Media Update Reply); Connoisseur Media et al. Reply Comments, MB Docket No. 18-349, at 4 (rec. Oct. 1, 2021) (Connoisseur Media et al. Update Reply); NAB Update Reply at 63-70.

[118] NAB Comments at 8-13, 17-18 (providing evidence of the growing popularity of streaming services and the shrinking listening times for radio); Reno Media Comments at 3; *see also* Connoisseur Media et al. Comments at 8-10 (providing data showing that radio listening has declined while internet listening has increased); American General Media et al. Reply at 6-8; Connoisseur Media et al. Update Comments at 6-14; Connoisseur Media et al. Update Reply at 4-5.

[119] *2022 Communications Marketplace Report* at 186, para. 318.

[120] *Id.*

[121] *Id.* at 189, para. 328 (noting also that online audio programming includes AM or FM broadcasts accessed online). iHeart Comments at 1; *see also* musicFirst/FMC Audio Marketplace Comments, MB Docket No.18-227, at 22-23, 25-26 (rec. Sept. 24, 2018) (musicFirst/FMC Audio Marketplace Comments) (asserting that despite its "slow-drip decline," radio listenership remains relatively strong). *But see* Connoisseur Media et al. Update Comments at 7-8 (reporting that Nielsen data found that radio's weekly reach in 2020 was just over 80%); Connoisseur Media et al. Update Reply at 4-5 (arguing that "reach does not tell the whole story").

[122] *See, e.g.*, Brad Adgate, *As the Country Opens Up, Radio Listening is Returning to Pre-Pandemic Levels*, Forbes (June 1, 2021).

[123] Connoisseur Media et al. Comments at 13-15; Connoisseur Media et al. Update Comments at 16-18.

[124] Cumulus Media, Edison Research's "Share of Ear" Q4 2021: How America Listens to Audio at 23-24 (2021)
(continued….)

radios in households with the ubiquity of digital devices, like smartphones and smart speakers, that provide access to an array of audio content.[125] Nonetheless, evidence further suggests that, even within the evolving marketplace, broadcast radio stations are embracing these new devices and finding additional ways to reach listeners.[126]

38. Ultimately, we agree with iHeart that "competitive pressures across platforms within the audio ecosystem are not determinative of what is the relevant market" for purposes of our Local Radio Ownership Rule.[127] We reject NAB's suggestion that the relevant competition is for "the public's attention and time."[128] Since its inception, radio has competed with other types of entertainment for the public's attention and time. Television, movies, books, newspapers, magazines, concerts, plays, and all manner of activities present consumers with countless options for how to spend their time or be entertained or informed.[129] Today's consumers have a broad selection of audio options that can be accessed on an increasing number of devices, but that does not mean competition among local radio stations should be weakened or that consumers and advertisers consider non-broadcast options to be appropriate substitutes for local radio.

39. As we have acknowledged, in recent years, the audio landscape has seen the growth of streaming music services that have amassed millions of subscribers. Nonetheless, there is evidence that consumers may be most directly substituting online audio services for what would once have been purchases of recorded music rather than for live, local, free broadcast radio, and that consumers still flock to broadcast radio for elements that other audio sources in the marketplace are not currently providing. For instance, while advertising dollars may have started to flow to other sources over time, in filings with the Securities and Exchange Commission (SEC), iHeart (the largest radio station owner by revenue, number of stations, and number of markets) suggests that within the broader audio marketplace, there are distinct sectors that vie separately for listeners, and in some respects, serve as complements to one another. Specifically, iHeart states:

> Within the audio industry, companies operate in two primary sectors: [1] The 'music collection' sector, which essentially replaced downloads and CDs and [2] The '*companionship sector*, [in] which people regard radio and podcasting personalities as their trusted friends and companions on whom they rely to provide news on everything from entertainment, local news, storytelling, information about new music and artists, weather, traffic and more. *We operate in the second*

(finding that AM/FM radio accounts for a 59% share of audio time spent in the car among persons 18 and older); *see also* Edison Research, Infinite Dial 2022 at 44-45 (2022) (finding that 73% of Americans who had driven in a car in the last month had used AM/FM radio).

[125] *See, e.g.*, Connoisseur Media et al. Comments at 13 (stating that almost 30% of Americans over the age of 12, and 50% of Americans aged 18 to 34, do not own an FM or AM radio in their home); NAB Comments at 13-16 (stating that in 2019, 84% of Americans over the age of 12 owned a smartphone, and the rates were higher among younger age groups); Connoisseur Media et al. Update Comments at 14-15; NAB Comments at 69-75.

[126] Inside Radio, *Smart Speaker Ownership Levels Off but Remains Important Part of Radio Listening* (Sept. 22, 2022), https://www.insideradio.com/free/smart-speaker-ownership-levels-off-but-remains-important-part-of-radio-listening/article_329e1af6-38ab-11ed-a908-9f76855e2b99.html.

[127] iHeart Comments at 12.

[128] NAB Comments at 7.

[129] *See* iHeart Comments at 12 (making an analogy to the airline industry and arguing that when there is a competition issue concerning airline carriers, the market is restricted to the airline market, and not the transportation market, even though trains, ships, and vehicles compete with airlines for passengers); Open Markets Institute Reply at 3 (also using a transportation analogy); Triangle Access Comments at 2 (arguing that Internet services should not be included in the radio market definition any more than "cinemas, sports arenas, and other entertainment venues"). *But see* Connoisseur Media et al. Reply at 7-8 (challenging the relevance of iHeart's airline analogy).

sector and use our large scale and national reach in broadcast radio to build additional complementary platforms.[130]

As iHeart suggests, in general, broadcast radio continues to serve a distinct role in the marketplace by providing important entertainment, information, and "companionship" to listeners that other forms of audio content likely do not. Moreover, by contrast, online streaming services that offer access to tens of millions of songs and other audio tracks to listeners on demand are perhaps situated more directly as substitutes for traditional purchased music collections.[131]

40. For the reasons stated above, we find that the local radio listening market remains a distinct market for purposes of our Local Radio Ownership Rule analysis. We conclude that allowing further concentration within local radio markets would disserve listeners by jeopardizing the aspects of radio that make it a unique and appealing service.

41. *Market Size Tiers and Numerical Limits.* Based on the record of this proceeding, we find that the Local Radio Ownership Rule as currently designed remains necessary in the public interest as the result of competition, and we reject proposals in the record to modify its market size tiers or numerical limits at this time. For example, NAB urges the Commission to repeal the radio rule entirely, or at a minimum, to loosen restrictions in the top 75 Nielsen Audio Metro markets to allow a single entity to own or control up to eight commercial FM stations, with no cap on AM ownership, and, outside of the top 75 Nielsen markets and in unrated markets, to allow a single entity to own or control an unlimited number of AM and FM stations.[132] NAB also proposes that an owner in the top 75 markets be permitted to own up to two additional FM stations (for a total of 10 FMs) in a market after successfully participating in the Commission's incubator program.[133] As discussed below, we find that the existing rule continues to serve the public interest, that the record does not establish that permitting greater consolidation would benefit either the radio industry or the listening public, and that proposals to loosen the rule would reduce competition among broadcast radio stations to the detriment of listeners.[134]

(Continued from previous page)

[130] *See* iHeartMedia, Inc., Annual Report at 1 (Form 10-K) (Feb. 23, 2022) (emphasis added).

[131] The Recording Industry Association of America's (RIAA) U.S. Sales Database illustrates how revenues for downloaded albums (since 2016) and downloaded songs (since 2014) have sustained significant declines amid increases in subscriptions to music streaming platforms. *See* U.S. Sales Database, RIAA, https://www.riaa.com/u-s-sales-database/ (last visited June 10, 2022). Notwithstanding the economic volatility in the advertising market amid the COVID-19 pandemic, radio advertising revenues have remained stable in recent years with moderate gains projected for the next five years. *See* Justin Nielson, *US TV, Radio Station Ad Projections Update*, S&P Global Market Intelligence (June 12, 2019), https://www.nab.org/documents/about/TVRadioAdvertisingProjectionsFAQ.pdf (noting projections for advertising revenues in radio using data from Kagan estimates).

[132] NAB Comments at 39-40; NAB Update Comments at 68. Commenters are divided in their responses to NAB's proposal. A number of commenters support NAB's proposal. *See, e.g.*, Connoisseur Media, et al. Comments at 26; Alpha Media Comments at 1; West Virginia Radio Comments at 6; Vanguard Media Comments at 2; Galaxy Comments at 1-3; Reno Media Comments at 3-4; Grant Reply at 1-3 (arguing that small owners will improve their ability to obtain investment when capital sources are assured that radio can grow revenue and compete); 25-7 Media Reply at 1 (supporting the lifting of all limits in small, unrated markets); WBOC Reply at 1-3; American General, et al. Reply at 2-4, 19-21; Summit Update Reply at 1-3; Alpha Media Update Reply at 7-8; *see also* Local Community Broadcasters Audio Marketplace Comments at 5-7 (arguing for the removal of all radio ownership limits). Other commenters oppose the proposal. *See, e.g.*, iHeart Comments at 29-32; musicFirst/FMC Comments at 7-8; Urban One Comments at 10-12; Free Press Comments at 4-5; Free Press Reply at 6-7; Multicultural Media, Telecom and Internet Council (MMTC) Reply at 1-2; musicFirst/FMC Reply at 1-3; Mount Wilson Reply at 1-2; iHeart Reply at 3, 6, 8-9, 10-12, 19-24; iHeart Update Comments at 9-11, 21-22, 26-29; Salem Media Group Reply Comments, MB Docket No. 18-349, at 3-4 (rec. Oct. 1, 2021) (Salem Media Update Reply); Music Coalition Update Reply at 5-15.

[133] NAB Comments at 39-40; NAB Update Comments at 68 n.209.

[134] For these reasons, we also reject various other proposals to relax the radio restrictions. For example, Press Communications argues that radio ownership limits should be doubled for Class A radio stations and proposes new

(continued….)

42. We find that the current tiers and limits maintain an appropriate level of competition in the local radio markets to the benefit of listeners and the public. Ever since Congress established these demarcations more than two and a half decades ago, the Commission consistently "has found that setting numerical ownership limits based on market size tiers remains the most effective method for preventing the acquisition of market power in local radio markets."[135] We disagree with the notion that changes in the broader audio environment require a restructuring of the rule's market size tiers or numerical limits. Not only do we find that the current limits promote our policy goals, but, as discussed below we conclude that allowing further consolidation would not ensure that local radio stations retain their listeners and advertisers. In addition, we note that the market tiers that NAB proposes would be determined by the size of the population in the Nielsen Audio Metro market. The current rule uses Nielsen markets as a starting point, but its tiers depend on the number of radio stations in the Nielsen market, rather than on how many people live in the market. Because the rule limits the *number of stations* an entity may own within a local market, we find that the most consistent and relevant measure upon which to base the rule's tiers is the total *number of stations* in the market, a concept that has been applied as part of the rule for many years, is well understood, and provides a degree of certainty to applicants.[136] Under the rule, if there are more total stations in a market, an entity can own more stations. In effect, this ensures that a certain number of stations in a market would not be owned by a single entity. By contrast, NAB's proposal would permit ownership of eight stations in each of the top 75 markets as ranked by population, regardless of the total number of stations (or number of stations available to be owned by other entities) in the market. NAB's proposal to eliminate all ownership limits in most markets and retain only FM limits in the largest 75 markets would represent a radical departure from the existing numerical limits and would allow an increase in consolidation that would significantly decrease existing competition.

43. Commenters in favor of loosening radio ownership limits suggest that the broadcast radio industry, in general, is in dire need of relief and contend that its viability may be at stake if additional consolidation is not permitted.[137] Other commenters, however, assert that the survival of the radio

(Continued from previous page)
limits for the market tiers. Press Communications Comments, MB Docket No. 18-349, at 3-5 (rec. Sept. 2, 2021) (Press Communications Update Comments). Similarly, Galaxy argues that, if the Commission retains the radio ownership limits, it should count a Class A station as half a station for purposes of the rule. Galaxy Comments at 6-9. The Commission previously found that decreasing the value assignment for Class A radio stations for the purpose of measuring local ownership could result in "potentially significant consolidation in local radio markets" and that "assign[ing] different values to stations of different classes [would] not account for the possibility of a relatively lower power radio station potentially reaching a larger audience than a station with a larger service contour." *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9902-03, paras. 98-99. In addition, Golden Isles argues that all stations in a Nielsen Audio market should be counted for purposes of the rule, even if Nielsen excludes them because they do not subscribe to Nielsen. Golden Isles Reply Comments, MB Docket No. 18-349, at 3-7 (rec. Oct. 1, 2021) (Golden Isles Update Reply). Adams Radio suggests lifting the cap only for small group owners and individual market owners outside the top 25 markets. Adams Radio Comments at 1. Reno Media supports NAB's proposal but suggests as an alternative the elimination of subcaps and market tiers such that, in all markets, one entity could own eight stations, regardless of whether they were in the AM or FM service. Reno Media Comments at 3-4. Finally, as discussed further below, iHeart urges the Commission to retain all limits and subcaps on FM stations but to allow unlimited AM ownership in all markets. iHeart Comments at 1, 26-28; iHeart Update Comments at 5.

[135] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9901, para. 96 (citing *2006 Quadrennial Review Order*, 23 FCC Rcd at 2072, para. 116; *Prometheus I*, 373 F.3d at 431-32; *2002 Biennial Review Order*, 18 FCC Rcd at 13730-34, paras. 288-91).

[136] *But see* Sinclair Telecable Comments at 1-4 (advocating for a flexible approach that accounts for changes in a market's advertising revenues and population growth).

[137] While there is no question industry trends represent formidable challenges for broadcast radio, we are not convinced by NAB and other industry commenters that allowing station owners to acquire additional stations within their local markets would enable them to combat these trends effectively. They contend that survival of the radio industry depends on station owners achieving economies of scale that would allow them to spread their fixed costs
(continued….)

industry depends on keeping ownership limits in place to prevent massive consolidation that could result in a few national owners buying all or most of the stations in a market and piping in preset programming from distant headquarters.[138] These commenters contend that relaxing the rule to "save" radio under NAB's plan would have the opposite effect: destroying what is the very essence of local radio.[139] We recognize that the record contains evidence showing that broadcast radio has experienced declines in listening shares and in advertising revenues in recent years, while streaming audio has seen growth in both areas.[140] We further realize that broadcast radio, like other industries, has faced and continues to face challenges as technologies, market dynamics, and consumer behaviors evolve.[141] Notwithstanding these challenges, we continue to find, as compelled by the instruction of section 202(h), that the current structure of the ownership rule remains necessary to promote the Commission's public interest goals. Moreover, we note that in any action that affects licensing, the Commission must be mindful of Congress'

over more stations and lower their costs per station. *See, e.g.*, NAB Comments at 6-7, 35-38; Connoisseur Media et al. Comments at 4-5, 22, 26; West Virginia Radio Comments at 5; Galaxy Comments at 6; NAB Reply at 44-45; Press Communications Reply at 2-3; Golden Isles Update Reply at 1-3; Alpha Media Update Reply at 7-8. Some broadcasters claim that these cost-savings would enable them to compete with social media companies such as Facebook and Google, to invest more in local programming, and to offer a wider array of programming that would better serve niche audiences. Connoisseur Media et al. Comments at 22-25; NAB Comments at 38-39; NAB Reply at 37-49; Alpha Media Update Reply at 5-6; Connoisseur Media et al. Update Reply at 8-10. *But see* Urban One Comments at 14-15 (arguing that the "reduction or spreading out of costs will result in less programming resources per station for local programming").

[138] *See, e.g.*, King City Comments at 1-2; Bristol County Broadcasting/SNE Comments at 1-2; Urban One Comments at 13; WBOC Reply at 2.

[139] *See* King City Comments at 1-2 (asserting that "[e]liminating the ownership cap will hasten the demise of the independent, family-owned broadcast radio station and destroy the localism that is at the center of such stations"); Crawford Comments at 1 (attributing the "generally healthy" state of the radio industry to the fact that "the underlying formula is one that works"); Salem Media Comments at 2 (advising that "it is incumbent upon the Commission to move cautiously and responsibly before changing a formula that has brought an unparalleled amount of success to the radio industry"); Sarkes Tarzian Reply at 2-3 (asserting that "further consolidation will likely be the demise of the 'mom-and-pop radio broadcaster,' a uniquely American feature of the radio industry since its inception"); Redrock Broadcasting Reply Comments, MB Docket No. 18-349, at 1 (rec. Oct. 1, 2021) (Redrock Update Reply) (contending that "a radio station in a community is fundamentally a small local business and not a transmitter for a large national company"); Letter from Matthew Wesolowski, General Manager, SSR Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 1 (filed Nov. 20, 2023) (SSR Nov. 20, 2023 *Ex Parte*) (stating that NAB's proposal could lead to a "disastrous imbalance" of media ownership in smaller radio markets).

[140] *See, e.g.*, Connoisseur Media et al. Comments at 6-10, 16-21; NAB Comments at 17-18, 20-26; West Virginia Radio Comments at 2-4; Galaxy Comments at 3-6; Reno Media Comments at 2-3; NAB Reply at 34-37; American General Media et al. Reply at 8-14; Connoisseur Media et al. Reply at 4-5; Press Communications Reply at 2-3; Alpha Media Update Reply at 3-5; NAB Update Reply at 63-70; Letter from David Oxenford, Counsel, Connoisseur Media and Mid-West Family Broadcasting, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 1-2 (filed Nov. 29, 2023). *But see* iHeart Reply at 9 (claiming that NAB's analysis ignores the fact that the decline in AM listening is responsible for most of the decline in radio listening). NAB reports that in 2019, people aged 13 to 24 spent nearly three times as much time streaming audio (125 minutes a day) as they spent listening to radio (53 minutes a day). NAB Reply at 35; *see also* Connoisseur Media et al. Update Comments at 6-14. In addition, Connoisseur Media et al. state that, in 2019, more than 50% of all local advertising dollars went to digital media, primarily to companies like Google and Facebook, a figure which they claim is predicted to reach two-thirds by 2023. Connoisseur Media et al. Comments at 3; Connoisseur Media et al. Update Reply at 5-6; *see also* NAB Reply at 37-45; Connoisseur Media et al. Update Comments at 20-28.

[141] As previously indicated, as subscription-based services for music entered the market, total revenues of digital albums and songs, as well as CD sales, began to shrink. *See* U.S. Sales Database, RIAA, https://www.riaa.com/u-s-sales-database/ (last visited June 10, 2022); *see also 2022 Communications Marketplace Report* at 179, para. 303 (noting that radio advertising revenue was "virtually flat between 2010 and 2019").

directive to avoid excessive concentration of licenses and to disseminate licenses widely.[142] Allowing all radio stations in a market to be licensed to one entity would demand an exceptional justification given this directive. In *FCC v. Prometheus*, the Supreme Court recognized the Commission's longstanding policy of "ensuring that a small number of entities do not dominate a particular media market."[143] In any event, we remain highly skeptical that permitting additional consolidation beyond that currently allowed under our rule is warranted or would address radio's stated woes.

44. For one thing, as we note above, broadcast listenership within the broader audio landscape remains relatively strong despite declines in radio's popularity. In addition, broadcast radio revenue—the lifeblood of the industry—has shown signs of stability over the past decade.[144] As the Commission found in its most recent Communications Marketplace Report, "the primary source of revenue for commercial terrestrial radio stations is advertising" and while "total broadcast radio revenue dropped to $13.7 billion in 2020," revenue then "rose to $14.8 billion in 2021, resulting in a net decline of approximately 17% from 2019 to 2021, due largely to the drop in demand for advertising due to the COVID-19 pandemic."[145] In fact, broadcast radio advertising revenue remained virtually flat from 2010 to 2019, which obviously is not preferable to steep growth, but also is not indicative of a prolonged or pronounced decline.[146] Moreover, as broadcast radio companies expand into other parts of the audio marketplace (streaming, podcasts, etc.), online revenue for broadcast radio has seen substantial growth and stands as an "area of potential growth" going forward.[147] Perhaps tellingly, the total number of broadcast radio stations remained fairly steady, and actually increased slightly, between 2015 and 2020, suggesting there has not been a massive shuttering of radio stations due to financial stress.[148]

45. We understand that radio stations depend on advertising revenues to survive and to provide free, over-the-air programming, as they have since the inception of broadcasting. However, evidence does not appear to show that owning more stations necessarily correlates to being able to attain proportionally more revenue (i.e., the number of owned stations and the net advertising revenue per station vary considerably among the top ten largest radio companies by net advertising revenue).[149] While we recognize that adding more stations to a radio owner's local holdings may offer some benefit to the owner, including the ability to reduce costs, it would come at a tradeoff to the public interest, and we agree, moreover, with those commenters who contend that it would not reverse the overall downward trend in the amount of time that American consumers spend listening to broadcast radio or encourage

[142] 47 U.S.C. § 309(j)(3)(B).

[143] *FCC v. Prometheus*, 141 S.Ct. at 1155.

[144] *2022 Communications Marketplace Report* at 179, para. 303.

[145] *Id.* at 178-79, paras. 302-03.

[146] *Id.* at 179, para. 303. Moreover, while not back to pre-pandemic levels across the industry, there is evidence that radio revenue is rebounding following a precipitous drop off during 2020. *See* Justin Nielson, S&P Capital IQ, *U.S. TV and Radio Station Ad Projections 2022-32: Political Offsets Dwindling Core* (July 15, 2022) (showing total U.S. radio station revenue increased 8.2% in 2021 following a 23.0% decline in 2020); Inside Radio, *BIA Forecasts 6% Growth for Radio in Updated Local Ad Forecast* (Dec. 21, 2021), https://www.insideradio.com/free/bia-forecasts-6-growth-for-radio-in-updated-local-ad-forecast/article_5b38f92a-6243-11ec-9eb2-2b8279b869bd.html (reporting BIA forecast for over-the-air radio station revenue increasing to $10.91 billion in 2021 from $9.57 billion in 2020 following a decrease from $12.68 billion in 2019); Inside Radio, *RAB: Local Radio's Digital Revenue Hit $1.5 Billion in 2021 With a "Bountiful" 2022 on Tap* (Feb. 9, 2022), https://www.insideradio.com/free/rab-local-radio-s-digital-revenue-hit-1-5-billion-in-2021-with-a-bountiful/article_278cf4d6-897c-11ec-a457-738b81fb513e.html (reporting information collected by Borrell Associates showing radio local advertising revenue increased to $8.0 billion in 2021 from $6.5 billion in 2020 following a decline from $8.9 billion in 2019).

[147] *2022 Communications Marketplace Report* at 179, para. 304.

[148] *Id.* at 3089, Fig. II.E.1.

[149] *Id.* at 3090, Fig. II.E.2.

local advertisers to increase their radio advertising budgets, both of which our rule cannot address.[150] Although NAB and others provide evidence that broadcast radio is losing advertising revenue to online platforms and digital audio, we find that greater consolidation is unlikely to improve the ability of local radio owners to regain their advertising losses, particularly given the dissimilar value propositions that they and large technology companies offer to advertisers.[151] We agree with those commenters who assert that if further consolidation were allowed, smaller and independent radio stations could be sacrificed needlessly based on an unrealistic premise that ever larger radio owners are the answer to compete for advertising on a level playing field with large technology companies.[152] Or as one commenter put it, radio "will never out-Google Google, or out-Facebook Facebook."[153]

46. In any event, our conclusion that the current radio rule remains necessary in the public interest as the result of competition rests on the premise that the listening public is the constituency that the rule is intended to serve.[154] The purpose of the rule is to ensure competition among broadcast radio stations within a market so that radio owners are motivated to provide the highest quality of service to the public. Reducing the number of competitors in a local market puts that quality of service at risk, threatens viewpoint diversity, and may reduce the amount of local programming available. Some commenters contend that if an owner is allowed to acquire the competing stations in a market, it will diversify the programming formats on its newly-acquired stations because it will not want to compete with itself.[155] One has to question, however, whether that owner would maintain the same quality of service on its

[150] National Association of Black Owned Broadcasters (NABOB) Comments at 11-12; iHeart Reply at 19-24; iHeart Update Reply at 10-12; NABOB Comments, MB Docket No. 18-349, at 12-16 (rec. Sept. 2, 2021) (NABOB Update Comments).

[151] *See* iHeart Reply at 11-12, 19-23 (arguing that adding more stations to an owner's local cluster would not attract more advertising because micro-targeted digital advertising is complementary to, and not substitutable for, mass-targeted radio advertising).

[152] *See* musicFirst/FMC Comments at 11 (quoting independent radio broadcasters Ronald Gordon and Glenn Cherry as saying: "How would buying an additional four or five radio stations in a market allow a broadcaster to take on Google or Facebook? Individually, these big tech companies dwarf the annual revenues of the entire radio industry combined. How exactly would gutting the radio ownership rules drive advertising money away from tech and into radio's pocket? To the advertiser, what difference does it make who owns the station? Horizontal deregulation just shuffles the deck in favor of the big guys; it does nothing to improve radio's ability to compete with big tech.") (citing Glenn Cherry and Ronald Gordon, *The Three Types of Radio Deregulation*, Radio World (July 25, 2018), https://www.radioworld.com/columns-and-views/the-three-types-of-radio-deregulation); *see also* MMTC Comments at 6-9; Urban One Comments at 3, 14; Taxi Productions Reply at 2; Sarkes Tarzian Reply at 5; Salem Media Reply at 3; Free Press Reply at 8. *But see* NAB Reply at 3 (replying that broadcasters "are not attempting to beat Google and Facebook").

[153] musicFirst/FMC Comments at 10-11 (quoting Ron Stone, Chief Executive Officer of Adams Radio Group, disputing the notion that relaxing ownership limits would help radio compete with online platforms and further stating that "[t]hat is not our business. Thinking that way is no different than thinking we can be a television station or newspaper or steel mill for that matter. It's silly. People listen to our stations for three reasons: 1) to hear live and local information about their communities; 2) because they have a relationship with the jocks; and 3) to hear music. . . . If we are live and local and we limit commercials, we can keep our listeners.") (citing Radio Ink, *Ron Stone Fires Up the Opposition* (May 17, 2018), https://radioink.com/2018/05/17/a-strong-argument-against-more-deregulation/); *see also* Open Markets Institute Reply at 3-4 (arguing that radio consolidation is not the answer to large technology companies and that corporate concentration in one sector should not be addressed by allowing corporate concentration in another sector).

[154] *See* musicFirst/FMC Comments at 6-8 (asserting that the Commission should focus on the interests of AM/FM listeners); iHeart Reply at 10-11 (stating that the Commission's role is to regulate broadcast radio, not advertising); musicFirst/FMC Update Reply at 5-12.

[155] Connoisseur Media et al. Comments at 22-23; NAB Reply at 45-49; American General Media et al. Reply at 18; Connoisseur Media et al Reply at 13.

stations without facing external competition from other station owners. Furthermore, evidence in the record suggests that as the radio industry has become more consolidated over time, some types of formats have been reduced.[156]

47. Notably, the existing rule already allows a generous amount of common ownership within a radio market and does not limit ownership across markets, nor, any longer, across other media such as newspapers, television stations, or cable systems. For example, in the largest radio markets, one owner may own as many as eight radio stations, and up to five in the same service, and that same owner is permitted to own stations up to the limit in every local market in the country.[157] Moreover, since the passage of the 1996 Act, considerable consolidation already has taken place within the radio industry, and there is mounting evidence that it has not been without at least some negative effects for consumers.[158] As some commenters observe, such consolidation has resulted in the homogenization of content; less local programming; fewer market entry opportunities for new or small owners, including minorities and women; employee layoffs; and competitive harm to the smaller station owners striving to remain in the market.[159] The result is that, even under the current Local Radio Ownership Rule, there are some radio

[156] *See* Christopher Terry and Caitlin Ring Carlson Reply Comments, MB Docket No. 18-349, at 9-10, 13-14 (rec. Oct. 1, 2021) (Terry and Carlson Update Reply) (submitting data showing declines in the number of stations carrying, and quantity of, programming targeted at African Americans and women, in particular); Thomas C. Smith Comments at 1-2 (arguing that when six to eight stations are commonly-owned in a market, there will be at least some overlap in programming because large group owners rely on a limited number of basic formats).

[157] In addition, as Mount Wilson notes, large group owners with five FM stations in a market already have the ability to add four HD channels to the main program streams, for a total of 25 FM channels (which would increase to 40 FM channels if the FM limit were raised to eight stations). Mount Wilson Comments at 3-4; Mount Wilson Reply at 1-2.

[158] Christopher Terry and Caitlin Ring Carlson Comments, MB Docket No. 18-349, at 4-5 (rec. Sept. 2, 2021) (Terry and Carlson Update Comments); Terry and Carlson Update Reply at 3-14. Notably, there is evidence that over time, local radio stations have made significant reductions in employees devoted to local news, from 4,570 news employees in 2008, to 3,360 news employees in 2020, a decline of approximately 26%. *See* Pew Research Center, *U.S. Newsroom Employment Has Fallen 26% since 2008* (July 13, 2021), https://www.pewresearch.org/short-reads/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/.

[159] Free Press Comments at 4-5 (disputing the idea that scale necessarily leads to increased production quality and arguing that it usually leads to content homogenization and decreased local coverage); musicFirst/FMC Audio Marketplace Comments at 10-14 (providing data to show that ownership concentration leads to content homogenization); NABOB Comments at 3-5 (arguing that consolidation after the 1996 Act caused a significant loss of African-American owned stations); Triangle Access Comments at 3 (contending that fostering consolidation is "synonymous with fostering a reduction in local content" and it would increase the cost of entry to diverse voices); Stephen Ressel Comments at 3-4; Mount Wilson Comments at 4-5; Bristol County Broadcasting/SNE Comments at 1-2; Thomas C. Smith Comments at 4; Urban One Comments at 3-4, 6, 9, 12-13; musicFirst/FMC Comments at 14-45 (discussing how ownership limits preserve localism, diversity, and competition); Leadership Conference Comments at 8; Writers Guild of America, East, AFL-CIO (WGAE) Comments at 3; MMTC Comments at 5-6 (asserting that lifting ownership limits would benefit "only a tiny handful of broadcasters" to the detriment of others, especially minorities, women, and new entrants); Howard Reynolds Reply at 1-2; Taxi Productions Reply at 1-3; Sarkes Tarzian Reply at 2-5; Free Press Reply at 5-7; Marshall Steinbaum Reply at 1-3; MMTC Reply at 1-8; Open Markets Institute Reply at 2; NABOB Update Comments at 4-8; Screen Actors Guild – American Federation of Television and Radio Artists (SAG-AFTRA) Comments, MB Docket No. 18-349, at 2-5 (rec. Sept. 2, 2021) (SAG-AFTRA Update Comments) (arguing that consolidation leads to fewer jobs); Terry and Carlson Update Comments at 4-5; Leadership Conference Update Reply at 2-3; Redrock Update Reply at 1-2; Media Action Center Reply Comments, MB Docket No. 18-349, at 2-3 (rec. Oct. 1, 2021) (Media Action Center Update Reply) (contending that the current rules already provide inadequate protection for viewpoint diversity); NHMC Update Reply at 4-5 (arguing that the rule should be strengthened to promote minority ownership); Salem Media Update Reply at 3-4, 6-7 (claiming that 1996 showed that consolidation helps only a small number of large group owners and hurts the smaller station groups); musicFirst/FMC Update Reply at 15-21 (disputing the argument that cost-savings leads to investment in local programming); *see also* musicFirst/FMC Comments at 3-5 (arguing that broadcast radio already (continued….)

companies with hundreds of radio stations around the country and many radio markets are already quite concentrated, a fact that the Commission highlighted in the last quadrennial review.[160]

48. For instance, we find that within local radio markets, the largest station group owners continue to dominate other radio stations in terms of audience and revenue share. Specifically, evidence shows that the largest owners of commercial stations continue to enjoy substantial advantages in revenue share—on average, the largest station group in each Nielsen Audio Metro market has a 46.7% share of the market's total radio advertising revenue, with the two largest owners accounting for 73.9% of the revenue.[161] In more than a third of all Nielsen Audio Metro markets, the top two commercial station owners control at least 80% of the radio advertising revenue.[162] With respect to ratings, the top four station group owners continue to dominate audience share.[163] Even without accounting for the market shares of station groups beyond the largest, these data reflect the high level of concentration in local radio markets, where on average the top station group owner's advertising revenue share hovers between 40 and 50 percent.[164] We therefore do not find that the current rule is overly burdensome or unduly restrictive, or that relaxing the existing numerical limits would promote competition in a manner that would be consistent with the public interest.[165]

49. Indeed, we find that the current rule remains a backstop against further excessive consolidation. When the Commission repealed the Radio/Television Cross-Ownership Rule in 2017, it reasoned that any negative effects would be mitigated by the continued operation of the Local Radio and Local Television Ownership Rules, which would act as constraints on undue concentration.[166] There is

(Continued from previous page)
has a competitive advantage over other audio delivery platforms because it is exempt from paying royalties to music creators).

[160] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9904, para. 105; *2014 Quadrennial Further Notice of Proposed Rulemaking*, 29 FCC Rcd at 4409, para. 92.

[161] *See* BIA/Kelsey MEDIA Access Pro Online Radio Analyzer & Rankers Database as of July 21, 2022 ("BIA Media Access Pro Database July 21, 2022") (evaluating advertising revenue market share data for all Nielsen Audio markets).

[162] According to BIA data, in the 50 largest markets, on average, the top two firms account for 62.3% of radio advertising revenue in the market; in the 100 smallest markets, on average, the top two firms account for 81% of market revenue. *See id.*

[163] BIA data indicate that the four firm market concentration ratios (i.e., the percentage of audience share attributed to the four largest firms in the market) average 97.2% in smaller markets and 89.7% in the 50 largest markets. *See id.*

[164] The Herfindahl–Hirschman Index (HHI) is a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The U.S. Department of Justice (DOJ) and Federal Trade Commission (FTC) generally consider markets in which the HHI is between 1,500 and 2,500 points to be moderately concentrated and consider markets in which the HHI is in excess of 2,500 points to be highly concentrated. *See* U.S. DOJ & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Under an HHI analysis, in a market where the market share leader has a share in excess of 50%, the market would be considered highly concentrated on the basis of that one firm alone (i.e., $50^2 = 2500$). In a market where the market share leader has a share in excess of roughly 40%, the market would be considered moderately concentrated on the basis of that one firm alone (i.e., $40^2 = 1600$). Arithmetically, the addition of other firms' market shares would not make the market any less concentrated under an HHI analysis, as all market shares, no matter the quantity or size, are additive to the total HHI value for the market and that value would only increase with the addition of market share information for other firms.

[165] *See* Taxi Productions Reply at 2-3 (surmising that "today's caps . . . should be sufficient to meet basic economies of scale").

[166] *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9829-30, para. 62; *see also* iHeart Comments at 6-7 (noting the Commission's reliance on the local ownership rules to serve as "guardrails" after the
(continued….)

some evidence that, although a considerable amount of consolidation has occurred, the rule has prevented further excessive consolidation. For instance, although the market share information cited above reflects a high degree of concentration among the largest firms, it also appears that those numbers have remained fairly stable for the past decade or so under the existing ownership limits.[167]

50. On the other hand, NAB's proposal of eliminating all limits in most markets and retaining only FM limits in the largest 75 markets would exacerbate the dominance of the larger firms. It would permit consolidation to the level of monopolization or near monopolization in many, if not most, markets.[168] It would mean, for many markets, the potential to move from moderately concentrated today, under traditional antitrust standards, to another level of concentration altogether, and for others that are already highly concentrated, it would mean making them even more so.[169] Practically speaking, this effect could be particularly pronounced in the smallest markets (i.e., those outside the top 75) where NAB's proposal to remove limits altogether would represent a radical departure from the current limits. For instance, most of the 178 markets outside the top 75 would be classified in one of the two smallest tiers per our existing rule (Tier 3 or Tier 4), with the majority (108) being considered Tier 3 and having, on average, 10.3 commercial FM stations.[170] Under NAB's proposal, then, in those 108 markets, an owner could increase its ownership from a maximum of four FM stations today to ten or more FM stations (or all such stations in the market).[171]

51. Surely, further consolidation could have benefits for certain radio owners, but such benefits are not worth the cost of the real and likely harms that would result to the listening public from a further reduction in competition. In particular, we find that undue consolidation is likely to lead to radio stations becoming less responsive to the needs and interests of their local communities. As the Commission has noted previously, "[b]ecause stations have a duty to serve the needs of their local communities, localism has been a cornerstone of broadcast regulations for decades."[172] We find that the cost pressures and incentives associated with consolidation could be expected to work against the provision of programming responsive to local issues.[173] Specifically, we think the cost incentives in favor of repurposing content on multiple stations—a practice that would be expected to expand with ownership of more stations in local markets—would work against vigorous competition for service responsive to

repeal of the cross-ownership rules); iHeart Update Comments at 5-7.

[167] For instance, the average advertising revenue market share of the largest station group in each market increased only slightly from 45% in 2012 to approximately 47% in 2022. Similarly, the combined market share for the top two station owners increased from 73% in 2012 to approximately 74% in 2022. *See 2010/2014 Quadrennial Review FNPRM*, 29 FCC Rcd at 4409, para 92.

[168] *See* NAB Comments at 39-40; NAB Update Comments at 68.

[169] For instance, based on 2021 data from BIA Kelsey Media Access Pro, HHIs for advertising revenue share in radio markets finds that there is one market with low concentration, 49 markets that are moderately concentrated, and 203 markets that are highly concentrated. For listening share among commercial stations, there are no markets with low concentration, 40 markets that are moderately concentrated, and 213 markets that are highly concentrated. Under NAB's proposal, every one of these 253 markets would carry the risk of becoming highly concentrated or becoming even more highly concentrated if already so.

[170] BIA Media Access Pro Database July 21, 2022 (providing data on the number of commercial and noncommercial stations in each Nielsen Audio market).

[171] The potential effect on competition inherent in NAB's proposal—which, as noted, is substantial—does not even account for any practical administrative difficulties that could be present with transitioning to a completely new approach to radio limits that sets a size cutoff based on Nielsen ranking (by households) rather than the number of stations in a market.

[172] *Broadcast Localism*, MB Docket No. 04-233, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, 1328, para. 5 (2008).

[173] *See 2022 Communications Marketplace Report* at 180, para. 305.

local needs.

52. In addition, we note that some commenters raise concerns about the effects that loosening limits on FM ownership could have on the AM band. Specifically, commenters opposing NAB's proposal argue that eliminating the FM limit in the majority of radio markets and raising it from five to eight stations in the largest 75 markets would devalue the AM band by causing the migration of AM station owners to the FM band.[174] They argue that migrating AM station owners would take audiences, advertising, programming, investment of capital, resources, and talent with them.[175] They assert that the result would be counterproductive to the Commission's AM revitalization efforts[176] and would undermine the Commission's incubator program by removing or reducing the incentive to participate in the program.[177] NAB counters that its proposal, in fact, would promote AM revitalization by allowing owners to acquire more AM stations.[178] It contends that radio stations in smaller markets need the regulatory relief its proposal would provide and that AM stations, in particular, are struggling.[179] Because we decline to adopt NAB's proposal, we need not reach a determination on whether the proposal would have a deleterious impact on the AM band due to a purported exodus of owners that commenters claim would occur.

53. We acknowledge that even under the existing rule there may be instances in which smaller owners are increasingly finding it difficult to remain viable in the current radio industry (a fact that is perhaps not surprising given the dominance of the largest firms). While NAB and others present this as a rationale in favor of further consolidation, i.e., to allow larger firms to buy struggling smaller firms,[180] we disagree. Rather, we agree with those commenters that assert that loosening the current rule would result in the disappearance of smaller stations from the market entirely, either because they would

[174] iHeart Comments at 29-32; Crawford Comments at 2; CRC Comments at 2-3; Salem Media Comments at 3-6; MMTC Comments at 11-12; NABOB Comments at 9-11; Salem Media Reply at 9-10; musicFirst/FMC Reply at 16-20; MMTC Reply at 3-5; iHeart Update Reply at 9-10; Salem Media Update Reply at 4-6.

[175] iHeart Comments at 29-32; Crawford Comments at 2; CRC Comments at 2-3; Salem Media Comments at 3-6 (providing several examples of AM stations migrating to the FM band); MMTC Comments at 11-12; NABOB Comments at 9-11; Salem Media Reply at 9-10; musicFirst/FMC Reply at 16-20; MMTC Reply at 3-5; iHeart Update Reply at 9-10; Salem Media Update Reply at 4-6; *but see* NAB Reply at 54 (stating that denying relief to FM stations in order to protect AM stations is "the regulatory equivalent of cutting off radio's nose to spite its face"); Connoisseur Media et al. Reply at 9-11.

[176] iHeart Comments at 7, 32; Crawford Comments at 2 (contending that "removal or easing of FM subcaps will do far more harm to AM Radio than all the good the Commission has so far achieved in its AM Revitalization efforts"); CRC Comments at 3-4; Salem Media Comments at 2; NABOB Comments at 5-9; Crawford Reply at 1; Salem Media Reply at 3; NABOB Update Comments at 8-12. *But see* WBOC Reply at 4 (asserting that "if [AM] revitalization rests on artificial FM ownership restrictions, it won't be durable enough to survive the competitive onslaught that local radio now faces").

[177] iHeart Comments at 7-8, 33-35; MMTC Comments at 9-10; iHeart Update Comments at 5-7, 26-29. iHeart further argues that the AM band should be preserved because AM stations are "a vital component of America's public safety and national security communications infrastructure" that are relied upon by the public during emergencies. iHeart Comments at 18-24, 33; iHeart Update Comments at 13-22; iHeart Update Reply at 12-17; *see also* Adams Radio Comments at 1; Salem Media Comments at 10. *But see* NAB Reply at 52-53 (suggesting that there are many sources of emergency information other than AM radio).

[178] NAB Comments at 34-35.

[179] *Id.* at 31-33; *see also* American General Media et al. Reply at 14-15 (arguing that digital competition has had a particularly severe impact on stations in smaller markets).

[180] *See* NAB Update Comments at 80 (stating that "the benefits of permitting additional station combinations are greatest in small markets, where radio stations most struggle to cover their fixed costs"); NAB Comments at 61, n.241 (arguing that "'depriving stations, especially smaller ones, of the ability to engage' in local combinations and joint arrangements could significantly impact 'stations' ultimate financial viability'").

be more vulnerable to acquisition or because they would be unable to compete with the larger station groups that would expand their dominance if further consolidation was permitted.[181] Excessive aggregation through acquisition of stations of any size disserves our policy goals of competition, diversity, and localism. In any event, we continue to find that there is ample leeway under the current rule for additional consolidation within limits.[182] What the current rule does constrain, however, is the further aggregation of market share by an already dominant firm in a local market. Put another way, even if it would be efficient for a struggling firm to exit the market, it does not follow that an in-market competitor has to be, or should be, the one to acquire that firm. Instead, we find that a new entrant (or at least a new market entrant) would be preferable from the perspective of competition and diversity, and our current rule is conducive to such an outcome.[183]

54. *AM/FM Subcaps*. We conclude that, like the market tiers and associated ownership limits, the sub-limits on AM and FM ownership within the Local Radio Ownership Rule also remain necessary in the public interest given the current audio marketplace. The radio rule's AM/FM subcaps limit the number of radio stations from the same service, i.e., AM or FM, that an entity may own in a single market.[184] Currently, a broadcaster may not own more than five AM or five FM stations in markets in the largest market tier, four AM or four FM stations in markets in the two middle-sized tiers, or three AM or three FM stations in markets in the smallest tier.[185] These subcaps, which were set by Congress in 1996, are intended to prevent excessive concentration in a particular service, to foster market entry, and to promote competition by accounting for the technological and marketplace differences between AM and FM stations.[186]

55. We find that the AM/FM subcaps continue to serve these purposes. The subcaps help prevent excessive common ownership of either AM or FM stations in a local market. Retaining a cap specific to FM stations addresses the concerns of commenters that relaxing or removing the FM subcaps potentially could cause AM stations to migrate to the FM band, resulting in a diminished AM band where lower-cost market entry opportunities for small owners, including minorities and women, are most likely.[187] Moreover, despite the growing use of FM translators to transmit AM signals and the transition of some AM stations to digital radio, disparities between the AM and FM services persist.[188] iHeart provides evidence that the number of AM stations has declined while the number of FM stations has increased, and it states that quantitative data for audience listening and advertising revenue demonstrate "a large and increasing competitive gap between AM and FM radio stations" from 2010 to 2018.[189] In the

[181] Crawford Comments at 2; CRC Comments at 2; King City Comments at 1-2; Thomas C. Smith Comments at 3; Urban One Comments at 3-4; musicFirst/FMC Comments at 8-9; Sarkes Tarzian Reply at 1-5; musicFirst/FMC Audio Marketplace Reply at 5-15.

[182] For instance, in looking at the ten largest radio station owners (by net advertising revenue), none has an average of more than five radio stations per market, suggesting there are markets where these companies could acquire additional stations, even under the current rule. *See 2022 Communications Marketplace Report* at 179, Fig. II.F.2.

[183] The ten largest radio station owners, on average, own stations in 43 markets, suggesting there may be more markets they could enter to pursue cost efficiencies and economies of scale under the current rule. *See id.*

[184] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12124-25, paras. 30-32.

[185] 47 CFR § 73.3555(a)(1).

[186] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9907-08, paras. 113-14.

[187] MMTC Comments at 11-12 (arguing that migration would especially harm minority broadcasters); NABOB Comments at 9-11 (contending that lifting subcaps would harm African-American AM owners disproportionately).

[188] Crawford Reply at 2; iHeart Update Comments at 22-26. *But see* Alpha Media Comments at 2 (asserting that the disparities between AM and FM stations no longer exist given online streaming, HD radio, and the use of FM translators).

[189] iHeart Comments at 14-18.

interest of preventing undue concentration among local stations in either band, we reject the proposals in our record aimed at modifying or eliminating the rule's subcaps.[190]

56. Though iHeart and other commenters contend that elimination of the AM subcap would provide needed relief to the struggling AM band without risk of harming competition, we disagree.[191] iHeart's proposal to remove all limits and subcaps on AM stations while retaining all current limits and subcaps on FM stations[192] would not create a risk of migration of AM owners to the FM band, which is one concern that has been raised regarding FM deregulation.[193] However, we agree with those commenters who contend that AM deregulation would allow large owners of AM stations to buy up the smaller AM stations in their markets and could lead to excessive concentration within the AM band.[194] iHeart asserts that there is no longer a risk of concentration in the AM band given "increasingly steep declines in audience listening to AM stations and the continuing erosion of advertiser revenue experienced by AM stations, especially when compared to FM stations."[195] However, we find that although AM stations overall tend not to achieve the ratings or revenues of FM stations, this disparity is by no means a universal truth. For instance, in each of the top five markets, there is an AM station among the top three stations in revenue.[196] Additionally, throughout the 253 Nielsen Audio Metro markets, there are 124 AM stations ranked in the top five in terms of all-day audience share, or approximately 10% of all top-five stations in those markets.[197] Further, four out of the top ten (and seven out of the top twenty) radio stations in the United States (as ranked by net advertising revenue for 2021) are AM stations.[198] Therefore, it cannot be presumed that AM stations would not be targets for acquisition if AM restrictions were eliminated. Regardless, even in markets where AM stations are not among the highest-ranked stations in the market, the AM limits and subcaps promote a competitive AM band by preventing excessive concentration.

57. In addition, we find that reduced competition in the AM band would threaten the band's

---

[190] *See, e.g.*, *id.* at 8 (urging the Commission to remove all AM subcaps); NAB Comments at 7 (essentially proposing to retain only the FM subcap in the top 75 markets and raise it to eight stations); Sinclair Telecable Comments at 1 (recommending that the AM/FM subcap limits be raised by one station in each market tier).

[191] iHeart Reply at 13-18; *see also* iHeart Update Reply at 12-17. *See* Curtis Media Group Comments at 2-3 (arguing that the elimination of all AM ownership limits "would promote investment in AM radio and increase efficiencies and economies of scale . . . [which] would allow AM stations to expand programming diversity, including enhanced local programming and community engagement, so that AM stations can better compete for listeners and advertisers"); CRC Comments at 4 (contending that eliminating AM subcaps would stabilize AM radio valuations by enabling large group owners to increase their presence in a market); SSR Nov. 20, 2023 *Ex Parte* at 1 (proposing removal of any delineations between AM and FM facilities in the radio ownership limits).

[192] iHeart Comments at 1, 26-28; iHeart Update Comments at 5.

[193] *See, e.g.*, iHeart Comments at 29-32; Crawford Comments at 2; CRC Comments at 2-3; Salem Media Comments at 3-6; MMTC Comments at 11-12; NABOB Comments at 9-11; Salem Media Reply at 9-10; musicFirst/FMC Reply at 16-20; MMTC Reply at 3-5; iHeart Update Reply at 9-10; Salem Media Update Reply at 4-6.

[194] *See, e.g.*, Mount Wilson Comments at 2-3; musicFirst/FMC Comments at 44-45; Thomas C. Smith Comments at 3; Mount Wilson Reply at 2-3; Crawford Reply at 2; Taxi Productions Reply at 1-3.

[195] iHeart Comments at 26-28.

[196] *See* BIA Media Access Pro Database July 21, 2022.

[197] *Id.* Specifically, across all 253 Nielsen Audio Metro markets, there are 1,265 total stations that would be ranked in the top five (discounting any potential ties for the number five ranking), which means that AM stations account for approximately 9.8% percent of the top five stations in these markets. So although, in general, FM stations may continue to enjoy some competitive advantages over AM stations, there continue to be many strong AM stations and AM remains a vital service.

[198] *See* S&P Capital IQ, Radio Stations by Market and Format as of Aug. 4, 2022.

distinctive qualities. Notably, some commenters observe that the AM band, in particular, includes more small broadcasters than the FM band, including minority and female licensees, and that it is important to preserve that diversity of ownership.[199] AM stations also include more Spanish and Ethnic, News, Sports, and Talk formats relative to FM stations.[200] Despite competitive developments that have continued to affect the AM and FM bands, relative to each other, we find that the public interest benefits of maintaining diffuse ownership within the AM and FM bands continue to support retaining the AM and FM subcaps.

58. *Methodology for Determining Compliance in Non-Nielsen Audio Markets*. We will make permanent the Commission's contour-overlap methodology that has been used on an interim basis to determine compliance with ownership limits in areas that are not within defined Nielsen Audio Metro markets. At the time the Commission adopted the use of Nielsen Audio Markets (formerly Arbitron Metro markets), it acknowledged that not all portions of the country fall into a market area defined by Arbitron or later Nielsen. In fact, a significant portion of the country, both in terms of geography and population is not located in such rated/defined markets, meaning that another method must be employed in those instances to determine the number of stations in a given market.[201] Accordingly, the Commission previously stated that it would continue to use the former "contour-overlap methodology" to determine the relevant geographic market for purposes of ascertaining compliance with the relevant radio ownership market tiers and caps.[202] Under this approach, the relevant geographic market is defined by the cluster of stations with overlapping signal contours of a given strength.[203] Although the Commission was initially critical of the contour-overlap methodology, and indeed abandoned it in favor of using markets defined by Arbitron or Nielsen ratings where such markets exist, it has continued to use the approach now on an "interim" basis for nearly 20 years for those areas that fall outside a rated market. In that time, and in various quadrennial proceedings, the Commission has invited commenters to offer alternatives to the methodology for use in non-rated areas, but ultimately has found no reason to revisit the approach. Rather, it has found previously that the revised contour-overlap methodology appeared to be working

[199] *See* Urban One Comments at 7-8; Mount Wilson Reply at 2-3; League of United Latin American Citizens Reply at 1-3 (stating that AM radio is a trusted source of information for Hispanics, who rely on Spanish-speaking radio for local news and health and public safety information); Salem Media Update Reply at 6-7.

[200] *2022 Communications Marketplace Report* at 181, para. 307.

[201] *See 2002 Biennial Review Order*, 18 FCC Rcd at 13729, para. 282 (stating that "Arbitron Metros do not cover the entire country; the 287 Arbitron Metros cover approximately 60% of the commercial radio stations, 30% of the counties, and 78% of the population above the age of 12 in the United States, including Puerto Rico").

[202] *Id.* at 13729-30, paras. 282-86. In adopting the Arbitron Metro (now Nielsen Audio Metro) market definition for purposes of the radio rule in the *2002 Biennial Review Order*, the Commission stated that the contour-overlap methodology would continue to apply to undefined markets on an interim basis while it explored the potential for a better substitute. While the Commission continued to apply the methodology on an interim basis, it adopted changes to the methodology that minimized what it found to be the more problematic aspects of that approach. Specifically, the Commission excluded from the market calculation radio stations that are commonly owned with the stations seeking to be combined and radio stations whose transmitter site is more than 92 kilometers (58 miles) from the perimeter of the mutual overlap area. *Id*.

[203] The contour-overlap methodology for defining radio markets and counting the radio stations that are in those markets uses the principal community contours of the commercial radio stations that a party seeks to own. The relevant radio market is defined as the area encompassed by the principal community contours of the commonly owned radio stations whose contours mutually overlap. Principal community contours also are used to count the number of radio stations in a radio market, that is, to determine the size of the market for purposes of applying the ownership limits. Specifically, in addition to the radio stations whose contours form the market, any station whose principal community contour intersects the market is considered to be in the relevant market. *See id.* at 13729-30, paras. 282-86 and Appendix F for a detailed explanation of the contour overlap methodology.

well.[204]

59. Seeking to resolve the issue once and for all, and either remove the "interim" label or else find a suitable replacement, the Commission once again called for any potential alternatives to the contour-overlap method in the *NPRM*.[205] The record neither offers any new alternative to the method, nor any opposition to its continued use in those areas of the country that are outside of a rated Nielsen Audio Market.[206] Accordingly, because we find that the approach has worked sufficiently well for the past 20 years[207] and is familiar to both radio broadcasters and Commission staff, we will make permanent the Commission's contour-overlap methodology that has been used on an interim basis to determine ownership limits in areas that are not within defined Nielsen Audio Metro markets. Therefore, going forward, parties proposing a radio station combination involving one or more stations whose communities of license are not located within a Nielsen Audio Market must show compliance with the local radio ownership rule using the contour-overlap methodology.

60. *Embedded Markets.* We decline requests from commenters to modify our presumption regarding embedded markets, which was originally adopted in 2017 and made applicable pending further consideration of embedded market transactions in this 2018 Quadrennial Review proceeding.[208] We now complete our 2018 Quadrennial Review and retain the presumption in its current form. As described above, embedded markets are smaller markets, as defined by Nielsen Audio, that are contained within the boundaries of a larger Nielsen Audio Metro market. In general, entities seeking to acquire a radio station in an embedded market must satisfy, separately, the numerical limits of the Local Radio Ownership Rule for both the embedded market and the overall parent market. In addition, our current policy includes a presumption in favor of waiving the general rule for radio stations in embedded markets where the parent market contains multiple embedded markets, provided two conditions are satisfied: (1) compliance with the numerical ownership limits using the Nielsen Audio Metro methodology in each embedded market, and (2) compliance with the ownership limits using the contour-overlap methodology applicable to undefined markets—in lieu of evaluating compliance with the numerical limits in the overall parent market.[209] Currently, the only two markets for which the presumption is relevant—i.e., parent markets

[204] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9898, para. 85 n.234.

[205] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12122-23, para. 25.

[206] NAB Comments at 40-41 (supporting the contour-overlap methodology for non-Nielsen Audio markets and observing that "no party has ever suggested a rational, workable alternative"). Arguing that small stations often serve only a portion of a Nielsen Audio market, Curtis Media Group would like to see a return to the contour-overlap methodology for all markets. Curtis Media Group Comments at 3-5. We will continue to use the Nielsen Audio market definition where possible. In selecting the Arbitron (now Nielsen Audio) radio market definition, the Commission pointed to the fact that Arbitron was an "established industry standard" and a "commercially accepted and recognized definition" that represented "a reasonable geographic market delineation within which radio stations compete." *2002 Biennial Review Order*, 18 FCC Rcd at 13725, paras. 275-76; *see also 2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9843-44, para. 92 (stating that "Nielsen Audio's market definitions are recognized as the industry standard and provide for consistency and ease of application in comparison to other possible methods for defining local radio markets"); *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9903-04, para. 102 (recognizing Nielsen Audio market definitions as the industry standard). We continue to find this approach preferable where we can apply it.

[207] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12122-23, para. 25.

[208] *See* Connoisseur Media Comments at 2-11; NAB Comments at 41-42; Press Communications Update Comments at 4-5. As promised when the embedded markets presumption was adopted, the Commission sought comment on it in the *NPRM* initiating the 2018 Quadrennial Review proceeding. *See 2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12125-27, paras. 33-36; *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9841, 9845-46, paras. 86, 95.

[209] *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9842, para. 90 n.262; *see also id.* at 9841, para. 86 n.251.

that contain multiple embedded markets—are New York, NY, and Washington, DC, and application of the presumption is limited to these markets.[210]

61. We find that the record, and the lack of applications received to date, supports not making any changes to our embedded markets policies at this time.[211] In particular, we reject suggestions that we eliminate the policy that counts an embedded market station in both the embedded market and in the parent market in favor of counting embedded market stations only within an embedded market.[212] In addition, we reject the suggestion that the waiver presumption should be extended to any and all future situations with multiple embedded markets, beyond New York and Washington, DC.[213] Instead, after evaluating the presumption in the 2018 Quadrennial Review proceeding, we retain the presumption in its current form.[214] We agree that Connoisseur Media and others have demonstrated evidence in the past that embedded market stations primarily compete for listeners within the confines of their own embedded market, that is, against stations located within their own embedded market and those stations located in the main city of the parent market whose signals reach the embedded market (but not against stations in other embedded markets).[215] It is precisely for these reasons that the Commission adopted the presumption in 2017. Nonetheless, we find that the proposal not to count embedded market stations toward an entity's compliance with the limits in the parent market could lead to excessive concentration, allowing a single owner to combine parent market stations together with those in embedded markets in a

[210] *See id.* at 9841, 9845-46, paras. 86, 94-95 (limiting the presumption to the two markets with multiple embedded markets (New York and Washington, DC) at the time it was adopted).

[211] *See* Connoisseur Media Comments at 2 (stating that "the Commission's policy to count embedded market stations in both the embedded market and in the parent market should be abolished"); NAB Comments at 42 (contending that stations in an embedded market should "not count toward the group owner's compliance with the local ownership limit in the parent market"); Press Communications Update Comments at 4-5 (requesting that the number of stations counted for an embedded market should include competing stations from adjacent markets, thereby increasing the station count for the embedded market and in turn the number of stations an entity could own in the embedded market).

[212] *See* Connoisseur Media Comments at 2-9; NAB Comments at 42. Connoisseur Media advocates for such a change by relying on its analysis of the New York, NY, and Washington, DC, markets, claiming that such a change would be consistent with the competitive dynamics in these embedded markets and that embedded market stations compete almost exclusively within the confines of their own embedded markets. Connoisseur Media Comments at 3-8. Put another way, Connoisseur Media claims that embedded market stations do not compete in embedded markets other than their own, and therefore, a policy that requires an entity to comply with the overall parent market limit restricts an entity's ability to amass groups of stations in multiple embedded markets in a single parent market. For instance, if an entity is permitted under the separate limits applicable to three individual embedded markets to own four stations in each (or twelve stations total), it would still run afoul of the overall parent market limit, which permits, at most, ownership of eight stations. *See* Connoisseur Media Comments at 7-9; *see also* NAB Comments at 42. As noted above, the Commission already has in place a presumption in favor of waiver of the usual embedded markets policy in markets with multiple embedded markets, pursuant to which a contour-overlap methodology is applied rather than conducting a parent market analysis. For the reasons discussed above, we find this relief to be sufficient.

[213] *See* Connoisseur Media Comments at 11. Connoisseur Media suggests that the Commission need not evaluate each subsequent market should new situations arise in the future with multiple embedded markets, but rather it should simply apply the waiver presumption automatically.

[214] *See id.* at 2 (asking the Commission to retain the presumption, which was adopted in 2017 and subject to further review in the 2018 Quadrennial Review proceeding).

[215] *See id.* at 7 (noting that "Connoisseur provided a county-by-county breakdown of the listening of the [New York, NY, and Washington, DC] embedded market stations, showing that virtually all of the listening to those stations comes from listeners in the home counties of the embedded market, not from listeners in the parent market or in other embedded markets"); *see also* Press Communications Update Comments at 4-5 (noting that New York City and out-of-market stations account for 60% of the ratings in the Monmouth-Ocean, New Jersey embedded market).

way that harms competition within the embedded market.[216] Moreover, absent further experience with the existing presumption in practice, we remain unconvinced that there is a demonstrated need, or that it would be wise, to adopt additional flexibility at this time.[217] For these same reasons, we decline to automatically extend the waiver presumption to all future situations involving multiple embedded markets.

62. When the Commission adopted the embedded market presumption in 2017, it stated that the presumption would "give Connoisseur—and other parties—sufficient confidence with which to assess possible future actions."[218] We find that this continues to be the case, as the presumption favors an entity's ability to invest in multiple embedded markets without the stations it owns in one embedded market counting against its ownership of stations in the other. Moreover, the Commission anticipated that future transactions utilizing the presumption would "help inform our subsequent review of … the treatment of embedded market transactions."[219] In fact, however, during the time since 2017 that the presumption has been in effect, no party has filed an application seeking to avail itself of the presumption. Moreover, the record in this proceeding contains no evidence to indicate that the current presumption is deterring such transactions or that that the presumption would be inadequate to facilitate their successful completion where the criteria of the presumption could be met. As a result, we find that the Commission is providing sufficient flexibility and certainty to prospective applicants and that we do not have any further experience or information supporting further policy or rule changes at this time.[220]

63. *Minority and Female Ownership*. We find that the record provides no reason for the Commission to reevaluate its conclusions in the *2010/2014 Quadrennial Review Order* that the current Local Radio Ownership Rule remains consistent with the Commission's goal of promoting minority and female ownership of broadcast radio stations.[221] We retain the rule for the reasons stated above, particularly to promote competition among broadcast radio stations in local markets. The record does not

[216] For instance, within the New York, NY parent market, suppose an entity owns eight stations, four in each of two embedded markets. If those stations do not count toward the limits in the parent market, then the entity would be free to acquire up to eight non-embedded stations in the New York, NY parent market. If, as Connoisseur Media claims, New York parent market stations compete for listeners in outlying embedded markets, then this change could effectively allow an entity to own a total of sixteen stations, twelve of which, according to Connoisseur Media's claims, would be competing in each of two embedded markets (i.e., the four embedded market stations each competing within their respective embedded markets as well as the eight non-embedded parent market stations that presumably compete in each of the two embedded markets as well). *See* Connoisseur Media Comments at 5 (stating that "parent market stations compete in the areas encompassed by the embedded markets").

[217] We note that Press Communications argues for a broader rule change on the basis of data supplied for a single embedded market. Again, without additional data or experience applying the presumption already in place, we decline to make further changes, including those suggested by Press Communications, to our embedded markets policies at this time. *See* Press Communications Update Comments at 4-5.

[218] *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9845-46, para. 95. This followed statements in the *2010/2014 Quadrennial Review Order* suggesting the Commission's willingness to entertain a waiver in the New York, NY market. *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9904, para 103.

[219] *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9845-46, para. 95.

[220] With regard to Connoisseur Media's suggestion that our policy should apply to all future parent markets with multiple embedded markets, we find that it would be speculative and premature to consider how we will apply the presumption to all such future markets without understanding the particular competitive dynamics of those markets. *See* Connoisseur Media Comments at 11. As Connoisseur Media claims, the drawing of embedded markets is, at least in some sense, a function of geography, such that the competitive dynamics of future markets may or may not resemble those of the current two to which the presumption applies. *See id.* at 4 (noting statements from Nielsen and BIA to demonstrate that the inclusion of an embedded market in a parent market is "simply a statement of geography"). It is possible that, even if applied to other markets, the presumption could be overcome by factors in future markets that we have not observed in the New York, NY or Washington, DC markets.

[221] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9911, para. 125.

contain persuasive evidence that relaxing the rule would boost minority or female radio ownership.[222] To the contrary, several commenters contend that loosening ownership restrictions could make it more difficult for minority and women owners to remain and/or to enter the local radio market.[223] For example, NABOB opposes any changes to the local radio ownership rule and notes that increased consolidation of ownership in the broadcast industry reduces opportunities for minorities to enter the business or to grow.[224] In contrast, NAB states that the best way to encourage broadcast ownership by new entrants, including minority and female owners, is to ensure access to capital and argues that the existing rule impedes investment in broadcasting by making other unregulated forms of media more attractive.[225] We note that a balance must be struck between incentivizing investment in broadcasting and ensuring that station-buying opportunities exist for new entrants. We find that the existing rule strikes the appropriate balance, especially considering that investment by new entrants is less likely in a market that is highly concentrated.[226] We note that simply eliminating ownership limits would allow more consolidation. We also share commenters' concerns that allowing greater consolidation could increase the challenges many of these relatively smaller stations face in competing for revenue in the marketplace and could reduce opportunities for new entrants, including minority and women owners, to participate in the market.[227]

64. In this context, we note, as discussed above, that the Commission has taken several actions, such as improving its collection and analysis of ownership information on FCC Form 323/323-E, exploring access to capital through its re-chartered CEDC,[228] and implementing the radio incubator program, that are intended to provide the Commission with more information about the state of minority and female broadcast ownership, or that seek to further the important goal of increasing minority and female ownership, objectives to which we remain committed.

65. *Cost-Benefit Analysis*. The *NPRM* asked how the Commission should compare the benefits and costs of retaining, modifying, or eliminating the Local Radio Ownership Rule.[229] As discussed above, commenters disagree regarding whether rule modifications would enable radio owners to respond more effectively to changes in the broader audio environment, or even, if so, whether any such benefits would outweigh potential harms to competition, localism, or viewpoint diversity. For all the reasons explained above, we conclude that any potential benefits that further consolidation might offer

[222] *See, e.g.*, Connoisseur Media et al. Reply at 9-12 (arguing that migration of AM stations to the FM band would open up ownership opportunities for minorities and women).

[223] *See, e.g.*, musicFirst/FMC Comments at 23-25; Urban One Comments at 5-8; MMTC Comments at 5-6, 9-12; NABOB Comments at 1-9; Free Press Reply at 5-6; MMTC Reply at 5-8; Taxi Productions Reply at 1; NABOB Update Comments at 1-12; Leadership Conference Update Reply at 2-3; Redrock Update Reply at 2; NHMC Update Reply at 5; Salem Media Update Reply at 6-7.

[224] NABOB Update Comments at 2. NABOB has submitted evidence showing that currently 72% of the 168 Black Owned radio stations generate less than $1 million in annual revenue, and only 2.4% of Black Owned radio stations generate more than $10 million in annual revenue. Letter from James L. Winston, President, NABOB, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 18-349, 20-401 and 17-105, at 1 (filed June 6, 2022).

[225] NAB Update Comments at 10-18; NAB Update Reply at 18-19; NAB Oct. 30, 2023 *Ex Parte* at 1-2.

[226] *See* MMTC Reply at 6 (stating that, without ownership caps, small and minority broadcasters would be forced out of business because their investors would be susceptible to purchase offers from larger competitors); Letter from Jonathan Mason, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 1 (filed Oct. 30, 2023) (stating that small station group owners, many of which are minority-owned, cannot compete in a market owned and controlled by the largest station owners).

[227] Urban One Comments at 7-8; MMTC Reply at 1-8; NABOB Update Comments at 8-12; *see also* LCCHR Update Reply at 2-3.

[228] *See* FCC, Communications Equity and Diversity Council, at https://www.fcc.gov/communications-equity-and-diversity-council.

[229] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12127, paras. 38-39.

larger radio owners are outweighed by potential costs to the consumer stemming from such harms as weakened competition within the local broadcast radio market, increased homogenization of content, less local programming, the disappearance of stations from the market, and fewer opportunities for new and diverse market entrants.

B. Local Television Ownership Rule

1. Introduction

66. In this section, we retain the existing Local Television Ownership Rule subject to minor modifications. As an initial matter, we find that the rule remains necessary to promote the Commission's public interest goals of competition, localism, and viewpoint diversity. Specifically, we find that the Local Television Ownership Rule remains necessary to promote these goals given the unique obligations broadcast licensees have as trustees of the public's airwaves to serve their local communities.

67. In reaching our conclusion, we find that the relevant market for the rule should continue to focus on broadcast television stations, as no other source of video programming provides a substitute for broadcast television, and we retain the current numerical ownership limits. We also retain as a condition of common ownership that a broadcaster cannot acquire two stations ranked in the top four in audience share in a market—known as the Top-Four Prohibition—unless, at the request of an applicant, the Commission finds that such an acquisition serves the public interest, convenience, and necessity on a case-by-case basis.[230] But we modify the methodology of the Top-Four Prohibition to reflect better the current state of broadcast industry practices. Specifically, as detailed further below, under the revised Local Television Ownership Rule adopted herein, a television station's audience share ranking in a Nielsen Designated Market Area (DMA)[231] will be determined based on the combined audience share of all free-to-consumer, non-simulcast[232] multicast programming airing on streams owned, operated, or controlled by that station as measured by Nielsen Media Research or by any comparable audience ratings service. We update the relevant daypart used to make audience share and ratings determinations to the metric that, based on Commission experience and consultation, most accurately reflects a station's true performance given changes in the broadcast industry.[233] We also specify a definite time period over which ratings data should be averaged to minimize the impact of anomalous ratings periods.

68. In addition, we extend a previously adopted measure in order to prevent further circumvention of the Top-Four Prohibition and ensure the efficacy of the Local Television Ownership rule. Pursuant to the changes we adopt herein, an entity will not be permitted to acquire a network affiliation and place it on a station or broadcast signal that is otherwise not counted as a station for purposes of the Local Television Ownership Rule as a way to circumvent the prohibition on such

---

[230] The Top-Four Prohibition does not prohibit a broadcaster from ending up with two top-four stations through organic growth.

[231] The Nielsen Company assigns each broadcast television station to a designated market area (DMA). The DMA boundaries and DMA data are owned solely and exclusively by Nielsen. Nielsen, *Nielsen DMA Maps*, https://markets.nielsen.com/us/en/contact-us/intl-campaigns/dma-maps/ (last visited Aug. 11, 2022). Each DMA is a group of counties that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed. There are 210 DMAs, covering the entire continental United States, Hawaii, and parts of Alaska.

[232] Some station owners simultaneously broadcast the primary programming stream of a second station they own on the nonprimary multicast stream of the other station they own in the same market. A nonprimary multicast stream is typically designated by appending a ".2" or greater digit to the channel number to distinguish such streams from a station's primary stream which usually is designated with a ".1" suffix.

[233] Because the same daypart is also used to make audience share and ratings determinations in the context of failing stations waivers as provided in Note 7 to section 73.3555 of the Commission's rules, we find that our update to the methodology of the Top-Four Prohibition logically leads us to update also the failing station waiver methodology with respect to the daypart used.

affiliation acquisitions adopted in the *2010/2014 Quadrennial Review Order*. We retain the shared service agreement (SSA) disclosure requirement to continue providing transparency regarding the extent of cooperation and coordination between competing stations in a market. We also find that retaining the rule continues to preserve opportunities for a variety of different owners, including minority and female owners, who can contribute to the multiplicity of speakers in a market. Lastly, we find that the public interest benefits achieved by retaining the rule with the adopted changes outweigh the potential economic cost of continued compliance with the rule.

2. Background

69. The Local Television Ownership Rule limits the number of full power television stations an entity may own within the same local market. The Local Television Ownership Rule provides that an entity may own up to two television stations in the same Nielsen DMA if: (1) the digital noise limited service contours (NLSCs) of the stations (as determined by Section 73.622(e) of the Commission's rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top-four stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.[234] With respect to the latter provision—the Top-Four Prohibition—an applicant may request that the Commission examine the facts and circumstances in a market regarding a particular transaction, and based on the showing made by the applicant in a particular case, make a finding that permitting an entity to directly or indirectly own, operate, or control two top-four television stations licensed in the same DMA would serve the public interest, convenience, and necessity.[235] The Commission considers showings that the Top-Four Prohibition should not apply due to specific circumstances in a local market or with respect to a specific transaction on a case-by-case basis.[236]

70. The *NPRM* sought comment on the effects of rule changes made in the *2010/2014 Quadrennial Review Order on Reconsideration* and raised several issues for consideration related to changes in the video programming industry.[237] In particular, the *NPRM* sought comment on whether the current version of the Local Television Ownership Rule remained necessary in the public interest as a result of competition.[238] The *NPRM* also sought comment on whether the Local Television Ownership Rule is necessary to promote localism or viewpoint diversity.[239] In response to broadcaster claims in previous quadrennial review proceedings that non-broadcast sources of video should be considered substitutes for broadcast video, the *NPRM* sought comment on whether and to what extent this was true, as well as how to incorporate non-broadcast video into market definition analyses.[240] The *NPRM* then asked whether changes in the video programming industry support modification of the numerical limit of owning up to two television stations in the same market.[241] If the Commission retained the Local

[234] 47 CFR § 73.3555(b)(1).

[235] *Id.* § 73.3555(b)(2). As noted below, pursuant to this provision, the Commission has granted three case-by-case applications for flexibility affecting five DMAs.

[236] 47 CFR § 73.3555(b)(2).

[237] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12129-40, paras. 43-77.

[238] *Id.* at 12129, para. 43.

[239] *Id.* at 12129, para. 45.

[240] *Id.* at 12130-31, paras. 49-51. In response, NAB offers a study finding that digital advertising over broadband networks could be considered a direct substitute for local television broadcast advertising. NAB Update Comments at 57; *but see* Writers Guild of America, West (WGAW) Comments at 2-9 (stating that broadcast television offers a distinct and non-substitutable advertising product); Free Press Reply at 7-10 (stating that digital media are not a true substitute for broadcast media).

[241] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12133, para. 55.

Television Ownership Rule and the existing limits, the *NPRM* asked whether the Top-Four Prohibition should be retained or modified.[242] The *NPRM* then sought comment on the prevalence of, and how to account for, broadcast stations placing content from the Big Four broadcast networks (ABC, CBS, NBC, Fox) on multicast streams and low power television stations.[243] As a matter of diligence, the *NPRM* also sought comment on the implications, if any, of the television broadcast incentive auction and of the new broadcast television transmission standard.[244] The *NPRM* also asked if the Commission should continue to require the filing of SSAs.[245] Regarding minority and female television owners, the *NPRM* sought comment on how retaining, modifying, or eliminating the local television rule might affect minority and female ownership including potential entry into the market by these types of owners.[246] Finally, the *NPRM* sought quantifications of the costs and benefits of its proposed changes.[247]

3. Discussion

71. We find that the Local Television Ownership Rule remains necessary to promote the Commission's public interest goals of competition, localism, and viewpoint diversity. No other source of video programming serves local communities as broadcast television does, particularly at low, or no, cost to consumers. The rule promotes competition among local broadcast television stations that, to this day, remain the only entities in the video marketplace that are licensed by the Commission with use of the airwaves to provide a broadcast television service, in exchange for a unique obligation to serve the public interest. Furthermore, although primarily focused on competition, as detailed further below, the rule continues to promote localism, as broadcasters have a unique obligation to supply programming of interest to their local communities and stations are likely to be more responsive to those local interests where there are other local competitors.[248] Similarly, the rule promotes viewpoint diversity by preserving opportunities for non-commonly owned stations to air a multitude of viewpoints through independent choices regarding the local news and other local programming on their stations.

72. Accordingly, for these reasons we find that the Local Television Ownership Rule remains necessary in the public interest. We discuss below the various elements of the rule, the goals the rule serves, as well as adopt several key modifications to update application of the rule and to ensure its continued efficacy.

73. *Market definition.* After careful review, we continue to find that broadcast television remains unique and non-substitutable with other sources of video programming, particularly with respect to fulfilling our traditional public interest objectives of competition (e.g., in terms of competition among local broadcast television stations and with respect to local programming), localism (e.g., in terms of supplying locally responsive programming), and viewpoint diversity (e.g., in terms of airing a multitude of viewpoints through local news and other local programming). Although some commenters contend that by defining the market to include only broadcast television the Commission fails to account for the myriad of video programming options now available to consumers, the Commission has acknowledged for some time the availability of other forms of video programming, even while continuing to find that

[242] *Id.* at 12133-34, para. 56.

[243] *Id.* at 12137-38, paras. 66-69.

[244] *Id.* at 12138-39, paras. 70-71, 73.

[245] *Id.* at 12139-40, para. 74.

[246] *Id.* at 12138, para. 72.

[247] *Id.* at 12140, paras. 75-76.

[248] The Commission has previously stated that a competition-based rule, while not designed specifically to promote localism, may still have such an effect. *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9870-71, para. 17. The Commission has consistently found that broadcast licensees have an obligation to air programming that is responsive to the needs and interests of their communities of license. *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12425, para. 1 (2004).

broadcast television remains its own distinct market.[249] Indeed, from video cassette recorders and DVDs, to subscription cable television services, to on-demand streaming services, video programming alternatives to free over-the-air broadcast television have existed for decades in a number of forms. The critical question in Quadrennial Review has been and continues to be whether and to what extent such video programming options can be considered substitutes to broadcast programming, or put another way, whether competitive market forces alone are proving sufficient to create a video marketplace that satisfies the public interest objectives long associated with broadcast television, such that our Local Television Ownership Rule can be deemed no longer "necessary in the public interest as the result of competition."[250]

74. Although there are far more sources of video programming available today than there were when the Local Television Ownership Rule was first adopted, most commenters assert that non-broadcast programming is not a substitute to broadcast programming, which remains unique.[251] We agree. Notably, cable, satellite, and streaming media all have higher consumer fees as they require an additional service, such as Internet access or cable or satellite service, as well as, often times, a subscription fee, in contrast to broadcast media, which consumers can access freely over the air, a distinction that keeps non-broadcast media from being a comparable alternative to broadcast television, especially for price conscious consumers.[252] To this point, estimates suggest that 15% of U.S. television households (or 18 million households) use free, over-the-air television, a percentage that has increased in recent years, particularly as the number of consumers subscribing to pay TV alternatives continues to decline significantly.[253]

75. Moreover, the record reflects that despite its growing prevalence, online video still largely complements, rather than competes with, broadcast television.[254] While broadcasters assert that they compete with a myriad of sources that now provide video programming,[255] competition from other

(Continued from previous page)

[249] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9874, para. 27.

[250] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

[251] Free Press Update Comments at 4, 7; LCCHR Update Reply at 3-4; Free Press Comments at 11-13; LCCHR Comments at 5-8; Free Press Reply at 7-10; *see also* NAB Update Comments at 6-7, 19-23, 92-93; TEGNA Comments, MB Docket No. 18-349, at 6-8 (rec. Sept. 2, 2021) (TEGNA Update Comments); ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (Network Affiliates) Reply Comments, MB Docket No. 18-349, at 10-11 (rec. Oct. 1, 2021) (Network Affiliates Update Reply); Gray Television (Gray) Reply Comments, MB Docket No. 18-349, at 2 (rec. Oct. 1, 2021) (Gray Update Reply); Nexstar Media Reply Comments, MB Docket No. 18-349, at 4 (rec. Oct. 1, 2021) (Nexstar Update Reply). The Commission has previously found that the video programming market is distinct from other media markets because consumers do not view non-video media (e.g., audio or print media) as good substitutes for watching video, and there is no evidence in the current record that would disturb this finding. *See 2010/2014 Quadrennial Review FNPRM*, 29 FCC Rcd at 4380, para. 21.

[252] Free Press Update Comments at 4, 7; LCCHR Update Reply at 3-4; Free Press Comments at 11-13 (noting that many people of color and low-income households rely disproportionately on broadcast); LCCHR Comments at 5-8 (stating that internet-based communications are not replacing broadcast content, particularly for communities of color and low-income communities); NHMC Comments at 9-12 (noting that broadcast programming is still essential for American children); WGAW Comments at 2-9; Free Press Reply at 7-10.

[253] Nielsen, *OTA + OTT: The New TV Bundle*, https://www.nielsen.com/insights/2022/ota-ott-the-new-tv-bundle/ (May 2022); Nielsen, *Nielsen Estimates 121 Million TV Homes in the U.S. for the 2020-2021 TV Season*, https://www.nielsen.com/insights/2020/nielsen-estimates-121-million-tv-homes-in-the-u-s-for-the-2020-2021-tv-season/ (August 2020). *See also 2022 Communications Marketplace Report* at 169, para. 283 (finding that 15% of U.S. TV households watched over-the-air television at the end of 2021).

[254] LCCHR Update Reply at 3-4. In fact, some streaming services include local broadcast programming as part of their linear channel offerings.

[255] Heritage Broadcasting of Michigan (Heritage) Comments, MB Docket No. 18-349, at 5-7 (rec. Sept. 2, 2021) (Heritage Update Comments); NAB Update Comments at 23-28, 84-93; Nexstar Media Comments, MB Docket No.

(continued….)

video programming sources appears to be mostly focused on advertising revenue, which is but one of the facets of competition among local broadcast television stations. In general, non-broadcast sources of video programming do not compete with broadcasters for retransmission consent fees, network affiliations, or the provision of local programming, which continue to remain largely unique to broadcast television.[256] Moreover, while broadcasters may be seen as participating in various markets or competing along various dimensions (including, among others, the sale of local or non-local advertising; the creation, acquisition, and provision of local, syndicated, or national programming; and the acquisition of on-air talent), the provision of local programming remains a hallmark of broadcast television and an area where viewers directly benefit from competition among local broadcast television stations.[257]

76. We note that our market definition is also consistent with the Department of Justice's (DOJ's) approach, which considers local broadcast television to be its own market in antitrust analysis.[258] DOJ has rejected the assertions of broadcasters that non-broadcast sources of video programming should be considered competitors to broadcast television in the context of analyzing transactions, focusing on the spot advertising product market in local television markets.[259] Although DOJ's analysis has focused historically on competition for advertising, whereas the Commission's rule considers competition in a number of areas, including audience share, we find DOJ's approach further supports, and is consistent with, our own.[260]

(Continued from previous page)
18-349, at 3-6 (rec. Sept. 2, 2021) (Nexstar Update Comments); TEGNA Update Comments at 2-6; Network Affiliates Update Reply at 3-10; Gray Update Reply at 8-11, 14-16; Nexstar Update Reply at 3-4, 6; Gray Comments at 9-10; Meredith Comments at 1-2; NAB Comments at 43-49, 54-57; Nexstar Comments at 3-9; *see also* R Street Institute Comments at 2-5; NPG Comments at 2-4; ION Reply at 1-3; NAB Reply at 14-17, 56-64; Nexstar Reply at 2-5; TEGNA Reply at 3-8.

[256] Retransmission consent fees are unique to broadcast stations, and the broadcast content for which MVPDs pay retransmission consent fees has special appeal to television viewers in comparison to any other type of video content to the point where viewers do not consider any other video programming to be substitutes for such broadcast content. *See* FCC, *Cable Carriage of Broadcast Stations*, https://www.fcc.gov/media/cable-carriage-broadcast-stations (last visited July 21, 2022); Competitive Impact Statement at para. 4, *United States v. Gray Television, Inc. and Quincy Media, Inc.*, No. 1:21-cv-02041 (D.D.C. July 28, 2021). The largest national networks (ABC, CBS, Fox, and NBC) affiliate with broadcast stations for over-the-air delivery of their programming.

[257] *See* LCCHR Update Reply at 3-4.

[258] The Department of Justice examines local television broadcasters competing in the spot advertising market and competition for retransmission consent licensing fees in local television markets. *See*, *e.g.*, Complaint at paras. 15-46, *United States v. Gray Television, Inc. and Quincy Media, Inc.*, No. 1:21-cv-02041 (D.D.C. July 28, 2021) (identifying two product markets in which broadcast television uniquely competes—retransmission consent and broadcast spot advertising); Complaint at paras. 14-22, *United States v. Gannett Co., Inc., et al.*, No. 1:13-cv-01984 (D.D.C. Dec. 16, 2013) (finding the relevant markets for analysis to be broadcast television spot advertising and retransmission consent fees (product market) in the St. Louis DMA (geographic market)); Complaint at paras. 38-44, *United States v. Comcast Corp.*, No. 1:11-cv-00106 (D.D.C. Jan. 18, 2011) (excluding broadcast television from the "video programming distribution" market, which included MVPDs and Online Video Programming distributors (OVDs)); *DOJ Nexstar-Media General Complaint*, 81 FR at 63207, para. 12 (stating that "the licensing of broadcast television programming to MVPDs that retransmit the programming to subscribers in each of the DMA Markets" constitutes a relevant market under Section 7 of the Clayton Act); *see also Application of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 183, 196-97, para. 35 (MB 2017) (finding that divestitures required by DOJ resolved any concerns about retransmission consent bargaining leverage within a local market).

[259] *See*, *e.g.*, Complaint at paras. 14-22, *United States v. Gannett Co., Inc., et al.*, No. 1:13-cv-01984 (D.D.C. Dec. 16, 2013) (finding the relevant product market for analysis to be broadcast television spot advertising).

[260] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9875, para. 29; *2010/2014 Quadrennial Review FNPRM*, 29 FCC Rcd at 4383, para. 25 n.62; *see also DOJ Nexstar-Media General Complaint*, 81 FR at 63207-08, paras. 12-21 (stating that radio, newspapers, outdoor billboards, satellite and cable television networks, MVPD interconnects,
(continued….)

77. As we have concluded in previous quadrennial reviews, there are strong public interest reasons for promoting competition among local broadcast television stations. Promoting competition among local television stations prevents local broadcasters from demanding higher retransmission consent fees and charging higher rates for local businesses seeking to purchase advertising time on local stations, costs that may be passed on to consumers.[261] Moreover, competition spurs quality improvements by broadcast television stations that benefit consumers, including through reinvestment in stations, expanded programming choices, and technological innovation.

78. Spurring competition among broadcast television stations also promotes localism, as licensees seek to differentiate themselves while fulfilling their obligation to air programming responsive to the needs and interests of their local communities. For many stations, that includes local news and information programming. In contrast to other sources of video programming, broadcast stations are particularly well situated to cover local news, as stations are licensed to local communities to facilitate locally responsive content and information.[262] Indeed, the record contains numerous assertions from broadcasters that the local programming they provide is unique and unduplicated by any other video programming provider.[263] The Leadership Conference on Civil and Human Rights (LCCHR) states that 77% of Americans get most of their local news from broadcast sources, while only 23% get local news from online only sources, little of which is actually created by online outlets since much of the news consumed online are uploaded videos of television broadcast news.[264]

79. Although much local news is undoubtedly cost intensive to produce, we reject the broadcasters' assertions that in order to preserve localism we must allow greater consolidation than is permitted under our current rule.[265] As an initial matter, there is evidence that despite some declines in audience size over time, there remains significant demand for local television news, and the amount of local news on television has increased over time.[266] Moreover, contrary to claims that absent consolidation television stations cannot continue to produce local news, Nielsen data shows that the

---

and Internet-based media are not substitutes for broadcast television stations in the spot advertising market).

[261] *See* ATVA Update Comments at 6-8, 15-21.

[262] LCCHR Update Reply at 3-4.

[263] NAB Update Comments at 6-7, 19-23, 92-93; TEGNA Update Comments at 6-9; Network Affiliates Update Reply at 10-11; Gray Update Reply at 2; Nexstar Update Reply at 4; *see also* Free Press Update Comments at 4, 7; LCCHR Update Reply at 3-4; Free Press Comments at 11-13; LCCHR Comments at 5-8; Free Press Reply at 7-10.

[264] LCCHR Update Reply at 3-4.

[265] *See* NAB Update Comments at 6-9, 19-37, 93-95; TEGNA Update Comments at 8-9; Gray Update Reply at 2-6, 8-13; Network Affiliates Update Reply at 10-11; NAB Update Reply at 32-36; Nexstar Update Reply at 2-5; NAB Comments at 59-62; TEGNA Reply at 9-12; *see also* RIDE Television Network, MAVTV Motorsports Network, Cinemoi, and beIN SPORTS (Independent Programmers) Comments at 6-10 (stating that elimination of the Top-Four Prohibition would harm localism and viewpoint diversity); Thomas Smith Comments at 7-9 (arguing that consolidation will not help broadcasters compete with other media); WGAE Comments at 2-3 (stating that further consolidation of local television station ownership would reduce the number and diversity of viewpoints on local issues).

[266] *See, e.g.,* Pew Research Center, *For Local News, Americans Embrace Digital but Still Want Strong Community Connection* (March 26, 2019), https://www.pewresearch.org/journalism/2019/03/26/for-local-news-americans-embrace-digital-but-still-want-strong-community-connection/ (noting that 86 percent of U.S. adults get their local news from television stations with 41 percent preferring to get their local news from television). Moreover, Pew Research Center compiles and presents data from RTDNA to show that the average number of local TV news hours per weekday has increased over time, including from from 6.3 hours in 2021 to 6.6 hours in 2022. Pew Research Center, *Local TV News Fact Sheet* (Sept. 14, 2023), https://www.pewresearch.org/journalism/fact-sheet/local-tv-news/.

number of stations airing local news actually increased slightly in a four year period from 2017 to 2021.[267] Also, Nielsen data demonstrates that while almost 20% of markets saw an increase in the number of stations airing local news, only 10% of markets saw a decrease and 70% of markets saw no change.[268] Notably, only the top 50 markets saw more decreases than increases in the number of stations airing local news.[269] In markets ranked 51 and lower, where broadcasters argue the need to consolidate is particularly acute, the number of markets that saw increases in stations airing local news outnumbered those that saw decreases.[270] Further, studies by the Radio Television Digital News Association (RTDNA) found that the number of stations originating local news (i.e., the number of stations producing local news) increased slightly from 2017 to 2021.[271] Just as the record does not demonstrate that consolidation, as opposed to competition to meet audience demand, is what drove increases in local news over time, we similarly cannot conclude that additional consolidation is necessary to preserve these gains, much less to preserve the ability of stations to produce local programming at all or to otherwise serve their local communities as required as licensees.

80. Regarding the *Market Size and Television News* study conducted by OEA that concluded small and mid-sized markets are unlikely to support four independent local news operations,[272] we note that the study itself mentions that it examines but one dimension to consider when determining the desirability of consolidation.[273] We also note that the Local Television Ownership Rule has never been designed to ensure, and does not prescribe markets should or must have, at least four independent news operations. Rather, as discussed below, the rule helps ensure a level of viewpoint diversity so that there is an opportunity for as many independent news operations as a market can support, even if some markets have less independent local news operations and some have more, as they always have. In markets where there may be fewer independent news operations already, greater consolidation would not create new independent news operations and would only decrease the diversity of voices in the providers of local

[267] Nielsen Local TV View shows there were 976 stations airing at least one verified local news program in November 2017 and 992 such stations in November 2021.

[268] The Commission examined Nielsen data in all available markets in November 2017 and November 2021 to identify any station that aired at least one program categorized as local news by Nielsen and then used program titles to verify that programming was correctly classified as local news.

[269] According to Nielsen data, all of the top 50 markets have at least four broadcast stations airing local news, and the overwhelming majority of these markets have at least six stations airing local news.

[270] *See supra* note 268.

[271] These studies found that 703 stations originated local news in 2017 and 707 stations originated local news in 2021. Bob Papper, RTDNA, 2018 RTDNA/Hofstra University Newsroom Survey: Local News by the Numbers at 1 (2018); Bob Papper with Keren Henderson. RTDNA, TV, Radio news profits rise, but short of pre-COVID levels at 4 (2022), https://www.rtdna.org/news/tv-radio-news-profits-rise-but-short-of-pre-covid-levels.

[272] In the authors' preferred specification, only markets with more than 615,000 TV households were predicted to support at least four independent local news operations.

[273] *See* Kim Makuch and Jonathan Levy, *Market Size and Local Television News*, OEA Working Paper 52 (Jan. 15, 2021). We carefully reviewed other studies submitted in the record to show that consolidation improves local news coverage or makes production of local programming feasible. *See* Gray Television News Programming Study by Mark Fratrik; "The Value of Cross Ownership to Improving Local News in Small Markets," by Professor Kent S. Collins. We also note the report of Professor Thomas Hubbard whose analysis shows that local news is not declining and has actually increased. *But see* Response to Dr. Thomas Hubbard's Comments on the Gray Television News Programming Study by Mark Fratrik. Although there appears to be agreement that the amount of local news has increased, there remains disagreement on whether this growth is due to consolidation or part of an industry-wide trend to increase local news. We also note disagreement regarding the role of scale economies in the provision of local news relative to the increasing practice of contracting and sharing local news between stations. Finally, we note disagreement around what constitutes local news. We found the empirical studies and arguments helpful to our deliberations and decisions.

news.

81. We also find that the rule remains important for helping to ensure viewpoint diversity in a local market.[274] While the Local Television Ownership Rule remains first and foremost competition-focused, our policy goals are not unrelated or mutually exclusive, and the rule continues to promote viewpoint diversity as well.[275] We continue to find that the competition-based rule helps to ensure the presence of a number of independently owned broadcast television stations in the local market, thereby indirectly increasing the likelihood of a variety of viewpoints (including a variety of viewpoints within local programming) and preserving ownership opportunities for new entrants.[276] Numerous commenters agree and state that the rule remains necessary to promote viewpoint diversity.[277] We recognize, as NAB points out, that the Commission concluded in a prior Quadrennial Review that the rule was not necessary to promote viewpoint diversity due to the presence of "other types of media, such as radio, newspapers, cable, and the Internet [that] contribute to viewpoint diversity in local markets."[278] Although it remains true that there are various types of media available to consumers within local markets, we reject the Commission's prior conclusion that the rule is not necessary to promote viewpoint diversity. As we have described herein, the provision of local programming remains a defining characteristic of television stations, one that has grown, even as other sources of local content have disappeared or have repurposed local television content for their own platforms. Moreover, as we have reiterated, our rule serves to maintain diffuse ownership of this key platform—a local television station—among a wide variety of owners and types of owners, thereby promoting the interest in a multiplicity of speakers, particularly with respect to local issues and the needs and interests of local communities.[279]

82. *Numerical Limit*. We find that permitting ownership of up to two stations in a local market continues to strike the appropriate competitive balance of enabling some efficiencies of common ownership while maintaining a level of competition amongst broadcast television stations to ensure that they continue to serve the public interest. No commenter argues that the numerical limit should be tightened to permit ownership of only one station in a market. Indeed, we recognize that common ownership subject to the restrictions of the current rule can create operating efficiencies, which potentially could lead to public interest benefits if a local broadcast station chooses to invest more resources in programming that meets the needs of its local community as a result of those efficiencies. However, such efficiencies come at the expense of reducing competition and diversity and must be balanced accordingly.

83. Given our determination of the relevant market, above, we do not find that the current state of the local television marketplace justifies ownership of a third in-market station. Broadcast commenters suggest that permitting ownership of a third, or additional, in-market station would enable broadcasters to compete more effectively, especially in large markets with a large number of full-power

---

[274] *See* Free Press Update Comments at 3-9; SAG-AFTRA Comments at 3-4; UCC et al. Comments at 2-4; LCCHR Update Reply at 4; NHMC Update Reply at 2-7; Free Press Comments at 13-15; WGAE Comments at 2-3.

[275] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9870-71, para. 17.

[276] *Id.* at 9893-94, para. 75.

[277] LCCHR Update Reply at 1-3; NHMC Update Reply at 2-7; Free Press Update Comments at 3-9; SAG-AFTRA Comments at 3-4; UCC et al. Comments at 2-4; Free Press Comments at 4-11; Independent Programmers Comments at 6-10; WGAE Comments at 2-3.

[278] *2006 Quadrennial Review Order*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2065-66, para. 100 (2008) (citing *2002 Biennial Review Order*, 18 FCC Rcd at 13668, para. 133); NAB Update Comments at 37-38, n.102.

[279] *Compare 2006 Quadrennial Review Order*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2065-66, para. 100 (2008) (concluding that the local television ownership rule is no longer necessary to foster diversity of viewpoint in local markets) *with 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9893-94, para. 75 n.206 (discussing theoretical analyses on how the presence of more independently owned outlets can increase viewpoint diversity in a market).

commercial stations.[280] We do not find adequate support, however, for the notion that allowing ownership of a third station would generate public interest benefits outweighing potential public interest harms.[281] While greater consolidation may lead to more operating efficiencies for the commonly owned stations, such consolidation also would mean the loss of an independent station operator, to the detriment of competition, localism, and viewpoint diversity. We find that any such marginal additional efficiency fails to outweigh the countervailing harms to these public interest goals. Excessive consolidation from a lack of ownership restrictions threatens the Commission's competition and diversity goals by jeopardizing the continued existence and operations of small and mid-sized broadcasters that may be bought out by larger competitors instead of, as broadcast commenters suggest, enabling them to combine to become more effective competitors to the larger stations.[282]

84. Based on Nielsen viewership data over the period May 2021 to April 2022 and advertising revenue data for 2021 from BIA Kelsey Media Access Pro, the majority of television markets are already highly concentrated according to the 2010 Horizontal Merger Guidelines.[283] Even taking into account viewership of all noncommercial full-power television, Class A, and LPTV stations and any associated multicast streams in addition to all full-power commercial television stations, 147 of the 210 local television markets have viewership HHIs of greater than 2,500, meaning they are highly concentrated. Likewise, factoring in advertising revenue from all commercial full-power television, Class A, and LPTV stations and any associated multicast streams, 166 markets have advertising revenue HHIs of greater than 2,500. Given the current levels of concentration in television markets, we find no grounds to loosen the existing numerical limits.

85. *Top-Four Prohibition*. We retain the general prohibition on common ownership of two stations ranked in the top four of audience share in a market, along with the ability to allow such combinations on a case-by-case basis. At the same time, however, given changes in broadcast industry practice, we update our methodology used to implement this part of our rule. Specifically, we update the audience share metric used to determine a station's in-market ranking and clarify that ratings data should be averaged over the 12-month period preceding a transaction. Additionally, we incorporate the ratings of a station's multicast streams, to the extent such streams have measurable ratings, to reflect a station's total audience share more accurately.

86. Consistent with the Commission's prior decisions, we continue to find that a combination involving two of the top-four stations in a market would be the most detrimental to competition, and thus the public interest. We continue to find that top-four combinations would often result in a single entity obtaining a significantly larger market share than other entities in the market and that such combinations could create welfare harms such as reduced incentives for local stations to improve their programming, as

[280] Meredith Comments at 4 (stating that a number four ranked station in a market with at least nine commercial stations should be able to own two or three non-top-four stations to compete better against the top station); NAB Comments at 77-79 (stating that common ownership of the three lowest ranked stations would create a more viable competitor, especially in large markets with "a dozen full power commercial stations"); ION Reply at 2 (suggesting that the Commission should presume ownership of three or more local television stations in a market is permissible unless the DOJ finds an antitrust violation or a compelling case of specific public interest harms is made).

[281] The hypotheticals cited by commenters do not state why adding a third low-ranked station would grant a combination of two other lower ranked stations efficiencies and benefits above and beyond what a combination of two stations could achieve.

[282] *See* Meredith Comments at 4; NAB Comments at 77-79.

[283] U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines at 19 (2010), https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf. The guidelines classify market concentration using the Herfindahl-Hirschman Index (HHI). The Commission examined Nielsen viewership data over the period May 2021 to April 2022 to compute the viewership HHIs. The Commission examined ad revenue data for 2021 from BIA Kelsey Media Access Pro to compute the advertising revenue HHIs.

allowing former rivals to combine would reduce incentives to compete vigorously against one another.[284] Notably, there are still four major broadcast networks (ABC, CBS, NBC, and Fox), and the programming from these networks continues to be the most highly rated. These top-four broadcast television networks continue to have a distinctive ability to attract large primetime audiences on a regular basis, and generally the top-four stations in any market are affiliated with these highly-viewed networks.[285] Accordingly, we continue to find that the ability to attract mass audiences distinguishes the top ranked stations in local television markets so that owning two such stations in a market should be prohibited. We find further that top-four ranked stations are also still the most likely stations to originate local news.[286] Accordingly, prohibiting top-four combinations helps ensure a diversity of voices among those stations providing such coverage of local issues. We note that, in the past, the Commission has cited the typical gap in ratings between the fourth and fifth ranked stations in a market as supporting the Top-Four Prohibition. To the extent there are situations where, for instance, a large gap in ratings occurs between the third and fourth ranked stations in a market (rather than between the fourth and fifth ranked stations), the fact remains that there is substantial concentration of audience share among the top-ranked stations in most markets and such situations may be indicative of the largest stations in a market exploiting loopholes in our rule (which we address today) to increase their market shares.[287] Accordingly, even if, say, the top three full power stations, rather than the top four full power stations, may dominate audience share in some markets, it certainly does not follow that one of those three stations categorically should be permitted to acquire the fourth ranked station and increase its market share even more.[288] Rather than eliminating the Top-Four Prohibition, we find that the flexibility of the case-by-case approach to consider combinations of top-four rated stations is better suited to address broadcasters' concerns about the viability of stations in smaller markets or situations in which there may no longer be a clear-cut distinction between the top-four rated stations and the rest of the stations in a market.

87. We note that the Top-Four Prohibition's case-by-case approach serves an important purpose by affording flexibility to the Commission and licensees to consider combinations of highly ranked stations in unique circumstances. And we are not persuaded by the sweeping claims that for the broadcast television industry to remain viable, broadcasters must be given greater opportunities to consolidate without reference to such circumstances.[289] Nor do such claims change our conclusion about

(Continued from previous page)

[284] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9881, para. 44.

[285] *See* Section IV. C. Dual Network Rule, *infra*; *see also 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9952, para. 216.

[286] *See 2022 Communications Marketplace Report*, 36 FCC Rcd at 165, para. 269; LCCHR Update Reply at 3-4; *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13695, para. 194.

[287] For instance, our rule was historically premised on the notion that four full power stations in a market corresponded with four Big Four network affiliates. However, as discussed below, there are now numerous examples where entities have moved programming from what had been top-four rated stations (including Big Four network affiliates) to low power stations or multicast streams, such that what had been top-four rated station programming now may be aggregated on fewer than four full power stations (or among fewer than four separate owners) in a market.

[288] *See* NAB Update Comments at 85-86 (reiterating that the largest ratings gaps in audience share and revenue share are among the top-four ranked stations in a market); Gray Comments at 8 (stating that, in the markets where Gray owns stations, the largest ratings cushion actually occurs after the first-, second-, or third-ranked station); NAB Comments at 71-73 (stating that the largest ratings gaps in most markets are found among the top-four stations, not between the fourth- and fifth- ranked stations).

[289] Broadcast commenters contend that they must be allowed to achieve efficiencies from consolidation or will cease to be viable in the face of continually increasing competition for advertising revenue from MVPDs, streaming services, and tech companies. Heritage Update Comments at 9-15, 17-19; NAB Update Comments at 6-8, 19-37; Nexstar Update Comments at 3-11; TEGNA Update Comments at 6-10; Network Affiliates Update Reply at 3-13; Gray Update Reply at 2-6, 8-13; NAB Update Reply at 32-44; Nexstar Update Reply at 2-5; NAB Comments at 43- (continued….)

the actual objective of the quadrennial review, which is to review our rules to ensure that they remain necessary in the public interest as a result of competition to promote the Commission's public interest goals of competition, localism, and diversity. As the record demonstrates, broadcast television stations have multiple streams of revenue that support them. One stream, advertising revenue, has remained fairly steady in recent years, even while, broadcasters assert, they have lost advertising dollars to other sources of video programming.[290] Stations increasingly are also generating revenue from digital advertising and the distribution of their programming on digital platforms. Most importantly, as discussed above, many broadcast television stations also receive per subscriber fees from video programming distributors in exchange for retransmitting their broadcast programming. Retransmission consent fees remain a significant source of station revenue and one that, at least for now, is expected to continue growing.[291] We note further that technological developments in broadcast television could create opportunities for other revenue sources from new digital services ancillary to ATSC 3.0.[292]

88. We find that on the whole, the record does not demonstrate an imminent threat to the viability of broadcast television at this time that would either warrant, or, more importantly, be remedied

57; Nexstar Comments at 3-9; Gray Reply at 7-10, 15-17; ION Reply at 1-3; NAB Reply at 10-17, 56-64; TEGNA Reply at 3-12. MVPD and special interest group commenters state that broadcast television remains a very profitable industry and that broadcasters are overstating their difficulties and repeating the same claims as they have in the past. ATVA Update Comments at 4-8; ATVA Reply Comments, MB 18-349, at 1-2 (rec. Oct. 1, 2021) (ATVA Update Reply); Independent Programmers Comments at 2-8 (stating that the broadcast industry is thriving under the existing regulatory framework); Free Press Reply at 7-10 (noting that digital media may not necessarily be siphoning away viewers from broadcast outlets, but rather viewers are often using digital tools to consume traditional broadcast programming increasing their overall time spent consuming media).

[290] According to a Pew Research Center analysis of MEDIA Access Pro & BIA Advisory Services data, local television over-the-air advertising revenue follows a cyclical pattern that sees significant increases from political advertising during even-numbered elections years. Pew Research Center, *Local TV News Fact Sheet* (Sept. 14, 2023), https://www.pewresearch.org/journalism/fact-sheet/local-tv-news/. By contrast, other industries besides broadcast television (e.g., print advertising, newspaper classifieds, and direct-mail advertising) have seen precipitous and lasting declines in advertising revenue concomitant with the growth of online advertising. In light of this, it is possible that online advertising is not siphoning advertising dollars only, or even primarily, away from broadcast sources.

[291] NAB contends that advertising revenue is still critical to broadcast television and asserts that retransmission consent revenues represented only 38 percent of television station total revenues, predicting that number will decrease to 36 percent by 2026. NAB Update Comments at 96. Nexstar concedes that retransmission consent revenue grew between 2020 and 2021 but states that this growth was short of industry projections and asserts that the raw retransmission consent fee numbers do not show the amount that must be paid back to networks. Nexstar Update Comments at 14-15. One commenter states that retransmission consent fee revenue will dry up as traditional MVPD subscriptions decrease while major networks place more content on their own streaming services. Network Affiliates Update Reply at 10. In contrast, ATVA refutes the broadcasters' assertions that there is downward pressure on retransmission fees and states that its MVPD members have seen no slowing of retransmission price increases. ATVA Update Reply at 5-6. Ultimately, we find assertions regarding the future of retransmission consent fees to be speculative and that retransmission consent fee revenue continues to grow, in spite of predictions that they may flatten out or decrease at some point in the future. *See generally* Pew Research Center, *Local TV News Fact Sheet* (Sept. 14, 2023), https://www.pewresearch.org/journalism/fact-sheet/local-tv-news/ (projecting that total retransmission fee revenue for U.S. local TV stations will continue to rise through 2027).

[292] *See generally Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Notice of Proposed Rulemaking, 32 FCC Rcd 1670, 1672-73, paras. 3-4 (2017) (noting the "new services and capabilities to be provided" and "innovative technologies and services to consumers" that will be offered by ATSC 3.0). ATSC 3.0 is a television transmission standard currently being developed by broadcasters with the intent of merging the capabilities of over-the-air broadcasting with the Internet's broadband viewing and information delivery methods while using the same 6 MHz channels presently allocated for digital television. *Id.* at 1671, para. 1.

by loosening or eliminating the Top-Four Prohibition.[293] Even if we were to accept broadcasters' arguments that certain broadcast television stations in certain markets (e.g., smaller markets) are struggling to produce local programming due to an inherently limited revenue base and may benefit from consolidation, such a finding would not support relaxing the local television rule in all markets. Broadcasters would have us eliminate all ownership restrictions in all markets to enable consolidation that may only be of some benefit to certain stations in certain markets.[294] The case-by-case flexibility contained in the current rule is intended to account for the practical challenges some stations may face.[295]

89. We find that the case-by-case approach has allowed the Commission to maintain the proper balance between ensuring that no market is excessively concentrated and allowing flexibility in particular circumstances. Although some commenters state that the case-by-case approach offers inadequate relief because of the lack of any defined criteria for granting relief,[296] the Commission previously offered several examples of information that could help establish whether application of the Top-Four Prohibition would be in the public interest, such as (1) ratings share data of the stations proposed to be combined compared with other stations in the market; (2) revenue share data of the stations proposed to be combined compared with other stations in the market, including advertising (on-air and digital) and retransmission consent fees; (3) market characteristics including population and the number and types of broadcast television stations serving the market (including any strong competitors outside the top-four rated broadcast television stations); (4) the likely effects on programming meeting the needs and interests of the community; and (5) any other circumstances impacting the market, particularly

[293] Broadcast commenters argue for the Top-Four Prohibition to be repealed because they claim it prevents consolidation that is crucial for broadcasters to continue serving the public interest. Heritage Update Comments at 2-5, 13-16; NAB Update Comments at 34-35; Nexstar Update Comments at 17-19; TEGNA Update Comments at 2-3; Network Affiliates Update Reply at 10-13; Gray Update Reply at 11-13, 17-23; NAB Update Reply at 44-51; Nexstar Update Reply at 2-7; Gray Comments at 2-18; Meredith Comments at 2-4; NAB Comments at 70-76; Nexstar Comments at 10-14; ION Reply at 2-3; NAB Reply at 64-76; Nexstar Reply at 5-9; TEGNA Reply at 11-12. Conversely, ATVA and NCTA assert that the rule must be retained to protect consumers from rising costs due to pass through of retransmission consent fee increases that result when broadcasters are able to negotiate retransmission consent fees for two top-four stations jointly in a market. ATVA Update Comments at 12-18; NCTA - The Internet & Television Association (NCTA) Comments, MB Docket No. 18-349, at 1-6 (rec. Sept.2, 2021) (NCTA Update Comments); ATVA Comments at 2-13; NCTA Comments at 2-8; *see also* Independent Programmers Comments at 6-10 (stating that elimination of the Top-Four Prohibition would harm localism and viewpoint diversity); WTA Reply at 2-5 (agreeing with ATVA that common ownership of two stations is effectively the same as a joint negotiation by two stations in their effects on retransmission consent prices and stating that increasing retransmission consent fee rates represents a consumer harm in rural America as rural local exchange carriers have been forced to exit the video marketplace, thus leaving rural consumers with few options for video since most rural households rely on MVPDs to access broadcast programming). *But see* Gray Reply at 2-15, TEGNA Reply at12-15 (contending that combinations of Big-Four network affiliates in a local market do not result in artificially high or supra-competitive retransmission consent fees and that retransmission consent fees simply reflect the value of broadcast television programming).

[294] *See* Gray Update Reply at 2-8; NAB Update Comments at 93-96; Gray Comments at 2-18. Some commenters support relaxation of the rules only for smaller markets. Heritage Update Comments at 2-5; Meredith Comments at 2-4 (stating that the two station cap should not be uniformly applied in all markets); NPG Comments at 4-5 (stating that ownership of two stations, regardless of rank or affiliation, should be permitted in all but the top 74 DMAs). As discussed below, we find that the local television rule's case-by-case approach allows for the Commission to address the challenges faced by small and other uniquely situated markets.

[295] 47 CFR § 73.3555(b)(2).

[296] *See* Heritage Update Comments at 13-16 (stating that the case-by-case approach is inadequate because the Commission has never stated what the criteria are for a successful showing); Meredith Comments at 2-4; Letter from Robert M. McDowell, Counsel, Gray Television, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 2 (filed Dec. 13, 2023) (Gray Dec. 13, 2023 *Ex Parte*) (stating that the case-by-case process does not create the certainty necessary for planning transactions).

any disparities primarily impacting small and mid-sized markets.[297] Variations in local markets and specific transactions make it impractical to provide an exhaustive set of criteria for the case-by-case analysis, but we will continue to monitor transactions and the marketplace in the course of further reviews and identity additional factors as it is useful to do so.[298] Moreover, we note that pursuant to the previously articulated factors and even in the absence of rigid criteria, the Commission granted three case-by-case requests for flexibility affecting five DMAs before the provision was temporarily vacated and subsequently restored by the courts, demonstrating the utility of the case-by-case approach under appropriate circumstances.[299]

90. We decline to adopt presumptions in favor of top-four combinations at this time and based on the current record as recommended by some commenters.[300] As the Commission has stated, we find that most combinations of top-four ranked stations would result in a single entity obtaining a significantly larger market share than others in the market and that such combinations would create public interest harms.[301] Furthermore, the impact of top-four station combinations could vary greatly depending on factors such as the relative strength of the stations in the market, which would weigh against creating a presumption based on other factors.[302] Therefore, we find it preferable to allow for exceptions to the prohibition rather than to presume such combinations should be allowed.

91. Finally, we adopt two modifications to elements of the Top-Four Prohibition to better reflect current broadcast industry practices. While commenters for the most part either support retaining

---

[297] *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9838-39, para. 82.

[298] *See id.* at 9838, para. 82.

[299] *See Consent to Assign Certain Licenses from Red River Broadcast Co., LLC to Gray Television Licensee, LLC*, Memorandum Opinion and Order, 34 FCC Rcd 8590 (MB 2019) (*Red River/Gray Order*); *Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order, 34 FCC Rcd 8436 (MB 2019); *Consent to Transfer Control Licenses to Gray Television, Inc. and Associated Divestiture License Assignments*, Memorandum Opinion and Order, 33 FCC Rcd 12349 (MB 2018).

[300] Gray suggests that the Commission should adopt presumptions in favor of top-four combinations where an entity commits to improving local news. *See* Gray Update Reply at 22-23; *see also* Gray Dec. 13, 2023 *Ex Parte* at 2 (arguing that the Commission should create clear standards that encourage the expansion of local news in small markets and adopt a presumption in favor of combinations in markets outside of the top 50 DMAs). Although the Commission has considered additional local programming to be a factor in previous requests, we find that creating a presumption in all such requests may detract from examining the unique circumstances of a market, such as the level of local programming already present or the relative strength of the stations in the market, as intended by the case-by-case approach. Also, ION Media argues that top-four combinations should be presumed to comply with the rules, and the burden should be on opponents of a proposed top-four combination to show that it would violate the Commission's policies. ION Reply at 2-3. We do not find that there is adequate record support for changing the Commission's previous conclusion regarding the anticompetitive nature, in general, of combinations of top-four ranked stations in the same market.

[301] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9881, para. 44. The Commission made these findings based on the research of Froeb, Werden, and Tardiff, which found that mergers pose little risk of competitive harm when they do not create a significant increase in the market share of the largest firm in a market, but a merger of the second and third largest firms, which would significantly overtake the largest firm in size, would create welfare harms. Luke M. Froeb, Gregory J. Werden and Timothy J. Tardiff, *The Demsetz Postulate and the Effect of Mergers in Differentiated Product Industries,* Working Paper EAG 93-5 Economic Analysis Group, Antitrust Division, U.S. Department of Justice (Aug. 1993). *See also* Gregory Werden and Luke M. Froeb, *The Effects of Mergers in Differentiated Products Industries: Logit Demand and Merger Policy*, 10(2) J. L. ECON ORG. 407-16 (1994).

[302] *See Red River/Gray Order*, 34 FCC Rcd at 8594-95 (observing the unique characteristics of the market at issue where the top ranked station had a substantial majority of the revenue and audience share compared to the stations that were seeking to combine).

the Top-Four rule as-is or repealing it completely,[303] we find that it is appropriate to update the methodology used to determine whether a station is ranked among the top-four stations in a Nielsen DMA to comport with current market realities.[304] The first modification updates the audience share metric used to determine a station's in-market ranking and specifies that ratings data must be averaged over a 12-month period preceding any transaction. The second modification clarifies that, because the rule only references "stations," the ratings of multicast streams will be aggregated with the ratings of all non-simulcast programming airing on streams owned, operated, or controlled by the same station, provided that such streams have measurable ratings reported by an audience measuring service and are not the simulcast stream of another in-market station.[305]

92. First, we modify the provision in the current rule that determines market ranking to use the Sunday to Saturday, 7AM to 1AM daypart in order to reflect more accurately a station's performance in terms of audience share.[306] Previously, the rule determined market ranking "based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service."[307] The *NPRM* sought comment on whether this data point is still the most useful for accurately determining a station's ranking for purposes of the Top-Four Prohibition.[308] As Gray and Nielsen indicate, that daypart, which is also used for evaluating failing station waiver requests, does not accurately reflect a station's full performance in light of programming changes over the years, including the addition of early morning programming.[309] In particular, we expect that expanding the daypart will capture more local news, an important part of a station's programming and a driver of viewership that stations have begun airing earlier in the day than in the past.[310] Moreover, using the 7AM to 1AM daypart, as opposed to a 24-hour reporting period, avoids "minor fluctuations" in ratings during nighttime hours when some stations may not transmit video programming.[311] Lastly, given that the existing 9AM to midnight daypart is also used for determining audience share for purposes of evaluating failing station waiver requests, we find that using the new 7AM to 1AM daypart in the failing station waiver context going forward makes sense logically for the same reasons discussed above and to maintain consistency in the Commission's methods.[312]

(Continued from previous page)

[303] The record is practically devoid of any discussion regarding updating specific elements or mechanisms of the rule. *See generally* ATVA Update Comments at 12-18; Heritage Update Comments at 2-5, 13-16; NAB Update Comments at 34-35; NCTA Update Comments at 1-6; Nexstar Update Comments at 17-19; TEGNA Update Comments at 2-3; Network Affiliates Update Reply at 10-13; Gray Update Reply at 17-20; NAB Update Reply at 44-51; ATVA Comments at 2-13; Gray Comments at 2-18; NAB Comments at 70-76; Nexstar Comments at 10-14; Independent Programmers Comments at 6-10; ION Reply at 2-3; NAB Reply at 64-76; Nexstar Reply at 5-9; TEGNA Reply at 11-12.

[304] We retain the language in the rule that allows for consideration of other comparable audience measuring services in addition to Nielsen to keep flexibility in the rule.

[305] *See* 47 CFR § 73.3555(b).

[306] *See* Letter from Michael Nilsson, Counsel, The Nielsen Company (US), LLC to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 1-2 (filed Feb. 16, 2022) (Nielsen *Ex Parte*). In addition, we delegate to the Media Bureau the authority to update the relevant FCC forms to conform with the changes we adopt today.

[307] *See* 47 CFR § 73.3555.

[308] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12136, para. 63.

[309] *See* Nielsen *Ex Parte* at 2; Gray Update Reply at 23 (proposing that we use the midnight-to-midnight daypart be used for determining audience share for purposes of failing station waiver requests).

[310] Nielsen *Ex Parte* at 1-2.

[311] *Id.* at 2.

[312] We find that making this change is the logical outgrowth of updating the Top-Four Prohibition since the use of audience measurements in both contexts serves the same purpose in allowing the Commission to evaluate a station's

(continued….)

93. We also specify that, for purposes of determining a station's in-market ranking under the Local Television Ownership Rule, the rule will require submission of ratings averaged from available data over a 12-month period immediately preceding the date of application rather than an average over a shorter ratings period or a snapshot of a single such data point (i.e., ratings at the time an assignment of license or transfer of control application is filed with the Commission). Also, where the station or stations at issue have changed network affiliations within the preceding 12 months, the ratings should be averaged for the period since the affiliation change took place so as to most accurately reflect the ratings position of the station or stations at the time of application. While the *NPRM* sought comment on whether the Commission should clarify the phrase "at the time the application to acquire or construct the station(s) is filed" with respect to the appropriate ratings data applicants submit for consideration, we received no comments responsive to this question.[313] We note that ratings data have become available on a more frequent (and more frequently updated) basis than in the past and are now accessible for many different time periods. We find that replacement of the phrase "most recent" in favor of establishing a defined time period in this manner will enable a more complete understanding of the market and the competition among stations within it. Such information will in turn better inform the Commission and public as to whether a proposed transaction is in the public interest. In particular, such an approach will provide a more accurate assessment of a station's true market position by minimizing the impact of seasonal or one-off monthly ratings anomalies (typically the result of sporting events or seasons) and also reduce opportunities for gamesmanship based on the lack of a clearly established timeframe in the rule's language. For example, applicants would have less incentive to time a transaction or application filing to correspond with a period where a station experiences abnormally low ratings. Finally, the consideration of ratings averaged over a 12-month period will apply to all instances that involve determinations of whether stations are ranked in the top-four, including applications of Note 11 to section 73.3555 and its extension as described below.

94. Second, going forward we will aggregate the audience share of all free-to-consumer non-simulcast multicast programming airing on streams owned, operated, or controlled by a single station to determine the station's audience share and ranking in a market (to the extent that such streams are ranked by Nielsen or a comparable professional, accepted audience ratings service). The *NPRM* sought comment on whether and how the Commission should evaluate multicast streams for purposes of the Local Television Ownership Rule.[314] The existing rule does not specify that it includes multicast streams, but we find that ignoring such streams when evaluating a station's in-market audience share is no longer appropriate given the proliferation of such programming and the industry trend toward carriage of major network affiliate programming on such streams. To the extent that a nonprimary multicast stream has measurable audience ratings, not accounting for such ratings when evaluating a station's performance would seem to ignore a potentially significant portion of the station's service and competitive strength within the market.[315] The use of multicasting has grown in prevalence over the years and is expected to continue to grow as a way for broadcasters to expand their offerings and distribution.[316] Although

---

performance in its local market, and the same measurement has historically been used for both.

[313] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12136, para. 64 (asking if ratings data should be submitted for the most recent month, week, or sweeps period in relation to the application date and whether the data should be for a longer period of time, such as over a three-year period).

[314] *Id.* at 12137, para. 67.

[315] Some multicast streams have ratings reported by audience ratings services while others do not. We find that, to the extent Nielsen or a comparable professional, accepted audience ratings service reports ratings for a multicast stream, such a stream is significant enough to be included in its station's audience ratings measurement.

[316] *See* Brad Adgate, *TV Stations are Launching Multicast Networks as an Opportunity to Reach Cord Cutters* (June 10, 2021), https://www.forbes.com/sites/bradadgate/2021/06/10/tv-stations-are-launching-multicast-networks-as-an-opportunity-to-reach-cord-cutters/?sh=3bc99b587136 (noting that many multicast networks are available in over half the country with some reaching upwards of 90% of all U.S. television homes).

accounting for nonprimary multicast streams may not have affected a station's ratings significantly in the past, such streams may have an impact on ratings now and in the future, and thus including them in ratings should provide a better indicator of the competitive strength and health of a station than simply focusing on a single stream. As noted, some stations are even placing programming affiliated with major broadcast networks on nonprimary multicast streams, making it all the more important to consider in our analysis when possible.

95. We limit aggregation to free-to-consumer programming airing on streams owned, operated, or controlled by a station because stations make such streams available to consumers over the air as part of their broadcast signal. We also do not count simulcast streams airing the programming of another station, because, based on Commission experience, the ratings for such streams typically are measured by audience ratings services as part of the ratings for their originating stations. Accordingly, because the multicast stream's ratings are not separately reported, we do not aggregate the programming's ratings in order to avoid double counting ratings already attributed to another station. In other words, if a station utilizes one of its nonprimary multicast streams to simulcast the primary programming stream of another station, the ratings of that simulcast stream will not be aggregated in determining the overall ratings of the station. Through these limitations, we find that aggregation will capture a station's true ratings by focusing on programming originating from that station and broadcast in the same manner as traditional television signals.

96. Similarly, we are aware that some broadcast stations may be hosting programming of other stations on a temporary basis during the transition to ATSC 3.0.[317] We clarify that only the ratings of programming owned or controlled by a station and airing on the station's multicast streams will be aggregated. Consistent with the way such streams are licensed, we do not find that hosting the ATSC 1.0 signal of another station for purposes of the transition amounts to operating the signal's programming.[318] In other words, if Station A is hosting Station B's ATSC 1.0 signal on one of its multicast streams, Station B's ATSC 1.0 ratings will not be aggregated with Station A's multicast streams (which are airing programming belonging to Station A). Rather, Station B's ATSC 1.0 ratings will be aggregated with those of Station B's streams depending on how audience ratings services choose to incorporate ATSC 1.0 and 3.0 ratings into their measurements.

97. *Anti-Circumvention Measures*. Note 11 to section 73.3555 of the Commission's rules prohibits certain types of acquisitions of a network affiliation by one station from another station in the same market that the Commission has found to be the functional equivalent of an assignment or transfer of control from the standpoint of our Local Television Ownership Rule. For example, since the last quadrennial review, the Commission has taken action against certain affiliation acquisitions that violate Note 11.[319] Today we take further action to expand the measure contained in Note 11 to prevent other means of circumventing the Top-Four Prohibition. In response to the *NPRM's* questions about entities

---

[317] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, MB Docket No. 16-142, Second Further Notice of Proposed Rulemaking, FCC 21-116, at 1 (Nov. 5, 2021).

[318] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9953-54, para. 48 & n.140 (2017) ("The companion channel aired on a partner host station will be considered part of the guest station's license and may not be separately assigned to a third party.")

[319] *See Gray Television, Inc., Parent of Gray Television Licensee, LLC, Licensee of Stations KYES-TV, Anchorage, AK and KTUU-TV, Anchorage, AK*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 10856, 10859, para. 8 (2021) (explaining that the scope of the Note 11 prohibition has never been limited to "swaps" of affiliations between two stations); *see also Gray Television, Inc., parent of Gray Television Licensee, LLC, Licensee of Stations KYES-TV, Anchorage, AK and KTUU-TV, Anchorage, AK*, Forfeiture Order, FCC 22-83, at paras. 8-25 (Nov. 1, 2022) (affirming the conclusions in the Notice of Apparent Liability and further explaining that Note 11 does not allow a broadcaster with two existing top-four rated stations unfettered ability to acquire additional network affiliations of top-four rated stations through agreements for non-license assets).

placing major network affiliations on multicast streams and LPTV stations,[320] parties have raised in the record, and the Commission has observed itself, that some station owners appear to be circumventing the prohibition on network affiliation acquisitions—and hence the Top-Four Prohibition—by acquiring the network-affiliated programming of another top-four full power station in the DMA, either alone or in conjunction with other tangible and non-tangible assets and then placing that programming on the multicast stream of an existing full power station or on an LPTV station in the same DMA, neither of which is counted for purposes of the Local Television Rule. Because we view such actions as undermining our Local Television Rule, we revise the language in Note 11 to extend the existing prohibition on certain network affiliation acquisitions to prohibit such behavior in the future and ensure the efficacy of our rule.

98. We take this action to preserve the efficacy of the Top-Four Prohibition because we find it necessary to prevent further exploitation of unintended ambiguities or gaps in the rule. Such exploitation harms competition and denies consumers the benefits of competition. Therefore, we find that our actions are consistent with the statutory mandate of section 202(h) to modify a rule so that the rule continues to serve the public interest.[321]

99. The record demonstrates that there are two methods through which parties have been able to achieve results that are inconsistent with the policy objectives and intent of the Top-Four Prohibition rule's Note 11 provision. Although different in certain respects, the two methods both avoid acquisition of another full-power station in the same local market and instead rely on use of broadcast facilities or transmissions that have not been subject to the ownership limitations placed on full-power facilities. For the sake of clarity, we employ hypothetical examples to illustrate the methods in operation. Accordingly, consider situations involving two independently owned, full-power stations among the top four stations (as measured by ratings) in the same local market. Station A is affiliated with Network YYY and Station B is affiliated with Network ZZZ.

- Under the first scenario, the licensee of Station A acquires Station B's Network ZZZ affiliation but, stymied by the ownership rules from also buying Station B outright, instead places the Network ZZZ affiliation on an LPTV station that the licensee of Station A already owns in the market.[322] This action comports with the Commission's regulations to date because LPTV stations have been exempt from the Local Television Ownership Rule's restrictions.[323]
- Under the second scenario, the licensee of Station A still acquires Station B's Network ZZZ affiliation but simply places it on one of Station A's own digital multicast streams. This action also comports with the Commission's regulations to date because the agency has not treated a licensee's multiple programming streams on a single station (e.g., a primary and one or more multicast stream) to be the functional equivalent of operating two stations.[324]

100. However, the use of an LPTV station or multicast stream in these manners to air top-four rated programming acquired from an in-market competitor results in the acquiring party's obtaining the equivalent of a second top-four rated station in terms of audience and revenue share in the local market. In this manner, parties have obtained the programming and non-license assets of a competing, in-market

[320] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12137-38, paras. 67, 69.

[321] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

[322] NCTA Comments at 9; ATVA Comments at 15-16.

[323] *See* 47 CFR § 74.732(b) ("Low power TV and TV translator stations are not counted for purposes of § 73.3555, concerning multiple ownership.").

[324] *See* NCTA Comments at 8; ATVA Comments at 14-16; *see also 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9892, para. 72.

full power television station, typically without the need or opportunity for any review by the Commission, as no broadcast station license is being transferred. Further, by acquiring the network affiliation and most valuable non-license assets from the former station, these machinations typically result in the removal of a commercial full power competitor from the market. Therefore, such actions are inconsistent with the Top-Four Prohibition because they allow excessive aggregation of viewers and revenue among top stations in the market, which harms competition and the competitive benefits that flow to consumers.

101. While some broadcast commenters characterize the placing of major network (e.g., ABC, CBS, NBC, Fox) content on non-primary multicast streams and LPTVs as legitimate efforts to improve their stations' programming and to increase the availability of quality programming in local markets,[325] that does not always appear to be the case. Instead, rather than representing genuine attempts by stations to compete better through organic growth, such transactions often appear to be intentionally manufactured to skirt the prohibitions on excessive market concentration. Commenters have identified instances, and we are aware of others that, if not clearly intentional, at least appear to be deliberately exploiting these loopholes.[326] For example, ATVA identifies six markets where Sinclair put a newly acquired network affiliation and programming on a multicast stream where the existing prohibitions would have prohibited Sinclair from putting the programming on separate full-power stations.[327] ATVA also characterizes Gray's use of LPTV and multicasting to cure an apparent Note 11 violation as a "form over substance" move since the end result is still the same accumulation of top-four affiliations and programming by one entity.[328]

102. We note that, in the past, placing major network affiliations on LPTV stations or multicast streams happened relatively rarely and often enabled broadcasters to bring such network programming to so-called "short markets," that is markets that do not have enough full power commercial stations to accommodate all of the major networks on their own individual full power stations.[329] Indeed, the Commission has considered previously the prevalence of dual Big-Four network affiliations on multicast streams and expressed its intent to monitor the issue.[330] While in the past such situations were relatively limited, circumstances have changed. ATVA and NCTA state that such network affiliation arrangements and acquisitions are increasingly being used to circumvent the Top-Four Prohibition and its ban on using an agreement or series of agreements to effectuate an acquisition of another station's programming (i.e., affiliation acquisitions or swaps) by enabling entities to acquire affiliations and non-license assets and placing them on multicast streams or LPTV stations to avoid running afoul of the existing ban.[331] ATVA identifies 121 instances of this perceived rule circumvention, 46 of which have

(Continued from previous page)

[325] NAB Update Comments at 99-106; Gray Update Reply at 17-22, 34-36; *see* TEGNA Update Comments at 12-13; NAB Update Reply at 55-57; Nexstar Update Reply at 12-15; Letter from Timothy Nelson, Counsel, ABC Television Affiliates Association and the NBC Television Affiliates, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 1-2 (filed Nov. 29, 2023) (Network Affiliates Nov. 29, 2023 *Ex Parte*); Letter from Matthew S. DelNero, Counsel, Fox Corporation, Paramount Global, and The Walt Disney Company, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 1-2 (filed Dec. 6, 2023) (Network Representatives Dec. 6, 2023 *Ex Parte*); Letter from Jeffery A. Liberman, President and Chief Operating Officer, Entravision Communications Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 2-3 (filed Dec. 6, 2023) (Entravision Dec. 6, 2023 *Ex Parte*).

[326] ATVA Update Comments at 8-15; ATVA Comments at 14-21; NCTA Comments at 8-12.

[327] ATVA Update Comments at 14-15.

[328] *Id.* at 12-13.

[329] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9892, para. 72.

[330] *See e.g.*, *id.*; *2010/2014 Quadrennial Review FNRPM*, 29 FCC Rcd at 4396, 4398, paras. 61, 66.

[331] ATVA Update Comments at 8-15; ATVA Comments at 14-21; NCTA Comments at 8-12; Thomas C. Smith Comments at 5-6 (contends that the Commission should examine the legality of top-four duopolies through workarounds such as affiliation swaps or subchannels); Letter from Mary Beth Murphy, Vice President and Deputy (continued….)

occurred in true short markets as determined by ATVA.[332] ATVA also notes that several such affiliation arrangements occur in the top 100 Nielsen DMAs, further indicating that they are not limited to the smallest markets where the number of full power stations would be more limited.[333] We agree with ATVA and NCTA that the number of instances where top-four rated programming appears on nonprimary multicast streams or low power stations now vastly outnumber the occurrence of actual "short markets" where there are an inadequate number of full power stations to host each major network on its own full power station.[334]

103. The Commission has encountered similar circumvention of the Top-Four Prohibition in the past and adopted Note 11 in response. However, because Note 11's language concerns only stations within the meaning of the Local Television Ownership Rule (full power stations), the existing prohibition does not currently restrict the use of LPTV stations or multicast streams for the reasons discussed above. Therefore, we expand Note 11 by adding the following language in order to address some of the new affiliation acquisition practices described above:

> Further, an entity will not be permitted through the execution of any agreement (or series of agreements) to acquire a network affiliation, directly or indirectly, if the change in network affiliation would result in the affiliation programming being broadcast from a television facility that is not counted as a station toward the total number of stations an entity is permitted to own under paragraph (b) of this section (e.g., a low power television station, a Class A television station, etc.) or on any television station's video programming stream that is not counted separately as a station toward the total number of stations an entity is permitted to own under paragraph (b) of this section (e.g., non-primary multicast streams) and where the change in affiliation would violate this Note were such television facility counted or such video programming stream counted separately as a station toward the total number of stations an entity is permitted to own for purposes of paragraph (b) of this section.

104. With the above expansion of Note 11, the Commission going forward will not permit an entity to acquire the network affiliation of another in-market station and then place that affiliation on "a television facility that is not counted as a station toward the total number of stations an entity is permitted to own under [the Local Television Ownership Rule contained in] paragraph (b) of [section 73.3555]" such as an LPTV station or any other class of television station exempted from the ownership rules, if the affiliation could not be placed on a station that is counted "toward the total number of stations an entity is

---

General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 2 (filed Dec. 6, 2023) (NCTA Dec. 6, 2023 *Ex Parte*).

[332] ATVA Update Comments at 11-12, Exhibit B; NCTA Dec. 6, 2023 *Ex Parte* at 2 (stating that there are 114 instances, across 92 markets, in which a broadcaster controls the programming of two or more top-four networks using an LPTV station or multicast stream). *But see* Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President of Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 3-7 (filed Dec. 1, 2023) (NAB Dec. 1, 2023 *Ex Parte*) (stating that the list of instances submitted by ATVA is full of errors and is overinclusive); Letter from Michael Nilsson, Counsel, ATVA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 4 (filed Dec. 6, 2023) (ATVA Dec. 6, 2023 *Ex Parte*) (conceding that there are less markets where the rule circumvention occurs than ATVA listed, but maintaining that such circumvention still occurs in 109 markets); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President of Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 18-349, at 2 (filed Dec. 19, 2023) (NAB Dec. 19, 2023 *Ex Parte*) (noting that NCTA's list suffers the same deficiencies as ATVA's and identifying additional flaws with ATVA's filings). ATVA defines short markets as markets with fewer than four total commercial stations. ATVA Update Comments at 11. *But see* NAB Dec. 19, 2023 *Ex Parte* at 3-5 (pointing out that stations currently airing independent or non-English language programming may not be interested in affiliating with any of the four largest broadcast networks).

[333] ATVA Update Comments at 11-12.

[334] *See* ATVA Update Reply at 3-5; NCTA Dec. 6, 2023 *Ex Parte* at 2; ATVA Dec. 6, 2023 *Ex Parte* at 4.

permitted to own for purposes of [the Local Television Ownership Rule contained in] paragraph (b) of [section 73.3555]," namely, a full-power commercial station. The Commission also will not permit an entity to acquire the network affiliation of another in-market station and then place that affiliation on "any television station's video programming stream that is not counted separately as a station toward the total number of stations an entity is permitted to own under [the Local Television Ownership Rule contained in] paragraph (b) of [section 73.3555]" be it a .2, .3, or .4 multicast stream, if the affiliation could not be placed on a station that is counted "toward the total number of stations an entity is permitted to own for purposes of [the Local Television Ownership Rule contained in] paragraph (b) of [section 73.3555]." This restriction applies to streams that an entity owns, operates, or controls even when those streams are being hosted by another station in which the entity has no cognizable interest. We believe these changes will suffice to resolve the loopholes identified above and to ensure the efficacy of the Top-Four Prohibition and the public interest benefits that flow therefrom. As with Note 11 when adopted in the *2010/2014 Quadrennial Review Order*, the extension adopted today will apply on a prospective basis.[335] The extension will apply to all applications filed after the release date of this Order and transactions entered into after the release date of this Order.[336]

105. We find that our approach today closes loopholes to Note 11 and the Top-Four Prohibition while continuing to support legitimate uses of both LPTV and multicast streams. We note that our amendment to Note 11 narrowly targets actions by which broadcast stations effectively seek to circumvent application of the Top-Four Prohibition and the need for the Commission's transaction review, actions that typically result in the elimination of an in-market competitor station. The rule change we adopt today does not inhibit organic growth, expansion, or changes in station programming, nor does it impact affiliation changes initiated by a network itself. For example, where a network, absent any undue direct or indirect influence from a broadcast entity, chooses to move its affiliation from one station to another in the market (perhaps because the network is no longer satisfied with the existing affiliate station and the other station has demonstrated superior operation and thus earned the affiliation on merit),

[335] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9885, n.142. Where their actions have not otherwise violated current rules, parties that prior to the release of this Order had acquired the affiliation of a top-four rated television station and placed it on a multicast stream and/or a low power television station in a manner that would violate Note 11 as revised herein will not be subject to divestiture. All future transactions will be required to comply with the Commission's rules then in effect. Such grandfathered arrangements will not be transferable or assignable. Instead, proposed sales involving such grandfathered station arrangements in existence as of this Order's release date will be subject to Commission review upon application to transfer or assign the license or licenses of the station or stations involved. Consistent with prior applications of Note 11, entities may seek case-by-case examination of such proposed transactions and seek Commission approval to transfer or assign the grandfathered arrangement. *See Consent to Transfer Control Licenses to Gray Television, Inc. and Associated Divestiture License Assignments*, Memorandum Opinion and Order, 33 FCC Rcd 12349, 12360-61, para. 28 (MB 2018). Just as with pre-existing combinations of top-four stations that applicants seek to transfer intact, this approach will enable the Commission to weigh potential harms and benefits of permitting the arrangement to continue, including any unique circumstances of the market and potential effects related to service disruption to viewers. *See generally* NAB Oct. 30, 2023 *Ex Parte* at 4-6 (suggesting potential circumstances where the harms and benefits of prohibiting a dual affiliation arrangement from transferring should be examined); Network Affiliates Nov. 29, 2023 *Ex Parte* at 2 (stating that any constraints on broadcasters with multiple affiliations would have negative effects on their investment and growth); ATVA Dec. 6, 2023 *Ex Parte* at 2 (noting that the Commission's case-by-case process can address situations in markets where there are an insufficient number of stations to carry certain programming).

[336] Our revision of Note 11 to prevent other means of circumventing the Top-Four Prohibition is not a content-based restriction on speech. *See* NAB Oct. 30, 2023 *Ex Parte* at 6-7. The prohibition on affiliation acquisitions involving two top-four stations does not consider content but rather market concentration. *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9884, paras. 49-50 ("The rule is predicated entirely on content-neutral objectives, primarily the public interest goal of promoting competition in local markets."). *See also Cablevision Sys. Corp. et al. v. FCC*, 649 F.3d 695, 718 (D.C. Cir. 2011) (Commission rule limiting cable operators from withholding their "regional sports networks" from competitors was "due to that programming's economic characteristics, not to its communicative impact" and therefore was a "content-neutral" regulation).

such a change in affiliation is not a circumvention of Note 11.[337]

106. In adopting this approach, we reject suggestions that the Commission should eliminate the exemption of LPTV stations for purposes of the Top-Four Prohibition, except in markets without at least four full-power stations.[338] That approach would effectively eliminate the existing provision in our rules exempting LPTV stations from the local television ownership restrictions.[339] When the Commission adopted its rules exempting LPTV stations from the ownership restrictions, it found that LPTVs were limited by their coverage, operation, and secondary status, and that such limitations weighed in favor of "permitting experienced participants in the market to pioneer the low power service."[340] It found further that pioneering the creation of such low power service outweighed the Commission's traditional concerns regarding multiple ownership.[341] Accordingly, LPTV stations have never been subject to the Commission's multiple ownership rules, nor seen as entirely equivalent to full power television stations. At this time, we do not find that the record supports completely abandoning this previous determination or fully extending the local television ownership restriction to LPTV.[342]

107. Similarly, we reject ATVA's suggestion that the Commission prevent a station in a market with four or more full-power or LPTV stations from multicasting two or more streams of top-four network affiliated programming.[343] As the Commission has found in the past, a significant benefit of the multicast capability is the ability to bring more local network affiliates to smaller markets, thereby increasing access to popular network programming and local news and public interest programming tailored to the specific needs and interests of the local community, and we do not wish to constrain this ability unnecessarily.[344] However, the record does contain indications that some entities currently may be using the fact that multicast streams and LPTV stations are exempt from the ownership rules to circumvent the Commission's local television ownership restrictions, indications that are corroborated by

---

[337] *See id.* at 9883, n.128. A broadcast commenter points out that the Commission declined to restrict instances where a station acquired a multicast affiliation with a major network through direct negotiations with the network rather than with the existing local affiliate. TEGNA Update Comments at 12-13. The Commission did state that Note 11 would not apply in situations where a network offers an existing duopoly owner a top-four-rated affiliation (perhaps because the network is no longer satisfied with the existing affiliate station and the duopoly owner has demonstrated superior station operation and thus earned the affiliation on merit) because such a circumstance represents organic growth of the station and not a transaction that is the functional equivalent of an assignment or transfer of control from the standpoint of our Local Television Ownership Rule. *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9883, n.128. In contrast, circumstances where a station induces an existing local affiliate to terminate its affiliation with its network so that the station can then affiliate with the same network clearly falls outside of the situation described by the Commission.

[338] ATVA Comments at 14-21; NCTA Dec. 6, 2023 *Ex Parte* at 2-3.

[339] 47 CFR § 74.732(b) ("Low power TV and TV translator stations are not counted for purposes of § 73.3555, concerning multiple ownership.").

[340] *An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 47 FR 21468, May 18, 1982.

[341] *Id.*

[342] *See* HC2 Comments at 1-3; NPG Comments at 5-6; NAB Comments at 79-81; NAB Reply at 70-74; ION Reply at 3; NPG Reply at 2-4; Nexstar Reply at 9-12; TEGNA Reply at 15-17; WBOC Reply at 4-6 (opposing the inclusion of LPTV in the ownership rules); NAB Oct. 30, 2023 *Ex Parte* at 2-6; Network Affiliates Nov. 29, 2023 *Ex Parte* at 1-2; NAB Dec. 1, 2023 *Ex Parte* at 2-3; Network Representatives Dec. 6, 2023 *Ex Parte* at 1-2; Entravision Dec. 6, 2023 *Ex Parte* at 2-3.

[343] ATVA Comments at 14-21; *see also* NCTA Dec. 6, 2023 *Ex Parte* at 2-3 (arguing for the Top-Four Prohibition to be extended to multicast streams).

[344] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9892, para. 72. *See also* NAB Oct. 30, 2023 *Ex Parte* at 2-6; Network Affiliates Nov. 29, 2023 *Ex Parte* at 1-2.

the Commission's own aforementioned experience.[345] Such circumvention runs directly against the intended purpose of exempting LPTV and multicast streams, which was expected to benefit competition in the form of new programming alternatives and increasing the availability of network programming respectively.[346] Therefore, although we do not change the Top-Four Prohibition's methodology with respect to LPTV and multicast streams in general, we nevertheless find our action today appropriate to address when entities seek to exploit the exemption in ways that circumvent our rules and result in market concentration, considering both the exemptions' original pro-public interest purposes and the clear intent of the Top-Four prohibition.

108. We recognize that in the future licensees may devise other ways to read our rules narrowly or to manufacture transactions that circumvent the intended purpose of the Top-Four Prohibition. At this time, the Commission will not prohibit conduct other than that which we have observed to be circumventing the purpose of established rules, as there remain compelling reasons for low power and satellite television stations to remain transferable and otherwise exempt from our ownership rules.[347] However, we stress that this should not be interpreted as an invitation for licensees to invent creative ways to circumvent the clear intent of our ownership rules, and the Commission stands ready to take further action as necessary. Finally, we note that if an entity believes the Top-Four Prohibition and Note 11 should not apply to its plan to place on a low power station or multicast stream an affiliation or affiliated programming acquired from another top-four station in the same market, the entity may seek case-by-case consideration under the Local Television Ownership Rule.[348]

109. *Broadcast Spectrum Auction and Next Generation Broadcast Television Transmission Standard*. We conclude that neither the television broadcast incentive auction, conducted in 2016, nor the related repack of the television spectrum, concluded in late 2020, had any significant effects on local television ownership or implications for retention or modification of the Local Television Ownership Rule.[349] Nor do we find that the adoption and deployment of the new broadcast television transmission standard should have any effect on the Local Television Ownership Rule.[350]

(Continued from previous page)

[345] *See* ATVA Update Comments at 8-15; ATVA Comments at 14-21; NCTA Comments at 8-12; NCTA Dec. 6, 2023 *Ex Parte* at 2; ATVA Dec. 6, 2023 *Ex Parte* at 4.

[346] In adopting the LPTV exemption, the Commission believed that excluding LPTV from ownership restrictions would "foster a low power service that can grow to provide program alternatives to full service stations and cable systems in a manner that increases competition in the marketplace and thus enhances the telecommunications service available to the public." *An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 47 FR 21468, May 18, 1982.

[347] Although the *NPRM* sought comment on satellite stations as another type of television station exempted from ownership restrictions through which an entity could air multiple major network-affiliated programming, the record does not indicate that satellite stations are being misused in such a way. *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12137-38, para. 68. In any case, the language of the modification to Note 11 includes any station that is not counted for purposes of the local ownership restriction and is not limited to LPTV or multicast streams as the only possible methods for circumvention.

[348] Put another way, just as entities may seek case-by-case review of a top-four combination that would otherwise violate the Top Four Prohibition, entities may also seek case-by-case consideration of an affiliation acquisition that we would consider effectively equivalent to a top-four acquisition and that would otherwise violate Note 11 of our rule. In small markets, the Commission may look favorably upon a request for consideration where, if Note 11 were to be applied, the result would be fewer programming streams in the market than there were before (e.g., an assignment or transfer of control of a grandfathered combination where coming into compliance with Note 11 would result in the loss of an existing top four stream from the market).

[349] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12139, para. 73.

[350] *Id.* at 12138, para. 70-71. Indeed, no commenter contends that either the broadcast spectrum auction or the voluntary transition to ATSC 3.0 provides any reason for retaining or tightening the rules. *See* NAB Update Comments at 106-11; NAB Comments at 82-83. One commenter calls upon the Commission to study the impact of (continued….)

110. First, we find that the auction and resulting repack did not significantly affect the ownership ranks or our consideration of the ownership rules. As we noted in the Public Notice seeking to update the record of this proceeding, only 41 television stations permanently discontinued operations as a result of the auction.[351] All other stations involved in the auctions are still available to their viewers because they chose to implement channel sharing arrangements or moved from the UHF to the VHF band.[352] The 41 television stations that surrendered their licenses represented less than 2% of the 2,148 full power and Class A stations that existed at the time.[353] Furthermore, only 19 of the 41 stations that surrendered their licenses and terminated service were full power commercial stations, which represents a reduction of 1.38% of the 1,373 full power commercial stations counted in the most recent broadcast station totals.[354] In sum, we find the impact of the incentive auction and resulting repack of the television spectrum on ownership to be negligible.

111. Second, the record does not indicate that the broadcasters' voluntary transition to the ATSC 3.0 transmission standard has any immediate or direct implication for the ownership rules.[355] There is no evidence in the record that use of 3.0 allows anyone to own more or less stations, creates any loopholes to our rules, or affects any of the conclusions underlying our actions in this proceeding. We will continue to monitor any innovations and developments that could affect television industry practices or otherwise call into question the premises under which the ownership restrictions were adopted.

112. *Shared Service Agreements*. We conclude that the SSA disclosure requirement should be retained to maintain transparency as to the extent of common operation between broadcast stations. We agree with the only commenter who mentions the SSA disclosure requirement in the record, who contends that the rule should be retained because SSA disclosure facilitates the Commission's analysis of the broadcast industry and allows the public to analyze ownership diversity in the industry, recognizing that consolidation of operations could limit competition and diversity.[356]

113. No commenter provides a reason for eliminating this requirement, and so in the interest of maintaining transparency, we conclude that the disclosure of SSAs should continue. As when the Commission adopted the SSA disclosure requirement six years ago, we find that the requirement continues to be useful for the public and the Commission to monitor the content, scope, and prevalence of SSAs, as well as to evaluate the impact of these agreements on the Commission's public interest policy goals.[357] Despite calls from some commenters for greater oversight or action by the Commission, we note that the *NPRM* in this proceeding did not seek comment on attributing SSAs, Joint Sales Agreements, or any other contractual relationships between stations in the same market, and we therefore do not have an

---

the incentive auction as part of developing the record for the upcoming 2022 quadrennial review. UCC et al. Update Comments at 8.

[351] *2021 Update Public Notice*, 36 FCC Rcd at 9367, n.32.

[352] *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program*, Public Notice, 34 FCC Rcd 304, 308, para. 11 (MB/WTB 2019).

[353] *See* Broadcast Station Totals as of Dec. 31, 2018, News Release (Jan. 2, 2019).

[354] *See* Broadcast Station Totals as of Mar. 31, 2022, Public Notice (Apr. 5, 2022); NAB Update Comments at 110-11, n.390.

[355] Although we noted above that new digital services ancillary to ATSC 3.0 could create revenue opportunities for broadcast stations that belie a bleak outlook of the broadcast industry, we do not find that the benefits of ATSC 3.0 have been actualized to the point where we could draw any more direct implications until the new transmission standard becomes more widely deployed.

[356] LCCHR Update Reply at 2, n.2; LCCHR Comments at 8-9.

[357] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 10009-10, para. 341.

adequate record to take further action in this order with respect to such agreements.[358]

114. *Minority and Female Ownership*. We find that retaining the existing ownership limits continues to preserve opportunities for ownership diversity, including minority and female ownership. As in past quadrennial reviews, we retain the existing Local Television Ownership Rule for the reasons stated above, primarily to promote competition among broadcast television stations in local markets. Nevertheless, we also find that retaining the existing rule can promote opportunities for diversity in local television ownership.[359] Broadcast commenters state that the best way to encourage broadcast ownership by new entrants, including minority and female owners, is to ensure access to capital by removing rules that impede investment and by incentivizing existing broadcast owners to provide capital to new entrants.[360] As stated earlier with regard to radio,[361] we find that the existing rule strikes the appropriate balance between incentivizing investment in broadcasting and ensuring that station-buying opportunities exist for new entrants in a market, particularly since investment by new entrants is less likely in a market that is highly concentrated.[362] We share the concerns of commenters such as LCCHR, Free Press, NABOB, NHMC, and UCC et al. that media consolidation could further increase entry barriers for ownership by people of color and women by decreasing the likelihood that television stations would be sold to a new entrant.[363] In addition, the Commission has observed some evidence that divestitures and other transactions made to comply with the existing ownership limits have resulted in new entrants, including minority and female owners, entering into local television markets.[364]

115. Ultimately, we find there is no basis to conclude that retaining the Local Television Ownership Rule with the slight modifications we adopt above will harm minority and female ownership. If anything, we believe that retention and modification of the rule will maintain a level of competition and multiplicity of speakers that could allow room for entry into the market, including by minority or female

(Continued from previous page)

[358] *See* Nexstar Update Reply at 15-16. The Commission eliminated attribution for television JSAs and did not seek comments on reestablishing attribution in the NPRM. Several commenters nevertheless call on the Commission to attribute sharing arrangements, which they perceive as a loophole to the ownership restrictions. ATVA Update Comments at 21-24; Free Press Update Comments at 9-20; NHMC Update Reply at 6-7; ATVA Comments at 21-25; LCCHR Comments at 9.

[359] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9893-94, para. 75.

[360] NAB Update Comments at 10-18; TEGNA Update Comments at 9-10; NAB Update Reply at 18-19; Nexstar Update Reply at 11-12; NAB Oct. 30, 2023 *Ex Parte* at 1-2.

[361] *See supra* para. 63.

[362] *See* Allen Media Group (AMG) Update Comments at 9 (noting AMG's difficulty in competing with investment firms to purchase broadcast television stations); AMG Update Reply at 4 (stating that consolidation of television station ownership and increased purchases by large investment funds have decreased the prospect of minority television station ownership).

[363] These commenters also state that the Commission must retain and enforce its existing rules and adopt measures specifically targeted at promoting minority and female ownership. Free Press Update Comments at 3-9, 20-23; NABOB Update Comments at 7-8; UCC et al. Comments at 2-4; LCCHR Update Reply at 1-3, 4; NHMC Update Reply at 2-7; LCCHR Comments at 2-5.

[364] *See Assignment of Broadcast Television Licenses from Meredith Corporation to Gray Television Licensee, LLC*, Letter, DA 21-1426 (MB Nov. 12, 2021) (granting divestiture to Allen Media Holdings) ; *Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order, 34 FCC Rcd 8436 (MB 2019) (granting divestiture to Circle City Broadcasting); *see also* Michael Malone, *Gray TV Lines Up Minority/Female Owners for Six Stations* (Aug. 27, 2014), https://www.nexttv.com/news/gray-tv-lines-minorityfemale-owners-six-stations-133481; Carl Marcucci, *Gray Gets Approvals for Hoak Media Buys, Spinoffs*, (Apr. 4, 2014), https://www.rbr.com/gray-gets-approvals-for-hoak-media-buys-spinoffs/ (describing an acquisition by Mission Broadcasting).

owners.[365] As the Commission has stated in the past, ensuring "the presence of independently owned broadcast television stations in the local market [indirectly increases] the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants."[366] We continue to believe this to be the case. Accordingly, we find that retaining the Local Television Ownership Rule as modified furthers the public interest by ensuring the potential for new and diverse entrants.

116. *Cost-Benefit Analysis*. In light of the lack of record on the specific costs or benefits of this rule, and the limited nature of the modifications we adopt today, we believe that the public interest benefits achieved by retaining the rule as so modified outweigh the potential economic cost of complying with this long-standing structural ownership rule. While the *NPRM* sought quantifications of the costs and benefits of its proposed changes,[367] we note that commenters did not provide such quantifications in the record.[368] For all the reasons explained in the discussion above, we conclude that the public interest benefits promoted by the rule outweigh the cost of compliance with the rule. Also, any potential benefits that further consolidation might offer television station owners are outweighed by potential public interest costs to the consumer in the form of harms resulting from weakened competition within the local broadcast television market, less viewpoint diversity in the only entities producing local programming, and fewer opportunities for new market entrants.

C. Dual Network Rule

1. Introduction

117. We find that the Dual Network Rule, which effectively prohibits a merger between the Big Four broadcast networks (specifically, ABC, CBS, Fox, and NBC),[369] remains necessary in the public interest to protect and promote both competition and localism. With regard to competition, we find that the Big Four broadcast networks have a unique ability to regularly attract large, national audiences, which separates them from other broadcast and cable networks. And given their large audience shares, the Big Four broadcast networks earn higher rates from advertisers seeking to consistently reach mass audiences than other networks are able to earn. We find that loosening the rule to allow a combination between Big Four broadcast networks would lessen competition for advertising revenue and likely subsequently result in the remaining networks paying less attention to viewer demand for innovative, high-quality programming. With regard to localism, we find that the Dual Network Rule increases the bargaining power of local broadcast affiliates and enables them to influence Big Four broadcast network programming decisions in ways that better serve the interests of their local communities.

2. Background

118. The Dual Network Rule states: "A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or

[365] We do not find that our modifications to the Top-Four Prohibition will have a negative impact on minority and female ownership as the modifications simply support the competitive purposes of the overall television ownership rule. In addition, the modifications will apply on a prospective basis, and the case-by-case approach provides the opportunity for flexibility in application of the Top-Four Prohibition should it prove necessary.

[366] *See 2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9893-94, para. 75.

[367] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12140, paras. 75-76.

[368] Free Press states that the Commission was wrong to suggest in the NPRM that economic benefits could serve as "tradeoffs" to the traditional public interest standards of competition, localism, and diversity. Free Press Comments at 13-15. We recognize that as commenters focus on particular discrete issues, the cost or benefits from the rule may not be easy to quantify or balance in any empirical way. Certainly, we do not want to imply that such weighing of costs and benefits in a Quadrennial Review would replace—as opposed to complement—our evaluation of the traditional public interest standards of competition, localism, and diversity.

[369] *See* 47 CFR § 73.658(g).

multiple networks are composed of two or more persons or entities that, on February 8, 1996, were 'networks' as defined in § 73.3613(a)(1) of the Commission's regulations (that is, ABC, CBS, Fox and NBC)."[370] Therefore, the rule allows common ownership of multiple broadcast networks, but effectively prohibits a merger between or among the Big Four broadcast networks, ABC, CBS, Fox and NBC. The Dual Network Rule has existed since the 1940s and has remained largely unchanged except for a revision in response to the Telecommunications Act of 1996.[371] In the *NPRM*, the Commission sought comment on whether the Dual Network Rule remained necessary in the public interest to protect competition and localism as the Commission previously held in its *2010/2014 Quadrennial Review Order*.[372] Specifically, the Commission sought comment on whether broadcast networks still participated in the video marketplace by 1) assembling and distributing a collection of programming suitable for large, national audiences, and 2) selling advertising based on this programming to large, national advertisers.[373] The Commission further asked if the Big Four broadcast networks still outperform their broadcast and cable counterparts in terms of viewership and advertising revenue such that they represent a "strategic group" within the marketplace.[374] The Commission also asked how online video distributors and digital advertisers have affected competition for national broadcast television advertising.[375] Finally, the Commission sought comment on whether the rule still promotes an important and sufficient balance between the national interests of the Big Four broadcast networks and the local interests and obligations held by their local affiliates.[376] The Commission received little comment focused on the Dual Network Rule in response to the *NPRM* and the *2021 Update Public Notice*.[377] In the record, there appears to be nominal interest in changing the rule[378] while a handful of other commenters call for the Commission to retain the rule without modification.[379]

---

[370] *Id.* Section 73.3613(a)(1) in turn defines "network" as "any person, entity, or corporation which offers an inter-connected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity or corporation." 47 CFR § 73.3613(a)(1).

[371] In the Telecommunications Act of 1996 Congress permitted common ownership of two or more broadcast networks, but not a merger among ABC, CBS, Fox or NBC, or between one of these networks and the two largest emerging networks, UPN or WB. 1996 Act, § 202(e); *see also* S. Rep. No. 230, 104th Cong., 2d Sess. at 163; *2002 Biennial Review Order*, 18 FCC Rcd at n. 1240. In 2001, after concluding in its 1998 Biennial Review that the rule as applied to UPN and WB might no longer be in the public interest (*1998 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 Of the Telecommunications Act of 1996,* Order, 15 FCC Rcd 11058, 11098, para. 77 (2000)), the Commission further modified the dual network rule to permit a Big Four network to merge with or acquire UPN or WB. *Amendment of Section 73.658(g) of the Commission's Rules—The Dual Network Rule*, Report and Order, 16 FCC Rcd 11114 (2001); *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13848, para. 594.

[372] *See 2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12140, para. 80.

[373] *Id*.

[374] *Id.* at 12142, para. 82.

[375] *Id*.

[376] *Id.* at 12142-44, paras. 85-86.

[377] As described below, the record contains a total of five Comments and three Reply Comments that discuss the Dual Network Rule.

[378] No parties filed comments or reply comments in support of loosening or repealing the rule in response to the *2018 Quadrennial Review NPRM*. However, three of the Big Four broadcast networks filed comments in response to the *2021 Update Public Notice*. *See* ViacomCBS Inc., Fox Corp., and NBCUniversal Media, LLC Comments, MB Docket No. 18-349 (rec. Sept. 2, 2021) (Networks Update Comments).

[379] *See* WGAW Comments at 3; WGAE Comments; Thomas C. Smith Comments at 7; LCCHR Update Reply at 4; ABC Television Affiliates Association and NBC Television Affiliates Reply at 3 (ABC and NBC Affiliates Reply);

(continued….)

3. Discussion

119. After careful review, we find that the Dual Network Rule remains necessary in the public interest despite marketplace changes, as it continues to foster our core policy goals of competition and localism. Consistent with our findings in the past, we find that the rule promotes competition in the provision of programming suitable for large, national audiences and the sale of national advertising time and furthers localism by maintaining a balance among the Big Four broadcast networks and their affiliate groups.[380]

120. *Competition*. The Big Four broadcast networks continue to hold a unique position in the video marketplace. They earn higher and more consistent ratings on linear television than other broadcast and cable networks. With their high ratings, the Big Four broadcast networks in turn are highly sought after by advertisers seeking to reach large, national audiences. The Big Four broadcast networks largely compete amongst themselves for such advertising revenue, and to differentiate themselves, they attempt to produce programming that will generate the highest ratings possible from the widest audiences. We find that such competition for revenue and audience share serves the public interest by spurring the networks to compete to develop and deliver programming that is innovative, high-quality, and of interest to the viewers. If two of the networks were to merge, competition for this advertising revenue would lessen and the networks would be less incentivized to compete for viewers by providing a national television product that is desired by viewers. Accordingly, we find that the Dual Network Rule remains necessary in the public interest to promote competition in the provision of programming suitable for large, national audiences and the sale of national advertising time.

121. This conclusion is supported by data that show the Big Four broadcast networks are in a class of their own when it comes to producing national programming and selling national advertising time such that a merger among these networks would reduce competition and would be likely to increase these networks' ability to create barriers to entry. As demonstrated by the data below, a review of both the total primetime ratings of the networks and the primetime ratings of individual shows reveals that, in general, the Big Four broadcast networks consistently attract the largest audiences, greatly exceeding the ratings of their broadcast and cable counterparts. Over the last several years, cable networks, as well as some online services, have produced some high-quality television series that can draw high ratings comparable to the Big Four broadcast networks or reach sizeable audiences. These shows are the result of significant investments and many are critically acclaimed and garner media attention.[381] However, as discussed below, this programming still does not achieve the sort of consistent audience share and advertising revenue that the programming of the Big Four broadcast networks generate. And we continue to find that the Big Four broadcast networks form a unique and discrete group within the video marketplace.

122. For example, the most popular show outside of National Football League programming in the 2021-2022 television season was *Yellowstone* airing on the basic cable channel Paramount Network

(Continued from previous page)
Network Affiliates Update Reply at 14; Independent Programmers Comments at 10.

[380] *See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, MB Docket Nos. 02-277, et al, 18 FCC Rcd 13620, 13858, para. 621 (2003); *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2083-84, para. 141, (2008); *2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9952, *para* 216.

[381] *See, e.g.,* Tony Maglio, *From Disney to Peacock: Here's What the Top 7 Streamers Will Spend on Content in 2022*, Mar. 8, 2022, https://www.indiewire.com/2022/03/streaming-wars-content-spend-disney-netflix-hbo-paramount-1234703867/ ("From Disney to Peacock, we estimate that the major streamers will spend well over $50 billion on programming this year."); Dan Snierson, *Emmy Awards 2021: See the full list of winners*, Sept. 20, 2021, https://ew.com/awards/emmys/emmy-awards-2021-winners-list/.

(formerly SpikeTV), which averaged 11.312 million total viewers across its fourth season.[382] This cable network show has surged in popularity since its premiere in 2018.[383] However, Nielsen ratings data reveal that *Yellowstone* is not only the only program aired by Paramount Network to make it on the annual list of the 100 most-popular shows judged by average total viewers, but also is the only non-NFL affiliated program from any cable network that makes it into the top 70 most-watched shows. The next highest rated show aired by a cable network is the cable network History's *Curse of Oak Island*, which ranks 72nd with a 3.611 million total viewers average. In contrast, the non-sports programming of the Big Four broadcast networks dominates the list with 25 of the top 30 shows averaging at least 7 million total viewers in the 2021-2022 season.[384] Notably, CBS had 14 of those shows; NBC had seven; and Fox and ABC each had two. Further, of the 39 non-sports telecasts on the list of 100 most-watched telecasts, all but two aired on a Big Four broadcast network.[385]

123. Further indicating the unique status of the Big Four broadcast networks, sports leagues seeking to reach the largest audiences generally seek to enter into rights agreements with those networks in part because of their proven ability to reach a mass audience.[386] Nielsen ratings data for 2021shows that the Big Four broadcast networks carried sports programming from the NFL, MLB, NBA, the Olympics, and NCAA that dominated the list of highest rated telecasts, representing 40 of the top 50 and 51 of the top 100 telecasts.[387] Moreover, based on the same data, sports programming on the Big Four

(Continued from previous page)

[382] *See* Michael Schneider, *100 Most-Watched TV Series of 2021-22: This Season's Winners and Losers*, May 31, 2022, https://variety.com/2022/tv/news/most-popular-tv-shows-highest-rated-2021-2022-season-yellowstone-1235275680/.

[383] *Id.*; Nielsen ratings data. Ratings data are for average total viewers (live plus seven day viewing) for individual shows across the 2021-2022 season. As WGAW also notes, the networks had 85% of the 100 highest rated series during the 2017-2018 season. We agree with WGAW, which observes that the programming on the Big Four broadcast networks remains the most popular during prime time and that new online video platforms are not adequate substitutions for programming on the Big Four broadcast networks. *See* WGAW Comments at 3, 5-6.

[384] *See* Michael Schneider, *100 Most-Watched TV Series of 2021-22: This Season's Winners and Losers*, May 31, 2022, https://variety.com/2022/tv/news/most-popular-tv-shows-highest-rated-2021-2022-season-yellowstone-1235275680/; FCC staff analysis of Nielsen ratings data. Ratings data are for average total viewers (live plus seven day viewing) for individual shows across the 2021-2022 season.

[385] *See* Michael Schneider and Mónica Marie Zorrilla, *Top 100 Telecasts of 2021: 'NCIS,' 'Yellowstone,' NFL Dominate, as Oscars Fail to Make the Cut*, Dec. 29, 2021, https://variety.com/2021/tv/news/top-rated-shows-2021-ncis-yellowstone-squid-game-1235143671/; Nielsen ratings data. Ratings data are for total viewers (live plus seven day viewing) during individual telecasts.

[386] Due to the revenues they are able generate by packaging and distributing sports programming alongside other highly rated network programming, the Big Four broadcast networks are also in a unique position to pay substantial fees to control the television rights for sports leagues. In return, sports programming historically has generated, and continues to generate, high advertising revenues for the networks in return. For example, the networks airing NFL programming during the 2021-2022 season (CBS, Fox, NBC, and ESPN) brought in $3.4 billion in advertising revenue. *See* Andy Gibs, *NFL TV Ad Revenue up to $3.4 Billion in 2020/2021 Season*, https://www.standardmediaindex.com/insights/nfl-tv-ad-revenue-up-to-3-3-billion-in-2020-2021-season/ (last accessed June 4, 2022); *See also* Ken Belson and Kevin Draper, *N.F.L. Signs Media Deals Worth Over $100 Billion*, May 26, 2021, https://www.nytimes.com/2021/03/18/sports/football/nfl-tv-contracts.html?smid=url-share.

[387] Ratings data are for total viewers (live plus seven day viewing) during individual telecasts. Meanwhile, sports programming airing on cable networks represented only 3 of the top 50 telecasts and 10 of the top 100. Although cable networks air sports programming from the major sports leagues and organizations, the U.S. Department of Justice has found that broadcast network sports programming and cable network sports programming constitute separate product markets, further highlighting the difference between dedicated full-time cable sports networks and the periodic highly rated sports programming that appears on the Big Four broadcast networks. *See* Competitive Impact Statement, *U.S. v. The Walt Disney Company and Twenty-First Century Fox, Inc.*, No. 1:18-cv-05800 (S.D.N.Y. June 27, 2018), https://www.justice.gov/atr/case-document/file/1075201/download (stating that

(continued….)

broadcast networks represented 39 of the top 50 telecasts watched by the highly sought after 18-49 demographic.[388] We agree with WGAW that sports leagues have significant incentives to prefer to negotiate programming rights with the Big Four broadcast networks given their proven ability to reach the largest audiences with fewer of the technical issues sometimes associated with online platforms and, in return, have the potential to draw the largest advertising revenues.[389] While we recognize that some leagues are experimenting with shifting some programming online, most notably, the NFL moving Thursday Night Football to Amazon Prime, it appears that airing programming on a Big Four broadcast network continues to be the most reliable way to reach the largest, most consistent audience possible.[390] The continued dominance of the Big Four broadcast networks in offering the premier sports leagues and events demonstrates further that these four networks remain distinct from other programming channels or networks in the video marketplace.

124. Comparing data regarding the average primetime rating of the Big Four broadcast networks to the top cable networks further demonstrates the strength of the Big Four broadcast networks. Despite some individual cable network programs earning high ratings, the average primetime rating of the Big Four broadcast networks has remained larger than the audience size for even the most popular cable networks. In 2016, the average primetime rating for the Big Four broadcast networks was 3.78, while the average primetime rating of the four highest-rated cable networks (Fox News Channel, ESPN, TBS, and HGTV) was 1.45 – roughly a 62% difference.[391] Moreover, the Big Four broadcast networks' average primetime rating was more than four times larger than that of the next-highest rated English-language broadcast network (The CW).[392] At first glance, more recent data show the gap in primetime ratings between the Big Four broadcast networks and either the top cable networks or the next largest broadcast network is tightening. For example, in 2020, the Big Four broadcast networks averaged a primetime rating of 2.54 while the four highest rated cable networks (Fox News Channel, MSNBC, ESPN, and CNN) average a 1.88 rating, which is approximately a 26 percent difference.[393] The average primetime

"[b]roadcast networks and their affiliates aim to have broad appeal by offering a variety of highly-rated programming content including primetime entertainment shows, syndicated shows, and local and national news and weather in addition to sports, with marquee sports events making up a small percentage of a broadcast network's airtime").

[388] Sports programming airing on cable networks represented only 9 of the top 50 telecasts for the 18-49 demographic.

[389] WGAW Comments at 5-6.

[390] In 2021, Amazon acquired the rights to the NFL's Thursday Night Football program for eleven years at $1 billion per year; *See* Alex Sherman, *Amazon's exclusive 'Thursday Night Football' package will begin in 2022 instead of 2023*, May 3, 2021, https://www.cnbc.com/2021/05/03/amazons-thursday-night-football-package-will-begin-in-2022-instead-of-2023.html.

[391] *See* S&P Global Market Intelligence, 2016 TV Network Summary, Broadcast Networks by Average Prime Time Rating as of June 5, 2022 (S&P Global Market Intelligence Broadcast Networks by Average Prime Time Rating June 5, 2022); S&P Global Market Intelligence, 2016 TV Network Summary, Basic Cable Networks by Average Prime Time Rating as of June 5, 2022 (S&P Global Market Intelligence Basic Cable Networks by Average Prime Time Rating June 5, 2022). Because Spanish-language networks reach a different audience (i.e., those viewers who speak Spanish), only English-language cable networks are included in these averages. We note that if Spanish-language networks were included, it would not greatly impact the analyses or lead us to change our ultimate conclusions.

[392] *Id*. Per S&P Global Market Intelligence, The CW's average primetime audience was a 0.84 in 2016.

[393] *See* S&P Global Market Intelligence, 2020 TV Network Summary, Broadcast Networks by Average Prime Time Rating as of June 5, 2022 (S&P Global Market Intelligence Broadcast Networks by Average Prime Time Rating June 5, 2022); S&P Global Market Intelligence, 2020 TV Network Summary, Basic Cable Networks by Average Prime Time Rating as of June 5, 2022 (S&P Global Market Intelligence Basic Cable Networks by Average Prime Time Rating Delivery June 5, 2022).

rating of the Big Four broadcast networks was nearly three times the size of the next highest broadcast network, ION.[394] While smaller than in the past, the percentage differences between the Big Four broadcast networks and all other networks remain significant.

125. Moreover, it should be noted that much of the increased cable network ratings in 2020 were the result of cable news programming that surged in popularity during the election season on Fox News Channel, MSNBC, and CNN.[395] If Fox News Channel, MSNBC, and CNN, which are categorized as more specialty news networks rather than general/variety networks, are removed and one adds the three next highest rated cable networks (Hallmark Channel, HGTV, and TLC), the average of the top four cable networks is reduced to a 1.15 rating, which is roughly a 55 percent difference with the Big Four broadcast networks.[396] We also note that sports and cable news programming is often produced for a more niche audience rather than for a national, mass audience, the type of competition which the Dual Network Rule seeks to promote. If one considers only broadcast and cable networks that S&P Global categorizes as "General/Variety," the four highest rated, English-language networks in 2020 were TBS, ION, Investigation Discovery, and USA with an average primetime rating of 0.77 – less than a third of the Big Four broadcast networks.[397]

126. Beyond just the primetime hours, the Big Four broadcast networks also still boast a significant advantage in terms of the 24-hour average ratings, despite an increase for cable networks' ratings in recent years. In 2020, the average 24-hour rating for the Big Four broadcast networks was a 1.97 compared to a 1.15 for the four highest rated cable networks (Fox News Channel, MSNBC, CNN, and Hallmark Channel).[398]

127. In addition to the disparity in ratings, there continues to be a wide disparity in the advertising rates charged by the Big Four broadcast networks and the advertising rates charged by other broadcast and cable networks, supporting our view that the Big Four broadcast networks retain distinct characteristics and pursue distinct business interests and strategies, such that they remain a separate strategic group within the larger video marketplace.[399] Recent data show that the Big Four broadcast

(Continued from previous page)

[394] *Id.* Per S&P Global Market Intelligence, ION's average primetime audience was a 0.78 in 2020.

[395] *See* Rick Porter, *Pandemic, Election Push Cable News Channels to Peak in 2020*, Dec. 22, 2022, https://www.hollywoodreporter.com/tv/tv-news/pandemic-election-push-cable-news-channels-to-peak-in-2020-4108610/. In 2021, weekday primetime viewership saw a sharp decline after the 2020 election season. Nielsen states that CNN dropped 38 percent; Fox News Channel dropped 34 percent; and MSNBC dropped 25 percent. *See* David Bauder, *Cable news lost plenty of viewers in 2021*, Dec. 27, 2021, https://www.bostonglobe.com/2021/12/27/business/cable-news-lost-plenty-viewers-2021/.

[396] *See* S&P Global Market Intelligence, 2020 TV Network Summary, Broadcast Networks by Average Prime Time Rating as of June 5, 2022 (S&P Global Market Intelligence Broadcast Networks by Average Prime Time Rating June 5, 2022); S&P Global Market Intelligence, 2020 TV Network Summary, Basic Cable Networks by Average Prime Time Rating as of June 5, 2022 (S&P Global Market Intelligence Basic Cable Networks by Average Prime Time Rating Delivery June 5, 2022). We also note that the differences become much greater when one excludes all vertically integrated cable networks (i.e. cable networks that share the same parent company as a Big Four broadcast network). In 2020, the average primetime rating for the four highest rated non-vertically integrated cable networks (CNN, Hallmark Channel, HGTV, and TLC) was 1.16, which is roughly a 55 percent difference with that of the Big Four. *Id*.

[397] *Id.*

[398] *See* S&P Global Market Intelligence, 2020 TV Network Summary, Broadcast Networks by 24 Hour Average rating as of June 5, 2022 (S&P Global Market Intelligence Broadcast Networks by 24 Hour Average Rating June 5, 2022); S&P Global Market Intelligence, 2020 TV Network Summary, Basic Cable Networks by 24 Hour Average Rating as of June 5, 2022 (S&P Global Market Intelligence Basic Cable Networks by 24 Hour Average Rating June 5, 2022).

[399] *See Amendment of Section 73.658(g) of the Commission's Rules – the Dual Network Rule,* MM Docket No. 00-108, Report and Order, 16 FCC Rcd at 11114, 11122-23, *para*. 20 n.45 (2001) (Dual Network Order) (finding that a (continued….)

networks generally charge higher advertising rates than cable networks.[400] According to S&P Global Market Intelligence data for 2020, the average advertising rate among the Big Four broadcast networks, as estimated in cost per thousand views (referred to as cost per mille or CPM), was approximately $23.68.[401] By contrast, the four highest CPMs among cable networks for the same period (ESPN, MTV, Discovery Channel, and Bravo) had an average of approximately $19.39, which is approximately 19 percent less than that of the Big Four broadcast networks.[402] This gap increases if one excludes ESPN, which is owned by Disney, the parent company of broadcast network ABC, and a network with a uniquely high CPM as a result of its sports programming. Without ESPN, the Big Four cable networks (MTV, Discovery Channel, Bravo, and Food Network) average $15.40, a 35 percent difference as compared to the CPM garnered by the Big Four broadcast networks.[403] Data from 2017 reveal that this gap in advertising rates has stayed steady in recent years. In 2017, the Big Four broadcast networks earned an average CPM of $21.43 and the four highest CPMs among cable networks (ESPN, MTV, Bravo, and Discovery Channel) averaged $17.46 – a difference of approximately 19 percent.[404] If one was to exclude ESPN (and replace with next highest, TNT), the CPM average of the top four cable networks drops to $14.32, which is approximately a 33 percent difference.[405]

128. Data on net advertising revenues earned by the various top networks provide additional evidence that the Big Four broadcast networks have a definite appeal to advertisers seeking consistent, large national audiences. In these data as well, we find a wide disparity between the net advertising revenue of the Big Four broadcast networks and the comparable top four cable networks. For example, in 2021 the Big Four broadcast networks earned an average of $3.102 billion.[406] In comparison, the four

(Continued from previous page)
"strategic group" refers to a cluster of independent firms within an industry that pursue similar business strategies. For example, the top-four networks supply their affiliated local stations with programming intended to attract mass audiences and advertisers that want to reach such large, nationwide audiences); *2002 Biennial Review Order*, 18 FCC Rcd at 13850, paras. 601 n.1251 (finding that Big Four broadcast networks remained a "strategic group" as a cluster of independent firms within an industry that pursue similar business strategies); *2006 Quadrennial Review Order*, 23 FCC Rcd at 2013, 2082-83, para. 140 n.439 (finding that Big Four broadcast networks remained a "strategic group"); *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9857-58, para. 228 (finding the Big Four broadcast networks remained a "strategic group").

[400] *See* S&P Global Market Intelligence, 2020 TV Network Summary, Basic Cable Networks by Calculated CPM ($) as of Oct. 5, 2022 (S&P Global Market Intelligence Basic Cable Networks by Calculated CPM Oct. 5, 2022); See S&P Global Market Intelligence, 2020 TV Network Summary, Broadcast Networks by Calculated CPM ($) as of Oct. 5, 2022 (S&P Global Market Intelligence Broadcast Networks by Calculated CPM Oct. 5, 2022). We also note that the Big Four broadcast networks have much higher CPMs than the other broadcast networks with the exception of the CW, which has a uniquely high CPM as a result of its young adult targeted programming. In 2020, the CW's CPM was 40.91.

[401] *Id*.

[402] *Id.*

[403] *Id.* Of note, the *2010/2014 Quadrennial Review Order* stated there was a 44% gap in CPMs between the Big Four broadcast networks and the four highest CPMs among non-sports cable networks in 2014. While one may contend that the gap is lessening, we still find a 36% gap to be significant. *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9957, para. 227.

[404] *See* S&P Global Market Intelligence, 2017 TV Network Summary, Basic Cable Networks by Calculated CPM ($) as of June 5, 2022 (S&P Global Market Intelligence Basic Cable Networks by Calculated CPM June 5, 2022); See S&P Global Market Intelligence, 2017 TV Network Summary, Broadcast Networks by Calculated CPM ($) as of June 5, 2022 (S&P Global Market Intelligence Broadcast Networks by Calculated CPM June 5, 2022).

[405] *Id.*

[406] *See* S&P Global Market Intelligence, TV Network Summary, Broadcast Networks by Net Advertising Revenue ($000) as of Oct. 5, 2022 (S&P Global Market Intelligence Broadcast Networks by Net Advertising Revenue Oct. 5, 2022); S&P Global Market Intelligence, TV Network Summary, Basic Cable Networks by Net Advertising Revenue (continued….)

cable networks with the highest net advertising revenue totals (ESPN, Fox News Channel, HGTV, and TBS) averaged $1.242 billion in estimated net advertising revenues.[407] This represents close to a third of the average amount received by the Big Four broadcast networks.[408] The difference is even wider when comparing the net advertising revenues of the Big Four broadcast networks to the next best performing English-language broadcast network. In 2021, ION earned $463 million in net advertising revenue – nearly a seventh of the average earned by the Big Four broadcast networks.

129. In sum, we find that the data support our conclusion that that the Big Four broadcast networks retain distinct characteristics and strategies that drive competition among this group and warrant retention of the Dual Network Rule. We find that these four broadcast networks continue to be uniquely capable of attracting large audiences of a size that individual cable networks and other broadcast networks cannot consistently replicate. For advertisers seeking to reach a national audience, and for sports leagues seeking to reach the largest audiences, the Big Four broadcast networks remain the outlets able to guarantee them a consistent, large national audience. We thus agree with WGAW that the Big Four broadcast networks still operate as a strategic group and their programming is a distinct non-substitutable advertising product for those attempting to reach mass audiences.[409] While on certain occasions, a cable network may compete with the Big Four broadcast networks for high ratings, cable networks have not been shown to replicate the same ratings success sustained by the Big Four broadcast networks.

130. While we recognize that there have been significant changes in technology and media consumption in the video marketplace since our last quadrennial review, most notably from the continued growth of online video options, we disagree with the Network Commenters that the Dual Network Rule is no longer in the public interest as a result of these newer outlets.[410] As described above, we continue to find that the mass appeal of Big Four broadcast programming sets it apart in the video marketplace. With respect to online programming, although not directly comparable to ratings for traditional television, lists are routinely published identifying the most streamed series and movies, the overwhelming majority of which appear on services best described as subscription video-on-demand (or SVOD) services.[411] Although SVOD services offer notable original content and garner many millions of subscribers, as their descriptive moniker implies, these services pursue different strategies and offer different value propositions as compared to the Big Four broadcast networks.[412] For instance, the Big Four broadcast networks offer live or linear programming intended to garner mass audiences and funded in large part through advertising revenues. Such network programming is available for free and over-the-air from broadcast television stations (i.e., without requiring Internet access or a paid subscription) as well as on pay TV (i.e., MVPDs) and streaming online. Conversely, SVODs offer individual, on-demand programming for their customers – generally not live or linear national programming.[413] Further, SVODs

($000) as of Oct. 5, 2022 (S&P Global Market Intelligence Cable Networks by Net Advertising Revenue Oct. 5, 2022).

[407] *Id*.

[408] *Id.* This gap widens if one excludes vertically integrated cable networks (leaving HGTV, CNN, TBS, and Food Network). Those four cable networks averaged $981 million in revenue.

[409] WGAW Comments at 7-8.

[410] *See* Networks Update Comments at 4.

[411] *See, e.g.,* Todd Spangler, Variety, *Surprise! Criminal Minds Was 2021's Most-Streamed TV Show in the U.S.* (Jan. 21, 2022), https://variety.com/2022/digital/news/most-streamed-tv-shows-movies-2021-criminal-minds-1235159626/ (listing top streaming titles from various SVODs and noting that many of the most popular were older licensed shows that had originally aired on Big Four broadcast networks); Nielsen, *Tops of 2020: Nielsen Streaming Unwrapped* (Jan. 2021), https://www.nielsen.com/insights/2021/tops-of-2020-nielsen-streaming-unwrapped/ (listing Netflix and Disney+ titles as the top streaming content of 2020 for original series, acquired series, and movies).

[412] *See 2022 Communications Marketplace Report* at 158-59, paras. 256-57.

[413] *Id.* at 3058, para. 179.

are primarily subscription based models, charging viewers fees for access, and with programming intended to drive subscriptions to the service and to retain existing subscribers. Moreover, as subscription-based services, SVODs do not compete with the Big Four broadcast networks for national advertising revenue.[414] As previously stated, the goal of the Dual Network Rule is to foster competition in the provision of primetime entertainment programming and the sale of national advertising time.[415] We find that retention of the rule continues to incentivize the Big Four broadcast networks to compete for viewers by producing a national television product that is desired by viewers. Allowing a merger between two of the Big Four broadcast networks, either based on competition from cable networks or the perceived competition from SVODs, would not promote the creation of more national programming, but instead, could lead to less national programming with wide audience appeal. In addition, we also agree with WGAE that the Dual Network Rule has not prevented the networks' parent companies from creating their own SVOD platforms that compete in the video marketplace.[416]

131. In reaching our conclusion that the rule remains in the public interest, we also disagree with the Network Commenters that new competition for advertising revenue from digital platforms and social media companies, supports eliminating the Dual Network Rule at this time.[417] Instead, as described above, we find that the Big Four broadcast networks offer a unique advertising product that reaches the largest audience possible, something that is not routinely matched by either cable networks or SVODs. Indeed, we find that there is still a market for advertisers trying to reach a national audience via linear television. Media buyer Magna states that national broadcast and cable television generated $39 billion in 2021, which marked a 7% increase over the previous year.[418] Moreover, advertising over television is

(Continued from previous page)

[414] *Id*.

[415] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 9955, para 221.

[416] *See* WGAE Comments at 2. In recent years, network-affiliated SVOD platforms such as Disney+ (ABC), Paramount+ (CBS), Peacock (NBC), Hulu (ABC and NBC) have all launched and appear to be growing in subscriptions. For example, Disney+ ended 2021 with 129.8 million paid subscribers globally, which represented a 37 percent growth over the previous year. In the United States and Canada, Disney reported having 42.0 million Disney+ subscribers, which was an 18 percent increase. As of May 2022, Paramount+ has 40 million subscribers gaining 6.8 million subscribers in the first quarter of 2022. Peacock ended the first quarter of 2022 with 28 million monthly active accounts and 13 million paid subscribers, which was an increase from 24.5 million at the end of 2021. Hulu had 45.3 million subscribers at the end of 2021, including 4.3 million users on its live television service. While Netflix with 220.67 million global subscribers (73.28 million in the United States and Canada) still has far more than any of these platforms individually, these new platforms have added competition to the market as Netflix recently reported its first loss of subscribers in a quarter since 2011. *See* Brent Lang and Todd Spangler, *Disney Plus Ends 2021 With Nearly 130 Million Subscribers, Smashing Growth Forecasts*, Feb 9, 2022, https://variety.com/2022/biz/news/disney-plus-subscribers-2021-earnings-1235175715/; Emma Roth, *Paramount Plus subscriber count has grown to nearly 40 million*, May 3, 2022, https://www.theverge.com/2022/5/3/23055121/paramount-plus-subscriber-count-40-million; Jennifer Maas, *Peacock Hits 28 Million Monthly Active U.S. Accounts, 13 Million Paid Subscribers*, April 28, 2022, https://variety.com/2022/tv/news/peacock-subscribers-users-q1-1235242891/; Todd Spangler, *Hulu Adding Unlimited DVR for All Live TV Subscribers at No Extra Charge*, Mar. 11, 2022, https://variety.com/2022/digital/news/hulu-live-tv-unlimited-dvr-1235201117/; Peter Kafka, Why Netflix is suddenly losing subscribers, April 29, 2022, https://www.vox.com/recode/23032705/netflix-subscriber-loss-streaming-wars; Emma Roth, *Netflix subscriber count in the US and Canada dropped by 1.3 million over the last three months*, July 19, 2022, https://www.theverge.com/2022/7/19/23268626/netflix-q2-2022-earnings-subscribers-ads-stranger-things.

[417] Network Commenters Comments at 6-7.

[418] *See* Brad Adgate, *Agencies Agree; 2021 Was A Record Year For Ad Spending, With More Growth Expected In 2022*, Dec. 8, 2021, https://www.forbes.com/sites/bradadgate/2021/12/08/agencies-agree-2021-was-a-record-year-for-ad-spending-with-more-growth-expected-in-2022/?sh=5734f7e77bc6. Further, as WGAW notes, the growth of online advertising does not appear to have come at the expense of national advertising. *See* WGAW Comments at 9. We note further that some consider digital advertising to be an "add on" as part of a traditional marketing campaign,

(continued….)

often viewed as unique in that it can protect brand safety by allowing brands to choose when they want an ad to be aired in contrast with less controllable digital advertising where a brand may appear in circumstances beyond the control of the corporation placing the ad.[419]

132. Accordingly, the Dual Network Rule remains necessary in the public interest to promote competition in the provision of programming suitable for large, national audiences and the sale of national advertising time.

133. *Localism*. We find that the Dual Network Rule also remains necessary to foster the Commission's goal of localism. Viewers benefit from localism when an affiliate station is able to preempt national, network programming without fear of repercussion so that the affiliate station can air programming it feels is of preeminent importance to the local viewer. Eliminating the rule would increase the bargaining power of the Big Four broadcast networks over the local affiliates, which would then reduce the ability of the affiliates to influence network programming decisions or exert their own independence from their affiliated network in a manner that best serves the needs of their local communities. This balance is important because the networks and the local affiliates have differing incentives and obligations. Broadcast networks design their programming to reach the largest audience possible as well as to maximize advertising revenue.[420] Local affiliates, by contrast, have obligations and incentives to serve their local communities by offering local news and other programming.[421] Thus, while local affiliates typically want the most popular programming a network has to offer, an affiliate, nonetheless, may wish to offer input to a network on its programming so that it better serves the specific needs and interests of its specific local community or preempt network programming for programming that is important for its local community.

134. We agree with the Network Affiliates that the reduction in the number of networks resulting from a Big Four network merger would reduce the bargaining power for affiliates.[422] With fewer networks, affiliates would be less able, if at all, to use the availability of other top, independently owned networks as a bargaining tool to exert influence on the programming decisions of its network, including with regard to program content and scheduling. For similar reasons, we also find that the existence of other networks gives affiliates more leeway to raise locally oriented concerns with network programming or decide to preempt network programming in favor of programming that may better fit the

---

and thus complementary to advertising on broadcast networks, not a substitute. *See id.* (citing Michael Nathanson, et al., U.S. Advertising: A False Dichotomy?, Apr. 5, 2019, MoffettNathanson Media & Telecom); *see also* Commentary of Mark Lieberman, President and CEO, Viamedia, Inc., while on panel titled "*Television Advertising: the Nuts and Bolts of Broadcast and Cable*" during a public workshop produced by the Antitrust Division of the United States Department of Justice at p. 45, transcript available here: https://www.justice.gov/atr/page/file/1202076/download.

[419] *See* Oriana Schwindt, *MAGNA Predicts a Roaring Recovery for U.S. Ad Market*, Oct. 25, 2021, https://www.mediavillage.com/article/magna-predicts-a-roaring-recovery-for-us-ad-market/print/. WGAW notes that only broadcast advertising with a Big Four broadcast network can reach a national mass audience at once with a guarantee of brand safety and without the pitfalls of advertising online. *See* WGAW Comments at 8.

[420] *See supra*, para. 121.

[421] The 2022 Communications Marketplace Report notes that "[d]espite COVID-related budget cuts, in 2020, 1,116 television stations aired local news." *See 2022 Communications Marketplace Report* at 165, para. 269.

[422] Initially the ABC and NBC Affiliates filed comments, and subsequently all Big Four broadcast network affiliates (Network Affiliates) filed reply comments, in response to the *NPRM* and the *2021 Update Public Notice* respectively that a combination of two of the Big Four broadcast networks would create a competitive imbalance in the video programming industry in favor of the networks at the expense of local affiliates. *See* ABC and NBC Affiliates Reply at 3; Network Affiliates Update Reply at 14. We also find support in the record from the Independent Programmers who echoed these concerns stating that elimination of the rule would undermine the balance of bargaining power and lead to greater consolidation causing harm to the Commission's public interest goals. *See* Independent Programmers Comments at 10.

local needs of their communities. We also find that the dual network rule potentially provides a local affiliate with an additional affiliation option should it come to an affiliation negotiation impasse with a network.

135. In addition, we find that the increases in affiliation fees paid by the local affiliates to the Big Four broadcast networks in recent years are evidence of the considerable leverage the Big Four broadcast networks already hold in their negotiations with affiliates. And we conclude that eliminating the Dual Network Rule would upset the existing balance between networks and affiliates to the detriment of local viewers. As the Network Affiliates note, networks originally provided content to the local affiliates for free or in exchange for advertising availabilities.[423] However, the Big Four broadcast networks now draw significant sums of revenue via reverse compensation from the local affiliates.[424] Notably, much of this revenue is derived from retransmission consent revenue, at least some of which could otherwise be expected to flow back into local station operations but is instead redirected towards national programming produced by the networks. According to one estimate, total industrywide reverse compensation payments paid by affiliates to broadcast networks have increased from roughly $300 million in 2010 to $2.9 billion in 2017.[425] The Affiliates report that some pay as much as 70% of their retransmission consent revenue to the network,[426] and S&P Global estimates that nearly 50% of all retransmission consent revenue of the Big Four affiliated stations went back to the networks in 2019.[427] We find that eliminating or loosening the Dual Network Rule would only increase the leverage of the networks at the potential expense of local affiliates and their commitment to the needs and interests of local viewers.[428]

136. For these reasons, we agree with the Network Affiliates that the Dual Network Rule is a "reinforcing mechanism" that helps maintain the balance between the national goals of the networks and the local commitments of the affiliates,[429] and it thus remains necessary to foster localism. If two of the Big Four broadcast networks were to merge, local broadcast affiliates would have fewer options to re-affiliate with a national network and would have a reduced ability to influence the programming decisions of the networks – at a detriment to their local communities. Accordingly, we find the rule also continues to be necessary in the public interest to promote localism, and we retain the rule without modification.[430]

137. Finally, we disagree with the Network Commenters that traditional antitrust protections would sufficiently protect the public interest if we modified the Dual Network Rule to be no longer an *ex*

---

[423] Network Affiliates Update Reply at 15-16.

[424] *Id.*

[425] *See 2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12143-4, *para*. 86. (citing SNL Kagan, Media Census (June 2017)).

[426] *See* Network Affiliates Update Reply at 16.

[427] *See* Justin Nielson, *Broadcast Investor Retrans Projections Update: Sub Rates Continue To Rise*, July 25, 2019, https://www.spglobal.com/marketintelligence/en/news-insights/research/retrans-projections-update-sub-rates-continue-to-rise.

[428] The Big Four Affiliates also raise direct-to-consumer platforms such as CBS's Paramount +, NBC's Peacock and ABC/Disney's Disney+ as evidence that their role in distributing content is diminishing and their leverage would only worsen with consolidation among the Big Four broadcast networks. The commenters further raise what they call "take-it-or-leave-it" deals negotiated by the Big Four broadcast networks for distribution of affiliate stations on virtual Multichannel Video Programming Distributors as evidence as to why the Dual Network Rule remains important. *See* Network Affiliates Update Reply at 16-18.

[429] *See* Network Affiliates Update Reply at 14.

[430] We also find support in the record from Thomas C. Smith and The Leadership Conference on Civil and Human Rights who both oppose modification of the rule. *See* Thomas C. Smith Comments at 7; LCCHR Update Reply at 4.

ante prohibition.[431] As we have stated previously, a traditional antitrust analysis does not consider the harms the Dual Network Rule protects against, namely, that a merger may "restrict the availability, price, and quality of primetime entertainment programming and the bargaining power and influence of network affiliate stations, harming consumers and localism."[432] In addition, while a fact-specific public interest review by the Commission would remain, the information and data already before us provide a general picture of what a merger between two of the Big Four broadcast networks may look like, and we find that such a merger would harm competition and localism such that the *ex ante* prohibition remains appropriate.

138. *Minority and Female Ownership*. In the *NPRM*, we sought comment on how, if at all, the Dual Network Rule impacts female and minority ownership of broadcast stations; however, no commenters responded to the issue. Due to the rule's focus on mergers between the Big Four broadcast networks rather than the ownership of broadcast stations in local markets, and the absence of relevant comment in the record, we find that the rule likely does not have a meaningful impact on female and minority ownership of broadcast stations.

139. *Cost Benefit Analysis*. In the *NPRM*, we sought comment on the costs and benefits of retaining, modifying, or eliminating the Dual Network Rule with an emphasis on data regarding the economic impact any decision may have.[433] While commenters provided data about the relative market strength of the Big Four broadcast networks, no commenters addressed data as to the rule's costs and benefits. Ultimately, for the reasons explained in the discussion above, we find that the benefits of maintaining the Dual Network Rule outweigh the costs. Specifically, we find that the benefits consumers receive by keeping the Big Four broadcast networks intact (e.g., the increased quality and quantity of national programming; maintenance of balance between networks and affiliates) outweigh the potential costs of the rule, which might include preventing the increased economy of scale that two merged networks could attain.

V. DIVERSITY-RELATED PROPOSALS

140. Consistent with commitments made by the Commission in the *2010/2014 Quadrennial Review Order*,[434] the *NPRM* sought comment on three long-pending proposals that had previously been put forward by the Multicultural Media, Telecom and Internet Council (MMTC), only one of which continues to receive support for review in a rulemaking and each of which we decline to adopt today.[435] The first proposal, extending cable procurement requirements to broadcasters, is one we will continue to consider outside of this proceeding. We decline to pursue the other proposals—developing a model for market-based tradeable "diversity credits" to serve as an alternative method for adopting ownership limits and adopting formulas aimed at creating media ownership limits that promote diversity—given the lack of current support for them and the lack of detail in the record about how they would be implemented.

---

[431] *See* Networks Update Comments at 8-10.

[432] *See 2010/2014 Quadrennial Review Order,* 31 FCC Rcd at 9959-60, para. 231 n.710; *see also 2006 Quadrennial Review Order*, 23 FCC Rcd at 2083, para. 141 n.451 (finding that antitrust enforcement would not protect against certain harms addressed by the Dual Network Rule: "reduce[d] program output, choices, quality, and innovation to the detriment of viewers, and with reduced affiliate power and influence").

[433] *See 2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12145, paras. 91-92.

[434] *2010/2014 Quadrennial Review Order*, 31 FCC Rcd at 10006-07, paras. 331-32. In the *2010/2014 Quadrennial Review Order*, the Commission stated that it would evaluate the feasibility of extending cable procurement type rules to the broadcast industry and also consider further the ideas of tradeable diversity credits and two formulas related to broadcast diversity. The Commission committed to soliciting input on these particular ideas in the document initiating the next quadrennial review of the media ownership rules. *Id*. *See also 2018 Quadrennial Review NPRM* at 33 FCC Rcd at 12145, para. 93 (describing the history behind these proposals).

[435] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12145-12155, paras. 93-120.

141. While, for reasons discussed below, we do not adopt these specific proposals at this time, we continue to look for ways to address the lack of diversity in media ownership and the broader media ecosystem. For example, we recognize the calls in this proceeding to reinstate the tax certificate program in order to foster ownership of broadcast stations by minorities and women, and we urge Congress to heed these requests from both broadcasters and public interest groups alike.[436] Indeed, the Commission has long-supported reinstatement of the tax certificate program, recognizing its proven ability to broaden the diversity of media ownership.[437] In addition to seeking ways to enhance ownership diversity within the broadcast sector, we continue to search for and develop more accurate information about the level of diversity within the broadcast sector.[438] In this regard, as mentioned above, the Commission's Office of Economics and Analytics recently released a white paper on minority ownership of broadcast television stations that will continue to inform our understanding of the television market and the diversity of ownership.[439] As another example, we note that the Media Bureau recently sought public comment on a petition for rulemaking filed by FUSE, LLC, and other public interest groups regarding the establishment of an annual report on the diversity of video programming content vendors.[440] We turn below to the proposals raised in the NPRM.

142. *Extension of Cable Procurement Regulation*. First, we determine that the issue of whether to extend the cable procurement requirement to other Commission regulatees should be reviewed outside the context of the quadrennial review, which per statutory mandate focuses on our media ownership rules. As part of the 1992 Cable Act, Congress established the so-called cable procurement requirement, which directs operators of cable systems to: "encourage minority and female entrepreneurs

---

[436] *See, e.g.,* Allen Media Group Comments, MB Docket No. 18-349, at 7-10 (rec. Sept. 2, 2021) (requesting that, in lieu of the diversity proposals contained in the *NPRM*, which Allen Media acknowledges may take years or even decades to come to fruition, the Commission engage in a concerted and continuing effort to achieve two remedies -- the previously successful minority tax certificate program and a program to make capital available to minority investors); Letter from Robert Branson, et al., President and CEO, MMTC, to Sanford Williams, Special Advisor to the Chairwoman, FCC, MB 18-349, at 6 (filed Aug. 4, 2021) (MMTC *Ex Parte*) (urging the Commission to request that Congress reinstate the tax certificate program); NAB Update Reply at 16-18 (asking the Commission to do everything possible to encourage the 117th Congress to approve tax certificate legislation); Music Coalition Update Reply at 26 (stating that Congress should pass a bill reinstating the minority tax certificate program). *See also* FCC Communications Equity and Diversity Council, Enhancing Media Ownership and Entrepreneurial Opportunities for Minorities and Women at 12 (2023), https://www.fcc.gov/sites/default/files/cedc-diversity-equity-wg-media-ownership-diversity-report-06152023.pdf (recommending that the Commission encourage Congress to reinstate the Minority Tax Certificate policy with safeguards and updates to increase minority broadcast ownership).

[437] *See, e.g., Section 257 Triennial Report to Congress*, Report, 31 FCC Rcd 12037, 12078, para. 139 (2016) (*Fifth Section 257 Report*); *see also 2010/2014 Quadrennial Review Order*, 31 FCC Rcd 9864, at 9966, para. 244 (stating that the Commission's then most recent *Section 257 Report* included a recommendation that Congress pass tax deferral legislation). *See also* Press Release, Statement of Acting Chairwoman Jessica Rosenworcel on Release of the Fifth Annual Biennial Ownership Report (Sept. 3, 2021) (stating that "it is essential that we identify ways we can encourage more diversity in this market, including reinstatement of the Minority Tax Certificate Program."); Press Release, Statement of Commissioner Geoffrey Starks on Release of Fifth Broadcast Station Ownership Report (Sept. 8, 2021) (strongly supporting Congressman G.K. Butterfield's bill to reestablish the Minority Tax Certificate Program and noting this will provide opportunities for diversity in broadcast ownership and viewpoints).

[438] *See, e.g., Review of the Commission's Broadcast Equal Employment Opportunity Rules and Policies*, Further Notice of Proposed Rulemaking, 36 FCC Rcd 12055 (2021) (seeking to reinstate FCC Form 395-B so as to gather workforce composition data from broadcasters based on race, ethnicity, and gender).

[439] *See supra* para. 26.

[440] *See Media Bureau Seeks Comment on Petition for Rulemaking to Establish Vendor Diversity*, Public Notice, DA 22-567, MB Docket No. 22-209, at para. 1 (May 23, 2022). *See also* Petition for Rulemaking of FUSE, LLC, Common Cause, National Hispanic Media Coalition, Public Knowledge, and United Church of Christ Media Justice Ministry, MB Docket No. 22-209 (filed May 5, 2022).

to conduct business with all parts of its operation; and . . . analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program."[441] Based on this statutory requirement, the Commission promulgated section 76.75(e), which provides that a cable system must: "[e]ncourage minority and female entrepreneurs to conduct business with all parts of its operation."[442] The rule explains that "[f]or example, this requirement may be met by: (1) Recruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests."[443]

143. In response to MMTC's proposal, the *NPRM* sought comment on the Commission's statutory authority to extend the cable procurement requirement to broadcasters, given that the cable requirement flows directly from the statutory mandate pertaining to the cable industry contained in the 1992 Cable Act.[444] In addition, the Commission sought comment on whether by specifically identifying minority and female entrepreneurs, the proposed rule would classify those entrepreneurs differently from others such as to trigger heightened judicial scrutiny,[445] and, if so, whether such a proposed rule could be modified in some way to avoid legal impediments.[446] The *NPRM* also sought data demonstrating whether the cable procurement rule had in fact had a beneficial impact on minority and female participation, as well as input on the likelihood of similar impacts in the broadcast sector if the requirement was extended, given the differences between the cable and broadcast industries.[447]

144. This proposal garnered extremely limited comment, with sparse support.[448] In particular, commenters failed to address the substantive statutory authority and constitutional issues the Commission set forth in the *NPRM*. Moreover, MMTC, which initially proposed the extension of the cable procurement requirement to broadcasters, has over the course of this proceeding broadened its request to now suggest an extension of the requirement to *all* Commission regulated entities, not just broadcast licensees.[449] Further, MMTC now recommends that the Commission consider the broader request in the context of a new docket.[450]

145. In light of this, we determine today to terminate review of this issue in the context of our quadrennial review of the structural ownership rules applicable to broadcasting. Rather, we defer to a later date whether to commence a separate proceeding regarding extension of the cable procurement requirement to other Commission regulated entities. While we will continue to consider this proposal, we note that substantively the issue of procurement does not fall within the ambit of our quadrennial review

---

[441] 47 U.S.C. § 554(d)(2)(E)-(F).

[442] 47 CFR § 76.75(e).

[443] 47 CFR § 76.75(e).

[444] *See 2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12146, para. 96 (citing 47 U.S.C. § 554(d)(2)(E)).

[445] *Id.* at 12146-7, para. 97.

[446] *Id.* at 12147, para. 98.

[447] *Id.* at 12147-8, para. 99-100.

[448] *See, e.g.*, MMTC Reply at 9-14 (supporting extension of cable procurement requirement to broadcasters); *but see* NAB Comments at 85-90 (asserting that the Commission lacks statutory authority to extend the cable procurement to broadcasters and that any such extension might also run afoul of court precedent interpreting constitutional equal protection requirements).

[449] *See* MMTC *Ex Parte* at 5-6 (urging the Commission to commence a proceeding considering extension of the cable procurement requirement to all Commission regulatees); *see also* MMTC Comments, MB Docket No. 18-349, at 2-3 (rec. Aug. 31, 2021) (MMTC Update Comments).

[450] *See* MMTC Update Comments at 3 (urging the Commission to issue a notice of proposed rulemaking in a "new general docket, encompassing the industries regulated by the Wireline, Wireless, and Media Bureaus").

proceedings, which are conducted pursuant to the statutory requirement to review our broadcast ownership rules every four years to determine whether they remain "necessary in the public interest as the result of competition."[451] Nevertheless, because the Commission's prior commitment to seek comment on the extension of the cable procurement requirement stemmed from previous litigation before the Third Circuit involving the broadcast ownership rules, the Commission found it appropriate to seek comment on this proposal in the context of the 2018 Quadrennial Review proceeding.[452] Given the limited comment on the extension of the cable procurement requirement in the instant proceeding, the significant remaining open issues, and the specific request to broaden the scope of this issue to all FCC-regulated industries and entities in a separate proceeding, we decline to pursue the issue further in the context of the quadrennial review proceedings.

146. *Other Diversity Proposals.* In addition to the cable procurement proposal, the Commission also committed in the *2010/2014 Quadrennial Review Order* to seek comment on two other diversity-related proposals floated in prior proceedings, both of which we decline to adopt for lack of support. These proposals were described as: 1) developing a model for market-based tradeable "diversity credits" to serve as an alternative method for adopting ownership limits;[453] and 2) adopting a "tipping point" formula[454] and/or a "source diversity formula."[455] Because many details associated with these proposals had never been developed when the ideas were presented previously, the *NPRM* sought to unpack these dormant issues and asked many specific questions about the proposals.[456] The Commission

[451] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) (1996 Act); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (Appropriations Act) (amending Sections 202(c) and 202(h) of the 1996 Act). In 2004, Congress revised the then-biennial review requirement to require such reviews quadrennially. *See* Appropriations Act § 629, 118 Stat. at 100.

[452] *2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12145, para. 93.

[453] While the concept of diversity credits was not well-defined when initially proposed to the Commission in 2002, the general idea appears to be that a system of "diversity credits" could be created that could be traded in a market-based system and redeemed by the buyer of a broadcast station to offset any increased concentration that would result from the proposed transaction. *2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12148-9, para. 101. The diversity credits concept was further refined in 2004, with the idea being that the number of diversity credits attached to each license would be commensurate with the extent to which the licensee of the station was considered to be "socially and economically disadvantaged." *2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12149, para. 102. The diversity credits proposal suggested that when a transaction occurred that was deemed to promote diversity (and here the proponents suggested a transaction that would result in the breakup of a local radio ownership cluster, or the sale of a station to a socially and economically disadvantaged business), the Commission would award the seller additional diversity credits "commensurate with the extent to which the transaction promotes diversity." *Id.* Similarly, when a transaction reduced diversity (perhaps by creating an ownership combination or expanding an ownership cluster), the Commission would require the submission of a certain number of diversity credits from the buyer, commensurate with the extent to the which the transaction reduced diversity. *Id.*

[454] In 2002, MMTC proposed the "tipping point formula" as an alternative to the approach the Commission used at the time of flagging radio station transactions that, based on an initial analysis, would result in a level of local radio concentration implicating public interest concerns for maintaining diversity and competition. *See 2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12152-54, para. 113. MMTC's tipping point formula was based on the premise that "platforms . . . [should] not control so much advertising revenue that well run independents cannot survive or offer meaningful local service." *2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12152-54, para. 113.

[455] The source diversity formula appears to seek to measure the level of consumer welfare derived from viewpoint diversity in the broadcast market. *2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12154-5, para. 118. It was suggested that the source diversity formula could be used as a "thermometer" to determine whether "a national or local market manifest[s] strong diversity, moderate diversity, or slight diversity." *Id.* It was proposed that the Commission conduct a negotiated rulemaking to determine what significance to accord to various "temperature readings" on the HHI for a Diversity thermometer. *Id.* For example, what temperatures would reflect "poor health," versus measurements indicative of strong health. *Id.*

[456] *2018 Quadrennial Review NPRM,* 33 FCC Rcd at 12149-55, paras. 101-21.

sought to elicit answers about threshold matters such as statutory authority, key definitions, feasibility, and the continued relevance of the proposals given the significant passage of time since they were initially put forth.

147. There was extremely limited comment on these proposals, with most commenters either opposing the ideas[457] or finding the proposals themselves to lack sufficient specificity.[458] MMTC, the chief proponent of these ideas, itself notes that perhaps the proposals are not well-suited for review in a notice and comment rulemaking and might be more appropriately considered in some other forum.[459] Given the sparse record on these proposals and the lack of any additional guidance in the record about how they would operate in practice and integrate into the Commission's structural ownership rules, we decide today to terminate further review of these proposals.

VI. PROCEDURAL MATTERS

148. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[460] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the Report and Order. The FRFA is set forth in Appendix B.

149. *Final Paperwork Reduction Act Analysis*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).This document may contain non-substantive modifications to approved information collection(s). Any such modifications will be submitted to OMB for review pursuant to OMB's non-substantive modification process.

150. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the *Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

151. *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).

152. *Additional Information*. For additional information on this proceeding, contact Ty Bream, Assistant Division Chief, Industry Analysis Division, Media Bureau at Ty.Bream@fcc.gov or 202-418-0644.

VII. ORDERING CLAUSES

---

[457] *See, e.g.*, NHMC Comments at 12-14 (urging the Commission to abandon the tradeable diversity credits proposal on the basis that such an approach will encourage license owners "to use superficial definitions to check a 'diversity box.'"); Free Press Comments at 15 (stating that the diversity proposals were "vague and underdeveloped.").

[458] *See, e.g.*, Free Press Comments at 15 (stating that the diversity proposals were "vague and underdeveloped"); NAB Comments at 91-94 (raising questions about how the proposals would operate and noting that many key concepts remain undefined, such as whether the Diversity Credits proposal defines "diversity" in terms of ownership or viewpoints).

[459] MMTC Update Comments at 4 (stating: "[o]ur three basic concepts do not lend themselves to development in a notice-and-comment rulemaking. What these concepts need at the outset is not legal analysis but economic analysis, because each concept immediately presents questions of economic policy whose answers are the predicates to whether its formula, or some other formula, is the best one.").

[460] *See* 5 U.S.C. § 603.

153. Accordingly, **IT IS ORDERED**, that pursuant to the authority contained in Sections 1, 2(a), 4(i), 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, 310, and 403, and Section 202(h) of the Telecommunications Act of 1996, this Report and Order **IS ADOPTED**. The Report and Order and rule modifications attached hereto as Appendix A shall be effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except that any non-substantive changes to Commission Forms required as the result of the rule amendments adopted herein **WILL NOT BECOME EFFECTIVE** until approved by the Office of Management and Budget.

154. **IT IS FURTHER ORDERED**, that, should no petitions for reconsideration or petitions for judicial review be timely filed, the proceeding MB Docket No. 18-349 **IS TERMINATED**.

155. **IT IS FURTHER ORDERED**, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

156. **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, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Amend § 73.3555 by revising paragraph (b)(1)(ii), (b)(2), and Note 11:

§ 73.3555 Multiple ownership.

* * * * *

(b) * * *

(1) * * *

(ii) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the Sunday to Saturday, 7AM to 1AM daypart audience share from ratings averaged over a 12-month period immediately preceding the date of application, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service. For any station broadcasting multiple programming streams, the audience share of all free-to-consumer non-simulcast multicast programming airing on streams owned, operated, or controlled by a single station shall be aggregated to determine the station's audience share and ranking in a DMA (to the extent that such streams are ranked by Nielsen or a comparable professional, accepted audience ratings service).

(2) * * *

Paragraph (b)(1)(ii) (Top–Four Prohibition) of this section shall not apply in cases where, at the request of the applicant, the Commission makes a finding that permitting an entity to directly or indirectly own, operate, or control two television stations licensed in the same DMA would serve the public interest, convenience, and necessity. The Commission will consider showings that the Top–Four Prohibition, including Note 11 to section § 73.3555, should not apply due to specific circumstances in a local market or with respect to a specific transaction on a case-by-case basis.

* * * * *

Note 11 to § 73.3555: An entity will not be permitted to directly or indirectly own, operate, or control two television stations in the same DMA through the execution of any agreement (or series of agreements) involving stations in the same DMA, or any individual or entity with a cognizable interest in such stations, in which a station (the "new affiliate") acquires the network affiliation of another station (the "previous affiliate"), if the change in network affiliations would result in the licensee of the new affiliate, or any individual or entity with a cognizable interest in the new affiliate, directly or indirectly owning, operating, or controlling two of the top-four rated television stations in the DMA at the time of the agreement. Parties should also refer to the Second Report and Order in MB Docket No. 14-50, FCC 16-107 (released August 25, 2016).

Further, an entity will not be permitted through the execution of any agreement (or series of agreements) to acquire a network affiliation, directly or indirectly, if the change in network affiliation would result in

the affiliation programming being broadcast from a television facility that is not counted as a station toward the total number of stations an entity is permitted to own under paragraph (b) of this section (e.g., a low power television station, a Class A television station, etc.) or on any television station's video programming stream that is not counted separately as a station toward the total number of stations an entity is permitted to own under paragraph (b) of this section (e.g., non-primary multicast streams) and where the change in affiliation would violate this Note were such television facility counted or such video programming stream counted separately as a station toward the total number of stations an entity is permitted to own for purposes of paragraph (b) of this section.

APPENDIX B

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an initial Regulatory Flexibility Act Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*), released in December 2018.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments 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* (*Order*) concludes the 2018 Quadrennial Review of the broadcast ownership rules, which were initiated pursuant to Section 202(h) of the Telecommunications Act of 1996 (1996 Act).[4] The Commission is required by statute to review its media ownership rules every four years to determine whether they "[a]re necessary in the public interest as the result of competition"[5] and to "repeal or modify any regulation it determines to be no longer in the public interest."[6]

3. The media ownership rules that are subject to this quadrennial review are the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule.[7] Ultimately, while the Commission acknowledges the impact of new technologies on the media marketplace, it concludes that some limits on broadcast ownership remain necessary to safeguard and promote the Commission's policy goals of fostering competition, localism, and diversity. Based on our careful review of the record, we find that our existing rules, with some minor modifications, remain necessary in the public interest.

4. Specifically, we retain the Dual Network Rule and the Local Radio Ownership Rule, which we modify only to make permanent the interim contour-overlap methodology long used to determine ownership limits in areas outside the boundaries of defined Nielsen Audio Metro markets and in Puerto Rico. We likewise retain the Local Television Ownership Rule with modest adjustments to reflect changes that have occurred in the television marketplace. The existing Local Television Ownership Rule ensures competition among local broadcasters while allowing for flexibility should the circumstances of local markets justify it. Accordingly, today we update the methodology for determining station ranking within a market to better reflect current industry practices, and we extend the existing prohibition on circumventing the ownership of two top-four ranked stations in a market. We find that the modifications

[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). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[2] *See 2018 Quadrennial Regulatory Review—Review the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 33 FCC Rcd 12111, Appx. (2018) (*NPRM*).

[3] *See* 5 U.S.C. § 604.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) (1996 Act) (codified as amended at 47 U.S.C. § 303 note); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (Appropriations Act) (amending Sections 202(c) and 202(h) of the 1996 Act).

[5] 1996 Act § 202(h). The Supreme Court has recognized the Commission's broad statutory authority to regulate in the public interest. *See FCC v. Prometheus Radio Project*, 141 S.Ct. 1150, 1154 (2021).

[6] 47 U.S.C. § 303 note (Section 202(h) of the 1996 Act as amended).

[7] These rules are found, respectively, at 47 CFR §§ 73.3555(a), (b) and 73.658(g).

adopted today will enable the Commission to promote competition, localism, and viewpoint diversity more effectively going forward.

5. *Local Radio Ownership Rule.* The Commission determines that the Local Radio Ownership Rule remains necessary in the public interest as the result of competition. The purpose of the rule is to ensure competition between broadcast radio stations within a market so that radio owners are motivated to provide the highest quality of service to the public. In addressing the public interest, the Commission notes that competition stems from the premise that the listening public, not the advertising industry, is the constituency that the rule is intended to serve. If radio owners were allowed to acquire more radio stations than allowed by the rule, the Commission expresses skepticism whether owners would be able to maintain the same level of service on their stations given reduced competition. Further, the Commission states that allowing one entity to own more radio stations in a market than currently permitted would threaten the viability of smaller stations. In the Order, the Commission articulates that the rule already allows a generous amount of common ownership within a market and does not limit ownership across markets.

6. The *Order* leaves the market definition in place because it reflects the type of competition that the rule was intended to promote—competition between local radio stations. The *Order* also preserves the existing market size tiers and numerical limits. The Commission finds that the current tiers and limits prevent consolidation to the level of monopolization or near monopolization in many, if not most, markets. As to the Commission's AM/FM subcaps, the *Order* leaves in place the existing limits, and notes that lifting them would have deleterious impacts on the AM band, including excessive, undue concentration of ownership. The *Order* declines to revise the presumption for certain embedded markets because the existing presumption sufficiently addresses concerns regarding stations in embedded markets.

7. *Local Television Ownership Rule.* The Commission finds that the Local Television Ownership Rule remains necessary to promote competition among broadcast television stations in local markets as there are still market characteristics unique to broadcast television. The Commission also finds that ensuring broadcast television stations remain independently owned and competitive in providing programming that serves the interests and needs of local communities promotes localism goals more effectively than permitting greater consolidation.

8. The Commission observes that the numerical limits set under the rule continue to strike the appropriate balance of enabling some efficiencies of common ownership while maintaining a level of competition amongst broadcast television stations to ensure that they continue to serve the public interest. Likewise, the *Order* holds that the Top-Four Prohibition, and its case-by-case approach, strikes a reasonable balance between preserving and supporting enhancements of the public interest standards of competition, localism, and diversity with occasional incidences of acquisitions under special circumstances that warrant an exception to the prohibition. Reflecting the Commission's commitment to accurate measurements of the industry for purposes of this rule, the *Order* revises the Commission's methodology used to determine market ranking and performance of stations. To preserve the intended purpose of the prohibition, the *Order* seeks changes to the rule that would effectively close loopholes used by some broadcast stations to acquire affiliations from top-four rated full-power stations and moving such affiliations to multicast streams or low power stations.

9. The Commission finds that the rule is consistent with the objective of fostering minority and female ownership within the industry. Thus, retaining the existing ownership limits preserves opportunities for greater ownership diversity. Media consolidation, which the Commission believes would increase were the rule to be relaxed or eliminated, would result in additional entry barriers and decrease the likelihood that television stations would be sold to a new entrant, including a minority or female owner. As the Commission observes, evidence shows that divestitures and other transactions

made to comply with the existing ownership limits have resulted in new entry, including by minority and female owners, into local television markets.[8]

10. *Dual Network Rule.* In the *Order*, the Commission finds that the Dual Network Rule remains necessary in the public interest to protect and promote competition in the provision and creation of primetime entertainment programming and the sale of national advertising time. Based on the record collected in the 2018 Quadrennial Review, the Commission finds that the Big Four broadcast networks (ABC, CBS, Fox, and NBC) have a unique ability to regularly attract large primetime audiences, which separates them from other broadcast and cable networks.

11. The Big Four broadcast networks comprise a strategic group in the national advertising marketplace and compete mostly amongst themselves for advertisers that seek to reach large, national audiences consistently and are willing to pay a premium to reach that audience. The Commission finds that the Big Four broadcast networks invest in and create innovative high-quality programming particularly during primetime that will draw advertisers and thus bring in the highest advertising revenues. The merger of two of the Big Four broadcast networks would subsequently decrease that competition, leaving advertisers with fewer options to reach a mass audience, and would also reduce the remaining networks' need to produce the innovative programming desired by viewers.

12. The *Order* also determines that the Dual Network Rule is necessary to foster the Commission's goal of localism. Specifically, the Commission finds that eliminating the rule would increase the bargaining power of the networks over the local affiliates, which would then reduce the ability of the affiliates to influence network programming decisions or exert their own independence from their affiliated network in a manner that best serves their local communities.[9]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

14. 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.[10] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

---

[8] *See Assignment of Broadcast Television Licenses from Meredith Corporation to Gray Television Licensee, LLC*, Letter, DA 21-1426 (MB Nov. 12, 2021) (granting divestiture to Allen Media Holdings) ; *Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order, 34 FCC Rcd 8436 (MB 2019) (granting divestiture to Circle City Broadcasting); *see also* Michael Malone, *Gray TV Lines Up Minority/Female Owners for Six Stations* (Aug. 27, 2014), https://www.nexttv.com/news/gray-tv-lines-minorityfemale-owners-six-stations-133481; Carl Marcucci, *Gray Gets Approvals for Hoak Media Buys, Spinoffs*, (Apr. 4, 2014), https://www.rbr.com/gray-gets-approvals-for-hoak-media-buys-spinoffs/ (describing an acquisition by Mission Broadcasting).

[9] *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, MB Docket Nos. 14-50 et al., Second Report and Order, 31 FCC Rcd 9864, 9959, para. 230 (2016).

[10] 5 U.S.C. § 604(a)(3).

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. 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.[11] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[12] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[13] 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.[14]

16. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[15] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[16] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[17] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[18] Of that number, 657 firms had revenue of less than $25,000,000.[19] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

---

[11] 5 U.S.C. § 603(b)(3).

[12] 5 U.S.C. § 601(6); *see infra* note 7 (explaining the definition of "small business" under 5 U.S.C. § 601(3)); *see* 5 U.S.C. § 601(4) (defining "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register"); 5 U.S.C. § 601(5) (defining "small governmental jurisdiction" as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register").

[13] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

[14] 15 U.S.C. § 632(a)(1)-(2)(A).

[15] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[16] *Id.*

[17] *See* 13 CFR § 121.201, NAICS Code 515120.

[18] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[19] *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.

17. As of June 2023, there were 1,375 licensed commercial television stations.[20] Of this total, 1,256 stations (or 91.3%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,902 LPTV stations and 3,123 TV translator stations.[21] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

18. *Radio Stations*. This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."[22] Programming may originate in their own studio, from an affiliated network, or from external sources.[23] The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small.[24] U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.[25] Of this number, 1,879 firms operated with revenue of less than $25 million per year.[26] Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

19. The Commission estimates that as of June 30, 2023, there were 4,463 licensed commercial AM radio stations and 6,675 licensed commercial FM radio stations, for a combined total of 11,138 commercial radio stations.[27] Of this total, 11,136 stations (or 99.98 %) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 30, 2023, there were 4,236 licensed noncommercial (NCE) FM radio stations, 1,989 low power FM (LPFM) stations, and 8,935 FM translators and boosters.[28] The Commission however does not compile, and otherwise does not have

---

[20] *Broadcast Station Totals as of June 30, 2023*, Public Notice, DA 23-582 (rel. July 14, 2023) (*June 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-23-582A1.pdf.

[21] *Id*.

[22] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/naics/?input=515112&year=2017&details=515112.

[23] *Id.*

[24] *See* 13 CFR § 121.201, NAICS Code 515112.

[25] *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 515112, https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

[26] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than $100,000, and $100,000 to $249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher that noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[27] *June 2023 Broadcast Station Totals PN*, DA 23-582 at 1.

[28] *Id.*

access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

20. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[29] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. The *Order* requires modification of several FCC forms and their instructions: (1) FCC Form 301, Application for Construction Permit for Commercial Broadcast Station; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License. The change will involve replacing instructions on the forms for the Local Television Ownership Rule, which stated that "among the top four stations in the DMA, based on the most recent all-day (9:00 a.m.-midnight) audience share as determined by Nielsen or a comparable professional survey organization . . ." The instruction's will be modified to incorporate the new standard measurement of "Sunday to Saturday, 7AM to 1AM daypart" in order to more accurately reflect a station's performance in terms of audience share. In addition, ratings data submitted will now need to be averaged over the 12-month period preceding a transaction. The impact of these minor changes will be the same on all entities, and we do not anticipate that compliance will require the expenditure of any additional resources or place additional burdens on small businesses.

22. As a result of these modified reporting requirements, we do not believe that small businesses will need to hire additional professionals (e.g., attorneys, engineers, economists, or accountants) to comply with the updated standard under the Local Television Ownership Rule's Top-Four Prohibition. Further, the *Order* delegates to the Media Bureau the authority to update FCC forms to conform with the rule changes adopted therein.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. 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

[29] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR § 21.103(a)(1).

other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[30]

24. In conducting the quadrennial review, the Commission has three chief alternatives available for each of the Commission's media ownership rules—eliminate the rule, modify it, or, if the Commission determines that the rule is "necessary in the public interest," retain it. The Commission finds that the rules adopted in the *Order*, which are intended to achieve the policy goals of competition, localism, and diversity, will continue to benefit small entities by fostering a media marketplace in which small entities are better able to compete and sustain services to their communities. The Commission discusses below several ways in which the rules may benefit small entities as well as steps taken, and significant alternatives considered, to minimize any potential burdens on small entities.

25. In consideration of the burdens that paperwork can place especially on small entities with limited resources, this *Order* proposes no new reporting requirements, performance standards or other compliance obligations, although, as discussed above, it modifies, as necessary, certain existing reporting forms.

26. *Local Radio Ownership Rule.* In the *Order*, the Commission finds that the Local Radio Ownership Rule remains necessary in the public interest. The Commission finds that retaining the rule will foster the ability of all stations, large and small alike, to operate in a competitive environment. Without the rule, the Commission finds that the competitive and business environment for smaller stations could deteriorate due to consolidation among dominant firms, such that many smaller stations may be forced to exit their respective markets. By preserving the rule in the *Order*, the Commission states that opportunities for diffuse ownership are preserved.

27. In the *Order*, the Commission preserves the AM/FM subcap limits. The *Order* preserves the subcaps, finding that they contribute necessary support to the public interest factors of competition, localism, and diversity. As to commenters' recommendation that the Commission should dispense with the subcaps altogether,[31] the Commission expresses concern that without the rule, smaller stations could face an influx of larger station-group acquisitions, which would lead to increased concentration of ownership and a race to the bottom for purposes of competition and local content.

28. *Local Television Ownership Rule.* The *Order* retains the Local Television Ownership Rule subject to some small modifications. Notably, the Commission ends the loophole for the Top-Four Prohibition's limit on certain broadcast network affiliation acquisitions through some broadcasters' use of multicast streams and LPTV stations. The Commission modifies the provision in the current rule that determines market ranking and performance according to Nielsen or other substitutable data. The *Order* adopts a "Sunday to Saturday, 7AM to 1AM daypart" to determine audience share "from ratings averaged over a 12-month period immediately preceding the date of application" as the new standard for the Top-Four Prohibition (and in concert with it, adopts the 7AM to 1AM daypart for failing station waivers as well). Further, to accurately measure a station's audience share and ranking, the *Order* establishes a new methodology by which the Commission will aggregate the audience share of all free-to-consumer non-simulcast multicast programming airing on streams owned, operated, or controlled by a station. The Commission believes that this adjustment will better equip the agency to measure stations' performance and competitive strength within a given market. In the Commission's analysis of the Local Television Ownership Rule, detailed consideration is given in analyzing the effects on consumers and broadcasters of the rule's preservation, the rule's absence, or the rule's modification. The Commission's evaluation of small business involvement in the local television marketplace ultimately favors a preservation of a modified version of the rule, as further explained below.

[30] 5 U.S.C. § 604(a)(6).

[31] *Id.*

29. The Commission finds that the rule, as modified, will help to ensure that ownership structures and concentrations within local television markets do not pose obstacles to entry for small entities. The Commission finds that leaving the rule in place will actually allow for more firms, including those falling under the definition of small entity, to gain entry into or to preserve their already existing involvement within local markets as well as to compete effectively against other stations. Preserving the rule helps to mitigate and minimize those negative economic impacts resulting from enlarged market concentration, and in turn minimized competition, were broadcast station groups allowed to acquire stations within markets without reasonable limitation. The modifications established in the *Order*, which close affiliation loopholes, work to ensure the integrity of the rules necessary for the maintenance of business environments in which small stations can seek entrance and growth. Likewise, modifications to the provisional standard for the measurement of market ranking and performance will promote the interests of small entities because the new standard will offer a clearer snapshot of what market competition exists among broadcasters in a given DMA.

30. *Dual Network Rule.* The *Order* preserves the Dual Network Rule, which effectively prohibits a merger between the Big Four broadcast networks (specifically, ABC, CBS, Fox, and NBC). By keeping the rule in place, the Commission finds that the bargaining power of local broadcast affiliates, including many small entities, is promoted by enabling such entities to better influence top-four network programming decisions in ways that better serve the interests of local communities. Unlike the Big Four broadcast networks, which design their shows with the goal of producing the largest national audience possible, small broadcast affiliates typically design their programming to serve niche audiences. Such design is indicative of local broadcasters' independence from their affiliated network. Such independence often times is reflective of local content that best serves the particular and localized needs of individual communities. The Commission finds that the bargaining power of affiliates would diminish were there to be a reduction in the number of the Big Four broadcast networks. The lasting economic impacts from the retreat of such bargaining power may diminish local broadcasters' abilities to provide the type of local programming that the Commission believes increases competition for local audiences. Thus, by eliminating the Dual Network Rule, local affiliates would be further displaced from the networks in terms of their negotiating power.

31. In summary, the Commission agrees with the local affiliates that the Dual Network Rule is a "reinforcing mechanism" that helps maintain local commitments of the affiliates,[32] and it thus remains necessary to foster localism and the health of affiliates, including many small entities.[33] If two of the Big Four broadcast networks were to merge, affiliates would have fewer options to re-affiliate with a national network and would have a reduced ability to influence the programming decisions of the networks—at a detriment to both the affiliate networks and their local communities.

G. Report to Congress

32. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[34] In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

[32] *See* ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates Reply Comments, MB Docket No. 18-349, at 14 (rec. Oct. 1, 2021).

[33] In the *NPRM*, the Commission also sought comment on whether antitrust laws and our public interest standard are sufficient to address any harms to competition or localism that might result from a Big Four network merger. *See NPRM*, 26 FCC Rcd at 17543-44, paras. 144, 146. As discussed above, our concern here is that a merger of two or more Big Four networks would restrict the availability, price, and quality of primetime entertainment programming and the bargaining power and influence of network affiliate stations, harming consumers and localism. Because these harms to consumers and localism are not typically considered in a structural antitrust analysis, we do not believe that antitrust enforcement would adequately protect against these harms.

[34] 5 U.S.C. § 801(a)(1)(A).

A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[35]

[35] *See id*. § 604(b).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 18-349, Report and Order.

For decades, the Federal Communications Commission has had rules that limit the number of broadcast stations a single entity can own. This approach is a product of the Communications Act and the values in the law that have always informed our approach to media policy—support for localism, competition, and diversity of ownership. These values support jobs and journalism. They are important.

Even as times change, these values remain. So does the law. Our approach here is consistent with the Communications Act and other laws that Congress has passed to address media markets, including the Consolidated Appropriations Act of 2004, which limits the number of television stations a single entity can own nationwide.

To be clear, at this point only three core rules remain. No entity can own all the television stations in a single market, with a case specific request necessary to own more than one of the top four stations. No entity can own all the radio stations in a single market. There is also a restriction on the national combination of two of the four big television networks—ABC, CBS, Fox, and NBC.

This decision updates the application of these rules. With respect to radio, it clarifies our approach to subcaps and the contour-overlap methodology used to asses stations. With respect to television, it closes a loophole that involves the transfer of station affiliation to a multicast stream or low-power station that can be used to evade rules and exceed the limits in the Consolidated Appropriations Act of 2004.

While the ways we consume news and content in the digital age have changed, this approach is consistent with our longstanding values. It helps ensure that entities—both big and small—play by the same rules when they seek to build a station and audience in local markets.

DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 18-349, Report and Order.

Newton's first law of motion states that an object at rest remains at rest, and an object in motion remains in motion unless acted upon by a sufficient force. Of course, the laws of physics do not constrain the laws of regulation. Indeed, regulatory inertia is a power that has no analog in the physical world. The FCC's media ownership rules at issue here are a case in point.

The FCC has every reason to update this outdated set of broadcast radio and television rules. The law compels us to do so. The facts tell us to do so. And the public interest in promoting local news and information counsel in favor of doing so. Yet the rules will remain in place—impervious to those compelling forces.

Congress passed a law in 1996 that specifically directed the FCC to review these rules every four years and to eliminate them if they become unnecessary as a result of competition. How much has the market evolved in the intervening years? Hulu, Netflix, Disney+, ESPN+, Amazon Prime Video, Sling TV, Apple TV, YouTube, YouTubeTV, Tubi, Vudu, Freevee, Crackle, Pluto TV, NBC News Now, CBS News Streaming Network, CBS Sports HQ, Peacock, The Roku Channel, Paramount+, Max (nee HBO Max), BritBox,DIRECTV Stream, AT&T Now, FuboTV, Pandora, Spotify, SiriusXM, Apple Music, Amazon Music, and other online audio and video streaming services too numerous to quantify or recount have all emerged and fundamentally altered the competitive landscape.

Unfortunately, the Commission has taken an ostrich-like approach to this requirement in nearly every one of its quadrennial reviews, including the instant review. Indeed, the Commission has consistently ignored Congress's deregulatory mandate under the statute, the realities of the modern media marketplace, and the many ways that Americans now consume news, information, and entertainment programming. This failure does not serve anyone's interest, as a broad range of stakeholders have made clear in this record—once again. But despite a record bursting with evidence of a vibrant media marketplace, the Commission continues to advance the fiction that broadcast radio and broadcast television stations exist in markets unto themselves.

It is past time for the FCC to confront the harms that its own media ownership policies have caused. For decades, the FCC prohibited someone from owning a newspaper and a broadcast station in the same market. This restriction was born in an era when newspapers and broadcasters were the only games in town for local news and information. Back then, Americans got their news in the morning when a newspaper clunked onto the front doorstep and in the evening when they tuned into one of three nightly newscasts. But over time, the FCC failed to acknowledge the titanic changes taking place in the news business, particularly with the rise of the Internet. Our prohibition on newspaper-broadcast cross-ownership only made it harder for them to gain the scale needed to compete with the Internet giants. When we finally eliminated the prohibition in 2017, it was too late for much of the industry—1,800 newspapers had gone out of business since 2004 alone. They were facing competition from market segments that the FCC refused even to recognize. The result? Communities across the country lost access to local news and information at least in part because the FCC failed to react quickly enough to changes in the marketplace.

I've seen the impacts of our backwards-looking policies firsthand. During a visit to Powell, Wyoming, a town of about 6,000 people that sits in the northwest corner of the Cowboy State, I stopped

by a local radio station, only to find its doors locked. After we were finally able to rouse someone to let us inside, I got a good look at the operations—effectively a Dell laptop playing music pumped in from some big city somewhere else.

A couple of miles away in Cody, there was a local broadcast company that was investing in their community and the types of local news and entertainment programming that are attuned to the needs of their listeners. This company wanted to invest in the Powell station and originate live and local programming for this underserved community. But they couldn't. Not because they lacked the capital or a willing seller, but because the FCC wouldn't let them. Our ownership rules—which are supposed to promote competition, a diversity of viewpoints, and localism—were keeping that laptop powered up while preventing actual investment in local newsgathering and the local jobs that come with it.

These are the very same rules that the FCC votes to retain in this item. What's worse, the FCC is actually tightening the Local Television Ownership Rule, though it attempts to characterize this action as closing a loophole, even though the resulting combinations would not violate any ownership restriction.

This doesn't make much sense to me. In a diverse and growing media marketplace, we need to do everything we can to promote investment in trusted local news and information. Maintaining the regulatory status quo is not going to cut it. The FCC must enact significant reforms to help promote competition and increase access to the local news and information that is so vital yet is too often out of reach for those in rural and other underserved communities.

None of this will happen, however, if we continue to view the market as it was and not where it is going. But this fundamental error taints the entire 2018 quadrennial review and fatally undermines the basis for the rules we adopt today. Because of this, I dissent.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 18-349, Report and Order.

I dissent from this item, which represents poor policy and an illegal reading of our statute and rules.

Let us start with the illegal portion. Section 202(h) of the Act requires that the Commission, *as the result of competition*, repeal or modify any rule that is no longer in the public interest. What this does not mean, and what this cannot mean, is that the Commission properly may wedge in new, burdensome rules on broadcasters who are, at present, being *outcompeted* in the video marketplace under the guise of "loophole closing" in the so-called public interest. It cannot. By not merely ignoring the competitive realities of the modern video marketplace, but indeed turning them on their head, this Commission, yet again, fails to understand the meaning of the word "result." Section 202(h) requires that a competitive analysis *drive* the "repeal or modification" of rules, not sit along for in the back seat for the ride.

Speaking of being taken for a ride, the American people, at the hands of the so-called public interest groups, yet again lose. The item is at pains to point out that local news production has actually *increased* in recent years in small DMAs. Tabling the truth of the issue, let us stipulate to it for the purposes of argument. The increase would be a direct result of station groups recognizing that local news is one of their two competitive advantages (the other being sports), and consequently *investing* in its production. And, *as a result of competition*—the very competition *driving* the production of local content—the Commission will now *undercut* those gains in localism by making investing in small DMAs a less attractive commercial proposition? And this, as we are admonished in the item, is in the public interest, actually? Given that the Commission is, in this item, transporting itself back in time to the age of broadcast tycoons, perhaps a "Hello, McFly?" is warranted.

The fully novel application of this item's approach to extending the Local Television Ownership Rule to multicast streams and low power stations (which will impact principally smaller DMAs where it is not even arguable that broadcasters are "winning" in the video marketplace) is without factual foundation and flies in the face of the essentially de-regulatory precedent of the Quadrennial Review. This decision is anti-localism and hastens the death of local news in small markets, and it does so on the thinnest of gruels supplied in the factual record. The item tells a just-so story about viewpoint diversity and public interest while, at the same time, destroying the asset value of the very small market stations providing what limited viewpoint diversity remains. The Commission did not kill local print journalism, but it prepaid its ticket across the Styx, and today's decision is a second punch in the loyalty card.

Briefly, the Commission *also* should have eliminated or loosened the Local Radio Ownership Rule, as the factual record regarding the competitive environment in the audio marketplace clearly supports that conclusion. Yet it is not to be. The Commission here, in the name of public interest, viewpoint diversity, and *competition*, valiantly relies on the national industry incumbent—whose commercial dominance in the radio marketplace would be hurt by elimination of the rule—to make its arguments for it. Just so.

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

In the Matter of	)	
	)	
Connect America Fund: A National Broadband Plan for our Future High-Cost Universal Service Support	)	WC Docket No. 10-90
	)	
	)	

SECOND REPORT AND ORDER

Adopted: December 26, 2023 **Released: December 27, 2023**

By the Commission:

I. INTRODUCTION

1. The Commission hereby defers the commencement of the next five-year deployment obligation term for legacy rate-of-return carriers receiving Connect America Fund Broadband Loop Support (CAF BLS) in 2024 until January 1, 2025, while it considers general program reforms in the ongoing *Notice of Proposed Rulemaking* proceeding.[1] Legacy carriers will remain subject to the Commission's rules, requiring the offering of broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream to the previously determined number of unserved locations under the current five-year term that ends on December 31, 2023.[2] Deferring the commencement of the next term will maintain the *status quo* as the Commission considers whether to modify deployment obligations for CAF BLS recipients going forward, allowing the Commission to take into account the effect of awards for broadband deployment pursuant to the Broadband Equity, Access, and Deployment Program (BEAD Program) or other federal programs.[3]

II. BACKGROUND

2. Rate-of-return carriers not electing to receive model-based support, such as the Alternative Connect America Cost Model (A-CAM) support or Alaska Plan support, and that are not affiliates of price cap carriers, receive cost-based support pursuant to two "legacy" support mechanisms, CAF BLS and high-cost loop support (HCLS).[4] CAF BLS subsidizes carriers with high local loop costs

[1] *See* 47 CFR § 1.425; *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, paras. 138-42 (2023) (*Report and Order* or *Notice of Proposed Rulemaking*).

[2] *See* 47 CFR § 54.308(a)(2); *Wireline Competition Bureau Announces Posting of Information Regarding Revised Deployment Obligations for Incumbent Rate-of-Return Carriers*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2871 (WCB 2019); Universal Service Administrative Company (USAC), https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/ACAM-ACAM-II-and-CAF-BLS-Buildout-Requirements.xlsx.

[3] *See* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, Div. F, Tit. I § 60102(b)(1) (2021) (Infrastructure Act).

[4] *See* 47 CFR §§ 54.901-903 (CAF BLS), 54.1301-1310 (HCLS). Carriers also receive Connect America Fund Intercarrier Compensation Replacement. *See* 47 CFR § 54.304.

in the interstate jurisdiction for both voice and consumer broadband-only loops.[5] HCLS provides support for voice lines, including voice lines bundled with broadband service, in study areas with an average common line cost per loop in excess of a specified threshold.[6]

3. In the *2016 Rate-of-Return Reform Order*, the Commission first adopted defined deployment obligations for carriers receiving CAF BLS, except those that had already deployed 10/1 Mbps or faster service to 80% or more of the locations in their study areas, to deploy 10/1 Mbps or faster service to a specified number of previously unserved or underserved locations over a five-year term, which the Commission codified in section 54.308(a)(2).[7] Later, in the *December 2018 Rate-of-Return Reform Order*, the Commission significantly revised the deployment obligations, making them applicable to all CAF BLS carriers, increasing the speed obligation to at least 25/3 Mbps, and restarting the five-year term for deployment.[8] The current five-year term ends on December 31, 2023.[9] Legacy carriers are then, under the current rules, subject to subsequent five-year deployment obligation terms using a pre-set formula incorporating cost loop updates by the Universal Service Administrative Company (USAC) and adjustments by the Wireline Competition Bureau.[10] Accordingly, the next five-year term would begin January 1, 2024, and end December 31, 2028.[11]

4. On July 24, 2023, the Commission released a *Notice of Proposed Rulemaking* seeking comment on, among other things, whether to modify the deployment obligations for rate-of-return carriers receiving CAF BLS.[12] The Commission asked "whether it should continue to require deployment obligations for CAF BLS recipients," and if so, whether to increase the obligations to offer 100 Mbps downstream/20 Mbps upstream broadband service, consistent with the deployment obligations recently adopted for Enhanced A-CAM recipients and the BEAD Program providers.[13] The Commission also sought comment on "deferring the commencement of the next five-year term . . . by one year, to January 1, 2025," which "would enable the Commission to make an initial determination, prior to the commencement of the term, regarding areas for which new CAF BLS deployment obligations would be appropriate."[14]

---

[5] *See* 47 CFR § 54.901.

[6] *See id*. §§ 54.1301-54.1310.

[7] *See id*. § 54.308(a)(2); *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3145-54, paras. 156-80 & Appx. E (2016) (*2016 Rate-of-Return Reform Order*).

[8] *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, 11924-27, paras. 101-12 (2018) (*December 2018 Rate-of-Return Reform Order*).

[9] *See id.* at 11926, para. 110.

[10] *See* 47 CFR § 54.308(a)(2)(iv); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3153, para. 175.

[11] *See Notice of Proposed Rulemaking* at para. 139.

[12] *See id.* at paras. 138-42.

[13] *See id*. at para. 140; *Report and Order* at paras. 37-59. The BEAD Programs is administered by the National Telecommunications and Information Administration (NTIA). Under the BEAD Program, NTIA has allocated $42.45 billion to states for grants for the deployment of broadband networks to unserved locations "to bridge the digital divide." Infrastructure Act, Div. F, Tit. I § 60102(b)(1). BEAD Program recipients must offer download speeds of at least 100 Mbps and upload speeds of at least 20 Mbps and "latency that is sufficiently low to allow reasonably foreseeable, real-time, interactive applications." *Id*. § 60102(h)(4)(A)(i).

[14] *Notice of Proposed Rulemaking* at para. 142.

5. The comment period for the *Notice of Proposed Rulemaking* ended on October 2, 2023.[15] Nine comments and five reply comments were filed. This Second Report and Order addresses only the issue of deferring the next five-year deployment obligation term. All other proposed rule changes remain under consideration in the on-going rulemaking proceeding.

III. DISCUSSION

6. We defer the commencement of the next deployment obligation term for CAF BLS recipients by one year, until January 1, 2025, as described in the *Notice of Proposed Rulemaking*.[16] The deferral will allow the Commission to address the future budget and deployment obligations for CAF BLS carriers and give the Commission additional time to evaluate the impact of BEAD Program and other federal and state broadband program commitments made by eligible providers.[17] This action by no means releases legacy carriers from their deployment commitments by the end of 2023 under the Commission's rules.[18]

7. We agree with those commenters supporting the deferral of the next deployment obligation term until January 1, 2025. As NTCA states, "[t]his should afford time to determine with greater precision where BEAD and other programs impose enforceable commitments of their own, leaving it clear what remaining locations could then be served at higher levels leveraging [CAF BLS] resources."[19] Because the "size, characteristics, and broadband needs of the rural service areas . . . will not be determinable for some time," the Commission should "monitor broadband deployment in the remaining [CAF BLS/HCLS] areas for at least one year before embarking upon the consideration of potential changes . . . deployment obligations."[20] Given the additional time needed to "issue the necessary legacy program revision orders, the next five-year term for CAF BLS support should begin no later than January 1, 2025."[21]

8. The sole commenter objecting to a deferment, the Nebraska Public Service Commission (NPSC), states it will delay "the deployment of broadband infrastructure improvement in these areas."[22] We agree with NTCA, however, that the "benefits of greater coordination and potential relief for the future [Universal Service Fund] budget outweigh" such concerns.[23] Although the Commission previously has imposed specific broadband deployment obligations on CAF BLS support recipients,[24] we conclude

---

[15] *See Connect America Fund et al*., 88 Fed. Reg. 56579 (Aug. 18, 2023).

[16] *Notice of Proposed Rulemaking* at para. 142.

[17] *Id.*

[18] *See* 47 CFR § 54.308(a)(2).

[19] NTCA Comments, WC Docket No. 10-90 et al., at 8 (rec. Sept. 18, 2023); *see also* WTA Comments, WC Docket No. 10-90 et al., at 2 (rec. Sept. 18, 2023) ("[N]o changes should be made to CAF-BLS, HCLS or other legacy support mechanisms until the Commission and the industry have had sufficient time to determine the nature and scope of the changes in broadband deployment and support needs that are likely to result from the reduction in the size and potential changes in the composition of the CAF-BLS and HCLS mechanisms due to the imminent voluntary migration of a presently unknown portion of current CAF-BLS/HCLS recipients to [Enhanced A-CAM].").

[20] WTA Reply Comments, WC Docket No. 10-90 et al., at 1-2 (rec. Oct. 2, 2023).

[21] TCA Comments, WC Docket No. 10-90 et al., at 9 (rec. Sept. 18, 2023); *see also* WISPA Comments, WC Docket No. 10-90 et al., at 4 ("WISPA does not object to deferring the new requirements until January 1, 2025 to afford the Commission time to determine where the new deployment obligations should apply.").

[22] NPSC Comments, WC Docket No. 10-90 et al., at 5 (rec. Sept. 18, 2023).

[23] NTCA Comments at 9.

[24] *See, e.g.*, *2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11926, 11927, paras. 109, 111 (concluding that broadband deployment obligations help "ensure that consumers in rural areas enjoy a reasonably comparable quality

(continued….)

that such requirements are not in the public interest during the deferral period.[25] In particular, broadband deployment obligations for CAF BLS support recipients have reflected a carefully-calibrated balancing of measurable broadband deployment objectives coupled with appropriate carrier flexibility, and the record does not reveal a viable way of similarly accommodating those interests in a deferral period. The Commission has recognized that carriers need to plan their broadband deployments.[26] Forging ahead with the next deployment obligation term under the current rules, or applying other deployment obligations specific to a deferral term, even as we consider significant changes, would undermine the viability of that planning given that both the support levels and ultimate deployment obligations would be uncertain over the relevant time horizon. The Commission also has recognized rate-of-return CAF BLS support recipients' need for flexibility in implementing the associated broadband deployment obligations, reflected, for example, in our decision to give those carriers flexibility in how they spread their deployment efforts out over the course of a deployment term,[27] and in our actions to ensure those carriers have a full five-year deployment term to fulfill those deployment obligations.[28] The record does not reveal a way to similarly achieve those objectives as part of deployment obligations for CAF BLS support recipients in 2024, while the Commission considers future reforms in that regard. Such near-term deployment obligations for CAF BLS support recipients also could lead to the inefficient allocation of resources in the event that broadband deployment obligations would require them to deploy facilities that could not be used efficiently—or at all—to achieve any revised broadband deployment obligations that the Commission might adopt. Accordingly, we find the better course is to maintain the *status quo* pending the outcome of the rulemaking proceeding.[29]

(Continued from previous page)
of broadband as those in urban areas" and concluding "that all legacy carriers should be subject to deployment obligations"); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3147, para. 162 ("[T]o ensure that we make progress towards achievement of universal service, consistent with the statute, we adopt defined performance and deployment obligations for rate-of-return carriers. The Commission's goal is to utilize universal service funds to extend broadband to high-cost and rural areas where the marketplace alone does not currently provide a minimum level of broadband connectivity, and 'to distribute universal service funds as efficiently and effectively as possible.' . . . Through the adoption of rules to transform ICLS into the CAF-BLS mechanism, we now build on the foundation the Commission established [previously] to distribute support equitably and efficiently and advance the Commission's longstanding objective of closing the rural-rural divide." (footnotes omitted)).

[25] Of course, recipients remain subject to the general obligation to use the support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

[26] For example, the CAF BLS broadband deployment obligations originally adopted in 2016 built on five-year deployment planning required for all high cost support recipients in the 2011 *USF/ICC Transformation Order*. *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3148, para. 162 (discussing requirements adopted in *Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17740-41, paras. 205-09 (2011) (*USF/ICC Transformation Order*)); *id*. at 3149-50, para. 167 ("basing the new deployment obligation on a support forecast will give carriers the relative certainty they desire in their support going forward, allowing them to plan new investment").

[27] *See, e.g.*, *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3153, para. 174 ("carriers subject to a defined five-year deployment obligation may choose to meet their obligation at any time during the five-year period").

[28] *See, e.g.*, *2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11926-27, para. 110 (adopting new broadband deployment obligations for CAF BLS support recipients and resetting the start of the deployment term "[t]o be consistent with CAF BLS deployment obligations being based on a five-year term").

[29] Because the start- and end-dates of the five-year deployment obligation terms are not codified, deferring the commencement of the next deployment obligation term does not require an amendment of section 54.308. Alternatively, even assuming *arguendo* that section 54.308 were read as contrary to the approach to the deferral period reflected in this order in any respects, we find good cause to suspend that rule for 2024, subject to CAF BLS support recipients' compliance with the regulatory approach reflected in this order, for the same reasons we find our regulatory approach justified more generally. *See* 47 CFR § 1.3. Although CAF BLS support recipients thus will not be subject to specific broadband deployment obligations during the 2024 deferral period, we make clear that
(continued….)

9. We emphasize, notwithstanding this action, CAF BLS recipients, including those that were not authorized for Enhanced A-CAM, remain subject to the current December 31, 2023 term deadline and must satisfy their broadband service location coverage requirements by that date.[30] Further, CAF BLS recipients not authorized for Enhanced A-CAM remain subject to the Commission's reporting and certification requirements, including the reporting of newly served locations in the High Cost Universal Broadband (HUBB) portal, and the Commission's broadband network performance testing and certification requirements.[31] Legacy carriers remain eligible to receive high-cost support during the deferral period to cover their ongoing eligible costs subject to the Commission's monthly per-line cap support amount.[32] Carriers are also permitted, but not required, to expand their broadband service coverage to unserved locations during the deferral period and are expected to at least maintain their coverage footprint[33] as of December 31, 2023 as the Commission considers future deployment obligations.

IV. PROCEDURAL MATTERS

10. *Effective Date*. We conclude that good cause exists to make the Second Report and Order effective immediately upon publication in the Federal Register, pursuant to 553(d)(3) of the Administrative Procedure Act.[34] Agencies determining whether there is good cause to make effective an order less than 30 days after Federal Register publication "should balance the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded reasonable time to prepare for the effective date of is ruling."[35] In this action, the Commission is deferring the commencement of the next deployment obligation term, which would commence on January 1, 2024, but for the action taken here.[36] The Second Report and Order therefore does not impose new rule obligations that would require preparation by legacy rate-of-return carriers but instead delays the commencement of existing requirements while the Commission considers rule changes in the ongoing rulemaking proceeding. Accordingly, given the timing of the next deployment obligation term and that deferment will not require advanced preparation by carriers, we find good cause exists to make the Second Report and Order effective upon publication of a summary in the Federal Register.

11. *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

(Continued from previous page)
CAF BLS support remains conditioned on recipients offering of 25/3 Mbps broadband service to approximately the same number of locations as of December 31, 2023, consistent with the obligations adopted in the *2018 Rate-of-Return Reform Order*. *See, e.g.*, *2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11925-27, paras. 104-12.

[30] 47 CFR § 54.308(a)(2).

[31] *See, e.g.*, 47 CFR § 54.316 (setting forth reporting and certification requirements for CAF BLS recipients); *see also December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11927, para. 112 ("Because all legacy carriers will have defined deployment obligations, all will be required to report their locations deployed in the HUBB portal."); 47 CFR § 54.313(a)(6); *Connect America Fund*, Order, WC Docket No. 10-90, 33 FCC Rcd 6509 (WCB 2018); *Connect America Fund*, Order on Reconsideration, WC Docket No. 10-90, 34 FCC Rcd 10109 (2019).

[32] 47 CFR §§ 54.302, 54.303, Subparts K and M. In the *Report and Order*, the Commission reset the budget for legacy carriers for "2024-2025 at a level equal to 2023-24 legacy support claims less any frozen support received by carriers transitioning from legacy support to Enhanced A-CAM support." *Report and Order at para*. 106.

[33] Carriers may expand and decrease coverage in the study area so long as the net effect is the offering of 25/3 Mbps broadband service to approximately the same number of locations as of December 31, 2023.

[34] 5 U.S.C. § 553(d)(3).

[35] *See Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (quoting *United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir. 1977)).

[36] *See Notice of Proposed Rulemaking* at para. 139.

a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

12. *Final Regulatory Flexibility Certification*. The Regulatory Flexibility Act of 1980, as amended (RFA),[37] requires an agency to prepare a regulatory flexibility analysis for notice-and- comment rulemakings, unless the agency certifies the proposed or final rule(s) "will not, if promulgated, have a significant economic impact on a substantial number of small entities."[38] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[39] In addition, the term "small business" has the same meaning as the term "small business concerns" under the Small Business Act.[40] A "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[41]

13. As required by the RFA,[42] the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Notice of Proposed Rulemaking* (*Notice*), released in July 2023.[43] The Commission sought written public comment on the proposals in the *Notice*, including comment on the IFRA. No comments were filed addressing the IRFA. The two statutorily-mandated criteria to be applied in determining the need for RFA analysis are (1) whether the proposed rules, if adopted, would have a significant economic effect, and (2) if so, whether the economic effect would directly affect a substantial number of small entities.[44] For the reasons discussed below, the Commission has determined that the rules and policy changes adopted in the Second Report and Order will not have a significant economic impact on a substantial number of small entities and has prepared this Final Regulatory Flexibility Certification (FRFC).

14. The Second Report and Order defers the commencement of the next five-year deployment obligation term, until January 1, 2025, for those cost-based rate-of-return carriers receiving Connect America Fund Broadband Loop Support (CAF BLS). Legacy carriers will remain subject to the Commission's rules, requiring the offering of broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream to the previously determined number of unserved locations under the current five-year term that ends on December 31, 2023.[45] This will maintain the *status quo* as the

---

[37] 5 U.S.C. §§ 601 et. seq. The RFA has been amended by the Contract With America Advancement Act of 1996. Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[38] 5 U.S.C. § 605(b).

[39] *Id*. § 606(6).

[40] *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."

[41] 15 U.S.C. § 632.

[42] 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).

[43] *Notice of Proposed Rulemaking* Appx. C.

[44] 5 U.S.C. §§ 603 *et seq*; *see also Mid-Tex Electric Cooperative, Inc., v. FERC*, 773 F.2d 327, 342-343 (D.C. Cir. 1985) (*Mid-Tex Electric*).

[45] *See* 47 CFR § 54.308(a)(2); *Wireline Competition Bureau Announces Posting of Information Regarding Revised Deployment Obligations for Incumbent Rate-of-Return Carriers*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2871 (WCB 2019); Universal Service Administrative Company (USAC), https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/ACAM-ACAM-II-and-CAF-BLS-Buildout-Requirements.xlsx.

Commission considers general program reforms in the *Notice of Proposed Rulemaking* proceeding, including whether to modify deployment obligations for CAF BLS recipients going forward. Because this action delays the commencement of deployment obligations already provided for under the Commission's rules, it will not cause any significant economic impact on providers, including those which are small entities.

15. Accordingly, based on our application of the two statutorily-mandated criteria to the rules adopted in the Second Report and Order, the Commission concludes that the adopted rules and policy changes will not have a significant economic impact on a substantial number of small entities. We therefore certify that the rules and policy changes adopted in the Second Report and Order will not have a significant economic impact on a substantial number of small entities.

16. The Commission will send a copy of the Second Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[46] In addition, the Second Report and Order and this Final Regulatory Flexibility Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration and will be published in the Federal Register.[47]

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

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 218-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, and 254, and sections 1.1, 1.3, and 1.425 of the Commission's rules, 47 CFR §§ 1.1, 1.3, and 1.425 this Second Report and Order IS ADOPTED. The Second Report and Order SHALL BE EFFECTIVE upon publication of the text or summary in the Federal Register.

19. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

20. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Second Report and Order and the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[46] *See* 5 U.S.C. § 801(a)(1)(A).

[47] *Id.* § 605(b).