

**Volume 38, No. 3, Pages 1933 to 2901,
March 15 – April 11, 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. 3, Pages 1933 to 2901, March 15 – April 11, 2023



FEDERAL COMMUNICATIONS COMMISSION

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Federal Communications Commission Record

Table of Contents

Volume 38

Issue 3

<i>Table of Cases</i>	<i>i</i>
<i>Table of FCC and Delegated Authority Numbers</i>	<i>iv</i>
<i>Table of Docket Numbers</i>	<i>vi</i>
<i>Table of Rulemaking Numbers</i>	<i>vii</i>
<i>Table of Cities</i>	<i>viii</i>

Federal Communications Commission Record

Table of Cases

Volume 38

Issue 3

Case Name	Page
FCC Task Force to Hold Listening Session in Baltimore	1933
MB & OMD Revokes License Held by Bravo Broadcasting Company, Inc., KIRT(AM), Mission, Texas	1934
FCC Targets Over \$7M Toward Affordable Connectivity Program Awareness	1938
WCB Invites Comments on Interconnected VoIP Numbering Authorization Application Filed	1942
Table of Allotments, Television Broadcast Stations, Roanoke, Virginia	1946
WTB Grants Two Broadband Segment Applications	1949
WTB Issues Protective Order Adopted for CIS Certification Applications	1952
WTB Announces Comment Cycle for Five CIS Certification Applications	1961
PSHSB Grants Waiver for U.S. Virgin Islands WEA Test	1964
International Authorizations Granted	1969
WCB & OMD Announce Wind Down of COVID-19 Telehealth Program	1975
FCC Announces CEDC to Host March 23 Broadband Roundtable	1978
Table of Allotments, Television Broadcast Stations, Hampton, Virginia	1980
Satellite Policy Branch Information Actions Taken	1982
MB Dismisses Cross City, Florida, Petition for Reconsideration	1984
WCB Extends Preventing Digital Discrimination NPRM Reply Comment Date	1992
WCB Releases Interim Report on Connected Care and COVID-19 Telehealth	1995
WCB Grants Notice of Interconnected VoIP Numbering Authorization	2044
WCB Grants Navajo Tribal Utility Authority Waiver of Invoice Deadline	2045
IB Identifies Inactive C-Band Incumbent Earth Station Antennas	2049
FCC Releases Agenda for March 23 Diversity Council Roundtable	2055
OET Seeks Comment on Wi-Fi Alliance Request For Waiver	2059
WTB Announces C-Band Phase II Certification Procedures Comment Date	2062
OET Makes Non-Substantive Editorial Revisions to Part 2	2063
WCB Issues Order Granting Joint Petition for Waiver	2215
MB Issues Notice of Apparent Liability for Forfeiture, Station K30HY-D	2222
MB & OMD Revokes License for Durlyn Broadcasting Company, WPNC-FM	2227
MB Issues Notice of Apparent Liability for Forfeiture, Washoe County TV	2232
WCB Issues Monthly USF Appeals	2237
WTB Seeks Comment on the Waiver Request filed by Commonwealth of VA	2249
WCB Addresses SES's Petition for Reconsideration	2252
WCB Provides Data Fields for ACP Transparency Data Collection	2257
WTB Seeks Comment on a Petition for Waiver Filed by ATIS	2273
WTB Seeks Comment on HAC Task Force's Final Report and Recommendation	2280
Satellite Policy Branch Information Actions Taken	2287
PSHSB Announces Region 28 700 MHz and 800 MHz RPCs to Hold Meetings	2288
WCB Announces Comment Dates for RHC Second Further Notice	2290
MB Issues Notice of Apparent Liability for Forfeiture, Eureka County TV	2291
MB Issues Notice of Apparent Liability for Forfeiture, Eureka County TV	2297
WTB & PSHSB Extend Comment Deadlines for 4.9 GHz band FNPRM	2303
Domestic Section 214 Authorization Granted	2305
WTB & OEA Seeks Comments on Continued Filing of Alaska Plan FCC Form 477	2306
MX Applications Filed by CCGI, EGI, NMHA, & CBCO, NCE MX Group 54 Letter	2313

Federal Communications Commission Record

Case Name	Page
EB Resolves Improper Billing Complaint	2318
Table of Allotments, FM Broadcast Stations, South Padre Island, Texas	2331
WCB Approves E-Rate FY2023 PIA Form 471 Procedures Review Letter	2335
MX Applications Filed by FDMI & ETCB, NCE MX Group 205 Letter	2336
WTB Grants Progeny Relief for M-LMS Licenses	2342
MB Announces Comment Deadlines for Audio Description FNPRM	2369
International Authorizations Granted	2370
MB Opens Docket No. MB 23-126	2375
OET Opens ET Docket No. 23-122	2376
WCB Reminds Non-Dominant Carriers of Section 64.1900 Filing Deadline	2377
Eureka County TV District, Forfeiture Order	2379
Satellite Policy Branch Information Actions Taken	2385
Denver Digital TV, LLC, Forfeiture Order	2386
WCB Addresses Ziply CAF Performance Measures Waiver Request	2391
MB & OMD Issues Order to Pay or to Show Cause	2401
OEA, WTB, & WCB Partially Deny PTI Pacifica MF-I Waiver Request	2405
WCB Invites Comments on Section 214 Discontinuance Application(s)	2415
FCC Seeks Comment on State TRS Program Certification Applications	2419
EB Issues Initial Determination Order Against One Eye LLC	2423
Kalamazoo Broadcasting Company, Inc., Petition for Reconsideration Letter	2428
Media Power Group, Inc., Petition for Reconsideration Letter	2431
WCB Announces July 1, 2023 Annual Access Charge Tariff Filings	2441
PSHSB Announces Region 21 (MI) RPCs to Hold 700 and 800 MHz Meetings	2447
WTB Grants One Broadband Segment Application	2449
BDTF Announces Release of Tutorials on Responding to Mobile Wireless Challenges	2452
FCC Announces Disability Advisory Committee New Members and Next Meeting	2454
PSHSB Announces Region 41 (UT) 700 and 800 MHz RPCs to Hold Meetings	2460
WCB Announces Final List of Entities Selected for ACP Pilot Programs	2461
CGB Seeks Comments on GlobalVRS Request for Exogenous VRS DeafBlind Costs	2465
CGB Grants Lingo Telecom, LLC Complaint	2468
CGB Announces ClearCaptions Certified to Provide IP CTS	2471
WCB Seeks Comments on Domestic 214 Transfer of IIG from Yount to WRA II	2476
CGB Announces CAF Phase II Auction Post-Authorization Defaults	2482
OET Seeks Comment on Stadler Signalling Request for Waiver	2484
Salem State College Board of Trustees, Consent Decree	2487
MB & OEA Issues Fourth Quarter Cable Inflation Adjustment	2496
WCB Adopts IPCS Protective Order	2498
PSHSB Changes Ex Parte Status for Secure Internet Routing Proceeding	2506
FCC Announces Broadcast Station Totals As Of March 31, 2023	2507
Satellite Policy Branch Information Actions Taken	2508
PSHSB Announces Comment, Reply Dates for 988 Outage Reporting NPRM	2509
PSHSB Announces Region 15 (IA) 700 and 800 MHz RPCs to Hold Meetings	2510
WCB Seeks Comments on Domestic 214 Transfer of BroadLife - Yellowhammer	2512
WCB Announces Comment Dates for IPCS NPRM	2518
MB Seeks Comment on NAB Waiver Extension Petition	2519
Innovative Media Technologies, NALF	2522

Federal Communications Commission Record

Case Name	Page
Table of Allotments, FM Broadcast Stations, Dennison, Ohio	2528
Table of Allotments, FM Broadcast Stations, Snowflake, Arizona, et al.	2537
Elko TV District, NALF	2540
FCC Adopts Second Funding Opportunity for ACP Outreach Grant Program	2546
FCC Proposes \$80,000 Fine for PIRATE Act Violations	2554
FCC Proposes Over \$2M Fine for PIRATE Act Violations	2562
FCC Closes Gap in Caller ID Authentication Regime	2573
FCC Acts to Ensure Reasonable Calling Rates for Incarcerated People	2669
FCC Proposes Expansion of Audio Description Requirements	2724
FCC Adopts Its First Rules Focused on Scam Texting	2744
FCC Proposes Framework to Facilitate Supplemental Coverage From Space	2790
FCC Proposes Rules to Implement the Low Power Protection Act	2874

Federal Communications Commission Record

Table of FCC and Delegated Authority Numbers

Volume 38

Issue 3

DA/FCC Number	Page	DA/FCC Number	Page
DA 23-217	1933	DA 23-261	2318
DA 23-218	1934	DA 23-262	2331
DA 23-219	1938	DA 23-263	2335
DA 23-220	1942	DA 23-264	2336
DA 23-221	1946	DA 23-265	2342
DA 23-222	1949	DA 23-266	2369
DA 23-223	1952	DA 23-267	2370
DA 23-224	1961	DA 23-268	2375
DA 23-225	1964	DA 23-269	2376
DA 23-226	1969	DA 23-270	2377
DA 23-227	1975	DA 23-271	2379
DA 23-228	1978	DA 23-272	2385
DA 23-229	1980	DA 23-273	2386
DA 23-230	1982	DA 23-274	2391
DA 23-231	1984	DA 23-275	2401
DA 23-233	1992	DA 23-276	2405
DA 23-234	1995	DA 23-277	2415
DA 23-235	2044	DA 23-278	2419
DA 23-236	2045	DA 23-279	2423
DA 23-237	2049	DA 23-280	2428
DA 23-238	2055	DA 23-281	2431
DA 23-239	2059	DA 23-282	2441
DA 23-240	2062	DA 23-283	2447
DA 23-241	2063	DA 23-284	2449
DA 23-242	2215	DA 23-285	2452
DA 23-243	2222	DA 23-286	2454
DA 23-244	2227	DA 23-287	2460
DA 23-245	2232	DA 23-288	2461
DA 23-246	2237	DA 23-289	2465
DA 23-247	2249	DA 23-290	2468
DA 23-248	2252	DA 23-291	2471
DA 23-249	2257	DA 23-292	2476
DA 23-250	2273	DA 23-293	2482
DA 23-251	2280	DA 23-294	2484
DA 23-252	2287	DA 23-295	2487
DA 23-253	2288	DA 23-297	2496
DA 23-254	2290	DA 23-298	2498
DA 23-255	2291	DA 23-299	2506
DA 23-256	2297	DA 23-300	2507
DA 23-257	2303	DA 23-301	2508
DA 23-258	2305	DA 23-302	2509
DA 23-259	2306	DA 23-303	2510
DA 23-260	2313	DA 23-305	2512

Federal Communications Commission Record

DA/FCC Number	Page	DA/FCC Number	Page
DA 23-306	2518		
DA 23-308	2519		
DA 23-309	2522		
DA 23-310	2528		
DA 23-311	2537		
DA 23-312	2540		
FCC 23-15	2546		
FCC 23-16	2554		
FCC 23-17	2562		
FCC 23-18	2573		
FCC 23-19	2669		
FCC 23-20	2724		
FCC 23-21	2744		
FCC 23-22	2790		
FCC 23-23	2874		

Federal Communications Commission Record

Table of Docket Numbers

Volume 38

Issue 3

Docket Number	Page	Docket Number	Page
22-330	1942	11-10	2452
23-14	1946	02-378	2460
17-200	1949	21-450	2461
13-111	1952	10-51	2465
13-111	1961	03-123	2471
15-94	1964	23-85	2476
20-89	1975	10-90	2482
22-151	1980	23-133	2484
22-69	1992	12-375	2498
20-89	1995	22-90	2506
22-385	2044	23-5	2509
02-60	2045	02-378	2510
20-205	2049	09-197	2512
23-107	2059	12-375	2518
23-97	2062	12-107	2519
23-108	2063	22-337	2528
10-90	2215	21-502	2537
02-6	2237	21-450	2546
20-241	2249	17-97	2573
06-122	2252	12-375	2669
21-450	2257	11-43	2724
20-3	2273	21-402	2744
15-285	2280	23-65	2790
02-378	2288	23-126	2874
17-310	2290		
07-100	2303		
23-41	2305		
18-143	2306		
22-172	2318		
22-373	2331		
02-6	2335		
12-202	2342		
11-43	2369		
23-122	2376		
96-61	2377		
10-90	2391		
20-104	2405		
23-95	2415		
03-123	2419		
22-174	2423		
23-9	2441		
02-378	2447		
17-200	2449		

Federal Communications Commission Record

Table of Rulemaking Numbers

Volume 38

Issue 3

Rulemaking Number	Page	Rulemaking Number	Page
RM-11943	1946		
RM-11927	1980		
RM-11933	2331		
RM-11930	2528		

Federal Communications Commission Record

Table of Localities

Volume 38

Issue 3

City/State	Page	City/State	Page
Roanoke, VA	1946		
Hampton, VA	1980		
South Padre Island, TX	2331		
Dennison, OH	2528		



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 23-217

Released: March 15, 2023

FCC TASK FORCE TO PREVENT DIGITAL DISCRIMINATION ANNOUNCES REGIONAL LISTENING SESSION IN BALTIMORE, MARYLAND

GN Docket No. 22-69

On March 28, 2023, the FCC's Task Force to Prevent Digital Discrimination will host a listening session in Baltimore, MD to gain additional information and understanding from affected communities, state, local, and Tribal governments, public interest advocates, and providers about their experiences – including challenges and barriers faced – as they work to ensure all people of the United States benefit from equal access to broadband. The purpose of these listening sessions is to continue the Commission's outreach in support of its ongoing efforts to promote equal access to broadband for everyone.

On December 21, 2022, the Commission adopted a [Notice of Proposed Rulemaking](#) focused on implementing provisions of the Bipartisan Infrastructure Law pertaining to the prevention and elimination of digital discrimination. That law establishes various requirements for the prevention and elimination of digital discrimination and tasks the FCC to adopt rules to facilitate equal access to broadband internet access service.

The listening session will take place, from 4:30 – 5:30 p.m. Eastern Daylight Time, at the Enoch Pratt Free Library, Southeast Anchor Branch, 3601 Eastern Avenue, Baltimore, MD 21224. The program agenda will include presentations from the Task Force, local leaders, and stakeholders, and will include an opportunity for members of the public to share their broadband access experiences, providing the Commission with first-hand knowledge it needs to further its goals to create a framework for addressing digital discrimination. The listening session will be recorded and archived on the FCC's website.

Reasonable accommodations for people with disabilities are available upon request. Requests for accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Last minute requests will be accepted but may not be possible to accommodate.

Additional information about the listening sessions and the Task Force's work can be found at: <https://www.fcc.gov/task-force-prevent-digital-discrimination>. To contact or request a meeting with the Task Force to Prevent Digital Discrimination, email PreventDigitalDiscrimination@fcc.gov.

-FCC-

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of	)	
	)	
Bravo Broadcasting Company, Inc.,	)	Facility ID 56474
Licensee of KIRT(AM), Mission, Texas	)	FRN: 0008720591

ORDER TO PAY OR TO SHOW CAUSE

Adopted: March 15, 2023**Released: March 15, 2023**

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

I. INTRODUCTION

1. By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the license held by Bravo Broadcasting Company, Inc. (Licensee) for KIRT(AM), Mission, Texas (Station), for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission). For the reasons set forth below, we direct Licensee to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

2. Under section 9 of the Communications Act of 1934, as amended (Act), and section 1.1151 of the Commission's rules (Rules), the Commission is required to "assess and collect regulatory fees" to recover the cost of carrying out the functions of the Commission."¹ When the required payment is received late or is incomplete, the Commission must assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."²

3. For fiscal year (FY) 2012, the deadline for paying regulatory fees was September 13, 2012;³ for FY 2015, it was September 24, 2015;⁴ for FY 2016, it was September 27, 2016;⁵ for FY 2017, it was September 26, 2017;⁶ for FY 2018, it was September 25, 2018;⁷ for FY 2019, it was September 27,

¹ 47 U.S.C. § 159(a)(1); 47 CFR § 1.1151.

² 47 U.S.C. § 159A(c)(1); 47 CFR § 1.1164.

³ *Payment Methods and Procedures For Fiscal Year 2012 Regulatory Fees*, Public Notice, DA 12-1294, 27 FCC Rcd 9204 (OMD Aug. 13, 2012).

⁴ *Payment Methods and Procedures for Fiscal Year 2015 Regulatory Fees*, Public Notice, DA 15-103, 30 FCC Rcd 9941 (OMD September 11, 2015).

⁵ *Payment Methods and Procedures for Fiscal Year 2016 Regulatory Fees*, Public Notice, 2016 WL 4625515 (OMD Sep. 6, 2016).

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

⁷ *Payment Methods and Procedures for Fiscal Year 2018 Regulatory Fees*, Public Notice (OMD Aug. 30, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-353883A1.pdf>.

2019;⁸ for FY 2020, it was September 28, 2020;⁹ for FY 2021, it was September 24, 2021;¹⁰ and for FY 2022, it was September 30, 2022.¹¹ When Licensee failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act¹² and section 1.1164 of the Rules,¹³ and interest, penalties, and administrative costs required by section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA), section 159A(c)(2) of the Act and section 1.1940 of the Rules.¹⁴

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of \$895.94 for FY 2012; \$1,772.42 for FY 2015; \$5,046.91 for FY 2016; \$6,059.15 for FY 2017; \$4,112.90 for FY 2018; \$4,424.28 for FY 2019; \$4,536.37 for FY 2020; \$4,542.26 for FY 2021; and \$4,775.00 for FY 2022. Additional charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.¹⁵ When Licensee did not pay the regulatory fee debts for FYs 2012, 2015, 2016, 2017, 2018, 2019, 2020, and 2021, the Commission transferred those debts to the United States Department of Treasury for collection.¹⁶ At the Commission's request, the United States Department of Treasury has returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. The Commission has authority under section 9A(c)(4) of the Act and section 1.1164(f) of the Rules to revoke licenses and authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Licensee to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made or show cause why the payment is inapplicable or should be waived or deferred.¹⁷ Licensee is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

⁸ *Regulatory Fee Filing Window Is Extended to Friday, September 27, 2019*, Public Notice, DA 19-881, 34 FCC Rcd 7945 (OMD Sep. 5, 2019).

⁹ *Regulatory Fee Filing Window is Extended to Monday, September 28, 2020*, Public Notice, DA 20-1131, 35 FCC Rcd 10466 (OMD Sep. 24, 2020).

¹⁰ *Payment Methods and Procedures for Fiscal Year 2021 Regulatory Fees*, Public Notice, DA 21-1112, 36 FCC Rcd 13423 (OMD Sep. 7, 2021).

¹¹ *Fiscal Year 2022 Regulatory Fee Filing Deadline is Extended to Friday, September 30, 2022, for All Regulatory Fee Payors*, Public Notice, DA 22-1023, 2022 WL 4597483 (OMD Sep. 28, 2022).

¹² 47 U.S.C. § 159(c)(3) (1993); 47 U.S.C. § 159A(c)(1) (2018). The RAY BAUM'S Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, section 9A(c)(1) now sets forth those penalties.

¹³ 47 CFR § 1.1164.

¹⁴ 31 U.S.C. § 3717; 47 U.S.C. § 159A(c)(2); 47 CFR § 1.1940.

¹⁵ See 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letters, the Media Bureau notified Licensee of its failure to pay the Station's regulatory fees for FY 2012 and FY 2015. See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Francisco R. Montero, Esq. (MB June 18, 2015).

¹⁶ See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917. The Commission retained the FY 2022 regulatory fee debt owed by Licensee and did not refer it to Treasury for further collection.

¹⁷ The Commission may waive, reduce, or defer payment of fee debt where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to

(continued...)

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f) of the Rules,¹⁸ an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.¹⁹ Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.²⁰

7. To the extent that Licensee is a respondent in other administrative proceedings, both before this agency and other federal agencies, action in this proceeding is without prejudice to action in those proceedings. Further, the existence of any such proceedings and matters raised therein are not considered in this proceeding.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,²¹ Bravo Broadcasting Company, Inc., is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FYs 2012, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

9. **IT IS FURTHER ORDERED** that payment of the delinquent regulatory fee debt must be made by wire transfer and must include the FRN referenced above. Additional wire transfer instructions are as follows:

ABA Routing Number 021030004

Receiving Bank:
TREAS NYC
33 Liberty St.
New York, NY 10045

(BNF) Beneficiary: FCC
Account #: 27000001
OBI Field (skip one space between each information item)

Bravo Broadcasting Company, Inc., must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

Bravo Broadcasting Company, Inc., must fax a copy of the wire transfer confirmation to the FCC at (202) 418-2843 or send the wire transfer confirmation copy to the FCC via email to RROGWireFaxes@fcc.gov on the same day the wire transfer is initiated.

10. **IT IS FURTHER ORDERED** that Bravo Broadcasting Company, Inc., must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form

show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207-08, paras. 49-51 (2019).

¹⁸ 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

¹⁹ 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

²⁰ 47 U.S.C. § 159A(c)(4)(C)(ii)(iii); 47 CFR § 1.1164(f)(3).

²¹ 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.11, 0.61, 0.231, 0.283 and 1.1164(f).

may be obtained at <http://www.fcc.gov/Forms/Forms 159/159.pdf>. When completing the FCC Form 159, Bravo Broadcasting Company, Inc., must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): 1227(for FY 2012); 1527 (for FY 2015); 1637 (for FY 2016); 1737 (for FY 2017); 1837 (for FY 2018), 1937 (for FY 2019); 2027(for FY 2020); 2127(for FY 2021); and 2227(for FY 2022).

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

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director



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 23-219

Released: March 15, 2023

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU AND WIRELINE COMPETITION BUREAU ANNOUNCE ACP PILOT PROGRAM GRANTS TARGET FUNDING

WC Docket No. 21-450

The Federal Communications Commission (FCC) is announcing today target funding allocations for the Affordable Connectivity Outreach Grant Program—Pilot Program Grants (ACP Pilot Program Grants). The total amount of targeted funding is \$4,995,831 for the Your Home, Your Internet (YHYI) Outreach Grants, and \$2,449,311 for the Navigator Pilot Program (NPP) Outreach Grants.

The ACP continues to play an integral role in helping to bridge the broadband affordability gap. In August 2022, the FCC adopted an order establishing the Affordable Connectivity Outreach Grant Program (ACP Outreach Grant Program) to facilitate the promotion and awareness of and participation in the Affordable Connectivity Program (ACP) among eligible households.¹ In November 2022, the FCC released a Notice of Funding Opportunity (NOFO) for the ACP Pilot Program Grants.² Today, as part of this announcement, the FCC is enlisting partners to serve as trusted community messengers and providing those partners with the funding and resources needed to implement innovative outreach strategies to reach historically underserved and unserved communities in connection with their participation in two one-year ACP Pilot Programs: (1) the Your Home, Your Internet Pilot Program, which is focused on ACP outreach and application support to recipients of federal housing assistance; and (2) the ACP Navigator Pilot Program, which provides selected applicants access to the National Verifier to help low-income households complete and submit their ACP application.³

The ACP Outreach Grant Program also includes the National Competitive Outreach Program (NCOP) and the Tribal Competitive Outreach Program (TCOP). On March 10, 2023, the FCC announced combined funding allocations of \$66 million for NCOP and TCOP.⁴

In determining funding allocations for the ACP Pilot Program Grants, FCC reviewed over 75 grant applications to determine the impact of proposed projects against the ACP Pilot Program Grants' goals,

¹ See *generally Affordable Connectivity Program*, Second Report and Order, WC Docket No. 21-450, FCC 22-64 (2022) (*Second ACP Order*) (establishing ACP Outreach Grant Program).

² See *Affordable Connectivity Outreach Grant Program – Pilot Programs*, Notice of Funding Opportunity, FCC-ACOGP-23-002 (Nov. 21, 2022).

³ Additional information on the two Pilot Programs is available at <https://www.fcc.gov/affordable-connectivity-pilot-programs>.

⁴ Public Notice, *Consumer and Governmental Affairs Bureau Announces ACP Outreach Grant Program Target Funding*, WC Docket No. 21-450, DA 23-194 (CGB Mar. 10, 2023).

objectives, and priorities. Submitted applicants were assessed using the following three-step review process:

1. **Eligibility** review to determine if the applicant is eligible and submitted a complete application package as required in the NOFO;
2. **Merit** review to determine the quality of proposed projects against program objectives, activities, and costs/budget using pre-determined criteria; and
3. **Risk** review to determine fiscal stability of an applicant using many factors including the quality of the management systems, history of grant performance, and audit reports and findings.

At the conclusion of the three-step review process, applicants were selected for funding consistent with the funding determination process outlined in the ACP Pilot Program Grants NOFO.

Target Funding Allocations

Target funding allocations for the two ACP Pilot Programs:⁵

- Your Home, Your Internet Pilot Program: \$4,995,831
- ACP Navigator Pilot Program: \$2,449,311

Entity-specific target funding allocations are enclosed as part of the Appendices contained within this Public Notice. Following today's announcement, the FCC's Consumer and Governmental Affairs Bureau will contact applicable entities to finalize allocations and subsequently issue Notices of Award (NOAs). The Wireline Competition Bureau will provide information to pilot participants on the start of their one-year (12 months) period of performance for the two pilot programs.

Further questions regarding today's announcement can be directed to: acpgrants@fcc.gov.

-FCC-

⁵ While a NOFO was released for both Pilot Programs to provide funding to support outreach activities of eligible entities selected to participate in the Your Home, Your Internet Pilot Program and ACP Navigator Pilot Programs, entities could still participate in those Pilot Programs without funding. Accordingly, this Public Notice does not serve as an exhaustive list of entities selected to participate in the Pilot Programs. The Wireline Competition Bureau will make a forthcoming announcement with the full list of Pilot Program participants.

The FY 2023 Your Home, Your Internet recipients and target funding amounts are provided in the table below.

ACP Your Home, Your Internet Pilot Program			
#	Name	State	Target Funding Amount
1	Housing Authority of the Birmingham District	Alabama	\$262,397
2	Housing Authority of the City of Santa Barbara	California	\$75,000
3	San Diego Housing Commission	California	\$230,114
4	Adams County Housing Authority dba Maiker Housing Partners	Colorado	\$557,265
5	Housing Authority of the City of Tampa	Florida	\$152,413
6	Chicago Housing Authority	Illinois	\$242,940
7	Lake County Housing Authority	Illinois	\$167,383
8	Fort Wayne Housing Authority	Indiana	\$403,432
9	Louisville Metro Housing Authority	Kentucky	\$33,937
10	Housing Authority of Baltimore City	Maryland	\$229,061
11	Maryland Department of Housing and Community Development	Maryland	\$88,237
12	Sturgis Housing Commission	Michigan	\$421,569
13	Housing Authority of the City of Reno	Nevada	\$57,459
14	Jersey City Housing Authority	New Jersey	\$141,309
15	INLIVIAN	North Carolina	\$301,892
16	Akron Metropolitan Housing Authority	Ohio	\$183,737
17	Cheyenne and Arapaho Housing Authority	Oklahoma	\$241,200
18	Home Forward	Oregon	\$331,989
19	Metropolitan Development and Housing Agency	Tennessee	\$372,109
20	Housing Authority of the City of Austin	Texas	\$250,980
21	Housing Authority of the City of Brownsville	Texas	\$30,145
22	Utah Paiute Tribal Housing Authority, LLC	Utah	\$50,000
23	King County Housing Authority	Washington	\$171,263
TOTAL:			\$4,995,831

The FY 2023 ACP Navigator Pilot Program recipients and target funding amounts are provided in the table below.

ACP Navigator Pilot Program			
#	Name	State	Target Funding Amount
1	Coconino County	Arizona	\$228,266
2	University of Arkansas for Medical Sciences	Arkansas	\$474,943
3	City of South Bend	Indiana	\$193,200
4	Montgomery County, Maryland	Maryland	\$250,000
5	Jersey City Housing Authority	New Jersey	\$356,205
6	Brooklyn Public Library	New York	\$250,003
7	Cuyahoga County Public Library	Ohio	\$377,154
8	Harris County, Texas	Texas	\$149,824
9	Government of Salt Lake County	Utah	\$169,716
TOTAL:			\$2,449,311



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 23-220

Released: March 15, 2023

INTERCONNECTED VOIP NUMBERING AUTHORIZATION APPLICATION FILED BY CSC VOICE, LLC PURSUANT TO SECTION 52.15(g)(3) OF THE COMMISSION'S RULES

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-330¹

Comments Due: April 14, 2023

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

In its Application, CSC Voice includes the contact information and acknowledgements required by section 52.15(g)(3)(i) of the Commission's rules.⁶ CSC Voice provides evidence that it will be

¹ We assign WC Docket No. 22-330 for this application and all related filings by the applicant and interested parties. See *Wireline Competition Bureau Announces Commencement Date and Process for Interconnected VoIP Providers to File Applications for Authorization to Obtain Telephone Numbers*, Public Notice, 31 FCC Rcd 949, 950 (WCB 2016).

² See Supplement to CSC Voice Application of CSC Voice for Authorization to Obtain Numbering Resources at 3-5, WC Docket No. 22-330 (filed Aug. 28, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10827203121157> (CSC Voice Supplement) (describing Israeli and Luxembourg foreign ownership of applicant via the indirect ownership interests of several entities and an individual, Patrick Drahí).

³ See Application of CSC Voice for Authorization to Obtain Numbering Resources, WC Docket No. 22-330 (filed Jun. 9, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10609406405729> (CSC Voice Supplement at 1-8); Supplement to CSC Voice Application, WC Docket No. 22-330 (filed Dec. 5, 2022), <https://www.fcc.gov/ecfs/document/120540316456/1> (CSC Voice Supplement 2); 47 CFR § 52.15(g)(3).

⁴ See Application at 2. See also *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd 6839, 6850, para. 24 & n.74 (2015) (*VoIP Direct Access to Numbers Order*).

⁵ 47 CFR § 52.15(g)(3)(iii)(D).

⁶ Application at 1-4; see 47 CFR § 52.15(g)(3)(i)(A)-(C), (F).

capable of providing service within 60 days of the numbering resources activation date.⁷ CSC Voice also certifies that it complies with the contribution, regulatory fee, and 911 obligations set forth in section 52.15(g)(3)(i)(E).⁸ In addition, CSC Voice certifies that it has the financial, managerial, and technical expertise to provide reliable service.⁹ CSC Voice further certifies that none of its key management and technical personnel are being or have been investigated by the Commission, or any law enforcement or regulatory agency, for failure to comply with any law, rule, or order.¹⁰ Finally, CSC Voice certifies that no party to the Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.¹¹

The Commission has discretion to refer applications to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.¹² In light of the existing agreement with the Executive Branch agencies described by the Applicants, we are exercising our discretion and are not referring the Application to the Executive Branch.¹³ Although we are not formally referring this Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.¹⁴

GENERAL INFORMATION

The Application identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 52.15(g)(3)(iii)(D) of the Commission's rules,¹⁵ interested parties may file comments in WC Docket No. 22-330 **on or before April 14, 2023**. Commenters must serve a copy of comments on CSC Voice no later than the above comment filing date.

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS

⁷ Application at 2-3, Exhibit A; CSC Voice Supplement, Attachment A; *see* 47 CFR § 52.15(g)(3)(i)(D).

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

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

¹⁰ Application at 3-4.

¹¹ Application at 4; *see* 47 CFR § 52.15(g)(3)(i)(G); *see also* 21 U.S.C. § 862.

¹² 47 CFR § 1.40001; *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10935-38, paras. 24-28 (2020) (*Executive Branch Review Order*) (setting out which types of applications will generally be referred to the Executive Branch, but noting the Commission has the discretion to refer additional types of applications if it finds that the specific circumstances of an application require the input of the Executive Branch as part of the Commission's public interest determination). *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

¹³ *See* CSC Voice Supplement 2 at 2-5.

¹⁴ *See Executive Branch Review Process Order* at 10941, para. 36, n. 99; *see also id.* at 10939, para 30, n. 81.

¹⁵ 47 CFR § 52.15(g)(3)(iii)(D).

at <https://apps.fcc.gov/ecfs/>.¹⁶

- *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.¹⁷ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

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

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

- 1) DAA@fcc.gov;
- 2) Margoux Newman, Competition Policy Division, Wireline Competition Bureau, Margoux.Newman@fcc.gov;
- 3) Michelle Sclater, Competition Policy Division, Wireline Competition Bureau, Michelle.Sclater@fcc.gov.

The proceeding in this Notice will be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).¹⁸ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

¹⁶ See *VoIP Direct Access to Numbers Order*, 30 FCC Rcd at 6858, para. 39; see also 47 CFR § 52.15(g)(3)(ii).

¹⁷ 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).

¹⁸ 47 CFR § 1.1206(b).

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.¹⁹ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

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

- FCC -

¹⁹ See *id.* § 1.45(c).

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

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

REPORT AND ORDER

(Proceeding Terminated)

Adopted: March 15, 2023

Released: March 15, 2023

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking¹ issued in response to a Petition for Rulemaking filed by Blue Ridge Public Television, Inc. (Blue Ridge PBS or Petitioner),² the licensee of noncommercial educational television PBS member station WBRA-TV (WBRA-TV or Station), channel *3, Roanoke, Virginia.³ The Petitioner has requested the substitution of high-band VHF channel *13 in place of low-band VHF channel *3 in the Table of TV Allotments.⁴ The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),⁵ reaffirming its commitment to apply for channel *13. No other comments were received.

2. We believe the public interest would be served by substituting channel *13 in place of channel *3 at Roanoke, Virginia. The proposed channel substitution will improve viewers' access to the Station's PBS and other public television programming by improving reception and resolving low-VHF reception issues.⁶ The Petitioner further states that the Commission has recognized that although VHF reception issues are not universal, "environmental noise blockages affecting [VHF] signal strength and reception exist" and "[vary] widely from service area to service area."⁷ According to the Petitioner, WBRA-TV's move from channel *3 to channel *13 is predicted to create an area where 64,309 persons are predicted to lose service without considering the service from other PBS stations. When taking into

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Roanoke, Virginia)*, MB Docket No. 23-14, Notice of Proposed Rulemaking, DA 23-23 (rel. Jan. 11, 2023) (*NPRM*).

² Petition of Blue Ridge Public Television, Inc. for Rulemaking (filed Nov. 18, 2022, LMS File No. 0000203784) (Petition). We note that Petitioner amended its Petition on January 9, 2023 (Amended Engineering Statement) to include further analysis of the population that may lose predicted service as a result of the proposed channel substitution. Amended Engineering Statement at 1.

³ Noncommercial educational television stations are identified in the Table of TV Allotments by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR § 73.622(a).

⁴ 47 CFR § 73.622(j).

⁵ 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

⁶ *NPRM* at para. 2.

⁷ *Id.*

account service from other PBS stations,⁸ only 94 persons are predicted to lose PBS service, a number which the Petitioner asserts the Commission has found to be *de minimis*.⁹

3. As proposed, channel *13 can be substituted in place of channel *3 at Roanoke, Virginia, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,¹⁰ at coordinates 37° 11' 46.0" N and 80° 09' 16.0" W. Although the Petitioner's proposal would result in a loss of PBS network programming to a limited number of viewers, we find that the overall benefits of the proposed channel change by resolving low-VHF band reception issues outweighs any possible harm to the public interest. When taking into account the service provided by noncommercial educational stations WUNC-TV and WUNL-TV to the WBRA-TV noise limited service contour area, only 94 persons are predicted to lose access to PBS network programming, which is *de minimis*.¹¹ In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:¹²

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Roanoke, Virginia	*13	66	630.6	1,691,961

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.¹³ An expedited effective date is necessary in this case to ensure that WBRA-TV can operate with improved service to its viewers as quickly as possible.

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

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

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, Blue Ridge Public Television, Inc. shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel *13.¹⁴

⁸ The vast majority of viewers that will no longer receive WBRA-TV are located in North Carolina and continue to be served by WUNL-TV and WUNC-TV, which are both North Carolina PBS affiliates. *NPRM* at n.9.

⁹ *Id.* See also *WSET, Inc.*, Memorandum Opinion and Order, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*).

¹⁰ 47 CFR § 73.625(a).

¹¹ *Supra* para. 2 and n.9.

¹² 47 CFR §§ 73.616, 73.623.

¹³ 5 U.S.C. § 553(d)(3).

¹⁴ Upon grant, the construction permit will include a condition that program test authority will be conditioned on WVPT, Staunton, Virginia, vacating channel *12. In September 2022, the Media Bureau issued an Order substituting channel *12 for *15 at Staunton, Virginia for WVPT. See *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Staunton, Virginia)*, MB Docket No. 21-248, Report and Order, DA 22-919 (rel. Sept. 1, 2022). WVPT continues to operate on channel *12 under STA (LMS File No. 0000199189), but holds a construction permit to relocate to channel *15 consistent with the Order. See LMS File No. 0000201196.

7. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office.

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-14 and RM-11943 **SHALL BE TERMINATED** and its docket closed.

9. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, Joyce.Bernstein@fcc.gov or Emily B.V. Harrison, Video Division, Media Bureau, Emily.Harrison@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-222

Released: March 16, 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 two 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 demonstrate 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. New 900 MHz broadband licensees may begin operation in the applicable counties, subject to protecting 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 *900 MHz Report and Order*, 35 FCC Rcd at 5229, 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	0010346270	0023948573	D48375	Potter County, TX	N/A
PDV Spectrum Holding Company, LLC	0010346271	0023948573	D48381	Randall County, TX	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	)	
	)	
Promoting Technological Solutions to Combat	)	GN Docket No. 13-111
Contraband Wireless Device Use in Correctional	)	
Facilities	)	

PROTECTIVE ORDER

Adopted: March 24, 2023**Released: March 24, 2023**

By the Acting Chief, Wireless Telecommunications Bureau:

1. In this Protective Order, we set forth procedures to (i) limit access to proprietary or confidential information that has been or may be filed with respect to or contained in Contraband Interdiction System (CIS) certification applications in this proceeding, especially information which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. As provided by the *Second Report and Order* in this proceeding, interested stakeholders have an opportunity to review and comment on the CIS certification applications prior to their being tested or deployed at a correctional facility.¹ While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to do so, while also protecting sensitive law enforcement information and competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them “best conduce[s] to the proper dispatch of the Commission’s business and to the ends of justice.”²

2. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

“Acknowledgment” means the Acknowledgment of Confidentiality attached as the Appendix hereto.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his or her clients involving 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 the Submitting Party or with a Third-Party Interest Holder.

“Confidential Information” means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to withholding under the Freedom of Information Act (FOIA) and the Commission’s implementing rules; and that contains sensitive material related to law enforcement or that the Submitting Party or a Third-Party

¹ *In the Matter of Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Second Report and Order and Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 11813, 11822, 11824, paras. 24, 27 (2021) (*Second Report and Order*).

² 47 U.S.C. § 154(j).

Interest Holder claims constitutes some of its most sensitive business data which, if released to competitors or those with whom the Submitting Party or Third-Party Interest Holder does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules, that any such information is not entitled to confidential treatment.

“Counsel” means In-House Counsel and Outside Counsel of Record.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

“In-House Counsel” means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“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 a) an attorney employed by a non-commercial Participant in this proceeding, including by a governmental entity, provided that such attorney is not involved in Competitive Decision-Making; and b) an attorney employed by a Participant that is a commercial mobile radio service provider, 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 a) an expert employed by a non-commercial Participant in this proceeding, including by a governmental entity, provided that such expert is not involved in Competitive Decision-Making; and b) an expert employed by a Participant that is a commercial mobile radio service provider, provided that such 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.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) pursuant to paragraphs 7 or 12 of this Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 13-111 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The term “Stamped Confidential Document” includes a Contraband Interdiction System (CIS) certification application contains, and that has been marked in any manner to show that it contains, Confidential Information. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document.

“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 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.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information that is submitted under this Protective Order.

3. *Designation of Information as Confidential.* By designating documents and information as Confidential under this Protective Order, a Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules.³ Material designated as confidential in a CIS certification application will be deemed to have been designated as Confidential pursuant to this paragraph.

4. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days and include a justification for treating the information as Confidential. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.⁴ Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.⁵

5. *Submission of Stamped Confidential Documents other than CIS certification applications.* A Submitting Party shall submit to the Secretary’s Office one copy of each Stamped Confidential Document it seeks to file (other than a CIS certification application) and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document. Each page of the Stamped Confidential Document shall be stamped “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 13-111 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document submitted, the Submitting Party shall also file through the Commission’s Electronic Comment Filing System (“ECFS”) a copy of the respective Redacted Confidential Document and an accompanying cover letter.⁶ Each Redacted Confidential Document shall have the same pagination as the Stamped Confidential Document from which it is derived. Each page of the Redacted Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” To the extent that any page of the filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information and the non-confidential information. In addition, copies of each Stamped Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission

³ See 47 CFR § 0.459(a).

⁴ Cf. 47 CFR §§ 0.459(g), 0.461(i).

⁵ See 47 CFR §§ 0.459(h), 0.461.

⁶ If a party is not able to submit a copy of the Redacted Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document with the Secretary’s Office along with the appropriately stamped cover letter.

staff, to Halie Peacher, Halie.Peacher@fcc.gov, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission.

6. *Copying Sensitive Documents.* If, in the reasonable judgment of the Submitting Party, a Stamped Confidential Document contains information so sensitive that copying of it should be restricted, the Submitting Party may mark the document with the legend “Additional Copying Restricted.” Subject to the provisions for access to information in electronic format in paragraph 10, each Outside Firm shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

7. *Procedure for Obtaining Access to Confidential Information.* Access to Confidential Information (including Stamped 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 Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person’s reviewing or having access to the Submitting Party’s Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

8. *Procedure for Objecting to the Disclosure of Confidential Information to a Potential Reviewing Party.*⁷ Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person’s Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. 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 shall not have access to the relevant Confidential Information.⁸ 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 Confidential Information by the Reviewing Party until the objection is resolved.

⁷ This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential Information pursuant to this Protective Order. The Commission has ruled that the information contained in CIS applications may be made available to stakeholders pursuant to a protective order. *Second Report and Order*, 36 FCC Rcd at 11822, 11824, paras. 24, 27. If a party timely requests that other information it submits be entirely withheld from review by *any* individual under the Protective Order, it shall do so at the time of or prior to submission of that information; we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and, if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

⁸ An objection ordinarily will first be ruled upon by the 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
(continued....)

9. *Review of Stamped Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of the party's Outside Counsel of Record. Subject to the provisions of paragraph 6, a Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 7. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 21.

10. *Review of Confidential Information in Electronic Format.* A Submitting Party shall make available to a Reviewing Party one copy of Confidential Information contained, recorded, or electronically stored on an appropriate electronic storage device (such as a CD-ROM, DVD, flash drive or portable hard drive), which shall be considered a Stamped Confidential Document. A Submitting Party may, but is not required to, transmit the information electronically to a Reviewing Party. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Confidential Information shall be password protected immediately. The Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Confidential Information shall be deleted from the computer no later than when proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

11. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this 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 documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential Information in its orders in this proceeding, it will do so either by redacting any such Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential Information under this Protective Order, as appropriate, or as otherwise permitted by law.

12. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder. Information derived from Confidential Information shall be treated as Confidential Information, unless the Commission determines otherwise.

13. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 13-111 BEFORE THE FEDERAL

for Review is not filed within that time, the 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 Confidential Information shall be made available to the Reviewing Party.

COMMUNICATIONS COMMISSION.” The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal and will not be placed in the Commission’s public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential Information (the “Redacted Confidential Filing”), to the Commission via ECFS.⁹ The Redacted Confidential Filing and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information, only the Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Halie Peacher, Halie.Peacher@fcc.gov, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

14. *Non-Disclosure of Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information shall not be disclosed further.

15. *Protection of Stamped Confidential Documents and Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information (including Stamped Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information is used only as provided in this Protective Order.

16. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission’s rules.¹⁰

17. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict 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 generally on examination of Confidential Information to which they have access under this Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information.

18. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

19. *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 Stamped Confidential Documents or Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the

⁹ If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary’s Office along with the appropriately stamped cover letter, as described in this paragraph.

¹⁰ 47 CFR §§ 0.442, 0.461.

pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

20. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of 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 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 Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

21. *Termination of Proceeding.* The provisions of this 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 Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever containing or derived from 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 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 Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of the same and Confidential Information shall not be construed to apply to the Commission or its staff.

22. *Questions.* Questions concerning this Protective Order should be addressed to Halie Peacher, (202) 418-0514, Halie.Peacher@fcc.gov, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, or to Joel Rabinovitz, Joel.Rabinovitz@fcc.gov, (202) 418-0689, Transaction Team, Office of General Counsel.

23. Authority. This Order is issued pursuant to Sections 4(j), 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 214 and 310(d), 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
Acting Chief
Wireless Telecommunications Bureau

APPENDIX

Acknowledgment of Confidentiality

GN Docket No. 13-111

I am seeking access to Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this 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 Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential Information in a manner not authorized by this 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 Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, 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 Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ____ day of _____, 20__.

[Name]
[Position]
[Firm]
[Telephone]



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 23-224

Released: March 24, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON FIVE CONTRABAND INTERDICTION SYSTEM CERTIFICATION APPLICATIONS

GN Docket No. 13-111

Comment Deadline: April 23, 2023

On July 13, 2021, the Commission released the *Second Report and Order* in this proceeding, which adopted a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria.¹ On December 17, 2021, the Wireless Telecommunications Bureau (Bureau) issued the *Guidance Public Notice*, which established the minimum criteria that must be demonstrated in and provided guidance on the submission of a Contraband Interdiction System (CIS) certification application.² Specifically, phase one of the CIS certification application process requires an applicant to describe the legal and technical qualifications of and provide a test plan for the system that the applicant seeks to use as the basis for qualifying requests for contraband device disabling.³ Per the *Second Report and Order*, stakeholders will have an opportunity to review and comment on the CIS certification applications prior to testing or deploying at a correctional facility.⁴

By this Public Notice, the Bureau announces that the CIS applications listed in Attachment A hereto have been found complete, and stakeholders are invited to review the application and file comments using the Commission's Electronic Comment Filing System (ECFS).⁵ All filings must reference **GN Docket 13-111 and the relevant file number**, as listed in Attachment A. Stakeholders seeking review of confidential filings are required to follow the procedures set forth in the Protective Order.⁶ We call attention to a change to the Commission's typical protective order provisions that is being adopted for this proceeding. Under this Protective Order, experts employed by wireless providers participating in the proceeding will be permitted to have access to Confidential Information. Experts employed by other commercial entities will continue to be prohibited from such access. We urge all

¹ See *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Second Report and Order and Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 11813, 11814, para. 2 (2021) (*Second Report and Order*); see also *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Erratum (rel. Aug. 3, 2021).

² *Wireless Telecommunications Bureau Provides Guidance for Filing Contraband Interdiction System Certification Applications and Self-Certifications*, GN Docket No. 13-111, DA 21-1572, 2-4, paras. 5-6, 9-10 (WTB 2021) (*Guidance Public Notice*).

³ *Guidance Public Notice*, at 2-4, paras. 5-10.

⁴ *Second Report and Order*, 36 FCC Rcd at 11822, 11824, paras. 24, 27.

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

⁶ See *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Protective Order, DA 23-223 (Mar. 24, 2023).

parties who plan to seek access to confidential information in this proceeding (and who have filed or have a good faith intention to file material comments) to promptly file an Acknowledgement of Confidentiality, as set forth in the Protective Order.

Additional Information. For further information regarding this Public Notice, please contact Halie Peacher, Attorney Advisor, WTB, Mobility Division at (202) 418-0514 or Halie.Peacher@fcc.gov.

-FCC-

ATTACHMENT A

CIS Certification Application Name and Associated File Number

CIS Certification Applicant	File Number
CellBlox Acquisitions, LLC ⁷	0001
ShawnTech Communications, Inc. ⁸	0002
Tecore Networks ⁹	0003
SOC, LLC ¹⁰	0004
OmniProphis Corporation ¹¹	0005

⁷ Application of CellBlox Acquisitions, LLC for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Aug. 9, 2022) (CellBlox CIS Application).

⁸ ShawnTech Communications, Inc., CIS Certification Application, GN Docket No. 13-111 (filed Oct. 4, 2022) (ShawnTech CIS Application).

⁹ Application of Tecore Networks for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Aug. 22, 2022) (Tecore CIS Application).

¹⁰ Application of SOC, LLC for Certification of Contraband Interdiction System Under 47 CFR 20.23, GN Docket No. 13-111 (filed Nov. 3, 2022) (SOC CIS Application).

¹¹ Application of OmniProphis Corporation for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Nov. 30, 2022) (OmniProphis CIS Application).

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

In the Matter of	)	
	)	
Improving Wireless Emergency Alerts and Community-Initiated Alerting	)	PS Docket No. 15-91
	)	
Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System	)	PS Docket No. 15-94
	)	

ORDER

Adopted: March 15, 2023

Released: March 15, 2023

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communications Commission (Commission) grants the waiver request of the Virgin Islands Territorial Emergency Management Agency (VITEMA). Specifically, VITEMA seeks a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers¹ to participate in an end-to-end WEA test that it proposes to conduct on March 16, 2023 at 11:00 a.m. Atlantic Standard Time (AST). VITEMA proposes to conduct this test as part of its annual Caribe Wave Tsunami Awareness exercise, which it conducts due to the elevated risk that this type of natural disaster poses to the people of the U.S. Virgin Islands.² Accordingly, we grant VITEMA's request to use the Public Safety Message category, which would be transmitted to all members of the public with WEA-capable devices and who are opted in, by default, to receive WEA messages, for its upcoming test.

II. BACKGROUND

2. WEA allows authorized government entities to send geographically-targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial mobile service providers are Participating CMS Providers.³ The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service

¹ Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR §§ 10.10(d), (f). The WEA rules are set forth in Part 10 of the Commission's rules. *See generally* 47 CFR § 10.1, *et seq.*

² Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), <https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/>.

³ *Commercial Mobile Alert System*, PS Docket No. 07-287, Third Report and Order, 23 FCC Rcd 12561, 12575, para. 32 (2008) (stating the requirements for wireless providers volunteering to participate in WEA).

announcements.⁴ The Commission's rules allow WEA end-to-end tests that reach the public only when the test is conducted using the State/Local WEA Test category.⁵ State/Local WEA test alert messages differ from actual WEAs in order to reduce public confusion and minimize any chance that they might be misconstrued as WEAs about actual emergencies. Consumers will not receive State/Local WEA Test alerts by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.⁶ Further, tests conducted using the State/Local WEA Test category must include conspicuous language sufficient to make it clear to the public that the WEA alert message is only a test.⁷ While the rules allowing such State/Local WEA Tests became effective on May 1, 2019,⁸ Participating CMS Providers were not required to support State/Local WEA Tests until December 19, 2019, at which time the FEMA Integrated Public Alert and Warning System (IPAWS) infrastructure (through which all alerts are authenticated, validated, and delivered to Participating CMS Providers) was capable of fully supporting these enhancements.⁹ Accordingly, as of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Tests category do not need to request a waiver from the FCC to permit such WEA test alerts to be transmitted to the public.¹⁰

3. VITEMA requests a waiver of the Commission's rules to allow Participating CMS Providers in the U.S. Virgin Islands to participate in an end-to-end WEA test on March 16, 2023 at 11:00 a.m. AST. Among other activities, the exercise would involve activating sirens in, and sending a WEA message to, the St. Croix District and St. Thomas District. The message to be sent to each district at 11:00 a.m. AST would read: "*****THIS IS A TEST***** THIS MESSAGE IS FOR THE CARIBEWAVE23 EXERCISE ON THURSDAY, MARCH 16, 2023. PLEASE PRACTICE YOUR EVACUATION PLANS AND GET TO 82 FT ABOVE SEA LEVEL AS QUICKLY AND SAFELY AS POSSIBLE ***** THIS IS A TEST*****." In its waiver request, VITEMA requests to send this test alert because it wishes to ensure that as many people are aware and participate in the exercise as possible, including both residents that regularly face threats from tsunamis and visitors that are becoming aware of how to respond to those threats for the first time. VITEMA argues that sending the alerts as State/Local

⁴ 47 CFR § 10.520(d). The Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the attention signal used by the EAS. Compare 47 CFR § 10.520 with 47 CFR § 11.31(a)(2).

⁵ 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by the Federal Emergency Management Agency and in periodic tests of WEA's C-Interface. *Id.* On November 1, 2016, the Commission adopted a Report and Order that amended the WEA testing rules to permit emergency managers to conduct end-to-end WEA tests to the public to assess how WEA is working within their jurisdictions. See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11154-57, paras. 65-68 (2016) (*WEA R&O*).

⁶ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65 (requiring Participating CMS Providers to provide their subscribers with the option to receive State/Local WEA Tests, whereby subscribers must affirmatively select the option to receive State/Local WEA Test messages).

⁷ *Id.* (requiring State/Local WEA Test messages to include conspicuous language sufficient to make clear to the public that the message is only a test).

⁸ *Id.* at 11161, 11165, paras. 79, 85 (stating that the deadline for state and local testing is 30 months after the rule's publication in the Federal Register); *Federal Communications Commission, Wireless Emergency Alerts, Amendments to Rules Regarding the Emergency Alert System*, 81 Fed. Reg. 75710 (Nov. 1, 2016) (establishing the date of Federal Register publication).

⁹ See *Public Safety and Homeland Security Bureau Announces New Enhancements to Wireless Emergency Alerts Are Now Available*, PS Docket No. 15-91, Public Notice, DA 19-1297 (PSHSB Dec. 19, 2019).

¹⁰ *Id.*

WEA Tests would be unlikely to be effective for purposes of this specific exercise because the opt-in nature of State/Local WEA Tests is more limited in the number of devices that it can reach.

4. VITEMA states that it has conducted outreach to the public about the proposed WEA messages. Specifically, VITEMA states its staff has conducted extensive community outreach about the exercise, sent out press releases in electronic and printed media,¹¹ highlighted the exercise as part of a live broadcast from the Governor's office, heavily promoted the exercise using social media,¹² and made several bilingual radio announcements for over the previous month.

III. DISCUSSION

5. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."¹³ 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."¹⁴ As stated in the Bureau's prior decisions, given the availability of State/Local WEA Tests, the Bureau does not routinely grant waiver requests from alert originators seeking to conduct end-to-end WEA tests.¹⁵

6. Based on the circumstances set forth by VITEMA, we find good cause exists to grant a waiver in the instant case. VITEMA has highlighted that the U.S. Virgin Islands, along with the rest of the Caribbean region, is highly vulnerable to threats from tsunamis.¹⁶ In the past the Commission has also recognized that the U.S. Virgin Islands faces heightened risks from natural disasters, such as the two hurricanes caused extensive damage and loss of life in 2017.¹⁷ We believe that the frequency and magnitude of natural disasters that have been observed in the Caribbean in recent years creates a heightened need for emergency managers in that region to ensure both that the populace is prepared in advance of disasters and that WEA works effectively when those disasters do strike. We agree with VITEMA that a State/Local WEA Tests, which need to be opted into by subscribers, would have limited

¹¹ See, e.g., Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), <https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/>.

¹² See, e.g., @FEMARegion2, Twitter, (March 13, 2023), <https://twitter.com/femaregion2/status/1635252009036320768?cxt=HHwWgMDUzbnCyrEtAAAA>.

¹³ 47 CFR § 1.3.

¹⁴ 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), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

¹⁵ *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Order, DA 21-302, 2021 WL 960395 (PSHSB rel. Mar. 12, 2021) (*Vail, CO Waiver Order*). See also *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Order, DA 20-190, 35 FCC Rcd 1527 (PSHSB 2020) (*City of Aliso Viejo, CA Waiver Order*).

¹⁶ Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), <https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/>.

¹⁷ See, e.g., PBS, *2 years later, U.S. island territories still hurting from Hurricanes Irma and Maria* (Dec. 26, 2023), <https://www.pbs.org/newshour/show/2-years-later-u-s-island-territories-still-hurting-from-hurricanes-irma-and-maria>. See also *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404, 5408, para. 13 (2018) (committing to ensuring the restoration, hardening, and expansion of advanced telecommunications networks in the U.S. Virgin Islands by creating the Bringing Puerto Rico Together Fund and the Connect USVI Fund).

reach and would not be effective in supporting widespread participation in this specific tsunami exercise. We also note that a State/Local WEA Test message would not serve its purpose of reducing public confusion because the exercise will also involve the activation of emergency sirens, which will in themselves create the impression of an active emergency. In this specific instance, we find that sending a Public Safety Message would better achieve the goal reducing public confusion. We believe that widespread receipt of a Public Safety Message stating that a tsunami exercise is occurring will maximize the chance that individuals who are confused or concerned by the sirens will understand their lives and property are not in immediate danger. We also note generally that, as we have previously found, public awareness, alert propagation, and proficiency training exercises are helpful tools that allow the public, city officials, and alert originators to determine geographic reach, public feedback, and effectiveness of internal policies.¹⁸

7. We condition this waiver to require that the test may only be conducted on the times and dates referenced above and may only be conducted for the purposes described above. Specifically, the waiver is based upon representations that:

- (1) this test is necessary to effectively conduct the Caribe Wave Tsunami Awareness exercise and to assess and validate the readiness and effectiveness of the emergency warning system, plans and infrastructure, and ability of participants to disseminate emergency messages to the public;
- (2) VITEMA has conducted extensive community outreach about the exercise (including the planned WEA messages), sent out press releases in electronic and printed media,¹⁹ highlighted the exercise as part of a live broadcast from the Governor's office, heavily promoted the exercise using social media,²⁰ and made several bilingual radio announcements for over the previous month; and
- (3) VITEMA will use the "test" wording in the test message as described above.

8. We also require that the test and any post-test analysis and reports that VITEMA may conduct or cause to be produced, are done in a manner consistent with customers' expectations of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the WEA systems and infrastructure.²¹ We encourage VITEMA to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who wish to share feedback on their experience with the test to do so by filing them with the FCC's Public Safety Support Center at: <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

9. 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 1.3 of the Commission's rules, 47 CFR § 1.3, Sections 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, 47 CFR §§ 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, ARE WAIVED, to allow a one-time test of WEA in the U.S. Virgin Islands, as requested by VITEMA, on March 23, 2023, which test must be conducted subject to the conditions described herein. This action is taken under delegated authority

¹⁸ *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Public Notice, 36 FCC Rcd 8551 (2021), <https://www.fcc.gov/document/pshsb-grants-waiver-mendocino-california-wea-test>.

¹⁹ See, e.g., Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), <https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/>.

²⁰ See, e.g., @FEMARegion2, Twitter, (March 13, 2023), <https://twitter.com/femaregion2/status/1635252009036320768?cxt=HHwWgMDUzbnCyrEtAAAA>.

²¹ See 47 U.S.C. § 222.

pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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



PUBLIC NOTICE

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DA No. 23-226

Report No. TEL-02259

Thursday March 16, 2023

International Authorizations Granted

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

The following applications have been granted pursuant to the Commission's processing procedures set forth in sections 63.12, 63.20 of the Commission's rules, 47 CFR §§ 63.12, 63.20, other provisions of the Commission's rules, or procedures set forth in an earlier public notice listing the applications as accepted for filing.

Unless otherwise noted, these grants authorize the applicants: (1) to become a facilities-based international common carrier subject to 47 CFR §§ 63.21, 63.22; and/or (2) to become a resale-based international common carrier subject to 47 CFR §§ 63.21, 63.23; (3) to assign or transfer control of international section 214 authority in accordance with 47 CFR § 63.24; or (4) to exceed the foreign ownership benchmarks applicable to common carrier radio licensees under 47 U.S.C. § 310(b); see Subpart T of Part 1 of the Commission's rules, 47 CFR §§ 1.5000-5004.

THIS PUBLIC NOTICE SERVES AS EACH NEWLY AUTHORIZED CARRIER'S SECTION 214 CERTIFICATE. It contains general and specific conditions, which are set forth below. Newly authorized carriers should carefully review the terms and conditions of their authorizations. Failure to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies, could result in fines and forfeitures.

Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within thirty days of this public notice (see 47 CFR § 1.4(b)(2)).

On June 2, 2022, Three Forty-Five Holdings, LLC (Three Forty-Five Holdings or Petitioner) filed a petition for a declaratory ruling requesting that the Commission find it would serve the public interest to approve an increase in the indirect foreign equity and voting interests in Three Forty-Five Holdings, the controlling U.S. parent of Three Forty-Five Spectrum, LLC (Three Forty-Five Spectrum), to exceed the 25% benchmarks in section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4) (the "Act"), and pursuant to section 1.5000(a)(1) of the Commission's rules, 47 CFR § 1.5000(a)(1). On September 1 and 13, 2022, the Petitioner filed, respectively, a restated petition (Restated Petition) and a supplement. The Restated Petition is associated with a pro forma filing with the Wireless Telecommunications Bureau. See ULS File No. 0010039555. We received no comments on this request.

According to the Restated Petition, Three Forty-Five Spectrum, a Delaware limited liability corporation, holds 3.45 GHz Service (PK) radio licenses as a result of winning bids placed in FCC Auction 110. Three Forty-Five Holdings, a Delaware limited liability corporation, is the direct parent of Three Forty-Five Spectrum and is vested with exclusive and full operational control of Three Forty-Five Spectrum. Columbia Capital Equity Partners VII (QP), L.P. (Delaware), Columbia 345 VII, LLC (Delaware), Columbia Capital Equity Partners VII (NON-US), L.P. (Delaware), Columbia Capital Equity Partners VII, L.P. (Delaware), Columbia Capital VII, LLC (Delaware), Columbia Spectrum Partners V-A, L.P. (Delaware), Columbia Spectrum Partners V GP, L.P. (Delaware), Columbia Spectrum V, LLC (Delaware) (together "Columbia Capital entities") currently hold 50% of the equity and voting interests in Three Forty-Five Holdings. The remaining 50% equity and voting interests are held by the Ross W. Manire Revocable Trust, whose sole trustee is Ross W. Manire.

The Petitioner states that in 2021, Three Forty-Five Holdings entered into subscription agreements with certain investors in connection with Three Forty-Five Holdings' anticipated participation in FCC Auction 110. Pursuant to such subscription agreements, the investors purchased convertible notes (the "Convertible Notes") to fund Three Forty-Five Holdings' potential acquisition of licenses in FCC Auction 110. According to the Restated Petition, the Convertible Notes will convert into membership units in Three Forty-Five Holdings upon receipt of the Commission's approval of Three Forty-Five Holdings' new ownership structure.

According to the Restated Petition, as a result of the conversion of the Convertible Notes, the equity and voting interests held by the Columbia Capital entities in Three Forty-Five Holdings will increase from 50% to 77.98%. The equity and voting interests of the Manire Trust will decrease from 50% to 0.04%. Petitioner states that following the conversion of the Convertible Notes, Three Forty-Five Spectrum's indirect aggregate foreign ownership will increase from approximately 22.55% to 34.61%. The Restated Petition asks that the Commission approve up to an aggregate 45% indirect foreign equity and voting interest in Three Forty-Five Holdings.

Pursuant to section 1.5001(i) of the Commission's rules, Petitioner requests that the Commission specifically approve indirect foreign equity and voting interests in Three Forty-Five Spectrum's controlling U.S. parent, Three Forty-Five Holdings, by the foreign-organized entities upon conversion of the Convertible Notes, as follows:

Crossbones Investment Pte. Ltd. (13.43% equity and voting interests) (Singapore); GIC Blue Holdings Pte. Ltd. (13.43% equity and voting interests) (Singapore); GIC (Ventures) Pte. Ltd. (13.43% equity and voting interests) (Singapore); and The Minister for Finance of the Government of Singapore (13.43% equity and voting interests) (Singapore).

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. On March 2, 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 letter stating that the Committee has reviewed the Restated Petition and has no recommendation at this time to the Commission and no objection to the Commission granting the ruling.

We find that the public interest would not be served by prohibiting foreign ownership of Three Forty-Five Holdings 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 45% aggregate foreign ownership of Three Forty-Five Holdings, as the controlling U.S. parent of Three Forty-Five Spectrum, 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 Three Forty-Five Holdings exceeds the terms and conditions of this ruling. 47 CFR § 1.5004. Specifically, pursuant to section 1.5001(i) of the rules, we grant Petitioner's request to permit the above-listed foreign-organized entities to hold, directly and/or indirectly, equity and/or voting interests in Three Forty-Five Holdings, the controlling U.S. parent, in the amounts specified above.

We note that Petitioner did not seek advance approval for any foreign persons or entities to increase their interests, at some future time, up to any amount, including 100% of the direct and/or indirect equity and/or voting interests in Three Forty-Five Holdings as the controlling U.S. parent of Three Forty-Five Spectrum.

Three Forty-Five 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 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 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).

ITC-ASG-20230124-00005 E PNG Telecommunications, Inc.
Assignment
Grant of Authority Date of Action: 03/10/2023

Current Licensee: Business Network Long Distance, Inc.

FROM: Business Network Long Distance, Inc.

TO: PNG Telecommunications, Inc.

PNG Telecommunications, Inc. (PNG) filed an application for consent to the assignment of the international long distance customer base of Business Network Long Distance, Inc. (BNLD) to PNG. PNG will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization (ITC-214-19961011-00515). BNLD will retain its international section 214 authorization (ITC-214-20021216-00586). PNG, an Ohio corporation, is owned by Roberta Stevens (52%), Allison Stevens (18%), Barbara Williams (18%), and Bernie Stevens (11%), all U.S. citizens.

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

ITC-ASG-20230124-00006 E PNG Telecommunications, Inc.
Assignment
Grant of Authority Date of Action: 03/10/2023

Current Licensee: Integrated Services, Inc.

FROM: Integrated Services, Inc.

TO: PNG Telecommunications, Inc.

PNG Telecommunications, Inc. (PNG) filed an application for consent to the assignment of the international long distance customer base of Integrated Services, Inc. (ISI) to PNG. PNG will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization (ITC-214-19961011-00515). ISI will retain its international section 214 authorization (ITC-214-20060530-00292). PNG, an Ohio corporation, is owned by Roberta Stevens (52%), Allison Stevens (18%), Barbara Williams (18%), and Bernie Stevens (11%), all U.S. citizens.

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

ITC-ASG-20230124-00007 E PNG Telecommunications, Inc.
Assignment
Grant of Authority Date of Action: 03/10/2023

Current Licensee: Multiline Long Distance, Inc.

FROM: Multiline Long Distance Inc.

TO: PNG Telecommunications, Inc.

PNG Telecommunications, Inc. (PNG) filed an application for consent to the assignment of the international long distance customer base of Multiline Long Distance Inc. (MLD) to PNG. PNG will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization (ITC-214-19961011-00515). MLD will retain its international section 214 authorization (ITC-214-20061107-00502). PNG, an Ohio corporation, is owned by Roberta Stevens (52%), Allison Stevens (18%), Barbara Williams (18%), and Bernie Stevens (11%), all U.S. citizens.

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

ITC-ASG-20230213-00017 E PNG Telecommunications, Inc.
Assignment
Grant of Authority Date of Action: 03/10/2023

Current Licensee: Nationwide Long Distance Service, Inc.

FROM: Nationwide Long Distance Service, Inc.

TO: PNG Telecommunications, Inc.

PNG Telecommunications, Inc. (PNG) filed an application for consent to the assignment of the international long distance customer base of Nationwide Long Distance Service, Inc. (NLDS) to PNG. PNG will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization (ITC-214-19961011-00515). NLDS will retain its international section 214 authorization (ITC-214-20060404-00186). PNG, an Ohio corporation, is owned by Roberta Stevens (52%), Allison Stevens (18%), Barbara Williams (18%), and Bernie Stevens (11%), all U.S. citizens.

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

ITC-ASG-20230213-00018 E PNG Telecommunications, Inc.
Assignment
Grant of Authority Date of Action: 03/10/2023

Current Licensee: National Access Long Distance, Inc.

FROM: National Access Long Distance, Inc.

TO: PNG Telecommunications, Inc.

PNG Telecommunications, Inc. (PNG) filed an application for consent to the assignment of the international long distance customer base of National Access Long Distance, Inc. (NALD) to PNG. PNG will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization (ITC-214-19961011-00515). NALD will retain its international section 214 authorization (ITC-214-20021018-00505). PNG, an Ohio corporation, is owned by Roberta Stevens (52%), Allison Stevens (18%), Barbara Williams (18%), and Bernie Stevens (11%), all U.S. citizens.

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

ITC-ASG-20230303-00027 E Fusion Cloud Services, LLC
Assignment
Grant of Authority Date of Action: 03/14/2023

Current Licensee: Fusion Communications, LLC

FROM: Fusion Communications, LLC

TO: Fusion Cloud Services, LLC

Fusion Cloud Services, LLC (Fusion Cloud) filed a notification on March 3, 2023 of the assignment of assets from Fusion Communications, LLC (Fusion Communications) to Fusion Cloud, effective February 1, 2023. Fusion Cloud and Fusion Communications are both wholly owned subsidiaries of Fusion Connect, Inc. (Fusion Connect) and both provide international service under the international section 214 authority held by Fusion Connect (ITC-214-19971001-00592) pursuant to section 63.12(h) of the Commission's rules. 47 CFR § 63.21(h). In a corporate reorganization, Fusion Cloud acquired the Nebraska customer base and operating assets of Fusion Communications.

ITC-T/C-20230217-00019 E Truphone, Inc.
Transfer of Control
Grant of Authority Date of Action: 03/14/2023

Current Licensee: Truphone, Inc.

FROM: Truphone Limited

TO: Geoffrey P Rowley

Truphone, Inc. (TI), a Delaware corporation that holds an international section 214 authorization (ITC-214-20081112-00494), filed a notification on February 17, 2023, of the involuntary transfer of control of TI from Truphone Limited to Mr. Geoffrey Rowley and Mr. Philip Armstrong, as Administrators, effective January 24, 2023. TI is a direct wholly owned subsidiary of Truphone Limited, a private limited liability company organized under the laws of England and Wales. On January 24, 2023, the United Kingdom's High Court of Justice, the Business Property Courts of England and Wales (the "U.K. Court"), issued an order placing Truphone Limited into administration under the Insolvency Act of 1986. The U.K. Court appointed Mr. Rowley and Mr. Armstrong, both U.K. citizens, as Administrators to direct the operations of Truphone Limited during the administration process.

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

SURRENDER

ITC-214-20110511-00128 18C, LLC

By letter filed on March 14, 2023, 18C, LLC notified the Commission that it surrendered its international section 214 authorization effective March 14, 2023.

ITC-214-20180405-00074 Telecom2Go, LLC

By letter filed on March 13, 2023, Telecom2Go, LLC notified the Commission that it surrendered its international section 214 authorization effective March 13, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

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



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-227

Released: March 16, 2023

WIRELINE COMPETITION BUREAU AND OFFICE OF THE MANAGING DIRECTOR ANNOUNCE WIND DOWN OF COVID-19 TELEHEALTH PROGRAM

WC Docket No. 20-89

The Wireline Competition Bureau (Bureau) and Office of the Managing Director offer guidance to participants in the COVID-19 Telehealth Program on the expected expiration of the National Emergency and Public Health Emergency on May 11, 2023. Pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, all payments from health care providers to vendors must be completed and all supported services must be received before the emergency period ends.

In the CARES Act, Congress appropriated \$200 million to the Federal Communications Commission (Commission) “to prevent, prepare for, and respond to” COVID-19, “including to support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services during an emergency period as defined in Section 1135(g)(1) of the Social Security Act.”¹ In the Consolidated Appropriations Act, 2021, Congress appropriated an additional \$249.95 million for the COVID-19 Telehealth Program, which the Commission created under the authority provided by the CARES Act.² The Social Security Act defines an “emergency period” as the period during which there exists “(i) an emergency or disaster declared by the President pursuant to the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and (ii) a public health emergency declared by the Secretary (of Health and Human Services) pursuant to section 319 of the Public Health Service Act.”³

On January 31, 2020, the Department of Health and Human Services declared that a public health emergency exists and has existed since January 27, 2020.⁴ On March 13, 2020, President Trump declared

¹ CARES Act, Pub. L. No. 116-136, 134 Stat. 28, 531 (2020). This bill is available at Library of Congress, *Congress.gov*, <https://www.congress.gov/bill/116th-congress/house-bill/748?q=%7B%22search%22%3A%5B%22cite%3APL116-136%22%5D%7D&s=1&r=1> (last visited Mar. 16, 2023).

² Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet Access Service, § 903 “FCC COVID-19 Telehealth Program” (2020), *available at* Library of Congress, *Congress.gov*, <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (*Consolidated Appropriations Act, 2021*): (“(b) ADDITIONAL APPROPRIATION.—Out of amounts in the Treasury not otherwise appropriated, there is appropriated \$249,950,000 in additional funds for the COVID-19 Telehealth Program, of which \$50,000 shall be transferred by the Commission to the Inspector General of the Commission for oversight of the COVID-19 Telehealth Program.”) (capitalization in original).

³ See 42 U.S.C. § 1320b-5(g)(1)(A).

⁴ Department of Health and Human Services, Administration for Strategic Preparedness & Response, *Determination That A Public Health Emergency Exists* (Jan. 31, 2020) <https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx>.

a national emergency, based on powers granted in the National Emergencies Act.⁵ Both declarations have been extended several times since those dates.⁶ In his February 10, 2023, statement extending the national emergency, President Biden stated that he anticipated terminating the emergency period on May 11, 2023.⁷ The Department of Health and Human Services expects to allow the Public Health Emergency to expire at the end of the day on May 11, 2023.⁸ The emergency period applicable to the COVID-19 Telehealth Program under the CARES Act is tied to the existence of both the National Emergency and the Public Health Emergency. Thus, we anticipate that the emergency period for purposes of the COVID-19 Telehealth program would correspondingly end on May 11, 2023.⁹

Pursuant to the CARES Act and program rules, the COVID-19 Telehealth Program may reimburse only for eligible telehealth expenses incurred by health care providers from March 13, 2020, through May 11, 2023. Below is a summary of upcoming¹⁰ Program deadlines:

- **Purchase/implementation deadline:** The deadline to purchase and implement services supported by the COVID-19 Telehealth Program has already passed, so the expiration of the emergency period will not impact this deadline. For most awardees, the deadline to purchase services was October 31, 2022.¹¹ The deadline was extended to February 28, 2023, for awardees in Puerto Rico, Florida, South Carolina, and North Carolina due to Hurricanes Fiona and Ian.¹²
- **Service delivery/receipt deadline:** All equipment supported by the Program must be delivered by May 11, 2023, and all recurring services must be received by May 11, 2023.

⁵ The White House, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 Fed. Reg. 15337. See National Archives and Records Administration, Federal Register, <https://www.federalregister.gov/d/2020-05794> (last visited Mar. 16, 2023).

⁶ Department of Health and Human Services, Administration for Strategic Preparedness & Response, *Renewal of Determination That A Public Health Emergency Exists* (Feb. 9, 2023) <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-9Feb2023.aspx>.

⁷ The White House, *Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic*, 85 Fed. Reg. 9385. See National Archives and Records Administration, Federal Register, <https://www.federalregister.gov/d/2023-03218> (last visited Mar. 16, 2023). Under the provisions of the National Emergencies Act, emergency powers and authorities shall cease to be exercised after this date. See 50 U.S.C. § 1622(a).

⁸ See Dept. of Health and Human Services web site, *COVID-19 Public Health Emergency (PHE)*, <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html> (last visited Mar. 16, 2023).

⁹ In the event the national emergency is extended past May 11, 2023, all deadlines herein that reference May 11 will be updated to reflect the new end date of the national emergency.

¹⁰ This notice is addressed to Round 2 participants, and the listed deadlines are only for Round 2. Round 1 is complete; the most recent past deadline was Jan. 31, 2022, when Post-Program Reports were due for submission. See *Wireline Competition Bureau and Office of the Managing Director Set July 31, 2021 Invoicing Deadline for COVID-19 Telehealth Program and Provide Post-Program Guidance*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 14628 (WCB/OMD 2020).

¹¹ See *Wireline Competition Bureau Extends Deadlines for the COVID-19 Telehealth Program Round 2*, WC Docket No. 20-89, Public Notice, DA 22-805 (WCB July 29, 2022) (*Round 2 Deadlines Notice*).

¹² See *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6 et al., Order, DA 22-998 (WCB 2022) (*Hurricane Fiona Order*); *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6 et al., Order, DA 22-1063 (WCB 2022) (*Hurricane Ian Order*).

Recurring services are deemed received when the health care provider makes a payment to the vendor.¹³

- **Deadline to submit requests for reimbursement:** The deadline of October 31, 2023, to submit requests for reimbursement¹⁴ is unaffected by the expiration of the national emergency.
- **Deadline to submit Post-Program Feedback Reports:** The deadline of January 31, 2024, to submit Post-Program Feedback Reports¹⁵ is unaffected by the expiration of the national emergency.

The Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the COVID-19 Telehealth Program are used for appropriate purposes. In the event of a violation of Program rules or requirements, the Commission reserves the right to take appropriate action, including, but not limited to, seeking recovery of funds.¹⁶ Awardees may also be subject to compliance audits to ensure compliance with rules and requirements for the COVID-19 Telehealth Program.¹⁷ If audited, awardees must provide documentation related to their participation in the COVID-19 Telehealth Program.¹⁸ Awardees are reminded to retain relevant records for six years past the last date of delivery of services or connected devices and records may be requested as part of any follow-up audit.¹⁹

Additional Information. For assistance, all program participants are encouraged to email Round2TelehthInvoiceSupp@fcc.gov. For special situations or to resolve ambiguous issues, please contact Clinton Highfill, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, clinton.highfill@fcc.gov or (202) 418-0091. Frequently Asked Questions (FAQs) are posted at the Commission's website for the COVID-19 Telehealth Program, www.fcc.gov/covid19telehealth.

-FCC-

¹³ Awardees with recurring service contracts should note that until the emergency period ends, recurring costs may be paid for monthly or in advance. See FCC website, *COVID-19 Telehealth Program (Invoices & Reimbursements)*, Round 2 FAQs tab, FAQ No. 24, <https://www.fcc.gov/covid-19-telehealth-program-invoices-reimbursements> (last visited Mar. 16, 2023).

¹⁴ See *Round 2 Deadlines Notice*. Information on the invoicing process is available at USAC, *Round 2 Invoicing FAQs*, <https://www.usac.org/about/covid-19-telehealth-program/covid-19-telehealth-program-invoicing-faqs/round-2-invoicing-faqs/> (last visited Mar. 16, 2023).

¹⁵ See *Round 2 Deadlines Notice*. See also FCC website, *COVID-19 Telehealth Program (Invoices & Reimbursements)*, Round 2 FAQs tab, FAQ No. 25, <https://www.fcc.gov/covid-19-telehealth-program-invoices-reimbursements> (last visited Mar. 16, 2023). The reporting template is posted at: https://www.fcc.gov/sites/default/files/covid-19_telehealth_post-program_feedback_template.xlsx (last visited Mar. 16, 2023). Completed reports should be filed in WC Docket No. 20-89 in the Commission's electronic comment filing system, available at <https://www.fcc.gov/ecfs/>.

¹⁶ See 47 CFR § 54.631.

¹⁷ See *COVID-19 Telehealth Program; Promoting Telehealth for Low-Income Consumers*, WC Docket Nos. 20-89 and 18-213, Report and Order and Order on Reconsideration, 36 FCC Rcd 7141 at 7176-77, paras. 79-80 (2021) (*Second COVID-19 Report and Order*).

¹⁸ See *id.*

¹⁹ See *id.*



PUBLIC NOTICE

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DA 23-228

Released: March 16, 2023

COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL TO HOST MARCH 23, 2023 LESSONS LEARNED FROM THE PANDEMIC ROUNDTABLE

GN Docket No. 17-208

This Public Notice announces that the Federal Communications Commission's Communications Equity and Diversity Council (CEDC) will host a roundtable discussion on **Lessons Learned from the Pandemic on Broadband Access, Affordability and Deployment**, on March 23, 2023, from 10:00 am to 1:30 pm, DST. The roundtable discussion will be held virtually and will be available to the public for viewing via the Internet at <http://www.fcc.gov/live>.

The goal of the roundtable is to convene key stakeholders across community organizations, internet service providers (ISPs), federal agencies with emergency broadband funding, and state agencies to assess lessons learned concerning programs that provided broadband connectivity to opportunity communities during the pandemic. The half-day virtual workshop will provide a platform to hear from experts from a range of backgrounds and a diverse set of stakeholders about efforts to promote digital equity, broadband adoption, and digital skills training for opportunity communities.

Two panel discussions are planned for the roundtable. **Panel 1, Affordability, Availability and Deployment**, will help identify successful strategies various organizations and entities implemented to promote deployment of affordable and accessible broadband service during the pandemic, and engage about measures that worked well and the best practices going forward to address challenges in the event of a future pandemic or health emergency. This panel is scheduled for 10:20 am – 11:30 am DST. **Panel 2, Adoption and Digital Readiness**, will help identify programs initiated during the pandemic to address adoption and digital readiness, and the opportunities that exist to scale successful programs, while funding them sufficiently to be effective. This panel is scheduled for 12:00 noon – 1:15 pm.

The detailed agenda for the "Lessons Learned from the Pandemic" roundtable discussion will be released prior to the event. The public may view the roundtable discussion via live feed from the FCC's web page at <https://www.fcc.gov/live>. The public may also follow the roundtable discussion on the Commission's YouTube page at <https://www.youtube.com/user/fccdotgovvideo>. In addition, the public may follow the event on Twitter@fcc or via the Commission's Facebook page at www.facebook.com/fcc. Members of the public may submit questions during the roundtable discussions to livequestions@fcc.gov.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be

accepted but may not be possible to accommodate.

Members of the public may submit written comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Any comments should be filed in GN Docket No. 17-208.

More information about the CEDC is available at <https://www.fcc.gov/communications-equity-and-diversity-council>. You may also contact Jamila Bess Johnson, the Designated Federal Officer for the Communications Equity and Diversity Council, at (202) 418-2608, or Jamila.Bess-Johnson@fcc.gov; or Diana Coho, Consumer Affairs and Outreach Specialist, Consumer and Governmental Affairs Bureau, at (202) 418-2848 or, Diana.Coho@fcc.gov, or Ashley Tyson, Attorney Advisor, Wireline Competition Bureau at Ashley.Tyson@fcc.gov or (202) 418-1137.

– FCC –

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 22-151
Table of Allotments, Television Broadcast	)	RM-11927
Stations (Hampton, Virginia)	)	
	)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: March 16, 2023

Released: March 16, 2023

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking¹ issued in response to a Petition for Rulemaking filed by WVEC Television, LLC (Petitioner), the licensee of television station WVEC(TV) (WVEC or Station), channel 11, Hampton, Virginia. The Petitioner has requested the substitution of UHF channel 35 for VHF channel 11 in the Table of TV Allotments. The Petitioner, filed comments in support of the petition, as required by the Commission's rules,² reaffirming its commitment to apply for channel 35.³ No other comments were received.

2. We believe the public interest would be served by substituting channel 35 for channel 11 at Hampton, Virginia. The Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances.⁴ According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 11, despite being able to receive the NBC, CBS, and FOX network affiliates in

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Hampton, Virginia)*, MB Docket No. 22-151, Notice of Proposed Rulemaking, DA 22-404 (rel. Apr. 13, 2022) (*NPRM*).

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

³ As noted in the *NPRM*, the proposed channel 35 facility causes 1.38 percent interference to WFMY-TV, Greensboro, North Carolina, in excess of the 0.5 percent interference allowed in the Commission's rules. *See* 47 CFR § 73.616(d) ("An application will not be accepted if it is predicted to cause interference to more than an additional 0.5 percent of the population served by another post-transition DTV station."). The Petitioner owns both WFMY-TV and WVEC, and provides an Interference Acceptance Consent letter from WFMY-TV, LLC agreeing to accept the interference from the proposed channel 35 facility. Petition, Exhibit C. In addition, the proposed facility was predicted to cause prohibited interference to WYSJ-CD, Yorktown, Virginia (WYSJ-CD). An application for minor modification application to co-locate WYSJ-CD with WVEC's proposed channel 35 facility (LMS File No. 0000188559), thus eliminating the adjacent-channel interference, will be granted simultaneously with the issuance of this Order. *See NPRM* at para. 3, n.7.

⁴ *Id.* at para. 2.

the Norfolk, Virginia market, all of which operate on UHF channels.⁵ The proposed channel change would not cause any loss of service to viewers of WVEC's existing coverage area.⁶

3. As proposed, channel 35 can be substituted for channel 11 at Hampton, Virginia, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules,⁷ at coordinates 36° 49' 00.0" N and 76° 28' 05.0" W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Hampton, Virginia	35	1000	363.9	2,127,491

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.⁸ An expedited effective date is necessary in this case to ensure that WVEC can operate with improved service to its viewers as quickly as possible.

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

<u>City and State</u>	<u>Channel No.</u>
Hampton, Virginia	35

6. **IT IS FURTHER ORDERED**, That within 30 days of the effective date of this Order, WVEC Television, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 35 in lieu of channel 11.

7. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office.

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-151 and RM-11927 **SHALL BE TERMINATED** and its docket closed.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁵ *Id.*

⁶ *Id.*

⁷ 47 CFR § 73.625(a).

⁸ 5 U.S.C. § 553(d)(3).



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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WASHINGTON D.C. 20554

News media information 202-418-0500
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DA No. 23-230

Friday March 17, 2023

Report No. SAT-01709

Satellite Policy Branch Information

Actions Taken

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

SAT-STA-20230109-00001	E	S3144	Momentus Space LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 03/15/2023

On March 15, 2023, the Satellite Division granted, with conditions, the request of Momentus Space LLC for special temporary authority for an additional period of 14 days to operate the UHF beacon on the Vigoride-5 spacecraft.

SAT-STA-20230208-00028	E		Intelsat License LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 03/15/2023

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

SAT-STA-20230303-00047	E	S2423	Intelsat License LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 03/15/2023

On March 15, 2023, the Satellite Division granted, with conditions, the request of Intelsat License LLC for special temporary authority for an additional period of 30 days, to operate the Horizons 2 space station in the fixed-satellite service with a new platform bias at the 73.8° W.L. orbital location.

SAT-STA-20230310-00052	E	S2387	Intelsat License LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 03/11/2023

On March 11, 2023, the Satellite Division granted, with conditions, the request of Intelsat License LLC for special temporary authority for a period of 30 days to conduct telemetry, tracking, and command communications with the Galaxy 15 space station during drift to, and for testing at, the 108.9 W.L. orbital location.

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



Federal Communications Commission
Washington, D.C. 20554

March 17, 2023

In Reply Refer to:
1800B3-TSN

DA 23-231
Released: March 17, 2023

William Johnson, Managing Member
Urban One Broadcasting Network, LLC
414 SW 140th Terrace, Suite 120
Newberry, FL 32669

In re: **DWURB(FM), Cross City, FL**
Facility ID No. 189555
File No. BNPB-20110524AHQ

Petition for Reconsideration

Dear Mr. Johnson:

We have before us a Petition for Reconsideration (Petition) filed by Urban One Broadcasting Network, LLC (Urban One), on January 14, 2022. In the Petition, Urban One seeks reconsideration of the Media Bureau's (Bureau) letter decision denying its June 17, 2021, Petition for Declaratory Ruling.¹ In the Petition for Declaratory Ruling Urban One sought to amend its December 13, 2016, "Petition for Reinstatement of Construction Permit," in which Urban One requested reinstatement of its forfeited permit to construct an FM radio station at Cross City, Florida (Station) and to grant an 18-month construction period. Urban One further sought to remove from the Auction 109 inventory the allotment for Channel 249C3 at Cross City, Florida, which was previously assigned to Urban One's now-forfeited construction permit. We dismiss and, in the alternative, deny the Petition.

Background.² In 2013 Urban One acquired the construction permit for Channel 249 at Cross City, Florida, with an expiration date of July 21, 2014.³ While Urban One identified itself in the

¹ William Johnson, Managing Member, Urban One Broadcasting Network, LLC, Letter Decision, DA 21-1561 (MB Dec. 15, 2021) (*Declaratory Ruling Decision*).

² The procedural history of the above-referenced facility is complex. See File No. BNPB-20110524AHQ. It is recounted in greater detail in the *Declaratory Ruling Decision*. *Declaratory Ruling Decision* at 1-5.

³ Alex Media, Inc. (Alex Media) was the winning bidder for the construction permit (Station) in FM Auction 91. See *Auction of FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 91*, Public Notice, 26 FCC Rcd 7541, Attachment A (MB/WTB 2011). We granted Alex Media's post-auction construction permit application on July 21, 2011, which was set to expire on July 21, 2014. Public Notice, Broadcast Actions, Report No. 47536 (July 26, 2011). On March 1, 2013, Urban One acquired the construction permit from Alex Media. File No. BAPB-20120917AGZ (Assignment Application) (assignment approved December 26, 2012, and

assignment application as an “eligible entity” under the definition set forth in the Commission’s *Promoting Diversity of Ownership in the Broadcasting Services* Report and Order,⁴ at all times relevant to Urban One’s ownership of and attempt to license the Station, which began in 2013, the eligible entity policy was not in effect, having been vacated in 2011 by the United States Court of Appeals for the Third Circuit and thereafter suspended by the Commission.⁵ Thus, despite Urban One’s May 19, 2014, application to modify the construction permit,⁶ and its June 23, 2014, request for tolling of the construction period, the Station construction permit automatically expired and was forfeit by its own terms on July 21, 2014.⁷

Urban One filed petitions for reconsideration of the adverse decisions on its Modification Application and its request to have the construction period tolled. The Media Bureau denied both petitions for reconsideration.⁸ The Commission denied review of those decisions,⁹ and the Bureau then dismissed Urban One’s petition for reconsideration of the Commission’s denial of review.¹⁰ Urban One next sought review from the United States Court of Appeals for the District of Columbia Circuit, which dismissed its Petition for Review for lack of prosecution on August 11, 2017.¹¹ Thus, the Commission’s denial of Urban One’s Modification Application and its request to toll the expiration date of the construction permit and obtain additional time to construct was final as of August 11, 2017. The allotment for the Station, Channel 249C3 at Cross City, Florida, remained in the Table of FM Allotments,¹² and was eventually included in the inventory for Auction 109.¹³

consummated March 1, 2013). Urban One certified in the Assignment Application that it qualified as an eligible entity.

⁴ *Promoting Diversity of Ownership in the Broadcasting Services*, MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, 5925-27 (2008) (*2008 Diversity Order*).

⁵ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 437 (3d Cir. 2011) (*Prometheus II*); *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, Public Notice, 26 FCC Rcd 10370 (MB 2011).

⁶ File No. BMPH-20140519ABG (Modification Application).

⁷ *William Johnson*, Letter Decision, 30 FCC Rcd 2015, 2021 (MB 2015) (*Reconsideration Decision*).

⁸ *Id.*

⁹ *Urban One Broadcasting Network, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 4186 (2016) (*Urban One MO&O*).

¹⁰ *Urban One Broadcasting Network, LLC*, Order on Reconsideration, 31 FCC Rcd 7680 (MB 2016) (*Reconsideration Dismissal*).

¹¹ *Urban One Broadcasting Network, LLC v. FCC*, Order, Document No. 1688385 (D.C. Cir. Aug. 11, 2017). Additionally, since release of the *Declaratory Ruling Decision*, Urban One filed an action in the United States District Court for the District of Columbia, seeking an injunction prohibiting the Commission from offering the Cross City permit in Auction 109 and returning the permit to Urban One. The court dismissed that action on November 29, 2022, finding that it lacked subject matter jurisdiction. *William Johnson, et al. v. FCC*, Memorandum Opinion, Civil Action No. 1:21-cv-2050 (CKK), at 5-9 (D.D.C. Nov. 29, 2022).

¹² 47 CFR § 73.202.

¹³ *Public Notice Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Comment Sought on Competitive Bidding Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, 36 FCC Rcd 1409, 1410, para. 3 (OEA/MB 2021) (*Auction 109 Comment Public Notice*). The Cross City permit had previously been offered in the inventory for Auction 106, which was canceled due to the COVID-19 pandemic, and the

In its Petition for Declaratory Ruling, Urban One argued that the Commission must reinstate its construction permit and provide an additional 18 months in which to construct the Station, based on the Bureau's 2021 reinstatement of the eligible entity policy pursuant to *FCC v. Prometheus Radio Project*.¹⁴ Urban One also demanded that the Commission remove the vacant Cross City allotment from the Auction 109 inventory. Because Urban One's construction permit was automatically forfeited on July 21, 2014,¹⁵ and the dismissal of its appeals of the Commission's denial of the Modification Application and the tolling request became final in 2017, the Bureau denied the Petition for Declaratory Ruling.¹⁶

Urban One now seeks reconsideration of the *Declaratory Ruling Decision*. It argues, first, that the Bureau erred by not putting its Petition for Declaratory Ruling on public notice, pursuant to section 1.2(b) of the Commission's rules,¹⁷ and seeking public comment. Second, Urban One contends that the Bureau should apply the eligible entity policy, and specifically the rule provision that gives an eligible entity acquiring an expiring construction permit up to an additional 18 months in which to construct the facilities,¹⁸ retroactively to Urban One. It asserts that the Bureau's 2021 reinstatement of the rule, which the court had first vacated in 2011, before Urban One acquired the Cross City permit in 2013, would have applied to it had the Commission not suspended the rule after the court of appeals vacated it. Finally, Urban One asserts that equity and fairness compel application of the eligible entity definition and construction period extension rule.

Discussion. We dismiss the Petition as defective for failing to meet the requirements for reconsideration of a decision on delegated authority and, on alternative and independent grounds, we deny the Petition on the merits.

Procedural Dismissal. A party may seek reconsideration of a Commission denial of an action by a designated authority only on the basis of either changed circumstances or newly discovered facts, or

inventory offered in Auction 109. *Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Comment Sought on Competitive Bidding Procedures for Auction 106*, AU Docket No. 19-290, Public Notice, DA 19-1027, 34 FCC Rcd 9375 (OEA/MB 2019) (*Auction 106 Comment Public Notice*). As noted in the *Declaratory Ruling Decision*, Urban One did not protest the inclusion of the Cross City permit in response to either the *Auction 106 Comment Public Notice* or the *Auction 109 Comment Public Notice*. *Declaratory Ruling Decision* at 4-5.

¹⁴ *FCC v. Prometheus Radio Project*, 141 S.Ct. 1150, 209 L.Ed.2d 287 (2021) (*Prometheus Supreme Court Decision*). In June 2021, the Media Bureau announced that the eligible entity rules would be reinstated pursuant to the *Prometheus Supreme Court Decision*. *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, 09-182, 07-294, 04-256, 17-289, Order, DA 21-656, at 1-2, para. 1 (MB June 4, 2021). Subsequently on July 1, 2021, the Media Bureau announced by public notice that the summary of the Order had been published in the *Federal Register* and that the reinstated rules became effective on June 30, 2021. *Media Bureau Announces June 30, 2021 Effective Date of Reinstated Media Ownership Rules*, Public Notice, DA 21-783 (MB July 1, 2021); *Media Bureau Reinstates Commission's Prior Rule Changes Regarding Media Ownership Consistent with the U.S. Supreme Court's Decision*, 86 Fed. Reg. 34627 (June 30, 2021).

¹⁵ Section 319(b) of the Communications Act of 1934, as amended (Act) and section 73.3598(e) of the Rules provide that a station's construction permit forfeits automatically if the station is not ready for operation by the construction deadline. See 47 U.S.C. § 319(b); 47 CFR § 73.3598(e).

¹⁶ See *Declaratory Ruling Decision*, *supra* note 1.

¹⁷ 47 CFR § 1.2(b).

¹⁸ See 47 CFR § 73.3598(a).

when the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.¹⁹ In the Petition, however, Urban One does not allege any change in circumstances or offer any newly discovered facts. Instead, it repeats the arguments it made in its Petition for Declaratory Ruling, as well as arguments it previously raised in pleadings contemporaneous with its attempts to license the Station, and petitions for reconsideration of adverse decisions on those pleadings.²⁰ We reaffirm that “[i]t is settled Commission Policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.”²¹ We further note that the evidence presented in Exhibits A and B to the Petition consists of documents either generated or received by Urban One in 2014, indicating that they do not constitute facts “unknown to petitioner until after [its] last opportunity to present them to the Commission,” or that it “could not through the exercise of ordinary diligence have learned of . . . prior to such opportunity.”²² Accordingly we dismiss the Petition as procedurally defective.

Denial on the Merits. On alternative and independent grounds, we deny the Petition on the merits. We find that Urban One may not use the mechanism of a Petition for Declaratory Ruling to challenge unambiguous Commission and staff orders. Additionally, we find that Urban One may not retroactively apply the Supreme Court’s 2021 revival of the eligible entity definition and related rules to its construction permit, which had expired by its own terms at a point in time during which the Commission had suspended that definition and attendant rules. Finally, we disagree with Urban One’s attempt to relitigate its arguments surrounding the Modification Application by labeling those arguments as an appeal to “equity and fairness.”

Section 1.2(b) of the rules. We find the Bureau was not obligated by section 1.2(b) of the rules to seek public comment on the Petition for Declaratory Ruling,²³ and that Urban One had multiple opportunities to provide input on the inclusion of the Cross City allotment in the Auction 109 inventory.

As noted above, in the Petition for Declaratory Ruling Urban One had first sought to amend its December 13, 2016, “Petition for Reinstatement of Construction Permit,” asking the Commission to reinstate Urban One’s forfeited permit to construct an FM radio station at Cross City, Florida, and to grant an additional 18-month construction period. Second, Urban One asked to remove from the Auction 109 inventory the allotment for Channel 249C3 at Cross City, Florida, which previously covered Urban One’s now-forfeited construction permit. Neither of these requests for relief is appropriate for a petition for declaratory ruling. According to section 1.2(a) of the rules, a declaratory ruling is designed for “terminating a controversy or removing uncertainty.”²⁴ The expiration of the Cross City construction

¹⁹ 47 CFR § 1.106(c).

²⁰ See generally *Declaratory Ruling Decision* at 2-4 nn.4-18. See also *Reconsideration Decision, Urban One MO&O*, and *Reconsideration Dismissal*, *supra* notes 7-10.

²¹ See *S&L Teen Hospital Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900-01, para. 3 (2002) (citing *Mandeville Broad. Corp. and Infinity Broad. of Los Angeles*, Order, 3 FCC Rcd 1667, para. 2 (1988)).

²² See 47 CFR § 1.106(b)(2)(ii) (referenced in 47 CFR § 1.106(c)(1)).

²³ Section 1.2(b) (47 CFR § 1.2(b)) states that the Bureau “should docket such a petition [for declaratory ruling] within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice.”

²⁴ See 47 CFR § 1.2(a).

permit was neither controversial nor uncertain,²⁵ and the consequence of automatic forfeiture was unambiguously set forth in the authorization itself, as well as in section 319(b) of the Act and section 73.3598(e) of the rules.²⁶ Moreover, a party's recourse when disagreeing with a clear and non-controversial Commission or staff action is to seek reconsideration or review, not to file a petition for declaratory ruling. As the Commission has stated, "[a]n interested person who believes an unambiguous Commission decision is incorrect, however, should either file a timely petition for reconsideration with this Commission or a timely appeal or petition for review with an appropriate Court of Appeals. Such persons should not attempt to use a petition for declaratory ruling as a substitute for a petition for reconsideration."²⁷

Neither of the specific requests for relief raised in the Petition for Declaratory Ruling was so complicated as to require additional analysis and extended time for non-parties to file comments.²⁸ The fact that Urban One disagreed with the staff's unambiguous decisions not to grant the Modification Application or the tolling request does not render either a matter of such complexity or of such public interest that it must be docketed for public comment.²⁹

Although we disagree that section 1.2(b) required that we seek comment on Urban One's request to remove the Cross City allotment from Auction 109, as pointed out in the *Declaratory Ruling Decision*, nevertheless the public had multiple opportunities to comment on the entire proposed Auction 106/109 inventory, including the Cross City allotment.³⁰ Urban One offers no explanation for why those opportunities were not sufficient nor does it explain why it did not avail itself of those opportunities to provide timely input about the Cross City allotment.³¹ In the Petition, it neglects to acknowledge that it had ample opportunity to comment on the inclusion of the Cross City allotment in Auctions 106 and 109, but did not do so. Urban One has mis-read the framework of section 1.2(b), and we reject its argument in this regard.

Retroactive application of eligible entity definition and section 73.3598(a). We disagree with Urban One and find the Bureau's 2021 reinstatement of the eligible entity policy cannot be retroactively

²⁵ In adopting section 1.2(b), the Commission intended to make the process for petitions for declaratory rulings "similar" to that for petitions for rule making, meant for matters so complex that extra response time is warranted. *Part 1 Amendment R&O*, 26 FCC Rcd at 1598-99, para. 12.

²⁶ See *Declaratory Ruling Decision* at 1 n.1; 47 U.S.C. § 319(b); 47 CFR § 73.3598(e).

²⁷ *Public Service Commission of Maryland and Maryland People's Counsel Applications for Review of a Memorandum Opinion and Order By the Chief, Common Carrier Bureau Denying The Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services*, Memorandum Opinion and Order, 4 FCC Rcd 4000, 4004, para. 30 (1989).

²⁸ We also point out that, to the extent in-depth analysis was needed in considering Urban One's contentions, the staff wrote a seven-page letter decision in the *Declaratory Ruling Decision*, in which it exhaustively responded to Urban One's contentions. It is unclear what benefit Urban One thinks would have accrued by opening its arguments up to public comment. Also, as discussed below, the public was invited to comment on the inclusion of the Cross City permit in the Auction 106 and Auction 109 inventories—an invitation that Urban One itself declined.

²⁹ We reiterate that the mere re-labeling of a straightforward request for relief as a "petition for declaratory ruling" does not of itself justify the extended deadlines and other treatment accorded such petitions under 47 CFR § 1.2.

³⁰ *Declaratory Ruling Decision* at 4-5. See *Auction 106 Comment Public Notice*, *Auction 109 Comment Public Notice*, *supra* note 13.

³¹ *Id.*

applied to the Urban One construction permit, which expired and was automatically forfeited on July 21, 2014. Throughout this protracted proceeding, Urban One has claimed to be an “eligible entity,” and that it is therefore unequivocally entitled to an additional 18 months in which to construct the Station.³² It argues that the Commission’s eligible entity definition should be retroactively applied to it because the rule “went into effect in 2008.”³³ Urban One further argues that the eligible entity definition and rules applying that definition, which were reinstated by the United States Supreme Court in 2021,³⁴ should be considered to be of “retroactive effect . . . appropriate for new applications of existing law, clarifications, and additions.”³⁵ Further, citing certain specific aspects of its prior 2014 attempt to modify the Station construction permit, Urban One contends that “equity and fairness” must now be applied and should dictate that the Cross City construction permit be returned to it.³⁶

As noted, the revenue-based eligible entity definition, as well as the revision to section 73.3598 of the rules allowing an eligible entity acquiring an expiring construction permit up to an additional 18 months to construct the facility, were first adopted in the Commission’s *2008 Diversity Order*.³⁷ The United States Court of Appeals for the Third Circuit vacated the eligible entity definition, and the rules reliant on that definition in 2011,³⁸ before Urban One acquired the Cross City construction permit in 2013. The eligible entity definition, and correlating rules, were subsequently addressed and re-adopted by the Commission in August 2016, in the *2014/2010 Quadrennial Second R&O*.³⁹ When that re-adopted definition became effective in December 2016, the Cross City construction permit had already expired and been forfeited by its terms, and Urban One had exhausted its remedies before the Commission.⁴⁰

It is thus undisputed that the eligible entity definition, and the specific rule relying on that definition that gave certain eligible entities additional time to build out their facilities,⁴¹ were not in effect at any time from the date when Urban One first acquired the Cross City construction permit, through the date when that permit expired and was forfeited by its terms, and through the date when the Commission

³² See 47 CFR § 73.3598(a).

³³ Petition at 2.

³⁴ See *supra* note 14.

³⁵ Petition at 3.

³⁶ *Id.* at 2-3.

³⁷ See *2008 Diversity Order*, *supra* note 4, 23 FCC Rcd at 5925-26, 5928-31, paras. 6-7, 10-16.

³⁸ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 437 (3d Cir. 2011) (*Prometheus II*).

³⁹ *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, 09-182, 07-294, 04-256, Second Report and Order, 31 FCC Rcd 9864, 9985-87, para. 285-286 (2016) (*2014/2010 Quadrennial Second R&O*). See also *Prometheus Supreme Court Decision*, 141 S.Ct. at 1160 n.4.

⁴⁰ See *2014 Quadrennial Regulatory Review*, 81 Fed. Reg. 76220-01 (Nov. 1, 2016) (announcing December 1, 2016, effective date of reinstated eligible entity policy); *Reconsideration Dismissal*, *supra* note 10, 31 FCC Rcd 7680 (MB 2016) (exhausting Urban One’s remedies before the Commission). Following release of the *Reconsideration Dismissal*, on August 15, 2016, Urban One filed a Petition for Review with the United States Court of Appeals for the District of Columbia Circuit.

⁴¹ See 47 CFR § 73.3598(a) (“An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license.”).

finally rejected Urban One's attempts to revive the construction permit. Urban One itself states in its Petition that "an agency that fails to comply with its own regulations is fatal to the deviant action."⁴² It is true that, as a general matter, an administrative agency must apply the law in effect at the time it renders its decision unless there is some indication to the contrary in the statute or its legislative history or unless the new statute or rule would have retroactive effect.⁴³ What Urban One fails to recognize is that, at the time the Bureau and the Commission released their decisions regarding the Station construction permit, the rule in effect did not include the eligible entity definition, nor did it include the allowance for an additional 18 months to construct that Urban One now demands. In rejecting Urban One's arguments and demands for extra time to construct, the Bureau and Commission correctly applied the law in effect at the time.

We therefore reject Urban One's argument that the 2021 *Prometheus Supreme Court Decision* invalidates the entire administrative history of the eligible entity definition and the rules employing that definition. Urban One seems to contend that the *Prometheus Supreme Court Decision* effectively nullified the entire intervening record of the eligible entity definition from 2008 to the present, including the two prior vacatur and remands of the definition by a court of appeals, ensuing suspensions of that definition and related rules by the Commission, and the ultimate lifting of the suspension upon reinstatement of the definition pursuant to a Supreme Court reversal.⁴⁴ As noted above, the Commission is bound by the law as it exists at the time a given case is decided, and that body of law included all court and Commission decisions pertaining to the eligible entity definition. Those valid legal actions did not cease to exist on the day the Supreme Court reversed the court of appeals decision, such that parties affected by those earlier actions—legally correct when made—may now come before us to demand that we retroactively render the definition and correlating rules applicable during the time periods when the regulations were not actually in effect. We know of no precedent, and Urban One cites none, to support this novel proposition.⁴⁵

Moreover, Urban One ignores the fact that the procedural history of the eligible entity policy includes Commission public notices, published in accordance with section 552(a) of the Administrative Procedure Act,⁴⁶ announcing the effective dates of both rule suspensions and rule reinstatements.⁴⁷ This includes notice of the effective date of those rules post-*Prometheus Supreme Court Decision*.⁴⁸ Urban

⁴² Petition at 2 (citing *Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356 (D.C. Cir. 1979)).

⁴³ *Petition for Modification of Dayton, Ohio, Designated Market Area with Regard to Television Station WHIO-TV, Dayton, Ohio*, MB Docket No. 13-201, Memorandum Opinion and Order, 33 FCC Rcd 8943, 8948, para. 14 (2018).

⁴⁴ See *supra* notes 5, 14.

⁴⁵ To hold otherwise would require an agency to revisit virtually any case that might have been impacted by a previously vacated and suspended rule. Indeed, given that any rule is subject to attack when it is first applied to a party (see, e.g., *Functional Music v. FCC*, 274 F.2d 543, 546-47 (D.C. Cir. 1958), *cert. denied*, 361 U.S. 813 (1959); *Geller v. FCC*, 610 F.2d 973, 978 (D.C. Cir. 1979)), we could essentially never reach a final decision were we to accept Urban One's novel interpretation of retroactivity: a subsequent litigant could successfully attack a rule and, in theory, unravel all previous decisions that relied on the rule.

⁴⁶ 5 U.S.C. § 552(a)(D), (E).

⁴⁷ See *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, Public Notice, 26 FCC Rcd 10370 (MB 2011); *2014/2010 Quadrennial Second R&O*, 31 FCC Rcd at 9979-84, paras. 279-286.

⁴⁸ See *Media Bureau Announces June 30, 2021 Effective Date of Reinstated Media Ownership Rules*, Public Notice, DA 21-783 (MB July 1, 2021), cited *supra* note 14.

One would have us eradicate these published effective date notices in order to substitute its own preferred effective date for the previously vacated rules. Again, however, Urban One may not re-write the record in order to sidestep the Cross City permit's expiration at a time when the eligible entity definition, and the construction permit extension provisions of section 73.3598, had been suspended. We therefore reject Urban One's attempt to argue that the eligible entity definition and related rule should be applied *post hoc* in order to resurrect the forfeited Cross City permit.

Equity arguments. We also reject Urban One's claim that we must reinstate its construction permit based on "equity and fairness." Apart from contradicting the history of Urban One's Cross City construction permit,⁴⁹ its appeals to "equity and fairness" are nothing more than an attempt to relitigate the Modification Application, the Commission's denial of which has been final for years.

As discussed in the Background section above, Urban One has extensively pleaded, and the Commission has rejected, its arguments regarding the Modification Application it filed for the Cross City construction permit.⁵⁰ Having unsuccessfully sought Commission and court review of these contentions, Urban One may not simply re-argue the points, years later, by labeling them an appeal to "equity and fairness." This is especially true where, as here, Urban One attempts to use a petition for reconsideration of a what we have already determined to be an invalid Petition for Declaratory Ruling to introduce new arguments in matters that have already been argued, decided, and dismissed. We thus dismiss Urban One's "equity and fairness" arguments as untimely.⁵¹

Conclusion. Because Urban One has not presented us with new facts or circumstances justifying reconsideration of the *Declaratory Ruling Decision*, we dismiss the Petition. As discussed above, on alternative and independent grounds, we find no merit in Urban One's various arguments in support of its Petition, and on that basis the January 14, 2022, Petition for Reconsideration is denied.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴⁹ For example, Urban One states that the Bureau should have granted a request for special temporary authorization (STA) to operate the Cross City facility that it insists it submitted. Urban One attaches to its Petition as Exhibit A a bare copy of an STA request, but this does not bear an Office of the Secretary stamp or any other indication that it was received or accepted for filing by the Commission, and there is no record of such a request in the Commission's filing databases. Without a record of the filing, or a date-stamped copy, we have no basis to conclude that such request was ever filed.

⁵⁰ See *supra* notes 7-11 and accompanying text.

⁵¹ Even were we to consider the substance of Urban One's arguments, we would have rejected them. Given the protracted history of this matter, however, we see no value in discussing contentions that, as noted in the text, should not have been presented in the first place.

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

In the Matter of	)	
	)	
Implementing the Infrastructure Investment and	)	GN Docket No. 22-69
Jobs Act: Prevention and Elimination of Digital	)	
Discrimination	)	
	)	

ORDER

Adopted: March 17, 2023

Released: March 17, 2023

Reply Comment Date in Response to the Notice of Proposed Rulemaking: April 20, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (Bureau) grants an unopposed Motion filed by Public Knowledge, The Benton Institute for Broadband & Society, Center for Accessible Technology, Common Cause, Common Sense Media, Communications Workers of America, Electronic Frontier Foundation, Free Press, The Greenlining Institute, the Lawyers' Committee for Civil Rights Under Law, MediaJustice, National Urban League, Next Century Cities, National Digital Inclusion Alliance, and TURN—The Utility Reform Network (collectively “Public Interest Advocates”) seeking a 30-day extension of time for filing reply comments in the above-captioned proceeding from March 21, 2023 to April 20, 2023.¹

II. BACKGROUND

2. On March 16, 2022, the Commission adopted a *Notice of Inquiry* to commence a proceeding “to ensure that all people of the United States benefit from equal access to broadband internet access service,” with the intention of preventing and identifying steps the Commission should take to eliminate “digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin,” consistent with Congress’s directive in section 60506 of the Infrastructure Investment and Jobs Act (Infrastructure Act).² Subsequently, on December 21, 2022, the Commission adopted a *Notice of Proposed Rulemaking* that built upon the robust comments offered by a broad array of stakeholders in response to the *Notice of Inquiry* and sought further, focused comment on the statutory

¹ Motion of Public Knowledge, The Benton Institute for Broadband & Society, Center for Accessible Technology, Common Cause, Common Sense Media, Communications Workers of America, Electronic Frontier Foundation, Free Press, The Greenlining Institute, the Lawyers' Committee for Civil Rights Under Law, MediaJustice, National Urban League, Next Century Cities, National Digital Inclusion Alliance, and TURN—The Utility Reform Network for Extension of Time, GN Docket No. 22-69 (filed Mar. 13, 2023) (*March 13 Extension Request*).

² *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Inquiry, FCC 22-21, para. 2 (2022) (*Notice of Inquiry*) (citing Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act)). Section 60506 of the Infrastructure Act is codified at 47 U.S.C. § 1754, *Digital Discrimination*.

language and the proposals suggested in the record.³ Interested parties were required to file their initial comments by February 21, 2023 and their reply comments by March 21, 2023.⁴

3. On March 13, 2023, Public Interest Advocates filed a joint motion for an extension of time to submit their reply comments, pursuant to section 1.46 of the Commission's rules.⁵ As justifications for the extension, the parties point to the complexity of issues raised in the *Notice of Proposed Rulemaking*, as well as the size and complexity of the record that the Commission received in the initial round of comments.⁶ The parties further contend that the extension is necessary for them to fully participate in this proceeding by providing them adequate time to examine the record and respond, and furthermore, that it "will significantly improve the record for the FCC's consideration."⁷ Finally, Public Interest Advocates argue that granting a 30-day extension will not significantly delay the proceeding and will not prejudice any other party because the statutory deadline of November 15, 2023, remains fixed.⁸

III. DISCUSSION

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

5. Here, because of the complexity and importance of the legal and policy issues contemplated in the *Notice of Proposed Rulemaking* and the wide breadth of the record the Commission received in the initial round of comments,¹³ the Bureau finds good cause to grant the extension request. As Public Interest Advocates acknowledge, the Commission is subject to a statutory deadline to implement Congress's directive in section 60506 of the Infrastructure Act.¹⁴ The Bureau finds that an

³ *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98 (2022) (*Notice of Proposed Rulemaking*).

⁴ *Wireline Competition Bureau Announces Comment Dates for the Preventing Digital Discrimination Notice of Proposed Rulemaking*, GN Docket No. 22-69, Public Notice, DA 23-54 (WCB Jan. 20, 2023).

⁵ 47 CFR § 1.46.

⁶ *March 13 Extension Request* at 2.

⁷ *Id.* at 2, 4.

⁸ *Id.*

⁹ 47 CFR § 1.46(a).

¹⁰ See e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59 and WC Docket No. 17-97, Order, 36 FCC Rcd 15572, 15573, para. 4 (WCB & CGB 2021) (*2021 Extension Request Order*); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Order, DA 23-13 (WCB 2022).

¹¹ *2021 Extension Request Order*, 36 FCC Rcd at 15573, para. 4.

¹² *Id.*

¹³ During the initial comment period, the Commission received a record totaling approximately 1,500 pages.

¹⁴ *March 13 Extension Request* at 4; 47 U.S.C. § 1754(b) (stating that the Commission shall adopt rules to facilitate equal access to broadband services not later than two years after November 15, 2021).

extension of 30 days to file reply comments is warranted to allow interested parties the time to meaningfully review and reply to the information in the record and is consistent with this deadline.¹⁵ This extension will facilitate the development of a complete and informed record and will not harm any party in the proceeding nor cause a significant delay in the Commission's ability to consider the issues raised in this proceeding in a timely manner. Thus, the Bureau extends the deadline for the filing of reply comments until April 20, 2023.

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

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

IV. ORDERING CLAUSES

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

9. IT IS FURTHER ORDERED that the date for filing reply comments in response to the *Notice of Proposed Rulemaking* is EXTENDED to April 20, 2023.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

¹⁵ The Commission has found good cause to grant requests for extension of time in proceedings subject to a statutory deadline where the extension would facilitate the development of a complete record on expansive and complex issues. See, e.g., *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, 26 FCC Rcd 9445, 9446, para. 4 (MB 2011); *Implementation of Section 703(E) of the Telecommunications Act of 1996, Amendment of Rules and Policies Governing Pole Attachments*, Order, 13 FCC Rcd 7959, 7956, paras. 3-5 (Cable Serv. Bur. 1997).

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

In the Matter of	)	
	)	
Promoting Telehealth to Low-Income Consumers	)	WC Docket 18-213
	)	
COVID-19 Telehealth Program	)	WC Docket No. 20-89
	)	

REPORT

Adopted: March 21, 2023

Released: March 21, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Report, the Wireline Competition Bureau (Bureau) analyzes how the Connected Care Pilot Program (Pilot Program) and the COVID-19 Telehealth Program impacted health care providers' use of telehealth services. Telehealth took on an increasingly critical role in health care delivery during the coronavirus disease 2019 (COVID-19) pandemic. Additionally, advances in technology and broadband connectivity are transforming health care from a service delivered solely through traditional brick and mortar health care facilities to include connected care options delivered via a broadband Internet access connection directly to the patient's home or mobile location.¹ As a result, since the COVID-19 pandemic began in spring of 2020, many health care providers expanded their telehealth options or began offering telehealth for the first time. The COVID-19 Telehealth Program enabled health care providers to continue offering necessary care throughout the pandemic, and the ongoing Connected Care Pilot Program has increased participation in telehealth and improved health care outcomes.

II. BACKGROUND

2. The Commission's efforts to support telehealth care offered by health care providers first began in 2020 with the adoption of the *Connected Care and COVID-19 Program Report and Order*.² While the Commission adopted the Pilot Program and COVID-19 Telehealth Program on the same day, each program serves a different role in supporting telehealth access.³ Before the COVID-19 pandemic began, the Commission initially contemplated a pilot program to be funded through the Universal Service Fund (USF or Fund) to study how the Commission might support connected care services.⁴ The Commission identified "connected care" services as a subset of telehealth that uses broadband Internet

¹ See, e.g., Frank Cunningham and Sam Marwaha, *Rapid Advances in Digital and Remote Health Are Changing the Care Delivery Landscape* (Feb. 8, 2021), <https://www.fiercehealthcare.com/sponsored/rapid-advances-digital-and-remote-health-are-changing-care-delivery-landscape>.

² See *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket No. 18-213, Report and Order, 35 FCC Rcd 3366 (2020) (*Connected Care and COVID-19 Program Report and Order*).

³ See *Connected Care and COVID-19 Program Report and Order*, 35 FCC Rcd 3366.

⁴ See *Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Notice of Inquiry, 33 FCC Rcd 7825 (2018) (*Connected Care Notice of Inquiry or Notice of Inquiry*); *Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Notice of Proposed Rulemaking, 34 FCC Rcd 5620 (2019) (*Connected Care Notice*).

access service-enabled technologies to deliver remote medical, diagnostic, patient-centered, and treatment-related services directly to patients outside of traditional brick and mortar medical facilities—including specifically to patients at their mobile location or residence.⁵ Although the Commission adopted the Connected Care Pilot Program at the outset of the coronavirus pandemic, the Pilot Program’s purpose—to gain insight into how the Fund might be leveraged to promote connected care services—was not specifically connected to the COVID-19 pandemic.⁶ By contrast, the Commission adopted the COVID-19 Telehealth Program pursuant to Congressional direction to provide funding on a temporary, emergency basis to health care providers responding to the pandemic.⁷ Following the final selections in the Connected Care Pilot Program in March 2022, Chairwoman Rosenworcel charged Commission staff with preparing, within a year, a report on lessons learned thus far from the COVID-19 Telehealth Program and the Connected Care Pilot Program.⁸

A. COVID-19 Telehealth Program

3. On March 27, 2020, in response to the coronavirus outbreak, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law, providing, among a panoply of other actions, \$200 million to the Commission to support health care providers in the fight against the ongoing coronavirus pandemic.⁹ The CARES Act established the COVID-19 Telehealth Program “to prevent, prepare for, and respond to coronavirus” including support of health care providers “to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services.”¹⁰

4. On April 2, 2020, the Commission established the COVID-19 Telehealth Program with a budget of \$200 million for its first round (Round 1).¹¹ The Program provides 100% reimbursement for eligible equipment and services.¹² End-user devices and equipment were eligible for support, as were other connected devices and monthly recurring charges for six months for Round 1 or 12 months for the second round (Round 2).¹³

5. The Commission’s work regarding purchasing and invoicing for Round 1 is complete. The Commission fully obligated the \$200 million appropriated by Congress by issuing awards for 539

⁵ See *Connected Care and COVID-19 Program Report and Order*, 35 FCC Rcd at 3375, 3385, paras. 14, 39.

⁶ See *id.* at 3368-69, paras. 5-6. While the Pilot Program was not adopted to specifically address the coronavirus pandemic, the Commission did contemplate the Program being useful in remote treatment of infectious diseases such as COVID-19. See *id.* at 3385, para. 39.

⁷ *Connected Care and COVID-19 Program Report and Order*, 35 FCC Rcd at 3375, para. 13.

⁸ See *FCC Announces Final Set of Projects Selected for the Connected Care Pilot Program*, WC Docket 18-213, Public Notice, 9 (2022) (Statement of Chairwoman Jessica Rosenworcel) (*Connected Care Final Selection Public Notice*).

⁹ CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). This bill is available at <https://www.congress.gov/bill/116th-congress/house-bill/748?q=%7B%22search%22%3A%5B%22cite%3A%22%22%5D%7D&s=1&r=1>. The CARES Act appropriates \$200 million to the Commission “to prevent, prepare for, and respond to coronavirus, including to support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services during an emergency period, as defined in section 1135(g)(1) of the Social Security Act (42 U.S.C. 1320b-5(g)(1)).”

¹⁰ See CARES Act, Pub. L. No. 116-136, 134 Stat. 281, 531, 15 U.S.C. § 9001 (note) (2020).

¹¹ *Connected Care and COVID-19 Program Report and Order*, 35 FCC Rcd 3366.

¹² *Id.* at 3376-77, para. 17.

¹³ CARES Act, 134 Stat. at 531.

applications from April 16, 2020, through July 8, 2020.¹⁴ Awardees had until December 31, 2020, to complete purchases and initiate eligible services and until July 31, 2021, to submit invoices and reimbursement requests.¹⁵ The reimbursement period for recurring costs, such as broadband or software subscriptions, has lapsed, and the Commission has paid all qualifying Round 1 reimbursement requests.

6. Supplemental funding of \$249.95 million was provided in December 2020 through the Consolidated Appropriations Act, 2021.¹⁶ As directed in this second appropriation, the Commission held a 10-day comment period on how to handle first round applications that were not funded, as well as the metrics to be used in evaluating applications.¹⁷ The second appropriation also appended to the initial CARES Act language certain requirements for the application process, including equitable geographic distribution of awards, a requirement that Round 1 applicants who were not selected be allowed to amend their applications, a two-stage application review process, and specific Congressional reporting requirements.¹⁸ The Commission adopted requirements and procedures governing Round 2 on March 30, 2021.¹⁹ The second appropriation, combined with unclaimed Round 1 funds,²⁰ provided for Round 2 awards of \$256.4 million to 446 applicants, announced between August 2021 and January 2022.²¹ At the

¹⁴ Press Release, FCC, FCC Approves Final Set of COVID-19 Telehealth Program Applications (July 8, 2020), <https://www.fcc.gov/document/fcc-approves-final-set-covid-19-telehealth-program-applications>.

¹⁵ See *Wireline Competition Bureau Extends the COVID-19 Telehealth Program September 30, 2020 Purchase and Implementation Deadline*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 10580 (WCB Sept. 28, 2020); *Wireline Competition Bureau and Office of the Managing Director Set July 31, 2021 Invoicing Deadline for COVID-19 Telehealth Program and Provide Post-Program Guidance*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 14628 (WCB/OMD 2020) (*Round 1 Invoicing Deadline Public Notice*).

¹⁶ See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet Access Service, § 903 “FCC COVID-19 Telehealth Program” (2020), <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act); Section 903(b), *Additional Appropriation*, provides as follows: “Out of amounts in the Treasury not otherwise appropriated, there is appropriated \$249,950,000 in additional funds for the COVID-19 Telehealth Program, of which \$50,000 shall be transferred by the Commission to the Inspector General of the Commission for oversight of the COVID-19 Telehealth Program.” Section 903(a)(3), in turn, defines the term “COVID-19 Telehealth Program” to mean “the COVID-19 Telehealth Program established by the Commission under the authority provided under the heading ‘SALARIES AND EXPENSES’ under the heading ‘FEDERAL COMMUNICATIONS COMMISSION’ under the heading ‘INDEPENDENT AGENCIES’ in title V of Division B of the CARES Act (Public Law 116-136; 134 Stat. 531).” (case formatting in the statute).

¹⁷ See *Wireline Competition Bureau Seeks Comment on COVID-19 Telehealth Program Application Evaluation Metrics*, WC Docket No. 20-89, Public Notice, DA 21-14 (WCB Jan. 6, 2021).

¹⁸ See Consolidated Appropriations Act, 2021.

¹⁹ See *COVID-19 Telehealth Program; Promoting Telehealth for Low-Income Consumers*, WC Docket Nos. 20-89 and 18-213, Report and Order and Order on Reconsideration, 36 FCC Rcd 7141 (2021) (*Second COVID-19 Report and Order*).

²⁰ Based on financial records maintained by the Office of the Managing Director, approximately 7% of Round 1 awards went unused, a figure that includes funding for 17 awardees that submitted no eligible reimbursement requests. The unclaimed Round 1 funds were rolled over to Round 2. See *Wireline Competition Bureau Approves Sixth and Final Group of Funding Awards in Round 2 of COVID-19 Telehealth Program*, WC Docket No. 20-89, Public Notice, FCC 22-88, n.2 (2022).

²¹ Federal Communications Commission, Press Release, FCC Announces Final Set of Commitments for COVID-19 Telehealth Program (Jan. 26, 2022), <https://www.fcc.gov/document/fcc-announces-final-set-commitments-covid-19-telehealth-program>.

present stage of Round 2, awardees have completed all purchases and are being reimbursed by the Commission. All reimbursement requests must be submitted by October 31, 2023.²²

B. Connected Care Pilot Program

7. As part of the same *Connected Care and COVID-19 Program Report and Order* establishing the COVID-19 Telehealth Program, the Commission also established the Connected Care Pilot Program to help support the continuing trend toward connected care services and defray eligible health care providers' costs of providing connected care services.²³ The Pilot Program designated up to \$100 million in Universal Service Funds over three years for selected pilot projects with an emphasis on supporting these projects for low-income Americans and veterans.²⁴ The Commission expected that the Pilot Program would benefit many low-income patients and veterans who are responding to a wide variety of health challenges such as diabetes management, opioid dependency, high-risk pregnancies, pediatric heart disease, mental health conditions, and cancer.²⁵ The Commission established three specific goals for the Pilot Program, to determine how USF support can be used to: (1) improve health outcomes through connected care; (2) reduce health care costs for patients, facilities, and the health care system; and (3) support the trend towards connected care everywhere.²⁶

8. The Pilot Program provides support for 85% of the cost of eligible services and network equipment, which include: (1) patient broadband internet access services; (2) health care provider broadband data connections; (3) other connected care information services, and (4) certain network equipment (e.g., equipment necessary to make a supported broadband service function, such as routers).²⁷ The remaining 15% share of the costs of eligible services must be paid by the selected Pilot Program recipients from eligible sources, and participating health care providers must also pay the costs of any ineligible expenses associated with their respective projects.²⁸ The Pilot Program does not provide funding for devices, including end-user connected devices (e.g., tablets, smart phones, or remote patient monitoring equipment), medical equipment, health care provider administrative costs, personnel costs (including, but not limited to medical professional costs), or other miscellaneous expenses.²⁹ The Pilot Program also does not fund network deployment, the construction of networks between health care providers, or connectivity services between health care provider sites.³⁰

²² See *Wireline Competition Bureau Extends Deadlines for the COVID-19 Telehealth Program Round 2*, WC Docket No. 20-89, Public Notice, DA 22-805 (WCB July 29, 2022).

²³ *Connected Care and COVID-19 Program Report and Order*, 35 FCC Rcd at 3367, para. 2.

²⁴ *Id.* at 3368, para. 4.

²⁵ *Id.* at 3368-69, para. 5.

²⁶ *Id.* at 3415, para. 83.

²⁷ *Id.* at 3397, para. 55.

²⁸ See *id.* at 3388-89, para. 43. See also 47 CFR § 54.611(b)(1) ("Eligible sources include the applicant or eligible health care provider participants, state grants, appropriations, or other sources of state funding; federal funding, grants, loans or appropriations except for other federal universal service funding, or other sources of federal funding; Tribal government funding; and other grants, including private grants."); 47 CFR § 54.611(b)(2) ("Ineligible sources include (but are not limited to) in-kind or implied contributions from health care providers; direct payments from service providers, including contractors and consultants to such entities; and for-profit entities."). Additionally, all applicants participating in the Connected Care Pilot Program are subject to the Commission prohibition on gifts from service providers. See *Connected Care and COVID-19 Program Report and Order*, 35 FCC Rcd at 3412, para. 76.

²⁹ See *id.* at 3402-04, paras. 65-66.

³⁰ *Id.* at 3399-40, para. 60.

III. DISCUSSION

9. We next provide specific information about funding for the COVID-19 Telehealth Program and Connected Care Pilot Program, as well as an analysis of lessons learned to date from the programs.

A. COVID-19 Telehealth Program

10. Selectees have completed all purchases in the COVID-19 Telehealth Program. As noted above, all Round 1 expenses have been reimbursed to awardees, while the Round 2 reimbursement process is underway, and some Round 2 awardees are in mid-stream with recurring service agreements. The COVID-19 Telehealth Program helped health care providers respond to the COVID-19 pandemic by supporting the purchase of telehealth equipment and related services that enabled providers to offer new and more treatments via telehealth. Telehealth services supported by the COVID-19 Telehealth Program reimbursements were particularly effective for remote patient monitoring applications and treatment for behavioral health conditions.

11. The Commission informed awardees in both rounds that they should complete post-program reports providing information on funding-related outcomes, the devices and services purchased, any unused award funding, and general feedback on the COVID-19 Telehealth Program and its processes for applications and reimbursements.³¹ Post-program reports by Round 1 awardees were due January 31, 2022.³² Because Round 2 is ongoing, only a small number of Round 2 post-program reports have been received. Most Round 2 reports are expected by the reporting deadline of January 31, 2024.³³ Thus, this Report focuses on Round 1 and its post-program reports. A wrap-up report, as required by the *Second COVID-19 Report and Order*, will be issued in 2024.³⁴

1. Funding Award Summary

12. Between April 16, 2020, and July 8, 2020, the Commission issued awards for the full \$200 million in available Round 1 funding to health care providers in 47 states, the District of Columbia, and Guam.³⁵ In the Consolidated Appropriations Act, 2021, Congress required the Commission to award Round 2 funding “to the extent feasible” to “at least one applicant from all 50 states and the District of

³¹ The Round 2 report template is slightly different in format and wording but requests responses on a nearly identical set of topics. The reporting templates were released in Public Notices on December 28, 2020 (Round 1) and May 25, 2022 (Round 2). See *Round 1 Invoicing Deadline Public Notice*, 35 FCC Rcd at 14631 and *Wireline Competition Bureau and Office of Managing Director Set July 31, 2023 Invoicing Deadline for COVID-19 Telehealth Program Round 2 and Provide Post-Program Guidance*, WC Docket No. 20-89, Public Notice, DA 22-582 (WCB/OMD May 25, 2022) (*Invoicing and Reporting Public Notice*).

³² See *Round 1 Invoicing Deadline Public Notice*, 35 FCC Rcd 14628.

³³ The Round 2 reporting deadline and guidance were announced in the *Invoicing and Reporting Public Notice*. The January 31, 2024 deadline has not changed, despite other deadline extensions and hurricane-related waivers.

³⁴ *Second COVID-19 Report and Order*, 36 FCC Rcd at 7167, para. 78. Per the Commission’s direction, the report should review “the effectiveness of the COVID-19 Telehealth Program funding on health outcomes, patient treatment, health care facility administration, benefits from services and connected devices on patients treatments and outcomes, administration, and health care providers overall expanded telehealth programs, and any other relevant aspects of the COVID-19 pandemic. Such information could include: feedback on the application and invoicing processes; a description of how funding was helpful in providing or expanding telehealth services, including anonymized patient accounts; a description of how funding promoted innovation and improved health outcomes; and other areas for improvement.” *Id.*

³⁵ Federal Communications Commission, Press Release, FCC Approves Final Set of COVID-19 Telehealth Program Applications (July 8, 2020), <https://www.fcc.gov/document/fcc-approves-final-set-covid-19-telehealth-program-applications>.

Columbia.”³⁶ As a result, the *Second COVID-19 Report and Order* directed that, over the course of both rounds of the Program, at least two awards be made in each state, territory, and the District of Columbia.³⁷ The Commission issued Round 2 awards for \$256.4 million to 446 health care providers in all 50 states, the District of Columbia, and the Territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands in a series of commitment batches, beginning August 26, 2021, and ending January 26, 2022.³⁸ Lists of all Round 1 and Round 2 awardees are contained in Appendices B and C.

2. Lessons Learned

13. Most Round 1 reports presented qualitative and quantitative evidence suggesting that COVID-19 Telehealth Program funding was effective in helping patients access health care during the pandemic. Many post-program reports concluded that telehealth funding helped safeguard health professionals and vulnerable populations, conserved resources such as hospital rooms and personal protective equipment (PPE), and assisted in maintaining or increasing the volume of patient care services.³⁹ The ways that awardees approached their pandemic-related needs were varied. Many

³⁶ Consolidated Appropriations Act, 2021, § 903(c)(2).

³⁷ *Second COVID-19 Report and Order*, 36 FCC Rcd at 7158, para. 48.

³⁸ Federal Communications Commission, Press Release, *FCC Announces Final Set of Commitments for COVID-19 Telehealth Program* (Jan. 26, 2022), <https://www.fcc.gov/document/fcc-announces-final-set-commitments-covid-19-telehealth-program>.

³⁹ For general effectiveness in sustaining health care delivery during the pandemic, *see* Asian Pacific Health Care Venture, Inc., Post-Program Report, Questions 2.b, 4.b (Outcomes tab), <https://www.fcc.gov/ecfs/search/search-filings/filing/105271238417059> (filed May 27, 2021) (Asian Pacific HCV Post-Program Report); Tanner Medical Center, Post-Program Report, Questions 3.b, 6.b., 7.b. (Outcomes tab), <https://www.fcc.gov/ecfs/search/search-filings/filing/1006149897162> (filed Oct. 6, 2021) (Tanner MC Post-Program Report); Navajo Nation Department of Health, Post-Program Report, Question 3, p. 1, <https://www.fcc.gov/ecfs/search/search-filings/filing/10201453827584> (filed Jan. 31, 2022) (Navajo Nation DH Post-Program Report); El Rio Santa Cruz Neighborhood Health Center, Question 2.b. (Outcomes tab), <https://www.fcc.gov/ecfs/search/search-filings/filing/1062944784452> (filed June 29, 2021) (El Rio Santa Cruz NHC Post-Program Report); Jewish Family Service of the Desert, Post-Program Report, Question 3.b., p. 3, <https://www.fcc.gov/ecfs/search/search-filings/filing/1012806658381> (filed Jan. 28, 2022) (JFS of the Desert Post-Program Report); and Pacific Clinics East, Post-Program Report, Questions 3.b, 7.b (Outcomes tab), <https://www.fcc.gov/ecfs/search/search-filings/filing/10426285253218> (filed April 26, 2021) (Pacific Clinics East Post-Program Report). With regard to safeguarding health professionals and vulnerable populations, examples appear in Eastern Shore Rural Health System, Inc., Post-Program Report, Question 3.b, <https://www.fcc.gov/ecfs/search/search-filings/filing/10126218942143> (filed Jan. 26, 2022) (Eastern Shore Rural Health Post-Program Report); Valley View Health Center, Chehalis Clinic, Post-Program Report, Question 6, <https://www.fcc.gov/ecfs/search/search-filings/filing/10621360711164> (filed June 21, 2021) (Valley View-Chehalis Post-Program Report); Spring Branch Community Health Center, Post-Program Report, Questions 3, 3.a, 3.c, <https://www.fcc.gov/ecfs/search/search-filings/filing/10128446229770> (filed Jan. 28, 2022) (Spring Branch CHC Post-Program Report); JFS of the Desert Post-Program Report, Question 3.a., p. 2; Asian Pacific HCV Post-Program Report, Question 6.b. (Outcomes tab); St. Luke's Hospital of Duluth, Post-Program Report, Question 6, p. 3, <https://www.fcc.gov/ecfs/search/search-filings/filing/1012877542625> (filed Jan. 28, 2022) (St. Luke's Duluth Post-Program Report); St. John's Riverside Hospital, Post-Program Report, Question 3, p. 1, and Question 3.d., p. 2, <https://www.fcc.gov/ecfs/search/search-filings/filing/10131003726296> (filed Jan. 31, 2022) (St. John's Riverside Post-Program Report). With regard to conserving resources, *see* Atlantic Health System, Inc., Post-Program Report, Question 4.b, <https://www.fcc.gov/ecfs/search/search-filings/filing/1013187006634> (filed Jan. 31, 2022) (Atlantic Health Post-Program Report); Saratoga Hospital Consortium, Post-Program Report, Question 3, <https://www.fcc.gov/ecfs/search/search-filings/filing/10131257287380> (filed Jan. 31, 2022) (Saratoga HC Post-Program Report); and Stony Brook University Hospital, Post-Program Report, Question 3.d, p. 2, <https://www.fcc.gov/ecfs/search/search-filings/filing/1013129696709> (filed Jan. 31, 2022) (Stony Brook UH Post-Program Report). Better ability to sustain or increase pre-pandemic patient care services were reported by, for example, Navajo Nation DH Post-Program Report, Question 3.b (Outcomes tab); JFS of the Desert Post-Program (continued....)

purchased handheld devices like tablets, laptops, web cams, or remote patient monitoring devices, and networking gear like wireless access points, network switches, and teleworker VPN gateway-routers.⁴⁰ Many used COVID-19 Telehealth Program funding to buy video conferencing services, broadband service subscriptions, software licenses for telehealth platforms, and a variety of cloud-based services and data storage.⁴¹ A strength of the COVID-19 Telehealth Program was its flexibility in accommodating locally designed telehealth initiatives. Awardees report several notable use cases for COVID-19 Telehealth Program funding.

14. *Continuity of care.* Many participants reported that participation in the COVID-19 Telehealth Program allowed them to continue providing necessary care to patients during the pandemic while protecting patients and providers from the heightened health risks brought on by the spread of COVID-19. Most participants noted significant increases in the use of telehealth. Barnes Jewish Hospital in St. Louis, Missouri (Barnes), reported that its virtual visits grew from 4,000 in 2019 to more than 180,000 virtual encounters in 2020.⁴² Barnes spent 90% of its funding on connected devices, including connected telehealth carts, tablet computers, remote patient monitoring devices and patient kits, and connected stethoscopes.⁴³ Asian Pacific Health Care Venture, Inc. in Los Angeles, California, experienced an increase from 36% of services being provided via telehealth in March 2020 to 86% of services provided via telehealth by January 2021, after it began participating in the COVID-19 Telehealth Program.⁴⁴ Its most useful purchases were network switches, video conferencing software, tablet computers, and laptops.⁴⁵ The 20,000 video visits enabled by the COVID-19 Telehealth Program allowed Grady Health System in Atlanta to “maintain [its] clinic volumes throughout the height of COVID” as remote treatment was used for patients with chronic illnesses such as cancer, patients with high blood pressure, patients on anticoagulation therapy, and patients with heart and vascular illnesses.⁴⁶ Grady used Program funds to purchase remote teleconferencing appliances, high-resolution monitors, telehealth carts and mobile devices, connected medical cameras, and software licenses.⁴⁷

15. The University of Florida Department of Pediatrics, Gainesville, Florida (UF), reported that “we expanded our telemedicine offerings by more than 500% across most of our pediatric specialties

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Report, Question 3, p. 2, and Question 6, p. 4; El Rio Santa Cruz NHC Post-Program Report, Question 3.b (Outcomes tab); Asian Pacific HCV Post-Program Report, Questions 3.b, 7.b (Outcomes tab); Atlantic Health Post-Program Report, Question 8.b; and Saratoga HC Post-Program Report, Question 3.

⁴⁰ Lists of these and other devices and their utility are cited in Stony Brook UH Post-Program Report, Question 2, p.1; Asian Pacific HCV Post-Program Report, Questions 3.b, 5.b, 6.b (Outcomes tab); El Rio Santa Cruz NHC Post-Program Report, Questions 6.b and 6.c (Outcomes tab); and St. John's Well Child and Family Center, Post-Program Report, Question 1, p.1, <https://www.fcc.gov/ecfs/search/search-filings/filing/102012750916091> (filed Jan. 31, 2022) (St. John's WCFC Post-Program Report).

⁴¹ For examples of services like telehealth platform licenses, software licenses, and video conferencing subscriptions, see Stony Brook UH Post-Program Report, Question 3.d, pp. 2-7; El Rio Santa Cruz NHC Post-Program Report, Questions 6.b and 6.c (Outcomes tab); and St. John's Riverside Post-Program Report, Question 1, p. 1.

⁴² See Barnes Jewish Hospital, Post-Program Report, Question 3.b, p. 3, <https://www.fcc.gov/ecfs/search/search-filings/filing/1012782298990> (filed Jan. 27, 2022) (Barnes Jewish Post-Program Report).

⁴³ *Id.*, Question 1, p.2.

⁴⁴ See Asian Pacific HCV Post-Program Report, Question 3.b (Outcomes tab).

⁴⁵ *Id.*, Question 6.b.

⁴⁶ See Grady Memorial Hospital Corporation, Post-Program Report, Question 3.d, p. 2, <https://www.fcc.gov/ecfs/search/search-filings/filing/10131470907934> (filed Jan. 31, 2022) (Grady Post-Program Report).

⁴⁷ *Id.* at 1.

thanks to support from the COVID-19 Program.⁴⁸ The COVID-19 Telehealth Program, coupled with innovative outreach programs through local schools and county extension offices, enabled UF to serve additional patients from outside of Florida.⁴⁹ UF used Program funds to purchase multi-function home medical exam tools, tablet computers, fingertip pulse oximeters, connected baby scales, connected stethoscopes and related software, remote glucose monitors, speaker phones, web cameras, and smartphone-compatible scales.⁵⁰ Saratoga Hospital Consortium in Saratoga Springs, New York, offered no telehealth prior to the pandemic, but ramped up to 27,203 video visits in 2020 and 14,149 video visits in 2021.⁵¹ Using funding from the COVID-19 Telehealth Program, Saratoga navigated a dramatic increase in COVID cases by diverting patients from the emergency room to temporary facilities in a parking lot for triage with wireless access points and tablets.⁵² Saratoga reported that this change “would not have been possible without iPads, portable devices, and connectivity in the parking lot.”⁵³

16. While other local health care providers had to reduce patients and lay off staff during the pandemic, Harbor in Toledo, Ohio, was able to build on its modest existing telehealth program and “quickly expand the scope of our HIPAA compliant telehealth service delivery model with funding from the COVID-19 Telehealth Program.”⁵⁴ Harbor used Program funding to purchase HIPAA compliant telehealth software licenses for clinical staff, laptops with cameras and speakers for clinical staff, a patient wellness app, and tablets for patients with pre-installed telehealth software.⁵⁵ Harbor was able to scale up its services to serve current clients and also accept referrals from health care providers in other parts of Ohio that could not adjust to the pandemic operating environment. The number of Harbor telehealth patients grew 264% during the pandemic.⁵⁶

17. *Patient experience.* The use of telehealth also improved the quality of the patient experience. Even after the worst of the pandemic ended and patients began returning to clinics, Barnes noted that patients’ new familiarity with telehealth treatment made it possible to “improve the patient journey by allowing a mix of in-person and virtual care which decreased travel time, reduced exposure to pathogens in waiting rooms, and allowed patients to interact with their provider from the comfort of their own home.”⁵⁷ Using telehealth enabled additional members of the patient’s care team, the patient’s caregiver and medically trained interpreters to join appointments for Asian Pacific Health Care Venture’s patients.⁵⁸ In the long-term care facility, Grady Health System was able to link patients who were locked down in one facility with HIV/AIDS specialists who were located at another facility and also create patient consultations involving the long-term care facility’s primary care doctor and a multidisciplinary team from off-site.⁵⁹ Valley View Health Center in Chehalis, Washington, reports that some skeptical

⁴⁸ See University of Florida Department of Pediatrics, Post-Program Report, Question 3.b, <https://www.fcc.gov/ecfs/search/search-filings/filing/101070798506947> (filed Jan. 7, 2022) (University of Florida Pediatrics Post-Program Report).

⁴⁹ *Id.*, Questions 3.b, 5, and 6.

⁵⁰ *Id.*, Question 1.

⁵¹ See Saratoga HC Post-Program Report, Question 3, p. 2.

⁵² *Id.*, Question 3, p. 2.

⁵³ See *id.*

⁵⁴ See Harbor, Post-Program Report, Question 3, p. 2, <https://www.fcc.gov/ecfs/search/search-filings/filing/101311851322425> (filed Jan. 31, 2022) (Harbor Post-Program Report).

⁵⁵ *Id.*, Question 1.

⁵⁶ See Harbor Post-Program Report, Question 3, p. 3.

⁵⁷ See Barnes Jewish Post-Program Report, Question 3.c, p. 3.

⁵⁸ See Asian Pacific HCV Post-Program Report, Question 7.b (Outcomes tab).

⁵⁹ See Grady Post-Program Report, Question 3.d, p. 2.

medical professionals later recognized telehealth's benefits: "The pandemic forced us into doing telehealth with much initial reluctance, but our providers are now converted, and as one stated, 'I am grateful every day for the option and think it is working well.'"⁶⁰ Finally, Providence Regional Medical Center, Everett, Washington, offered several direct quotes from patients related to telehealth visits completed from January to March 2021:

- "Our visit was a joy.... Providence has provided a simple process allowing us to participate in a virtual office visit which is a very appreciated option in these trying times."
- "I really like using Zoom for appointments. I realized I was a lot more relaxed and able to communicate better."
- "Love the telemedicine."
- "I loved the fact that due to a schedule change in my surgery date, [my doctor] adapted to a Zoom visit easily, as I was in pre-op quarantine."⁶¹

In sum, both providers and patients appreciated how access to telehealth services improved the patient experience.

18. *Remote patient monitoring.* The availability of telehealth provided by the COVID-19 Telehealth Program bolstered some participants' ability to monitor patients' medical conditions from home. Faith Regional Health Services in Norfolk, Nebraska, initiated its first-ever remote patient monitoring program using Program funds to purchase tablet computers, blood pressure cuffs, weight scales, and pulse oximeters that were used for 140 patients.⁶² It found that better remote patient monitoring reduced in-patient admissions and allowed for constant monitoring for patients who could not tolerate risks associated with office visits.⁶³ Stony Brook University Hospital in Stony Brook, New York, used the COVID-19 Telehealth Program to fund remote monitoring kits and service plans for 176 patients who had been treated for COVID-19, treated for heart failure, or discharged after surgery.⁶⁴ Participants reported satisfaction with the overall quality of service and felt that it facilitated early detection of complications.⁶⁵ Although Stony Brook University Hospital cautions that other confounding variables cannot be ruled out, the readmission rate for patients in the remote patient monitoring program was 3%, compared to 11% previously.⁶⁶ Atlantic Health System in Morristown, New Jersey, used Program funding to purchase connected devices and services allowing remote patient management and thus was able to care for COVID-19 patients in their homes in six New Jersey counties.⁶⁷ To reach certain underserved and older populations, Atlantic Health negotiated special terms with a vendor so devices

⁶⁰ See Valley View Health Center, Post-Program Report, Question 5, <https://www.fcc.gov/ecfs/search/search-filings/filing/10621360711164> (filed June 21, 2021) (Valley View Post-Program Report).

⁶¹ See Providence Regional Medical Center - Everett, Post-Program Report, Question 8, <https://www.fcc.gov/ecfs/search/search-filings/filing/10605063126902> (filed June 4, 2021) (Providence Regional Post-Program Report).

⁶² See Faith Regional Health Services, Post-Program Report, Question 1, p. 1, <https://www.fcc.gov/ecfs/search/search-filings/filing/10131300760645> (filed Jan. 31, 2022) (Faith Regional Post-Program Report).

⁶³ *Id.*, Question 3.a, p. 1.

⁶⁴ See Stony Brook UH Post-Program Report, Question 3, pp. 2-3.

⁶⁵ *Id.*, Question 3, p. 3.

⁶⁶ *Id.*, Question 3, p. 3.

⁶⁷ See Atlantic Health Post-Program Report, Questions 5.b, 7.b, 8.b.

could be deployed to homes.⁶⁸ The connected devices enabled earlier hospital discharges and seven-day-per-week monitoring of COVID-19 patients, thus conserving PPE and protecting staff from infection.⁶⁹

19. *Behavioral health.* According to the World Health Organization's assessment of early studies it commissioned, the pandemic "has had a severe impact on the mental health and well being of people around the world."⁷⁰ The COVID-19 Telehealth Program enabled participants to treat their patients for behavioral health issues remotely. When asked if its Program purchases affected patient health outcomes, Access Community Health Centers, Inc., of Richmond, Texas, highlighted that the Program was particularly helpful for treating behavioral health issues and noted that it had a very high volume of patients and patients with high need.⁷¹ Although Access Community Health did not provide telehealth prior to the pandemic, it now uses telehealth for 90% of behavioral health visits.⁷² In one case, a patient with complex medical conditions was experiencing increased anxiety due to the pandemic and changes in her regular access to specialty care services. Access Community Health was "able to engage in a mindfulness intervention over the phone, complete guided imagery, explore the mind-body connection, and then assist the patient with scheduling a same-day virtual visit with her medical provider."⁷³

20. Many other Program participants also highlighted the value of telehealth in addressing behavioral health conditions. Barnes Jewish Hospital noted that the use of telehealth to treat behavioral health issues improved no-show rates because there may have been "an associated stigma" with in-clinic visits.⁷⁴ Spring Branch Community Health Center in Houston, Texas, provided behavioral health services via telehealth prior to the pandemic, but was able to expand its offerings with Program funding.⁷⁵ Eastern Shore Rural Health System, Inc. in Onancock, Virginia, started offering telehealth services during the pandemic and delivered multiple types of care, including teledentistry and chronic disease management.⁷⁶ Eastern Shore noted that the "ability to provide responsiveness and continuity of care has become even more essential as patients struggle with the effects of isolation, stress, grief, and depression resulting from the ongoing pandemic."⁷⁷ In addition to patient care, Eastern Shore scheduled a weekly online meeting between its care providers and an external child behavioral health provider to discuss cases and expand the providers' knowledge base.⁷⁸

21. Harbor provided advice to other behavioral health agencies on setting up telehealth services.⁷⁹ It also reported an incident that highlights how telehealth can be used in emergencies. During a group video session for patients with substance use disorders, a Harbor clinician realized that one

⁶⁸ *Id.*, Question 9.b.

⁶⁹ *Id.*, Questions 2.b, 4.b.

⁷⁰ World Health Organization, Mental Health and COVID-19: Early evidence of the pandemic's impact at 1 (2022), https://www.who.int/publications/i/item/WHO-2019-nCoV-Sci_Brief-Mental_health-2022.1.

⁷¹ See Access Community Health Centers, Inc., Post-Program Report, Question 4, <https://www.fcc.gov/ecfs/search/search-filings/filing/104200275909696> (filed Apr. 20, 2021) (Access CHC Post-Program Report).

⁷² See Access CHC Post-Program Report, Question 5.

⁷³ *Id.*, Question 3.

⁷⁴ See Barnes Jewish Post-Program Report, Question 3.a, p. 2.

⁷⁵ See Spring Branch CHC Post-Program Report, Question 3.b.

⁷⁶ See Eastern Shore Rural Health Post-Program Report Branch CHC Post-Program Report, Question 3.c.

⁷⁷ *Id.*, Question 3.c.

⁷⁸ *Id.*, Question 5.

⁷⁹ See Harbor Post-Program Report, Question 3, p. 2.

participant had relapsed and was at serious risk of overdose.⁸⁰ While another team member called 911 to have paramedics dispatched to the patient's location, the clinician used the new software and connected devices to redirect the group to a different telehealth session.⁸¹ The clinician was able to maintain verbal and visual contact with the patient until the paramedics arrived.⁸²

B. Connected Care Pilot Program

22. The three-year, \$100 million Connected Care Pilot Program is ongoing. The Commission made its final round of selections in March 2022.⁸³ After each year of funding, Pilot Program participants are required to file annual reports providing data on, among other things, patient population, patient satisfaction, impact on the number of appointments and hospital stays, and progress toward meeting the Pilot Program's goals.⁸⁴ The Bureau will prepare a final report in 2026 on the Pilot Program after the final projects are complete.⁸⁵

1. Funding Award Summary

23. The filing window for the Pilot Program opened on November 6, 2020, and closed on December 7, 2020.⁸⁶ The Commission received 220 applications. In total, the Pilot Program approved 111 projects seeking approximately \$98.2 million in funding serving patients in 40 states, including the District of Columbia.⁸⁷ These selections represented several different geographic areas and provider types, served patients in underserved communities, and addressed a range of health conditions.

24. On January 15, 2021, the Commission announced the initial set of Pilot projects, which included 14 applicants with 23 separate projects requesting \$26.5 million.⁸⁸ On June 17, 2021, the Commission announced a second set of Pilot projects, which included 36 separate applications requesting \$31.3 million.⁸⁹ Following further review of the applications on file, the Commission announced a third set of selections on October 27, 2021, which included a selection of 26 entities with a total of 36 separate project applications amounting to \$15.3 million.⁹⁰ On March 16, 2022, the Commission announced its

⁸⁰ *Id.*, Question 3, pp. 2-3.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Final Selection Notice* at 2, para. 6.

⁸⁴ *See Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Report and Order, 36 FCC Rcd 10642, 10658, para. 38 (2021) (*Second Connected Care Report and Order*).

⁸⁵ *See id.*, 36 FCC Rcd at 10658, para. 17.

⁸⁶ *Wireline Competition Bureau Announces Connected Care Pilot Program Application Filing Window Opening*, WC Docket No. 18-213, Public Notice, 35 FCC Rcd 12751 (2020) (*Connected Care Pilot Program Filing Window Notice*).

⁸⁷ *Final Selection Notice* at 2, para. 6.

⁸⁸ *FCC Announces Initial Projects Selected for the Connected Care Pilot Program*, WC Docket No. 18-213, Public Notice, 36 FCC Rcd 593 (2021) (*January Selection Notice*).

⁸⁹ *FCC Announces Second Set of Projects Selected for the Connected Care Pilot Program*, WC Docket No. 18-213, Public Notice, 36 FCC Rcd 10533 (2021) (*June Selection Notice*). Shortly after the announcement of the second round of projects, the Commission released a Report and Order offering additional guidance to Pilot Program participants on eligible services, competitive bidding, data reporting, and the invoicing process. *Second Connected Care Report and Order*, 36 FCC Rcd at 10646-49, 10651-54, 10657-59, paras. 14-18, 21-25, 32-34, 36-38.

⁹⁰ *FCC Announces Third Set of Projects Selected for the Connected Care Pilot Program*, WC Docket No. 18-213, Public Notice, 36 FCC Rcd 15952 (2021) (*October Selection Notice*).

fourth and final round of selections approving 16 projects for a total of \$29.8 million in funding.⁹¹ A list of all selectees for the Connected Care Pilot Program is in Appendix D.

2. Lessons Learned

25. At this time many of the projects in the Connected Care Pilot Program are in their early stages of implementation. Given that a limited number of annual reports have been filed because most Pilot Program participants have not yet completed their first year of funding, the data currently available to the Commission is limited. The following discussion therefore represents our initial impressions of, and projections for, the Pilot Program. Even at this early stage, it is already apparent that participating healthcare providers are able to serve more patients via telehealth than before they began participating in the Pilot Program.

26. *Increased participation in telehealth.* Based on the projects selected by the Commission, Connected Care Pilot Program projects will open the door for telehealth use for participating health care providers, some of whom had little to no experience with telehealth prior to being selected for participation in the Pilot Program. Fourteen percent of selectees reported in their initial applications that they had no experience with telehealth and another 33% reported less than 5 years experience with it.⁹² We expect that many of these Pilot Program participants will elect to continue offering the telehealth services they originally obtained from the three-year Pilot Program after it closes. The Pilot Program will also allow for increases in the number of patients participating health care providers are able to treat. Indeed, the initial Annual Report submissions indicate a 10-20% increase in the number of patients Pilot Program participants are able to serve.⁹³ With the three years of telehealth experience enabled by the Pilot Program, we anticipate that participants will be well-positioned to use telehealth to meet patients' future needs.

27. *Improved health outcomes.* We anticipate that Pilot Program participants will experience significant improvement in patient health outcomes as a result of implementing telehealth capabilities with the use of Pilot Program funding. Participants previously indicated that by providing high-speed broadband services for patients who have little to no access to connectivity, patients will be able to utilize virtual visits and remote patient monitoring devices.⁹⁴ We anticipate that these tools, available due to Pilot Program funding, will lead to decreases in appointment cancellations, emergency room visits, and hospitalizations, and increases in patient engagement and adherence to treatment plans.⁹⁵ For example, providers targeting patients experiencing high risk pregnancy, mental health and substance use disorders, and chronic conditions project that incorporating virtual visits and remote patient monitoring will lead to a significant improvement in providers' ability to administer quality care.⁹⁶

⁹¹ *Final Selection Notice* at 2, para. 6.

⁹² All Connected Care Pilot Program applications are available in WC Docket No. 18-213, which is available on the Commission's Electronic Filing Comment System. See FCC website, Welcome to the FCC's Electronic Comment Filing System, <https://www.fcc.gov/ecfs/search/search-filings> (last visited Mar. 13, 2023).

⁹³ See Blessing Health System Annual Report at 2.1c (Under Provider Focused Questions tab); University of Virginia Health System Annual Report at 2.1c (Under Provider Focused Questions tab).

⁹⁴ See e.g. IHS-CAL Round Valley Indian Health Center Application (requesting high-speed patient broadband to allow patients access to remote patient monitoring for chronic health conditions); Heritage Health Clinic Application (implementing video visits to improve adherence to treatment plans); Banyan Community Health Center (reducing emergency room visits and hospitalizations by implementing remote patient monitoring).

⁹⁵ See *id.*

⁹⁶ See e.g. Christiana Care Health Services Application (focusing on improving access for patients experiencing high risk pregnancy); Intermountain Centers for Human Development Application (focusing on improving access for patients experiencing mental health and substance use disorders).

28. We expect that, like the COVID-19 Telehealth Program, the Connected Care Pilot Program will have a significant positive impact on behavioral health and remote patient monitoring. Eighty-three percent of selectees indicated in their initial applications that they would leverage connected care services for behavioral health care. Additionally, 64% of selectees indicated that they would provide their patients with remote monitoring.

29. Providers also anticipate that funding from the Pilot Program will significantly improve their ability to increase treatment and care for vulnerable patients who experience homelessness, live in public housing, or live in rural and Tribal communities.⁹⁷ As participants continue to implement their projects over the several years, we expect to receive additional insight into the positive impact the Pilot Program has had on patient health outcomes and the ability for providers to facilitate quality care.

30. *Other benefits.* Initial reports indicate that the Connected Care Pilot Program has improved areas related to health care such as patient well-being and costs to the health care provider. The University of Virginia Health System (UVA) reported that patients saved significant travel time, experienced a reduction in time away from work or time away from school, and experienced shorter wait times when engaging with telehealth services.⁹⁸ Further, Temple University Hospital indicated that providing connected care services through the Pilot Program lead to increased savings for the health care provider.⁹⁹

31. *Challenges faced.* Most providers that have submitted reports have indicated overall satisfaction with the Pilot Program, though the initial reports reveal challenges that the Commission should consider as it continues its evaluation of how the USF can improve telehealth use. Digital literacy and health literacy are crucial for participating in remote patient monitoring and remain barriers for many patients. UVA reported that patients, especially geriatric and non-English speaking patients, are often intimidated by technology.¹⁰⁰ Further, UVA reports that it is helpful to have materials and instructions for online platforms in more than one language and to provide patients with technical support to troubleshoot any needs related to connectivity.¹⁰¹ We certainly agree that digital literacy is an important factor in the success of telehealth efforts and will be mindful of consideration moving forward.

32. Additionally, it appears that shifting priorities over the course of the COVID-19 pandemic may have impacted which selectees ultimately participated in the Pilot Program.¹⁰² Generally,

⁹⁷ See IHS-CAL Round Valley Indian Health Center Application (requesting funding to provide patients in rural and tribal communities with broadband capabilities to be able access Telehealth platforms); Heritage Health Clinic Application (requesting funding for high speed wireless broadband internet service for low income patients, vulnerable adults and patients experiencing homelessness); The Metro Health System Application (requesting funding for high-speed broadband for patients who live in public housing).

⁹⁸ University of Virginia Health System Annual Report at 3.4b-d (Under Patient Experience Questions tab)

⁹⁹ The provider is not currently tracking the exact savings but indicates on the report that they have generally increased savings through using connected care services. Temple University Hospital Annual Report at 2.3a (Under Provider Focused Questions tab).

¹⁰⁰ University of Virginia Health System Annual Report at 3.5b (Under Patient Experience Questions tab).

¹⁰¹ *Id.*

¹⁰² Out of the 111 projects selected for funding, six projects totaling \$11.3 million in approved funding formally withdrew from the program. See Letter from Sean Whitely-Ross, Chief Financial Officer, OCHIN at 1 (Nov. 10, 2022), <https://www.fcc.gov/ecfs/document/1111205212795/1> (OCHIN Withdrawal Letter); Letter from Melissa Frederick, Manager of Finance Operations, Trinity Health Consortium at 1 (Aug. 16, 2022), <https://www.fcc.gov/ecfs/document/10816210193392/1> (Trinity Healthy Consortium Withdrawal Letter); Letter from Robyn East, Financial Analyst, Heritage Clinic at 1 (Dec. 10, 2021), <https://www.fcc.gov/ecfs/document/1210250327402/1>, (Heritage Clinic Withdrawal Letter); Letter from Shannon Sale, Chief Strategy Officer, Grady Health System at 1 (Nov. 29, 2021), <https://www.fcc.gov/ecfs/document/121372096669/1> (Grady Health System Withdrawal Letter); Letter from
(continued....)

participants who have formally withdrawn from the Pilot Program experienced operational barriers in implementing their programs or changes to their telemedicine priorities since the peak of the pandemic when the Pilot Program application period opened.¹⁰³ We also note that several projects were removed from the Pilot Program for failing to file their initial Request for Funding by the deadline.¹⁰⁴

IV. CONCLUSIONS

33. With the COVID-19 Telehealth Program and Connected Care Pilot Program scheduled to wind down over the next few years and in light of the recent advances in telehealth utilization and popularity, we will continue to monitor the impact of both programs to aid us in assessing future options for telehealth support. In considering whether and how to build on these programs, the Commission may want to consider a few general takeaways from the COVID-19 Telehealth Program and the Pilot Program.

34. First, telehealth has become an invaluable component of health care. Participants in both programs highlighted the importance of the availability of telehealth, particularly for behavioral health and maternal health treatment and for remote patient monitoring.

35. Additionally, the COVID-19 Telehealth Program appears to have generally been more attractive to applicants than the Pilot Program because it provided a more expansive definition of eligible services, which included reimbursement for connected devices, and offered 100% reimbursement for eligible devices and services.¹⁰⁵ Next, it appears that some Pilot Program selectees underestimated the difficulty in implementing telehealth services in certain areas by not accounting for the resources necessary to educate patients who were unfamiliar with telehealth on how to use it. That, along with

(Continued from previous page)

Shannon Gerig, Chief Executive Officer, Mountain Valley Health Center at 1 (July 22, 2021), <https://www.fcc.gov/ecfs/document/1072656454581/1> (Mountain Valley Health Center Withdrawal Letter); Letter from Rick Davis, Chief Executive Officer, Central Peninsula Hospital at 1 (July 12, 2021), <https://www.fcc.gov/ecfs/document/1071516569438/1> (Central Peninsula Withdrawal Letter).

¹⁰³ See OCHIN Withdrawal Letter at 1 (stating “operational barriers and limited capacity” to implement Pilot Program goals impacted their ability to participate in the Program); Grady Withdrawal Letter at 1 (expressing that “changes to priorities related to telemedicine” impacted their feasibility to fully implement their goals for the Program). See also Central Peninsula Hospital Withdrawal Letter at 1; Trinity Health Consortium Withdrawal Letter at 1; Mountain Valleys Health Center at 1 (explaining that changes in “executive leadership” and “staff” resources impacted their ability to carry out their goals for the Pilot Program).

¹⁰⁴ Twenty-six projects selected for \$10.5 million in funding were removed from the Pilot Program after failing to file their initial Request for Funding by the deadline. See *Connected Care and COVID-19 Program Report and Order*, 35 FCC Rcd at 3414, para. 81.

¹⁰⁵ Participants faced some challenges regarding administration. There were recurring complaints about the complex and cumbersome Invoice Processing Platform (IPP) used for submission and initial review of reimbursement requests. For examples of complaints and suggestions regarding the IPP invoicing platform, see Navajo Nation DH Post-Program Report, Question 9, p. 2; Asian Pacific HCV Post-Program Report, Question 5 (General Program Feedback tab); El Rio Santa Cruz NHC Post-Program Report, Question 5 (General Program Feedback tab); Broward Health, Post-Program Report, Question 5 (General Program Feedback tab), <https://www.fcc.gov/ecfs/search/search-filings/filing/109212174429310> (filed Sept. 21, 2021) (Broward Health Post-Program Report); and Atlantic Health Systems, Inc., Post-Program Report, Row 7 (General Program Feedback tab), <https://www.fcc.gov/ecfs/search/search-filings/filing/1013187006634> (filed Jan. 31, 2022) (Atlantic Health Post-Program Report). A few awardees said the eligibility rules for telehealth devices and services were difficult to understand and created uncertainty in making certain purchases. For more information on problems understanding the eligibility rules for telehealth devices and services, see the Tanner MC Post-Program Report, Row 3 (General Program Feedback tab) and Saratoga Hospital Consortium, Post-Program Report, Question 9, p. 4, <https://www.fcc.gov/ecfs/search/search-filings/filing/10131257287380> (filed Jan. 31, 2022) (Saratoga HC Post-Program Report).

shifting priorities over the course of the COVID-19 pandemic, ultimately impacted participation in the Pilot Program.

36. We believe the successes and challenges faced in the COVID-19 Telehealth Program and Connected Care Pilot Program should prove useful to the Commission as it plans future steps for meeting Americans' telehealth needs. We anticipate additional insights about these Programs will continue to emerge as participants provide additional information in the coming months and years.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

APPENDIX A
COVID-19 Telehealth Program
Funding Summary

Round	Legal authority	Applications – Awards	Final deadlines
Round 1	CARES Act, 2020 <i>Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program</i> - released 4/2/2020	4,937 applications \$200 million awarded to 539 applicants	Invoicing: 7/31/2021 Post-program report: 1/31/2022
Round 2	Consolidated Appropriations Act, 2021 <i>Report and Order and Order on Reconsideration</i> - released 3/30/2021	1,953 applications \$256.4 million awarded to 446 applicants	Invoicing: 10/31/2023 Post-program report: 1/31/2024

APPENDIX B
COVID-19 Telehealth Awards
Round 1
539 awards, totaling \$200 million

Selection Date	Awardee	City	State	Amount
6/24/20	10th Street Clinic	Richmond	IN	\$152,931
7/1/20	A Renewed Mind	Perrysburg	OH	\$98,247
6/10/20	Access Community Health Centers, Inc.	Madison	WI	\$92,323
6/10/20	Access Community Health Network	Chicago	IL	\$130,401
6/3/20	Access Health Louisiana	Kenner	LA	\$930,098
6/24/20	AccessCNY	Syracuse	NY	\$134,286
5/28/20	AccessHealth (Brookshire Clinic)	Richmond	TX	\$439,286
5/20/20	Adult Services (Preferred Behavioral Health Group)	Lakewood	NJ	\$420,675
5/20/20	Advance Community Health	Raleigh	NC	\$690,671
6/17/20	Agape Health Services - Washington	Washington	NC	\$600,583
6/3/20	Airline Children's Clinic	Houston	TX	\$58,312
6/10/20	Albert Einstein Medical Center	Philadelphia	PA	\$315,357
7/8/20	Alivio Medical Center	Chicago	IL	\$510,190
6/10/20	also known as NewPath Mental Health Services	Golden Valley	MN	\$15,500
7/8/20	AltaPointe Health Systems	Mobile	AL	\$842,637
7/1/20	Ambulatory Health Services	Philadelphia	PA	\$791,398
5/6/20	Ampala Health	Yuba City	CA	\$332,079
4/23/20	Anne Arundel Medical Center, Inc.	Annapolis	MD	\$664,606
6/24/20	Ascension Health	St Louis	MO	\$926,266
6/10/20	Asian Pacific Health Care Venture, Inc.	Los Angeles	CA	\$295,215
5/20/20	Aspire Health Partners, Inc.	Orlando	FL	\$173,037
7/1/20	Association to Benefit Children--Children's Mobile Mental Health Clinic	New York	NY	\$174,270
6/10/20	Atlantic General Hospital	Berlin	MD	\$51,425
6/17/20	Atlantic General Hospital	Berlin	MD	\$515,449
6/24/20	Atlantic Health System, Inc.	Morristown	NJ	\$499,800
7/1/20	Atrius Health, Inc.	Auburndale	MA	\$985,312
4/29/20	Augusta University Medical Center	Augusta	GA	\$113,744
6/24/20	Augusta University Medical Center	Augusta	GA	\$710,316
6/10/20	Aultman Hospital	Canton	OH	\$294,749
6/3/20	Avenal Community Health Center	Lemoore	CA	\$194,700
5/6/20	Avenue 360 Health and Wellness	Houston	TX	\$297,975
6/24/20	Avera eCARE	Sioux Falls	SD	\$803,588
7/1/20	Avera Health	Sioux Falls	SD	\$672,879
4/21/20	Banyan Community Health Center	Coral Gables	FL	\$958,270
6/17/20	Baptist Health Louisville	Louisville	KY	\$873,982

6/17/20	Baptist Hospital of Miami	Miami	FL	\$1,000,000
7/1/20	Barnabas Health Medical Group	West Orange	NJ	\$784,200
7/1/20	Barnes-Jewish Hospital	St. Louis	MO	\$996,119
6/24/20	Barnes-Kasson County Hospital	Susquehanna	PA	\$12,595
7/1/20	Barren River District Health Department	Bowling Green	KY	\$99,006
6/10/20	Bayside Clinic	Anahuac	TX	\$399,038
6/24/20	Baystate Medical Center	Springfield	MA	\$927,146
5/13/20	Bee Busy Wellness Center	Houston	TX	\$182,854
7/1/20	Beebe Healthcare	Lewes	DE	\$399,320
5/13/20	Behavioral Health Services North, Inc.	Plattsburgh	NY	\$39,181
7/1/20	Beloit Area Community Health Center	Beloit	WI	\$107,701
6/10/20	Berkeley Center	Bayville	NJ	\$58,336
6/3/20	Betances Health Center	New York	NY	\$122,710
5/13/20	Bethesda Community Clinic	Canton	GA	\$5,886
5/20/20	Blackstone Valley Community Health Care	Pawtucket	RI	\$108,306
7/1/20	BMS Family Health and Wellness Centers	Brooklyn	NY	\$1,000,000
7/1/20	Boston Children's Hospital	Boston	MA	\$770,913
6/3/20	Boulder Community Hospital - Foothills	Boulder	CO	\$638,842
5/6/20	Brazos Valley Community Action Agency dba HealthPoint	Bryan	TX	\$415,621
5/28/20	Bridge Counseling Associates, Inc.	Las Vegas	NV	\$91,460
5/20/20	Bridgeport Hospital	New Haven	CT	\$938,960
5/20/20	BronxCare Health System (Ira H. Kirschenbaum, MD)	Bronx	NY	\$539,797
6/17/20	Brookline Community Mental Health Center	Brookline	MA	\$19,562
6/24/20	Broward Health	Fort Lauderdale	FL	\$1,000,000
6/24/20	Burrell, Inc.	Springfield	MO	\$767,184
6/10/20	Calhoun County Office	Oxford	MS	\$102,397
7/8/20	California Telehealth Network	Sacramento	CA	\$1,000,000
6/3/20	Callen-Lorde 18th Street Clinic	New York	NY	\$917,255
7/8/20	Cambridge Hospital	Cambridge	MA	\$535,172
5/20/20	Capstone Rural Health Center-Parrish	Nauvoo	AL	\$165,478
7/1/20	Care Alliance Health Center	Cleveland	OH	\$86,626
6/17/20	Care Plus NJ	Paramus	NJ	\$442,361
6/17/20	CARTI Cancer Center	Little Rock	AR	\$676,416
7/1/20	Catholic Health Initiatives Iowa Corp., dba Mercy Medical Center-Des Moines	Des Moines	IA	\$945,590
6/3/20	Catholic Health System of Long Island, Inc.	Rockville Centre	NY	\$141,397
6/3/20	CCI Health & Wellness Services	Silver Spring	MD	\$618,628
6/24/20	Center for Family Health & Education	Panorama City	CA	\$313,974
7/1/20	Centerstone of Florida, Inc.	Bradenton	FL	\$882,255
6/17/20	Central Ave. - South Los Angeles Clinic	Los Angeles	CA	\$281,231
5/28/20	Central Kansas Mental Health Center	Salina	KS	\$113,768

5/28/20	Central Maine Medical Center	Lewiston	ME	\$270,172
6/24/20	Central Nassau Guidance & Counseling Services	Hicksville	NY	\$513,403
5/28/20	Central New York Services	Syracuse	NY	\$546,009
7/8/20	Charleston Area Medical Center, Inc.	Charleston	WV	\$781,964
6/24/20	CHCW	Yakima	WA	\$288,530
6/3/20	Chehalis Clinic	Chehalis	WA	\$451,400
7/8/20	CHI St. Alexius Health	Dickinson	ND	\$124,053
5/13/20	Chicago Family Health Center	Chicago	IL	\$292,000
4/29/20	Children's Hospital Colorado	Aurora	CO	\$807,090
5/20/20	Children's National Hospital	Washington	DC	\$928,183
5/6/20	Chinatown Service Center	Los Angeles	CA	\$460,572
5/20/20	Christ Health Center, Inc.	Birmingham	AL	\$631,612
4/23/20	Christiana Care Health Services	Newark	DE	\$714,322
7/1/20	CHRISTUS Health Corporate Office	Irving	TX	\$870,925
5/13/20	Cincinnati Children's Hospital	Cincinnati	OH	\$719,098
6/24/20	Circle Health Services	Cleveland	OH	\$663,704
6/17/20	Citrus Health Network, Inc.	Hialeah	FL	\$453,601
5/28/20	Clark County Rehabilitation and Living Center	Owen	WI	\$201,863
6/3/20	Clarke County Hospital	Osceola	IA	\$170,072
7/1/20	Clay Behavioral Health Center, Inc.	Middleburg	FL	\$51,460
6/24/20	Clay County Medical Center	Clay Center	KS	\$126,960
5/20/20	Clinica Colorado	Westminster	CO	\$10,231
6/24/20	Clinica Family Health	Lafayette	CO	\$182,347
7/1/20	Cloud Peak Counseling Center	Worland	WY	\$17,538
6/3/20	CNS Healthcare-Nov	Novi	MI	\$152,075
6/17/20	Coastal Health & Wellness	LaMarque	TX	\$159,750
6/17/20	Colorado Rural Health Center	Aurora	CO	\$141,465
5/20/20	CommuniHealth Services Bastrop Family Practice & Behavioral Health Center	Bastrop	LA	\$102,016
6/24/20	Community Alliance Rehabilitation	Omaha	NE	\$637,128
6/3/20	Community Counseling Services - Malvern	Hot Springs National Park	AR	\$40,850
6/10/20	Community Guidance Center	Indiana	PA	\$70,198
5/13/20	Community Healing Centers	Kalamazoo	MI	\$36,673
6/17/20	Community Health Access Network	Newmarket	NH	\$907,383
6/17/20	Community Health Association of Spokane	Spokane	WA	\$804,641
5/20/20	Community Health Care, Inc	Davenport	IA	\$799,305
5/6/20	Community Health Center of Lubbock, Inc.	Lubbock	TX	\$143,584
7/1/20	Community Health Center, Inc.	Middletown	CT	\$986,261
7/8/20	Community Health Centers of Benton (Benton Health Center)	Corvallis	OR	\$146,390
5/6/20	Community Health Centers of Burlington (CHCB)	Burlington	VT	\$782,903

6/24/20	Community Health Network - Stephen F Austin Community Health Center	Pearland	TX	\$71,131
6/24/20	Community Health Service Agency, Inc. of Hunt County dba Carevide	Greenville	TX	\$189,653
7/1/20	Community Health Services	Fremont	OH	\$55,135
6/24/20	Community HealthCare Association of the Dakotas (CHAD)	Sioux Falls	SD	\$443,417
6/10/20	Community Healthcare Network	New York	NY	\$180,734
6/10/20	Community Hospital North	Indianapolis	IN	\$872,363
7/8/20	Community Medical Wellness Centers	Long Beach	CA	\$164,474
6/24/20	Community Mental Health Center, Inc.	Lawrenceburg	IN	\$65,142
6/3/20	Community Mental Health Centers of Warren County	Lebanon	OH	\$67,979
7/1/20	Community Reach Center Inc	Westminster	CO	\$223,569
5/13/20	Community Service, Inc. - Morrilton Clinic	Morrilton	AR	\$44,949
5/13/20	Community Teaching Homes, Inc	Toledo	OH	\$20,761
6/24/20	CommUnityCare Admin	Austin	TX	\$264,132
6/3/20	Compass Behavioral Health - Garden City	Garden City	KS	\$23,025
7/1/20	Compass Health	Everett	WA	\$247,819
7/8/20	Comprehensive Community Health Centers	Glendale	CA	\$298,659
6/17/20	Comprehensive Healthcare	Yakima	WA	\$421,748
7/8/20	Comprehensive Mental Health Center of Tacoma-Pierce County	Tacoma	WA	\$269,104
5/28/20	Conway Hospital	Conway	SC	\$536,359
5/20/20	Cooper University Health	Camden	NJ	\$506,284
5/13/20	Council for Jewish Elderly	Chicago	IL	\$6,783
4/29/20	Country Doctor Community Health Center	Seattle	WA	\$392,770
6/17/20	Covenant Health Alliance of Pennsylvania	Lancaster	PA	\$362,550
6/24/20	Crawford County Mental Health Center	Pittsburg	KS	\$19,669
6/24/20	Creek Valley Health Clinic	Colorado City	AZ	\$53,846
7/8/20	Crook County Medical Services District	Sundance	WY	\$240,428
7/1/20	Cummins Behavioral Health System, Inc.	Avon	IN	\$226,016
7/1/20	Curran Seeley Foundation	Jackson	WY	\$11,768
6/24/20	Decatur County Memorial Hospital	Greensburg	IN	\$698,603
6/17/20	Deckerville Community Hospital	Deckerville	MI	\$23,218
5/6/20	Delaware Valley Community Health, Inc.	Philadelphia	PA	\$504,880
6/3/20	DeSoto Regional Health System	Mansfield	LA	\$240,390
6/17/20	Dimock Community Health Center	Roxbury	MA	\$193,645
6/3/20	Duncan Regional Hospital	Duncan	OK	\$56,266
6/10/20	Dunlevy Milbank Family Services	New York	NY	\$73,848
5/20/20	East Alabama Medical Center	Opelika	AL	\$69,909
5/13/20	East Texas Border Health Clinic dba Genesis PrimeCare	Marshall	TX	\$990,716
6/17/20	East Valley Community Health Center Inc.	West Covina	CA	\$219,251

Federal Communications Commission

DA 23-234

6/24/20	Easter Seals - Michigan, Inc.	Auburn Hills	MI	\$110,577
6/3/20	Eastern Shore Rural Health System, Inc. Administrative Office	Onancock	VA	\$174,634
5/20/20	El Nuevo San Juan Health Center (1065 Southern Blvd.) (Urban Health Plan)	Bronx	NY	\$873,202
5/6/20	El Rio Santa Cruz Neighborhood Health Center, Inc. dba El Rio Health	Tucson	AZ	\$444,462
5/28/20	Ellis Hospital	Schenectady	NY	\$131,261
5/28/20	Elmwood Health Center Inc.	Williamsville	NY	\$128,789
5/20/20	Eprine Community Services, Inc.	Brooklyn	NY	\$86,386
7/1/20	Erie County Medical Center	Buffalo	NY	\$98,435
6/17/20	Excelsior Springs Hospital & Clinics	Excelsior Springs	MO	\$995,000
6/3/20	Excelsior Youth Center	Spokane	WA	\$96,500
5/6/20	Fair Haven Community Health Clinic, Inc.	New Haven	CT	\$430,438
6/10/20	Fairview Health Services	Minneapolis	MN	\$598,000
6/17/20	Faith Regional Health Services	Norfolk	NE	\$241,200
6/24/20	Families First in Essex County, Inc.	Elizabethtown	NY	\$26,997
6/17/20	Family and Children's Services	Elizabeth	NJ	\$14,253
7/8/20	Family Centers Health Care	Greenwich	CT	\$338,909
6/24/20	Family Connections	East Orange	NJ	\$347,358
6/17/20	Family Counseling Service of Aurora	Aurora	IL	\$14,306
6/3/20	Family Health Services	Twin Falls	ID	\$284,739
6/24/20	Family Health Services of Darke County	Greenville	OH	\$438,547
6/17/20	Family HealthCare Network - Porterville	Visalia	CA	\$325,637
6/10/20	Family Practice & Counseling Network	Philadelphia	PA	\$206,763
6/3/20	Family Pride of Northeast Ohio	Chardon	OH	\$8,013
6/24/20	Family Service League	Huntington	NY	\$239,346
6/24/20	Family Service Rochester	Rochester	MN	\$13,234
6/17/20	FCCH South Valley Family Health Commons	Albuquerque	NM	\$376,621
6/10/20	Finger Lakes Migrant Health Care Project	Penn Yan	NY	\$582,491
5/20/20	Florida Community Health Centers, Inc.	West Palm Beach	FL	\$884,116
6/17/20	Flushing Clinic	Forest Hills	NY	\$94,972
5/20/20	Foundations Behavioral Health Services	Celina	OH	\$19,965
5/13/20	Four County Mental Health Center, Inc.	Independence	KS	\$16,129
6/17/20	Four Rivers Behavioral Health	Paducah	KY	\$4,831
5/28/20	Franciscan Alliance dba Franciscan Health Indianapolis	Mishawaka	IN	\$929,834
5/13/20	Franklin County Memorial Hospital	Meadville	MS	\$262,934
6/17/20	Franklin Primary Health Center, Inc.	Mobile	AL	\$587,021
6/10/20	Frontier Behavioral Health	Spokane	WA	\$197,387
6/10/20	Gardner Family Health Network, Inc.	San Jose	CA	\$398,852
4/23/20	Garfield Health Center	Monterey Park	CA	\$130,217
6/17/20	Gateway Community Health Center, Inc.	Laredo	TX	\$135,594
6/24/20	Geisinger Medical Center	Danville	PA	\$978,935

5/20/20	Goodwill NYNJ Clinic	New York	NY	\$435,879
7/1/20	Grace Health	Battle Creek	MI	\$574,594
5/13/20	Grace Medical Home	Orlando	FL	\$34,732
4/16/20	Grady Memorial Hospital Corporation dba Grady Health System	Atlanta	GA	\$727,747
5/6/20	Greater Baden Medical Services	Brandywine	MD	\$537,747
5/13/20	Greater Elgin Family Care Center	Elgin	IL	\$39,639
7/1/20	Greater Lawrence Family Health Center	Lawrence	MA	\$712,694
7/1/20	Greater Philadelphia Health Action	Philadelphia	PA	\$754,950
4/29/20	Greene County General Hospital	Linton	IN	\$60,480
6/10/20	Greene County Health Care, Inc.	Snow Hill	NC	\$948,576
5/20/20	Greenwich Hospital	New Haven	CT	\$462,797
7/8/20	Guam Community Health Centers	Dededo	GU	\$321,244
6/10/20	GW Medical Faculty Associates	Washington	DC	\$817,248
6/24/20	Hackensack University Medical Center	Neptune	NJ	\$973,055
7/1/20	Hancock Regional Hospital	Greenfield	IN	\$409,984
5/28/20	Harbor	Toledo	OH	\$328,126
7/1/20	Harbor Community Clinic, Inc.	San Pedro	CA	\$103,169
6/10/20	Hawarden Regional Healthcare	Hawarden	IA	\$14,356
5/6/20	Health Access For All Inc.	Los Angeles	CA	\$442,376
6/3/20	Health Care Partners of SC, Inc	Conway	SC	\$156,293
4/21/20	Health Partners of Western Ohio	Lima	OH	\$737,098
6/3/20	Heart of The City Health Center	Grand Rapids	MI	\$493,586
5/28/20	Heartland Regional Medical Center	Saint Joseph	MO	\$266,800
6/17/20	Hearts for Hearing Foundation	Oklahoma City	OK	\$114,123
5/13/20	Helio Health	Syracuse	NY	\$504,034
6/17/20	Henry Ford Health System	Detroit	MI	\$715,723
6/17/20	Henry J Austin Health Center	Trenton	NJ	\$223,485
5/13/20	Heritage Clinic and Community Assistance Program for Seniors	Pasadena	CA	\$41,457
6/10/20	Hillendahl CHC	Houston	TX	\$627,667
6/17/20	Hillsides	Los Angeles	CA	\$225,359
6/3/20	Hilltop Regional Health Center	Tacoma	WA	\$534,139
4/23/20	HIV/AIDS Alliance for Region Two	Baton Rouge	LA	\$116,049
5/6/20	Holyoke Health Center, Inc.	Holyoke	MA	\$668,335
6/10/20	HOPE Clinic - Beltway	Houston	TX	\$112,547
5/13/20	Hope House Outpatient Clinic	Albany	NY	\$8,586
6/3/20	HopeHealth Irby	Florence	SC	\$423,645
6/17/20	Hospital For Special Surgery	New York	NY	\$596,045
6/3/20	Hough Clinic	Cleveland	OH	\$560,356
5/28/20	Housing Works Health Services III, Inc. d/b/a Housing Works Community Healthcare	Brooklyn	NY	\$857,750
6/3/20	Howard University Hospital	Washington	DC	\$881,958
4/16/20	Hudson River Health Care	Peekskill	NY	\$753,367

6/24/20	Hudson Valley Regional Community Health Centers, Inc.	Brewster	NY	\$342,449
6/24/20	Human Services Center	New Castle	PA	\$28,768
5/20/20	Hunterdon Drug Awareness Program	Flemington	NJ	\$37,571
6/24/20	Icahn School of Medicine at Mount Sinai	New York	NY	\$923,487
5/13/20	Impact Family Counseling	Birmingham	AL	\$75,000
6/10/20	Indian Health Center of Santa Clara Valley	San Jose	CA	\$371,175
5/28/20	Insight House Chemical Dependency Services	Utica	NY	\$78,528
5/28/20	InterCommunity Hartford	East Hartford	CT	\$100,083
5/13/20	Intermountain Health Care	Murray	UT	\$772,680
5/20/20	Irvington Counseling Center	Irvington	NJ	\$17,124
5/28/20	Isaiah's Place Inc.	Troy	OH	\$30,494
7/1/20	Jackson-Madison County General Hospital	Jackson	TN	\$110,785
7/1/20	Jasper Memorial Hospital	Monticello	GA	\$15,149
5/28/20	JBS Mental Health Authority	Birmingham	AL	\$120,035
5/20/20	Jefferson Parish Community Health Care Centers	Avondale	LA	\$188,500
5/13/20	Jewish Family & Children's Services	Tucson	AZ	\$27,320
5/13/20	Jewish Family Service of the Desert	Palm Springs	CA	\$19,636
5/28/20	Jordan Valley Community Health Center	Springfield	MO	\$742,780
6/10/20	Kansas City CARE Clinic	Kansas City	MO	\$90,400
5/6/20	Kennedy Krieger Children's Hospital	Baltimore	MD	\$994,950
6/24/20	Kheir Clinic	Los Angeles	CA	\$45,132
5/20/20	Knoxville Adult Center	Knoxville	TN	\$249,773
7/1/20	KVC Behavioral HealthCare Kentucky, Inc.	Lexington	KY	\$42,354
6/3/20	Labette Center for Mental Health Services, Inc.	Parsons	KS	\$41,619
6/17/20	Labette Health	Parsons	KS	\$109,344
5/28/20	Lafayette Foundation Clinic	Lafayette	LA	\$21,075
6/10/20	Lake Powell Medical Center	Page	AZ	\$221,267
6/3/20	Lakeland Regional Health System, Inc.	Grand Rapids	MI	\$351,175
4/29/20	Lancaster Health Center	Lancaster	PA	\$75,710
5/20/20	Lawrence + Memorial Hospital	New Haven	CT	\$384,024
6/24/20	Lawrence County Health Department - Behavior	Parsippany	NJ	\$37,308
5/28/20	Legacy Community Health Services	Houston	TX	\$571,045
5/20/20	Legacy Emanuel Hospital & Health Center	Portland	OR	\$368,912
6/10/20	Legacy Medical Care, Inc.	Arlington Heights	IL	\$48,591
7/1/20	Lehigh Valley Health Network	Allentown	PA	\$499,779
5/28/20	Leland Medical Center	Leland	MS	\$448,442
6/10/20	Leyden Family Service and Mental Health Center	Franklin Park	IL	\$1,468
6/24/20	Life Challenge of Southeastern Michigan	Detroit	MI	\$47,605
6/3/20	Lifeline Connections	Vancouver	WA	\$49,580
6/3/20	LifeSkills Corporate/Warren County Clinic	Bowling Green	KY	\$491,818

5/20/20	Lincoln County Primary Care Center, Inc.	Hamlin	WV	\$967,304
4/16/20	Linda DeCherrie (Mount Sinai Health)	New York	NY	\$312,500
5/6/20	Linn County Department of Health	Albany	OR	\$56,332
6/3/20	Lisbon Community Health Center	Lisbon	OH	\$376,191
6/3/20	Logansport Memorial Hospital	Logansport	IN	\$103,457
7/1/20	Long Island FQHC, Inc.	Westbury	NY	\$636,834
5/28/20	Long Island Select Healthcare, Inc.	Central Islip	NY	\$480,854
6/3/20	Lorain County Alcohol and Drug Abuse Services, Inc.	Lorain	OH	\$26,922
4/29/20	Loudoun Community Health Center T/A HealthWorks for Northern Virginia	Leesburg	VA	\$93,380
6/10/20	LUK Behavioral Health Clinic	Fitchburg	MA	\$28,919
6/24/20	Lutheran Medical Center	Broomfield	CO	\$730,008
5/20/20	Lynn County Hospital District	Tahoka	TX	\$127,980
5/6/20	MA FQHC Telehealth Consortium	Boston	MA	\$939,627
6/24/20	Magee-Womens Hospital of UPMC	Pittsburgh	PA	\$4,220
6/10/20	Mahaska County Hospital	Oskaloosa	IA	\$68,620
6/17/20	Maimonides Medical Center	Brooklyn	NY	\$1,000,000
6/24/20	Maine Medical Center	Portland	ME	\$803,268
6/10/20	Manna Ministries	Picayune	MS	\$75,358
5/28/20	Maple Knoll Communities, Inc	Cincinnati	OH	\$98,984
7/1/20	Margaret Mary Community Hospital	Batesville	IN	\$140,357
5/20/20	Marietta Memorial Hospital	Marietta	OH	\$473,159
5/20/20	Marin City Health and Wellness Center	Marin City	CA	\$162,207
6/17/20	Marion Area Counseling Center, Inc.	Marion	OH	\$33,216
6/17/20	Marshfield Medical Center	Marshfield	WI	\$1,000,000
6/3/20	Martin Luther King, Jr. Family Clinic, dba Foremost Family Health Centers	Dallas	TX	\$294,368
7/1/20	Mary and Alexander Laughlin Children's Center	Sewickley	PA	\$56,768
7/1/20	Mary's Center for Maternal and Child Care, Inc.	Washington	DC	\$672,149
5/6/20	Matagorda Episcopal Health Outreach	Bay City	TX	\$193,038
5/13/20	Mattapan Community Health Center	Mattapan	MA	\$755,468
4/29/20	Mayo Clinic	Rochester	MN	\$1,000,000
7/1/20	McCall Center for Behavioral Health	Torrington	CT	\$45,843
4/29/20	McLaren Health Care	Grand Blanc	MI	\$626,328
7/1/20	Medical Advocacy and Outreach	Montgomery	AL	\$288,847
7/8/20	MedStar Health	Hyattsville	MD	\$976,679
6/3/20	Meharry Medical College	Nashville	TN	\$718,752
6/24/20	Memorial Hospital for Cancer and Allied Diseases	New York	NY	\$781,831
6/3/20	Mental Health Association of Essex and Morris, Inc.	Montclair	NJ	\$39,959
6/24/20	Mental Health Association of Rockland	Valley Cottage	NY	\$69,636
6/17/20	Meridian	Tampa	FL	\$63,700

6/10/20	Meridian Health Services	Muncie	IN	\$240,669
5/20/20	Metro Health - University of Michigan Health	Wyoming	MI	\$356,597
7/1/20	Metropolitan Center for Mental Health	New York	NY	\$22,708
6/17/20	Midwestern Colorado Mental Health Center	Montrose	CO	\$149,339
6/3/20	Minnesota Community Care	St Paul	MN	\$498,818
6/17/20	Mission City Community Network	North Hills	CA	\$308,471
6/10/20	Missouri Delta Physician Services	Sikeston	MO	\$273,522
7/1/20	Mobile Infirmary Medical Center	Mobile	AL	\$785,992
6/24/20	Monongalia County General Hospital Company	Morgantown	WV	\$283,396
7/1/20	Montefiore Medical Center	Bronx	NY	\$1,000,000
6/24/20	Montezuma Creek Community Health Center	Montezuma Creek	UT	\$232,009
7/1/20	Moore Regional Hospital	Pinehurst	NC	\$759,635
6/17/20	Morristown Medical Center	Morristown	NJ	\$827,637
5/6/20	Mount Sinai Hospital (Eyal Shemesh)	New York	NY	\$862,950
7/8/20	MultiCare Medical Associates	Tacoma	WA	\$333,781
6/17/20	NARA Indian Health Clinic	Portland	OR	\$342,346
5/28/20	Native American Community Clinic	Minneapolis	MN	\$21,533
5/6/20	Navajo Nation Department of Health	Window Rock	AZ	\$954,990
6/24/20	Ne Ia Shing Clinic	Onamia	MN	\$350,679
4/16/20	Neighborhood Health Care, Inc.	Cleveland	OH	\$244,282
5/28/20	New York and Presbyterian Hospital	New York	NY	\$1,000,000
4/29/20	New York Psychotherapy and Counseling Center	Bronx	NY	\$126,799
5/20/20	New York-Presbyterian/Brooklyn Methodist	New York	NY	\$1,000,000
7/8/20	NewYork-Presbyterian Hudson Valley Hospital	Cortland Manor	NY	\$713,611
6/24/20	NewYork-Presbyterian/Queens	New York	NY	\$1,000,000
5/28/20	Niagara Falls Memorial Medical Center	Niagara Falls	NY	\$35,640
6/24/20	NO/AIDS Task Force dba CrescentCare	New Orleans	LA	\$242,209
6/24/20	Norman Regional Hospital	Norman	OK	\$915,862
7/1/20	North Country HealthCare	Flagstaff	AZ	\$418,996
7/8/20	North Mississippi Medical Center-Tupelo	Tupelo	MS	\$883,702
7/8/20	North Penn Comprehensive Health	Mansfield	PA	\$102,584
5/20/20	North Suffolk Mental Health Association	Chelsea	MA	\$56,786
6/10/20	Northeast Medical Group	New Haven	CT	\$494,839
6/10/20	Northern Kentucky Mental Health	Covington	KY	\$452,166
7/1/20	Northern Nevada HOPES	Reno	NV	\$507,861
6/17/20	Northern NY Rural Behavioral Health Institute	Saranac Lake	NY	\$55,180
5/28/20	NorthLakes Community Clinic	Iron River	WI	\$286,046
6/17/20	Northwest Human Services West Salem Clinic	Salem	OR	\$45,000
6/10/20	Northwestern Memorial HealthCare	Chicago	IL	\$1,000,000
6/24/20	Not For Profit Hospital Corporation (United Medical Center)	Washington	DC	\$535,481

5/20/20	Novant Health Inc	Winston Salem	NC	\$1,000,000
5/28/20	Novant Health Inc	Winston Salem	NC	\$536,485
6/10/20	NYC Health + Hospitals	New York	NY	\$1,000,000
4/23/20	NYU Grossman School of Medicine	New York	NY	\$772,687
4/21/20	NYU Langone Hospitals	New York	NY	\$983,772
7/1/20	Oak Orchard Health Center, Inc.	Brockport	NY	\$454,916
5/28/20	Ocean Health Initiatives (Lakewood Health Center)	Neptune	NJ	\$782,629
7/8/20	OCHIN, Inc.	Portland	OR	\$1,000,000
4/16/20	Ochsner Clinic Foundation	New Orleans	LA	\$1,000,000
7/1/20	Odyssey House Louisiana Community Health Center	New Orleans	LA	\$143,454
6/24/20	OhioGuidestone	Berea	OH	\$620,736
5/13/20	OLV Human Services (Baker Hall, Inc.)	Lackawanna	NY	\$174,840
5/6/20	Opportunities Industrialization Center, Inc. (dba: OIC Family Medical Center)	Rocky Mount	NC	\$27,468
6/17/20	Oregon Health & Science University	Portland	OR	\$372,757
7/1/20	Our Lady of the Lake Hospital	Baton Rouge	LA	\$997,720
5/28/20	Outside In	Portland	OR	\$291,235
7/1/20	Pacific Clinics	Santa Fe Springs	CA	\$41,553
6/24/20	Pacific Clinics East	Arcadia	CA	\$254,524
6/17/20	PAF at Biscayne Medical Center	Miami	FL	\$55,260
5/6/20	Parker Health Group	Piscataway	NJ	\$28,838
4/29/20	Parker Jewish Institute for Health Care and Rehabilitation	New Hyde Park	NY	\$97,965
7/1/20	Parkview Hospital, Inc.	Fort Wayne	IN	\$891,276
6/24/20	Pastoral Counseling Service of Summit County	Akron	OH	\$33,961
6/10/20	PCC Community Wellness Center	Oak Park	IL	\$393,575
6/10/20	People's Community Clinic	Austin	TX	\$136,214
6/24/20	Pinebrook Family Answers Main Office	Allentown	PA	\$9,243
6/24/20	Plains Area Mental Health Center - Carroll Office	Le Mars	IA	\$107,180
5/6/20	Pomona Community Health Center	Pomona	CA	\$209,933
5/28/20	Portland Community Health Center	Portland	ME	\$245,988
6/3/20	Positive Directions-The Center for Prevention and Counseling	Westport	CT	\$9,420
7/1/20	PrimaryOne Health	Columbus	OH	\$175,125
6/10/20	PrimeCare West Town	Chicago	IL	\$260,517
6/10/20	Prism Health	Portland	OR	\$28,131
5/28/20	Project Health Inc. d/b/a/ Langley Health Services	Sumterville	FL	\$437,114
6/24/20	ProMedica Health System	Toledo	OH	\$707,298
7/1/20	Providence Regional Medical Center	Everett	WA	\$19,736
6/3/20	Providence St. Joseph Health Consortium	Seattle	WA	\$1,000,000
6/10/20	Providence St. Joseph Health Consortium	Seattle	WA	\$866,750

6/17/20	Providence St. Joseph Health Consortium	Seattle	WA	\$105,000
5/28/20	Public Health Management Corporation	Philadelphia	PA	\$202,065
7/1/20	Pulask Clinic	Somerset	KY	\$6,327
5/28/20	Purdue University Fort Wayne Community Counseling Center	West Lafayette	IN	\$34,982
7/8/20	Recovery Consultants of Atlanta	Decatur	GA	\$26,733
4/21/20	Regents of the University of Michigan	Ann Arbor	MI	\$649,000
5/28/20	Region 8 Mental Health Services	Brandon	MS	\$32,349
5/13/20	Reliance Health, Inc.	Norwich	CT	\$18,601
6/10/20	Renown Regional Medical Center	Reno	NV	\$977,720
5/28/20	Resource Center for the Chemically Dependent Inc.	Denville	NJ	\$19,750
5/20/20	Ritter Center	San Rafael	CA	\$133,445
5/13/20	River Edge Behavioral Health	Macon	GA	\$735,365
6/3/20	Rochester General Hospital	Rochester	NY	\$794,909
6/17/20	Rosalind Franklin University Health Clinics	North Chicago	IL	\$18,250
6/10/20	Roswell Park Cancer Institute	Buffalo	NY	\$600,456
6/3/20	RotaCare Bay Area	Milpitas	CA	\$159,022
5/20/20	Rutgers Community Health (Suzanne Salamanca)	Newark	NJ	\$21,434
7/1/20	Ryan Health West 97th Street	New York	NY	\$749,766
6/24/20	Salem Home	Parsippany	NJ	\$16,079
5/13/20	Salina Family Healthcare Center	Salina	KS	\$14,418
6/24/20	San Fernando Community Health Center	San Fernando	CA	\$112,244
5/20/20	Saratoga Hospital Consortium	Saratoga Springs	NY	\$61,515
6/24/20	Sayre Health Center	Philadelphia	PA	\$112,926
6/17/20	Serenity First Counseling Prevention & Support Coalition	Sahuarita	AZ	\$40,202
6/17/20	SERV Behavioral Health Center	Clifton	NJ	\$37,193
4/29/20	Service Program for Older People, Inc.	New York	NY	\$26,180
6/10/20	Sharon Lee Family Health Care	Kansas City	KS	\$23,015
5/28/20	Shasta Community Health Center	Redding	CA	\$44,263
6/3/20	Singing River Services, Region 14	Gautier	MS	\$414,717
6/3/20	Sixteenth Street Community Health Centers - Chavez	Milwaukee	WI	\$257,284
6/17/20	Sojourns Community Clinic, INC	Westminster	VT	\$43,411
5/6/20	South Plains Rural Health Services, Inc.	Levelland	TX	\$109,365
7/1/20	South Shore Health	South Weymouth	MA	\$400,392
5/13/20	Southeast Alabama Rural Health Associates	Troy	AL	\$732,827
6/10/20	Southeast Arkansas Behavioral Healthcare System-Stuttgart	Pine Bluff	AR	\$36,231
6/3/20	Southeast Community Health Systems	Zachary	LA	\$561,131
6/10/20	Southern Illinois Hospital Services	Carbondale	IL	\$242,600
7/1/20	Southern Jersey Family Medical Centers	Burlington	NJ	\$937,755

5/13/20	Southwest General Health Center	Middleburg Heights	OH	\$190,150
7/1/20	Southwest Health Center	Platteville	WI	\$6,344
6/3/20	Southwest Mississippi Mental Health Complex	McComb	MS	\$659,092
7/8/20	Spanish Peaks Behavioral Health Centers	Pueblo	CO	\$55,380
5/6/20	Spectrum Health Services, Inc.	Philadelphia	PA	\$40,417
7/1/20	Spectrum Health System - Butterworth Hospital	Grand Rapids	MI	\$638,263
5/20/20	Spectrum Human Services	Orchard Park	NY	\$463,866
6/10/20	Squirrel Hill Health Center	Pittsburgh	PA	\$144,940
7/1/20	SSM Health	St. Louis	MO	\$944,766
5/20/20	St Joseph's Hospital and Medical Center, Inc.	Paterson	NJ	\$472,059
7/8/20	St Luke's Hospital	Duluth	MN	\$299,118
6/10/20	St Vincent General Hospital District	Leadville	CO	\$2,796
6/10/20	St. John's Health	Jackson	WY	\$57,499
7/1/20	St. John's Riverside Hospital	Yonkers	NY	\$923,989
4/21/20	St. John's Well Child & Family Center	Los Angeles	CA	\$382,331
5/20/20	St. Joseph Orphanage	Cincinnati	OH	\$228,619
6/10/20	St. Lawrence Health System	Potsdam	NY	\$615,545
6/3/20	St. Luke Hospital	Marion	KS	\$15,941
6/10/20	St. Thomas Community Health Center, Inc.	New Orleans	LA	\$999,700
6/24/20	St. Vincent Center	Chicago	IL	\$126,442
5/28/20	St. Vincent Charity Medical Center	Cleveland	OH	\$183,195
6/10/20	Sto-Rox Family Health Center	McKees Rocks	PA	\$34,489
6/24/20	Stony Brook University Hospital	Stony Brook	NY	\$966,026
5/28/20	SUNY Upstate Cancer Center at Seneca Hill	Syracuse	NY	\$373,731
7/1/20	Surgery Clinic of Philadelphia	Philadelphia	MS	\$71,564
6/17/20	SWLA Center for Health Services	Lake Charles	LA	\$793,274
7/1/20	Syracuse Community Health Center	Syracuse	NY	\$247,510
6/10/20	T.H.E. Clinic, Inc.	Los Angeles	CA	\$80,894
5/13/20	Tanner Medical Center, Inc.	Carrollton	GA	\$879,520
7/1/20	TCC Family Health	Long Beach	CA	\$920,019
5/28/20	Temple University Hospital, Inc.	Philadelphia	PA	\$902,290
7/8/20	Texas A&M Health Family Care Clinic	Bryan	TX	\$110,295
5/28/20	The Arc Madison Cortland	Oneida	NY	\$49,455
6/24/20	The Bridge, Inc.	New York	NY	\$440,875
5/28/20	The Chautauqua Center Medical Center	Dunkirk	NY	\$164,634
5/6/20	The Children's Home of Cincinnati	Cincinnati	OH	\$456,871
6/24/20	The Childrens Center Behavioral Health	Detroit	MI	\$118,604
6/24/20	The Connecticut Hospice, Inc.	Branford	CT	\$312,572
5/20/20	The Counseling Center of Wayne and Holmes Counties	Wooster	OH	\$28,270
6/3/20	The Family Center	Brooklyn	NY	\$49,855
5/28/20	The Family Counseling Center	Gloversville	NY	\$43,667

7/1/20	The Family Medicine Residency of Idaho, Inc.	Boise	ID	\$134,048
6/3/20	The Floating Hospital	Long Island City	NY	\$47,658
6/24/20	The Harris Center for Mental Health and IDD	Houston	TX	\$836,243
4/29/20	The Institute for Family Health	New Paltz	NY	\$729,118
5/28/20	The Johns Hopkins Health System Corporation	Baltimore	MD	\$1,000,000
5/28/20	The Key Program, Inc. (Children's Charter)	Framingham	MA	\$20,069
5/28/20	The Key Program, Inc. (State St)	Framingham	MA	\$6,423
6/10/20	The Los Angeles Free Clinic (dba Saban Community Clinic)	Los Angeles	CA	\$260,959
6/17/20	The MetroHealth System	Brooklyn Heights	OH	\$914,049
6/10/20	The Nord Center	Lorain	OH	\$101,294
6/24/20	The Osborn Family Health Center	Camden	NJ	\$204,603
6/17/20	The Silvercrest Center for Nursing and Rehab	New York	NY	\$631,795
7/1/20	The T.I.M.E Organization, Inc.	Baltimore	MD	\$90,816
5/13/20	The Transition House Inc.	Saint Cloud	FL	\$106,625
6/17/20	Thomas Jefferson University Hospitals	Philadelphia	PA	\$922,688
7/8/20	Thundermist Health Center	Warwick	RI	\$128,347
6/24/20	Tri County's Family Medicine Program Inc. - Dansville	Dansville	NY	\$60,009
5/28/20	TriHealth	Cincinnati	OH	\$537,471
6/24/20	Tuscola County Health Department	Caro	MI	\$9,015
6/10/20	UCNW	Bellingham	WA	\$302,000
6/17/20	Unicare Community Health Center, Inc	Ontario	CA	\$281,124
5/28/20	United Methodist Communities at the Shores	Neptune	NJ	\$909,560
7/1/20	Unity Health Care Community Health Centers	Washington	DC	\$820,493
5/28/20	Universal Community Health Center	Los Angeles	CA	\$170,479
5/28/20	University Hospitals Cleveland Medical Center	Cleveland	OH	\$821,882
7/1/20	University of Alabama at Birmingham Hospital	Birmingham	AL	\$1,000,000
6/24/20	University of Arkansas for Medical Sciences	Little Rock	AR	\$940,693
6/17/20	University of Colorado Health	Aurora	CO	\$998,250
6/24/20	University of Connecticut Health Center	Farmington	CT	\$135,707
6/24/20	University of Florida Department of Pediatrics	Gainesville	FL	\$967,957
6/10/20	University of Iowa Hospitals and Clinics	Iowa City	IA	\$266,944
6/3/20	University of Louisiana at Lafayette	Lafayette	LA	\$271,850
5/28/20	University of Mississippi Medical Center / UMMC Consortium	Jackson	MS	\$1,000,000
6/24/20	University of Virginia Health System	Charlottesville	VA	\$767,139
6/10/20	UPMC Bedford	Pittsburgh	PA	\$22,520
4/16/20	UPMC Children's Hospital of Pittsburgh	Allegheny	PA	\$192,500
6/10/20	UPMC Hanover	Harrisburg	PA	\$264,969
6/17/20	UPMC Magee-Women's Hospital	Pittsburgh	PA	\$85,234
6/17/20	UPMC Mercy	Pittsburgh	PA	\$67,958
6/24/20	UPMC Mercy	Pittsburgh	PA	\$10,029

6/10/20	UPMC Passavant	Pittsburgh	PA	\$216,502
6/17/20	UPMC Passavant	Pittsburgh	PA	\$12,591
7/1/20	UPMC Pinnacle Hospitals	Harrisburg	PA	\$705,940
6/24/20	UPMC Presbyterian Shadyside	Pittsburgh	PA	\$540,410
5/28/20	Upper Great Lakes Family Health Center	Calumet	MI	\$213,997
6/24/20	UTMB Health	Galveston	TX	\$24,690
6/10/20	Valley Presbyterian Hospital	Van Nuys	CA	\$381,642
4/29/20	Valley-Wide Health Systems, Inc.	Alamosa	CO	\$46,437
6/3/20	Vantage Health System, Inc.	Dumont	NJ	\$34,856
6/3/20	Vermont Psychological Services: Leitenberg Center for Evidence-Based Practice	Charlotte	VT	\$7,171
5/13/20	Via Care Community Health Center	Los Angeles	CA	\$157,123
5/28/20	View Point Health	Lawrenceville	GA	\$315,672
6/17/20	Virginia Mason Memorial Hospital (formerly Yakima Valley Memorial Hospital)	Yakima	WA	\$390,611
6/10/20	Vitality Integrated Programs	Elko	NV	\$180,050
6/10/20	Volunteers of America Oregon	Portland	OR	\$740,513
7/1/20	Washburn Center for Children	Minneapolis	MN	\$169,538
6/10/20	Wayne HealthCare	Greenville	OH	\$2,082
6/3/20	West Chester Medical Center	Valhalla	NY	\$593,957
7/8/20	Westside Family Healthcare	Wilmington	DE	\$524,062
4/23/20	White Plains Hospital Medical Center	White Plains	NY	\$165,832
6/3/20	Whitehall Family Health Center	Columbus	OH	\$150,475
5/6/20	Wilmington Community Clinic	Wilmington	CA	\$232,291
5/20/20	Windrose Health Network	Greenwood	IN	\$223,720
5/13/20	Wirt County Health Services Association, Inc.	Elizabeth	WV	\$274,432
6/10/20	Woodland Centers	Willmar	MN	\$118,294
5/6/20	Wright Center Medical Group	Scranton	PA	\$629,051
6/17/20	WVUHS - West Virginia United Health System Consortium	Morgantown	WV	\$780,899
5/13/20	Yakima Neighborhood Health Services	Yakima	WA	\$177,945
5/20/20	Yale New Haven Hospital	New Haven	CT	\$1,000,000
6/24/20	Youth Development Clinic of Newark	Newark	NJ	\$9,250

APPENDIX C
COVID-19 Telehealth Program Awards
Round 2
446 awards, totaling \$256.4 million

Selection Date	Awardee	City	State/territory	Amount
1/27/22	Adams County Regional Medical Center	Seaman	OH	\$498,756
10/21/21	Adelante Healthcare	Phoenix	AZ	\$868,857
12/21/21	Adena Regional Medical Center	Chillicothe	OH	\$532,000
11/9/21	Adult and Child Mental Health Center	Indianapolis	IN	\$516,208
11/9/21	Advantage Behavioral Health Systems	Athens	GA	\$222,406
1/27/22	Advantage Care Diagnostic and Treatment Center	Glen Head	NY	\$572,310
9/29/21	Adventist Health System	Altamonte Springs	FL	\$791,497
9/29/21	Adventist Health System-West	Roseville	CA	\$1,000,000
9/29/21	Alaska Native Tribal Health Consortium (ANTHC)	Anchorage	AK	\$798,148
11/9/21	Albany Medical Center	Albany	NY	\$810,801
8/26/21	Alfond Center for Health	Augusta	ME	\$603,315
10/21/21	Alleghany Memorial Hospital	Sparta	NC	\$92,041
8/26/21	Allegheny Health Network	Pittsburgh	PA	\$999,910
12/21/21	AllianceChicago	Chicago	IL	\$975,124
8/26/21	American Telemedicine Connect Consortium	Cody	WY	\$949,592
1/27/22	AMH Comprehensive Medical Centers	Los Angeles	CA	\$33,335
11/9/21	Ammonoosuc Community Health Services	Littleton	NH	\$332,854
9/29/21	Appalachian Regional Healthcare	Lexington	KY	\$408,141
10/21/21	Archie Hendricks Sr. Skilled Nursing Facility	Sells	AZ	\$688,084
1/27/22	Arkansas Valley Regional Medical Center	La Junta	CO	\$339,501
11/9/21	Aspire Indiana	Noblesville	IN	\$211,861
12/21/21	Aspirus Wausau Hospital	Wausau	WI	\$999,463
11/9/21	Astor Services for Children and Families	Rhinebeck	NY	\$344,119
9/29/21	AtlantiCare Regional Medical Center	Cape May Court House	NJ	\$533,062
12/21/21	Atrium Health	Charlotte	NC	\$774,414
1/27/22	Augusta University	Albany	GA	\$102,328
12/21/21	Aunt Martha's Health and Wellness	Olympia Fields	IL	\$156,000
1/27/22	AWARE	Anaconda	MT	\$457,603

12/21/21	Axis Health System	Durango	CO	\$300,027
9/29/21	Baldwin Family Health Care	Grant	MI	\$713,657
10/21/21	Baptist Health Medical Center - Little Rock	Little Rock	AR	\$999,277
9/29/21	Baptist Memorial Health Care Corporation	Memphis	TN	\$209,009
11/9/21	Barnes-Jewish Hospital	Saint Louis	MO	\$996,722
9/29/21	Baton Rouge General Medical Center - Mid-City Campus	Baton Rouge	LA	\$367,664
8/26/21	Baton Rouge Medical Center- Blue Bonnett Campus	Baton Rouge	LA	\$377,440
11/9/21	Bay Area Community Health	Fremont	CA	\$960,436
9/29/21	Baylor Scott and White Health	Dallas	TX	\$984,184
12/21/21	Beaumont Health	Southfield	MI	\$850,789
8/26/21	Bellin Memorial Hospital	Green Bay	WI	\$682,017
10/21/21	Berkshire Health Systems	Pittsfield	MA	\$1,000,000
1/27/22	Berkshire Healthcare Systems	Pittsfield	MA	\$835,068
9/29/21	Beth Israel Medical Center	New York	NY	\$920,000
1/27/22	Betty Jean Kerr People's Health Centers	St. Louis	MO	\$218,741
8/26/21	Bighorn Valley Health Center	Hardin	MT	\$930,000
11/9/21	Billings Area Office Indian Health Service	Billings	MT	\$1,000,000
11/9/21	Bluebonnet Trails Community Services	Round Rock	TX	\$724,411
1/27/22	Bluestone Health Association	Princeton	WV	\$169,383
12/21/21	BMH	Blackfoot	ID	\$840,111
9/29/21	Bon Secours St. Mary's Hospital of Richmond	Richmond	VA	\$308,246
11/9/21	Broad Top Area Medical Center	Broad Top	PA	\$354,602
11/9/21	Brooks Rehabilitation Hospital	Jacksonville	FL	\$218,599
12/21/21	Burnett Medical Center	Grantsburg	WI	\$174,634
1/27/22	Cabell Huntington Hospital	Huntington	WV	\$493,888
8/26/21	Cabin Creek Health Systems	Charleston	WV	\$304,521
1/27/22	California Rural Indian Health Board	Roseville	CA	\$638,914
9/29/21	Camillus Health Concern	Miami	FL	\$983,465
1/27/22	Canyonlands Community Health Care	Page	AZ	\$506,702
8/26/21	Cape Fear Valley Health System	Fayetteville	NC	\$998,358
9/29/21	Care Resource Community Health Centers	Miami	FL	\$966,543
10/21/21	CareSouth Carolina	Hartsville	SC	\$242,334
11/9/21	CareSTL Health	Saint Louis	MO	\$386,476
8/26/21	Carilion Roanoke Memorial Hospital	Roanoke	VA	\$933,385
12/21/21	Carle Foundation Hospital	Urbana	IL	\$643,231
9/29/21	Carolina Community Health Center	Wilson	NC	\$1,000,000

11/9/21	Caromont Regional Medical Center	Gastonia	NC	\$130,591
11/9/21	Catholic Health Initiatives	Englewood	CO	\$1,000,000
11/9/21	Catholic Health System	Buffalo	NY	\$955,102
1/27/22	Catholic Medical Center	Manchester	NH	\$1,000,000
10/21/21	CenterPlace Health	Sarasota	FL	\$91,179
9/29/21	Centerville Clinics	Fredericktown	PA	\$224,205
9/29/21	CentraCare Health System	Saint Cloud	MN	\$234,353
11/9/21	Centro De Salud Familiar La Fe	El Paso	TX	\$750,948
8/26/21	Centro de Salud Integral en Naranjito	Naranjito	PR	\$869,990
11/9/21	CGH Medical Center	Sterling	IL	\$183,015
9/29/21	Cherokee Health Systems	Talbott	TN	\$861,560
10/21/21	Chestnut Health Systems	Bloomington	IL	\$271,866
11/9/21	Children's Hospital of Philadelphia	Philadelphia	PA	\$869,672
1/27/22	Children's Hospital of Wisconsin	Milwaukee	WI	\$447,400
1/27/22	CHRISTUS Health	Irving	TX	\$734,675
1/27/22	Cibola General Hospital	Grants	NM	\$152,398
1/27/22	City of Hope National Medical Center and Community Practice Sites	Duarte	CA	\$215,300
1/27/22	Clara Martin Center	Randolph	VT	\$128,517
1/27/22	Cobre Valley Regional Medical Center	Globe	AZ	\$449,201
1/27/22	Coleman Professional Services	Kent	OH	\$631,836
10/21/21	Collier Health Services	Immokalee	FL	\$506,652
8/26/21	Commonwealth Health Center	Saipan	MP	\$522,752
1/27/22	CommuniCare Health Center	San Antonio	TX	\$556,846
12/21/21	Community Care Network of Kansas	Winfield	KS	\$404,923
1/27/22	Community Foundation Northwest Indiana	Munster	IN	\$539,840
1/27/22	Community Health Alliance of Pasadena	Pasadena	CA	\$248,024
8/26/21	Community Health Center	Middletown	CT	\$999,023
12/21/21	Community Health Center of Central Missouri	Jefferson City	MO	\$329,215
10/21/21	Community Health Center of Richmond	Staten Island	NY	\$335,995
8/26/21	Community Health Center of Southeast Kansas	Pittsburg	KS	\$366,168
12/21/21	Community Health Center of the North Country	Canton	NY	\$328,104
1/27/22	Community Health Center of Yavapai	Prescott	AZ	\$915,985
12/21/21	Community Health Centers	Winter Garden	FL	\$956,655
10/21/21	Community Health Centers of Pinellas	Clearwater	FL	\$962,184
9/29/21	Community Health Net	Erie	PA	\$327,661
9/29/21	Community Health of South Florida	Miami	FL	\$347,850
1/27/22	Community Health Partnership of Illinois	Chicago	IL	\$237,738

11/9/21	Community Health Programs Inc	Great Barrington	MA	\$164,079
1/27/22	Community Health Systems	Moreno Valley	CA	\$33,320
12/21/21	Community HealthNet	Gary	IN	\$885,000
1/27/22	Community Hospital	Tallassee	AL	\$46,323
12/21/21	Compass Community Health	Portsmouth	OH	\$151,879
12/21/21	Compass Health	St. Peters	MO	\$967,371
12/21/21	Cook County Health	Chicago	IL	\$513,356
12/21/21	Coos County Family Health Services	Berlin	NH	\$68,750
9/29/21	Cornell Scott-Hill Health Corporation	New Haven	CT	\$713,726
9/29/21	Cornerstone Family Healthcare	Cornwall	NY	\$390,330
12/21/21	County of Los Angeles - Department of Health Services	Los Angeles	CA	\$1,000,000
9/29/21	Covenant Health	Knoxville	TN	\$987,991
9/29/21	Covenant Living Communities and Services	Skokie	IL	\$95,114
12/21/21	CoxHealth Consortium	Springfield	MO	\$553,551
1/27/22	Credo Community Center for the Treatment of Addictions	Watertown	NY	\$541,077
1/27/22	Creek Valley Health Clinic	Colorado City	AZ	\$241,586
8/26/21	Dayspring Health Inc	Jellico	TN	\$533,225
1/27/22	Dayton Children's Hospital	Dayton	OH	\$938,136
10/21/21	Denver Health and Hospital Authority	Denver	CO	\$529,250
9/29/21	Detroit Health Care for the Homeless	Detroit	MI	\$221,620
1/27/22	Dickinson County Healthcare System	Gaylord	MI	\$1,000,000
10/21/21	DuBois Regional Medical Center	DuBois	PA	\$530,800
11/9/21	Duke University Health System	Durham	NC	\$955,557
8/26/21	East Bay Community Action Program	Newport	RI	\$164,950
1/27/22	East Carolina University	Greenville	NC	\$367,900
9/29/21	East Liberty Family Health Care Center	Pittsburgh	PA	\$427,782
1/27/22	Edgewater Health	Gary	IN	\$411,750
8/26/21	El Centro de Corazón, Magnolia Health Center	Portland	OR	\$999,881
11/9/21	El Centro del Barrio	San Antonio	TX	\$999,879
10/21/21	El Paso County Hospital District	El Paso	TX	\$763,050
8/26/21	Elaine Ellis Center of Health	Washington	DC	\$332,125
11/9/21	Elliot Health System	Manchester	NH	\$984,953
10/21/21	Empower U Community Health Center	Miami	FL	\$301,554
1/27/22	Equitas Health	Columbus	OH	\$263,045
10/21/21	Erie Family Health Center	Chicago	IL	\$409,678
8/26/21	Essentia Health	Duluth	MN	\$981,205
10/21/21	Evergreen Health	Buffalo	NY	\$160,806

10/21/21	Family Christian Health Center	Harvey	IL	\$124,667
10/21/21	Family First Health Corporation	York	PA	\$620,510
10/21/21	Family Health Centers	Okanogan	WA	\$212,164
9/29/21	Family Health Centers of Southwest Florida	Fort Myers	FL	\$13,801
12/21/21	Family Medicine Clinic for Health Equity	Denver	CO	\$360,200
11/9/21	FamilyCare Health Center	Scott Depot	WV	\$406,896
1/27/22	FCC Behavioral Health	Kennett	MO	\$163,900
10/21/21	First Nations Community HealthSource	Albuquerque	NM	\$655,395
10/21/21	Forsyth Memorial Hospital	Winston-Salem	NC	\$1,000,000
11/9/21	Fort Defiance Indian Hospital Board	Fort Defiance	AZ	\$244,614
10/21/21	FoundCare	West Palm Beach	FL	\$942,083
9/29/21	Franciscan Health Indianapolis	Mishawaka	IN	\$747,666
9/29/21	Gaston Family Health Services	Gastonia	NC	\$983,524
8/26/21	Georgia Association for Primary Health Care	Decatur	GA	\$998,514
1/27/22	Glencoe Regional Health Services	Glencoe	MN	\$53,688
10/21/21	Golden Valley Health Centers	Merced	CA	\$509,048
8/26/21	Governor Juan F Luis Hospital and Medical Center	Christiansted	VI	\$345,566
10/21/21	Great Lakes Bay Health Centers	Saginaw	MI	\$963,947
1/27/22	Great River Medical Center	Blytheville	AR	\$134,645
8/26/21	Guam Memorial Hospital Authority	Tamuning	GU	\$722,000
10/21/21	Gundersen Lutheran Health System Inc	La Crosse	WI	\$999,909
8/26/21	Gunnison Valley Hospital	Gunnison	UT	\$275,851
10/21/21	Hampton Roads Community Health Center	Portsmouth	VA	\$195,666
8/26/21	Harbor Care Health and Wellness Center	Nashua	NH	\$801,768
10/21/21	Health and Hospital Corporation of Marion County	Indianapolis	IN	\$299,799
9/29/21	Health Care Coalition of Lafayette County	Lexington	MO	\$285,872
9/29/21	Health Services	Montgomery	AL	\$533,072
1/27/22	Health West	Aberdeen	ID	\$774,240
1/27/22	HealthIE Georgia Corporation	Clayton	GA	\$923,986
8/26/21	HealthLinc	Valparaiso	IN	\$362,696
1/27/22	HealthNet	Indianapolis	IN	\$620,007
10/21/22	HealthNet connect	West Des Moines	IA	\$1,000,000
10/21/21	HealthPoint	Renton	WA	\$839,091
12/21/21	Heart of Florida Health Center	Ocala	FL	\$165,509
9/29/21	Heartland Health Centers	Chicago	IL	\$460,635
12/21/21	Henry County Memorial Hospital	New Castle	IN	\$338,511

1/27/22	Herald Christian Health Center	Rosemead	CA	\$604,854
1/27/22	Heritage Behavioral Health Center	Decatur	IL	\$294,000
1/27/22	Heritage Health and Housing	New York	NY	\$701,277
1/27/22	High Country Community Health	Boone	NC	\$495,429
11/9/21	Highlands Health: Laurel Highlands Free & Charitable Medical Clinic	Johnstown	PA	\$198,530
1/27/22	Hill Country MHDD Centers	Kerrville	TX	\$847,968
9/29/21	Hills & Dales General Hospital	Cass City	MI	\$684,801
1/27/22	Hocking Valley Community Hospital	Logan	OH	\$410,647
10/21/21	Holyoke Medical Center	Holyoke	MA	\$795,090
10/21/21	Holzer Health System	Gallipolis	OH	\$667,723
11/9/21	Honor Community Health	Pontiac	MI	\$693,990
11/9/21	Horizon Health and Wellness	Apache Junction	AZ	\$920,385
11/9/21	Horizon Health Center	Jersey City	NJ	\$74,100
9/29/21	Horizon Health Services	Buffalo	NY	\$697,590
1/27/22	Houlton Regional Hospital	Houlton	ME	\$277,934
9/29/21	Huntsville Hospital	Huntsville	AL	\$394,478
12/21/21	Hutchinson Regional Medical Center	Hutchinson	KS	\$1,000,000
9/29/21	Indiana Regional Medical Center	Indiana	PA	\$295,298
10/21/21	Indiana University Health	Indianapolis	IN	\$908,061
8/26/21	INTEGRIS Health	Oklahoma City	OK	\$998,854
11/9/21	Intermountain Centers for Human Development	Tucson	AZ	\$183,393
12/21/21	Jackson Parish Hospital Service	Jonesboro	LA	\$442,144
1/27/22	Kadlec Regional Medical Center	Kennewick	WA	\$762,420
10/21/21	Kaleida Health	Buffalo	NY	\$1,000,000
12/21/21	Kalkaska Memorial Health Center	Kalkaska	MI	\$526,250
4/25/22	Kau Hospital and Rural Clinic	Pahala	HI	\$825,254
1/27/22	Kaweah Delta Health Care District	Visalia	CA	\$994,003
9/29/21	Keck Hospital and School of Medicine of USC	Los Angeles	CA	\$895,103
12/21/21	Kenosha Community Health Center	Kenosha	WI	\$988,540
1/27/22	Kern County Hospital Authority	Bakersfield	CA	\$600,320
12/21/21	Kettering Medical Center	Kettering	OH	\$273,194
11/9/21	Kirkland Village	Dillsburg	PA	\$1,000,000
12/21/21	Klickitat County Public Hospital	Goldendale	WA	\$711,739
10/21/21	Kodiak Island Health Care Foundation	Kodiak	AK	\$86,033
11/9/21	Konza Prairie Community Health Center	Junction city	KS	\$488,176
9/29/21	Kootenai Health	Coeur d'Alene	ID	\$784,023
10/21/21	La Casa de Salud	Bronx	NY	\$419,875

8/26/21	La Clinica del Valle Family Health Center	Medford	OR	\$123,792
8/26/21	La Red Health Center	Georgetown	DE	\$287,766
1/27/22	Lakewood Health System	Staples	MN	\$376,200
11/9/21	Lakewood Resource and Referral Center	Lakewood	NJ	\$999,010
12/21/21	LaSante Health Center Inc	Brooklyn	NY	\$867,684
10/21/21	Lawndale Christian Health Center	Chicago	IL	\$172,354
8/26/21	LBJ Tropical Medical Center	Pago Pago	AS	\$334,519
9/29/21	Lee Memorial Health System	Fort Myers	FL	\$1,000,000
11/9/21	LifeStream Behavioral Center	Leesburg	FL	\$338,100
12/21/21	Little Rivers Health care	Bradford	VT	\$872,381
9/29/21	Lone Star Circle of Care	Georgetown	TX	\$220,477
10/21/21	Loretto Hospital	Chicago	IL	\$823,600
1/27/22	Los Angeles Christian Health Centers	Los Angeles	CA	\$47,219
8/26/21	Los Angeles Jewish Home for the Aging	Reseda	CA	\$862,906
11/9/21	Los Barrios Unidos Community Clinic	Dallas	TX	\$951,800
11/9/21	Louisiana Independent Hospital Network Coalition	Baton Rouge	LA	\$452,758
12/21/21	Louisiana Primary Care Association	Baton Rouge	LA	\$890,860
12/21/21	Lower Umpqua Hospital District	Reedsport	OR	\$989,628
8/26/21	Magnolia Regional Health Center	Corinth	MS	\$471,885
9/29/21	Maniilaq Health Center	Kotzebue	AK	\$637,869
9/29/21	Maple City Health Care Center	Goshen	IN	\$312,073
12/21/21	Marana Health Center	Marana	AZ	\$794,998
11/9/21	Maricopa County Special Health Care District	Phoenix	AZ	\$975,530
10/21/21	Marion General Hospital	Marion	IN	\$716,050
10/21/21	Marlette Regional Hospital	Gaylord	MI	\$382,730
8/26/21	McKenzie County Healthcare Systems	Watford City	ND	\$194,267
1/27/22	McLeod Regional Medical Center of the Pee Dee	Florence	SC	\$764,309
8/26/21	MCR Health	Palmetto	FL	\$1,000,000
8/26/21	Med Centro Healthcare System	Ponce	PR	\$909,391
9/29/21	Medical University of South Carolina	Charleston	SC	\$607,979
9/29/21	Memorial Healthcare System	Hollywood	FL	\$974,968
11/9/21	Memorial Hospital of South Bend	South Bend	IN	\$116,571
1/27/22	Mercy Foundation	Roseburg	OR	\$375,768
10/21/21	Mercy Health	St. Louis	MO	\$793,788
8/26/21	Mercy Health - St. Vincent Medical Center	Cincinnati	OH	\$812,876
12/21/21	Mercy Hospital Fort Smith	St. Louis	MO	\$647,154
10/21/21	Mercy Hospital Oklahoma City	St. Louis	MO	\$776,620

8/26/21	Mercy Rockford Health System	Janesville	WI	\$1,000,000
9/29/21	Methodist Healthcare Memphis Hospitals	Memphis	TN	\$280,212
11/9/21	Methodist Hospitals - Northlake	Gary	IN	\$1,000,000
1/27/22	Michigan Masonic Home	Alma	MI	\$519,532
10/21/21	Michigan Primary Care Association	Lansing	MI	\$990,000
11/9/21	Mid-State Health Center	Plymouth	NH	\$198,662
11/9/21	MidMichigan Health	Midland	MI	\$765,175
10/21/21	Minnie Hamilton Health Care Center	Grantsville	WV	\$457,568
8/26/21	Mobile County Board of Health	Mobile	AL	\$803,979
10/21/21	Mohawk Valley Health System	New Hartford	NY	\$697,382
12/21/21	Monongahela Valley Hospital	Monongahela	PA	\$498,726
10/21/21	Montefiore St. Luke's Cornwall	Newburgh	NY	\$749,385
1/27/22	Morehouse Healthcare	Atlanta	GA	\$907,235
9/29/21	Morris Heights Health Center	Bronx	NY	\$197,529
1/27/22	Mount Sinai Medical Center	Miami Beach	FL	\$925,208
10/21/21	Mount Vernon Neighborhood Health Center	Mount Vernon	NY	\$761,314
11/9/21	Mountain Park Health Center	Phoenix	AZ	\$165,844
8/26/21	Mountain States Health Alliance	Johnson City	TN	\$994,355
1/27/22	Multi-Cultural Health Evaluation Delivery System	Erie	PA	\$80,137
11/9/21	Munson Healthcare	Traverse City	MI	\$485,415
12/21/21	Na Pu'uwai	Kaunakakai	HI	\$275,000
10/21/21	Nathan Littauer Hospital	Gloversville	NY	\$283,254
12/21/21	Nationwide Children's Hospital	Columbus	OH	\$964,076
11/9/21	Native American Community Health Center	Phoenix	AZ	\$416,006
1/27/22	Navicent Health	Macon	GA	\$549,463
8/26/21	Nebraska Urban Indian Health Medical Center	Omaha	NE	\$190,875
9/29/21	Neighborcare Health	Seattle	WA	\$823,563
1/27/22	Neighborhood Health	Alexandria	VA	\$968,632
8/26/21	Neighborhood Health Services Corporation	Plainfield City	NJ	\$491,308
12/21/21	Neighborhood Healthcare	Escondido	CA	\$998,675
11/9/21	Nemours Children's Hospital	Jacksonville	FL	\$904,048
12/21/21	Neosho Memorial Regional Medical Center	Chanute	KS	\$176,054
9/29/21	Nett Lake Health Services	Nett Lake	MN	\$120,306
8/26/21	Nevada Health Centers	Las Vegas	NV	\$995,087
1/27/22	New Frontier	Fallon	NV	\$134,353
8/26/21	NEW Health Programs Association	Chewelah	WA	\$485,048

1/27/22	North Central Texas Community Health Care Center	Wichita Falls	TX	\$531,156
1/27/22	North Homes	Grand Rapids	MN	\$233,446
10/21/21	North Miami Center	Miami	FL	\$213,834
11/9/21	North Mississippi Medical Center-Tupelo	Tupelo	MS	\$1,000,000
11/9/21	North Valley Hospital	Tonasket	WA	\$92,591
1/27/22	Northeast Valley Health Corporation	San Fernando	CA	\$341,392
12/21/21	Northern Arizona Healthcare	Flagstaff	AZ	\$969,884
11/9/21	Northern Lakes Community Mental Health	Gaylord	MI	\$404,812
1/27/22	Northpointe Behavioral Healthcare	Gaylord	MI	\$37,679
9/29/21	Northwest Buffalo Community Health Care Center	Buffalo	NY	\$479,019
12/21/21	Northwestern Memorial HealthCare	Chicago	IL	\$1,000,000
11/9/21	Norton Healthcare	Louisville	KY	\$964,576
8/26/21	Norton Sound Health Corporation	Nome	AK	\$416,250
10/21/21	Novant Health	Fort Mill	SC	\$574,413
9/29/21	NSB Health & Social Service Department	Barrow	AK	\$319,409
11/9/21	Ochsner Medical Center	New Orleans	LA	\$999,996
12/21/21	Ohio State University Wexner Medical Center and James Cancer Hospital	Columbus	OH	\$526,613
10/21/21	Okeene Municipal Hospital	Okeene	OK	\$221,821
1/27/22	Oklahoma Department of Corrections	Oklahoma City	OK	\$202,692
1/27/22	One Brooklyn Health System	Brooklyn	NY	\$354,000
10/21/21	Oonalska Wellness Center	Anchorage	AK	\$79,892
1/27/22	Open Door Community Health Centers	Arcata	CA	\$201,300
9/29/21	Orange Blossom Family Health	Orlando	FL	\$126,361
9/29/21	OSF HealthCare Consortium	Peoria	IL	\$943,645
11/9/21	Ossining Open Door	Ossining	NY	\$426,039
10/21/21	Palmetto Care Connections	Bamberg	SC	\$782,575
8/26/21	Peak Vista Community Health Centers	Colorado Springs	CO	\$999,565
1/27/22	Pediatric and Family Medical Center	Los Angeles	CA	\$357,096
9/29/21	Philadelphia FIGHT	Philadelphia	PA	\$399,184
12/21/21	Piedmont Healthcare	Atlanta	GA	\$197,789
10/21/21	Pillars Community Health	La Grange	IL	\$598,504
12/21/21	Pine Rest Christian Mental Health Services	Grand Rapids	MI	\$398,825
9/29/21	Plan de Salud del Valle	Fort Lupton	CO	\$433,140
1/27/22	Potomac Valley Hospital	Keyser	WV	\$70,669
1/27/22	Premier Community HealthCare Group	Dade City	FL	\$569,940
1/27/22	Premium Health	Brooklyn	NY	\$29,438

9/29/21	Presbyterian Healthcare Services	Albuquerque	NM	\$625,790
8/26/21	Presbyterian Medical Services	Santa Fe	NM	\$357,725
1/27/22	Prester Center for Mental Health Services	Huntington	WV	\$166,050
1/27/22	Primary Care Health Services	Pittsburgh	PA	\$321,183
11/9/21	Professional Care Services of West TN	Covington	TN	\$195,953
11/9/21	Project Vida Health Center	El Paso	TX	\$384,159
1/27/22	Providence Community Health Centers	Providence	RI	\$898,467
12/21/21	Putnam County Hospital	Greencastle	IN	\$934,736
11/9/21	Red Lake Hospital	Red Lake	MN	\$291,148
10/21/21	Regions Hospital	Saint Paul	MN	\$1,000,000
12/21/21	Rehoboth McKinley Christian Health Care Services	Gallup	NM	\$697,179
12/21/21	Ritchie County Primary Care Association	Harrisville	WV	\$960,444
1/27/22	Riverwood Healthcare Center	Aitkin	MN	\$250,488
10/21/21	Robeson Health Care Corporation	Pembroke	NC	\$495,633
1/27/22	Roper St. Francis Hospital - Berkeley	Charleston	SC	\$630,678
9/29/21	Roseland Community Hospital	Chicago	IL	\$44,107
1/27/22	SAC Health System	San Bernardino	CA	\$540,319
12/21/21	Sacopee Valley Health Center	Porter	ME	\$616,532
11/9/21	Saint Joseph Health System	Lexington	KY	\$403,191
10/21/21	Saint Josephs Hospital, Yonkers	Yonkers	NY	\$927,213
9/29/21	Samaritan Healthcare	Moses Lake	WA	\$425,449
1/27/22	San Ysidro Health	San Diego	CA	\$1,000,000
8/26/21	Sanford Health	Sioux Falls	SD	\$967,439
11/9/21	Scheurer Health	Pigeon	MI	\$161,488
1/27/22	Scioto Paint Valley Mental Health Center	Chillicothe	OH	\$400,712
12/21/21	Seattle Children's Hospital	Seattle	WA	\$1,000,000
12/21/21	Shands Jacksonville Medical Center	Jacksonville	FL	\$470,553
11/9/21	Shawnee Christian Healthcare Center	Louisville	KY	\$320,808
8/26/21	Shenandoah Medical Center	Shenandoah	IA	\$946,100
9/29/21	Shore Memorial Hospital	Somers Point	NJ	\$770,000
12/21/21	Sinai Health System	Chicago	IL	\$1,000,000
12/21/21	Siouxland Community Health Center	Sioux City	IA	\$977,978
10/21/21	Skagit Regional Health	Mount Vernon	WA	\$38,515
12/21/21	Sky Lakes Medical Center Foundation	Klamath Falls	OR	\$226,092
9/29/21	South Boston Community Health Center	South Boston	MA	\$45,557
12/21/21	Southeast	Columbus	OH	\$51,733
8/26/21	SouthEast Alaska Regional Health Consortium	Juneau	AK	\$804,092

11/9/21	Southern Illinois University School of Medicine	Springfield	IL	\$967,430
8/26/21	Sparrow Health System	Lansing	MI	\$586,375
1/27/22	Spartanburg Regional Health Services District	Spartanburg	SC	\$152,230
1/27/22	Speare Memorial Hospital	Plymouth	NH	\$307,324
8/26/21	SSM Health	Saint Louis	MO	\$914,400
9/29/21	St. Anthony Hospital	Centennial	CO	\$997,597
10/21/21	St. Barnabas Hospital	Bronx	NY	\$998,624
10/21/21	St. Bernards Healthcare	Jonesboro	AR	\$547,270
12/21/21	St. Claire Medical Center	Morehead	KY	\$308,894
11/9/21	St. Croix Regional Medical Center	St. Croix Falls	WI	\$437,475
1/27/21	St. Elizabeth Medical Center	Edgewood	KY	\$949,340
8/26/21	St. Francis Hospital	Cincinnati	OH	\$853,062
10/21/21	St. John's Episcopal Hospital	Far Rockaway	NY	\$372,744
11/9/21	St. Joseph Mercy Oakland	Livonia	MI	\$306,927
9/29/21	St. Luke Community Healthcare	Ronan	MT	\$251,610
8/26/21	St. Luke's Health System	Boise	ID	\$699,816
1/27/22	St. Luke's Hospital	Bethlehem	PA	\$796,010
8/26/21	St. Luke's Hospital	New Bedford	MA	\$1,000,000
1/27/22	St. Mary's Health Wagon	Wise	VA	\$40,800
1/27/22	Summit Community Care Clinic	Frisco	CO	\$143,495
12/21/21	Summit Pacific Medical Center	Elma	WA	\$977,994
12/21/21	Sun Life Family Health Center	Casa Grande	AZ	\$907,887
11/9/21	Sunset Park Health Council Inc	Brooklyn	NY	\$1,000,000
10/21/21	SUNY Health Science Center at Brooklyn	Brooklyn	NY	\$945,421
10/21/21	Swope Health Services	Kansas City	MO	\$843,387
8/26/21	Tafuna Family Health Center	Pago Pago	AS	\$187,297
12/21/21	Talbert House Health Center	Middletown	OH	\$153,208
11/9/21	Tampa Family Health Centers	Tampa	FL	\$657,250
9/29/21	Tampa General Hospital	Tampa	FL	\$1,000,000
11/9/21	TCA Health	Chicago	IL	\$99,574
1/27/22	Tessie Cleveland Community Services Corporation	Los Angeles	CA	\$394,142
10/21/21	The Asian Human Services Family Health Center	Chicago	IL	\$400,725
9/29/21	The Brighter Beginnings Richmond Family Health Clinic	Philadelphia	PA	\$1,000,000
10/21/21	The C.W. Williams Community Health Center	Charlotte	NC	\$312,399
10/21/21	The Center for Family and Child Enrichment	Miami Gardens	FL	\$78,204

9/29/21	The Guthrie Clinic	Sayre	PA	\$949,721
1/27/22	The Jamaica Hospital	Jamaica	NY	\$925,912
9/29/21	The Medical Center at Bowling Green	Bowling Green	KY	\$100,325
9/29/21	The North Central Family Medical Center	Rock Hill	SC	\$269,050
8/26/21	The Queen's Medical Center - Punchbowl	Honolulu	HI	\$924,603
10/21/21	The University of Kansas Hospital Authority	Westwood	KS	\$659,146
8/26/21	The University of Vermont Medical Center (UVMHC)	Burlington	VT	\$606,998
1/27/22	The Village Health Center	San Diego	CA	\$261,458
11/9/21	The Wright Center Medical Group	Scranton	PA	\$491,814
1/27/22	ThedaCare	Neenah	WI	\$728,429
12/21/21	Trinitas Regional Medical Center	Elizabeth	NJ	\$639,832
8/26/21	Tuba City Regional Health Care Corporation	Tuba City	AZ	\$266,946
10/21/21	Union Community Health Center	Bronx	NY	\$999,075
12/21/21	Union Hospital	Terre Haute	IN	\$173,450
1/27/22	United Community Family Services	Norwich	CT	\$946,016
8/26/21	United Health Services Hospitals	Vestal	NY	\$562,116
12/21/21	University Hospitals Cleveland Medical Center	Cleveland	OH	\$999,015
11/9/21	University Medical Center Management Corporation	New Orleans	LA	\$996,376
8/26/21	University of Arkansas for Medical Sciences	Little Rock	AR	\$982,589
12/21/21	University of Cincinnati Medical Center	Cincinnati	OH	\$1,000,000
12/21/21	University of Colorado Hospital Authority	Aurora	CO	\$779,447
1/27/22	University of Colorado School of Medicine	Aurora	CO	\$691,230
9/29/21	University of Florida College of Medicine- Jacksonville	Jacksonville	FL	\$480,762
8/26/21	University of Hawaii Maternal Telehealth Network for Maternal Fetal Medicine	Honolulu	HI	\$899,106
1/27/22	University of Louisville Health	Louisville	KY	\$571,652
11/9/21	University of Maryland Medical System	Baltimore	MD	\$795,146
8/26/21	University of Maryland, Baltimore	Baltimore	MD	\$977,066
8/26/21	University of Montana College of Health	Missoula	MT	\$684,593
9/29/21	University of Rochester Medical Center	Rochester	NY	\$996,280
10/21/21	University of Virginia Health System	Charlottesville	VA	\$388,574
9/29/21	USA Health University Hospital	Mobile	AL	\$833,250
11/9/21	Valle del Sol	Phoenix	AZ	\$383,959

1/27/22	Valley Children's Hospital	Madera	CA	\$158,442
11/9/21	Valley Health	Winchester	VA	\$1,000,000
1/27/22	Valley Health Team	San Joaquin	CA	\$665,958
1/27/22	Venice Family Clinic	Venice	CA	\$697,864
9/29/21	Vidant Health System	Greenville	NC	\$897,000
8/26/21	Virgin Islands Healthcare Foundation	Christiansted	VI	\$416,003
11/9/21	Visiting Nurse Association of Central Jersey Community Health Center	Asbury Park	NJ	\$204,808
1/27/22	Vista Community Clinic	Vista	CA	\$894,718
1/27/22	Vocational Instruction Project	Bronx	NY	\$515,984
11/9/21	Washington University School of Medicine	St Louis	MO	\$737,109
12/21/21	Watauga Medical Center	Boone	NC	\$131,975
9/29/21	Wayne Memorial Community Health Centers	Honesdale	PA	\$421,883
10/21/21	Wellstar Sylvan Grove Hospital	Jackson	GA	\$1,000,000
12/21/21	Westchester County Health Care Corporation	Valhalla	NY	\$1,000,000
10/21/21	Wheeler Clinic	Plainville	CT	\$91,612
9/29/21	Whittier Street Health Center	Roxbury	MA	\$936,400
9/29/21	Wyckoff Heights Medical Center	Brooklyn	NY	\$601,398
1/27/22	Yakima Valley Council on Alcoholism Triumph Treatment Services	Yakima	WA	\$916,782
11/9/21	Yakutat Community Health Center	Yakutat	AK	\$454,343
11/9/21	York County Community Action	Sanford	ME	\$346,506
11/9/21	Yukon-Kuskokwim Health Corporation	Bethel	AK	\$520,597
11/9/21	Zufall Health Center	Dover	NJ	\$707,508

APPENDIX D

Connected Care Pilot Program Awardees

Selection Date	Awardee	State(s) served	Funding sought	Link to Application in ECFS
10/26/2021	Adult MH and SA Outpatient Services	AK	\$557,366	https://www.fcc.gov/ecfs/filing/1214279249727
6/17/2021	ADV West - Frank R. Howard Memorial Hospital	CA	\$504,900	https://www.fcc.gov/ecfs/filing/1214098704602
6/17/2021	Albany Medical Center	NY	\$331,429	https://www.fcc.gov/ecfs/filing/1214152116857
1/15/2021	Banyan Community Health Center, Inc.	FL	\$911,833	https://www.fcc.gov/ecfs/filing/1214136007638
6/17/2021	Blessing Health System	IL, MO	\$393,012	https://www.fcc.gov/ecfs/filing/121491766717
6/17/2021	Boone Memorial Health Services	WV	\$394,400	https://www.fcc.gov/ecfs/filing/121480911861
3/16/2022	Boston Medical Center	MA	\$446,250	https://www.fcc.gov/ecfs/filing/1214287516348
3/16/2022	Boston's Community Medical Group, Inc.	MA	\$918,000	https://www.fcc.gov/ecfs/filing/1214240216929
6/17/2021	Bridgeport Hospital	CT	\$320,790	https://www.fcc.gov/ecfs/filing/12140239102586
10/26/2021	Carmen B. Pingree Autism Center of Learning	UT	\$618,581	https://www.fcc.gov/ecfs/filing/121449008457
6/17/2021	Catholic Health Initiatives	AR, IA, KY, MN, ND, NE	\$6,183,189	https://www.fcc.gov/ecfs/filing/121466403917
10/26/2021	Charles Judd Community Health Center	HI	\$82,535	https://www.fcc.gov/ecfs/filing/1214047675187
10/26/2021	Children with Special Health Needs Branch-State Dept. of Health	HI	\$316,219	https://www.fcc.gov/ecfs/filing/121470857436
3/16/2022	Children's Hospital of Denver	CO, WY	\$824,096	https://www.fcc.gov/ecfs/filing/1214260273032
6/17/2021	Children's National Medical Center	DC	\$1,680,830	https://www.fcc.gov/ecfs/filing/1214224537361
10/26/2021	Children's Outpatient Services	UT	\$616,286	https://www.fcc.gov/ecfs/filing/1214821724752
10/26/2021	Christian Family Solutions - Brookfield, WI	WI	\$122,830	https://www.fcc.gov/ecfs/filing/121437957392
10/26/2021	Christian Family Solutions - Lakeville, MN	MN	\$190,669	https://www.fcc.gov/ecfs/filing/1214131460485
10/26/2021	Christian Family Solutions - Mankato, MN	MN	\$99,167	https://www.fcc.gov/ecfs/filing/1214017512710
3/16/2022	Christiana Care Health	DE	\$3,253,627	https://www.fcc.gov/ecfs/filing/1214295

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10/26/2021	Circare	NY	\$133,246	https://www.fcc.gov/ecfs/filing/1214223414764
6/17/2021	Coastal Health Alliance, dba Bolinas Family Practice	CA	\$158,514	https://www.fcc.gov/ecfs/filing/12141922106362
6/17/2021	Coastal Health Alliance, dba Point Reyes Medical Clinic	CA	\$383,790	https://www.fcc.gov/ecfs/filing/12140849410816
3/16/2022	Community Guidance Center - Indiana Location C-19	PA	\$154,530	https://www.fcc.gov/ecfs/filing/1214200154232
3/16/2022	Community Health Center (CHCI)	CT	\$1,093,398	https://www.fcc.gov/ecfs/filing/1214003517773
6/17/2021	Community Health Center of Lubbock	TX	\$59,142	https://www.fcc.gov/ecfs/filing/12142333213888
10/26/2021	Conway Medical	SC	\$1,018,449	https://www.fcc.gov/ecfs/filing/121445432349
10/26/2021	Cooper Health System	NJ	\$62,900	https://www.fcc.gov/ecfs/filing/12140652005624
10/26/2021	Core Recovery Management Outpatient Services	UT	\$614,756	https://www.fcc.gov/ecfs/filing/121493922471
3/16/2022	Council of Athabaskan Tribal Governments (Yukon Flats Health Center)	AK	\$1,124,486	https://www.fcc.gov/ecfs/filing/12141348917335
10/26/2021	Covington County Hospital	MS	\$162,860	https://www.fcc.gov/ecfs/filing/12142430330584
10/26/2021	Crisp Regional Hospital	GA	\$849,720	https://www.fcc.gov/ecfs/filing/1214134608765
6/17/2021	Dubuque Community Mental Health Center	IA	\$363,463	https://www.fcc.gov/ecfs/filing/1214119877789
1/15/2021	Duke University Health System	NC	\$1,464,759	https://www.fcc.gov/ecfs/filing/1214103875023
10/26/2021	Forensics	UT	\$616,286	https://www.fcc.gov/ecfs/filing/1214405009428
10/26/2021	Friend Health	IL	\$606,900	https://www.fcc.gov/ecfs/filing/1214383504738
1/15/2021	Geisinger	PA	\$1,739,100	https://www.fcc.gov/ecfs/filing/1214796000692
3/16/2022	Golden Valley Health Centers	CA	\$725,195	https://www.fcc.gov/ecfs/filing/121404617139
6/17/2021	Grace Health	MI	\$606,339	https://www.fcc.gov/ecfs/filing/1214679516514
3/16/2022	Greater Baden Medical Services, Inc.	MD	\$406,249	https://www.fcc.gov/ecfs/filing/1214026081819
6/17/2021	Greenwich Hospital	CT	\$213,860	https://www.fcc.gov/ecfs/filing/1214117874249
6/17/2021	Heartland Health Centers Consortium	IL	\$693,154	https://www.fcc.gov/ecfs/filing/1214829029459

6/17/2021	Heritage Behavioral Health Center, Inc	IL	\$322,299	https://www.fcc.gov/ecfs/filing/1214011731798
10/26/2021	Highland Springs Specialty Clinic American Fork	UT	\$615,978	https://www.fcc.gov/ecfs/filing/12140407003819
10/26/2021	Highland Springs Specialty Clinic Holladay	UT	\$619,622	https://www.fcc.gov/ecfs/filing/121444881567
6/17/2021	Housing Works Health Services III, Inc. on behalf of EngageWell IPA C-19	NY	\$2,527,220	https://www.fcc.gov/ecfs/filing/121479528025
6/17/2021	Hudson Headwaters Health Network	NY	\$767,210	https://www.fcc.gov/ecfs/filing/121415252213
6/17/2021	IHS-CAL Round Valley Indian Health Center	CA	\$968,836	https://www.fcc.gov/ecfs/filing/12140678210885
1/15/2021	Intermountain Centers for Human Development	AZ	\$237,150	https://www.fcc.gov/ecfs/filing/1214149169812
6/17/2021	Johns Hopkins University	MD	\$297,670	https://www.fcc.gov/ecfs/filing/121480846167
6/17/2021	Kennedy Krieger Children's Hospital, Inc.	MD	\$1,960,950	https://www.fcc.gov/ecfs/filing/12141266530296
10/26/2021	Kids Intensive Day Services (KIDS)	UT	\$617,595	https://www.fcc.gov/ecfs/filing/1214614001144
6/17/2021	Lawrence + Memorial Hospital	CT	\$319,940	https://www.fcc.gov/ecfs/filing/121427254374
10/26/2021	Long Island Select Healthcare, Inc.	NY	\$306,000	https://www.fcc.gov/ecfs/filing/121401581404
1/15/2021	MA FQHC Telehealth Consortium	MA	\$3,121,879	https://www.fcc.gov/ecfs/filing/12142862406316
10/26/2021	Marion General Hospital	IN	\$34,230	https://www.fcc.gov/ecfs/filing/1214076392272
10/26/2021	Metro Health	DC	\$297,517	https://www.fcc.gov/ecfs/filing/1214044405945
10/26/2021	MFA 2150 C-19	DC	\$454,809	https://www.fcc.gov/ecfs/filing/121492657072
6/17/2021	Mobile Medical Care, Inc.	MD	\$293,250	https://www.fcc.gov/ecfs/filing/12142255930187
3/16/2022	MUSC Medical Center	SC	\$246,347	https://www.fcc.gov/ecfs/filing/1214736729675
1/15/2021	Neighborhood Healthcare - El Cajon	CA	\$22,644	https://www.fcc.gov/ecfs/filing/121462450067
1/15/2021	Neighborhood Healthcare - Escondido	CA	\$38,556	https://www.fcc.gov/ecfs/filing/1214899013936
1/15/2021	Neighborhood Healthcare - Pauma Valley	CA	\$15,300	https://www.fcc.gov/ecfs/filing/121417768437

1/15/2021	Neighborhood Healthcare - Temecula	CA	\$37,944	https://www.fcc.gov/ecfs/filing/1214196400745
1/15/2021	Neighborhood Healthcare - Valley Parkway	CA	\$15,300	https://www.fcc.gov/ecfs/filing/1214398228691
3/16/2022	New England Telehealth Consortium, Inc.	ME, NH	\$2,560,098	https://www.fcc.gov/ecfs/filing/1214265438618
10/26/2021	New York Psychotherapy and Counseling Center - Bronx Child and Family Mental Health center	NY	\$636,650	https://www.fcc.gov/ecfs/filing/1214294418247
10/26/2021	North County Health Services (NCHS)	CA	\$334,887	https://www.fcc.gov/ecfs/filing/1214296075829
3/16/2022	Norther Nevada HOPES	NV	\$331,884	https://www.fcc.gov/ecfs/filing/12140603008162
10/26/2021	Norwegian American Hospital	IL	\$203,065	https://www.fcc.gov/ecfs/filing/121468010127
10/26/2021	NY Community Broadband Partnership	NY	\$126,480	https://www.fcc.gov/ecfs/filing/1214069225984
1/15/2021	OCHIN, Inc.	OH, OR, WA	\$5,834,620	https://www.fcc.gov/ecfs/filing/12142890418016
10/26/2021	One Brooklyn Health System	NY	\$882,401	https://www.fcc.gov/ecfs/filing/1214952915442
3/16/2022	Palmetto State Providers Network	SC	\$7,192,893	https://www.fcc.gov/ecfs/filing/12142140905571
10/26/2021	Parkview Consortium	IN, OH	\$642,600	https://www.fcc.gov/ecfs/filing/1214254912044
1/15/2021	Phoebe Family Medicine - Sylvester	GA	\$112,200	https://www.fcc.gov/ecfs/filing/121445259327
1/15/2021	Phoebe Family Medicine & Sports Medicine	GA	\$112,200	https://www.fcc.gov/ecfs/filing/1214626826276
1/15/2021	Phoebe Physicians Group - Ellaville Primary Medicine Center	GA	\$112,200	https://www.fcc.gov/ecfs/filing/1214245457559
1/15/2021	Phoebe Physicians Group Inc - PPC of Buena Vista	GA	\$112,200	https://www.fcc.gov/ecfs/filing/121471598310
1/15/2021	Phoebe Putney Memorial Hospital	GA	\$112,200	https://www.fcc.gov/ecfs/filing/1214038814551
1/15/2021	Phoebe Worth Medical Center - Camilla Clinic	GA	\$112,200	https://www.fcc.gov/ecfs/filing/12141693806859
6/17/2021	Primary Care Providers for a Healthy Feliciana, Inc - RKM Dental Clinic	LA	\$79,560	https://www.fcc.gov/ecfs/filing/1214679301525
6/17/2021	Sheppard Pratt	MD	\$1,109,287	https://www.fcc.gov/ecfs/filing/1214139

				56678
10/26/2021	Sky Lakes Medical Center	OR	\$193,673	https://www.fcc.gov/ecfs/filing/1214553305714
6/17/2021	Summa Health System	OH	\$783,870	https://www.fcc.gov/ecfs/filing/1214439603338
1/15/2021	Summit Pacific Medical Center	WA	\$169,977	https://www.fcc.gov/ecfs/filing/12142635321948
1/15/2021	Temple University Hospital, Inc.	PA	\$4,254,250	https://www.fcc.gov/ecfs/filing/1214310504229
6/17/2021	The Counseling Center of Wayne and Holmes Counties	OH	\$80,155	https://www.fcc.gov/ecfs/filing/1214604725502
6/17/2021	The Mental Health Center of Greater Manchester	NH	\$559,634	https://www.fcc.gov/ecfs/filing/1214061211895
6/17/2021	The MetroHealth System	OH	\$901,000	https://www.fcc.gov/ecfs/filing/1214326617808
3/16/2022	Tower Health - Reading Hospital	PA	\$396,457	https://www.fcc.gov/ecfs/filing/1214213932939
10/26/2021	Trinity Health Consortium	PA	\$652,800	https://www.fcc.gov/ecfs/filing/121419528751
3/16/2022	University Hospital	NJ	\$627,300	https://www.fcc.gov/ecfs/filing/121492657072
6/17/2021	University of Florida - Department of Pediatrics	FL	\$612,000	https://www.fcc.gov/ecfs/filing/12142429107224
6/17/2021	University of Hawaii, JABSOM: Department of Family Medicine and Community Health Hawaii/Pacific Basin Area Health Education Center	HI	\$320,535	https://www.fcc.gov/ecfs/filing/1214191100657
6/17/2021	University of Kentucky HealthCare	KY	\$998,466	https://www.fcc.gov/ecfs/filing/121452430614
1/15/2021	University of Mississippi Medical Center	MS	\$2,377,875	https://www.fcc.gov/ecfs/filing/1214264014334
1/15/2021	University of Virginia Health System	VA	\$4,462,500	https://www.fcc.gov/ecfs/filing/12141571415964
6/17/2021	Upstate Consortium	NY	\$2,050,200	https://www.fcc.gov/ecfs/filing/121486802792
10/26/2021	Valley EPIC Outpatient Recovery Management	UT	\$614,756	https://www.fcc.gov/ecfs/filing/121445767624
10/26/2021	Valleywest	UT	\$616,286	https://www.fcc.gov/ecfs/filing/12142561230621
10/26/2021	Western New York Rural Area Health Education Center, Inc.	NY	\$373,320	https://www.fcc.gov/ecfs/filing/121433002349
3/16/2022	Willis-Knighton Health System	LA	\$9,451,791	https://www.fcc.gov/ecfs/filing/12142931114181

10/26/2021	Winchester Medical Center	VA, WV	\$367,200	https://www.fcc.gov/ecfs/filing/121455878828
6/17/2021	Wooster Community Hospital	OH	\$104,414	https://www.fcc.gov/ecfs/filing/12142705703865
6/17/2021	Yale New Haven	CT	\$424,320	https://www.fcc.gov/ecfs/filing/121480731388
10/26/2021	Youth Outreach Services	IL	\$79,050	https://www.fcc.gov/ecfs/filing/12142487030018



PUBLIC NOTICE

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

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

DA 23-235

Released: March 20, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 22-385

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

Interconnected VoIP Numbering Authorization Application Filed by MCC Telephony, LLC
Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 22-385 (Oct. 28, 2022), Public Notice, DA 23-129 (WCB Feb. 16, 2023).

Effective Grant Date: March 19, 2023

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

-FCC-

¹ See 47 CFR § 52.15(g)(3).

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

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
NTUA Wireless, LLC	)	
	)	
Rural Health Care Universal Service	)	CC Docket No. 02-60
Support Mechanism	)	
	)	

ORDER

Adopted: March 20, 2023

Released: March 20, 2023

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

I. INTRODUCTION

1. In this Order, we address a request filed by the Navajo Tribal Utility Authority Wireless, LLC (NTUAW) seeking waiver of section 54.627(a) of the Commission's rules, the invoice filing deadline rule under the Rural Health Care Program's Healthcare Connect Fund (HCF) Program.¹ For the reasons provided below, we grant the requested relief.

II. BACKGROUND

2. The HCF Program provides eligible health care providers with a flat 65% discount on an array of advanced telecommunications and information services.² The HCF Program funding disbursement process requires that an invoice be submitted to the Universal Service Administrative Company (USAC) using an FCC Form 463. The health care provider initiates the invoicing process by preparing the FCC Form 463 and sending it via USAC's invoicing system to the service provider for completion.³ Section 54.627(a) of the HCF Program rules requires that the completed FCC Form 463 be submitted to USAC within 120 days of the service delivery deadline, unless a later date applies due to a revised funding commitment or successful appeal of a denied funding request.⁴ In response to the

¹ Petition for Waiver by NTUA Wireless, LLC of the Rural Health Care Program's Telecom Program Invoicing Deadline, CC Docket No. 02-60 (filed Oct. 25, 2022) (NTUAW Request for Waiver). NTUAW specifically requests a one-time extension of the invoice filing deadline, which in effect would require a waiver of the invoice filing deadline rule. The invoice filing deadline is set forth in section 54.627(a) of the Commission's rules. 47 CFR § 54.627(a).

² See 47 CFR §§ 54.607-54.618.

³ See USAC, *Rural Health Care, Healthcare Connect Fund Program, Step 6: Invoice USAC*, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-6-invoice-usac/> (last visited Mar. 20, 2023). Both the health care provider and service provider are required to make certifications as to, among other things, the accuracy of the information contained in the FCC Form 463 before USAC may process and pay the invoice. See 47 CFR § 54.627(d)(1).

⁴ 47 CFR § 54.627(a). The service delivery deadline, with limited exceptions, is June 30 of the funding year for which program support was sought. 47 CFR § 54.626(a). Rural Health Care Program participants may request a
(continued....)

administrative burdens suffered by health care providers as a result of the COVID-19 pandemic, the Wireline Competition Bureau (Bureau) extended the invoice filing deadline by an additional 120 days from October 28, 2021 to February 25, 2022 for funding year 2020 requests.⁵

3. NTUAW provides telecommunications services to health care providers and other entities within the Navajo Nation.⁶ For funding year 2020, the 17 eligible health care providers on the Navajo Nation received funding commitment decision letters from USAC in May 2021, and NTUAW provided telecommunications circuits to these rural health care providers.⁷ NTUAW states in its waiver request that its regulatory compliance manager who was responsible for submitting NTUAW's invoices to USAC became ill with COVID-19 in January 2022, which was shortly before the February 25, 2022 invoicing deadline.⁸ In its waiver request, NTUAW states that the regulatory compliance manager "suffered with effects from COVID-19 for three months, yet still tried to work as much as her illness would allow."⁹ She attempted to submit the invoices in March 2022, shortly after the end of February deadline, but was unable to do so because the deadline lapsed.¹⁰ NTUAW requests that the February 25, 2022 Rural Health Care Telecom Program FY 2020 invoice filing deadline be waived.¹¹

III. DISCUSSION

4. We grant the waiver request of NTUAW. The Commission's rules may be waived for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ 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.¹⁵

5. Special circumstances in this particular case favor waiving the requirements of section 54.627(a). The record indicates that the NTUAW regulatory compliance manager had a serious illness that temporarily impaired her ability to fully meet the new Commission invoice submission deadlines, and that she still attempted to submit the required invoices not long after the deadline in March 2022.¹⁶ As this occurrence was an exceptional circumstance, and because the regulatory compliance manager only missed the deadline by a short period of time even in these unique circumstances, we find that a one-time

(Continued from previous page) —————
one-time 120-day extension of the invoice filing deadline, which USAC is obligated to grant if timely requested. *Id.* § 54.626(b).

⁵ *Rural Health Care Support Mechanism, Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7062, para. 30 (WCB 2021).

⁶ NTUAW Request for Waiver at 1.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ NTUAW Request for Waiver at 3, 14 (Exhibit 2).

waiver of the invoice submission deadline here would be in the public interest.¹⁷ Furthermore, denying funding in this case would severely penalize a participant in an unwarranted manner for an isolated circumstance that is unlikely to repeat itself. NTUAW attempted to comply with the invoice deadline in these circumstances and attempted to file its invoice forms shortly after the deadline. We therefore find that granting a waiver in this case would further the mission of the RHC Program.¹⁸

6. In addition, the record presents no evidence of waste, fraud, or abuse on the part of NTUAW.¹⁹ Accordingly, we conclude that the unique special circumstances of the NTUAW compliance manager's hardship combined with the public interest in allowing it to receive RHC Program funding to provide health care to the Navajo Nation it serves justifies waiving the section 54.627(a) invoice filling deadline in this particular case. We therefore will allow NTUAW to re-submit the invoice within 60 days of this decision, and direct USAC to process the Rural Health Care Telecom reimbursement once NTUAW resubmits its invoices for reimbursement.

7. We emphasize that our holding here is narrow in scope and premised on the special circumstances and unique public interest considerations cited. Participants in the Rural Health Care Program continue to have a joint obligation to submit invoices and the accompanying required forms by the filing deadline set forth in our rules.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, 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), the waiver request of Navajo Tribal Utility Authority Wireless, LLC IS GRANTED to the extent described herein.

9. 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 54.627(a) of the Commission's rules, 47 CFR § 54.627(a), IS WAIVED to the limited extent provided herein and NTUAW shall re-submit the invoice at issue within 60 days of this decision.

10. 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 USAC SHALL PROCESS the FCC Form 463 associated with funding request numbers 2075556, 2075562, 2075557, 2075555, 2075554, 2075563, 2075564, 2075553, 2074684, 2075552, 2075567, 2075558, 2075561, 2075560, 2075568, 2075566, and 2075559 within 60 days of receipt of the completed form.

¹⁷ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District Abbotsford, Wisconsin, et al.*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (granting waiver when applications were filed within a "reasonable period" of the deadline "despite the person responsible for submitting the form suffering a serious illness").

¹⁸ *Id.*

¹⁹ *See Request for Review or Waiver by Maniilaq Association of Decision of Universal Service Administrator, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 1458, 1462, para. 9 (WCB 2020) (granting waiver of competitive bidding rules requirements in part because of no evidence of waste, fraud, or abuse on the part of the health care provider applicant).

11. IT IS FURTHER ORDERED that, pursuant to the authority delegated in 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



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 23-237

Released: March 21, 2023

INTERNATIONAL BUREAU IDENTIFIES EARTH STATION ANTENNAS ON C-BAND INCUMBENT LIST THAT MAY BE INACTIVE OR OTHERWISE NOT OPERATIONAL ON THE 3.7 GHZ BAND

Earth Station Antennas Subject to this Public Notice that Do Not Provide Notice of Operational Status in the 3.7 GHz band by June 19, 2023, Will Lose Incumbent Status and, Where Applicable, Have Authorizations for Those Frequencies Automatically Terminated in IBFS

IB Docket No. 20-205

With this Public Notice, the International Bureau (Bureau) provides the following notice to operators of certain incumbent FSS C-band earth station antennas recently reported to the Bureau by RSM US LLP (RSM), the C-band Relocation Coordinator, on behalf of incumbent C-band satellite operators.¹ We have attached as an Appendix to this PN a list of these reported earth station antennas. According to RSM, each antenna on this list was reported to RSM by one or more satellite operators as not currently receiving service from a C-band satellite in the 3.7 GHz band even though the FCC's International Bureau Filing System (IBFS) lists the antenna as an active C-band antenna.

Failure to submit a filing to the Bureau by no later than 90 days after the release of this Notice (*i.e.*, by June 19, 2023) affirming the operation in the 3.7 GHz band of the earth station antennas reported to the Bureau, and the intent that those earth station antennas participate in the C-band transition will result in a Bureau announcement that those antennas will be removed from the incumbent earth station list.² Absent such an affirmation, these antennas would no longer qualify as incumbent earth stations based on a finding that either: (1) the portions of the authorizations identified in the attached Appendix regarding the use of the 3.7 GHz band have automatically terminated by operation of rule,³ or (2) the interference protection provided by

¹ See Letter from Sanga Chandel, RSM US LLP, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 20-205 (filed March 10, 2023) (March 10 RSM filing).

² 47 CFR § 25.138(c)(1) (among other requirements, an incumbent earth station must "continue to be operational" to be eligible for the C-band transition). An incumbent earth station for purposes of the C-band transition is "entitled to interference protection pursuant to § 25.138(c) of this chapter. An incumbent earth station must transition above 4000 MHz pursuant to this subpart. An incumbent earth station will be able to continue receiving uninterrupted service both during and after the transition." 47 CFR § 27.1411(b)(3). Incumbent earth station operators could opt for either reimbursement of their transition costs, or a lump sum election in the event they decided not to participate in the formal relocation process. 47 CFR § 27.1419. The list of incumbent earth station antennas identified in the Appendix hereto excludes any antennas for which a lump sum election was made.

³ See 47 CFR § 25.161(c) (a station authorization "shall be automatically terminated ... without further notice upon [t]he removal or modification of the facilities which renders the station not operational for more than 90 days").

Commission rule regarding use of those frequencies has been automatically terminated.⁴ In addition, the Bureau will, as appropriate, terminate in IBFS those portions of the authorizations relating to the 3.7 GHz band and/or make changes in IBFS necessary to reflect the presumed use of the relevant facilities.

Under the Commission's *3.7 GHz Band Report and Order*, RSM is responsible for coordinating with the five incumbent C-band satellite operators – Eutelsat, Intelsat, SES, StarOne, and Telesat – to ensure that all incumbent earth stations are accounted for in the transition.⁵ The overwhelming majority of incumbent earth stations have been claimed by the satellite operator(s) from which they receive service, included in the relevant satellite operators' transition plans to the Commission, and will be transitioned to the upper 200 megahertz of the band.⁶ RSM, as the C-band Relocation Coordinator, and the satellite operators have conducted outreach and research to determine whether incumbent earth station antennas are still operational in the 3.7 GHz band and, if so, from which satellite(s) the earth station receives its service.⁷ RSM has advised the Commission that it and the incumbent satellite operators regularly share the results of their respective outreach efforts to better coordinate the transition of incumbent earth stations.

In the course of their outreach, the satellite operators and RSM have identified certain entries on the incumbent list that they report include antennas that are not active C-band antennas in the 3.7 GHz band. According to RSM, these entries include: (1) C-band antennas that are inactive or non-operational, (2) authorizations that list more C-band antennas than are currently operational at a site,⁸ (3) duplicate authorizations by the same entity for the same C-band antennas, and (4) operational antennas that do not receive in the 3.7 GHz band.⁹ RSM represents that these earth station operators have failed to make filings in the FCC's IBFS to reflect the correct status of those antennas.

On March 10, 2023, RSM submitted a letter identifying these individual earth station antennas that fall into one of the two categories listed above, which are included on the latest incumbent earth

⁴ Section 27.1411(b)(3) defines an incumbent earth station as one "that is entitled to interference protection pursuant to section 25.138(c)," while section 25.138(c) applies only to earth stations "operating in the 3.7-4.0 GHz portion of the band." Earth station antennas that do not receive in the C-band, either because they receive in a different band or because they do not exist, would not be entitled to interference protection pursuant to section 25.138. Note that, in addition, the Commission's rules provide that receiving earth stations automatically lose their interference protection if they have been in use less than 50% of the time during any 12-month period or if the Commission finds that the actual use of the facility is inconsistent with what was set forth in the registrant's application. See 47 CFR § 25.162(c) & (e) n.

⁵ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2391, paras. 116-23 (2020) (*3.7 GHz Band Report and Order*). As a reminder, the Commission decided in the *3.7 GHz Band Report and Order* that it will no longer accept applications for registration and licenses for FSS operations in the 3.7-4.0 GHz band in the contiguous United States and that it will not accept applications for new earth stations in the 4.0-4.2 GHz band in the contiguous United States for the time being, during the C-band transition. *3.7 GHz Band Report and Order*, 35 FCC Rcd at 2407, paras. 149-151.

⁶ 47 CFR § 27.1412(d) (transition plan requirements). The satellite operators also file quarterly status reports in GN Docket No. 20-173. 47 CFR § 27.1412(f).

⁷ *3.7 GHz Band Report and Order*, 35 FCC Rcd 2343, 2460, para. 313.

⁸ According to RSM, in these cases an authorization holder has included in an IBFS authorization more C-band receive antennas at a site than exist at that site – e.g., 10 antennas registered when there are only six antennas at the site.

⁹ For instance, RSM has represented that certain antennas on the Incumbent List do not receive in the 3.7 GHz band, but are instead antennas operating on Ku band or Ka band frequencies.

station list and continue to be listed in IBFS.¹⁰ RSM explains that it compiled this group of antennas—which were not included in the *January 19 PN*, *July 23 PN*, *September 27 PN*, *May 12 PN*, or *November 18 PN*—from representations made to RSM by the satellite operators. We have attached to this PN an Appendix listing the antennas submitted by RSM that fall into two of the four categories.

We hereby presume as a factual matter, on a rebuttable basis, that earth station antennas included in the Appendix are not active antennas receiving in the 3.7 GHz band, or that the C-band earth station antennas associated with a given site, as reflected on the incumbent list, exceed the actual number of such antennas located at that site. Absent factual rebuttal from the earth station operator by June 19, 2023, these antennas would not satisfy the Commission’s C-band transition rules that antennas must be operational C-band antennas entitled to interference protection in the 3.7 GHz band to qualify for incumbent status.¹¹ For inactive earth stations, section 25.161(c) of the Commission’s rules provides that an earth station authorization is automatically terminated if the station is not operational for more than 90 days.¹² Where a registration lists more antennas than have been observed to exist at a site, the apparently non-existent antennas will be deemed never to have existed and, accordingly, will fail to qualify for incumbent status under the C-band transition rules. Where there is more than one registration for the same antennas at a site, the antennas listed in one of the apparently duplicate registrations will be deemed never to have existed and, accordingly, will fail to qualify for incumbent status under the C-band transition rules. Similarly, antennas that operate in other bands but do not receive in the 3.7 GHz band would not qualify for incumbent status under the C-band transition rules.¹³

We direct earth station operators with incumbent earth station antennas that appear on the appended list to make either of two filings no later than 90 days after release of this Notice (*i.e.*, by June 19, 2023): (1) file to correct the IBFS filings for the affected antennas,¹⁴ or (2) file in ECFS IB Docket No. 20-205 affirming that those antennas are operational antennas receiving in the 3.7 GHz band. An earth station operator may contact Bureau staff at IBFSINFO@fcc.gov if it has questions about the above or if it needs instructions on how to surrender entire Callsigns in IBFS, how to remove an inactive earth station antenna from a Callsign that includes other operational earth station antennas, or how to modify its Callsign to accurately reflect the bands used by an antenna.

Earth station operators with earth station antenna(s) on the attached list that do not respond by June 19, 2023, affirming operation of the identified earth station antennas in the 3.7

¹⁰ See March 10 RSM filing. The March 10 RSM filing, with its attachment, can be found in ECFS.

¹¹ 47 CFR § 25.138(c)(1). See note 4 *supra*. As noted above, note 2 *supra*, the earth station antennas listed in the Appendix hereto do not include those that are subject to lump sum elections. Those elections may include C-band antennas whose operators have decided to discontinue all use of the C-band by the end of the C-band transition.

¹² 47 CFR § 25.161(c). The Bureau has delegated authority to enforce the Part 25 rules. 47 CFR § 0.261(a)(15).

¹³ For the latter two groups of antennas, we note that the following rules would apply: (1) section 25.162(c) and (e) of the Commission’s rules provide that the interference protection of a receiving earth station is automatically terminated in certain circumstances, including when a station has been used less than 50% of the time during any 12-month period or when actual use of the facility is inconsistent with what is in a registrant’s application, 47 CFR § 25.162(c) & (e), and (2) section 25.115(b)(8) of the Commission’s rules require earth station operators to take the steps necessary to remove non-operational antennas from the active records in the IBFS, 47 CFR § 25.115(b)(8).

¹⁴ In addition to the required filings in IBFS, those earth station operators may also make a filing in ECFS IB Docket No. 20-205 confirming the extent to which they are surrendering callsigns, removing antennas, or modifying callsigns in IBFS.

GHz band¹⁵ will be deemed, based on the above presumptions, to have had either their authorizations to use the 3.7 GHz band for those antennas or their interference protection in the use of the 3.7 GHz band automatically terminated by rule. In those cases, the Bureau also will, as needed, terminate in IBFS those portions of the authorizations relating to the 3.7 GHz band and/or make changes in IBFS necessary to accurately reflect actual use of and interference protection for the relevant facilities. In addition, the Bureau will correct the incumbent earth station list by removing terminated earth station antennas and amending the list to no longer include any antennas in the list that are not operational C-band antennas, including over-registered antennas or antennas receiving in bands other than the 3.7 GHz band. Protection from interference from the network deployments of new wireless licenses and eligibility for reimbursement of any transition costs, including the cost of any filters, will be limited to those earth station antennas on the updated list.

As a reminder, while not subject to 90-days' notice, earth station operators that have not provided the necessary information to the Relocation Coordinator or satellite operators may not be successfully transitioned before terrestrial wireless licensees initiate service in the band. Unless those earth station operators provide the necessary information, they will risk losing their rights to receive relocation assistance prior to the initiation of service in the band by the incoming terrestrial wireless licensees, as well as any rights to operate in the lower C-band at their current locations free of harmful interference that may occur as these licensees deploy their networks.

ATTACHMENT

- FCC-

¹⁵ Notwithstanding an affirmation of continued operation, the Bureau retains the authority to eliminate an earth station antenna's incumbent status if the Bureau receives additional evidence that the antenna has failed to satisfy applicable requirements for maintaining operation or is otherwise ineligible to be considered an incumbent.

ESD	Non-Operational Antenna Quantity	ApplicantName	CallSign	Filing System	Real Light System	Accepted for Filing PA	Class of Station	SPRD	AntennaID	Quantity	CallSign Subject to Lump Sum Exemption	Intended Action	StreetView 2	City	State	Site State	Site Zip	Lat/Deg	LatMin	LatSec	LatHem	Long/Deg	LongMin	LongSec	LongHem	
286	1	Allice USA, Inc.	F182040	S15M02022040700620	Current		FES	KINGMAN	19	5	No		3902 Arroyo Ave	Keyman	AZ	86409	35	13	27.9	N	114	0	48.3	W		
278	4	Allice USA, Inc.	F182040	S15M02022040700620	Current		FES	WALTON	27	4	No		3643 Wellington St	Walton	NC	72608	34	53	11.4	N	94	5	31.2	W		
1425	7	Cable Communications Management, LLC	F180285	S51N52018043000506	Current		FES		1	8	No		46 Liberty Lane	Wilborno	NY	12895	44	21	57.03	N	75	23	13.83	W		
2372	1	Cable Communications Management, LLC	F180285	S51N52018043000506	Current		FES		1	3	No		46 Liberty Lane	Wilborno	NY	12895	44	21	57.03	N	75	23	13.83	W		
2617	1	Comcast of California Mary and Pennsylvania Virginia West Virginia, LLC	F182041	S51N5201804750488	Current		FES		2	1	No		3717 E. Bulmye Ave.	Spokane	WA	99207	47	40	58	N	117	22	59	W		
2875	1	Crysalis Networks	F101022	S15M020210104201770	Current		FES		5M	1	No		D NORTH STATE STREET	UNION	INDIANA	CA	95482	39	9	46.9	N	123	12	38.6	W	
6609	1	Enviromental Systems	F201291	S51N52018103107136	Current		FES	ENTERPRISE	1	1	No		38079 HEAVENS RD	ENTERPRISE	WISCONSIN	GR	97828	45	24	38.8	N	117	20	50.81	W	
11067	2	Netel Telecommunications, LLC	F201860	S51N52018103072786	Current		FES	NIJCS-BACA	12	2	No		3602 3rd Street	San Francisco	CALIFORNIA	CA	94107	37	46	57.6	N	122	23	54.1	W	
11860	1	Crum It Cable TV	F5143	S51N52018042201113	Current		FES		1	1	No			JAY	FLORIDA	OK	74346	36	25	20.3	N	94	47	48.8	W	
12009	2	Other Com Inc.	F181004	S51N52018041901712	Current		FES	Site 1	ANT1	2	No		P.O. Box 277	100 Main	Indiana	Other Tai	MAN	55584	46	36	8.28	N	98	5	38.6	W
12010	2	Other Com Inc.	F181004	S51N52018041901712	Current		FES	Site 2	ANT2	1	No		P.O. Box 277	100 Main	Indiana	Other Tai	MAN	55586	46	36	8.28	N	98	49	26.03	W
12012	1	Other Com Inc.	F181001	S51N52018041901721	Current		FES	Site 2	ANT1	1	No		P.O. Box 277	100 Main	Indiana	Other Tai	MAN	55586	46	36	8.28	N	98	49	26.03	W
12013	1	Other Com Inc.	F181001	S51N52018041901721	Current		FES	Site 2	ANT1	1	No		P.O. Box 277	100 Main	Indiana	Other Tai	MAN	55586	46	36	8.28	N	98	49	26.03	W
13338	1	Sequoia Telecommunications, LLC	F180991	S51N52018100104624	Current		FES	Site 1	ANT1	1	No		Dave Road	Lake Park	Florida	GA	31602	30	41	28.67	N	81	12	39.3	W	
13339	1	Sequoia Telecommunications, LLC	F200797	S51N52018101078667	Current		FES	Site 1	ANT1	1	No		2650 DOWNSIDE DR	Ward	ALABAMA	AL	36810	32	52	21.71	N	105	55	55.28	W	
13785	1	TDS BROADBAND SERVICE, LLC	F201295	S51N52018101786647	Current		FES	ALMGNMGA	2	1	No		2650 DOWNSIDE DR	Ward	ALABAMA	AL	36810	32	52	21.71	N	105	55	55.28	W	
13786	1	TDS BROADBAND SERVICE, LLC	F201295	S51N52018101786647	Current		FES	ALMGNMGA	2	1	No		2650 DOWNSIDE DR	Ward	ALABAMA	AL	36810	32	52	21.71	N	105	55	55.28	W	
13790	1	TDS BROADBAND SERVICE, LLC	F201295	S51N52018101786647	Current		FES	ALMGNMGA	2	1	No		2650 DOWNSIDE DR	Ward	ALABAMA	AL	36810	32	52	21.71	N	105	55	55.28	W	
15485	3	Woodman Leacom Communications, LLC	F181472	S51N52018100920594	Current		FES	LAWRENCE NC	ALL	3	No		814 E Old US Hwy 64	Lawrence	NC	27292	35	46	22.41	N	80	10	50.46	W		
15486	3	Woodman Leacom Communications, LLC	F181472	S51N52018100920594	Current		FES	LAWRENCE NC	ALL	3	No		814 E Old US Hwy 64	Lawrence	NC	27292	35	46	22.41	N	80	10	50.46	W		
15881	1	WTTW INC	F190510	S51N5201809404102	Current		FES	ROCKY MOUNT VA	Dish 1	2	No		75 Glenwood Drive	Rocky Mount	VA	24151	36	58	38.3	N	76	53	46.5	W		
21003	1	Nexstar Media Inc.	F191247	S51N52018100504875	Current		FES	WOL Studio4	ABC News1	1	No		3903 Westown Pkwy	W Des Moines	Polk	IA	50266	41	35	50.53	N	93	45	29.05	W	
21004	1	Nexstar Media Inc.	F191247	S51N52018100504875	Current		FES	WOL Studio5	SAT5 WDDX	2	No		3903 Westown Pkwy	W Des Moines	Polk	IA	50266	41	35	50.7	N	93	45	28	W	
21005	2	Nexstar Media Inc.	F191247	S51N52018100504875	Current		FES	WOL Studio6	SAT7 J	2	No		3903 Westown Pkwy	W Des Moines	Polk	IA	50266	41	35	50.52	N	93	45	28	W	

ESD	Overregistered Antenna Quantity	Applicant Name Alice USA, Inc.	Collision E182049	File Number SESAMD2020700020	Filing Status Current	Red Light AppType MOD	Accepted For Filing PIN	Class of Earth FES	SPAD PADUOAH	AntennaID 25	Quantity 8	Collision Subject to Compensation No	Intended Action	SiteName1 5115 Goodwin St	SiteName2 2	SiteCity Paducah	SiteCounty Cottle	SiteState TX	SiteZip 79248	LatDeg 34	LatMin 0	LatSec 26.2	LatHem N	LonDeg 100	LonMin 18	LonSec 41.7	LonHem W
275	1																										



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

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DA 23-238

Released: March 21, 2023

FCC RELEASES AGENDA FOR MARCH 23, 2023 LESSONS LEARNED FROM THE PANDEMIC ROUNDTABLE

GN Docket No. 17-208

This Public Notice announces the agenda for the Communications Equity and Diversity Council (CEDC)'s Lessons Learned from the Pandemic Roundtable on Broadband Access, Affordability and Deployment on March 23, 2023, from 10:00 am to 1:30 pm, EDT. The CEDC is an advisory council of the Federal Communications Commission. The roundtable will be held virtually, beginning at 10:00 am EDT, and will be available to the public for viewing via the Internet at <http://www.fcc.gov/live>.

The goal of the roundtable is to convene key stakeholders across community organizations, internet service providers (ISPs), federal agencies with emergency broadband funding, and state agencies to assess lessons learned concerning programs that provided broadband connectivity to opportunity communities during the pandemic. The half-day virtual workshop will provide a platform to hear from a range of experts and a diverse set of stakeholders about efforts to promote digital equity, broadband adoption, and digital skills training for opportunity communities.

The detailed agenda is attached to this Public Notice as an Appendix. The roundtable will be available to the public via live feed from the FCC's web page at <https://www.fcc.gov/live>. The public may also view the roundtable on the Commission's YouTube page at <https://www.youtube.com/user/fccdotgovvideo>. More information on the roundtable is available on Twitter@fcc via the Commission's Facebook page at www.facebook.com/fcc. Members of the public may submit questions during the panel discussions to livequestions@fcc.gov.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit written comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Any comments should be filed in GN Docket No. 17-208.

More information about the CEDC is available at <https://www.fcc.gov/communications-equity-and-diversity-council>. You may also contact Jamila Bess Johnson, the Designated Federal Officer for the Communications Equity and Diversity Council, at (202) 418-2608, or Jamila-Bess.Johnson@fcc.gov; or

Diana Coho, Consumer Affairs and Outreach Specialist, Consumer and Governmental Affairs Bureau at (202) 418-2848 or Diana.Coho@fcc.gov, or Ashley Tyson, Attorney Advisor, Wireline Competition Bureau at Ashley.Tyson@fcc.gov or (202) 418-1137.

– FCC –

APPENDIX

**“Lessons Learned from the Pandemic”****Roundtable on
Broadband Access, Affordability and Deployment****Sponsored by the
Communications Equity and Diversity Council
Digital Empowerment and Inclusion Working Group****Federal Communications Commission
Washington, D.C. 20554****March 23, 2023
10:00 am – 1:30 p.m. EDT****VIRTUAL ROUNDTABLE AGENDA**** indicates a member of the Communications Equity and Diversity Council*

10:00 am

IntroductionJamila Bess Johnson, Designated Federal Officer
Communications Equity and Diversity Council
Media Bureau**Opening Remarks and Presentation**Heather Gate, Vice President
Connected Nation*
CEDC Chair

10:10 am

Panel 1: Availability, Affordability, Deployment

*Moderator*Clayton Banks, CEO
Silicon Harlem**Panelists*Joshua Breitbart, Senior Vice President
ConnectAll NYGreta Byrum, Principal for Broadband and Digital Equity
HR&A Advisors

Broderick Johnson, Executive Vice President, Public Policy
Executive Vice President, Digital Equity
Comcast*

Thu Nguyen, Executive Director
OCA – Asian Pacific American Advocates

Annette Taylor, Director, Office of Digital Equity and Literacy
North Carolina Department of Information Technology

Ovidiu Viorica, Broadband & Technology Program Manager
New Mexico Public School Facilities Authority

11:25 am

Roundtable Break

11:45 am

Panel 2: Adoption and Digital Readiness*Moderator*

Sarah Kate Ellis, President and CEO
GLAAD*

Panelists

Stephan Adams, President and CEO
Virgin Islands Next Generation Network (viNGN)

Norma Fernandez, CEO
EveryoneOn

Anisa Green, Director, Federal Regulatory
Chief of Staff – EVP, Federal Regulatory Relations & Chief Regulatory
Officer, Corporate External & Legislative Affairs
AT&T Services, Inc.*

Thomas Kamber, Founder and Executive Director
Older Adults Technology Services (OATS)

Ji Soo Song, Digital Equity Advisor
U.S. Department of Education, Office of Educational Technology

Hal Woods, Chief of Policy
Kids First Chicago

1:00 pm

Closing Remarks

Dominique Harrison, Ph.D., Chair
Digital Empowerment and Inclusion Working Group
Representing Joint Center for Political and Economic Studies*

Jamila Bess Johnson, Designated Federal Officer
Communications Equity and Diversity Council
Media Bureau



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DA 23-239

Released: March 21, 2023

**OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON WI-FI ALLIANCE
REQUEST FOR WAIVER OF SECTION 15.407(L)(2) OF THE COMMISSION'S PART 15
RULES FOR AFC SYSTEM OPERATION IN THE 6 GHZ BAND**

ET Docket No. 23-107

Comment Date: April 5, 2023

Reply Comment Date: April 20, 2023

By this public notice, we seek comment on a request by Wi-Fi Alliance to waive Section 15.407(l)(2) of the Commission's rules¹ governing the predictive propagation models that an automated frequency coordination (AFC) system in the 5.925-6.425 GHz and 6.525-6.875 GHz frequency bands (the "6 GHz band") must employ.²

Wi-Fi Alliance is one of the thirteen companies that received conditional approval to operate an AFC system to manage access to 6 GHz spectrum by standard-power unlicensed devices.³ In the *AFC Conditional Approval Public Notice*, the Office of Engineering and Technology (OET) recognized that building entry loss (BEL) could be an input to any predictive propagation model to determine permitted power levels for 6 GHz standard-power devices.⁴ However, OET took no position on whether to permit AFC systems to account for BEL in their calculations. In its Waiver Request, Wi-Fi Alliance seeks flexibility for its AFC system to incorporate BEL attenuation losses when assessing allowable channel availability and power constraints for composite devices that are authorized to operate in both LPI and standard power mode (i.e., indoor only with AFC restrictions devices).⁵ Composite indoor only with AFC restrictions devices adhere to Product Form Factor (PFF) rules that were established for LPI devices to prevent outdoor operation.⁶ Wi-Fi Alliance states its AFC system can differentiate composite indoor

¹ 47 CFR § 15.407(l)(2).

² Authorizing 6 GHz Band Automated Frequency Coordination Systems, ET Docket No. 21-352 (filed February 17, 2023), <https://www.fcc.gov/ecfs/document/10217816203286/1>. (Wi-Fi Alliance Waiver Request).

³ *OET Announces Conditional Approval for 6 GHz Band Automated Frequency Coordination Systems*, Public Notice, DA 22-1146, ET Docket No. 21-352 (rel. Nov. 2, 2022) ("*AFC Conditional Approval Notice*").

⁴ *Id.* at 19.

⁵ *Wi-Fi Alliance Waiver Request* at 2. See also, *Part 15 Subpart E U-NII 6 GHz General Guidance Bands 5,6,7,8*, FCC Office of Engineering and Technology Laboratory Division Publication, Knowledge Database at 10, Table 4, Composite Equipment Class Product 3 "Indoor Only With AFC With Restriction" (May 20, 2022) https://apps.fcc.gov/kdb/GetAttachment.html?id=4iuZjuFgWiNypCLVpSN3cQ%3D%3D&desc=987594%20D01%20U-NII%206GHz%20General%20Requirements%20v01r03&tracking_number=277034 ("*6 GHz General Guidance*").

⁶ The "Product Form Factor (PFF)" restrictions refer to the requirements that an "indoor access point" must be a device that "is supplied power from a wired connection, has an integrated antenna, is not battery powered, and does (continued....)

only with AFC restrictions devices from other types of 6 GHz unlicensed devices, thus resulting in the assumption drawn by the AFC system of the composite indoor only with AFC restrictions devices operating indoors.⁷

Part 15.407(l) of the Commission's rules defines the predictive propagation models that an AFC system must use, as well as the interference protection criteria.⁸ AFC systems are required to use the designated propagation models to protect microwave receivers based on the -6 dB I/N metric used in the *6 GHz Report and Order*.⁹ The existing rules do not permit AFC systems to incorporate BEL into their algorithm for determining permissible standard power device operating channels and power levels. However, Wi-Fi Alliance asserts that incorporating BEL attenuation losses in the propagation models to calculate allowed power levels will provide composite indoor only with AFC restrictions devices more power to serve a wider coverage area.¹⁰ Wi-Fi Alliance is seeking a waiver to permit its AFC system to consider such losses when determining spectrum availability and power levels for composite indoor only with AFC restrictions devices. Wi-Fi Alliance asserts that grant of a waiver will enable composite indoor only with AFC restrictions devices to have greater access to available spectrum in the 6 GHz band, will protect incumbent operations from harmful interference and result in wider connectivity that will benefit the American public.¹¹

We seek comment on the Wi-Fi Alliance Waiver Request. To develop a complete record on the issues presented by this request, this proceeding will be treated, for *ex parte* purposes, as "permit-but-disclose" in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b). Wi-Fi Alliance filed its petition electronically in ET Docket No. 21-352 in the Commission's Electronic Comment Filing System. We have opened a new docket, **ET Docket No. 23-107** to facilitate consideration of this request and have moved Wi-Fi Alliance's submission into this docket. Parties should file all comments and reply comments in **ET Docket No. 23-107**.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

(Continued from previous page) _____
not have a weatherized enclosure". The device must display a label stating that "FCC regulations restrict operation of this device to indoor use only." See 47 C.F.R. § 15.403.

⁷ Wi-Fi Alliance Waiver Request at 5.

⁸ 47 CFR § 15.407(l)

⁹ *Unlicensed Use of the 6 GHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) ("*6 GHz Report and Order*").

¹⁰ Wi-Fi Alliance Waiver Request at 5.

¹¹ Wi-Fi Alliance Waiver Request at 1 and 7.

- 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-19.¹²

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

Parties should also send a copy of their filings to Anika Tahsin, Office of Engineering and Technology, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, or by e-mail to anika.tahsin@fcc.gov. Documents associated with this docket will be available for public inspection through the Commission's ECFS.

By the Acting Chief, Office of Engineering and Technology

-FCC-

¹² See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), available at <https://docs.fcc.gov/public/attachments/DA-20-304A1.pdf>.



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DA 23-240

Released: March 21, 2023

**WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES COMMENT DATE
ON PROCEDURES FOR FILING OF PHASE II CERTIFICATIONS OF
ACCELERATED RELOCATION AND IMPLEMENTATION OF THE COMMISSION'S
INCREMENTAL REDUCTION PLAN FOR PHASE II ACCELERATED RELOCATION
PAYMENTS**

GN Docket No. 18-122; GN Docket No. 23-97

On March 13, 2023, the Wireless Telecommunication Bureau issued a Public Notice seeking comment on its proposed procedures for filing of Phase II Certifications of Accelerated Relocation and its implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments relating to the ongoing transition of the 3.7 GHz band (*Phase II Certification Procedures and Incremental Reduction Comment PN*).¹ The *Phase II Certification Procedures and Incremental Reduction Comment PN* set a comment deadline of thirty (30) days after publication in the Federal Register and set forth the requisite comment filing instructions.² On March 21, 2023, the Office of the Federal Register published a summary of the *Phase II Certification Procedures and Incremental Reduction Comment PN*, thereby establishing the associated comment date.³ Accordingly, comments must be filed in GN Docket No. 23-97 on or before April 20, 2023.

Additional Information. For further information concerning this Public Notice, please contact Susan Mort, Wireless Telecommunications Bureau, (202) 418-2429, Susan.Mort@fcc.gov.

-FCC-

¹ *Wireless Telecommunications Bureau Seeks Comment on C-Band Phase II Certification of Accelerated Relocation Procedures and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments*, GN Docket Nos. 18-122 and 23-97, Public Notice, DA 23-204 (WTB 2023) (*Phase II Certification Procedures and Incremental Reduction Comment PN*); see *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification*, 35 FCC Rcd 2343, 2456-57, paras. 297-300 (2020) (3.7 GHz Report and Order).

² *Phase II Certification Procedures and Incremental Reduction Comment PN*.

³ Federal Communications Commission, *Wireless Telecommunications Bureau Seeks Comment on C-Band Phase II Certification Procedures*, 88 Fed. Reg. 16932 (Mar. 21, 2023).

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Make	)	ET Docket No. 23-108
Non-Substantive Editorial Revisions to Part 2	)	
	)	

ORDER

Adopted: March 31, 2023

Released: March 31, 2023

By the Acting Chief, Office of Engineering and Technology.

I. INTRODUCTION

By this administrative action, we make non-substantive, editorial revisions to conform Commission rules to formatting requirements of the Code of Federal Regulations (CFR). Specifically, we implement formatting revisions to section 2.106 by implementing edits to the Table of Frequency Allocations (Allocation Table) footnotes to comply with the standard CFR codification structure. We also make non-substantive, editorial revisions to the descriptions of the Radio Regulations of the International Telecommunication Union (ITU) (Radio Regulations); the United States Table of Frequency Allocations; and the United States, Non-Federal Government, and Federal Government Footnotes categories in sections 2.100, 2.105, and 2.106 of the rules, respectively, and add descriptions of the Allocation Table and International Footnotes category in section 2.106. These actions do not modify or otherwise change any entity's underlying rights or responsibilities.

II. BACKGROUND

The Allocation Table in section 2.106 of the Commission's rules is the Commission's means of organizing and presenting the use of radiofrequency spectrum in the United States and its insular areas by radio services under specified conditions.¹ The Allocation Table consists of six columns that are divided into cells, with each cell representing a specific frequency band(s).² The Allocation Table is comprised of the International Table, administered by the International Telecommunication Union (ITU) (columns 1-3),³ the United States Table of Frequency Allocations (U.S. Table) (columns 4 and 5),⁴ and cross-references to FCC rule part(s) (column 6).⁵ The International Table is subdivided into the Region 1, Region 2, and Region 3 columns, which reflect the corresponding regional or worldwide frequency allocations in the ITU Radio Regulations.⁶ The U.S. Table is subdivided into the Federal Table of

¹ An allocation (of a frequency band) is defined as an entry in the Allocation Tables of a given frequency band for the purpose of its use by one or more terrestrial or space radiocommunication services or the radio astronomy service under specified conditions. "Allocation" also applies to the frequency band concerned. 47 CFR §§ 2.1(c), 2.106.

² 47 CFR §§ 2.104, 2.105.

³ The International Table is described in 47 CFR § 2.104.

⁴ The U.S. Table is described in 47 CFR § 2.105(a)-(d).

⁵ The FCC rule part(s) column is described in 47 CFR § 2.105(e) ("Rule Part Cross References").

⁶ 47 CFR § 2.104(a), (h). Region 1 includes Europe, Africa, the Middle East, Russia, and central Asia. Region 2 includes North and South America. Region 3 is the rest of the world, which includes Australia and much of Asia.

Frequency Allocations in column 4 (Federal Table) and the non-Federal Table of Frequency Allocations in column 5 (non-Federal Table).⁷ The FCC rule part(s) column contains cross-references to the relevant service rules in the Code of Federal Regulations, where applicable.⁸ The International Table, the Federal Table, and the FCC rule part(s) are included in the Allocation Table for informational purposes only.⁹

The U.S. Table contains references to U.S., non-Federal, Federal, and certain international footnotes.¹⁰ The footnotes denote specific use restrictions affecting radiofrequency operations in the particular frequency band. The text of the international, U.S., non-Federal, and Federal footnotes immediately follows the Allocation Table in section 2.106. Any footnote number consisting of “5.” followed by one or more digits/letters (e.g., “5.53”) denotes an international footnote that is binding on users in the band.¹¹ Any footnote consisting of the letters “US” followed by one or more digits/letters (e.g., “US7”) denotes a stipulation affecting both Federal and non-Federal radiofrequency operations in the particular frequency band in the United States.¹² Any footnote consisting of the letters “NG” followed by one or more digits/letters (e.g., “NG3”) denotes a stipulation applicable only to non-Federal radiofrequency operations in the particular frequency band in the United States.¹³ Any footnote consisting of the letter “G” followed by one or more digits/letters (e.g., “G2”) denotes a stipulation applicable only to Federal radiofrequency operations in the particular frequency band in the United States.¹⁴ In some cases, a letter has, or letters have, been appended to the digit(s) of a footnote number to preserve the sequential order.

See 47 CFR § 2.104(b) and Figure 1 for the ITU’s official definitions and map of the Regions, respectively. Where an allocation occupies the whole of the width of the International Table or only one or two of the three columns, this is a worldwide allocation or a regional allocation, respectively. 47 CFR § 2.104(h)(1). The U.S. Table is based on the ITU Radio Regulations in Region 2 because the relevant area of jurisdiction is located primarily in Region 2 (i.e., the United States, the Caribbean insular areas, and some of the Pacific insular areas). 47 CFR § 2.105(a).

⁷ The Federal Table is administered by the National Telecommunications and Information Administration (NTIA), and the non-Federal Table is administered by the Commission. 47 CFR § 2.105(a). In the United States, radiofrequency spectrum may be allocated for either Federal or non-Federal use exclusively, or for shared use. In the case of Federal/non-Federal shared use, the type of service(s) permitted need not be the same. 47 CFR § 2.105(b).

⁸ 47 CFR § 2.105(e). The FCC rule parts in this column are not allocations and may apply to only a portion of a band. This column may also contain explanatory notes. *Id.*

⁹ 47 CFR §§ 2.104(a), 2.105(d)(3), (e).

¹⁰ If there is no service or footnote indicated for a frequency band in column 4 (Federal Table), then the Federal sector has no access to that band except as provided for by section 2.103 of the rules. If there is no service or footnote indicated for a frequency band in column 5 (non-Federal Table), then the non-Federal sector has no access to that band except as provided for by section 2.102 of the rules. When the Federal Table and the non-Federal Table are exactly the same for a Federal/non-Federal shared band, the line between columns 4 and 5 is deleted and the allocations are shown as one. 47 CFR § 2.105(d)(1)-(2).

¹¹ 47 CFR § 2.105(d)(5)(i). The international footnotes are contained in Article 5 of the ITU Radio Regulations. Where an international footnote is applicable, without modification, to both Federal and non-Federal operations, the Commission places the footnote in both the Federal and non-Federal Tables and the international footnote is binding on both Federal users and non-Federal licensees. If an international footnote pertains to a service allocated only for Federal or non-Federal use, the Commission places the international footnote only in the affected table. *Id.* The ITU Radiocommunication Sector (ITU-R) Recommendations referenced in certain of the international footnotes are available at <https://www.itu.int/pub/R-REC>.

¹² 47 CFR § 2.105(d)(5)(ii).

¹³ 47 CFR § 2.105(d)(5)(iii).

¹⁴ 47 CFR § 2.105(d)(5)(iv). Federal footnotes apply only to Federal operations and appear solely in the Federal Table. *Id.*

The Federal Register Act¹⁵ and its implementing regulations¹⁶ require that regulatory material be codified in the CFR in standard codified structure. As currently structured, the international, U.S., non-Federal, and Federal footnotes that follow the Allocation Table in section 2.106 are not formatted in the standard CFR codification structure contained in 1 CFR § 21.11 – Standard organization of the Code of Federal Regulations. This Order implements formatting revisions to all of the Allocation Table footnotes to comply with the standard CFR organizational structure.

Through the process of reformatting section 2.106, we found additional issues in section 2.106 that must be addressed to conform to the Office of the Federal Register's (OFR's) standard CFR codification structure. Specifically, Appendix C of the OFR's Document Drafting Handbook lists certain drafting conventions that are no longer permitted in the CFR and states that agencies must make conforming changes unless they have a formally approved deviation.¹⁷ In this Order, we address the following issues: 1) Footnotes that are "[Reserved]"; 2) Footnotes or notes that include multiple paragraphs; 3) Footnotes or notes with multiple paragraph levels; 4) Footnotes or notes that include regulatory content; and 5) Paragraph designations in the middle of a paragraph.¹⁸

III. DISCUSSION

Section 553(b)(B) of the Administrative Procedure Act (APA) provides exceptions to the notice and comment rulemaking procedures when, among other things, the agency finds for good cause that the notice and comment requirements are "impracticable, unnecessary, or contrary to the public interest" with respect to the rules at issue.¹⁹ In this Order, we take several non-substantive, editorial actions to add new or revise existing explanatory paragraphs before the Allocation Table and footnote categories in section 2.106, revise the format used for the footnotes that are listed after the Allocation Table in section 2.106, and provide descriptions of the International Table and the U.S. Table portions of the Allocation Table in sections 2.100 and 2.105 of the rules, respectively. The rules adopted in this Order do not modify or otherwise change any entity's underlying rights or responsibilities and, as such, entail no substantive regulatory decisions of any consequence or significance to industry or the general public. Accordingly, we find, for good cause, that it is "unnecessary," within the meaning of section 553(b)(B), to provide notice and an opportunity for public comment before implementing these rule revisions. The Acting Chief, Office of Engineering and Technology (OET) adopts this Order under delegated authority.²⁰

First, in section 2.106, we add paragraphs (a) through (e) to the existing table and footnotes categories, in accordance with the OFR's standard CFR codification structure contained in 1 CFR § 21.11(h), to describe the structure and contents of the Allocation Table. The addition of paragraph (a) before the Allocation Table is administrative in nature because it merely notes that the Allocation Table is comprised of the International Table and the United States Table, and notes where those tables, the ITU Radio Regulations, and the terms and acronyms used in the Allocation Table are described in the Commission's rules.

¹⁵ Federal Register Act, Pub. L. No. 74-220, 49 Stat. 500 (codified at 44 U.S.C. ch. 15)

¹⁶ See 1 CFR §§ 1.1, 5.2, 5.9, 8.1, 21.11.

¹⁷ Office of the Federal Register Document Drafting Handbook, August 2018 Edition (*Revision 1.4, January 7, 2022*), Office of the Federal Register National Archives and Records Administration (OFR DDH), Appendix C: Drafting conventions no longer permitted, at C-1, <https://www.archives.gov/federal-register/write/handbook#ddh>. (OFR Document Drafting Handbook).

¹⁸ See *id.*

¹⁹ 5 U.S.C. § 553(b)(B).

²⁰ Under the Commission's rules, the Chief of OET is delegated authority to make non-substantive, editorial revisions to parts 2, 15, and 18 of the Commission's rules and regulations. 47 CFR § 0.241(i).

In accordance with the OFR's standard CFR codification structure,²¹ we add paragraph (b) in section 2.106 before the list of international footnotes to provide a description of these footnotes' numbering format and their use in the Federal Table and non-Federal Table. The addition of this paragraph before the international footnotes is administrative in nature since it is based on descriptions contained in sections 2.104 and 2.105 of the Commission's rules, and simply notes where the ITU Radio Regulations, and the terms and abbreviations used in the international footnotes, are described in the Commission's rules. We also move the existing parenthetical text currently located before the lists of United States footnotes, non-Federal footnotes, and Federal footnotes to paragraphs (c), (d), and (e) of section 2.106, respectively, to provide a description of these footnotes' numbering format and their use in the Federal and non-Federal Tables.

Second, we observe that: 1) most footnotes to the Allocation Table contain regulatory content; 2) many of these footnotes are multiple paragraphs long or contain multiple paragraph levels; and 3) some footnotes contain paragraph designations in the middle of a paragraph. We address these issues by fully implementing the OFR's standard CFR codification structure formatting in the footnotes to the Allocation Table.²² For certain international footnotes with separate paragraphs, we merge the paragraphs to form a single paragraph. We label the tables and notes within footnotes in ascending numerical order, and if there is not an additional paragraph, we move the table to the end of the footnote text. See the Appendix for implementation of these formatting changes. Consistent with the Radio Regulations, we add a space between the fourth and third digits for five and six digit numbers within international and domestic footnotes.

Third, as required in the standard CFR codification structure, we update the cross-references in the footnotes in section 2.106 to conform to the OFR's standard CFR codification structure.²³

We also amend sections 2.100 and 2.105, respectively, to clarify the descriptions of the contents and structure of the International Table and the U.S. Table. Specifically, we add paragraph (a) to section 2.100 to provide a brief description of the structure of the ITU and its regulations for informational purposes. These consist of: 1) Articles 1-59 in volume 1; Article 5 includes the ITU's Table of Frequency Allocations, which is the basis for the International Table in § 2.106, as well as the text of the footnotes to the ITU's Table of Frequency Allocations, which is the basis for the list of international footnotes in § 2.106; 2) Appendices (with Annexes) in volume 2; 3) Resolutions and Recommendations in volume 3; and 4) ITU-R Recommendations incorporated by reference in volume 4. The ITU Radio Regulations are available at <https://www.itu.int/pub/R-REG-RR/en>. See the Appendix for the final format of these rules.

Finally, we revise section 2.105(d)(5) to clarify that the footnotes to the Allocation Table are listed in ascending numerical order in paragraphs (b)-(e) of § 2.106 and to remove footnote 7 from paragraphs (d)(5)(i)-(iv) and include the text of the footnote in paragraph (d)(5). In section 2.105, we replace "consisting of" in the first line of paragraph (d)(5)(i) and "consisting of the letters" in each of the paragraphs (d)(5)(ii)-(iv) with "in the format." In paragraphs (d)(5)(iii) and (iv), we replace "Non-Federal footnotes" and "Federal footnotes" with "Non-Federal government (non-Federal) footnotes" and "Federal government (Federal) footnotes."

IV. PROCEDURAL MATTERS

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 burdens for

²¹ 1 CFR § 21.11(h); OFR DDH, Ch. 2, Sec. 2.13 Numbering, Table 2-4: List of paragraph levels, 2-26.

²² 1 CFR § 21.11(h).

²³ See OFR DDH, Chapter 2, Sec. 2.16 Cross-references at 2-49-2-51.

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).

Congressional Review Act—The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSE

IT IS ORDERED that part 2 of the Commission’s Rules, 47 CFR part 2, IS AMENDED as set forth in the Appendix, effective 30 days after publication in the Federal Register. This action is taken pursuant to authority found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303, and in sections 0.11, 0.31, 0.231(b) and 0.241(i) of the Commission's Rules, 47 CFR §§ 0.11, 0.31, 0.231(b) and 0.241(i).

Petitions for reconsideration under 47 CFR § 1.429 or applications for review by the Commission under 47 CFR § 1.115 may be filed within 30 days after publication in the Federal Register. Should no petitions for reconsideration or applications for review be timely filed, this proceeding shall be terminated, and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Ronald T. Repasi
Acting Chief
Office of Engineering and Technology

APPENDIX**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Revise § 2.100 to read as follows:

§ 2.100 International Radio Regulations.

The United States is a Member State of the International Telecommunication Union (ITU). The legal framework of the ITU is comprised of the Constitution and Convention of the International Telecommunication Union—which have treaty status and are binding on ITU Member States—and the Administrative Regulations—which complement the Constitution and the Convention. The Radio Regulations form an integral part of the Administrative Regulations.

- (a) The Radio Regulations are available at <https://www.itu.int/pub/R-REG-RR/en> and consist of:

- (1) Articles in volume 1. Article 5 includes the ITU’s Table of Frequency Allocations, which is the basis for the International Table in § 2.106, as well as the text of the footnotes to the ITU’s Table of Frequency Allocations, which is the basis for the list of international footnotes in § 2.106. A description of terms and abbreviations used in the international footnotes is as follows:

- (i) ITU-R (ITU Radiocommunication Sector).

- (ii) No. (composite number indicating the number of the ITU Article and the provision number within that Article (e.g., No. 9.2B means provision No. 2B of Article 9).

- (iii) Radio Regulations (ITU Radio Regulations).

- (iv) WRC (World Radiocommunication Conference).

- (2) Appendices (with Annexes) in volume 2.

- (3) Resolutions and Recommendations in volume 3.

- (4) ITU Radiocommunication Sector (ITU-R) Recommendations as referenced in volume 4.

- (b) The Radio Regulations (Edition of 2012) have been incorporated to the extent practicable in this part, except that the International Table within § 2.106 has been updated to reflect the Radio Regulations (Edition of 2016).

3. Amend § 2.105 by revising paragraphs (b), (c) introductory text, (c)(1) introductory text, (d) introductory text, (d)(5), and (e) introductory text to read as follows:

§ 2.105 United States Table of Frequency Allocations.

* * * * *

(b) In the United States, radio spectrum may be allocated to either Federal or non-Federal use exclusively, or for shared use. In the case of shared use, the type of service(s) permitted need not be the same (e.g., Federal FIXED, non-Federal MOBILE). The terms used to designate categories of services and allocations in columns 4 and 5 of § 2.106 correspond to the terms in the ITU Radio Regulations.

(c) Any segment of the radio spectrum may be allocated to the Federal and/or non-Federal sectors either on an exclusive or shared basis for use by one or more radio services.

(1) In the case where an allocation has been made to more than one service, such services are listed in the following order:

* * * * *

(d) The format of the United States Table is as follows:

* * * * *

(5) The footnotes to the Allocation Table are listed in ascending numerical order in § 2.106(b) through (e); however, in some cases, a letter(s) has/have been appended after the digit(s) of a footnote number in order to preserve the sequential order. The following symbols are used to designate footnotes in the United States Table:

(i) Any footnote number in the format “5.” followed by one or more digits, *e.g.*, 5.53, denotes an international footnote. Where an international footnote is applicable, without modification, to both Federal and non-Federal operations, the Commission places the footnote in both the Federal Table and the non-Federal Table (columns 4 and 5) and the international footnote is binding on both Federal users and non-Federal licensees. If, however, an international footnote pertains to a service allocated only for Federal or non-Federal use, the international footnote will be placed only in the relevant Table. For example, footnote 5.142 pertains only to the amateur service, and thus, footnote 5.142 is shown only in the non-Federal Table.

(ii) Any footnote in the format “US” followed by one or more digits, *e.g.*, US7, denotes a stipulation affecting both Federal and non-Federal operations. United States footnotes appear in both the Federal Table and the non-Federal Table.

(iii) Any footnote in the format “NG” followed by one or more digits, *e.g.*, NG2, denotes a stipulation applicable only to non-Federal operations. Non-Federal Government (non-Federal) footnotes appear solely in the non-Federal Table (column 5).

(iv) Any footnote in the format “G” followed by one or more digits, *e.g.*, G2, denotes a stipulation applicable only to Federal operations. Federal Government (Federal) footnotes appear solely in the Federal Table (column 4).

* * * * *

(e) If a frequency or frequency band has been allocated to a radiocommunication service in the non-Federal Table, then a cross reference may be added to the pertinent FCC Rule part (column 6 of § 2.106) or, where greater specificity would be useful, to the pertinent subpart. For example, the band 849–851 MHz is allocated to the aeronautical mobile service for non-Federal use, rules for the use of the 849–851 MHz band have been added to part 22—Public Mobile Services (47 CFR part 22), and a cross reference, Public Mobile (22), has been added in column 6 of § 2.106. The exact use that can be made of any given frequency or frequency band (*e.g.*, channeling plans, allowable emissions, etc.) is given in the FCC Rule part(s) so indicated. The FCC Rule parts in this column are not allocations, may apply to only a portion of a band, and are provided for informational purposes only. This column also may contain explanatory notes for informational purposes only.

* * * * *

4. Amend § 2.106 by:

a. Adding paragraph (a) before the Table of Frequency Allocations;

b. Removing the “International Footnotes,” “United States (US) Footnotes,” “Non-Federal Government (NG) Footnotes,” and “Federal Government (G) Footnotes;” and

- c. Adding paragraphs (b) through (e) following the Table of Frequency Allocations.

The additions read as follows:

§ 2.106 Table of Frequency Allocations.

(a) *Allocation Table.* The Table of Frequency Allocations (Allocation Table) consists of the International Table of Frequency Allocations (International Table), the United States Table of Frequency Allocations (United States Table), and the FCC rule part(s) cross references as described in §§ 2.104 and 2.105, respectively. The International Telecommunication Union (ITU) Radio Regulations are described in § 2.100. The definitions of terms and acronyms used in the Allocation Table are specified in § 2.1. The footnotes to the Allocation Table are listed in ascending numerical order in paragraphs (b) through (e) of this section; however, in some cases, a letter(s) has/have been appended to the digit(s) of a footnote number in order to preserve the sequential order.

* * * * *

(b) *International footnotes.* International footnotes, each in the format "5." followed by one or more digits, denote stipulations applicable in the relationship between the United States and other nations and thus appear at a minimum in the International Table. Where an international footnote is applicable, without modification, to both Federal and non-Federal operations, the footnote is placed in both the Federal Table and the non-Federal Table (columns 4 and 5) and the international footnote is binding on both Federal users and non-Federal licensees. If, however, an international footnote pertains to a service allocated only for Federal or non-Federal use, the international footnote will be placed only in the relevant Table. Annex, Appendix, Article, No., and Resolution are cross references to provisions in the International Telecommunication Union (ITU) Radio Regulations (see § 2.100 for descriptions of the structure of the ITU Radio Regulations and the terms and abbreviations used in the international footnotes). The ITU-R Recommendations referenced in certain of the international footnotes are available at <https://www.itu.int/pub/R-REC>. The list of international footnotes follows:

(1) - (52) [Reserved]

(53) 5.53 Administrations authorizing the use of frequencies below 8.3 kHz shall ensure that no harmful interference is caused to services to which the bands above 8.3 kHz are allocated.

(54) 5.54 Administrations conducting scientific research using frequencies below 8.3 kHz are urged to advise other administrations that may be concerned in order that such research may be afforded all practicable protection from harmful interference.

(i) 5.54A Use of the 8.3-11.3 kHz frequency band by stations in the meteorological aids service is limited to passive use only. In the band 9-11.3 kHz, meteorological aids stations shall not claim protection from stations of the radionavigation service submitted for notification to the Bureau prior to 1 January 2013. For sharing between stations of the meteorological aids service and stations in the radionavigation service submitted for notification after this date, the most recent version of Recommendation ITU-R RS.1881 should be applied.

(ii) 5.54B *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Egypt, the United Arab Emirates, the Russian Federation, Iran (Islamic Republic of), Iraq, Kuwait, Lebanon, Morocco, Qatar, the Syrian Arab Republic, Sudan and Tunisia, the frequency band 8.3-9 kHz is also allocated to the radionavigation, fixed and mobile services on a primary basis.

(iii) 5.54C *Additional allocation:* in China, the frequency band 8.3-9 kHz is also allocated to the maritime radionavigation and maritime mobile services on a primary basis.

(55) 5.55 *Additional allocation:* in Armenia, the Russian Federation, Georgia, Kyrgyzstan, Tajikistan and Turkmenistan, the frequency band 14-17 kHz is also allocated to the radionavigation service on a primary basis.

(56) 5.56 The stations of services to which the bands 14-19.95 kHz and 20.05-70 kHz and in Region 1 also the bands 72-84 kHz and 86-90 kHz are allocated may transmit standard frequency and time signals. Such stations shall be afforded protection from harmful interference. In Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan, the frequencies 25 kHz and 50 kHz will be used for this purpose under the same conditions.

(57) 5.57 The use of the bands 14-19.95 kHz, 20.05-70 kHz and 70-90 kHz (72-84 kHz and 86-90 kHz in Region 1) by the maritime mobile service is limited to coast radiotelegraph stations (A1A and F1B only). Exceptionally, the use of class J2B or J7B emissions is authorized subject to the necessary bandwidth not exceeding that normally used for class A1A or F1B emissions in the band concerned.

(58) 5.58 *Additional allocation:* in Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan, the band 67-70 kHz is also allocated to the radionavigation service on a primary basis.

(59) 5.59 *Different category of service:* in Bangladesh and Pakistan, the allocation of the bands 70-72 kHz and 84-86 kHz to the fixed and maritime mobile services is on a primary basis (see No. 5.33).

(60) 5.60 In the bands 70-90 kHz (70-86 kHz in Region 1) and 110-130 kHz (112-130 kHz in Region 1), pulsed radionavigation systems may be used on condition that they do not cause harmful interference to other services to which these bands are allocated.

(61) 5.61 In Region 2, the establishment and operation of stations in the maritime radionavigation service in the bands 70-90 kHz and 110-130 kHz shall be subject to agreement obtained under No. 9.21 with administrations whose services, operating in accordance with the Table, may be affected. However, stations of the fixed, maritime mobile and radiolocation services shall not cause harmful interference to stations in the maritime radionavigation service established under such agreements.

(62) 5.62 Administrations which operate stations in the radionavigation service in the band 90-110 kHz are urged to coordinate technical and operating characteristics in such a way as to avoid harmful interference to the services provided by these stations.

(63) [Reserved]

(64) 5.64 Only classes A1A or F1B, A2C, A3C, F1C or F3C emissions are authorized for stations of the fixed service in the bands allocated to this service between 90 kHz and 160 kHz (148.5 kHz in Region 1) and for stations of the maritime mobile service in the bands allocated to this service between 110 kHz and 160 kHz (148.5 kHz in Region 1). Exceptionally, class J2B or J7B emissions are also authorized in the bands between 110 kHz and 160 kHz (148.5 kHz in Region 1) for stations of the maritime mobile service.

(65) 5.65 *Different category of service:* in Bangladesh, the allocation of the bands 112-117.6 kHz and 126-129 kHz to the fixed and maritime mobile services is on a primary basis (see No. 5.33).

(66) 5.66 *Different category of service:* in Germany, the allocation of the band 115-117.6 kHz to the fixed and maritime mobile services is on a primary basis (see No. 5.33) and to the radionavigation service on a secondary basis (see No. 5.32).

(67) 5.67 *Additional allocation:* in Mongolia, Kyrgyzstan and Turkmenistan, the band 130-148.5 kHz is also allocated to the radionavigation service on a secondary basis. Within and between these countries this service shall have an equal right to operate.

(i) 5.67A Stations in the amateur service using frequencies in the band 135.7-137.8 kHz shall not exceed a maximum radiated power of 1 W (e.i.r.p.) and shall not cause harmful interference to stations of the radionavigation service operating in countries listed in paragraph (b)(67) of this section.

(ii) 5.67B The use of the band 135.7-137.8 kHz in Algeria, Egypt, Iran (Islamic Republic of), Iraq, Lebanon, Syrian Arab Republic, Sudan, South Sudan and Tunisia is limited to the fixed and maritime mobile services. The amateur service shall not be used in the above-mentioned countries in the band 135.7-137.8 kHz, and this should be taken into account by the countries authorizing such use.

(68) 5.68 *Alternative allocation:* in Congo (Rep. of the), the Dem. Rep. of the Congo and South Africa, the frequency band 160-200 kHz is allocated to the fixed service on a primary basis.

(69) 5.69 *Additional allocation:* in Somalia, the band 200-255 kHz is also allocated to the aeronautical radionavigation service on a primary basis.

(70) 5.70 *Alternative allocation:* in Angola, Botswana, Burundi, the Central African Rep., Congo (Rep. of the), Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Nigeria, Oman, the Dem. Rep. of the Congo, South Africa, Swaziland, Tanzania, Chad, Zambia and Zimbabwe, the band 200-283.5 kHz is allocated to the aeronautical radionavigation service on a primary basis.

(71) 5.71 *Alternative allocation:* in Tunisia, the band 255-283.5 kHz is allocated to the broadcasting service on a primary basis.

(72) [Reserved]

(73) 5.73 The band 285-325 kHz (283.5-325 kHz in Region 1) in the maritime radionavigation service may be used to transmit supplementary navigational information using narrow-band techniques, on condition that no harmful interference is caused to radiobeacon stations operating in the radionavigation service.

(74) 5.74 *Additional allocation:* in Region 1, the frequency band 285.3-285.7 kHz is also allocated to the maritime radionavigation service (other than radiobeacons) on a primary basis.

(75) 5.75 *Different category of service:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Moldova, Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine and the Black Sea areas of Romania, the allocation of the band 315-325 kHz to the maritime radionavigation service is on a primary basis under the condition that in the Baltic Sea area, the assignment of frequencies in this band to new stations in the maritime or aeronautical radionavigation services shall be subject to prior consultation between the administrations concerned.

(76) 5.76 The frequency 410 kHz is designated for radio direction-finding in the maritime radionavigation service. The other radionavigation services to which the band 405-415 kHz is allocated shall not cause harmful interference to radio direction-finding in the band 406.5-413.5 kHz.

(77) 5.77 *Different category of service:* in Australia, China, the French overseas communities of Region 3, Korea (Rep. of), India, Iran (Islamic Republic of), Japan, Pakistan, Papua New Guinea and Sri Lanka, the allocation of the frequency band 415-495 kHz to the aeronautical radionavigation service is on a primary basis. In Armenia, Azerbaijan, Belarus, the Russian Federation, Kazakhstan, Latvia, Uzbekistan and Kyrgyzstan, the allocation of the frequency band 435-495 kHz to the aeronautical radionavigation service is on a primary basis. Administrations in all the aforementioned countries shall take all practical steps necessary to ensure that aeronautical radionavigation stations in the frequency band 435-495 kHz do not cause interference to reception by coast stations of transmissions from ship stations on frequencies designated for ship stations on a worldwide basis.

(78) 5.78 *Different category of service:* in Cuba, the United States of America and Mexico, the allocation of the band 415-435 kHz to the aeronautical radionavigation service is on a primary basis.

(79) 5.79 The use of the bands 415-495 kHz and 505-526.5 kHz (505-510 kHz in Region 2) by the maritime mobile service is limited to radiotelegraphy.

(i) 5.79A When establishing coast stations in the NAVTEX service on the frequencies 490 kHz, 518 kHz and 4209.5 kHz, administrations are strongly recommended to coordinate the operating

characteristics in accordance with the procedures of the International Maritime Organization (IMO) (see Resolution 339 (Rev.WRC-07)).

(ii) [Reserved]

(80) 5.80 In Region 2, the use of the band 435-495 kHz by the aeronautical radionavigation service is limited to non-directional beacons not employing voice transmission.

(i) 5.80A The maximum equivalent isotropically radiated power (e.i.r.p.) of stations in the amateur service using frequencies in the band 472-479 kHz shall not exceed 1 W. Administrations may increase this limit of e.i.r.p. to 5 W in portions of their territory which are at a distance of over 800 km from the borders of Algeria, Saudi Arabia, Azerbaijan, Bahrain, Belarus, China, Comoros, Djibouti, Egypt, United Arab Emirates, the Russian Federation, Iran (Islamic Republic of), Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, Uzbekistan, Qatar, Syrian Arab Republic, Kyrgyzstan, Somalia, Sudan, Tunisia, Ukraine and Yemen. In this frequency band, stations in the amateur service shall not cause harmful interference to, or claim protection from, stations of the aeronautical radionavigation service.

(ii) 5.80B The use of the frequency band 472-479 kHz in Algeria, Saudi Arabia, Azerbaijan, Bahrain, Belarus, China, Comoros, Djibouti, Egypt, United Arab Emirates, the Russian Federation, Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Libya, Mauritania, Oman, Uzbekistan, Qatar, Syrian Arab Republic, Kyrgyzstan, Somalia, Sudan, Tunisia and Yemen is limited to the maritime mobile and aeronautical radionavigation services. The amateur service shall not be used in the above-mentioned countries in this frequency band, and this should be taken into account by the countries authorizing such use.

(81) [Reserved]

(82) 5.82 In the maritime mobile service, the frequency 490 kHz is to be used exclusively for the transmission by coast stations of navigational and meteorological warnings and urgent information to ships, by means of narrow-band direct-printing telegraphy. The conditions for use of the frequency 490 kHz are prescribed in Articles 31 and 52. In using the frequency band 415-495 kHz for the aeronautical radionavigation service, administrations are requested to ensure that no harmful interference is caused to the frequency 490 kHz. In using the frequency band 472-479 kHz for the amateur service, administrations shall ensure that no harmful interference is caused to the frequency 490 kHz.

(83) [Reserved]

(84) 5.84 The conditions for the use of the frequency 518 kHz by the maritime mobile service are prescribed in Articles 31 and 52.

(85) [Reserved]

(86) 5.86 In Region 2, in the band 525-535 kHz the carrier power of broadcasting stations shall not exceed 1 kW during the day and 250 W at night.

(87) 5.87 *Additional allocation:* in Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Niger and Swaziland, the band 526.5-535 kHz is also allocated to the mobile service on a secondary basis.

(i) 5.87A *Additional allocation:* in Uzbekistan, the band 526.5-1606.5 kHz is also allocated to the radionavigation service on a primary basis. Such use is subject to agreement obtained under No. 9.21 with administrations concerned and limited to ground-based radiobeacons in operation on 27 October 1997 until the end of their lifetime.

(ii) [Reserved]

(88) 5.88 *Additional allocation:* in China, the band 526.5-535 kHz is also allocated to the aeronautical radionavigation service on a secondary basis.

(89) 5.89 In Region 2, the use of the band 1605-1705 kHz by stations of the broadcasting service is subject to the Plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988). The examination of frequency assignments to stations of the fixed and mobile services in the band 1625-1705 kHz shall take account of the allotments appearing in the Plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

(90) 5.90 In the band 1605-1705 kHz, in cases where a broadcasting station of Region 2 is concerned, the service area of the maritime mobile stations in Region 1 shall be limited to that provided by ground-wave propagation.

(91) 5.91 *Additional allocation:* in the Philippines and Sri Lanka, the band 1606.5-1705 kHz is also allocated to the broadcasting service on a secondary basis.

(92) 5.92 Some countries of Region 1 use radiodetermination systems in the bands 1606.5-1625 kHz, 1635-1800 kHz, 1850-2160 kHz, 2194-2300 kHz, 2502-2850 kHz and 3500-3800 kHz, subject to agreement obtained under No. 9.21. The radiated mean power of these stations shall not exceed 50 W.

(93) 5.93 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Mongolia, Nigeria, Uzbekistan, Poland, Kyrgyzstan, Slovakia, Tajikistan, Chad, Turkmenistan and Ukraine, the frequency bands 1625-1635 kHz, 1800-1810 kHz and 2160-2170 kHz are also allocated to the fixed and land mobile services on a primary basis, subject to agreement obtained under No. 9.21.

(94) - (95) [Reserved]

(96) 5.96 In Germany, Armenia, Austria, Azerbaijan, Belarus, Croatia, Denmark, Estonia, the Russian Federation, Finland, Georgia, Hungary, Ireland, Iceland, Israel, Kazakhstan, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Norway, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., the United Kingdom, Sweden, Switzerland, Tajikistan, Turkmenistan and Ukraine, administrations may allocate up to 200 kHz to their amateur service in the frequency bands 1715-1800 kHz and 1850-2000 kHz. However, when allocating the frequency bands within this range to their amateur service, administrations shall, after prior consultation with administrations of neighbouring countries, take such steps as may be necessary to prevent harmful interference from their amateur service to the fixed and mobile services of other countries. The mean power of any amateur station shall not exceed 10 W.

(97) 5.97 In Region 3, the Loran system operates either on 1850 kHz or 1950 kHz, the bands occupied being 1825-1875 kHz and 1925-1975 kHz respectively. Other services to which the band 1800-2000 kHz is allocated may use any frequency therein on condition that no harmful interference is caused to the Loran system operating on 1850 kHz or 1950 kHz.

(98) 5.98 *Alternative allocation:* in Armenia, Azerbaijan, Belarus, Belgium, Cameroon, Congo (Rep. of the), Denmark, Egypt, Eritrea, Spain, Ethiopia, the Russian Federation, Georgia, Greece, Italy, Kazakhstan, Lebanon, Lithuania, the Syrian Arab Republic, Kyrgyzstan, Somalia, Tajikistan, Tunisia, Turkmenistan and Turkey, the frequency band 1810-1830 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(99) 5.99 *Additional allocation:* in Saudi Arabia, Austria, Iraq, Libya, Uzbekistan, Slovakia, Romania, Slovenia, Chad, and Togo, the band 1810-1830 kHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(100) 5.100 In Region 1, the authorization to use the band 1810-1830 kHz by the amateur service in countries situated totally or partially north of 40° N shall be given only after consultation with the countries mentioned in paragraphs (b)(98) and (99) of this section to define the necessary steps to be

taken to prevent harmful interference between amateur stations and stations of other services operating in accordance with paragraphs (b)(98) and (99) of this section.

(101) [Reserved]

(102) 5.102 *Alternative allocation:* in Bolivia, Chile, Paraguay and Peru, the frequency band 1850-2000 kHz is allocated to the fixed, mobile except aeronautical mobile, radiolocation and radionavigation services on a primary basis.

(103) 5.103 In Region 1, in making assignments to stations in the fixed and mobile services in the bands 1850-2045 kHz, 2194-2498 kHz, 2502-2625 kHz and 2650-2850 kHz, administrations should bear in mind the special requirements of the maritime mobile service.

(104) 5.104 In Region 1, the use of the band 2025-2045 kHz by the meteorological aids service is limited to oceanographic buoy stations.

(105) 5.105 In Region 2, except in Greenland, coast stations and ship stations using radiotelephony in the band 2065-2107 kHz shall be limited to class J3E emissions and to a peak envelope power not exceeding 1 kW. Preferably, the following carrier frequencies should be used: 2065.0 kHz, 2079.0 kHz, 2082.5 kHz, 2086.0 kHz, 2093.0 kHz, 2096.5 kHz, 2100.0 kHz and 2103.5 kHz. In Argentina and Uruguay, the carrier frequencies 2068.5 kHz and 2075.5 kHz are also used for this purpose, while the frequencies within the band 2072-2075.5 kHz are used as provided in No. 52.165.

(106) 5.106 In Regions 2 and 3, provided no harmful interference is caused to the maritime mobile service, the frequencies between 2065 kHz and 2107 kHz may be used by stations of the fixed service communicating only within national borders and whose mean power does not exceed 50 W. In notifying the frequencies, the attention of the Bureau should be drawn to these provisions.

(107) 5.107 *Additional allocation:* in Saudi Arabia, Eritrea, Ethiopia, Iraq, Libya, Somalia and Swaziland, the band 2160-2170 kHz is also allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis. The mean power of stations in these services shall not exceed 50 W.

(108) 5.108 The carrier frequency 2182 kHz is an international distress and calling frequency for radiotelephony. The conditions for the use of the band 2173.5-2190.5 kHz are prescribed in Articles 31 and 52.

(109) 5.109 The frequencies 2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12 577 kHz and 16 804.5 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article 31.

(110) 5.110 The frequencies 2174.5 kHz, 4177.5 kHz, 6268 kHz, 8376.5 kHz, 12 520 kHz and 16 695 kHz are international distress frequencies for narrow-band direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article 31.

(111) 5.111 The carrier frequencies 2182 kHz, 3023 kHz, 5680 kHz, 8364 kHz and the frequencies 121.5 MHz, 156.525 MHz, 156.8 MHz and 243 MHz may also be used, in accordance with the procedures in force for terrestrial radiocommunication services, for search and rescue operations concerning manned space vehicles. The conditions for the use of the frequencies are prescribed in Article 31. The same applies to the frequencies 10 003 kHz, 14 993 kHz and 19 993 kHz, but in each of these cases emissions must be confined in a band of ± 3 kHz about the frequency.

(112) 5.112 *Alternative allocation:* in Denmark and Sri Lanka, the band 2194-2300 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(113) 5.113 For the conditions for the use of the bands 2300-2495 kHz (2498 kHz in Region 1), 3200-3400 kHz, 4750-4995 kHz and 5005-5060 kHz by the broadcasting service, see Nos. 5.16 to 5.20, 5.21 and 23.3 to 23.10.

(114) 5.114 *Alternative allocation:* in Denmark and Iraq, the band 2502-2625 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(115) 5.115 The carrier (reference) frequencies 3023 kHz and 5680 kHz may also be used, in accordance with Article 31, by stations of the maritime mobile service engaged in coordinated search and rescue operations.

(116) 5.116 Administrations are urged to authorize the use of the band 3155-3195 kHz to provide a common worldwide channel for low power wireless hearing aids. Additional channels for these devices may be assigned by administrations in the bands between 3155 kHz and 3400 kHz to suit local needs. It should be noted that frequencies in the range 3000 kHz to 4000 kHz are suitable for hearing aid devices which are designed to operate over short distances within the induction field.

(117) 5.117 *Alternative allocation:* in Côte d'Ivoire, Denmark, Egypt, Liberia, Sri Lanka and Togo, the band 3155-3200 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(118) 5.118 *Additional allocation:* in the United States, Mexico, Peru and Uruguay, the band 3230-3400 kHz is also allocated to the radiolocation service on a secondary basis.

(119) 5.119 *Additional allocation:* in Peru, the frequency band 3500-3750 kHz is also allocated to the fixed and mobile services on a primary basis.

(120) - (121) [Reserved]

(122) 5.122 *Alternative allocation:* in Bolivia, Chile, Ecuador, Paraguay and Peru, the frequency band 3750-4000 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(123) 5.123 *Additional allocation:* in Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe, the band 3900-3950 kHz is also allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. 9.21.

(124) [Reserved]

(125) 5.125 *Additional allocation:* in Greenland, the band 3950-4000 kHz is also allocated to the broadcasting service on a primary basis. The power of the broadcasting stations operating in this band shall not exceed that necessary for a national service and shall in no case exceed 5 kW.

(126) 5.126 In Region 3, the stations of those services to which the band 3995-4005 kHz is allocated may transmit standard frequency and time signals.

(127) 5.127 The use of the band 4000-4063 kHz by the maritime mobile service is limited to ship stations using radiotelephony (see No. 52.220 and Appendix 17).

(128) 5.128 Frequencies in the bands 4063-4123 kHz and 4130-4438 kHz may be used exceptionally by stations in the fixed service, communicating only within the boundary of the country in which they are located, with a mean power not exceeding 50 W, on condition that harmful interference is not caused to the maritime mobile service. In addition, in Afghanistan, Argentina, Armenia, Azerbaijan, Belarus, Botswana, Burkina Faso, the Central African Rep., China, the Russian Federation, Georgia, India, Kazakhstan, Mali, Niger, Pakistan, Kyrgyzstan, Tajikistan, Chad, Turkmenistan and Ukraine, in the bands 4063-4123 kHz, 4130-4133 kHz and 4408-4438 kHz, stations in the fixed service, with a mean power not exceeding 1 kW, can be operated on condition that they are situated at least 600 km from the coast and that harmful interference is not caused to the maritime mobile service.

(129) [Reserved]

(130) 5.130 The conditions for the use of the carrier frequencies 4125 kHz and 6215 kHz are prescribed in Articles 31 and 52.

(131) 5.131 The frequency 4209.5 kHz is used exclusively for the transmission by coast stations of meteorological and navigational warnings and urgent information to ships by means of narrow-band direct-printing techniques.

(132) 5.132 The frequencies 4210 kHz, 6314 kHz, 8416.5 kHz, 12 579 kHz, 16 806.5 kHz, 19 680.5 kHz, 22 376 kHz and 26 100.5 kHz are the international frequencies for the transmission of maritime safety information (MSI) (see Appendix 17).

(i) 5.132A Stations in the radiolocation service shall not cause harmful interference to, or claim protection from, stations operating in the fixed or mobile services. Applications of the radiolocation service are limited to oceanographic radars operating in accordance with Resolution 612 (Rev.WRC-12).

(ii) 5.132B *Alternative allocation:* in Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 4438-4488 kHz is allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis.

(133) 5.133 *Different category of service:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Latvia, Lithuania, Niger, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 5130-5250 kHz to the mobile, except aeronautical mobile, service is on a primary basis (see No. 5.33).

(i) 5.133A *Alternative allocation:* in Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency bands 5250-5275 kHz and 26 200-26 350 kHz are allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(ii) 5.133B Stations in the amateur service using the frequency band 5351.5-5366.5 kHz shall not exceed a maximum radiated power of 15 W (e.i.r.p.). However, in Region 2 in Mexico, stations in the amateur service using the frequency band 5351.5-5366.5 kHz shall not exceed a maximum radiated power of 20 W (e.i.r.p.). In the following Region 2 countries: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Dominica, El Salvador, Ecuador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela, as well as the overseas territories of the Netherlands in Region 2, stations in the amateur service using the frequency band 5351.5-5366.5 kHz shall not exceed a maximum radiated power of 25 W (e.i.r.p.).

(134) 5.134 The use of the bands 5900-5950 kHz, 7300-7350 kHz, 9400-9500 kHz, 11 600-11 650 kHz, 12 050-12 100 kHz, 13 570-13 600 kHz, 13 800-13 870 kHz, 15 600-15 800 kHz, 17 480-17 550 kHz and 18 900-19 020 kHz by the broadcasting service is subject to the application of the procedure of Article 12. Administrations are encouraged to use these bands to facilitate the introduction of digitally modulated emissions in accordance with the provisions of Resolution 517 (Rev.WRC-15).

(135) [Reserved]

(136) 5.136 *Additional allocation:* frequencies in the band 5900-5950 kHz may be used by stations in the following services, communicating only within the boundary of the country in which they are located: fixed service (in all three Regions), land mobile service (in Region 1), mobile except aeronautical mobile (R) service (in Regions 2 and 3), on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

(137) 5.137 On condition that harmful interference is not caused to the maritime mobile service, the bands 6200-6213.5 kHz and 6220.5-6525 kHz may be used exceptionally by stations in the fixed service, communicating only within the boundary of the country in which they are located, with a mean

power not exceeding 50 W. At the time of notification of these frequencies, the attention of the Bureau will be drawn to the above conditions.

(138) 5.138 The bands 6765-6795 kHz (centre frequency 6780 kHz), 433.05-434.79 MHz (centre frequency 433.92 MHz) in Region 1 except in the countries mentioned in No. 5.280, 61-61.5 GHz (centre frequency 61.25 GHz), 122-123 GHz (centre frequency 122.5 GHz), and 244-246 GHz (centre frequency 245 GHz) are designated for industrial, scientific and medical (ISM) applications. The use of these frequency bands for ISM applications shall be subject to special authorization by the administration concerned, in agreement with other administrations whose radiocommunication services might be affected. In applying this provision, administrations shall have due regard to the latest relevant ITU-R Recommendations.

(139) [Reserved]

(140) 5.140 *Additional allocation:* in Angola, Iraq, Somalia and Togo, the frequency band 7000-7050 kHz is also allocated to the fixed service on a primary basis.

(141) 5.141 *Alternative allocation:* in Egypt, Eritrea, Ethiopia, Guinea, Libya, Madagascar and Niger, the band 7000-7050 kHz is allocated to the fixed service on a primary basis.

(i) 5.141A *Additional allocation:* in Uzbekistan and Kyrgyzstan, the bands 7000-7100 kHz and 7100-7200 kHz are also allocated to the fixed and land mobile services on a secondary basis.

(ii) 5.141B *Additional allocation:* in Algeria, Saudi Arabia, Australia, Bahrain, Botswana, Brunei Darussalam, China, Comoros, Korea (Rep. of), Diego Garcia, Djibouti, Egypt, United Arab Emirates, Eritrea, Guinea, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Kuwait, Libya, Mali, Morocco, Mauritania, Niger, New Zealand, Oman, Papua New Guinea, Qatar, the Syrian Arab Republic, Singapore, Sudan, South Sudan, Tunisia, Viet Nam and Yemen, the frequency band 7100-7200 kHz is also allocated to the fixed and the mobile, except aeronautical mobile (R), services on a primary basis.

(142) 5.142 The use of the band 7200-7300 kHz in Region 2 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3.

(143) 5.143 *Additional allocation:* frequencies in the band 7300-7350 kHz may be used by stations in the fixed service and in the land mobile service, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

(i) 5.143A In Region 3, frequencies in the band 7350-7450 kHz may be used by stations in the fixed service on a primary basis and land mobile service on a secondary basis, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

(ii) 5.143B In Region 1, frequencies in the band 7350-7450 kHz may be used by stations in the fixed and land mobile services communicating only within the boundary of the country in which they are located on condition that harmful interference is not caused to the broadcasting service. The total radiated power of each station shall not exceed 24 dBW.

(iii) 5.143C *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Iran (Islamic Republic of), Jordan, Kuwait, Libya, Morocco, Mauritania, Niger, Oman, Qatar, the Syrian Arab Republic, Sudan, South Sudan, Tunisia and Yemen, the bands 7350-7400 kHz and 7400-7450 kHz are also allocated to the fixed service on a primary basis.

(iv) 5.143D In Region 2, frequencies in the band 7350-7400 kHz may be used by stations in the fixed service and in the land mobile service, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

(144) 5.144 In Region 3, the stations of those services to which the band 7995-8005 kHz is allocated may transmit standard frequency and time signals.

(145) 5.145 The conditions for the use of the carrier frequencies 8291 kHz, 12 290 kHz and 16 420 kHz are prescribed in Articles 31 and 52.

(i) 5.145A Stations in the radiolocation service shall not cause harmful interference to, or claim protection from, stations operating in the fixed service. Applications of the radiolocation service are limited to oceanographic radars operating in accordance with Resolution 612 (Rev.WRC-12).

(ii) 5.145B *Alternative allocation:* in Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency bands 9305-9355 kHz and 16 100-16 200 kHz are allocated to the fixed service on a primary basis.

(146) 5.146 *Additional allocation:* frequencies in the bands 9400-9500 kHz, 11 600-11 650 kHz, 12 050-12 100 kHz, 15 600-15 800 kHz, 17 480-17 550 kHz and 18 900-19 020 kHz may be used by stations in the fixed service, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies in the fixed service, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

(147) 5.147 On condition that harmful interference is not caused to the broadcasting service, frequencies in the bands 9775-9900 kHz, 11 650-11 700 kHz and 11 975-12 050 kHz may be used by stations in the fixed service communicating only within the boundary of the country in which they are located, each station using a total radiated power not exceeding 24 dBW.

(148) [Reserved]

(149) 5.149 In making assignments to stations of other services to which the bands listed in table 1 to this paragraph (b)(149) are allocated, administrations are urged to take all practicable steps to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 4.5 and 4.6 and Article 29).

(i) 5.149A *Alternative allocation:* in Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 13 450-13 550 kHz is allocated to the fixed service on a primary basis and to the mobile, except aeronautical mobile (R), service on a secondary basis.

(ii) [Reserved]

Table 1 to Paragraph (b)(149)

13 360-13 410 kHz	23.07-23.12 GHz
25 550-25 670 kHz	31.2-31.3 GHz
37.5-38.25 MHz	31.5-31.8 GHz in Regions 1 and 3
73-74.6 MHz in Regions 1 and 3	36.43-36.5 GHz
150.05-153 MHz in Region 1	42.5-43.5 GHz
322-328.6 MHz	48.94-49.04 GHz
406.1-410 MHz	76-86 GHz
608-614 MHz in Regions 1 and 3	92-94 GHz

1330-1400 MHz	94.1-100 GHz
1610.6-1613.8 MHz	102-109.5 GHz
1660-1670 MHz	111.8-114.25 GHz
1718.8-1722.2 MHz	128.33-128.59 GHz
2655-2690 MHz	129.23-129.49 GHz
3260-3267 MHz	130-134 GHz
3332-3339 MHz	136-148.5 GHz
3345.8-3352.5 MHz	151.5-158.5 GHz
4825-4835 MHz	168.59-168.93 GHz
4950-4990 MHz	171.11-171.45 GHz
4990-5000 MHz	172.31-172.65 GHz
6650-6675.2 MHz	173.52-173.85 GHz
10.6-10.68 GHz	195.75-196.15 GHz
14.47-14.5 GHz	209-226 GHz
22.01-22.21 GHz	241-250 GHz
22.21-22.5 GHz	252-275 GHz
22.81-22.86 GHz	

(150) 5.150 The bands 13 553-13 567 kHz (centre frequency 13 560 kHz), 26 957-27 283 kHz (centre frequency 27 120 kHz), 40.66-40.70 MHz (centre frequency 40.68 MHz), 902-928 MHz in Region 2 (centre frequency 915 MHz), 2400-2500 MHz (centre frequency 2450 MHz), 5725-5875 MHz (centre frequency 5800 MHz), and 24-24.25 GHz (centre frequency 24.125 GHz) are also designated for industrial, scientific and medical (ISM) applications. Radiocommunication services operating within these bands must accept harmful interference which may be caused by these applications. ISM equipment operating in these bands is subject to the provisions of No. 15.13.

(151) 5.151 *Additional allocation:* frequencies in the bands 13 570-13 600 kHz and 13 800-13 870 kHz may be used by stations in the fixed service and in the mobile except aeronautical mobile (R) service, communicating only within the boundary of the country in which they are located, on the condition that harmful interference is not caused to the broadcasting service. When using frequencies in these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

(152) 5.152 *Additional allocation:* in Armenia, Azerbaijan, China, Côte d'Ivoire, the Russian Federation, Georgia, Iran (Islamic Republic of), Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 14 250-14 350 kHz is also allocated to the fixed service on a primary basis. Stations of the fixed service shall not use a radiated power exceeding 24 dBW.

(153) 5.153 In Region 3, the stations of those services to which the band 15 995-16 005 kHz is allocated may transmit standard frequency and time signals.

(154) 5.154 *Additional allocation:* in Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 18 068-18 168 kHz is also allocated to the fixed service on a primary basis for use within their boundaries, with a peak envelope power not exceeding 1 kW.

(155) 5.155 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, Tajikistan, Turkmenistan and Ukraine, the band 21 850-21 870 kHz is also allocated to the aeronautical mobile (R) service on a primary basis.

(i) 5.155A In Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, Tajikistan, Turkmenistan and Ukraine, the use of

the band 21 850-21 870 kHz by the fixed service is limited to provision of services related to aircraft flight safety.

(ii) 5.155B The band 21 870-21 924 kHz is used by the fixed service for provision of services related to aircraft flight safety.

(156) 5.156 *Additional allocation:* in Nigeria, the band 22 720-23 200 kHz is also allocated to the meteorological aids service (radiosondes) on a primary basis.

(i) 5.156A The use of the band 23 200-23 350 kHz by the fixed service is limited to provision of services related to aircraft flight safety.

(ii) [Reserved]

(157) 5.157 The use of the band 23 350-24 000 kHz by the maritime mobile service is limited to inter-ship radiotelegraphy.

(158) 5.158 *Alternative allocation:* in Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 24 450-24 600 kHz is allocated to the fixed and land mobile services on a primary basis.

(159) 5.159 *Alternative allocation:* in Armenia, Belarus, Moldova, Uzbekistan and Kyrgyzstan, the frequency band 39-39.5 MHz is allocated to the fixed and mobile services on a primary basis.

(160) 5.160 *Additional allocation:* in Botswana, Burundi, Dem. Rep. of the Congo and Rwanda, the band 41-44 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

(161) 5.161 *Additional allocation:* in Iran (Islamic Republic of) and Japan, the band 41-44 MHz is also allocated to the radiolocation service on a secondary basis.

(i) 5.161A *Additional allocation:* in Korea (Rep. of) and the United States, the frequency bands 41.015-41.665 MHz and 43.35-44 MHz are also allocated to the radiolocation service on a primary basis. Stations in the radiolocation service shall not cause harmful interference to, or claim protection from, stations operating in the fixed or mobile services. Applications of the radiolocation service are limited to oceanographic radars operating in accordance with Resolution 612 (Rev.WRC-12).

(ii) 5.161B *Alternative allocation:* in Albania, Germany, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Cyprus, Vatican, Croatia, Denmark, Spain, Estonia, Finland, France, Greece, Hungary, Ireland, Iceland, Italy, Latvia, The Former Yugoslav Rep. of Macedonia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Norway, Uzbekistan, Netherlands, Portugal, Kyrgyzstan, Slovakia, Czech Rep., Romania, United Kingdom, San Marino, Slovenia, Sweden, Switzerland, Turkey and Ukraine, the frequency band 42-42.5 MHz is allocated to the fixed and mobile services on a primary basis.

(162) 5.162 *Additional allocation:* in Australia, the band 44-47 MHz is also allocated to the broadcasting service on a primary basis.

(i) 5.162A *Additional allocation:* in Germany, Austria, Belgium, Bosnia and Herzegovina, China, Vatican, Denmark, Spain, Estonia, the Russian Federation, Finland, France, Ireland, Iceland, Italy, Latvia, The Former Yugoslav Republic of Macedonia, Liechtenstein, Lithuania, Luxembourg, Monaco, Montenegro, Norway, the Netherlands, Poland, Portugal, the Czech Rep., the United Kingdom, Serbia, Slovenia, Sweden and Switzerland the band 46-68 MHz is also allocated to the radiolocation service on a secondary basis. This use is limited to the operation of wind profiler radars in accordance with Resolution 217 (WRC-97).

(ii) [Reserved]

(163) 5.163 *Additional allocation:* in Armenia, Belarus, the Russian Federation, Georgia,

Hungary, Kazakhstan, Latvia, Moldova, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the bands 47-48.5 MHz and 56.5-58 MHz are also allocated to the fixed and land mobile services on a secondary basis.

(164) 5.164 *Additional allocation:* in Albania, Algeria, Germany, Austria, Belgium, Bosnia and Herzegovina, Botswana, Bulgaria, Côte d'Ivoire, Croatia, Denmark, Spain, Estonia, Finland, France, Gabon, Greece, Ireland, Israel, Italy, Jordan, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Monaco, Montenegro, Nigeria, Norway, the Netherlands, Poland, Syrian Arab Republic, Slovakia, Czech Rep., Romania, the United Kingdom, Serbia, Slovenia, Sweden, Switzerland, Swaziland, Chad, Togo, Tunisia and Turkey, the frequency band 47-68 MHz, in South Africa the frequency band 47-50 MHz, and in Latvia the frequency band 48.5-56.5 MHz, are also allocated to the land mobile service on a primary basis. However, stations of the land mobile service in the countries mentioned in connection with each frequency band referred to in this footnote shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations of countries other than those mentioned in connection with the frequency band.

(165) 5.165 *Additional allocation:* in Angola, Cameroon, Congo (Rep. of the), Madagascar, Mozambique, Niger, Somalia, Sudan, South Sudan, Tanzania and Chad, the band 47-68 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(166) [Reserved]

(167) 5.167 *Alternative allocation:* in Bangladesh, Brunei Darussalam, India, Iran (Islamic Republic of), Pakistan and Singapore, the frequency band 50-54 MHz is allocated to the fixed, mobile and broadcasting services on a primary basis.

(i) 5.167A *Additional allocation:* in Indonesia and Thailand, the frequency band 50-54 MHz is also allocated to the fixed, mobile and broadcasting services on a primary basis.

(ii) [Reserved]

(168) 5.168 *Additional allocation:* in Australia, China and the Dem. People's Rep. of Korea, the band 50-54 MHz is also allocated to the broadcasting service on a primary basis.

(169) 5.169 *Alternative allocation:* in Botswana, Lesotho, Malawi, Namibia, the Dem. Rep. of the Congo, Rwanda, South Africa, Swaziland, Zambia and Zimbabwe, the band 50-54 MHz is allocated to the amateur service on a primary basis. In Senegal, the band 50-51 MHz is allocated to the amateur service on a primary basis.

(170) 5.170 *Additional allocation:* in New Zealand, the frequency band 51-54 MHz is also allocated to the fixed and mobile services on a primary basis.

(171) 5.171 *Additional allocation:* in Botswana, Lesotho, Malawi, Mali, Namibia, Dem. Rep. of the Congo, Rwanda, South Africa, Swaziland, Zambia and Zimbabwe, the band 54-68 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(172) 5.172 *Different category of service:* in the French overseas departments and communities in Region 2 and Guyana, the allocation of the frequency band 54-68 MHz to the fixed and mobile services is on a primary basis (see No. 5.33).

(173) 5.173 *Different category of service:* in the French overseas departments and communities in Region 2 and Guyana, the allocation of the frequency band 68-72 MHz to the fixed and mobile services is on a primary basis (see IRU RR No. 5.33).

(174) [Reserved]

(175) 5.175 *Alternative allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Moldova, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the

bands 68-73 MHz and 76-87.5 MHz are allocated to the broadcasting service on a primary basis. In Latvia and Lithuania, the bands 68-73 MHz and 76-87.5 MHz are allocated to the broadcasting and mobile, except aeronautical mobile, services on a primary basis. The services to which these bands are allocated in other countries and the broadcasting service in the countries listed above are subject to agreements with the neighbouring countries concerned.

(176) 5.176 *Additional allocation:* in Australia, China, Korea (Rep. of), the Philippines, the Dem. People's Rep. of Korea and Samoa, the band 68-74 MHz is also allocated to the broadcasting service on a primary basis.

(177) 5.177 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 73-74 MHz is also allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. 9.21.

(178) 5.178 *Additional allocation:* in Colombia, Cuba, El Salvador, Guatemala, Guyana, Honduras and Nicaragua, the band 73-74.6 MHz is also allocated to the fixed and mobile services on a secondary basis.

(179) 5.179 *Additional allocation:* in Armenia, Azerbaijan, Belarus, China, the Russian Federation, Georgia, Kazakhstan, Lithuania, Mongolia, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the bands 74.6-74.8 MHz and 75.2-75.4 MHz are also allocated to the aeronautical radionavigation service, on a primary basis, for ground-based transmitters only.

(180) 5.180 The frequency 75 MHz is assigned to marker beacons. Administrations shall refrain from assigning frequencies close to the limits of the guardband to stations of other services which, because of their power or geographical position, might cause harmful interference or otherwise place a constraint on marker beacons. Every effort should be made to improve further the characteristics of airborne receivers and to limit the power of transmitting stations close to the limits 74.8 MHz and 75.2 MHz.

(181) 5.181 *Additional allocation:* in Egypt, Israel and the Syrian Arab Republic, the band 74.8-75.2 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. 9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedure invoked under No. 9.21.

(182) 5.182 *Additional allocation:* in Western Samoa, the band 75.4-87 MHz is also allocated to the broadcasting service on a primary basis.

(183) 5.183 *Additional allocation:* in China, Korea (Rep. of), Japan, the Philippines and the Dem. People's Rep. of Korea, the band 76-87 MHz is also allocated to the broadcasting service on a primary basis.

(184) [Reserved]

(185) 5.185 *Different category of service:* in the United States, the French overseas departments and communities in Region 2, Guyana and Paraguay, the allocation of the frequency band 76-88 MHz to the fixed and mobile services is on a primary basis (see No. 5.33).

(186) [Reserved]

(187) 5.187 *Alternative allocation:* in Albania, the band 81-87.5 MHz is allocated to the broadcasting service on a primary basis and used in accordance with the decisions contained in the Final Acts of the Special Regional Conference (Geneva, 1960).

(188) 5.188 *Additional allocation:* in Australia, the band 85-87 MHz is also allocated to the

broadcasting service on a primary basis. The introduction of the broadcasting service in Australia is subject to special agreements between the administrations concerned.

(189) [Reserved]

(190) 5.190 *Additional allocation:* in Monaco, the band 87.5-88 MHz is also allocated to the land mobile service on a primary basis, subject to agreement obtained under No. 9.21.

(191) [Reserved]

(192) 5.192 *Additional allocation:* in China and Korea (Rep. of), the band 100-108 MHz is also allocated to the fixed and mobile services on a primary basis.

(193) [Reserved]

(194) 5.194 *Additional allocation:* in Azerbaijan, Kyrgyzstan, Somalia and Turkmenistan, the band 104-108 MHz is also allocated to the mobile, except aeronautical mobile (R), service on a secondary basis.

(195) - (196) [Reserved]

(197) 5.197 *Additional allocation:* in the Syrian Arab Republic, the band 108-111.975 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. 9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedures invoked under No. 9.21.

(i) 5.197A *Additional allocation:* the band 108-117.975 MHz is also allocated on a primary basis to the aeronautical mobile (R) service, limited to systems operating in accordance with recognized international aeronautical standards. Such use shall be in accordance with Resolution 413 (Rev. WRC-12). The use of the band 108-112 MHz by the aeronautical mobile (R) service shall be limited to systems composed of ground-based transmitters and associated receivers that provide navigational information in support of air navigation functions in accordance with recognized international aeronautical standards.

(ii) [Reserved]

(198) - (199) [Reserved]

(200) 5.200 In the band 117.975-137 MHz, the frequency 121.5 MHz is the aeronautical emergency frequency and, where required, the frequency 123.1 MHz is the aeronautical frequency auxiliary to 121.5 MHz. Mobile stations of the maritime mobile service may communicate on these frequencies under the conditions laid down in Article 31 for distress and safety purposes with stations of the aeronautical mobile service.

(201) 5.201 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Bulgaria, Estonia, the Russian Federation, Georgia, Hungary, Iran (Islamic Republic of), Iraq (Republic of), Japan, Kazakhstan, Moldova, Mongolia, Mozambique, Uzbekistan, Papua New Guinea, Poland, Kyrgyzstan, Romania, Tajikistan, Turkmenistan and Ukraine, the frequency band 132-136 MHz is also allocated to the aeronautical mobile (OR) service on a primary basis. In assigning frequencies to stations of the aeronautical mobile (OR) service, the administration shall take account of the frequencies assigned to stations in the aeronautical mobile (R) service.

(202) 5.202 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Belarus, Bulgaria, the United Arab Emirates, the Russian Federation, Georgia, Iran (Islamic Republic of), Jordan, Oman, Uzbekistan, Poland, the Syrian Arab Republic, Kyrgyzstan, Romania, Tajikistan, Turkmenistan and Ukraine, the frequency band 136-137 MHz is also allocated to the aeronautical mobile (OR) service on a primary basis. In assigning frequencies to stations of the aeronautical mobile (OR) service, the

administration shall take account of the frequencies assigned to stations in the aeronautical mobile (R) service.

(203) [Reserved]

(204) 5.204 *Different category of service:* in Afghanistan, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, the United Arab Emirates, India, Indonesia, Iran (Islamic Republic of), Iraq, Kuwait, Montenegro, Oman, Pakistan, the Philippines, Qatar, Serbia, Singapore, Thailand and Yemen, the band 137-138 MHz is allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis (see No. 5.33).

(205) 5.205 *Different category of service:* in Israel and Jordan, the allocation of the band 137-138 MHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see ITU No. 5.33).

(206) 5.206 *Different category of service:* in Armenia, Azerbaijan, Belarus, Bulgaria, Egypt, the Russian Federation, Finland, France, Georgia, Greece, Kazakhstan, Lebanon, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, the Syrian Arab Republic, Slovakia, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 137-138 MHz to the aeronautical mobile (OR) service is on a primary basis (see No. 5.33).

(207) 5.207 *Additional allocation:* in Australia, the band 137-144 MHz is also allocated to the broadcasting service on a primary basis until that service can be accommodated within regional broadcasting allocations.

(208) 5.208 The use of the band 137-138 MHz by the mobile-satellite service is subject to coordination under No. 9.11A.

(i) 5.208A In making assignments to space stations in the mobile-satellite service in the bands 137-138 MHz, 387-390 MHz and 400.15-401 MHz, administrations shall take all practicable steps to protect the radio astronomy service in the bands 150.05-153 MHz, 322-328.6 MHz, 406.1-410 MHz and 608-614 MHz from harmful interference from unwanted emissions. The threshold levels of interference detrimental to the radio astronomy service are shown in the relevant ITU-R Recommendation.

(ii) 5.208B In the frequency bands 137-138 MHz, 387-390 MHz, 400.15-401 MHz, 1452-1492 MHz, 1525-1610 MHz, 1613.8-1626.5 MHz, 2655-2690 MHz, and 21.4-22 GHz, Resolution 739 (Rev. WRC-15) applies.

(209) 5.209 The use of the bands 137-138 MHz, 148-150.05 MHz, 399.9-400.05 MHz, 400.15-401 MHz, 454-456 MHz and 459-460 MHz by the mobile-satellite service is limited to non-geostationary-satellite systems.

(210) 5.210 *Additional allocation:* in Italy, the Czech Rep. and the United Kingdom, the bands 138-143.6 MHz and 143.65-144 MHz are also allocated to the space research service (space-to-Earth) on a secondary basis.

(211) 5.211 *Additional allocation:* in Germany, Saudi Arabia, Austria, Bahrain, Belgium, Denmark, the United Arab Emirates, Spain, Finland, Greece, Guinea, Ireland, Israel, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lebanon, Liechtenstein, Luxembourg, Mali, Malta, Montenegro, Norway, the Netherlands, Qatar, Slovakia, the United Kingdom, Serbia, Slovenia, Somalia, Sweden, Switzerland, Tanzania, Tunisia and Turkey, the frequency band 138-144 MHz is also allocated to the maritime mobile and land mobile services on a primary basis.

(212) 5.212 *Alternative allocation:* in Angola, Botswana, Cameroon, the Central African Rep., Congo (Rep. of the), Gabon, Gambia, Ghana, Guinea, Iraq, Jordan, Lesotho, Liberia, Libya, Malawi, Mozambique, Namibia, Niger, Oman, Uganda, Syrian Arab Republic, the Dem. Rep. of the Congo, Rwanda, Sierra Leone, South Africa, Swaziland, Chad, Togo, Zambia and Zimbabwe, the band 138-144

MHz is allocated to the fixed and mobile services on a primary basis.

(213) 5.213 *Additional allocation:* in China, the band 138-144 MHz is also allocated to the radiolocation service on a primary basis.

(214) 5.214 *Additional allocation:* in Eritrea, Ethiopia, Kenya, The Former Yugoslav Republic of Macedonia, Montenegro, Serbia, Somalia, Sudan, South Sudan and Tanzania, the band 138-144 MHz is also allocated to the fixed service on a primary basis.

(215) [Reserved]

(216) 5.216 *Additional allocation:* in China, the band 144-146 MHz is also allocated to the aeronautical mobile (OR) service on a secondary basis.

(217) 5.217 *Alternative allocation:* in Afghanistan, Bangladesh, Cuba, Guyana and India, the band 146-148 MHz is allocated to the fixed and mobile services on a primary basis.

(218) 5.218 *Additional allocation:* the band 148-149.9 MHz is also allocated to the space operation service (Earth-to-space) on a primary basis, subject to agreement obtained under No. 9.21. The bandwidth of any individual transmission shall not exceed ± 25 kHz.

(219) 5.219 The use of the band 148-149.9 MHz by the mobile-satellite service is subject to coordination under No. 9.11A. The mobile-satellite service shall not constrain the development and use of the fixed, mobile and space operation services in the band 148-149.9 MHz.

(220) 5.220 The use of the frequency bands 149.9-150.05 MHz and 399.9-400.05 MHz by the mobile-satellite service is subject to coordination under No. 9.11A.

(221) 5.221 Stations of the mobile-satellite service in the frequency band 148-149.9 MHz shall not cause harmful interference to, or claim protection from, stations of the fixed or mobile services operating in accordance with the Table of Frequency Allocations in the following countries: Albania, Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cameroon, China, Cyprus, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Croatia, Cuba, Denmark, Djibouti, Egypt, the United Arab Emirates, Eritrea, Spain, Estonia, Ethiopia, the Russian Federation, Finland, France, Gabon, Georgia, Ghana, Greece, Guinea, Guinea Bissau, Hungary, India, Iran (Islamic Republic of), Ireland, Iceland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lesotho, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mali, Malta, Mauritania, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Norway, New Zealand, Oman, Uganda, Uzbekistan, Pakistan, Panama, Papua New Guinea, Paraguay, the Netherlands, the Philippines, Poland, Portugal, Qatar, the Syrian Arab Republic, Kyrgyzstan, Dem. People's Rep. of Korea, Slovakia, Romania, the United Kingdom, Senegal, Serbia, Sierra Leone, Singapore, Slovenia, Sudan, Sri Lanka, South Africa, Sweden, Switzerland, Swaziland, Tanzania, Chad, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Viet Nam, Yemen, Zambia and Zimbabwe.

(222) - (224) [Reserved]

(225) 5.225 *Additional allocation:* in Australia and India, the band 150.05-153 MHz is also allocated to the radio astronomy service on a primary basis.

(i) 5.225A *Additional allocation:* in Algeria, Armenia, Azerbaijan, Belarus, China, the Russian Federation, France, Iran (Islamic Republic of), Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine and Viet Nam, the frequency band 154-156 MHz is also allocated to the radiolocation service on a primary basis. The usage of the frequency band 154-156 MHz by the radiolocation service shall be limited to space-object detection systems operating from terrestrial locations. The operation of stations in the radiolocation service in the frequency band 154-156 MHz shall

be subject to agreement obtained under No. 9.21. For the identification of potentially affected administrations in Region 1, the instantaneous field-strength value of 12 dB(μ V/m) for 10% of the time produced at 10 m above ground level in the 25 kHz reference frequency band at the border of the territory of any other administration shall be used. For the identification of potentially affected administrations in Region 3, the interference-to-noise ratio (I/N) value of -6 dB ($N = -161$ dBW/4 kHz), or -10 dB for applications with greater protection requirements, such as public protection and disaster relief (PPDR ($N = -161$ dBW/4 kHz)), for 1% of the time produced at 60 m above ground level at the border of the territory of any other administration shall be used. In the frequency bands 156.7625-156.8375 MHz, 156.5125-156.5375 MHz, 161.9625-161.9875 MHz, 162.0125-162.0375 MHz, out-of-band e.i.r.p. of space surveillance radars shall not exceed -16 dBW. Frequency assignments to the radiolocation service under this allocation in Ukraine shall not be used without the agreement of Moldova.

(ii) [Reserved]

(226) 5.226 The frequency 156.525 MHz is the international distress, safety and calling frequency for the maritime mobile VHF radiotelephone service using digital selective calling (DSC). The conditions for the use of this frequency and the band 156.4875-156.5625 MHz are contained in Articles 31 and 52, and in Appendix 18. The frequency 156.8 MHz is the international distress, safety and calling frequency for the maritime mobile VHF radiotelephone service. The conditions for the use of this frequency and the band 156.7625-156.8375 MHz are contained in Article 31 and Appendix 18. In the bands 156-156.4875 MHz, 156.5625-156.7625 MHz, 156.8375-157.45 MHz, 160.6-160.975 MHz and 161.475-162.05 MHz, each administration shall give priority to the maritime mobile service on only such frequencies as are assigned to stations of the maritime mobile service by the administration (see Articles 31 and 52, and Appendix 18). Any use of frequencies in these bands by stations of other services to which they are allocated should be avoided in areas where such use might cause harmful interference to the maritime mobile VHF radiocommunication service. However, the frequencies 156.8 MHz and 156.525 MHz and the frequency bands in which priority is given to the maritime mobile service may be used for radiocommunications on inland waterways subject to agreement between interested and affected administrations and taking into account current frequency usage and existing agreements.

(227) 5.227 *Additional allocation:* the bands 156.4875-156.5125 MHz and 156.5375-156.5625 MHz are also allocated to the fixed and land mobile services on a primary basis. The use of these bands by the fixed and land mobile services shall not cause harmful interference to nor claim protection from the maritime mobile VHF radiocommunication service.

(228) 5.228 The use of the frequency bands 156.7625-156.7875 MHz and 156.8125-156.8375 MHz by the mobile-satellite service (Earth-to-space) is limited to the reception of automatic identification system (AIS) emissions of long-range AIS broadcast messages (Message 27, see the most recent version of Recommendation ITU-R M.1371). With the exception of AIS emissions, emissions in these frequency bands by systems operating in the maritime mobile service for communications shall not exceed 1 W.

(i) 5.228A The frequency bands 161.9625-161.9875 MHz and 162.0125-162.0375 MHz may be used by aircraft stations for the purpose of search and rescue operations and other safety-related communications.

(ii) 5.228AA The use of the frequency bands 161.9375-161.9625 MHz and 161.9875-162.0125 MHz by the maritime mobile-satellite (Earth-to-space) service is limited to the systems which operate in accordance with Appendix 18.

(iii) 5.228B The use of the frequency bands 161.9625-161.9875 MHz and 162.0125-162.0375 MHz by the fixed and land mobile services shall not cause harmful interference to, or claim protection from, the maritime mobile service.

(iv) 5.228C The use of the frequency bands 161.9625-161.9875 MHz and 162.0125-

162.0375 MHz by the maritime mobile service and the mobile-satellite (Earth-to-space) service is limited to the automatic identification system (AIS). The use of these frequency bands by the aeronautical mobile (OR) service is limited to AIS emissions from search and rescue aircraft operations. The AIS operations in these frequency bands shall not constrain the development and use of the fixed and mobile services operating in the adjacent frequency bands.

(v) 5.228D The frequency bands 161.9625-161.9875 MHz (AIS 1) and 162.0125-162.0375 MHz (AIS 2) may continue to be used by the fixed and mobile services on a primary basis until 1 January 2025, at which time this allocation shall no longer be valid. Administrations are encouraged to make all practicable efforts to discontinue the use of these bands by the fixed and mobile services prior to the transition date. During this transition period, the maritime mobile service in these frequency bands has priority over the fixed, land mobile and aeronautical mobile services.

(vi) 5.228E The use of the automatic identification system in the frequency bands 161.9625-161.9875 MHz and 162.0125-162.0375 MHz by the aeronautical mobile (OR) service is limited to aircraft stations for the purpose of search and rescue operations and other safety-related communications.

(vii) 5.228F The use of the frequency bands 161.9625-161.9875 MHz and 162.0125-162.0375 MHz by the mobile-satellite service (Earth-to-space) is limited to the reception of automatic identification system emissions from stations operating in the maritime mobile service.

(229) 5.229 *Alternative allocation:* in Morocco, the band 162-174 MHz is allocated to the broadcasting service on a primary basis. The use of this band shall be subject to agreement with administrations having services, operating or planned, in accordance with the Table which are likely to be affected. Stations in existence on 1 January 1981, with their technical characteristics as of that date, are not affected by such agreement.

(230) 5.230 *Additional allocation:* in China, the band 163-167 MHz is also allocated to the space operation service (space-to-Earth) on a primary basis, subject to agreement obtained under No. 9.21.

(231) 5.231 *Additional allocation:* in Afghanistan and China, the band 167-174 MHz is also allocated to the broadcasting service on a primary basis. The introduction of the broadcasting service into this band shall be subject to agreement with the neighbouring countries in Region 3 whose services are likely to be affected.

(232) [Reserved]

(233) 5.233 *Additional allocation:* in China, the band 174-184 MHz is also allocated to the space research (space-to-Earth) and the space operation (space-to-Earth) services on a primary basis, subject to agreement obtained under No. 9.21. These services shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations.

(234) [Reserved]

(235) 5.235 *Additional allocation:* in Germany, Austria, Belgium, Denmark, Spain, Finland, France, Israel, Italy, Liechtenstein, Malta, Monaco, Norway, the Netherlands, the United Kingdom, Sweden and Switzerland, the band 174-223 MHz is also allocated to the land mobile service on a primary basis. However, the stations of the land mobile service shall not cause harmful interference to, or claim protection from, broadcasting stations, existing or planned, in countries other than those listed in this footnote.

(236) [Reserved]

(237) 5.237 *Additional allocation:* in Congo (Rep. of the), Egypt, Eritrea, Ethiopia, Gambia, Guinea, Libya, Mali, Sierra Leone, Somalia and Chad, the band 174-223 MHz is also allocated to the fixed and mobile services on a secondary basis.

(238) 5.238 *Additional allocation:* in Bangladesh, India, Pakistan and the Philippines, the band 200-216 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

(239) [Reserved]

(240) 5.240 *Additional allocation:* in China and India, the band 216-223 MHz is also allocated to the aeronautical radionavigation service on a primary basis and to the radiolocation service on a secondary basis.

(241) 5.241 In Region 2, no new stations in the radiolocation service may be authorized in the band 216-225 MHz. Stations authorized prior to 1 January 1990 may continue to operate on a secondary basis.

(242) 5.242 *Additional allocation:* in Canada, the band 216-220 MHz is also allocated to the land mobile service on a primary basis.

(243) 5.243 *Additional allocation:* in Somalia, the band 216-225 MHz is also allocated to the aeronautical radionavigation service on a primary basis, subject to not causing harmful interference to existing or planned broadcasting services in other countries.

(244) [Reserved]

(245) 5.245 *Additional allocation:* in Japan, the band 222-223 MHz is also allocated to the aeronautical radionavigation service on a primary basis and to the radiolocation service on a secondary basis.

(246) 5.246 *Alternative allocation:* in Spain, France, Israel and Monaco, the band 223-230 MHz is allocated to the broadcasting and land mobile services on a primary basis (see No. 5.33) on the basis that, in the preparation of frequency plans, the broadcasting service shall have prior choice of frequencies; and allocated to the fixed and mobile, except land mobile, services on a secondary basis. However, the stations of the land mobile service shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations in Morocco and Algeria.

(247) 5.247 *Additional allocation:* in Saudi Arabia, Bahrain, the United Arab Emirates, Jordan, Oman, Qatar and Syrian Arab Republic, the band 223-235 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

(248) - (249) [Reserved]

(250) 5.250 *Additional allocation:* in China, the band 225-235 MHz is also allocated to the radio astronomy service on a secondary basis.

(251) 5.251 *Additional allocation:* in Nigeria, the band 230-235 MHz is also allocated to the aeronautical radionavigation service on a primary basis, subject to agreement obtained under No. 9.21.

(252) 5.252 *Alternative allocation:* in Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe, the bands 230-238 MHz and 246-254 MHz are allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. 9.21.

(253) [Reserved]

(254) 5.254 The bands 235-322 MHz and 335.4-399.9 MHz may be used by the mobile-satellite service, subject to agreement obtained under No. 9.21, on condition that stations in this service do not cause harmful interference to those of other services operating or planned to be operated in accordance with the Table of Frequency Allocations except for the additional allocation made in paragraph (b)(256)(i) of this section.

(255) 5.255 The bands 312-315 MHz (Earth-to-space) and 387-390 MHz (space-to-Earth) in the mobile-satellite service may also be used by non-geostationary-satellite systems. Such use is subject to

coordination under No. 9.11A.

(256) 5.256 The frequency 243 MHz is the frequency in this band for use by survival craft stations and equipment used for survival purposes.

(i) 5.256A *Additional allocation:* in China, the Russian Federation and Kazakhstan, the frequency band 258-261 MHz is also allocated to the space research service (Earth-to-space) and space operation service (Earth-to-space) on a primary basis. Stations in the space research service (Earth-to-space) and space operation service (Earth-to-space) shall not cause harmful interference to, or claim protection from, or constrain the use and development of, the mobile service systems and mobile-satellite service systems operating in the frequency band. Stations in space research service (Earth-to-space) and space operation service (Earth-to-space) shall not constrain the future development of fixed service systems of other countries.

(ii) [Reserved]

(257) 5.257 The band 267-272 MHz may be used by administrations for space telemetry in their countries on a primary basis, subject to agreement obtained under No. 9.21.

(258) 5.258 The use of the band 328.6-335.4 MHz by the aeronautical radionavigation service is limited to Instrument Landing Systems (glide path).

(259) 5.259 *Additional allocation:* in Egypt and the Syrian Arab Republic, the band 328.6-335.4 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. 9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedure invoked under No. 9.21.

(260) [Reserved]

(261) 5.261 Emissions shall be confined in a band of ± 25 kHz about the standard frequency 400.1 MHz.

(262) 5.262 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Botswana, Colombia, Cuba, Egypt, the United Arab Emirates, Ecuador, the Russian Federation, Georgia, Hungary, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Liberia, Malaysia, Moldova, Oman, Uzbekistan, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, Kyrgyzstan, Singapore, Somalia, Tajikistan, Chad, Turkmenistan and Ukraine, the band 400.05-401 MHz is also allocated to the fixed and mobile services on a primary basis.

(263) 5.263 The band 400.15-401 MHz is also allocated to the space research service in the space-to-space direction for communications with manned space vehicles. In this application, the space research service will not be regarded as a safety service.

(264) 5.264 The use of the band 400.15-401 MHz by the mobile-satellite service is subject to coordination under No. 9.11A. The power flux-density limit indicated in Annex 1 of Appendix 5 shall apply until such time as a competent world radiocommunication conference revises it.

(265) 5.265 In the frequency band 403-410 MHz, Resolution 205 (Rev.WRC-15) applies.

(266) 5.266 The use of the band 406-406.1 MHz by the mobile-satellite service is limited to low power satellite emergency position-indicating radiobeacons (see also Article 31).

(267) 5.267 Any emission capable of causing harmful interference to the authorized uses of the band 406-406.1 MHz is prohibited.

(268) 5.268 Use of the frequency band 410-420 MHz by the space research service is limited to space-to-space communication links with an orbiting, manned space vehicle. The power flux-density at

the surface of the Earth produced by emissions from transmitting stations of the space research service (space-to-space) in the frequency band 410-420 MHz shall not exceed $-153 \text{ dB(W/m}^2\text{)}$ for $0^\circ \leq \delta \leq 5^\circ$, $-153 + 0.077 (\delta - 5) \text{ dB(W/m}^2\text{)}$ for $5^\circ \leq \delta \leq 70^\circ$ and $-148 \text{ dB(W/m}^2\text{)}$ for $70^\circ \leq \delta \leq 90^\circ$, where δ is the angle of arrival of the radio-frequency wave and the reference bandwidth is 4 kHz. In this frequency band, stations of the space research service (space-to-space) shall not claim protection from, nor constrain the use and development of, stations of the fixed and mobile services. No. 4.10 does not apply.

(269) 5.269 *Different category of service:* in Australia, the United States, India, Japan and the United Kingdom, the allocation of the bands 420-430 MHz and 440-450 MHz to the radiolocation service is on a primary basis (see No. 5.33).

(270) 5.270 *Additional allocation:* in Australia, the United States, Jamaica and the Philippines, the bands 420-430 MHz and 440-450 MHz are also allocated to the amateur service on a secondary basis.

(271) 5.271 *Additional allocation:* in Belarus, China, India, Kyrgyzstan and Turkmenistan, the band 420-460 MHz is also allocated to the aeronautical radionavigation service (radio altimeters) on a secondary basis.

(272) and (273) [Reserved]

(274) 5.274 *Alternative allocation:* in Denmark, Norway, Sweden and Chad, the bands 430-432 MHz and 438-440 MHz are allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(275) 5.275 *Additional allocation:* in Croatia, Estonia, Finland, Libya, The Former Yugoslav Republic of Macedonia, Montenegro and Serbia, the frequency bands 430-432 MHz and 438-440 MHz are also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(276) 5.276 *Additional allocation:* in Afghanistan, Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burkina Faso, Djibouti, Egypt, the United Arab Emirates, Ecuador, Eritrea, Ethiopia, Greece, Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Jordan, Kenya, Kuwait, Libya, Malaysia, Niger, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, Switzerland, Thailand, Togo, Turkey and Yemen, the frequency band 430-440 MHz is also allocated to the fixed service on a primary basis and the frequency bands 430-435 MHz and 438-440 MHz are also allocated, except in Ecuador, to the mobile, except aeronautical mobile, service on a primary basis.

(277) 5.277 *Additional allocation:* in Angola, Armenia, Azerbaijan, Belarus, Cameroon, Congo (Rep. of the), Djibouti, the Russian Federation, Georgia, Hungary, Israel, Kazakhstan, Mali, Mongolia, Uzbekistan, Poland, the Dem. Rep. of the Congo, Kyrgyzstan, Slovakia, Romania, Rwanda, Tajikistan, Chad, Turkmenistan and Ukraine, the band 430-440 MHz is also allocated to the fixed service on a primary basis.

(278) 5.278 *Different category of service:* in Argentina, Colombia, Costa Rica, Cuba, Guyana, Honduras, Panama and Venezuela, the allocation of the band 430-440 MHz to the amateur service is on a primary basis (see No. 5.33).

(279) 5.279 *Additional allocation:* in Mexico, the bands 430-435 MHz and 438-440 MHz are also allocated on a primary basis to the land mobile service, subject to agreement obtained under No. 9.21.

(i) 5.279A The use of the frequency band 432-438 MHz by sensors in the Earth exploration-satellite service (active) shall be in accordance with Recommendation ITU-R RS.1260-1. Additionally, the Earth exploration-satellite service (active) in the frequency band 432-438 MHz shall not cause harmful interference to the aeronautical radionavigation service in China. The provisions of this footnote

in no way diminish the obligation of the Earth exploration-satellite service (active) to operate as a secondary service in accordance with Nos. 5.29 and 5.30.

(ii) [Reserved]

(280) 5.280 In Germany, Austria, Bosnia and Herzegovina, Croatia, The Former Yugoslav Republic of Macedonia, Liechtenstein, Montenegro, Portugal, Serbia, Slovenia and Switzerland, the band 433.05-434.79 MHz (centre frequency 433.92 MHz) is designated for industrial, scientific and medical (ISM) applications. Radiocommunication services of these countries operating within this band must accept harmful interference which may be caused by these applications. ISM equipment operating in this band is subject to the provisions of No. 15.13.

(281) 5.281 *Additional allocation:* in the French overseas departments and communities in Region 2 and India, the band 433.75-434.25 MHz is also allocated to the space operation service (Earth-to-space) on a primary basis. In France and in Brazil, the band is allocated to the same service on a secondary basis.

(282) 5.282 In the bands 435-438 MHz, 1260-1270 MHz, 2400-2450 MHz, 3400-3410 MHz (in Regions 2 and 3 only) and 5650-5670 MHz, the amateur-satellite service may operate subject to not causing harmful interference to other services operating in accordance with the Table (see No. 5.43). Administrations authorizing such use shall ensure that any harmful interference caused by emissions from a station in the amateur-satellite service is immediately eliminated in accordance with the provisions of No. 25.11. The use of the bands 1260-1270 MHz and 5650-5670 MHz by the amateur-satellite service is limited to the Earth-to-space direction.

(283) 5.283 *Additional allocation:* in Austria, the band 438-440 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(284) 5.284 *Additional allocation:* in Canada, the band 440-450 MHz is also allocated to the amateur service on a secondary basis.

(285) 5.285 *Different category of service:* in Canada, the allocation of the band 440-450 MHz to the radiolocation service is on a primary basis (see No. 5.33).

(286) 5.286 The band 449.75-450.25 MHz may be used for the space operation service (Earth-to-space) and the space research service (Earth-to-space), subject to agreement obtained under No. 9.21.

(i) 5.286A The use of the bands 454-456 MHz and 459-460 MHz by the mobile-satellite service is subject to coordination under No. 9.11A.

(ii) 5.286AA The frequency band 450-470 MHz is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT). See Resolution 224 (Rev.WRC-15). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations.

(iii) 5.286B The use of the band 454-455 MHz in the countries listed in paragraph (b)(286)(v) of this section, 455-456 MHz and 459-460 MHz in Region 2, and 454-456 MHz and 459-460 MHz in the countries listed in No. 5.286E, by stations in the mobile-satellite service, shall not cause harmful interference to, or claim protection from, stations of the fixed or mobile services operating in accordance with the Table of Frequency Allocations.

(iv) 5.286C The use of the band 454-455 MHz in the countries listed in No. 5.286D, 455-456 MHz and 459-460 MHz in Region 2, and 454-456 MHz and 459-460 MHz in the countries listed in No. 5.286E, by stations in the mobile-satellite service, shall not constrain the development and use of the fixed and mobile services operating in accordance with the Table of Frequency Allocations.

(v) 5.286D *Additional allocation:* in Canada, the United States and Panama, the band 454-455 MHz is also allocated to the mobile-satellite service (Earth-to-space) on a primary basis.

(vi) 5.286E *Additional allocation:* in Cape Verde, Nepal and Nigeria, the bands 454-456 MHz and 459-460 MHz are also allocated to the mobile-satellite (Earth-to-space) service on a primary basis.

(287) 5.287 Use of the frequency bands 457.5125-457.5875 MHz and 467.5125-467.5875 MHz by the maritime mobile service is limited to on-board communication stations. The characteristics of the equipment and the channelling arrangement shall be in accordance with Recommendation ITU-R M.1174-3. The use of these frequency bands in territorial waters is subject to the national regulations of the administration concerned.

(288) 5.288 In the territorial waters of the United States and the Philippines, the preferred frequencies for use by on-board communication stations shall be 457.525 MHz, 457.550 MHz, 457.575 MHz and 457.600 MHz paired, respectively, with 467.750 MHz, 467.775 MHz, 467.800 MHz and 467.825 MHz. The characteristics of the equipment used shall conform to those specified in Recommendation ITU-R M.1174-3.

(289) 5.289 Earth exploration-satellite service applications, other than the meteorological-satellite service, may also be used in the bands 460-470 MHz and 1690-1710 MHz for space-to-Earth transmissions subject to not causing harmful interference to stations operating in accordance with the Table.

(290) 5.290 *Different category of service:* in Afghanistan, Azerbaijan, Belarus, China, the Russian Federation, Japan, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 460-470 MHz to the meteorological-satellite service (space-to-Earth) is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21.

(291) 5.291 *Additional allocation:* in China, the band 470-485 MHz is also allocated to the space research (space-to-Earth) and the space operation (space-to-Earth) services on a primary basis subject to agreement obtained under No. 9.21 and subject to not causing harmful interference to existing and planned broadcasting stations.

(i) 5.291A *Additional allocation:* in Germany, Austria, Denmark, Estonia, Liechtenstein, the Czech Rep., Serbia and Switzerland, the frequency band 470-494 MHz is also allocated to the radiolocation service on a secondary basis. This use is limited to the operation of wind profiler radars in accordance with Resolution 217 (WRC-97).

(ii) [Reserved]

(292) 5.292 *Different category of service:* in Argentina, Uruguay and Venezuela, the allocation of the frequency band 470-512 MHz to the mobile service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21.

(293) 5.293 *Different category of service:* in Canada, Chile, Cuba, the United States, Guyana, Jamaica and Panama, the allocation of the frequency bands 470-512 MHz and 614-806 MHz to the fixed service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21. In the Bahamas, Barbados, Canada, Chile, Cuba, the United States, Guyana, Jamaica, Mexico and Panama, the allocation of the frequency bands 470-512 MHz and 614-698 MHz to the mobile service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21. In Argentina and Ecuador, the allocation of the frequency band 470-512 MHz to the fixed and mobile services is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21.

(294) 5.294 *Additional allocation:* in Saudi Arabia, Cameroon, Côte d'Ivoire, Egypt, Ethiopia, Israel, Libya, the Syrian Arab Republic, Chad and Yemen, the frequency band 470-582 MHz is also allocated to the fixed service on a secondary basis.

(295) 5.295 In the Bahamas, Barbados, Canada, the United States and Mexico, the frequency band 470-608 MHz, or portions thereof, is identified for International Mobile Telecommunications (IMT) – see Resolution 224 (Rev.WRC-15). This identification does not preclude the use of these

frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. Mobile service stations of the IMT system within the frequency band are subject to agreement obtained under No. 9.21 and shall not cause harmful interference to, or claim protection from, the broadcasting service of neighbouring countries. Nos. 5.43 and 5.43A apply. In Mexico, the use of IMT in this frequency band will not start before 31 December 2018 and may be extended if agreed by the neighbouring countries.

(296) 5.296 *Additional allocation:* in Albania, Germany, Angola, Saudi Arabia, Austria, Bahrain, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cameroon, Vatican, Congo (Rep. of the), Côte d'Ivoire, Croatia, Denmark, Djibouti, Egypt, United Arab Emirates, Spain, Estonia, Finland, France, Gabon, Georgia, Ghana, Hungary, Iraq, Ireland, Iceland, Israel, Italy, Jordan, Kenya, Kuwait, Lesotho, Latvia, The Former Yugoslav Republic of Macedonia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malawi, Mali, Malta, Morocco, Mauritius, Mauritania, Moldova, Monaco, Mozambique, Namibia, Niger, Nigeria, Norway, Oman, Uganda, the Netherlands, Poland, Portugal, Qatar, the Syrian Arab Republic, Slovakia, the Czech Republic, the United Kingdom, Rwanda, San Marino, Serbia, Sudan, South Africa, Sweden, Switzerland, Swaziland, Tanzania, Chad, Togo, Tunisia, Turkey, Ukraine, Zambia and Zimbabwe, the frequency band 470-694 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting and programme-making. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table in countries other than those listed in this footnote.

(i) 5.296A In Micronesia, the Solomon Islands, Tuvalu and Vanuatu, the frequency band 470-698 MHz, or portions thereof, and in Bangladesh, Maldives and New Zealand, the frequency band 610-698 MHz, or portions thereof, are identified for use by these administrations wishing to implement International Mobile Telecommunications (IMT) – *see* Resolution 224 (Rev.WRC-15). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. The mobile allocation in this frequency band shall not be used for IMT systems unless subject to agreement obtained under No. 9.21 and shall not cause harmful interference to, or claim protection from, the broadcasting service of neighbouring countries. Nos. 5.43 and 5.43A apply.

(ii) [Reserved]

(297) 5.297 *Additional allocation:* in Canada, Costa Rica, Cuba, El Salvador, the United States, Guatemala, Guyana and Jamaica, the frequency band 512-608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under No. 9.21. In the Bahamas, Barbados and Mexico, the frequency band 512-608 MHz is also allocated to the mobile service on a primary basis, subject to agreement obtained under No. 9.21.

(298) 5.298 *Additional allocation:* in India, the band 549.75-550.25 MHz is also allocated to the space operation service (space-to-Earth) on a secondary basis.

(299) [Reserved]

(300) 5.300 *Additional allocation:* in Saudi Arabia, Cameroon, Egypt, United Arab Emirates, Israel, Jordan, Libya, Oman, Qatar, the Syrian Arab Republic and Sudan, the frequency band 582-790 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

(301) - (303) [Reserved]

(304) 5.304 *Additional allocation:* in the African Broadcasting Area (see Nos. 5.10 to 5.13), the band 606-614 MHz is also allocated to the radio astronomy service on a primary basis.

(305) 5.305 *Additional allocation:* in China, the band 606-614 MHz is also allocated to the radio astronomy service on a primary basis.

(306) 5.306 *Additional allocation:* in Region 1, except in the African Broadcasting Area (see Nos. 5.10 to 5.13), and in Region 3, the band 608-614 MHz is also allocated to the radio astronomy service on a secondary basis.

(307) 5.307 *Additional allocation:* in India, the band 608-614 MHz is also allocated to the radio astronomy service on a primary basis.

(308) 5.308 *Additional allocation:* in Belize and Colombia, the frequency band 614-698 MHz is also allocated to the mobile service on a primary basis. Stations of the mobile service within the frequency band are subject to agreement obtained under No. 9.21.

(i) 5.308A In the Bahamas, Barbados, Belize, Canada, Colombia, the United States and Mexico, the frequency band 614-698 MHz, or portions thereof, is identified for International Mobile Telecommunications (IMT) – see Resolution 224 (Rev.WRC-15). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. Mobile service stations of the IMT system within the frequency band are subject to agreement obtained under No. 9.21 and shall not cause harmful interference to or claim protection from the broadcasting service of neighbouring countries. Nos. 5.43 and 5.43A apply. In Belize and Mexico, the use of IMT in this frequency band will not start before 31 December 2018 and may be extended if agreed by the neighbouring countries.

(ii) [Reserved]

(309) 5.309 *Different category of service:* in El Salvador, the allocation of the frequency band 614-806 MHz to the fixed service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21.

(310) [Reserved]

(311) 5.311A For the frequency band 620-790 MHz, see also Resolution 549 (WRC-07).

(312) 5.312 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the frequency band 645-862 MHz, in Bulgaria the frequency bands 646-686 MHz, 726-758 MHz, 766-814 MHz and 822-862 MHz, and in Poland the frequency band 860-862 MHz until 31 December 2017, are also allocated to the aeronautical radionavigation service on a primary basis.

(i) 5.312A In Region 1, the use of the frequency band 694-790 MHz by the mobile, except aeronautical mobile, service is subject to the provisions of Resolution 760 (WRC-15). See also Resolution 224 (Rev.WRC-15).

(ii) [Reserved]

(313) 5.313A The frequency band, or portions of the frequency band 698-790 MHz, in Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Korea (Rep. of), Fiji, India, Indonesia, Japan, Kiribati, Lao P.D.R., Malaysia, Myanmar (Union of), New Zealand, Pakistan, Papua New Guinea, the Philippines, Solomon Islands, Samoa, Singapore, Thailand, Tonga, Tuvalu, Vanuatu and Viet Nam, are identified for use by these administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations. In China, the use of IMT in this frequency band will not start until 2015.

(314) - (315) [Reserved]

(316) 5.316B In Region 1, the allocation to the mobile, except aeronautical mobile, service in the frequency band 790-862 MHz is subject to agreement obtained under No. 9.21 with respect to the aeronautical radionavigation service in countries mentioned in paragraph (b)(312) of this section. For countries party to the GE06 Agreement, the use of stations of the mobile service is also subject to the

successful application of the procedures of that Agreement. Resolutions 224 (Rev.WRC-15) and 749 (Rev.WRC-15) shall apply, as appropriate.

(317) 5.317 *Additional allocation:* in Region 2 (except Brazil, the United States and Mexico), the frequency band 806-890 MHz is also allocated to the mobile-satellite service on a primary basis, subject to agreement obtained under No. 9.21. The use of this service is intended for operation within national boundaries.

(i) 5.317A The parts of the frequency band 698-960 MHz in Region 2 and the frequency bands 694-790 MHz in Region 1 and 790-960 MHz in Regions 1 and 3 which are allocated to the mobile service on a primary basis are identified for use by administrations wishing to implement International Mobile Telecommunications (IMT) – see Resolutions 224 (Rev.WRC-15), 760 (WRC-15) and 749 (Rev.WRC-15), where applicable. This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations.

(ii) [Reserved]

(318) 5.318 *Additional allocation:* in Canada, the United States and Mexico, the bands 849-851 MHz and 894-896 MHz are also allocated to the aeronautical mobile service on a primary basis, for public correspondence with aircraft. The use of the band 849-851 MHz is limited to transmissions from aeronautical stations and the use of the band 894-896 MHz is limited to transmissions from aircraft stations.

(319) 5.319 *Additional allocation:* in Belarus, the Russian Federation and Ukraine, the bands 806-840 MHz (Earth-to-space) and 856-890 MHz (space-to-Earth) are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R), service. The use of these bands by this service shall not cause harmful interference to, or claim protection from, services in other countries operating in accordance with the Table of Frequency Allocations and is subject to special agreements between the administrations concerned.

(320) 5.320 *Additional allocation:* in Region 3, the bands 806-890 MHz and 942-960 MHz are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R), service on a primary basis, subject to agreement obtained under No. 9.21. The use of this service is limited to operation within national boundaries. In seeking such agreement, appropriate protection shall be afforded to services operating in accordance with the Table, to ensure that no harmful interference is caused to such services.

(321) [Reserved]

(322) 5.322 In Region 1, in the band 862-960 MHz, stations of the broadcasting service shall be operated only in the African Broadcasting Area (see Nos. 5.10 to 5.13) excluding Algeria, Burundi, Egypt, Spain, Lesotho, Libya, Morocco, Malawi, Namibia, Nigeria, South Africa, Tanzania, Zimbabwe and Zambia, subject to agreement obtained under No. 9.21.

(323) 5.323 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 862-960 MHz, in Bulgaria the bands 862-890.2 MHz and 900-935.2 MHz, in Poland the band 862-876 MHz until 31 December 2017, and in Romania the bands 862-880 MHz and 915-925 MHz, are also allocated to the aeronautical radionavigation service on a primary basis. Such use is subject to agreement obtained under No. 9.21 with administrations concerned and limited to ground-based radiobeacons in operation on 27 October 1997 until the end of their lifetime.

(324) [Reserved]

(325) 5.325 *Different category of service:* in the United States, the allocation of the band 890-942 MHz to the radiolocation service is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21.

(i) 5.325A *Different category of service:* in Argentina, Brazil, Costa Rica, Cuba, Dominican Republic, El Salvador, Ecuador, the French overseas departments and communities in Region 2, Guatemala, Mexico, Paraguay, Uruguay and Venezuela, the frequency band 902-928 MHz is allocated to the land mobile service on a primary basis. In Colombia, the frequency band 902-905 MHz is allocated to the land mobile service on a primary basis.

(ii) [Reserved]

(326) 5.326 *Different category of service:* in Chile, the band 903-905 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis, subject to agreement obtained under No. 9.21.

(327) 5.327 *Different category of service:* in Australia, the allocation of the band 915-928 MHz to the radiolocation service is on a primary basis (see No. 5.33).

(i) 5.327A The use of the frequency band 960-1164 MHz by the aeronautical mobile (R) service is limited to systems that operate in accordance with recognized international aeronautical standards. Such use shall be in accordance with Resolution 417 (Rev.WRC-15).

(ii) [Reserved]

(328) 5.328 The use of the band 960-1215 MHz by the aeronautical radionavigation service is reserved on a worldwide basis for the operation and development of airborne electronic aids to air navigation and any directly associated ground-based facilities.

(i) 5.328A Stations in the radionavigation-satellite service in the band 1164-1215 MHz shall operate in accordance with the provisions of Resolution 609 (Rev.WRC-07) and shall not claim protection from stations in the aeronautical radionavigation service in the band 960-1215 MHz. No. 5.43A does not apply. The provisions of No. 21.18 shall apply.

(ii) 5.328AA The frequency band 1087.7-1092.3 MHz is also allocated to the aeronautical mobile-satellite (R) service (Earth-to-space) on a primary basis, limited to the space station reception of Automatic Dependent Surveillance-Broadcast (ADS-B) emissions from aircraft transmitters that operate in accordance with recognized international aeronautical standards. Stations operating in the aeronautical mobile-satellite (R) service shall not claim protection from stations operating in the aeronautical radionavigation service. Resolution 425 (WRC-15) shall apply.

(iii) 5.328B The use of the bands 1164-1300 MHz, 1559-1610 MHz and 5010-5030 MHz by systems and networks in the radionavigation-satellite service for which complete coordination or notification information, as appropriate, is received by the Radiocommunication Bureau after 1 January 2005 is subject to the application of the provisions of Nos. 9.12, 9.12A and 9.13. Resolution 610 (WRC-03) shall also apply; however, in the case of radionavigation-satellite service (space-to-space) networks and systems, Resolution 610 (WRC-03) shall only apply to transmitting space stations. In accordance with paragraph (b)(329)(i) of this section, for systems and networks in the radionavigation-satellite service (space-to-space) in the bands 1215-1300 MHz and 1559-1610 MHz, the provisions of Nos. 9.7, 9.12, 9.12A and 9.13 shall only apply with respect to other systems and networks in the radionavigation-satellite service (space-to-space).

(329) 5.329 Use of the radionavigation-satellite service in the band 1215-1300 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under paragraph (b)(331) of this section. Furthermore, the use of the radionavigation-satellite service in the band 1215-1300 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. No. 5.43 shall not apply in respect of the radiolocation service. Resolution 608 (Rev.WRC-15) shall apply.

(i) 5.329A Use of systems in the radionavigation-satellite service (space-to-space) operating in the bands 1215-1300 MHz and 1559-1610 MHz is not intended to provide safety service applications, and

shall not impose any additional constraints on radionavigation-satellite service (space-to-Earth) systems or on other services operating in accordance with the Table of Frequency Allocations.

(ii) [Reserved]

(330) 5.330 *Additional allocation:* in Angola, Saudi Arabia, Bahrain, Bangladesh, Cameroon, China, Djibouti, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Nepal, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, Somalia, Sudan, South Sudan, Chad, Togo and Yemen, the band 1215-1300 MHz is also allocated to the fixed and mobile services on a primary basis.

(331) 5.331 *Additional allocation:* in Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Cameroon, China, Korea (Rep. of), Croatia, Denmark, Egypt, the United Arab Emirates, Estonia, the Russian Federation, Finland, France, Ghana, Greece, Guinea, Equatorial Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Jordan, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lesotho, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Mauritania, Montenegro, Nigeria, Norway, Oman, Pakistan, the Netherlands, Poland, Portugal, Qatar, the Syrian Arab Republic, Dem. People's Rep. of Korea, Slovakia, the United Kingdom, Serbia, Slovenia, Somalia, Sudan, South Sudan, Sri Lanka, South Africa, Sweden, Switzerland, Thailand, Togo, Turkey, Venezuela and Viet Nam, the band 1215-1300 MHz is also allocated to the radionavigation service on a primary basis. In Canada and the United States, the band 1240-1300 MHz is also allocated to the radionavigation service, and use of the radionavigation service shall be limited to the aeronautical radionavigation service.

(332) 5.332 In the band 1215-1260 MHz, active spaceborne sensors in the Earth exploration-satellite and space research services shall not cause harmful interference to, claim protection from, or otherwise impose constraints on operation or development of the radiolocation service, the radionavigation-satellite service and other services allocated on a primary basis.

(333) [Reserved]

(334) 5.334 *Additional allocation:* in Canada and the United States, the band 1350-1370 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

(335) 5.335 In Canada and the United States in the band 1240-1300 MHz, active spaceborne sensors in the Earth exploration-satellite and space research services shall not cause interference to, claim protection from, or otherwise impose constraints on operation or development of the aeronautical radionavigation service.

(i) 5.335A In the band 1260-1300 MHz, active spaceborne sensors in the Earth exploration-satellite and space research services shall not cause harmful interference to, claim protection from, or otherwise impose constraints on operation or development of the radiolocation service and other services allocated by footnotes on a primary basis.

(ii) [Reserved]

(336) [Reserved]

(337) 5.337 The use of the bands 1300-1350 MHz, 2700-2900 MHz and 9000-9200 MHz by the aeronautical radionavigation service is restricted to ground-based radars and to associated airborne transponders which transmit only on frequencies in these bands and only when actuated by radars operating in the same band.

(i) 5.337A The use of the band 1300-1350 MHz by earth stations in the radionavigation-satellite service and by stations in the radiolocation service shall not cause harmful interference to, nor constrain the operation and development of, the aeronautical-radionavigation service.

(ii) [Reserved]

(338) 5.338 In Kyrgyzstan, Slovakia and Turkmenistan, existing installations of the radionavigation service may continue to operate in the band 1350-1400 MHz.

(i) 5.338A In the frequency bands 1350-1400 MHz, 1427-1452 MHz, 22.55-23.55 GHz, 30-31.3 GHz, 49.7-50.2 GHz, 50.4-50.9 GHz, 51.4-52.6 GHz, 81-86 GHz and 92-94 GHz, Resolution 750 (Rev.WRC-15) applies.

(ii) [Reserved]

(339) 5.339 The bands 1370-1400 MHz, 2640-2655 MHz, 4950-4990 MHz and 15.20-15.35 GHz are also allocated to the space research (passive) and Earth exploration-satellite (passive) services on a secondary basis.

(340) 5.340 All emissions are prohibited in the bands 1400-1427 MHz, 2690-2700 MHz (except those provided for by paragraph (b)(422) of this section), 10.68-10.7 GHz (except those provided for by paragraph (b)(483) of this section), 15.35-15.4 GHz (except those provided for by paragraph (b)(511) of this section), 23.6-24 GHz, 31.3-31.5 GHz, 31.5-31.8 GHz (in Region 2), 48.94-49.04 GHz (from airborne stations), 50.2-50.4 GHz, 52.6-54.25 GHz, 86-92 GHz, 100-102 GHz, 109.5-111.8 GHz, 114.25-116 GHz, 148.5-151.5 GHz, 164-167 GHz, 182-185 GHz, 190-191.8 GHz, 200-209 GHz, 226-231.5 GHz, and 250-252 GHz. The allocation to the Earth exploration-satellite service (passive) and the space research service (passive) in the band 50.2-50.4 GHz should not impose undue constraints on the use of the adjacent bands by the primary allocated services in those bands.

(341) 5.341 In the bands 1400-1727 MHz, 101-120 GHz and 197-220 GHz, passive research is being conducted by some countries in a programme for the search for intentional emissions of extraterrestrial origin.

(i) 5.341A In Region 1, the frequency bands 1427-1452 MHz and 1492-1518 MHz are identified for use by administrations wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC-15). This identification does not preclude the use of these frequency bands by any other application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of IMT stations is subject to agreement obtained under No. 9.21 with respect to the aeronautical mobile service used for aeronautical telemetry in accordance with paragraph (b)(342) of this section.

(ii) 5.341B In Region 2, the frequency band 1427-1518 MHz is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC-15). This identification does not preclude the use of this frequency band by any application of the services to which they are allocated and does not establish priority in the Radio Regulations.

(iii) 5.341C The frequency bands 1427-1452 MHz and 1492-1518 MHz are identified for use by administrations in Region 3 wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC-15). The use of these frequency bands by the above administrations for the implementation of IMT in the frequency bands 1429-1452 MHz and 1492-1518 MHz is subject to agreement obtained under No. 9.21 from countries using stations of the aeronautical mobile service. This identification does not preclude the use of these frequency bands by any application of the services to which it is allocated and does not establish priority in the Radio Regulations.

(342) 5.342 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Uzbekistan, Kyrgyzstan and Ukraine, the frequency band 1429-1535 MHz is also allocated to the aeronautical mobile service on a primary basis, exclusively for the purposes of aeronautical telemetry within the national territory. As of 1 April 2007, the use of the frequency band 1452-1492 MHz is

subject to agreement between the administrations concerned.

(343) 5.343 In Region 2, the use of the band 1435-1535 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

(344) 5.344 *Alternative allocation:* in the United States, the band 1452-1525 MHz is allocated to the fixed and mobile services on a primary basis (see also paragraph (b)(343) of this section).

(345) 5.345 Use of the band 1452-1492 MHz by the broadcasting-satellite service, and by the broadcasting service, is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (Rev.WRC-15).

(346) 5.346 In Algeria, Angola, Saudi Arabia, Bahrain, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo (Rep. of the), Côte d'Ivoire, Djibouti, Egypt, United Arab Emirates, Gabon, Gambia, Ghana, Guinea, Iraq, Jordan, Kenya, Kuwait, Lesotho, Lebanon, Liberia, Madagascar, Malawi, Mali, Morocco, Mauritius, Mauritania, Mozambique, Namibia, Niger, Nigeria, Oman, Uganda, Palestine, Qatar, Dem. Rep. of the Congo, Rwanda, Senegal, Seychelles, Sudan, South Sudan, South Africa, Swaziland, Tanzania, Chad, Togo, Tunisia, Zambia, and Zimbabwe, the frequency band 1452-1492 MHz is identified for use by administrations listed above wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC-15). This identification does not preclude the use of this frequency band by any other application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of this frequency band for the implementation of IMT is subject to agreement obtained under No. 9.21 with respect to the aeronautical mobile service used for aeronautical telemetry in accordance with paragraph (b)(342) of this section. See also Resolution 761 (WRC-15).

(i) 5.346A The frequency band 1452-1492 MHz is identified for use by administrations in Region 3 wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC-15) and Resolution 761 (WRC-15). The use of this frequency band by the above administrations for the implementation of IMT is subject to agreement obtained under No. 9.21 from countries using stations of the aeronautical mobile service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations.

Note 1 to paragraph (b)(346)(i): The use by Palestine of the allocation to the mobile service in the frequency band 1452-1492 MHz identified for IMT is noted, pursuant to Resolution 99 (Rev. Busan, 2014) and taking into account the Israeli-Palestinian Interim Agreement of 28 September 1995.

(ii) [Reserved]

(347) [Reserved]

(348) 5.348 The use of the band 1518-1525 MHz by the mobile-satellite service is subject to coordination under No. 9.11A. In the band 1518-1525 MHz stations in the mobile-satellite service shall not claim protection from the stations in the fixed service. No. 5.43A does not apply.

(i) 5.348A In the band 1518-1525 MHz, the coordination threshold in terms of the power flux-density levels at the surface of the Earth in application of No. 9.11A for space stations in the mobile-satellite (space-to-Earth) service, with respect to the land mobile service use for specialized mobile radios or used in conjunction with public switched telecommunication networks (PSTN) operating within the territory of Japan, shall be -150 dB(W/m²) in any 4 kHz band for all angles of arrival, instead of those given in Table 5-2 of Appendix 5. In the band 1518-1525 MHz stations in the mobile-satellite service shall not claim protection from stations in the mobile service in the territory of Japan. No. 5.43A does not apply.

(ii) 5.348B In the band 1518-1525 MHz, stations in the mobile-satellite service shall not claim protection from aeronautical mobile telemetry stations in the mobile service in the territory of the United

States (*see* paragraphs (b)(343) and (344) of this section) and in the countries listed in paragraph (b)(342) of this section. No. 5.43A does not apply.

(349) 5.349 *Different category of service:* in Saudi Arabia, Azerbaijan, Bahrain, Cameroon, Egypt, France, Iran (Islamic Republic of), Iraq, Israel, Kazakhstan, Kuwait, The Former Yugoslav Republic of Macedonia, Lebanon, Morocco, Qatar, Syrian Arab Republic, Kyrgyzstan, Turkmenistan and Yemen, the allocation of the band 1525-1530 MHz to the mobile, except aeronautical mobile, service is on a primary basis (*see* No. 5.33).

(350) 5.350 *Additional allocation:* in Azerbaijan, Kyrgyzstan and Turkmenistan, the band 1525-1530 MHz is also allocated to the aeronautical mobile service on a primary basis.

(351) 5.351 The bands 1525-1544 MHz, 1545-1559 MHz, 1626.5-1645.5 MHz and 1646.5-1660.5 MHz shall not be used for feeder links of any service. In exceptional circumstances, however, an earth station at a specified fixed point in any of the mobile-satellite services may be authorized by an administration to communicate via space stations using these bands.

(i) 5.351A For the use of the bands 1518-1544 MHz, 1545-1559 MHz, 1610-1645.5 MHz, 1646.5-1660.5 MHz, 1668-1675 MHz, 1980-2010 MHz, 2170-2200 MHz, 2483.5-2520 MHz and 2670-2690 MHz by the mobile-satellite service, *see* Resolutions 212 (Rev.WRC-15) and 225 (Rev.WRC-12).

(ii) [Reserved]

(352) 5.352A In the frequency band 1525-1530 MHz, stations in the mobile-satellite service, except stations in the maritime mobile-satellite service, shall not cause harmful interference to, or claim protection from, stations of the fixed service in Algeria, Saudi Arabia, Egypt, France and French overseas communities of Region 3, Guinea, India, Israel, Italy, Jordan, Kuwait, Mali, Morocco, Mauritania, Nigeria, Oman, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Viet Nam and Yemen notified prior to 1 April 1998.

(353) 5.353A In applying the procedures of Section II of Article 9 to the mobile-satellite service in the bands 1530-1544 MHz and 1626.5-1645.5 MHz, priority shall be given to accommodating the spectrum requirements for distress, urgency and safety communications of the Global Maritime Distress and Safety System (GMDSS). Maritime mobile-satellite distress, urgency and safety communications shall have priority access and immediate availability over all other mobile satellite communications operating within a network. Mobile-satellite systems shall not cause unacceptable interference to, or claim protection from, distress, urgency and safety communications of the GMDSS. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services. (The provisions of Resolution 222 (Rev.WRC-12) shall apply.)

(354) 5.354 The use of the bands 1525-1559 MHz and 1626.5-1660.5 MHz by the mobile-satellite services is subject to coordination under No. 9.11A.

(355) 5.355 *Additional allocation:* in Bahrain, Bangladesh, Congo (Rep. of the), Djibouti, Egypt, Eritrea, Iraq, Israel, Kuwait, Qatar, Syrian Arab Republic, Somalia, Sudan, South Sudan, Chad, Togo and Yemen, the bands 1540-1559 MHz, 1610-1645.5 MHz and 1646.5-1660 MHz are also allocated to the fixed service on a secondary basis.

(356) 5.356 The use of the band 1544-1545 MHz by the mobile-satellite service (space-to-Earth) is limited to distress and safety communications (*see* Article 31).

(357) 5.357 Transmissions in the band 1545-1555 MHz from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links.

(i) 5.357A In applying the procedures of Section II of Article 9 to the mobile-satellite service in

the frequency bands 1545-1555 MHz and 1646.5-1656.5 MHz, priority shall be given to accommodating the spectrum requirements of the aeronautical mobile-satellite (R) service providing transmission of messages with priority 1 to 6 in Article 44. Aeronautical mobile-satellite (R) service communications with priority 1 to 6 in Article 44 shall have priority access and immediate availability, by pre-emption if necessary, over all other mobile-satellite communications operating within a network. Mobile-satellite systems shall not cause unacceptable interference to, or claim protection from, aeronautical mobile-satellite (R) service communications with priority 1 to 6 in Article 44. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services. (The provisions of Resolution 222 (Rev.WRC-12) shall apply.)

(ii) [Reserved]

(358) [Reserved]

(359) 5.359 *Additional allocation:* in Germany, Saudi Arabia, Armenia, Azerbaijan, Belarus, Benin, Cameroon, the Russian Federation, France, Georgia, Guinea, Guinea-Bissau, Jordan, Kazakhstan, Kuwait, Lithuania, Mauritania, Uganda, Uzbekistan, Pakistan, Poland, the Syrian Arab Republic, Kyrgyzstan, the Dem. People's Rep. of Korea, Romania, Tajikistan, Tunisia, Turkmenistan and Ukraine, the frequency bands 1550-1559 MHz, 1610-1645.5 MHz and 1646.5-1660 MHz are also allocated to the fixed service on a primary basis. Administrations are urged to make all practicable efforts to avoid the implementation of new fixed-service stations in these frequency bands.

(360) - (361) [Reserved]

(362) 5.362A In the United States, in the bands 1555-1559 MHz and 1656.5-1660.5 MHz, the aeronautical mobile-satellite (R) service shall have priority access and immediate availability, by pre-emption if necessary, over all other mobile-satellite communications operating within a network. Mobile-satellite systems shall not cause unacceptable interference to, or claim protection from, aeronautical mobile-satellite (R) service communications with priority 1 to 6 in Article 44. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services.

(363) [Reserved]

(364) 5.364 The use of the band 1610-1626.5 MHz by the mobile-satellite service (Earth-to-space) and by the radiodetermination-satellite service (Earth-to-space) is subject to coordination under No. 9.11A. A mobile earth station operating in either of the services in this band shall not produce a peak e.i.r.p. density in excess of -15 dB(W/4 kHz) in the part of the band used by systems operating in accordance with the provisions of paragraph (b)(366) of this section (to which No. 4.10 applies), unless otherwise agreed by the affected administrations. In the part of the band where such systems are not operating, the mean e.i.r.p. density of a mobile earth station shall not exceed -3 dB(W/4 kHz). Stations of the mobile-satellite service shall not claim protection from stations in the aeronautical radionavigation service, stations operating in accordance with the provisions of paragraph (b)(366) of this section and stations in the fixed service operating in accordance with the provisions of paragraph (b)(359) of this section. Administrations responsible for the coordination of mobile-satellite networks shall make all practicable efforts to ensure protection of stations operating in accordance with the provisions of paragraph (b)(366) of this section.

(365) 5.365 The use of the band 1613.8-1626.5 MHz by the mobile-satellite service (space-to-Earth) is subject to coordination under No. 9.11A.

(366) 5.366 The band 1610-1626.5 MHz is reserved on a worldwide basis for the use and development of airborne electronic aids to air navigation and any directly associated ground-based or satellite-borne facilities. Such satellite use is subject to agreement obtained under No. 9.21.

(367) 5.367 *Additional allocation:* The frequency band 1610-1626.5 MHz is also allocated to the aeronautical mobile-satellite (R) service on a primary basis, subject to agreement obtained under No.

9.21.

(368) 5.368 With respect to the radiodetermination-satellite and mobile-satellite services the provisions of No. 4.10 do not apply in the band 1610-1626.5 MHz, with the exception of the aeronautical radionavigation-satellite service.

(369) 5.369 *Different category of service:* in Angola, Australia, China, Eritrea, Ethiopia, India, Iran (Islamic Republic of), Israel, Lebanon, Liberia, Madagascar, Mali, Pakistan, Papua New Guinea, Syrian Arab Republic, the Dem. Rep. of the Congo, Sudan, South Sudan, Togo and Zambia, the allocation of the band 1610-1626.5 MHz to the radiodetermination-satellite service (Earth-to-space) is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21 from countries not listed in this provision.

(370) 5.370 *Different category of service:* in Venezuela, the allocation to the radiodetermination-satellite service in the band 1610-1626.5 MHz (Earth-to-space) is on a secondary basis.

(371) 5.371 *Additional allocation:* in Region 1, the band 1610-1626.5 MHz (Earth-to-space) is also allocated to the radiodetermination-satellite service on a secondary basis, subject to agreement obtained under No. 9.21.

(372) 5.372 Harmful interference shall not be caused to stations of the radio astronomy service using the band 1610.6-1613.8 MHz by stations of the radiodetermination-satellite and mobile-satellite services (No. 29.13 applies).

(373) [Reserved]

(374) 5.374 Mobile earth stations in the mobile-satellite service operating in the bands 1631.5-1634.5 MHz and 1656.5-1660 MHz shall not cause harmful interference to stations in the fixed service operating in the countries listed in paragraph (b)(359) of this section.

(375) 5.375 The use of the band 1645.5-1646.5 MHz by the mobile-satellite service (Earth-to-space) and for inter-satellite links is limited to distress and safety communications (see Article 31).

(376) 5.376 Transmissions in the band 1646.5-1656.5 MHz from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

(i) 5.376A Mobile earth stations operating in the band 1660-1660.5 MHz shall not cause harmful interference to stations in the radio astronomy service.

(ii) [Reserved]

(377) - (378) [Reserved]

(379) 5.379 *Additional allocation:* in Bangladesh, India, Indonesia, Nigeria and Pakistan, the band 1660.5-1668.4 MHz is also allocated to the meteorological aids service on a secondary basis.

(i) 5.379A Administrations are urged to give all practicable protection in the band 1660.5-1668.4 MHz for future research in radio astronomy, particularly by eliminating air-to-ground transmissions in the meteorological aids service in the band 1664.4-1668.4 MHz as soon as practicable.

(ii) 5.379B The use of the band 1668-1675 MHz by the mobile-satellite service is subject to coordination under No. 9.11A. In the band 1668-1668.4 MHz, Resolution 904 (WRC-07) shall apply.

(iii) 5.379C In order to protect the radio astronomy service in the band 1668-1670 MHz, the aggregate power flux-density values produced by mobile earth stations in a network of the mobile-satellite service operating in this band shall not exceed -181 dB(W/m²) in 10 MHz and -194 dB(W/m²) in any 20 kHz at any radio astronomy station recorded in the Master International Frequency Register, for

more than 2% of integration periods of 2000 s.

(iv) 5.379D For sharing of the band 1668.4-1675 MHz between the mobile-satellite service and the fixed and mobile services, Resolution 744 (Rev.WRC-07) shall apply.

(v) 5.379E In the band 1668.4-1675 MHz, stations in the mobile-satellite service shall not cause harmful interference to stations in the meteorological aids service in China, Iran (Islamic Republic of), Japan and Uzbekistan. In the band 1668.4-1675 MHz, administrations are urged not to implement new systems in the meteorological aids service and are encouraged to migrate existing meteorological aids service operations to other bands as soon as practicable.

(380) 5.380A In the band 1670-1675 MHz, stations in the mobile-satellite service shall not cause harmful interference to, nor constrain the development of, existing earth stations in the meteorological-satellite service notified before 1 January 2004. Any new assignment to these earth stations in this band shall also be protected from harmful interference from stations in the mobile-satellite service.

(381) 5.381 *Additional allocation:* in Afghanistan, Cuba, India, Iran (Islamic Republic of) and Pakistan, the band 1690-1700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(382) 5.382 *Different category of service:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Congo (Rep. of the), Egypt, the United Arab Emirates, Eritrea, Ethiopia, the Russian Federation, Guinea, Iraq, Israel, Jordan, Kazakhstan, Kuwait, the Former Yugoslav Republic of Macedonia, Lebanon, Mauritania, Moldova, Mongolia, Oman, Uzbekistan, Poland, Qatar, the Syrian Arab Republic, Kyrgyzstan, Somalia, Tajikistan, Turkmenistan, Ukraine and Yemen, the allocation of the frequency band 1690-1700 MHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. 5.33), and in the Dem. People's Rep. of Korea, the allocation of the frequency band 1690-1700 MHz to the fixed service is on a primary basis (see No. 5.33) and to the mobile, except aeronautical mobile, service on a secondary basis.

(383) [Reserved]

(384) 5.384 *Additional allocation:* in India, Indonesia and Japan, the band 1700-1710 MHz is also allocated to the space research service (space-to-Earth) on a primary basis.

(i) 5.384A The frequency bands, 1710-1885 MHz, 2300-2400 MHz and 2500-2690 MHz, or portions thereof, are identified for use by administrations wishing to implement International Mobile Telecommunications (IMT) in accordance with Resolution 223 (Rev.WRC-15). This identification does not preclude the use of these frequency bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations.

(ii) [Reserved]

(385) 5.385 *Additional allocation:* the band 1718.8-1722.2 MHz is also allocated to the radio astronomy service on a secondary basis for spectral line observations.

(386) 5.386 *Additional allocation:* the frequency band 1750-1850 MHz is also allocated to the space operation (Earth-to-space) and space research (Earth-to-space) services in Region 2 (except in Mexico), in Australia, Guam, India, Indonesia and Japan on a primary basis, subject to agreement obtained under No. 9.21, having particular regard to troposcatter systems.

(387) 5.387 *Additional allocation:* in Belarus, Georgia, Kazakhstan, Kyrgyzstan, Romania, Tajikistan and Turkmenistan, the band 1770-1790 MHz is also allocated to the meteorological-satellite service on a primary basis, subject to agreement obtained under No. 9.21.

(388) 5.388 The frequency bands 1885-2025 MHz and 2110-2200 MHz are intended for use, on a worldwide basis, by administrations wishing to implement International Mobile Telecommunications (IMT). Such use does not preclude the use of these frequency bands by other services to which they are

allocated. The frequency bands should be made available for IMT in accordance with Resolution 212 (Rev.WRC-15) (see also Resolution 223 (Rev.WRC-15)).

(i) 5.388A In Regions 1 and 3, the bands 1885-1980 MHz, 2010-2025 MHz and 2110-2170 MHz and, in Region 2, the bands 1885-1980 MHz and 2110-2160 MHz may be used by high altitude platform stations as base stations to provide International Mobile Telecommunications (IMT), in accordance with Resolution 221 (Rev.WRC-07). Their use by IMT applications using high altitude platform stations as base stations does not preclude the use of these bands by any station in the services to which they are allocated and does not establish priority in the Radio Regulations.

(ii) 5.388B In Algeria, Saudi Arabia, Bahrain, Benin, Burkina Faso, Cameroon, Comoros, Côte d'Ivoire, China, Cuba, Djibouti, Egypt, United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, India, Iran (Islamic Republic of), Israel, Jordan, Kenya, Kuwait, Libya, Mali, Morocco, Mauritania, Nigeria, Oman, Uganda, Pakistan, Qatar, the Syrian Arab Republic, Senegal, Singapore, Sudan, South Sudan, Tanzania, Chad, Togo, Tunisia, Yemen, Zambia and Zimbabwe, for the purpose of protecting fixed and mobile services, including IMT mobile stations, in their territories from co-channel interference, a high altitude platform station (HAPS) operating as an IMT base station in neighbouring countries, in the bands referred to in No. 5.388A, shall not exceed a co-channel power flux-density of $-127 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ at the Earth's surface outside a country's borders unless explicit agreement of the affected administration is provided at the time of the notification of HAPS.

(389) 5.389A The use of the bands 1980-2010 MHz and 2170-2200 MHz by the mobile-satellite service is subject to coordination under No. 9.11A and to the provisions of Resolution 716 (Rev.WRC-12).

(i) 5.389B The use of the band 1980-1990 MHz by the mobile-satellite service shall not cause harmful interference to or constrain the development of the fixed and mobile services in Argentina, Brazil, Canada, Chile, Ecuador, the United States, Honduras, Jamaica, Mexico, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

(ii) 5.389C The use of the bands 2010-2025 MHz and 2160-2170 MHz in Region 2 by the mobile-satellite service is subject to coordination under No. 9.11A and to the provisions of Resolution 716 (Rev.WRC-12).

(iii) 5.389E The use of the bands 2010-2025 MHz and 2160-2170 MHz by the mobile-satellite service in Region 2 shall not cause harmful interference to or constrain the development of the fixed and mobile services in Regions 1 and 3.

(iv) 5.389F In Algeria, Benin, Cape Verde, Egypt, Iran (Islamic Republic of), Mali, Syrian Arab Republic and Tunisia, the use of the bands 1980-2010 MHz and 2170-2200 MHz by the mobile-satellite service shall neither cause harmful interference to the fixed and mobile services, nor hamper the development of those services prior to 1 January 2005, nor shall the former service request protection from the latter services.

(390) [Reserved]

(391) 5.391 In making assignments to the mobile service in the frequency bands 2025-2110 MHz and 2200-2290 MHz, administrations shall not introduce high-density mobile systems, as described in Recommendation ITU-R SA.1154-0, and shall take that Recommendation into account for the introduction of any other type of mobile system.

(392) 5.392 Administrations are urged to take all practicable measures to ensure that space-to-space transmissions between two or more non-geostationary satellites, in the space research, space operations and Earth exploration-satellite services in the bands 2025-2110 MHz and 2200-2290 MHz, shall not impose any constraints on Earth-to-space, space-to-Earth and other space-to-space transmissions of those services and in those bands between geostationary and non-geostationary satellites.

(393) 5.393 *Additional allocation:* in Canada, the United States and India, the frequency band 2310-2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial sound broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (Rev.WRC-15), with the exception of *resolves* 3 in regard to the limitation on broadcasting-satellite systems in the upper 25 MHz.

(394) 5.394 In the United States, the use of the band 2300-2390 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services. In Canada, the use of the band 2360-2400 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile services.

(395) 5.395 In France and Turkey, the use of the band 2310-2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

(396) 5.396 Space stations of the broadcasting-satellite service in the band 2310-2360 MHz operating in accordance with paragraph (b)(393) of this section that may affect the services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33 (Rev.WRC-15). Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighbouring countries prior to their bringing into use.

(397) [Reserved]

(398) 5.398 In respect of the radiodetermination-satellite service in the band 2483.5-2500 MHz, the provisions of No. 4.10 do not apply.

(i) 5.398A *Different category of service:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Ukraine, the band 2483.5-2500 MHz is allocated on a primary basis to the radiolocation service. The radiolocation stations in these countries shall not cause harmful interference to, or claim protection from, stations of the fixed, mobile and mobile-satellite services operating in accordance with the Radio Regulations in the frequency band 2483.5-2500 MHz.

(ii) [Reserved]

(399) 5.399 Except for cases referred to in paragraph (b)(401) of this section, stations of the radiodetermination-satellite service operating in the frequency band 2483.5-2500 MHz for which notification information is received by the Bureau after 17 February 2012, and the service area of which includes Armenia, Azerbaijan, Belarus, the Russian Federation, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Ukraine, shall not cause harmful interference to, and shall not claim protection from stations of the radiolocation service operating in these countries in accordance with paragraph (b)(398)(i) of this section.

(400) [Reserved]

(401) 5.401 In Angola, Australia, Bangladesh, China, Eritrea, Ethiopia, India, Iran (Islamic Republic of), Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Syrian Arab Republic, Dem. Rep. of the Congo, Sudan, Swaziland, Togo and Zambia, the frequency band 2483.5-2500 MHz was already allocated on a primary basis to the radiodetermination-satellite service before WRC-12, subject to agreement obtained under No. 9.21 from countries not listed in this provision. Systems in the radiodetermination-satellite service for which complete coordination information has been received by the Radiocommunication Bureau before 18 February 2012 will retain their regulatory status, as of the date of receipt of the coordination request information.

(402) 5.402 The use of the band 2483.5-2500 MHz by the mobile-satellite and the radiodetermination-satellite services is subject to the coordination under No. 9.11A. Administrations are urged to take all practicable steps to prevent harmful interference to the radio astronomy service from emissions in the 2483.5-2500 MHz band, especially those caused by second-harmonic radiation that

would fall into the 4990-5000 MHz band allocated to the radio astronomy service worldwide.

(403) 5.403 Subject to agreement obtained under No. 9.21, the band 2520-2535 MHz may also be used for the mobile-satellite (space-to-Earth), except aeronautical mobile-satellite, service for operation limited to within national boundaries. The provisions of No. 9.11A apply.

(404) 5.404 *Additional allocation:* in India and Iran (Islamic Republic of), the band 2500-2516.5 MHz may also be used for the radiodetermination-satellite service (space-to-Earth) for operation limited to within national boundaries, subject to agreement obtained under No. 9.21.

(405) - (406) [Reserved]

(407) 5.407 In the band 2500-2520 MHz, the power flux-density at the surface of the Earth from space stations operating in the mobile-satellite (space-to-Earth) service shall not exceed $-152 \text{ dB (W/(m}^2 \cdot 4 \text{ kHz))}$ in Argentina, unless otherwise agreed by the administrations concerned.

(408) - (409) [Reserved]

(410) 5.410 The band 2500-2690 MHz may be used for tropospheric scatter systems in Region 1, subject to agreement obtained under No. 9.21. No. 9.21 does not apply to tropospheric scatter links situated entirely outside Region 1. Administrations shall make all practicable efforts to avoid developing new tropospheric scatter systems in this band. When planning new tropospheric scatter radio-relay links in this band, all possible measures shall be taken to avoid directing the antennas of these links towards the geostationary-satellite orbit.

(411) [Reserved]

(412) 5.412 *Alternative allocation:* in Kyrgyzstan and Turkmenistan, the band 2500-2690 MHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(413) 5.413 In the design of systems in the broadcasting-satellite service in the bands between 2500 MHz and 2690 MHz, administrations are urged to take all necessary steps to protect the radio astronomy service in the band 2690-2700 MHz.

(414) 5.414 The allocation of the frequency band 2500-2520 MHz to the mobile-satellite service (space-to-Earth) is subject to coordination under No. 9.11A.

(i) 5.414A In Japan and India, the use of the bands 2500-2520 MHz and 2520-2535 MHz, under paragraph (b)(403) of this section, by a satellite network in the mobile-satellite service (space-to-Earth) is limited to operation within national boundaries and subject to the application of No. 9.11A. The following pfd values shall be used as a threshold for coordination under No. 9.11A, for all conditions and for all methods of modulation, in an area of 1000 km around the territory of the administration notifying the mobile-satellite service network: $-136 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for $0^\circ \leq \theta \leq 5^\circ$, $-136 + 0.55(\theta - 5) \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for $5^\circ < \theta \leq 25^\circ$, and $-125 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for $25^\circ < \theta \leq 90^\circ$, where θ is the angle of arrival of the incident wave above the horizontal plane, in degrees. Outside this area Table 21-4 of Article 21 shall apply. Furthermore, the coordination thresholds in Table 5-2 of Annex 1 to Appendix 5 of the Radio Regulations (Edition of 2004), in conjunction with the applicable provisions of Articles 9 and 11 associated with No. 9.11A, shall apply to systems for which complete notification information has been received by the Radiocommunication Bureau by 14 November 2007 and that have been brought into use by that date. 5.415 The use of the bands 2500-2690 MHz in Region 2 and 2500-2535 MHz and 2655-2690 MHz in Region 3 by the fixed-satellite service is limited to national and regional systems, subject to agreement obtained under No. 9.21, giving particular attention to the broadcasting-satellite service in Region 1.

(ii) [Reserved]

(415) 5.415A *Additional allocation:* in India and Japan, subject to agreement obtained under

No. 9.21, the band 2515-2535 MHz may also be used for the aeronautical mobile-satellite service (space-to-Earth) for operation limited to within their national boundaries.

(416) 5.416 The use of the band 2520-2670 MHz by the broadcasting-satellite service is limited to national and regional systems for community reception, subject to agreement obtained under No. 9.21. The provisions of No. 9.19 shall be applied by administrations in this band in their bilateral and multilateral negotiations.

(417) [Reserved]

(418) 5.418 *Additional allocation:* in India, the frequency band 2535-2655 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (Rev.WRC-15). The provisions of paragraph (b)(416) of this section and Table 21-4 of Article 21, do not apply to this additional allocation. Use of non-geostationary-satellite systems in the broadcasting-satellite service (sound) is subject to Resolution 539 (Rev.WRC-15). Geostationary broadcasting-satellite service (sound) systems for which complete Appendix 4 coordination information has been received after 1 June 2005 are limited to systems intended for national coverage. The power flux-density at the Earth's surface produced by emissions from a geostationary broadcasting-satellite service (sound) space station operating in the frequency band 2630-2655 MHz, and for which complete Appendix 4 coordination information has been received after 1 June 2005, shall not exceed the following limits, for all conditions and for all methods of modulation: $-130 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for $0^\circ \leq \theta \leq 5^\circ$, $-130 + 0.4 (\theta - 5) \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for $5^\circ < \theta \leq 25^\circ$, and $-122 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for $25^\circ < \theta \leq 90^\circ$, where θ is the angle of arrival of the incident wave above the horizontal plane, in degrees. These limits may be exceeded on the territory of any country whose administration has so agreed. As an exception to the limits above, the pfd value of $-122 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ shall be used as a threshold for coordination under No. 9.11 in an area of 1500 km around the territory of the administration notifying the broadcasting-satellite service (sound) system. In addition, an administration listed in this provision shall not have simultaneously two overlapping frequency assignments, one under this provision and the other under paragraph (b)(416) of this section for systems for which complete Appendix 4 coordination information has been received after 1 June 2005.

(i) 5.418A In certain Region 3 countries listed in No. 5.418, use of the band 2630-2655 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound) for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000, is subject to the application of the provisions of No. 9.12A, in respect of geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received after 2 June 2000, and No. 22.2 does not apply. No. 22.2 shall continue to apply with respect to geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received before 3 June 2000.

(ii) 5.418B Use of the band 2630-2655 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to this paragraph (b)(418), for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000, is subject to the application of the provisions of No. 9.12.

(iii) 5.418C Use of the band 2630-2655 MHz by geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000 is subject to the application of the provisions of No. 9.13 with respect to non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to this paragraph (b)(418) and No. 22.2 does not apply.

(419) 5.419 When introducing systems of the mobile-satellite service in the band 2670-2690 MHz, administrations shall take all necessary steps to protect the satellite systems operating in this band

prior to 3 March 1992. The coordination of mobile-satellite systems in the band shall be in accordance with No. 9.11A.

(420) 5.420 The band 2655-2670 MHz may also be used for the mobile-satellite (Earth-to-space), except aeronautical mobile-satellite, service for operation limited to within national boundaries, subject to agreement obtained under No. 9.21. The coordination under No. 9.11A applies.

(421) [Reserved]

(422) 5.422 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Brunei Darussalam, Congo (Rep. of the), Côte d'Ivoire, Cuba, Djibouti, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Gabon, Georgia, Guinea, Guinea-Bissau, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Mauritania, Mongolia, Montenegro, Nigeria, Oman, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Kyrgyzstan, the Dem. Rep. of the Congo, Romania, Somalia, Tajikistan, Tunisia, Turkmenistan, Ukraine and Yemen, the band 2690-2700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

(423) 5.423 In the band 2700-2900 MHz, ground-based radars used for meteorological purposes are authorized to operate on a basis of equality with stations of the aeronautical radionavigation service.

(424) 5.424 *Additional allocation:* in Canada, the band 2850-2900 MHz is also allocated to the maritime radionavigation service, on a primary basis, for use by shore-based radars.

(i) 5.424A In the band 2900-3100 MHz, stations in the radiolocation service shall not cause harmful interference to, nor claim protection from, radar systems in the radionavigation service.

(ii) [Reserved]

(425) 5.425 In the band 2900-3100 MHz, the use of the shipborne interrogator-transponder (SIT) system shall be confined to the sub-band 2930-2950 MHz.

(426) 5.426 The use of the band 2900-3100 MHz by the aeronautical radionavigation service is limited to ground-based radars.

(427) 5.427 In the bands 2900-3100 MHz and 9300-9500 MHz, the response from radar transponders shall not be capable of being confused with the response from radar beacons (racons) and shall not cause interference to ship or aeronautical radars in the radionavigation service, having regard, however, to No. 4.9.

(428) 5.428 *Additional allocation:* in Azerbaijan, Kyrgyzstan and Turkmenistan, the frequency band 3100-3300 MHz is also allocated to the radionavigation service on a primary basis.

(429) 5.429 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Benin, Brunei Darussalam, Cambodia, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Egypt, the United Arab Emirates, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Lebanon, Libya, Malaysia, Oman, Uganda, Pakistan, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, the Dem. People's Rep. of Korea, Sudan and Yemen, the frequency band 3300-3400 MHz is also allocated to the fixed and mobile services on a primary basis. The countries bordering the Mediterranean shall not claim protection for their fixed and mobile services from the radiolocation service.

(i) 5.429A *Additional allocation:* in Angola, Benin, Botswana, Burkina Faso, Burundi, Ghana, Guinea, Guinea-Bissau, Lesotho, Liberia, Malawi, Mauritania, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sudan, South Sudan, South Africa, Swaziland, Tanzania, Chad, Togo, Zambia and Zimbabwe, the frequency band 3300-3400 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis. Stations in the mobile service operating in the frequency band 3300-3400 MHz shall not cause harmful interference to, or claim protection from, stations operating in the radiolocation

service.

(ii) 5.429B In the following countries of Region 1 south of 30° parallel north: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Congo (Rep. of the), Côte d'Ivoire, Egypt, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Malawi, Mauritania, Mozambique, Namibia, Niger, Nigeria, Uganda, the Dem. Rep. of the Congo, Rwanda, Sudan, South Sudan, South Africa, Swaziland, Tanzania, Chad, Togo, Zambia and Zimbabwe, the frequency band 3300-3400 MHz is identified for the implementation of International Mobile Telecommunications (IMT). The use of this frequency band shall be in accordance with Resolution 223 (Rev.WRC-15). The use of the frequency band 3300-3400 MHz by IMT stations in the mobile service shall not cause harmful interference to, or claim protection from, systems in the radiolocation service, and administrations wishing to implement IMT shall obtain the agreement of neighbouring countries to protect operations within the radiolocation service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations.

(iii) 5.429C *Different category of service:* in Argentina, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Paraguay and Uruguay, the frequency band 3300-3400 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis. In Argentina, Brazil, Guatemala, Mexico and Paraguay, the frequency band 3300-3400 MHz is also allocated to the fixed service on a primary basis. Stations in the fixed and mobile services operating in the frequency band 3300-3400 MHz shall not cause harmful interference to, or claim protection from, stations operating in the radiolocation service.

(iv) 5.429D In the following countries in Region 2: Argentina, Colombia, Costa Rica, Ecuador, Mexico and Uruguay, the use of the frequency band 3300-3400 MHz is identified for the implementation of International Mobile Telecommunications (IMT). Such use shall be in accordance with Resolution 223 (Rev.WRC-15). This use in Argentina and Uruguay is subject to the application of No. 9.21. The use of the frequency band 3300-3400 MHz by IMT stations in the mobile service shall not cause harmful interference to, or claim protection from, systems in the radiolocation service, and administrations wishing to implement IMT shall obtain the agreement of neighbouring countries to protect operations within the radiolocation service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations.

(v) 5.429E *Additional allocation:* in Papua New Guinea, the frequency band 3300-3400 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis. Stations in the mobile service operating in the frequency band 3300-3400 MHz shall not cause harmful interference to, or claim protection from, stations operating in the radiolocation service.

(vi) 5.429F In the following countries in Region 3: Cambodia, India, Lao P.D.R., Pakistan, the Philippines and Viet Nam, the use of the frequency band 3300-3400 MHz is identified for the implementation of International Mobile Telecommunications (IMT). Such use shall be in accordance with Resolution 223 (Rev.WRC-15). The use of the frequency band 3300-3400 MHz by IMT stations in the mobile service shall not cause harmful interference to, or claim protection from, systems in the radiolocation service. Before an administration brings into use a base or mobile station of an IMT system in this frequency band, it shall seek agreement under No. 9.21 with neighbouring countries to protect the radiolocation service. This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations.

(430) 5.430 *Additional allocation:* in Azerbaijan, Kyrgyzstan and Turkmenistan, the frequency band 3300-3400 MHz is also allocated to the radionavigation service on a primary basis.

(i) 5.430A The allocation of the frequency band 3400-3600 MHz to the mobile, except

aeronautical mobile, service is subject to agreement obtained under No. 9.21. This frequency band is identified for International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. The provisions of Nos. 9.17 and 9.18 shall also apply in the coordination phase. Before an administration brings into use a (base or mobile) station of the mobile service in this frequency band, it shall ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed $-154.5 \text{ dB(W/(m}^2 \cdot 4 \text{ kHz))}$ for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station) and with the assistance of the Bureau if so requested. In case of disagreement, calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to in this paragraph (b)(430)(i). Stations of the mobile service in the frequency band 3400-3600 MHz shall not claim more protection from space stations than that provided in Table 21-4 of the Radio Regulations (Edition of 2004). This allocation is effective from 17 November 2010.

(ii) [Reserved]

(431) 5.431 *Additional allocation:* in Germany and Israel, the frequency band 3400-3475 MHz is also allocated to the amateur service on a secondary basis.

(i) 5.431A In Region 2, the allocation of the frequency band 3400-3500 MHz to the mobile, except aeronautical mobile, service on a primary basis is subject to agreement obtained under No. 9.21.

(ii) 5.431B In Region 2, the frequency band 3400-3600 MHz is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a base or mobile station of an IMT system, it shall seek agreement under No. 9.21 with other administrations and ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed $-154.5 \text{ dB(W/(m}^2 \cdot 4 \text{ kHz))}$ for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to in this paragraph (b)(431)(ii). Stations of the mobile service, including IMT systems, in the frequency band 3400-3600 MHz shall not claim more protection from space stations than that provided in Table 21-4 of the Radio Regulations (Edition of 2004).

(432) 5.432 *Different category of service:* in Korea (Rep. of), Japan and Pakistan, the allocation of the band 3400-3500 MHz to the mobile, except aeronautical mobile, service is on a primary basis (see No. 5.33).

(i) 5.432A In Korea (Rep. of), Japan and Pakistan, the band 3400-3500 MHz is identified for International Mobile Telecommunications (IMT). This identification does not preclude the use of this band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a (base or mobile) station of the mobile service in this band it shall ensure

that the power flux-density (pfd) produced at 3 m above ground does not exceed $-154.5 \text{ dB(W/(m}^2 \cdot 4 \text{ kHz))}$ for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to in this paragraph (b)(432)(i). Stations of the mobile service in the band 3400-3500 MHz shall not claim more protection from space stations than that provided in Table 21-4 of the Radio Regulations (Edition of 2004).

(ii) 5.432B *Different category of service:* in Australia, Bangladesh, China, French overseas communities of Region 3, India, Iran (Islamic Republic of), New Zealand, the Philippines and Singapore, the frequency band 3400-3500 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis, subject to agreement obtained under No. 9.21 with other administrations and is identified for International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a (base or mobile) station of the mobile service in this frequency band it shall ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed $-154.5 \text{ dB(W/(m}^2 \cdot 4 \text{ kHz))}$ for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to in this paragraph (b)(432)(ii). Stations of the mobile service in the frequency band 3400-3500 MHz shall not claim more protection from space stations than that provided in Table 21-4 of the Radio Regulations (Edition of 2004).

(433) 5.433 In Regions 2 and 3, in the band 3400-3600 MHz the radiolocation service is allocated on a primary basis. However, all administrations operating radiolocation systems in this band are urged to cease operations by 1985. Thereafter, administrations shall take all practicable steps to protect the fixed-satellite service and coordination requirements shall not be imposed on the fixed-satellite service.

(i) 5.433A In Australia, Bangladesh, China, French overseas communities of Region 3, Korea (Rep. of), India, Iran (Islamic Republic of), Japan, New Zealand, Pakistan and the Philippines, the frequency band 3500-3600 MHz is identified for International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a (base or mobile) station of the mobile service in this frequency band it shall ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed $-154.5 \text{ dB(W/(m}^2 \cdot 4 \text{ kHz))}$ for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the

pfd shall be made by the Bureau, taking into account the information referred to in this paragraph (b)(433)(i). Stations of the mobile service in the frequency band 3500-3600 MHz shall not claim more protection from space stations than that provided in table 21-4 of the Radio Regulations (Edition of 2004).

(ii) [Reserved]

(434) 5.434 In Canada, Colombia, Costa Rica and the United States, the frequency band 3600-3700 MHz, or portions thereof, is identified for use by these administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. At the stage of coordination the provisions of Nos. 9.17 and 9.18 also apply. Before an administration brings into use a base or mobile station of an IMT system, it shall seek agreement under No. 9.21 with other administrations and ensure that the power flux-density (pfd) produced at 3 m above ground does not exceed $-154.5 \text{ dB(W/(m}^2 \cdot 4 \text{ kHz))}$ for more than 20% of time at the border of the territory of any other administration. This limit may be exceeded on the territory of any country whose administration has so agreed. In order to ensure that the pfd limit at the border of the territory of any other administration is met, the calculations and verification shall be made, taking into account all relevant information, with the mutual agreement of both administrations (the administration responsible for the terrestrial station and the administration responsible for the earth station), with the assistance of the Bureau if so requested. In case of disagreement, the calculation and verification of the pfd shall be made by the Bureau, taking into account the information referred to in this paragraph (b)(434). Stations of the mobile service, including IMT systems, in the frequency band 3600-3700 MHz shall not claim more protection from space stations than that provided in table 21-4 of the Radio Regulations (Edition of 2004).

(435) 5.435 In Japan, in the band 3620-3700 MHz, the radiolocation service is excluded.

(436) 5.436 Use of the frequency band 4200-4400 MHz by stations in the aeronautical mobile (R) service is reserved exclusively for wireless avionics intra-communication systems that operate in accordance with recognized international aeronautical standards. Such use shall be in accordance with Resolution 424 (WRC-15).

(437) 5.437 Passive sensing in the Earth exploration-satellite and space research services may be authorized in the frequency band 4200-4400 MHz on a secondary basis.

(438) 5.438 Use of the frequency band 4200-4400 MHz by the aeronautical radionavigation service is reserved exclusively for radio altimeters installed on board aircraft and for the associated transponders on the ground.

(439) 5.439 *Additional allocation:* in Iran (Islamic Republic of), the band 4200-4400 MHz is also allocated to the fixed service on a secondary basis.

(440) 5.440 The standard frequency and time signal-satellite service may be authorized to use the frequency 4202 MHz for space-to-Earth transmissions and the frequency 6427 MHz for Earth-to-space transmissions. Such transmissions shall be confined within the limits of $\pm 2 \text{ MHz}$ of these frequencies, subject to agreement obtained under No. 9.21.

(i) 5.440A In Region 2 (except Brazil, Cuba, French overseas departments and communities, Guatemala, Paraguay, Uruguay and Venezuela), and in Australia, the band 4400-4940 MHz may be used for aeronautical mobile telemetry for flight testing by aircraft stations (see No. 1.83). Such use shall be in accordance with Resolution 416 (WRC-07) and shall not cause harmful interference to, nor claim protection from, the fixed-satellite and fixed services. Any such use does not preclude the use of this band by other mobile service applications or by other services to which this band is allocated on a co-primary basis and does not establish priority in the Radio Regulations.

(ii) [Reserved]

(441) 5.441 The use of the bands 4500-4800 MHz (space-to-Earth), 6725-7025 MHz (Earth-to-space) by the fixed-satellite service shall be in accordance with the provisions of Appendix 30B. The use of the bands 10.7-10.95 GHz (space-to-Earth), 11.2-11.45 GHz (space-to-Earth) and 12.75-13.25 GHz (Earth-to-space) by geostationary-satellite systems in the fixed-satellite service shall be in accordance with the provisions of Appendix 30B. The use of the bands 10.7-10.95 GHz (space-to-Earth), 11.2-11.45 GHz (space-to-Earth) and 12.75-13.25 GHz (Earth-to-space) by a non-geostationary-satellite system in the fixed-satellite service is subject to application of the provisions of No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service shall not claim protection from geostationary-satellite networks in the fixed-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the Bureau of the complete coordination or notification information, as appropriate, for the non-geostationary-satellite systems in the fixed-satellite service and of the complete coordination or notification information, as appropriate, for the geostationary-satellite networks, and No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the above bands shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

(i) 5.441A In Uruguay, the frequency band 4800-4900 MHz, or portions thereof, is identified for the implementation of International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of this frequency band for the implementation of IMT is subject to agreement obtained with neighbouring countries, and IMT stations shall not claim protection from stations of other applications of the mobile service. Such use shall be in accordance with Resolution 223 (Rev.WRC-15).

(ii) 5.441B In Cambodia, Lao P.D.R. and Viet Nam, the frequency band 4800-4990 MHz, or portions thereof, is identified for use by administrations wishing to implement International Mobile Telecommunications (IMT). This identification does not preclude the use of this frequency band by any application of the services to which it is allocated and does not establish priority in the Radio Regulations. The use of this frequency band for the implementation of IMT is subject to agreement obtained under No. 9.21 with concerned administrations, and IMT stations shall not claim protection from stations of other applications of the mobile service. In addition, before an administration brings into use an IMT station in the mobile service, it shall ensure that the power flux-density produced by this station does not exceed $-155 \text{ dB(W/(m}^2 \cdot 1 \text{ MHz))}$ produced up to 19 km above sea level at 20 km from the coast, defined as the low-water mark, as officially recognized by the coastal State. This criterion is subject to review at WRC-19. See Resolution 223 (Rev.WRC-15). This identification shall be effective after WRC-19.

(442) 5.442 In the frequency bands 4825-4835 MHz and 4950-4990 MHz, the allocation to the mobile service is restricted to the mobile, except aeronautical mobile, service. In Region 2 (except Brazil, Cuba, Guatemala, Mexico, Paraguay, Uruguay and Venezuela), and in Australia, the frequency band 4825-4835 MHz is also allocated to the aeronautical mobile service, limited to aeronautical mobile telemetry for flight testing by aircraft stations. Such use shall be in accordance with Resolution 416 (WRC-07) and shall not cause harmful interference to the fixed service.

(443) 5.443 *Different category of service:* in Argentina, Australia and Canada, the allocation of the bands 4825-4835 MHz and 4950-4990 MHz to the radio astronomy service is on a primary basis (see No. 5.33).

(i) 5.443AA In the frequency bands 5000-5030 MHz and 5091-5150 MHz, the aeronautical mobile-satellite (R) service is subject to agreement obtained under No. 9.21. The use of these bands by the aeronautical mobile-satellite (R) service is limited to internationally standardized aeronautical systems.

(ii) 5.443B In order not to cause harmful interference to the microwave landing system operating above 5030 MHz, the aggregate power flux-density produced at the Earth's surface in the frequency band 5030-5150 MHz by all the space stations within any radionavigation-satellite service system (space-to-Earth) operating in the frequency band 5010-5030 MHz shall not exceed -124.5 dB(W/m²) in a 150 kHz band. In order not to cause harmful interference to the radio astronomy service in the frequency band 4990-5000 MHz, radionavigation-satellite service systems operating in the frequency band 5010-5030 MHz shall comply with the limits in the frequency band 4990-5000 MHz defined in Resolution 741 (Rev.WRC-15).

(iii) 5.443C The use of the frequency band 5030-5091 MHz by the aeronautical mobile (R) service is limited to internationally standardized aeronautical systems. Unwanted emissions from the aeronautical mobile (R) service in the frequency band 5030-5091 MHz shall be limited to protect RNSS system downlinks in the adjacent 5010-5030 MHz band. Until such time that an appropriate value is established in a relevant ITU-R Recommendation, the e.i.r.p. density limit of -75 dBW/MHz in the frequency band 5010-5030 MHz for any AM(R)S station unwanted emission should be used.

(iv) 5.443D In the frequency band 5030-5091 MHz, the aeronautical mobile-satellite (R) service is subject to coordination under No. 9.11A. The use of this frequency band by the aeronautical mobile-satellite (R) service is limited to internationally standardized aeronautical systems.

(444) 5.444 The frequency band 5030-5150 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. In the frequency band 5030-5091 MHz, the requirements of this system shall have priority over other uses of this frequency band. For the use of the frequency band 5091-5150 MHz, paragraph (b)(444)(i) of this section and Resolution 114 (Rev.WRC-15) apply.

(i) 5.444A The use of the allocation to the fixed-satellite service (Earth-to-space) in the frequency band 5091-5150 MHz is limited to feeder links of non-geostationary satellite systems in the mobile-satellite service and is subject to coordination under No. 9.11A. The use of the frequency band 5091-5150 MHz by feeder links of non-geostationary satellite systems in the mobile-satellite service shall be subject to application of Resolution 114 (Rev.WRC-15). Moreover, to ensure that the aeronautical radionavigation service is protected from harmful interference, coordination is required for feeder-link earth stations of the non-geostationary satellite systems in the mobile-satellite service which are separated by less than 450 km from the territory of an administration operating ground stations in the aeronautical radionavigation service.

(ii) 5.444B The use of the frequency band 5091-5150 MHz by the aeronautical mobile service is limited to:

(A) systems operating in the aeronautical mobile (R) service and in accordance with international aeronautical standards, limited to surface applications at airports. Such use shall be in accordance with Resolution 748 (Rev.WRC-15); and

(B) aeronautical telemetry transmissions from aircraft stations (see No. 1.83) in accordance with Resolution 418 (Rev.WRC-15).

(445) [Reserved]

(446) 5.446 *Additional allocation:* in the countries listed in paragraph (b)(369) of this section, the frequency band 5150-5216 MHz is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis, subject to agreement obtained under No. 9.21. In Region 2 (except in Mexico), the frequency band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis. In Regions 1 and 3, except those countries listed in paragraph (b)(369) of this section and Bangladesh, the frequency band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a secondary basis. The use by the radiodetermination-satellite service is limited to feeder links in

conjunction with the radiodetermination-satellite service operating in the frequency bands 1610-1626.5 MHz and/or 2483.5-2500 MHz. The total power flux-density at the Earth's surface shall in no case exceed -159 dB (W/m²) in any 4 kHz band for all angles of arrival.

(i) 5.446A The use of the bands 5150-5350 MHz and 5470-5725 MHz by the stations in the mobile, except aeronautical mobile, service shall be in accordance with Resolution 229 (Rev.WRC-12).

(ii) 5.446B In the band 5150-5250 MHz, stations in the mobile service shall not claim protection from earth stations in the fixed-satellite service. No. 5.43A does not apply to the mobile service with respect to fixed-satellite service earth stations.

(iii) 5.446C *Additional allocation:* in Region 1 (except in Algeria, Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Syrian Arab Republic, Sudan, South Sudan and Tunisia) and in Brazil, the band 5150-5250 MHz is also allocated to the aeronautical mobile service on a primary basis, limited to aeronautical telemetry transmissions from aircraft stations (see No. 1.83), in accordance with Resolution 418 (Rev.WRC-15). These stations shall not claim protection from other stations operating in accordance with Article 5. No. 5.43A does not apply.

(447) 5.447 *Additional allocation:* in Côte d'Ivoire, Egypt, Israel, Lebanon, the Syrian Arab Republic and Tunisia, the band 5150-5250 MHz is also allocated to the mobile service, on a primary basis, subject to agreement obtained under No. 9.21. In this case, the provisions of Resolution 229 (Rev.WRC-12) do not apply.

(i) 5.447A The allocation to the fixed-satellite service (Earth-to-space) in the band 5150-5250 MHz is limited to feeder links of non-geostationary-satellite systems in the mobile-satellite service and is subject to coordination under No. 9.11A.

(ii) 5.447B *Additional allocation:* the band 5150-5216 MHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis. This allocation is limited to feeder links of non-geostationary-satellite systems in the mobile-satellite service and is subject to provisions of No. 9.11A. The power flux-density at the Earth's surface produced by space stations of the fixed-satellite service operating in the space-to-Earth direction in the band 5150-5216 MHz shall in no case exceed -164 dB(W/m²) in any 4 kHz band for all angles of arrival.

(iii) 5.447C Administrations responsible for fixed-satellite service networks in the band 5150-5250 MHz operated under paragraphs (b)(447)(i) and (ii) of this section shall coordinate on an equal basis in accordance with No. 9.11A with administrations responsible for non-geostationary-satellite networks operated under paragraph (b)(446) of this section and brought into use prior to 17 November 1995. Satellite networks operated under paragraph (b)(446) of this section brought into use after 17 November 1995 shall not claim protection from, and shall not cause harmful interference to, stations of the fixed-satellite service operated under paragraphs (b)(447)(i) and (ii) of this section.

(iv) 5.447D The allocation of the band 5250-5255 MHz to the space research service on a primary basis is limited to active spaceborne sensors. Other uses of the band by the space research service are on a secondary basis.

(v) 5.447E *Additional allocation:* The frequency band 5250-5350 MHz is also allocated to the fixed service on a primary basis in the following countries in Region 3: Australia, Korea (Rep. of), India, Indonesia, Iran (Islamic Republic of), Japan, Malaysia, Papua New Guinea, the Philippines, Dem. People's Rep. of Korea, Sri Lanka, Thailand and Viet Nam. The use of this frequency band by the fixed service is intended for the implementation of fixed wireless access systems and shall comply with Recommendation ITU-R F.1613-0. In addition, the fixed service shall not claim protection from the radiodetermination, Earth exploration-satellite (active) and space research (active) services, but the provisions of No. 5.43A do not apply to the fixed service with respect to the Earth exploration-satellite

(active) and space research (active) services. After implementation of fixed wireless access systems in the fixed service with protection for the existing radiodetermination systems, no more stringent constraints should be imposed on the fixed wireless access systems by future radiodetermination implementations.

(vi) 5.447F In the frequency band 5250-5350 MHz, stations in the mobile service shall not claim protection from the radiolocation service, the Earth exploration-satellite service (active) and the space research service (active). These services shall not impose on the mobile service more stringent protection criteria, based on system characteristics and interference criteria, than those stated in Recommendations ITU-R M.1638-0 and ITU-R RS.1632-0.

(448) 5.448 *Additional allocation:* in Azerbaijan, Kyrgyzstan, Romania and Turkmenistan, the band 5250-5350 MHz is also allocated to the radionavigation service on a primary basis.

(i) 5.448A The Earth exploration-satellite (active) and space research (active) services in the frequency band 5250-5350 MHz shall not claim protection from the radiolocation service. No. 5.43A does not apply.

(ii) 5.448B The Earth exploration-satellite service (active) operating in the band 5350-5570 MHz and space research service (active) operating in the band 5460-5570 MHz shall not cause harmful interference to the aeronautical radionavigation service in the band 5350-5460 MHz, the radionavigation service in the band 5460-5470 MHz and the maritime radionavigation service in the band 5470-5570 MHz.

(iii) 5.448C The space research service (active) operating in the band 5350-5460 MHz shall not cause harmful interference to nor claim protection from other services to which this band is allocated.

(iv) 5.448D In the frequency band 5350-5470 MHz, stations in the radiolocation service shall not cause harmful interference to, nor claim protection from, radar systems in the aeronautical radionavigation service operating in accordance with No. 5.449.

(449) 5.449 The use of the band 5350-5470 MHz by the aeronautical radionavigation service is limited to airborne radars and associated airborne beacons.

(450) 5.450 *Additional allocation:* in Austria, Azerbaijan, Iran (Islamic Republic of), Kyrgyzstan, Romania, Turkmenistan and Ukraine, the band 5470-5650 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

(i) 5.450A In the frequency band 5470-5725 MHz, stations in the mobile service shall not claim protection from radiodetermination services. Radiodetermination services shall not impose on the mobile service more stringent protection criteria, based on system characteristics and interference criteria, than those stated in Recommendation ITU-R M.1638-0.

(ii) 5.450B In the frequency band 5470-5650 MHz, stations in the radiolocation service, except ground-based radars used for meteorological purposes in the band 5600-5650 MHz, shall not cause harmful interference to, nor claim protection from, radar systems in the maritime radionavigation service.

(451) 5.451 *Additional allocation:* in the United Kingdom, the band 5470-5850 MHz is also allocated to the land mobile service on a secondary basis. The power limits specified in Nos. 21.2, 21.3, 21.4 and 21.5 shall apply in the band 5725-5850 MHz.

(452) 5.452 Between 5600 MHz and 5650 MHz, ground-based radars used for meteorological purposes are authorized to operate on a basis of equality with stations of the maritime radionavigation service.

(453) 5.453 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Djibouti, Egypt, the United Arab Emirates, Gabon, Guinea, Equatorial Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel,

Japan, Jordan, Kenya, Kuwait, Lebanon, Libya, Madagascar, Malaysia, Niger, Nigeria, Oman, Uganda, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Sri Lanka, Swaziland, Tanzania, Chad, Thailand, Togo, Viet Nam and Yemen, the band 5650-5850 MHz is also allocated to the fixed and mobile services on a primary basis. In this case, the provisions of Resolution 229 (Rev.WRC-12) do not apply.

(454) 5.454 *Different category of service:* in Azerbaijan, the Russian Federation, Georgia, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 5670-5725 MHz to the space research service is on a primary basis (see No. 5.33).

(455) 5.455 *Additional allocation:* in Armenia, Azerbaijan, Belarus, Cuba, the Russian Federation, Georgia, Hungary, Kazakhstan, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 5670-5850 MHz is also allocated to the fixed service on a primary basis.

(456) [Reserved]

(457) 5.457 In Australia, Burkina Faso, Cote d'Ivoire, Mali and Nigeria, the allocation to the fixed service in the bands 6440-6520 MHz (HAPS-to-ground direction) and 6560-6640 MHz (ground-to-HAPS direction) may also be used by gateway links for high-altitude platform stations (HAPS) within the territory of these countries. Such use is limited to operation in HAPS gateway links and shall not cause harmful interference to, and shall not claim protection from, existing services, and shall be in compliance with Resolution 150 (WRC-12). Existing services shall not be constrained in future development by HAPS gateway links. The use of HAPS gateway links in these bands requires explicit agreement with other administrations whose territories are located within 1000 kilometres from the border of an administration intending to use the HAPS gateway links.

(i) 5.457A In the frequency bands 5925-6425 MHz and 14-14.5 GHz, earth stations located on board vessels may communicate with space stations of the fixed-satellite service. Such use shall be in accordance with Resolution 902 (WRC-03). In the frequency band 5925-6425 MHz, earth stations located on board vessels and communicating with space stations of the fixed-satellite service may employ transmit antennas with minimum diameter of 1.2 m and operate without prior agreement of any administration if located at least 330 km away from the low-water mark as officially recognized by the coastal State. All other provisions of Resolution 902 (WRC-03) shall apply.

(ii) 5.457B In the frequency bands 5925-6425 MHz and 14-14.5 GHz, earth stations located on board vessels may operate with the characteristics and under the conditions contained in Resolution 902 (WRC-03) in Algeria, Saudi Arabia, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Jordan, Kuwait, Libya, Morocco, Mauritania, Oman, Qatar, the Syrian Arab Republic, Sudan, Tunisia and Yemen, in the maritime mobile-satellite service on a secondary basis. Such use shall be in accordance with Resolution 902 (WRC-03).

(iii) 5.457C In Region 2 (except Brazil, Cuba, French overseas departments and communities, Guatemala, Mexico, Paraguay, Uruguay and Venezuela), the frequency band 5925-6700 MHz may be used for aeronautical mobile telemetry for flight testing by aircraft stations (see No. 1.83). Such use shall be in accordance with Resolution 416 (WRC-07) and shall not cause harmful interference to, or claim protection from, the fixed-satellite and fixed services. Any such use does not preclude the use of this frequency band by other mobile service applications or by other services to which this frequency band is allocated on a co-primary basis and does not establish priority in the Radio Regulations.

(458) 5.458 In the band 6425-7075 MHz, passive microwave sensor measurements are carried out over the oceans. In the band 7075-7250 MHz, passive microwave sensor measurements are carried out. Administrations should bear in mind the needs of the Earth exploration-satellite (passive) and space research (passive) services in their future planning of the bands 6425-7075 MHz and 7075-7250 MHz.

(i) 5.458A In making assignments in the band 6700-7075 MHz to space stations of the fixed-satellite service, administrations are urged to take all practicable steps to protect spectral line observations of the radio astronomy service in the band 6650-6675.2 MHz from harmful interference from unwanted emissions.

(ii) 5.458B The space-to-Earth allocation to the fixed-satellite service in the band 6700-7075 MHz is limited to feeder links for non-geostationary satellite systems of the mobile-satellite service and is subject to coordination under No. 9.11A. The use of the band 6700-7075 MHz (space-to-Earth) by feeder links for non-geostationary satellite systems in the mobile-satellite service is not subject to No. 22.2.

(459) 5.459 *Additional allocation:* in the Russian Federation, the frequency bands 7100-7155 MHz and 7190-7235 MHz are also allocated to the space operation service (Earth-to-space) on a primary basis, subject to agreement obtained under No. 9.21. In the frequency band 7190-7235 MHz, with respect to the Earth exploration-satellite service (Earth-to-space), No. 9.21 does not apply.

(460) 5.460 No emissions from space research service (Earth-to-space) systems intended for deep space shall be effected in the frequency band 7190-7235 MHz. Geostationary satellites in the space research service operating in the frequency band 7190-7235 MHz shall not claim protection from existing and future stations of the fixed and mobile services and No. 5.43A does not apply.

(i) 5.460A The use of the frequency band 7190-7250 MHz (Earth-to-space) by the Earth exploration-satellite service shall be limited to tracking, telemetry and command for the operation of spacecraft. Space stations operating in the Earth exploration-satellite service (Earth-to-space) in the frequency band 7190-7250 MHz shall not claim protection from existing and future stations in the fixed and mobile services, and No. 5.43A does not apply. No. 9.17 applies. Additionally, to ensure protection of the existing and future deployment of fixed and mobile services, the location of earth stations supporting spacecraft in the Earth exploration-satellite service in non-geostationary orbits or geostationary orbit shall maintain a separation distance of at least 10 km and 50 km, respectively, from the respective border(s) of neighbouring countries, unless a shorter distance is otherwise agreed between the corresponding administrations.

(ii) 5.460B Space stations on the geostationary orbit operating in the Earth exploration-satellite service (Earth-to-space) in the frequency band 7190-7235 MHz shall not claim protection from existing and future stations of the space research service, and No. 5.43A does not apply.

(461) 5.461 *Additional allocation:* the bands 7250-7375 MHz (space-to-Earth) and 7900-8025 MHz (Earth-to-space) are also allocated to the mobile-satellite service on a primary basis, subject to agreement obtained under No. 9.21.

(i) 5.461A The use of the band 7450-7550 MHz by the meteorological-satellite service (space-to-Earth) is limited to geostationary-satellite systems. Non-geostationary meteorological-satellite systems in this band notified before 30 November 1997 may continue to operate on a primary basis until the end of their lifetime.

(ii) 5.461AA The use of the frequency band 7375-7750 MHz by the maritime mobile-satellite service is limited to geostationary-satellite networks.

(iii) 5.461AB In the frequency band 7375-7750 MHz, earth stations in the maritime mobile-satellite service shall not claim protection from, nor constrain the use and development of, stations in the fixed and mobile, except aeronautical mobile, services. No. 5.43A does not apply.

(iv) 5.461B The use of the band 7750-7900 MHz by the meteorological-satellite service (space-to-Earth) is limited to non-geostationary satellite systems.

(462) 5.462A In Regions 1 and 3 (except for Japan), in the band 8025-8400 MHz, the Earth exploration-satellite service using geostationary satellites shall not produce a power flux-density in excess

of the following values for angles of arrival (θ), without the consent of the affected administration: -135 dB(W/m²) in a 1 MHz band for $0 \leq \theta < 5^\circ$, $-135 + 0.5 (\theta - 5)$ dB(W/m²) in a 1 MHz band for $5 \leq \theta < 25^\circ$, and -125 dB(W/m²) in a 1 MHz band for $25 \leq \theta \leq 90^\circ$.

(463) 5.463 Aircraft stations are not permitted to transmit in the band 8025-8400 MHz.

(464) [Reserved]

(465) 5.465 In the space research service, the use of the band 8400-8450 MHz is limited to deep space.

(466) 5.466 *Different category of service:* in Singapore and Sri Lanka, the allocation of the band 8400-8500 MHz to the space research service is on a secondary basis (see No. 5.32).

(467) [Reserved]

(468) 5.468 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burundi, Cameroon, China, Congo (Rep. of the), Djibouti, Egypt, the United Arab Emirates, Gabon, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Libya, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Uganda, Pakistan, Qatar, Syrian Arab Republic, the Dem. People's Rep. of Korea, Senegal, Singapore, Somalia, Sudan, Swaziland, Chad, Togo, Tunisia and Yemen, the frequency band 8500-8750 MHz is also allocated to the fixed and mobile services on a primary basis.

(469) 5.469 *Additional allocation:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Hungary, Lithuania, Mongolia, Uzbekistan, Poland, Kyrgyzstan, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the band 8500-8750 MHz is also allocated to the land mobile and radionavigation services on a primary basis.

(i) 5.469A In the band 8550-8650 MHz, stations in the Earth exploration-satellite service (active) and space research service (active) shall not cause harmful interference to, or constrain the use and development of, stations of the radiolocation service.

(ii) [Reserved]

(470) 5.470 The use of the band 8750-8850 MHz by the aeronautical radionavigation service is limited to airborne Doppler navigation aids on a centre frequency of 8800 MHz.

(471) 5.471 *Additional allocation:* in Algeria, Germany, Bahrain, Belgium, China, Egypt, the United Arab Emirates, France, Greece, Indonesia, Iran (Islamic Republic of), Libya, the Netherlands, Qatar and Sudan, the frequency bands 8825-8850 MHz and 9000-9200 MHz are also allocated to the maritime radionavigation service, on a primary basis, for use by shore-based radars only.

(472) 5.472 In the bands 8850-9000 MHz and 9200-9225 MHz, the maritime radionavigation service is limited to shore-based radars.

(473) 5.473 *Additional allocation:* in Armenia, Austria, Azerbaijan, Belarus, Cuba, the Russian Federation, Georgia, Hungary, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Romania, Tajikistan, Turkmenistan and Ukraine, the bands 8850-9000 MHz and 9200-9300 MHz are also allocated to the radionavigation service on a primary basis.

(i) 5.473A In the band 9000-9200 MHz, stations operating in the radiolocation service shall not cause harmful interference to, nor claim protection from, systems identified in No. 5.337 operating in the aeronautical radionavigation service, or radar systems in the maritime radionavigation service operating in this band on a primary basis in the countries listed in No. 5.471.

(ii) [Reserved]

(474) 5.474 In the band 9200-9500 MHz, search and rescue transponders (SART) may be used,

having due regard to the appropriate ITU-R Recommendation (see also Article 31).

(i) 5.474A The use of the frequency bands 9200-9300 MHz and 9900-10 400 MHz by the Earth exploration-satellite service (active) is limited to systems requiring necessary bandwidth greater than 600 MHz that cannot be fully accommodated within the frequency band 9300-9900 MHz. Such use is subject to agreement to be obtained under No. 9.21 from Algeria, Saudi Arabia, Bahrain, Egypt, Indonesia, Iran (Islamic Republic of), Lebanon and Tunisia. An administration that has not replied under No. 9.52 is considered as not having agreed to the coordination request. In this case, the notifying administration of the satellite system operating in the Earth exploration-satellite service (active) may request the assistance of the Bureau under Sub-Section IID of Article 9.

(ii) 5.474B Stations operating in the Earth exploration-satellite (active) service shall comply with Recommendation ITU-R RS.2066-0.

(iii) 5.474C Stations operating in the Earth exploration-satellite (active) service shall comply with Recommendation ITU-R RS.2065-0.

(iv) 5.474D Stations in the Earth exploration-satellite service (active) shall not cause harmful interference to, or claim protection from, stations of the maritime radionavigation and radiolocation services in the frequency band 9200-9300 MHz, the radionavigation and radiolocation services in the frequency band 9900-10 000 MHz and the radiolocation service in the frequency band 10.0-10.4 GHz.

(475) 5.475 The use of the band 9300-9500 MHz by the aeronautical radionavigation service is limited to airborne weather radars and ground-based radars. In addition, ground-based radar beacons in the aeronautical radionavigation service are permitted in the band 9300-9320 MHz on condition that harmful interference is not caused to the maritime radionavigation service.

(i) 5.475A The use of the band 9300-9500 MHz by the Earth exploration-satellite service (active) and the space research service (active) is limited to systems requiring necessary bandwidth greater than 300 MHz that cannot be fully accommodated within the 9500-9800 MHz band.

(ii) 5.475B In the band 9300-9500 MHz, stations operating in the radiolocation service shall not cause harmful interference to, nor claim protection from, radars operating in the radionavigation service in conformity with the Radio Regulations. Ground-based radars used for meteorological purposes have priority over other radiolocation uses.

(476) 5.476A In the band 9300-9800 MHz, stations in the Earth exploration-satellite service (active) and space research service (active) shall not cause harmful interference to, nor claim protection from, stations of the radionavigation and radiolocation services.

(477) 5.477 *Different category of service:* in Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, Djibouti, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Liberia, Malaysia, Nigeria, Oman, Uganda, Pakistan, Qatar, Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, South Sudan, Trinidad and Tobago, and Yemen, the allocation of the frequency band 9800-10 000 MHz to the fixed service is on a primary basis (see No. 5.33).

(478) 5.478 *Additional allocation:* in Azerbaijan, Mongolia, Kyrgyzstan, Romania, Turkmenistan and Ukraine, the band 9800-10 000 MHz is also allocated to the radionavigation service on a primary basis.

(i) 5.478A The use of the band 9800-9900 MHz by the Earth exploration-satellite service (active) and the space research service (active) is limited to systems requiring necessary bandwidth greater than 500 MHz that cannot be fully accommodated within the 9300-9800 MHz band.

(ii) 5.478B In the band 9800-9900 MHz, stations in the Earth exploration-satellite service (active) and space research service (active) shall not cause harmful interference to, nor claim protection

from stations of the fixed service to which this band is allocated on a secondary basis.

(479) 5.479 The band 9975-10 025 MHz is also allocated to the meteorological-satellite service on a secondary basis for use by weather radars.

(480) 5.480 *Additional allocation:* in Argentina, Brazil, Chile, Cuba, El Salvador, Ecuador, Guatemala, Honduras, Paraguay, the Netherlands Antilles, Peru and Uruguay, the frequency band 10-10.45 GHz is also allocated to the fixed and mobile services on a primary basis. In Colombia, Costa Rica, Mexico and Venezuela, the frequency band 10-10.45 GHz is also allocated to the fixed service on a primary basis.

(481) 5.481 *Additional allocation:* in Algeria, Germany, Angola, Brazil, China, Côte d'Ivoire, El Salvador, Ecuador, Spain, Guatemala, Hungary, Japan, Kenya, Morocco, Nigeria, Oman, Uzbekistan, Pakistan, Paraguay, Peru, the Dem. People's Rep. of Korea, Romania and Uruguay, the frequency band 10.45-10.5 GHz is also allocated to the fixed and mobile services on a primary basis. In Costa Rica, the frequency band 10.45-10.5 GHz is also allocated to the fixed service on a primary basis.

(482) 5.482 In the band 10.6-10.68 GHz, the power delivered to the antenna of stations of the fixed and mobile, except aeronautical mobile, services shall not exceed -3 dBW. This limit may be exceeded, subject to agreement obtained under No. 9.21. However, in Algeria, Saudi Arabia, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Egypt, United Arab Emirates, Georgia, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Moldova, Nigeria, Oman, Uzbekistan, Pakistan, Philippines, Qatar, Syrian Arab Republic, Kyrgyzstan, Singapore, Tajikistan, Tunisia, Turkmenistan and Viet Nam, this restriction on the fixed and mobile, except aeronautical mobile, services is not applicable.

(i) 5.482A For sharing of the band 10.6-10.68 GHz between the Earth exploration-satellite (passive) service and the fixed and mobile, except aeronautical mobile, services, Resolution 751 (WRC-07) applies.

(ii) [Reserved]

(483) 5.483 *Additional allocation:* in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, China, Colombia, Korea (Rep. of), Costa Rica, Egypt, the United Arab Emirates, Georgia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Lebanon, Mongolia, Qatar, Kyrgyzstan, the Dem. People's Rep. of Korea, Tajikistan, Turkmenistan and Yemen, the band 10.68-10.7 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

(484) 5.484 In Region 1, the use of the band 10.7-11.7 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service.

(i) 5.484A The use of the bands 10.95-11.2 GHz (space-to-Earth), 11.45-11.7 GHz (space-to-Earth), 11.7-12.2 GHz (space-to-Earth) in Region 2, 12.2-12.75 GHz (space-to-Earth) in Region 3, 12.5-12.75 GHz (space-to-Earth) in Region 1, 13.75-14.5 GHz (Earth-to-space), 17.8-18.6 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 27.5-28.6 GHz (Earth-to-space), 29.5-30 GHz (Earth-to-space) by a non-geostationary-satellite system in the fixed-satellite service is subject to application of the provisions of No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service shall not claim protection from geostationary-satellite networks in the fixed-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the Bureau of the complete coordination or notification information, as appropriate, for the non-geostationary-satellite systems in the fixed-satellite service and of the complete coordination or notification information, as appropriate, for the geostationary-satellite networks, and No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the above bands shall be operated in such a way that any unacceptable interference that

may occur during their operation shall be rapidly eliminated.

(ii) 5.484B Resolution 155 (WRC-15) shall apply.

(485) 5.485 In Region 2, in the band 11.7-12.2 GHz, transponders on space stations in the fixed-satellite service may be used additionally for transmissions in the broadcasting-satellite service, provided that such transmissions do not have a maximum e.i.r.p. greater than 53 dBW per television channel and do not cause greater interference or require more protection from interference than the coordinated fixed-satellite service frequency assignments. With respect to the space services, this band shall be used principally for the fixed-satellite service.

(486) 5.486 *Different category of service:* in the United States, the allocation of the frequency band 11.7-12.1 GHz to the fixed service is on a secondary basis (see No. 5.32).

(487) 5.487 In the band 11.7-12.5 GHz in Regions 1 and 3, the fixed, fixed-satellite, mobile, except aeronautical mobile, and broadcasting services, in accordance with their respective allocations, shall not cause harmful interference to, or claim protection from, broadcasting-satellite stations operating in accordance with the Regions 1 and 3 Plan in Appendix 30.

(i) 5.487A *Additional allocation:* in Region 1, the band 11.7-12.5 GHz, in Region 2, the band 12.2-12.7 GHz and, in Region 3, the band 11.7-12.2 GHz, are also allocated to the fixed-satellite service (space-to-Earth) on a primary basis, limited to non-geostationary systems and subject to application of the provisions of No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service shall not claim protection from geostationary-satellite networks in the broadcasting-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the Bureau of the complete coordination or notification information, as appropriate, for the non-geostationary-satellite systems in the fixed-satellite service and of the complete coordination or notification information, as appropriate, for the geostationary-satellite networks, and No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the above bands shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

(ii) [Reserved]

(488) 5.488 The use of the band 11.7-12.2 GHz by geostationary-satellite networks in the fixed-satellite service in Region 2 is subject to application of the provisions of No. 9.14 for coordination with stations of terrestrial services in Regions 1, 2 and 3. For the use of the band 12.2-12.7 GHz by the broadcasting-satellite service in Region 2, see Appendix 30.

(489) 5.489 *Additional allocation:* in Peru, the band 12.1-12.2 GHz is also allocated to the fixed service on a primary basis.

(490) 5.490 In Region 2, in the band 12.2-12.7 GHz, existing and future terrestrial radiocommunication services shall not cause harmful interference to the space services operating in conformity with the broadcasting-satellite Plan for Region 2 contained in Appendix 30.

(491) [Reserved]

(492) 5.492 Assignments to stations of the broadcasting-satellite service which are in conformity with the appropriate regional Plan or included in the Regions 1 and 3 List in Appendix 30 may also be used for transmissions in the fixed-satellite service (space-to-Earth), provided that such transmissions do not cause more interference, or require more protection from interference, than the broadcasting-satellite service transmissions operating in conformity with the Plan or the List, as appropriate.

(493) 5.493 The broadcasting-satellite service in the band 12.5-12.75 GHz in Region 3 is limited to a power flux-density not exceeding $-111 \text{ dB(W/(m}^2 \cdot 27 \text{ MHz))}$ for all conditions and for all methods of modulation at the edge of the service area.

(494) 5.494 *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Cameroon, the Central African Rep., Congo (Rep. of the), Côte d'Ivoire, Djibouti, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Madagascar, Mali, Morocco, Mongolia, Nigeria, Oman, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, Somalia, Sudan, South Sudan, Chad, Togo and Yemen, the frequency band 12.5-12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

(495) 5.495 *Additional allocation:* in France, Greece, Monaco, Montenegro, Uganda, Romania and Tunisia, the frequency band 12.5-12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

(496) 5.496 *Additional allocation:* in Austria, Azerbaijan, Kyrgyzstan and Turkmenistan, the band 12.5-12.75 GHz is also allocated to the fixed service and the mobile, except aeronautical mobile, service on a primary basis. However, stations in these services shall not cause harmful interference to fixed-satellite service earth stations of countries in Region 1 other than those listed in this footnote. Coordination of these earth stations is not required with stations of the fixed and mobile services of the countries listed in this footnote. The power flux-density limit at the Earth's surface given in Table 21-4 of Article 21, for the fixed-satellite service shall apply on the territory of the countries listed in this footnote.

(497) 5.497 The use of the band 13.25-13.4 GHz by the aeronautical radionavigation service is limited to Doppler navigation aids.

(498) 5.498A The Earth exploration-satellite (active) and space research (active) services operating in the band 13.25-13.4 GHz shall not cause harmful interference to, or constrain the use and development of, the aeronautical radionavigation service.

(499) 5.499 *Additional allocation:* in Bangladesh and India, the band 13.25-14 GHz is also allocated to the fixed service on a primary basis. In Pakistan, the band 13.25-13.75 GHz is allocated to the fixed service on a primary basis.

(i) 5.499A The use of the frequency band 13.4-13.65 GHz by the fixed-satellite service (space-to-Earth) is limited to geostationary-satellite systems and is subject to agreement obtained under No. 9.21 with respect to satellite systems operating in the space research service (space-to-space) to relay data from space stations in the geostationary-satellite orbit to associated space stations in non-geostationary satellite orbits for which advance publication information has been received by the Bureau by 27 November 2015.

(ii) 5.499B Administrations shall not preclude the deployment and operation of transmitting earth stations in the standard frequency and time signal-satellite service (Earth-to-space) allocated on a secondary basis in the frequency band 13.4-13.65 GHz due to the primary allocation to FSS (space-to-Earth).

(iii) 5.499C The allocation of the frequency band 13.4-13.65 GHz to the space research service on a primary basis is limited to: satellite systems operating in the space research service (space-to-space) to relay data from space stations in the geostationary-satellite orbit to associated space stations in non-geostationary satellite orbits for which advance publication information has been received by the Bureau by 27 November 2015; active spaceborne sensors; and satellite systems operating in the space research service (space-to-Earth) to relay data from space stations in the geostationary-satellite orbit to associated earth stations. Other uses of the frequency band by the space research service are on a secondary basis.

(iv) 5.499D In the frequency band 13.4-13.65 GHz, satellite systems in the space research service (space-to-Earth) and/or the space research service (space-to-space) shall not cause harmful interference to, nor claim protection from, stations in the fixed, mobile, radiolocation and Earth exploration-satellite (active) services.

(v) 5.499E In the frequency band 13.4-13.65 GHz, geostationary-satellite networks in the fixed-

satellite service (space-to-Earth) shall not claim protection from space stations in the Earth exploration-satellite service (active) operating in accordance with these Regulations, and No. 5.43A does not apply. The provisions of No. 22.2 do not apply to the Earth exploration-satellite service (active) with respect to the fixed-satellite service (space-to-Earth) in this frequency band.

(500) 5.500 *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Brunei Darussalam, Cameroon, Egypt, the United Arab Emirates, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Madagascar, Malaysia, Mali, Morocco, Mauritania, Niger, Nigeria, Oman, Qatar, the Syrian Arab Republic, Singapore, Sudan, South Sudan, Chad and Tunisia, the frequency band 13.4-14 GHz is also allocated to the fixed and mobile services on a primary basis. In Pakistan, the frequency band 13.4-13.75 GHz is also allocated to the fixed and mobile services on a primary basis.

(501) 5.501 *Additional allocation:* in Azerbaijan, Hungary, Japan, Kyrgyzstan, Romania and Turkmenistan, the band 13.4-14 GHz is also allocated to the radionavigation service on a primary basis.

(i) 5.501A The allocation of the frequency band 13.65-13.75 GHz to the space research service on a primary basis is limited to active spaceborne sensors. Other uses of the frequency band by the space research service are on a secondary basis.

(ii) 5.501B In the band 13.4-13.75 GHz, the Earth exploration-satellite (active) and space research (active) services shall not cause harmful interference to, or constrain the use and development of, the radiolocation service.

(502) 5.502 In the band 13.75-14 GHz, an earth station of a geostationary fixed-satellite service network shall have a minimum antenna diameter of 1.2 m and an earth station of a non-geostationary fixed-satellite service system shall have a minimum antenna diameter of 4.5 m. In addition, the e.i.r.p., averaged over one second, radiated by a station in the radiolocation or radionavigation services shall not exceed 59 dBW for elevation angles above 2° and 65 dBW at lower angles. Before an administration brings into use an earth station in a geostationary-satellite network in the fixed-satellite service in this band with an antenna diameter smaller than 4.5 m, it shall ensure that the power flux-density produced by this earth station does not exceed: $-115 \text{ dB(W/(m}^2 \cdot 10 \text{ MHz))}$ for more than 1% of the time produced at 36 m above sea level at the low water mark, as officially recognized by the coastal State; and $-115 \text{ dB(W/(m}^2 \cdot 10 \text{ MHz))}$ for more than 1% of the time produced 3 m above ground at the border of the territory of an administration deploying or planning to deploy land mobile radars in this band, unless prior agreement has been obtained. For earth stations within the fixed-satellite service having an antenna diameter greater than or equal to 4.5 m, the e.i.r.p. of any emission should be at least 68 dBW and should not exceed 85 dBW.

(503) 5.503 In the band 13.75-14 GHz, geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 shall operate on an equal basis with stations in the fixed-satellite service; after that date, new geostationary space stations in the space research service will operate on a secondary basis. Until those geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 cease to operate in this band:

(i) in the band 13.77-13.78 GHz, the e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in geostationary-satellite orbit shall not exceed:

(A) $4.7D + 28 \text{ dB (W/40 kHz)}$, where D is the fixed-satellite service earth station antenna diameter (m) for antenna diameters equal to or greater than 1.2 m and less than 4.5 m;

(B) $49.2 + 20 \log (D/4.5) \text{ dB(W/40 kHz)}$, where D is the fixed-satellite service earth station antenna diameter (m) for antenna diameters equal to or greater than 4.5 m and less than 31.9 m;

(C) $66.2 \text{ dB(W/40 kHz)}$ for any fixed-satellite service earth station for antenna diameters (m) equal to or greater than 31.9 m;

(D) 56.2 dB(W/4 kHz) for narrow-band (less than 40 kHz of necessary bandwidth) fixed-satellite service earth station emissions from any fixed-satellite service earth station having an antenna diameter of 4.5 m or greater;

(ii) The e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in non-geostationary-satellite orbit shall not exceed 51 dBW in the 6 MHz band from 13.772 to 13.778 GHz.

(iii) Automatic power control may be used to increase the e.i.r.p. density in these frequency ranges to compensate for rain attenuation, to the extent that the power flux-density at the fixed-satellite service space station does not exceed the value resulting from use by an earth station of an e.i.r.p. meeting the above limits in clear-sky conditions.

(504) 5.504 The use of the band 14-14.3 GHz by the radionavigation service shall be such as to provide sufficient protection to space stations of the fixed-satellite service.

(i) 5.504A In the band 14-14.5 GHz, aircraft earth stations in the secondary aeronautical mobile-satellite service may also communicate with space stations in the fixed-satellite service. The provisions of Nos. 5.29, 5.30 and 5.31 apply.

(ii) 5.504B Aircraft earth stations operating in the aeronautical mobile-satellite service in the frequency band 14-14.5 GHz shall comply with the provisions of Annex 1, Part C of Recommendation ITU-R M.1643-0, with respect to any radio astronomy station performing observations in the 14.47-14.5 GHz frequency band located on the territory of Spain, France, India, Italy, the United Kingdom and South Africa.

(iii) 5.504C In the frequency band 14-14.25 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Bahrain, Botswana, Côte d'Ivoire, Egypt, Guinea, India, Iran (Islamic Republic of), Kuwait, Nigeria, Oman, the Syrian Arab Republic and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU-R M.1643-0, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

(505) 5.505 *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Botswana, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Djibouti, Egypt, the United Arab Emirates, Gabon, Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Oman, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, South Sudan, Swaziland, Chad, Viet Nam and Yemen, the frequency band 14-14.3 GHz is also allocated to the fixed service on a primary basis.

(506) 5.506 The band 14-14.5 GHz may be used, within the fixed-satellite service (Earth-to-space), for feeder links for the broadcasting-satellite service, subject to coordination with other networks in the fixed-satellite service. Such use of feeder links is reserved for countries outside Europe.

(i) 5.506A In the band 14-14.5 GHz, ship earth stations with an e.i.r.p. greater than 21 dBW shall operate under the same conditions as earth stations located on board vessels, as provided in Resolution 902 (WRC-03). This footnote shall not apply to ship earth stations for which the complete Appendix 4 information has been received by the Bureau prior to 5 July 2003.

(ii) 5.506B Earth stations located on board vessels communicating with space stations in the fixed-satellite service may operate in the frequency band 14-14.5 GHz without the need for prior agreement from Cyprus and Malta, within the minimum distance given in Resolution 902 (WRC-03) from these countries.

(507) [Reserved]

(508) 5.508 *Additional allocation:* in Germany, France, Italy, Libya, The Former Yugoslav Rep. of Macedonia and the United Kingdom, the band 14.25-14.3 GHz is also allocated to the fixed service on a primary basis.

(i) 5.508A In the frequency band 14.25-14.3 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Bahrain, Botswana, China, Côte d'Ivoire, Egypt, France, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait, Nigeria, Oman, the Syrian Arab Republic, the United Kingdom and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU-R M.1643-0, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

(ii) [Reserved]

(509) 5.509A In the frequency band 14.3-14.5 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Bahrain, Botswana, Cameroon, China, Côte d'Ivoire, Egypt, France, Gabon, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait, Morocco, Nigeria, Oman, the Syrian Arab Republic, the United Kingdom, Sri Lanka, Tunisia and Viet Nam by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU-R M.1643-0, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

(i) 5.509B The use of the frequency bands 14.5-14.75 GHz in countries listed in Resolution 163 (WRC-15) and 14.5-14.8 GHz in countries listed in Resolution 164 (WRC-15) by the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service is limited to geostationary-satellites.

(ii) 5.509C For the use of the frequency bands 14.5-14.75 GHz in countries listed in Resolution 163 (WRC-15) and 14.5-14.8 GHz in countries listed in Resolution 164 (WRC-15) by the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service, the fixed-satellite service earth stations shall have a minimum antenna diameter of 6 m and a maximum power spectral density of -44.5 dBW/Hz at the input of the antenna. The earth stations shall be notified at known locations on land.

(iii) 5.509D Before an administration brings into use an earth station in the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service in the frequency bands 14.5-14.75 GHz (in countries listed in Resolution 163 (WRC-15)) and 14.5-14.8 GHz (in countries listed in Resolution 164 (WRC-15)), it shall ensure that the power flux-density produced by this earth station does not exceed -151.5 dB(W/(m² · 4 kHz)) produced at all altitudes from 0 m to 19000 m above sea level at 22 km seaward from all coasts, defined as the low-water mark, as officially recognized by each coastal State.

(iv) 5.509E In the frequency bands 14.50-14.75 GHz in countries listed in Resolution 163 (WRC-15) and 14.50-14.8 GHz in countries listed in Resolution 164 (WRC-15), the location of earth stations in the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service shall maintain a separation distance of at least 500 km from the border(s) of other countries unless shorter distances are explicitly agreed by those administrations. No. 9.17 does not apply. When applying this provision, administrations should consider the relevant parts of these Regulations and the latest relevant ITU-R Recommendations.

(v) 5.509F In the frequency bands 14.50-14.75 GHz in countries listed in Resolution 163 (WRC-15) and 14.50-14.8 GHz in countries listed in Resolution 164 (WRC-15), earth stations in the fixed-satellite service (Earth-to-space) not for feeder links for the broadcasting-satellite service shall not

constrain the future deployment of the fixed and mobile services.

(vi) 5.509G The frequency band 14.5-14.8 GHz is also allocated to the space research service on a primary basis. However, such use is limited to the satellite systems operating in the space research service (Earth-to-space) to relay data to space stations in the geostationary-satellite orbit from associated earth stations. Stations in the space research service shall not cause harmful interference to, or claim protection from, stations in the fixed and mobile services and in the fixed-satellite service limited to feeder links for the broadcasting-satellite service and associated space operations functions using the guardbands under Appendix 30A and feeder links for the broadcasting-satellite service in Region 2. Other uses of this frequency band by the space research service are on a secondary basis.

(510) 5.510 Except for use in accordance with Resolution 163 (WRC-15) and Resolution 164 (WRC-15), the use of the frequency band 14.5-14.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service. This use is reserved for countries outside Europe. Uses other than feeder links for the broadcasting-satellite service are not authorized in Regions 1 and 2 in the frequency band 14.75-14.8 GHz.

(511) 5.511 *Additional allocation:* in Saudi Arabia, Bahrain, Cameroon, Egypt, the United Arab Emirates, Guinea, Iran (Islamic Republic of), Iraq, Israel, Kuwait, Lebanon, Oman, Pakistan, Qatar, the Syrian Arab Republic and Somalia, the band 15.35-15.4 GHz is also allocated to the fixed and mobile services on a secondary basis.

(i) 5.511A Use of the frequency band 15.43-15.63 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links of non-geostationary systems in the mobile-satellite service, subject to coordination under No. 9.11A.

(ii) 5.511C Stations operating in the aeronautical radionavigation service shall limit the effective e.i.r.p. in accordance with Recommendation ITU-R S.1340-0. The minimum coordination distance required to protect the aeronautical radionavigation stations (No. 4.10 applies) from harmful interference from feeder-link earth stations and the maximum e.i.r.p. transmitted towards the local horizontal plane by a feeder-link earth station shall be in accordance with Recommendation ITU-R S.1340-0.

(iii) 5.511E In the frequency band 15.4-15.7 GHz, stations operating in the radiolocation service shall not cause harmful interference to, or claim protection from, stations operating in the aeronautical radionavigation service.

(iv) 5.511F In order to protect the radio astronomy service in the frequency band 15.35-15.4 GHz, radiolocation stations operating in the frequency band 15.4-15.7 GHz shall not exceed the power flux-density level of $-156 \text{ dB(W/m}^2\text{)}$ in a 50 MHz bandwidth in the frequency band 15.35-15.4 GHz, at any radio astronomy observatory site for more than 2 per cent of the time.

(512) 5.512 *Additional allocation:* in Algeria, Saudi Arabia, Austria, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, Congo (Rep. of the), Egypt, El Salvador, the United Arab Emirates, Eritrea, Finland, Guatemala, India, Indonesia, Iran (Islamic Republic of), Jordan, Kenya, Kuwait, Lebanon, Libya, Malaysia, Mali, Morocco, Mauritania, Montenegro, Nepal, Nicaragua, Niger, Oman, Pakistan, Qatar, Syrian Arab Republic, the Dem. Rep. of the Congo, Singapore, Somalia, Sudan, South Sudan, Chad, Togo and Yemen, the frequency band 15.7-17.3 GHz is also allocated to the fixed and mobile services on a primary basis.

(513) 5.513 *Additional allocation:* in Israel, the band 15.7-17.3 GHz is also allocated to the fixed and mobile services on a primary basis. These services shall not claim protection from or cause harmful interference to services operating in accordance with the Table in countries other than those included in No. 5.512.

(i) 5.513A Spaceborne active sensors operating in the band 17.2-17.3 GHz shall not cause harmful interference to, or constrain the development of, the radiolocation and other services allocated on

a primary basis.

(ii) [Reserved]

(514) 5.514 *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Bangladesh, Cameroon, El Salvador, the United Arab Emirates, Guatemala, India, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Jordan, Kuwait, Libya, Lithuania, Nepal, Nicaragua, Nigeria, Oman, Uzbekistan, Pakistan, Qatar, Kyrgyzstan, Sudan and South Sudan, the frequency band 17.3-17.7 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits given in Nos. 21.3 and 21.5 shall apply.

(515) 5.515 In the band 17.3-17.8 GHz, sharing between the fixed-satellite service (Earth-to-space) and the broadcasting-satellite service shall also be in accordance with the provisions of section 1 of Annex 4 of Appendix 30A.

(516) 5.516 The use of the band 17.3-18.1 GHz by geostationary-satellite systems in the fixed-satellite service (Earth-to-space) is limited to feeder links for the broadcasting-satellite service. The use of the band 17.3-17.8 GHz in Region 2 by systems in the fixed-satellite service (Earth-to-space) is limited to geostationary satellites. For the use of the band 17.3-17.8 GHz in Region 2 by feeder links for the broadcasting-satellite service in the band 12.2-12.7 GHz, see Article 11. The use of the bands 17.3-18.1 GHz (Earth-to-space) in Regions 1 and 3 and 17.8-18.1 GHz (Earth-to-space) in Region 2 by non-geostationary-satellite systems in the fixed-satellite service is subject to application of the provisions of No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service shall not claim protection from geostationary-satellite networks in the fixed-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the Bureau of the complete coordination or notification information, as appropriate, for the non-geostationary-satellite systems in the fixed-satellite service and of the complete coordination or notification information, as appropriate, for the geostationary-satellite networks, and No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the above bands shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

(i) 5.516A In the band 17.3-17.7 GHz, earth stations of the fixed-satellite service (space-to-Earth) in Region 1 shall not claim protection from the broadcasting-satellite service feeder-link earth stations operating under Appendix 30A, nor put any limitations or restrictions on the locations of the broadcasting-satellite service feeder-link earth stations anywhere within the service area of the feeder link.

(ii) 5.516B The following bands are identified for use by high-density applications in the fixed-satellite service: 17.3-17.7 GHz (space-to-Earth) in Region 1, 18.3-19.3 GHz (space-to-Earth) in Region 2, 19.7-20.2 GHz (space-to-Earth) in all Regions, 39.5-40 GHz (space-to-Earth) in Region 1, 40-40.5 GHz (space-to-Earth) in all Regions, 40.5-42 GHz (space-to-Earth) in Region 2, 47.5-47.9 GHz (space-to-Earth) in Region 1, 48.2-48.54 GHz (space-to-Earth) in Region 1, 49.44-50.2 GHz (space-to-Earth) in Region 1, and 27.5-27.82 GHz (Earth-to-space) in Region 1, 28.35-28.45 GHz (Earth-to-space) in Region 2, 28.45-28.94 GHz (Earth-to-space) in all Regions, 28.94-29.1 GHz (Earth-to-space) in Region 2 and 3, 29.25-29.46 GHz (Earth-to-space) in Region 2, 29.46-30 GHz (Earth-to-space) in all Regions, 48.2-50.2 GHz (Earth-to-space) in Region 2. This identification does not preclude the use of these bands by other fixed-satellite service applications or by other services to which these bands are allocated on a co-primary basis and does not establish priority in these Radio Regulations among users of the bands. Administrations should take this into account when considering regulatory provisions in relation to these bands. *See Resolution 143 (Rev.WRC-07).*

(517) 5.517 In Region 2, use of the fixed-satellite (space-to-Earth) service in the band 17.7-17.8 GHz shall not cause harmful interference to nor claim protection from assignments in the broadcasting-satellite service operating in conformity with the Radio Regulations.

(518) [Reserved]

(519) 5.519 *Additional allocation:* the bands 18-18.3 GHz in Region 2 and 18.1-18.4 GHz in Regions 1 and 3 are also allocated to the meteorological-satellite service (space-to-Earth) on a primary basis. Their use is limited to geostationary satellites.

(520) 5.520 The use of the band 18.1-18.4 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links of geostationary-satellite systems in the broadcasting-satellite service.

(521) 5.521 *Alternative allocation:* in the United Arab Emirates and Greece, the frequency band 18.1-18.4 GHz is allocated to the fixed, fixed-satellite (space-to-Earth) and mobile services on a primary basis (see No. 5.33). The provisions of No. 5.519 also apply.

(522) 5.522A The emissions of the fixed service and the fixed-satellite service in the band 18.6-18.8 GHz are limited to the values given in Nos. 21.5A and 21.16.2, respectively.

(i) 5.522B The use of the band 18.6-18.8 GHz by the fixed-satellite service is limited to geostationary systems and systems with an orbit of apogee greater than 20 000 km.

(ii) 5.522C In the band 18.6-18.8 GHz, in Algeria, Saudi Arabia, Bahrain, Egypt, the United Arab Emirates, Jordan, Lebanon, Libya, Morocco, Oman, Qatar, the Syrian Arab Republic, Tunisia and Yemen, fixed-service systems in operation at the date of entry into force of the Final Acts of WRC-2000 are not subject to the limits of No. 21.5A.

(523) 5.523A The use of the bands 18.8-19.3 GHz (space-to-Earth) and 28.6-29.1 GHz (Earth-to-space) by geostationary and non-geostationary fixed-satellite service networks is subject to the application of the provisions of No. 9.11A and No. 22.2 does not apply. Administrations having geostationary-satellite networks under coordination prior to 18 November 1995 shall cooperate to the maximum extent possible to coordinate pursuant to No. 9.11A with non-geostationary-satellite networks for which notification information has been received by the Bureau prior to that date, with a view to reaching results acceptable to all the parties concerned. Non-geostationary-satellite networks shall not cause unacceptable interference to geostationary fixed-satellite service networks for which complete Appendix 4 notification information is considered as having been received by the Bureau prior to 18 November 1995.

(i) 5.523B The use of the band 19.3-19.6 GHz (Earth-to-space) by the fixed-satellite service is limited to feeder links for non-geostationary-satellite systems in the mobile-satellite service. Such use is subject to the application of the provisions of No. 9.11A, and No. 22.2 does not apply.

(ii) 5.523C No. 22.2 shall continue to apply in the bands 19.3-19.6 GHz and 29.1-29.4 GHz, between feeder links of non-geostationary mobile-satellite service networks and those fixed-satellite service networks for which complete Appendix 4 coordination information, or notification information, is considered as having been received by the Bureau prior to 18 November 1995.

(iii) 5.523D The use of the band 19.3-19.7 GHz (space-to-Earth) by geostationary fixed-satellite service systems and by feeder links for non-geostationary-satellite systems in the mobile-satellite service is subject to the application of the provisions of No. 9.11A, but not subject to the provisions of No. 22.2. The use of this band for other non-geostationary fixed-satellite service systems, or for the cases indicated in Nos. 5.523C and 5.523E, is not subject to the provisions of No. 9.11A and shall continue to be subject to Articles 9 (except No. 9.11A) and 11 procedures, and to the provisions of No. 22.2.

(iv) 5.523E No. 22.2 shall continue to apply in the bands 19.6-19.7 GHz and 29.4-29.5 GHz, between feeder links of non-geostationary mobile-satellite service networks and those fixed-satellite service networks for which complete Appendix 4 coordination information, or notification information, is considered as having been received by the Bureau by 21 November 1997.

(524) 5.524 *Additional allocation:* in Afghanistan, Algeria, Saudi Arabia, Bahrain, Brunei

Darussalam, Cameroon, China, Congo (Rep. of the), Costa Rica, Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, South Sudan, Chad, Togo and Tunisia, the frequency band 19.7-21.2 GHz is also allocated to the fixed and mobile services on a primary basis. This additional use shall not impose any limitation on the power flux-density of space stations in the fixed-satellite service in the frequency band 19.7-21.2 GHz and of space stations in the mobile-satellite service in the frequency band 19.7-20.2 GHz where the allocation to the mobile-satellite service is on a primary basis in the latter frequency band.

(525) 5.525 In order to facilitate interregional coordination between networks in the mobile-satellite and fixed-satellite services, carriers in the mobile-satellite service that are most susceptible to interference shall, to the extent practicable, be located in the higher parts of the bands 19.7-20.2 GHz and 29.5-30 GHz.

(526) 5.526 In the bands 19.7-20.2 GHz and 29.5-30 GHz in Region 2, and in the bands 20.1-20.2 GHz and 29.9-30 GHz in Regions 1 and 3, networks which are both in the fixed-satellite service and in the mobile-satellite service may include links between earth stations at specified or unspecified points or while in motion, through one or more satellites for point-to-point and point-to-multipoint communications.

(527) 5.527 In the bands 19.7-20.2 GHz and 29.5-30 GHz, the provisions of No. 4.10 do not apply with respect to the mobile-satellite service.

(i) 5.527A The operation of earth stations in motion communicating with the FSS is subject to Resolution 156 (WRC-15).

(ii) [Reserved]

(528) 5.528 The allocation to the mobile-satellite service is intended for use by networks which use narrow spot-beam antennas and other advanced technology at the space stations. Administrations operating systems in the mobile-satellite service in the band 19.7-20.1 GHz in Region 2 and in the band 20.1-20.2 GHz shall take all practicable steps to ensure the continued availability of these bands for administrations operating fixed and mobile systems in accordance with the provisions of No. 5.524.

(529) 5.529 The use of the bands 19.7-20.1 GHz and 29.5-29.9 GHz by the mobile-satellite service in Region 2 is limited to satellite networks which are both in the fixed-satellite service and in the mobile-satellite service as described in No. 5.526.

(530) 5.530A Unless otherwise agreed between the administrations concerned, any station in the fixed or mobile services of an administration shall not produce a power flux-density in excess of $-120.4 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ at 3 m above the ground of any point of the territory of any other administration in Regions 1 and 3 for more than 20% of the time. In conducting the calculations, administrations should use the most recent version of Recommendation ITU-R P.452 (see also the most recent version of Recommendation ITU-R BO.1898).

(i) 5.530B In the band 21.4-22 GHz, in order to facilitate the development of the broadcasting-satellite service, administrations in Regions 1 and 3 are encouraged not to deploy stations in the mobile service and are encouraged to limit the deployment of stations in the fixed service to point-to-point links.

(ii) 5.530D See Resolution 555 (Rev.WRC-15).

(531) 5.531 *Additional allocation:* in Japan, the band 21.4-22 GHz is also allocated to the broadcasting service on a primary basis.

(532) 5.532 The use of the band 22.21-22.5 GHz by the Earth exploration-satellite (passive) and

space research (passive) services shall not impose constraints upon the fixed and mobile, except aeronautical mobile, services.

(i) 5.532A The location of earth stations in the space research service shall maintain a separation distance of at least 54 km from the respective border(s) of neighbouring countries to protect the existing and future deployment of fixed and mobile services unless a shorter distance is otherwise agreed between the corresponding administrations. Nos. 9.17 and 9.18 do not apply.

(ii) 5.532B Use of the band 24.65-25.25 GHz in Region 1 and the band 24.65-24.75 GHz in Region 3 by the fixed-satellite service (Earth-to-space) is limited to earth stations using a minimum antenna diameter of 4.5 m.

(533) 5.533 The inter-satellite service shall not claim protection from harmful interference from airport surface detection equipment stations of the radionavigation service.

(534) [Reserved]

(535) 5.535 In the band 24.75-25.25 GHz, feeder links to stations of the broadcasting-satellite service shall have priority over other uses in the fixed-satellite service (Earth-to-space). Such other uses shall protect and shall not claim protection from existing and future operating feeder-link networks to such broadcasting satellite stations.

(i) 5.535A The use of the band 29.1-29.5 GHz (Earth-to-space) by the fixed-satellite service is limited to geostationary-satellite systems and feeder links to non-geostationary-satellite systems in the mobile-satellite service. Such use is subject to the application of the provisions of No. 9.11A, but not subject to the provisions of No. 22.2, except as indicated in Nos. 5.523C and 5.523E where such use is not subject to the provisions of No. 9.11A and shall continue to be subject to Articles 9 (except No. 9.11A) and 11 procedures, and to the provisions of No. 22.2.

(ii) [Reserved]

(536) 5.536 Use of the 25.25-27.5 GHz band by the inter-satellite service is limited to space research and Earth exploration-satellite applications, and also transmissions of data originating from industrial and medical activities in space.

(i) 5.536A Administrations operating earth stations in the Earth exploration-satellite service or the space research service shall not claim protection from stations in the fixed and mobile services operated by other administrations. In addition, earth stations in the Earth exploration-satellite service or in the space research service should be operated taking into account the most recent version of Recommendation ITU-R SA.1862.

(ii) 5.536B In Saudi Arabia, Austria, Bahrain, Belgium, Brazil, China, Korea (Rep. of), Denmark, Egypt, United Arab Emirates, Estonia, Finland, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Jordan, Kenya, Kuwait, Lebanon, Libya, Lithuania, Moldova, Norway, Oman, Uganda, Pakistan, the Philippines, Poland, Portugal, the Syrian Arab Republic, Dem. People's Rep. of Korea, Slovakia, the Czech Rep., Romania, the United Kingdom, Singapore, Sweden, Tanzania, Turkey, Viet Nam and Zimbabwe, earth stations operating in the Earth exploration-satellite service in the frequency band 25.5-27 GHz shall not claim protection from, or constrain the use and deployment of, stations of the fixed and mobile services.

(iii) 5.536C In Algeria, Saudi Arabia, Bahrain, Botswana, Brazil, Cameroon, Comoros, Cuba, Djibouti, Egypt, United Arab Emirates, Estonia, Finland, Iran (Islamic Republic of), Israel, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Morocco, Nigeria, Oman, Qatar, Syrian Arab Republic, Somalia, Sudan, South Sudan, Tanzania, Tunisia, Uruguay, Zambia and Zimbabwe, earth stations operating in the space research service in the band 25.5-27 GHz shall not claim protection from, or constrain the use and deployment of, stations of the fixed and mobile services.

(537) 5.537 Space services using non-geostationary satellites operating in the inter-satellite service in the band 27-27.5 GHz are exempt from the provisions of No. 22.2.

(i) 5.537A In Bhutan, Cameroon, Korea (Rep. of), the Russian Federation, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kazakhstan, Malaysia, Maldives, Mongolia, Myanmar, Uzbekistan, Pakistan, the Philippines, Kyrgyzstan, the Dem. People's Rep. of Korea, Sudan, Sri Lanka, Thailand and Viet Nam, the allocation to the fixed service in the band 27.9-28.2 GHz may also be used by high altitude platform stations (HAPS) within the territory of these countries. Such use of 300 MHz of the fixed-service allocation by HAPS in the above countries is further limited to operation in the HAPS-to-ground direction and shall not cause harmful interference to, nor claim protection from, other types of fixed-service systems or other co-primary services. Furthermore, the development of these other services shall not be constrained by HAPS. *See* Resolution 145 (Rev.WRC-12).

(ii) [Reserved]

(538) 5.538 *Additional allocation:* the bands 27.500-27.501 GHz and 29.999-30.000 GHz are also allocated to the fixed-satellite service (space-to-Earth) on a primary basis for the beacon transmissions intended for up-link power control. Such space-to-Earth transmissions shall not exceed an equivalent isotropically radiated power (e.i.r.p.) of +10 dBW in the direction of adjacent satellites on the geostationary-satellite orbit.

(539) 5.539 The band 27.5-30 GHz may be used by the fixed-satellite service (Earth-to-space) for the provision of feeder links for the broadcasting-satellite service.

(540) 5.540 *Additional allocation:* the band 27.501-29.999 GHz is also allocated to the fixed-satellite service (space-to-Earth) on a secondary basis for beacon transmissions intended for up-link power control.

(541) 5.541 In the band 28.5-30 GHz, the earth exploration-satellite service is limited to the transfer of data between stations and not to the primary collection of information by means of active or passive sensors.

(i) 5.541A Feeder links of non-geostationary networks in the mobile-satellite service and geostationary networks in the fixed-satellite service operating in the band 29.1-29.5 GHz (Earth-to-space) shall employ uplink adaptive power control or other methods of fade compensation, such that the earth station transmissions shall be conducted at the power level required to meet the desired link performance while reducing the level of mutual interference between both networks. These methods shall apply to networks for which Appendix 4 coordination information is considered as having been received by the Bureau after 17 May 1996 and until they are changed by a future competent world radiocommunication conference. Administrations submitting Appendix 4 information for coordination before this date are encouraged to utilize these techniques to the extent practicable.

(ii) [Reserved]

(542) 5.542 *Additional allocation:* in Algeria, Saudi Arabia, Bahrain, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guinea, India, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Oman, Pakistan, Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Somalia, Sudan, South Sudan, Sri Lanka and Chad, the band 29.5-31 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits specified in Nos. 21.3 and 21.5 shall apply.

(543) 5.543 The band 29.95-30 GHz may be used for space-to-space links in the Earth exploration-satellite service for telemetry, tracking, and control purposes, on a secondary basis.

(i) 5.543A In Bhutan, Cameroon, Korea (Rep. of), the Russian Federation, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kazakhstan, Malaysia, Maldives, Mongolia, Myanmar, Uzbekistan, Pakistan, the Philippines, Kyrgyzstan, the Dem. People's Rep. of Korea, Sudan, Sri Lanka, Thailand and

Viet Nam, the allocation to the fixed service in the frequency band 31-31.3 GHz may also be used by systems using high altitude platform stations (HAPS) in the ground-to-HAPS direction. The use of the frequency band 31-31.3 GHz by systems using HAPS is limited to the territory of the countries listed above and shall not cause harmful interference to, nor claim protection from, other types of fixed-service systems, systems in the mobile service and systems operated under paragraph (b)(545) of this section. Furthermore, the development of these services shall not be constrained by HAPS. Systems using HAPS in the frequency band 31-31.3 GHz shall not cause harmful interference to the radio astronomy service having a primary allocation in the frequency band 31.3-31.8 GHz, taking into account the protection criterion as given in the most recent version of Recommendation ITU-R RA.769. In order to ensure the protection of satellite passive services, the level of unwanted power density into a HAPS ground station antenna in the frequency band 31.3-31.8 GHz shall be limited to -106 dB(W/MHz) under clear-sky conditions, and may be increased up to -100 dB(W/MHz) under rainy conditions to mitigate fading due to rain, provided the effective impact on the passive satellite does not exceed the impact under clear-sky conditions. See Resolution 145 (Rev.WRC-12).

(ii) [Reserved]

(544) 5.544 In the band 31-31.3 GHz the power flux-density limits specified in Article 21, Table 21-4 shall apply to the space research service.

(545) 5.545 *Different category of service:* in Armenia, Georgia, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 31-31.3 GHz to the space research service is on a primary basis (see No. 5.33).

(546) 5.546 *Different category of service:* in Saudi Arabia, Armenia, Azerbaijan, Belarus, Egypt, the United Arab Emirates, Spain, Estonia, the Russian Federation, Georgia, Hungary, Iran (Islamic Republic of), Israel, Jordan, Lebanon, Moldova, Mongolia, Oman, Uzbekistan, Poland, the Syrian Arab Republic, Kyrgyzstan, Romania, the United Kingdom, South Africa, Tajikistan, Turkmenistan and Turkey, the allocation of the band 31.5-31.8 GHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. 5.33).

(547) 5.547 The bands 31.8-33.4 GHz, 37-40 GHz, 40.5-43.5 GHz, 51.4-52.6 GHz, 55.78-59 GHz and 64-66 GHz are available for high-density applications in the fixed service (see Resolution 75 (WRC-12)). Administrations should take this into account when considering regulatory provisions in relation to these bands. Because of the potential deployment of high-density applications in the fixed-satellite service in the bands 39.5-40 GHz and 40.5-42 GHz (see No. 5.516B), administrations should further take into account potential constraints to high-density applications in the fixed service, as appropriate.

(i) 5.547A Administrations should take practical measures to minimize the potential interference between stations in the fixed service and airborne stations in the radionavigation service in the 31.8-33.4 GHz band, taking into account the operational needs of the airborne radar systems.

(ii) 5.547B *Alternative allocation:* in the United States, the band 31.8-32 GHz is allocated to the radionavigation and space research (deep space) (space-to-Earth) services on a primary basis.

(iii) 5.547C *Alternative allocation:* in the United States, the band 32-32.3 GHz is allocated to the radionavigation and space research (deep space) (space-to-Earth) services on a primary basis.

(iv) 5.547D *Alternative allocation:* in the United States, the band 32.3-33 GHz is allocated to the inter-satellite and radionavigation services on a primary basis.

(v) 5.547E *Alternative allocation:* in the United States, the band 33-33.4 GHz is allocated to the radionavigation service on a primary basis.

(548) 5.548 In designing systems for the inter-satellite service in the band 32.3-33 GHz, for the radionavigation service in the band 32-33 GHz, and for the space research service (deep space) in the

band 31.8-32.3 GHz, administrations shall take all necessary measures to prevent harmful interference between these services, bearing in mind the safety aspects of the radionavigation service (*see* Recommendation 707).

(549) 5.549 *Additional allocation:* in Saudi Arabia, Bahrain, Bangladesh, Egypt, the United Arab Emirates, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. Rep. of the Congo, Singapore, Somalia, Sudan, South Sudan, Sri Lanka, Togo, Tunisia and Yemen, the band 33.4-36 GHz is also allocated to the fixed and mobile services on a primary basis.

(i) 5.549A In the band 35.5-36.0 GHz, the mean power flux-density at the Earth's surface, generated by any spaceborne sensor in the Earth exploration-satellite service (active) or space research service (active), for any angle greater than 0.8° from the beam centre shall not exceed $-73.3 \text{ dB(W/m}^2\text{)}$ in this band.

(ii) [Reserved]

(550) 5.550 *Different category of service:* in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 34.7-35.2 GHz to the space research service is on a primary basis (*see* No. 5.33).

(i) 5.550A For sharing of the band 36-37 GHz between the Earth exploration-satellite (passive) service and the fixed and mobile services, Resolution 752 (WRC-07) shall apply.

(ii) [Reserved]

(551) 5.551F *Different category of service:* in Japan, the allocation of the band 41.5-42.5 GHz to the mobile service is on a primary basis (*see* No. 5.33).

(i) 5.551H The equivalent power flux-density (epfd) produced in the frequency band 42.5-43.5 GHz by all space stations in any non-geostationary-satellite system in the fixed-satellite service (space-to-Earth), or in the broadcasting-satellite service operating in the frequency band 42-42.5 GHz, shall not exceed the following values at the site of any radio astronomy station for more than 2% of the time: $-230 \text{ dB(W/m}^2\text{)}$ in 1 GHz and $-246 \text{ dB(W/m}^2\text{)}$ in any 500 kHz of the frequency band 42.5-43.5 GHz at the site of any radio astronomy station registered as a single-dish telescope; and $-209 \text{ dB(W/m}^2\text{)}$ in any 500 kHz of the frequency band 42.5-43.5 GHz at the site of any radio astronomy station registered as a very long baseline interferometry station. These epfd values shall be evaluated using the methodology given in Recommendation ITU-R S.1586-1 and the reference antenna pattern and the maximum gain of an antenna in the radio astronomy service given in Recommendation ITU-R RA.1631-0 and shall apply over the whole sky and for elevation angles higher than the minimum operating angle θ_{min} of the radiotelescope (for which a default value of 5° should be adopted in the absence of notified information). These values shall apply at any radio astronomy station that either: was in operation prior to 5 July 2003 and has been notified to the Bureau before 4 January 2004; or was notified before the date of receipt of the complete Appendix 4 information for coordination or notification, as appropriate, for the space station to which the limits apply. Other radio astronomy stations notified after these dates may seek an agreement with administrations that have authorized the space stations. In Region 2, Resolution 743 (WRC-03) shall apply. The limits in this footnote may be exceeded at the site of a radio astronomy station of any country whose administration so agreed.

(ii) 5.551I The power flux-density in the band 42.5-43.5 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth), or the broadcasting-satellite service operating in the 42-42.5 GHz band, shall not exceed the following values at the site of any radio astronomy station: $-137 \text{ dB(W/m}^2\text{)}$ in 1 GHz and $-153 \text{ dB(W/m}^2\text{)}$ in any 500 kHz of the 42.5-43.5 GHz band at the site of any radio astronomy station registered as a single-dish telescope; and $-116 \text{ dB(W/m}^2\text{)}$ in any 500 kHz of

the 42.5-43.5 GHz band at the site of any radio astronomy station registered as a very long baseline interferometry station. These values shall apply at the site of any radio astronomy station that either: was in operation prior to 5 July 2003 and has been notified to the Bureau before 4 January 2004; or was notified before the date of receipt of the complete Appendix 4 information for coordination or notification, as appropriate, for the space station to which the limits apply. Other radio astronomy stations notified after these dates may seek an agreement with administrations that have authorized the space stations. In Region 2, Resolution 743 (WRC-03) shall apply. The limits in this footnote may be exceeded at the site of a radio astronomy station of any country whose administration so agreed.

(552) 5.552 The allocation of the spectrum for the fixed-satellite service in the bands 42.5-43.5 GHz and 47.2-50.2 GHz for Earth-to-space transmission is greater than that in the band 37.5-39.5 GHz for space-to-Earth transmission in order to accommodate feeder links to broadcasting satellites. Administrations are urged to take all practicable steps to reserve the band 47.2-49.2 GHz for feeder links for the broadcasting-satellite service operating in the band 40.5-42.5 GHz.

(i) 5.552A The allocation to the fixed service in the bands 47.2-47.5 GHz and 47.9-48.2 GHz is designated for use by high altitude platform stations. The use of the bands 47.2-47.5 GHz and 47.9-48.2 GHz is subject to the provisions of Resolution 122 (Rev.WRC-07).

(ii) [Reserved]

(553) 5.553 In the bands 43.5-47 GHz and 66-71 GHz, stations in the land mobile service may be operated subject to not causing harmful interference to the space radiocommunication services to which these bands are allocated (*see* No. 5.43).

(554) 5.554 In the bands 43.5-47 GHz, 66-71 GHz, 95-100 GHz, 123-130 GHz, 191.8-200 GHz and 252-265 GHz, satellite links connecting land stations at specified fixed points are also authorized when used in conjunction with the mobile-satellite service or the radionavigation-satellite service.

(i) 5.554A The use of the bands 47.5-47.9 GHz, 48.2-48.54 GHz and 49.44-50.2 GHz by the fixed-satellite service (space-to-Earth) is limited to geostationary satellites.

(ii) [Reserved]

(555) 5.555 *Additional allocation:* the band 48.94-49.04 GHz is also allocated to the radio astronomy service on a primary basis.

(i) 5.555B The power flux-density in the band 48.94-49.04 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth) operating in the bands 48.2-48.54 GHz and 49.44-50.2 GHz shall not exceed $-151.8 \text{ dB(W/m}^2\text{)}$ in any 500 kHz band at the site of any radio astronomy station.

(ii) [Reserved]

(556) 5.556 In the bands 51.4-54.25 GHz, 58.2-59 GHz and 64-65 GHz, radio astronomy observations may be carried out under national arrangements.

(i) 5.556A Use of the bands 54.25-56.9 GHz, 57-58.2 GHz and 59-59.3 GHz by the inter-satellite service is limited to satellites in the geostationary-satellite orbit. The single-entry power flux-density at all altitudes from 0 km to 1000 km above the Earth's surface produced by a station in the inter-satellite service, for all conditions and for all methods of modulation, shall not exceed $-147 \text{ dB(W/(m}^2 \cdot 100 \text{ MHz))}$ for all angles of arrival.

(ii) 5.556B *Additional allocation:* in Japan, the band 54.25-55.78 GHz is also allocated to the mobile service on a primary basis for low-density use.

(557) 5.557 *Additional allocation:* in Japan, the band 55.78-58.2 GHz is also allocated to the radiolocation service on a primary basis.

(i) 5.557A In the band 55.78-56.26 GHz, in order to protect stations in the Earth exploration-satellite service (passive), the maximum power density delivered by a transmitter to the antenna of a fixed service station is limited to -26 dB(W/MHz).

(ii) [Reserved]

(558) 5.558 In the bands 55.78-58.2 GHz, 59-64 GHz, 66-71 GHz, 122.25-123 GHz, 130-134 GHz, 167-174.8 GHz and 191.8-200 GHz, stations in the aeronautical mobile service may be operated subject to not causing harmful interference to the inter-satellite service (see No. 5.43).

(i) 5.558A Use of the band 56.9-57 GHz by inter-satellite systems is limited to links between satellites in geostationary-satellite orbit and to transmissions from non-geostationary satellites in high-Earth orbit to those in low-Earth orbit. For links between satellites in the geostationary-satellite orbit, the single entry power flux-density at all altitudes from 0 km to 1000 km above the Earth's surface, for all conditions and for all methods of modulation, shall not exceed -147 dB(W/(m² · 100 MHz)) for all angles of arrival.

(ii) [Reserved]

(559) 5.559 In the band 59-64 GHz, airborne radars in the radiolocation service may be operated subject to not causing harmful interference to the inter-satellite service (see No. 5.43).

(i) 5.559B The use of the frequency band 77.5-78 GHz by the radiolocation service shall be limited to short-range radar for ground-based applications, including automotive radars. The technical characteristics of these radars are provided in the most recent version of Recommendation ITU-R M.2057. The provisions of No. 4.10 do not apply.

(ii) [Reserved]

(560) 5.560 In the band 78-79 GHz radars located on space stations may be operated on a primary basis in the Earth exploration-satellite service and in the space research service.

(561) 5.561 In the band 74-76 GHz, stations in the fixed, mobile and broadcasting services shall not cause harmful interference to stations of the fixed-satellite service or stations of the broadcasting-satellite service operating in accordance with the decisions of the appropriate frequency assignment planning conference for the broadcasting-satellite service.

(i) 5.561A The 81-81.5 GHz band is also allocated to the amateur and amateur-satellite services on a secondary basis.

(ii) 5.561B In Japan, use of the band 84-86 GHz, by the fixed-satellite service (Earth-to-space) is limited to feeder links in the broadcasting-satellite service using the geostationary-satellite orbit.

(562) 5.562 The use of the band 94-94.1 GHz by the Earth exploration-satellite (active) and space research (active) services is limited to spaceborne cloud radars.

(i) 5.562A In the bands 94-94.1 GHz and 130-134 GHz, transmissions from space stations of the Earth exploration-satellite service (active) that are directed into the main beam of a radio astronomy antenna have the potential to damage some radio astronomy receivers. Space agencies operating the transmitters and the radio astronomy stations concerned should mutually plan their operations so as to avoid such occurrences to the maximum extent possible.

(ii) 5.562B In the bands 105-109.5 GHz, 111.8-114.25 GHz, 155.5-158.5 GHz and 217-226 GHz, the use of this allocation is limited to space-based radio astronomy only.

(iii) 5.562C Use of the band 116-122.25 GHz by the inter-satellite service is limited to satellites in the geostationary-satellite orbit. The single-entry power flux-density produced by a station in the inter-satellite service, for all conditions and for all methods of modulation, at all altitudes from 0 km to 1000 km above the Earth's surface and in the vicinity of all geostationary orbital positions occupied by

passive sensors, shall not exceed $-148 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for all angles of arrival.

(iv) 5.562D *Additional allocation*: In Korea (Rep. of), the frequency bands 128-130 GHz, 171-171.6 GHz, 172.2-172.8 GHz and 173.3-174 GHz are also allocated to the radio astronomy service on a primary basis. Radio astronomy stations in Korea (Rep. of) operating in the frequency bands referred to in this footnote shall not claim protection from, or constrain the use and development of, services in other countries operating in accordance with the Radio Regulations.

(v) 5.562E The allocation to the Earth exploration-satellite service (active) is limited to the band 133.5-134 GHz.

(vi) 5.562F In the band 155.5-158.5 GHz, the allocation to the Earth exploration-satellite (passive) and space research (passive) services shall terminate on 1 January 2018.

(vii) 5.562G The date of entry into force of the allocation to the fixed and mobile services in the band 155.5-158.5 GHz shall be 1 January 2018.

(viii) 5.562H Use of the bands 174.8-182 GHz and 185-190 GHz by the inter-satellite service is limited to satellites in the geostationary-satellite orbit. The single-entry power flux-density produced by a station in the inter-satellite service, for all conditions and for all methods of modulation, at all altitudes from 0 to 1000 km above the Earth's surface and in the vicinity of all geostationary orbital positions occupied by passive sensors, shall not exceed $-144 \text{ dB(W/(m}^2 \cdot \text{MHz))}$ for all angles of arrival.

(563) 5.563A In the bands 200-209 GHz, 235-238 GHz, 250-252 GHz and 265-275 GHz, ground-based passive atmospheric sensing is carried out to monitor atmospheric constituents.

(i) 5.563B The band 237.9-238 GHz is also allocated to the Earth exploration-satellite service (active) and the space research service (active) for spaceborne cloud radars only.

(ii) [Reserved]

(564) [Reserved]

(565) 5.565 The following frequency bands in the range 275-1000 GHz are identified for use by administrations for passive service applications:

(i) Radio astronomy service: 275-323 GHz, 327-371 GHz, 388-424 GHz, 426-442 GHz, 453-510 GHz, 623-711 GHz, 795-909 GHz and 926-945 GHz; and

(ii) Earth exploration-satellite service (passive) and space research service (passive): 275-286 GHz, 296-306 GHz, 313-356 GHz, 361-365 GHz, 369-392 GHz, 397-399 GHz, 409-411 GHz, 416-434 GHz, 439-467 GHz, 477-502 GHz, 523-527 GHz, 538-581 GHz, 611-630 GHz, 634-654 GHz, 657-692 GHz, 713-718 GHz, 729-733 GHz, 750-754 GHz, 771-776 GHz, 823-846 GHz, 850-854 GHz, 857-862 GHz, 866-882 GHz, 905-928 GHz, 951-956 GHz, 968-973 GHz and 985-990 GHz.

(iii) The use of the range 275-1000 GHz by the passive services does not preclude use of this range by active services. Administrations wishing to make frequencies in the 275-1000 GHz range available for active service applications are urged to take all practicable steps to protect these passive services from harmful interference until the date when the Table of Frequency Allocations is established in the above-mentioned 275-1000 GHz frequency range.

(iv) All frequencies in the range 1000-3000 GHz may be used by both active and passive services.

(c) *United States Footnotes*. United States footnotes, each in the format "US" followed by one or more digits, denote stipulations applicable to both Federal and non-Federal operations and thus appear in both the Federal Table and the non-Federal Table. The list of United States footnotes follows:

(1) US1 The bands 2501-2502 kHz, 5003-5005 kHz, 10 003-10 005 kHz, 15 005-15 010 kHz,

19 990-19 995 kHz, 20 005-20 010 kHz, and 25 005-25 010 kHz are also allocated to the space research service on a secondary basis for Federal use. In the event of interference to the reception of the standard frequency and time broadcasts, these space research transmissions are subject to immediate temporary or permanent shutdown.

(2) US2 In the band 9-490 kHz, electric utilities operate Power Line Carrier (PLC) systems on power transmission lines for communications important to the reliability and security of electric service to the public. These PLC systems operate under the provisions of part 15 of this chapter, or Chapter 8 of the *NTIA Manual*, on an unprotected and non-interference basis with respect to authorized radio users. Notification of intent to place new or revised radio frequency assignments or PLC frequency uses in the band 9-490 kHz is to be made in accordance with the Rules and Regulations of the FCC and NTIA, and users are urged to minimize potential interference to the extent practicable. This footnote does not provide any allocation status to PLC radio frequency uses.

(3) - (7) [Reserved]

(8) US8 The use of the frequencies 170.475, 171.425, 171.575, and 172.275 MHz east of the Mississippi River, and 170.425, 170.575, 171.475, 172.225 and 172.375 MHz west of the Mississippi River may be authorized to fixed, land and mobile stations operated by non-Federal forest firefighting agencies. In addition, land stations and mobile stations operated by non-Federal conservation agencies, for mobile relay operation only, may be authorized to use the frequency 172.275 MHz east of the Mississippi River and the frequency 171.475 MHz west of the Mississippi River. The use of any of the foregoing nine frequencies shall be on the condition that no harmful interference will be caused to Government stations.

(9) - (10) [Reserved]

(11) US11 On the condition that harmful interference is not caused to present or future Federal stations in the band 162-174 MHz, the frequencies 166.25 MHz and 170.15 MHz may be authorized to non-Federal stations, as follows:

(i) Eligibles in the Public Safety Radio Pool may be authorized to operate in the fixed and land mobile services for locations within 150 miles (241.4 kilometers) of New York City; and

(ii) Remote pickup broadcast stations may be authorized to operate in the land mobile service for locations within the conterminous United States, excluding locations within 150 miles of New York City and the Tennessee Valley Authority Area (TVA Area). The TVA Area is bounded on the west by the Mississippi River, on the north by the parallel of latitude 37° 30' N, and on the east and south by that arc of the circle with center at Springfield, IL, and radius equal to the airline distance between Springfield, IL and Montgomery, AL, subtended between the foregoing west and north boundaries.

(12) [Reserved]

(13) US13 The center frequencies in table 2 to paragraph (c)(13)(i) of this section, each with a channel bandwidth not greater than 12.5 kHz, are available for assignment to non-Federal fixed stations for the specific purpose of transmitting hydrological and meteorological data in cooperation with Federal agencies, subject to the condition that harmful interference will not be caused to Federal stations:

(i) New assignments on the frequencies 406.125 MHz and 406.175 MHz are to be primarily for paired operations with the frequencies 415.125 MHz and 415.175 MHz, respectively.

Table 2 to Paragraph (c)(13)(i)

Hydro Channels (MHz)	
171.1000	406.1250
171.1125	406.1750
171.1250	412.6625
171.8250	412.6750
171.8375	412.6875
171.8500	412.7125
171.8625	412.7250
171.8750	412.7375
171.8875	412.7625
171.9000	412.7750
171.9125	415.1250
171.9250	415.1750

(ii) [Reserved]

(14) US14 When 500 kHz is being used for distress purposes, ship and coast stations using morse telegraph may use 512 kHz for calling.

(15) - (17) [Reserved]

(18) US18 In the bands 9-14 kHz, 90-110 kHz, 190-415 kHz, 510-535 kHz, and 2700-2900 MHz, navigation aids in the U.S. and its insular areas are normally operated by the Federal Government. However, authorizations may be made by the FCC for non-Federal operations in these bands subject to the conclusion of appropriate arrangements between the FCC and the Federal agencies concerned and upon special showing of need for service which the Federal Government is not yet prepared to render.

(19) - (21) [Reserved]

(22) US22 The following provisions denoted in table 3 to this paragraph (c)(22) shall apply to non-Federal use of 68 carrier frequencies in the range 2-8 MHz, which are not coordinated with NTIA:

(i) The frequencies authorized pursuant to §§ 90.264 (Disaster Communications) and 90.266 (Long Distance Communications) of this chapter are listed in columns 1-2 and columns 3-5, respectively. All stations are restricted to emission designator 2K80J3E, upper sideband transmissions, a maximum transmitter output power of 1 kW PEP, and to the class of station(s) listed in the column heading (*i.e.*, fixed (FX) for all frequencies; base and mobile (FB and ML) for the frequencies in column 1 and 3; itinerant FX for the frequencies in columns 4-5).

(ii) Letter(s) to the right of a frequency indicate that the frequency is available only for the following purpose(s):

(A) A or I: *Alternate channel or Interstate coordination.*

(B) C, E, M, or W: For stations located in the Conterminous U.S., *East of 108° West Longitude (WL), West of the Mississippi River, or West of 90° WL.*

Note 2 to paragraph (c)(22)(ii)(B): To determine the assigned frequency, add 1.4 kHz to the carrier frequency. Other emission designators may be authorized within the 2.8 kHz maximum necessary bandwidth pursuant to §§ 90.264 and 90.266 of this chapter.

(C) D or N: From two hours after local sunrise until two hours before local sunset (*i.e.*, Day only operations) or from two hours prior to local sunset until two hours after local sunrise (*i.e.*, Night only operations).

Table 3 to Paragraph (c)(22)

Preferred Carrier Frequencies (kHz)				
Disaster Communications		Long Distance Communications		
FX, FB, ML	FX	FX, FB, ML	FX (including itinerant)	
2326 ... I	5135 ... A	2289	5046.6 ... E	7480.1
2411	5140 ... A, I	2292	5052.6 ... E	7483.1
2414	5192 ... I	2395	5055.6 ... E	7486.1 ... E
2419	5195 ... I	2398	5061.6 ... W	7549.1 ... D
2422	7477 ... A	3170	5067.6	7552.1
2439	7480 ... A	4538.6 ... N	5074.6 ... E	7555.1 ... W
2463	7802 ... D	4548.6 ... N	5099.1	7558.1 ... W
2466	7805 ... I	4575	5102.1	7559.1 ... W
2471	7932	4610.5	5313.6	7562.1 ... W
2474	7935 ... C, D	4613.5	6800.1 ... N	7697.1
2487		4634.5	6803.1	
2511		4637.5	6806.1 ... W	
2535		4647	6855.1 ... N, M	
2569			6858.1 ... N	

2587			6861.1 ... W	
2801			6885.1 ... N	
2804 ... A			6888.1 ... N	
2812				

(23) US23 In the band 5330.5-5406.4 kHz (60 m band), the assigned frequencies 5332, 5348, 5358.5, 5373, and 5405 kHz are allocated to the amateur service on a secondary basis. Amateur service use of the 60 m band frequencies is restricted to a maximum effective radiated power of 100 W PEP and to the following emission types and designators: phone (2K80J3E), data (2K80J2D), RTTY (60H0J2B), and CW (150HA1A). Amateur operators using the data and RTTY emissions must exercise care to limit the length of transmissions so as to avoid causing harmful interference to Federal stations.

(24) [Reserved]

(25) US25 The use of frequencies in the band 25.85-26.175 MHz may be authorized in any area to non-Federal remote pickup broadcast base and mobile stations on the condition that harmful interference is not caused to stations of the broadcasting service in the band 25.85-26.1 MHz and to stations of the maritime mobile service in the band 26.1-26.175 MHz. Frequencies within the band 26.1-26.175 MHz may also be assigned for use by low power auxiliary stations.

(26) US26 The bands 117.975-121.4125 MHz, 123.5875-128.8125 MHz and 132.0125-136.0 MHz are for air traffic control communications.

(27) [Reserved]

(28) US28 The band 121.5875-121.9375 MHz is for use by aeronautical utility land and mobile stations, and for air traffic control communications.

(29) [Reserved]

(30) US30 The band 121.9375-123.0875 MHz is available to FAA aircraft for communications pursuant to flight inspection functions in accordance with the Federal Aviation Act of 1958.

(31) US31 The frequencies 122.700, 122.725, 122.750, 122.800, 122.950, 122.975, 123.000, 123.050 and 123.075 MHz may be assigned to aeronautical advisory stations. In addition, at landing areas having a part-time or no airdrome control tower or FAA flight service station, these frequencies may be assigned on a secondary non-interference basis to aeronautical utility mobile stations, and may be used by FAA ground vehicles for safety related communications during inspections conducted at such landing areas.

(i) The frequencies 122.850, 122.900 and 122.925 MHz may be assigned to aeronautical multicom stations. In addition, 122.850 MHz may be assigned on a secondary noninterference basis to aeronautical utility mobile stations. In case of 122.925 MHz, paragraph (c)(213) of this section applies.

(ii) Air carrier aircraft stations may use 122.000 and 122.050 MHz for communication with aeronautical stations of the Federal Aviation Administration and 122.700, 122.800, 122.900 and 123.000 MHz for communications with aeronautical stations pertaining to safety of flight with and in the vicinity of landing areas not served by a control tower.

(iii) Frequencies in the band 121.9375-122.6875 MHz may be used by aeronautical stations of the Federal Aviation Administration for communication with aircraft stations.

(32) US32 Except for the frequencies 123.3 and 123.5 MHz, which are not authorized for Federal use, the band 123.1125-123.5875 MHz is available for FAA communications incident to flight test and inspection activities pertinent to aircraft and facility certification on a secondary basis.

(33) US33 The band 123.1125-123.5875 MHz is for use by flight test and aviation instructional stations. The frequency 121.950 MHz is available for aviation instructional stations.

(34) - (35) [Reserved]

(36) US36 In Hawaii, the bands 120.647-120.653 MHz and 127.047-127.053 MHz are also allocated to the aeronautical mobile service on a primary basis for non-Federal aircraft air-to-air communications on 120.65 MHz (Maui) and 127.05 MHz (Hawaii and Kauai) as specified in § 87.187 of this chapter.

(37) - (40) [Reserved]

(41) US41 In the band 2450-2500 MHz, the Federal radiolocation service is permitted on condition that harmful interference is not caused to non-Federal services.

(42) - (43) [Reserved]

(44) US44 In the band 2900-3100 MHz, the non-Federal radiolocation service may be authorized on the condition that no harmful interference is caused to Federal services.

(45) - (48) [Reserved]

(49) US49 In the band 5460-5470 MHz, the non-Federal radiolocation service may be authorized on the condition that it does not cause harmful interference to the aeronautical or maritime radionavigation services or to the Federal radiolocation service.

(50) US50 In the band 5470-5650 MHz, the radiolocation service may be authorized for non-Federal use on the condition that harmful interference is not caused to the maritime radionavigation service or to the Federal radiolocation service.

(51) [Reserved]

(52) US52 In the VHF maritime mobile band (156-162 MHz), the following provisions shall apply:

(i) Except as provided for below, the use of the bands 161.9625-161.9875 MHz (AIS 1 with center frequency 161.975 MHz) and 162.0125-162.0375 MHz (AIS 2 with center frequency 162.025 MHz) by the maritime mobile and mobile-satellite (Earth-to-space) services is restricted to Automatic Identification Systems (AIS). The use of these bands by the aeronautical mobile (OR) service is restricted to AIS emissions from search and rescue aircraft operations. Frequencies in the AIS 1 band may continue to be used by non-Federal base, fixed, and land mobile stations until March 2, 2024.

(ii) Except as provided for below, the use of the bands 156.7625-156.7875 MHz (AIS 3 with center frequency 156.775 MHz) and 156.8125-156.8375 MHz (AIS 4 with center frequency 156.825 MHz) by the mobile-satellite service (Earth-to-space) is restricted to the reception of long-range AIS broadcast messages from ships (Message 27; see most recent version of Recommendation ITU-R M.1371). The frequencies 156.775 MHz and 156.825 MHz may continue to be used by non-Federal ship and coast stations for navigation-related port operations or ship movement until August 26, 2019.

(iii) The frequency 156.3 MHz may also be used by aircraft stations for the purpose of search and rescue operations and other safety-related communication.

(iv) Federal stations in the maritime mobile service may also be authorized as follows:

(A) Vessel traffic services under the control of the U.S. Coast Guard on a simplex basis by coast and ship stations on the frequencies 156.25, 156.55, 156.6 and 156.7 MHz;

(B) Inter-ship use of the frequency 156.3 MHz on a simplex basis;

(C) Navigational bridge-to-bridge and navigational communications on a simplex basis by coast and ship stations on the frequencies 156.375 and 156.65 MHz;

(D) Port operations use on a simplex basis by coast and ship stations on the frequencies 156.6 and 156.7 MHz;

(E) Environmental communications on the frequency 156.75 MHz in accordance with the national plan; and

(F) Duplex port operations use of the frequencies 157 MHz for ship stations and 161.6 MHz for coast stations.

(53) US53 In view of the fact that the band 13.25-13.4 GHz is allocated to doppler navigation aids, Federal and non-Federal airborne doppler radars in the aeronautical radionavigation service are permitted in the band 8750-8850 MHz only on the condition that they must accept any interference that may be experienced from stations in the radiolocation service in the band 8500-10000 MHz.

(54) [Reserved]

(55) US55 In the bands 162.0375-173.2 MHz and 406.1-420 MHz, the FCC may authorize public safety applicants to use the 40 Federal Interoperability Channels that are designated for joint Federal/non-Federal operations for law enforcement, public safety, emergency response and disaster response in Section 4.3.16 of the NTIA Manual, subject to the condition that that these non-Federal mobile (including portable) interoperability communications shall conform to the national plans specified therein, and in particular, shall not cause harmful interference to Federal stations. The procedure for authorizing such use is set forth in § 90.25 of this chapter.

(56) - (58) [Reserved]

(59) US59 The band 10.5-10.55 GHz is restricted to systems using type NON (AO) emission with a power not to exceed 40 watts into the antenna.

(60) - (63) [Reserved]

(64) US64

(i) In the band 401-406 MHz, the mobile, except aeronautical mobile, service is allocated on a secondary basis and is limited to, with the exception of military tactical mobile stations, Medical Device Radiocommunication Service (MedRadio) operations. MedRadio stations are authorized by rule on the condition that harmful interference is not caused to stations in the meteorological aids, meteorological-satellite, and Earth exploration-satellite services, and that MedRadio stations accept interference from stations in the meteorological aids, meteorological-satellite, and Earth exploration-satellite services.

(ii) The bands 413-419 MHz, 426-432 MHz, 438-444 MHz, and 451-457 MHz are also allocated on a secondary basis to the mobile, except aeronautical mobile, service. The use of this allocation is limited to MedRadio operations. MedRadio stations are authorized by rule and operate in accordance with part 95 of this chapter.

(65) US65 The use of the band 5460-5650 MHz by the maritime radionavigation service is limited to shipborne radars.

(66) [Reserved]

(67) US67 The use of the band 9300-9500 MHz by the meteorological aids service is limited to ground-based radars. Radiolocation installations will be coordinated with the meteorological aids service and, insofar as practicable, will be adjusted to meet the requirements of the meteorological aids service.

(68) [Reserved]

(69) US69 In the band 31.8-33.4 GHz, ground-based radionavigation aids are not permitted except where they operate in cooperation with airborne or shipborne radionavigation devices.

(70) US70 The meteorological aids service allocation in the band 400.15-406.0 MHz does not preclude the operation therein of associated ground transmitters.

(71) US71 In the band 9300-9320 MHz, low-powered maritime radionavigation stations shall be protected from harmful interference caused by the operation of land-based equipment.

(72) [Reserved]

(73) US73 The frequencies 150.775, 150.79, 152.0075, and 163.25 MHz, and the bands 462.94-463.19675 and 467.94-468.19675 MHz shall be authorized for the purpose of delivering or rendering medical services to individuals (medical radiocommunication systems), and shall be authorized on a primary basis for Federal and non-Federal use. The frequency 152.0075 MHz may also be used for the purpose of conducting public safety radio communications that include, but are not limited to, the delivering or rendering of medical services to individuals.

(i) The use of the frequencies 150.775 and 150.79 MHz is restricted to mobile stations operating with a maximum e.r.p. of 100 watts. Airborne operations are prohibited.

(ii) The use of the frequencies 152.0075 and 163.25 MHz is restricted to base stations that are authorized only for one-way paging communications to mobile receivers. Transmissions for the purpose of activating or controlling remote objects on these frequencies shall not be authorized.

(iii) Non-Federal licensees in the Public Safety Radio Pool holding a valid authorization on May 27, 2005, to operate on the frequencies 150.7825 and 150.7975 MHz may, upon proper renewal application, continue to be authorized for such operation; provided that harmful interference is not caused to present or future Federal stations in the band 150.05-150.8 MHz and, should harmful interference result, that the interfering non-Federal operation shall immediately terminate.

(74) US74 In the bands 25.55-25.67, 73-74.6, 406.1-410, 608-614, 1400-1427, 1660.5-1670, 2690-2700, and 4990-5000 MHz, and in the bands 10.68-10.7, 15.35-15.4, 23.6-24.0, 31.3-31.5, 86-92, 100-102, 109.5-111.8, 114.25-116, 148.5-151.5, 164-167, 200-209, and 250-252 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. Radio astronomy observations in these bands are performed at the locations listed in paragraph (c)(385) of this section.

(75) - (78) [Reserved]

(79) US79 In the bands 1390-1400 MHz and 1427-1432 MHz, the following provisions shall apply:

(i) Airborne and space-to-Earth operations are prohibited.

(ii) Federal operations (except for devices authorized by the FCC for the Wireless Medical Telemetry Service) are on a non-interference basis to non-Federal operations and shall not constrain implementation of non-Federal operations.

(80) US80 Federal stations may use the frequency 122.9 MHz subject to the following conditions:

(i) All operations by Federal stations shall be restricted to the purpose for which the frequency is authorized to non-Federal stations, and shall be in accordance with the appropriate provisions of part 87 (Aviation Services) of this chapter;

(ii) Use of the frequency is required for coordination of activities with Commission licensees operating on this frequency; and

(iii) Federal stations will not be authorized for operation at fixed locations.

(81) US81 The band 38-38.25 MHz is used by both Federal and non-Federal radio astronomy observatories. No new fixed or mobile assignments are to be made and Federal stations in the band 38-38.25 MHz will be moved to other bands on a case-by-case basis, as required, to protect radio astronomy observations from harmful interference. As an exception, however, low powered military transportable and mobile stations used for tactical and training purposes will continue to use the band. To the extent practicable, the latter operations will be adjusted to relieve such interference as may be caused to radio astronomy observations. In the event of harmful interference from such local operations, radio astronomy observatories may contact local military commands directly, with a view to effecting relief. A list of military commands, areas of coordination, and points of contact for purposes of relieving interference may be obtained upon request from the Office of Engineering and Technology, FCC, Washington, DC 20554.

(82) US82 In the bands 4146-4152 kHz, 6224-6233 kHz, 8294-8300 kHz, 12 353-12 368 kHz, 16 528-16 549 kHz, 18 825-18 846 kHz, 22 159-22 180 kHz, and 25 100-25 121 kHz, the assignable frequencies may be authorized on a shared non-priority basis to Federal and non-Federal ship and coast stations (SSB telephony, with peak envelope power not to exceed 1 kW).

(83) US83 In the 1432-1435 MHz band, Federal stations in the fixed and mobile services may operate indefinitely on a primary basis at the 22 sites listed in table 4 to this paragraph (c)(83). The first 21 sites are in the United States and the last site is in Guam (GU). All other Federal stations in the fixed and mobile services shall operate in the band 1432-1435 MHz on a primary basis until reaccommodated in accordance with the National Defense Authorization Act of 1999.

Table 4 to Paragraph (c)(83)

State	Site	North	West	Radius
AK	Fort Greely	63° 47'	145° 52'	80
AL	Redstone Arsenal	34° 35'	086° 35'	80
AZ	Fort Huachuca	31° 33'	110° 18'	80
AZ	Yuma Proving Ground	32° 29'	114° 20'	160
CA	China Lake/Edwards AFB	35° 29'	117° 16'	100
CA	Lemoore	36° 20'	119° 57'	120
FL	Eglin AFB/Ft Rucker, AL	30° 28'	086° 31'	140
FL	NAS Cecil Field	30° 13'	081° 52'	160
MD	Patuxent River	38° 17'	076° 24'	70
ME	Naval Space Operations Center	44° 24'	068° 01'	80
MI	Alpena Range	44° 23'	083° 20'	80

MS	Camp Shelby	31° 20'	089° 18'	80
NC	MCAS Cherry Point	34° 54'	076° 53'	100
NM	White Sands Missile Range/Holloman AFB	32° 11'	106° 20'	160
NV	NAS Fallon	39° 30'	118° 46'	100
NV	Nevada Test and Training Range (NTTR)	37° 29'	114° 14'	130
SC	Beaufort MCAS	32° 26'	080° 40'	160
SC	Savannah River	33° 15'	081° 39'	3
UT	Utah Test and Training Range/Dugway Proving Ground, Hill AFB	40° 57'	113° 05'	160
VA	NAS Oceana	36° 49'	076° 01'	100
WA	NAS Whidbey Island	48° 21'	122° 39'	70
GU	NCTAMS	13° 35'	144° 51'	80

Note 3 to table 4 to paragraph (c)(83): The coordinates (North latitude and West longitude) are listed under the headings North and West. The Guam entry under the West heading is actually 144° 51' East longitude. The operating radii in kilometers are listed under the heading Radius.

(84) US84 In the bands 941.5-944 MHz and 1435-1525 MHz, low power auxiliary stations may be authorized on a secondary basis, subject to the terms and conditions set forth in part 74, subpart H of this chapter.

(85) US85 Differential-Global-Positioning-System (DGPS) Stations, limited to ground-based transmitters, may be authorized on a primary basis in the band 1559-1610 MHz for the specific purpose of transmitting DGPS information intended for aircraft navigation.

(86) [Reserved]

(87) US87 The band 449.75-450.25 MHz may be used by Federal and non-Federal stations for space telecommand (Earth-to-space) at specific locations, subject to such conditions as may be applied on a case-by-case basis. Operators shall take all practical steps to keep the carrier frequency close to 450 MHz.

(88) US88 In the bands 1675-1695 MHz and 1695-1710 MHz, the following provisions shall apply:

(i) Non-Federal use of the band 1695-1710 MHz by the fixed and mobile except aeronautical mobile services is restricted to stations in the Advanced Wireless Service (AWS). Base stations that enable AWS mobile and portable stations to operate in the band 1695-1710 MHz must be successfully coordinated prior to operation as follows:

(A) All base stations within the 27 protection zones listed in paragraph (ii) that enable mobiles to operate at a maximum e.i.r.p. of 20 dBm; and

(B) Nationwide for base stations that enable mobiles to operate with a maximum e.i.r.p. greater than 20 dBm, up to a maximum e.i.r.p. of 30 dBm, unless otherwise specified by Commission rule, order, or notice.

(ii) Forty-seven Federal earth stations located within the protection zones listed below operate on a co-equal, primary basis with AWS operations. All other Federal earth stations operate on a secondary basis.

Table 5 to Paragraph (c)(88)(ii) - Protection Zones for Federal Earth Stations Receiving in the Band 1695-1710 MHz

State	Location	Latitude	Longitude	Radius (km)
AK	Barrow	71° 19' 22"	156° 36' 41"	 35
AK	Elmendorf AFB	61° 14' 08"	149° 55' 31"	 98
AK	Fairbanks	64° 58' 22"	147° 30' 02"	 20
AZ	Yuma	32° 39' 24"	114° 36' 22"	 95
CA	Monterey	36° 35' 34"	121° 51' 20"	 76
CA	Twenty-Nine Palms...	34° 17' 46"	116° 09' 44"	 80
FL	Miami	25° 44' 05"	080° 09' 45"	 51
HI	Hickam AFB	21° 19' 18"	157° 57' 30"	 28
MD	Suitland	38° 51' 07"	076° 56' 12"	 98
MS	Stennis Space Center	30° 21' 23"	089° 36' 41"	 57
SD	Sioux Falls	43° 44' 09"	096° 37' 33"	 42
VA	Wallops Island	37° 56' 45"	075° 27' 45"	 30
GU	Andersen AFB	13° 34' 52"	144° 55' 28"	 42

Table 6 to paragraph (c)(88)(ii) - Protection Zones For Federal Earth Stations Receiving in the

Band 1675-1695 MHz

State	Location	Latitude	Longitude	Radius (km)

CA	Sacramento	38° 35' 50"	121° 32' 34"	 55
CO	Boulder	39° 59' 26"	105° 15' 51"	 02
ID	Boise	43° 35' 42"	116° 13' 49"	 39
IL	Rock Island	41° 31' 04"	090° 33' 46"	 19
MO	Kansas City	39° 16' 40"	094° 39' 44"	 40
MO	St. Louis	38° 35' 26"	090° 12' 25"	 34
MS	Columbus Lake	33° 32' 04"	088° 30' 06"	 03
MS	Vicksburg	32° 20' 47"	090° 50' 10"	 16
NE	Omaha	41° 20' 56"	095° 57' 34"	 30
OH	Cincinnati	39° 06' 10"	084° 30' 35"	 32
OK	Norman	35° 10' 52"	097° 26' 21"	 03
TN	Knoxville	35° 57' 58"	083° 55' 13"	 50
WV	Fairmont	39° 26' 02"	080° 11' 33"	 04
PR	Guaynabo	18° 25' 26"	066° 06' 50"	 48

Note 4 to paragraph (c)(88)(ii): The coordinates are specified in the conventional manner (North latitude, West longitude), except that the Guam (GU) entry is specified in terms of East longitude.

(89) [Reserved]

(90) US90 In the band 2025-2110 MHz, the power flux-density at the Earth's surface produced by emissions from a space station in the space operation, Earth exploration-satellite, or space research service that is transmitting in the space-to-space direction, for all conditions and all methods of modulation, shall not exceed the following values in any 4 kHz sub-band: -154 dBW/m² for angles of arrival above the horizontal plane (δ) of 0° to 5° , $-154 + 0.5(\delta - 5)$ dBW/m² for δ of 5° to 25° , and -144 dBW/m² for δ of 25° to 90° .

(91) US91 In the band 1755-1780 MHz, the following provisions shall apply:

(i) Non-Federal use of the band 1755-1780 MHz by the fixed and mobile services is restricted to stations in the Advanced Wireless Service (AWS). Base stations that enable AWS mobile and portable stations to operate in the band 1755-1780 MHz must be successfully coordinated on a nationwide basis prior to operation, unless otherwise specified by Commission rule, order, or notice.

(ii) In the band 1755-1780 MHz, the Federal systems listed below operate on a co-equal, primary basis with AWS stations. All other Federal stations in the fixed and mobile services identified in an approved Transition Plan will operate on a primary basis until reaccommodated in accordance with part

301 of this chapter.

(A) Joint Tactical Radio Systems (JTRS) may operate indefinitely at the locations provided in table 7.

Table 7 to Paragraph (c)(91)(ii)(A)

State	Training area	Latitude	Longitude
AZ	Yuma Proving Ground	33° 12' 14"	114° 13' 47"
CA	Fort Irwin	35° 23' 19"	116° 37' 43"
LA	Fort Polk	31° 08' 38"	093° 06' 52"
NC	Fort Bragg (including Camp MacKall)....	35° 09' 04"	078° 59' 13"
NM	White Sands Missile Range.....	32° 52' 50"	106° 23' 10"
TX	Fort Hood	31° 13' 50"	097° 45' 23"

(B) Air combat training system (ACTS) stations may operate on two frequencies within two geographic zones that are defined by the coordinates provided in table 8.

Table 8 to Paragraph (c)(91)(ii)(B)

Geographic Zone	Latitude	Longitude
Polygon 1	41° 52' 00"	117° 49' 00"
	42° 00' 00"	115° 05' 00"
	43° 31' 13"	115° 47' 18"
Polygon 2	47° 29' 00"	111° 22' 00"
	48° 13' 00"	110° 00' 00"
	47° 30' 00"	107° 00' 00"
	44° 11' 00"	103° 06' 00"

Note 5 to paragraph (c)(91)(ii)(B): ACTS transmitters may cause interference to AWS base stations between separation distances of 285 km (minimum) and 415 km (maximum).

(C) In the sub-band 1761-1780 MHz, Federal earth stations in the space operation service (Earth-to-space) may transmit at the 25 sites identified in table 9 and non-Federal base stations must accept harmful interference caused by the operation of these earth stations.

Table 9 to Paragraph (c)(91)(ii)(C)

State	Site	Latitude	Longitude
AK	Fairbanks	64° 58' 20"	147° 30' 59"
CA	Camp Parks	37° 43' 51"	121° 52' 50"
CA	Huntington Beach	33° 44' 50"	118° 02' 04"
CA	Laguna Peak	34° 06' 31"	119° 03' 53"
CA	Monterey	36° 35' 42"	121° 52' 28"
CA	Sacramento	38° 39' 59"	121° 23' 33"
CA	Vandenberg AFB	34° 49' 23"	120° 30' 07"
CO	Buckley	39° 42' 55"	104° 46' 29"
CO	Schriever AFB	38° 48' 22"	104° 31' 41"
FL	Cape Canaveral AFS	28° 29' 09"	080° 34' 33"
FL	Cape GA, CCAFB	28° 29' 03"	080° 34' 21"
FL	JIATF-S Key West	24° 32' 36"	081° 48' 17"
HI	Kaena Point, Oahu	21° 33' 43"	158° 14' 31"
MD	Annapolis	38° 59' 27"	076° 29' 25"
MD	Blossom Point	38° 25' 53"	077° 05' 06"
MD	Patuxent River NAS	38° 16' 28"	076° 24' 45"
ME	Prospect Harbor	44° 24' 16"	068° 00' 46"
NC	Ft Bragg	35° 09' 04"	078° 59' 13"
NH	New Boston AFS	42° 56' 46"	071° 37' 44"
NM	Kirtland AFB	34° 59' 06"	106° 30' 28"
TX	Ft Hood	31° 08' 57"	097° 46' 12"
VA	Fort Belvoir	38° 44' 04"	077° 09' 12"
WA	Joint Base Lewis-McChord	47° 06' 11"	122° 33' 11"

GU	Andersen AFB	13° 36' 54"	144° 51' 22"
GU	NAVSOC Det. Charlie	13° 34' 58"	144° 50' 32"

Note 6 to paragraph (c)(91)(ii)(C): The coordinates are specified in the conventional manner (North latitude, West longitude), except that the Guam (GU) entries are specified in terms of East longitude. Use at Cape Canaveral AFS is restricted to launch support only. If required, successfully coordinated with all affected AWS licensees, and authorized by NTIA, reasonable modifications of these grandfathered Federal systems beyond their current authorizations or the addition of new earth station locations may be permitted. The details of the coordination must be filed with NTIA and FCC.

(iii) In the band 1755-1780 MHz, the military services may conduct Electronic Warfare (EW) operations on Federal ranges and within associated airspace on a non-interference basis with respect to non-Federal AWS operations and shall not constrain implementation of non-Federal AWS operations. This use is restricted to Research, Development, Test and Evaluation (RDT&E), training, and Large Force Exercise (LFE) operations.

(92) US92 In the band 2025-2110 MHz, Federal use of the co-primary fixed and mobile services is restricted to the military services and the following provisions apply:

(i) Federal use shall not cause harmful interference to, nor constrain the deployment and use of the band by, the Television Broadcast Auxiliary Service, the Cable Television Relay Service, or the Local Television Transmission Service. To facilitate compatible operations, coordination is required in accordance with a Memorandum of Understanding between Federal and non-Federal fixed and mobile operations. Non-Federal licensees shall make all reasonable efforts to accommodate military mobile and fixed operations; however, the use of the band 2025-2110 MHz by the non-Federal fixed and mobile services has priority over military fixed and mobile operations.

(ii) Military stations should, to the extent practicable, employ frequency agile technologies and techniques, including the capability to tune to other frequencies and the use of a modular retrofit capability, to facilitate sharing of this band with incumbent Federal and non-Federal operations.

(93) US93 In the conterminous United States, the frequency 108.0 MHz may be authorized for use by VOR test facilities, the operation of which is not essential for the safety of life or property, subject to the condition that no interference is caused to the reception of FM broadcasting stations operating in the band 88-108 MHz. In the event that such interference does occur, the licensee or other agency authorized to operate the facility shall discontinue operation on 108 MHz and shall not resume operation until the interference has been eliminated or the complaint otherwise satisfied. VOR test facilities operating on 108 MHz will not be protected against interference caused by FM broadcasting stations operating in the band 88-108 MHz nor shall the authorization of a VOR test facility on 108 MHz preclude the Commission from authorizing additional FM broadcasting stations.

(94) - (95) [Reserved]

(96) US96 The band 2200-2290 MHz is allocated to the space operation service (space-to-Earth) on a secondary basis for non-Federal use subject to the following conditions. Non-Federal stations shall be:

(i) Restricted to transmissions from the launch vehicle in the sub-bands 2208.5-2213.5 MHz, 2212.5-2217.5 MHz, 2270-2275 MHz, and 2285-2290 MHz (necessary bandwidth shall be contained within these ranges);

(ii) Restricted to use for pre-launch testing and space launch operations, except as provided under

US303; and

(iii) Subject to coordination with NTIA prior to each launch.

(97) US97 The following provisions shall apply in the band 2305-2320 MHz:

(i) In the sub-band 2305-2310 MHz, space-to-Earth operations are prohibited.

(ii) Within 145 km of Goldstone, CA (35° 25' 33" N, 116° 53' 23" W), Wireless Communications Service (WCS) licensees operating base stations in the band 2305-2320 MHz shall, prior to operation of those base stations, achieve a mutually satisfactory coordination agreement with the National Aeronautics and Space Administration (NASA).

Note 7 to paragraph (c)(97): NASA operates a deep space facility in Goldstone in the band 2290-2300 MHz.

(98) [Reserved]

(99) US99 In the band 1668.4-1670 MHz, the meteorological aids service (radiosonde) will avoid operations to the maximum extent practicable. Whenever it is necessary to operate radiosondes in the band 1668.4-1670 MHz within the United States, notification of the operations shall be sent as far in advance as possible to the National Science Foundation, Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, 2415 Eisenhower Avenue, Alexandria, VA 22314; Email: *esm@nsf.gov*.

(100) US100 The following provisions shall apply to the bands 2310-2320 MHz and 2345-2360 MHz:

(i) The bands 2310-2320 and 2345-2360 MHz are available for Federal aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles, or major components thereof, on a secondary basis to the Wireless Communications Service (WCS). The frequencies 2312.5 MHz and 2352.5 MHz are shared on a co-equal basis by Federal stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles, irrespective of whether such operations involve flight testing. Other Federal mobile telemetering uses may be provided in the bands 2310-2320 and 2345-2360 MHz on a non-interference basis to all other uses authorized pursuant to this paragraph (c)(100)(i).

(ii) The band 2345-2360 MHz is available for non-Federal aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles, or major components thereof, on a secondary basis to the WCS until January 1, 2020. The use of this allocation is restricted to non-Federal licensees in the Aeronautical and Fixed Radio Service holding a valid authorization on April 23, 2015.

(101) US101 The band 2360-2400 MHz is also allocated on a secondary basis to the mobile, except aeronautical mobile, service. The use of this allocation is limited to MedRadio operations. MedRadio stations are authorized by rule and operate in accordance with part 95 of this chapter.

(102) US102 In Alaska only, the frequency 122.1 MHz may also be used for air carrier air traffic control purposes at locations where other frequencies are not available to air carrier aircraft stations for air traffic control.

(103) US103 In the band 3300-3550 MHz, non-Federal stations in the radiolocation service that were licensed (or licensed pursuant to applications accepted for filing) before February 22, 2019 may continue to operate on a secondary basis until 180 days after the issuance of the first flexible-use licenses in the 3.45 GHz Service. No new assignments shall be made. In the band 3300-3500 MHz, stations in the amateur service may continue to operate on a secondary basis until new flexible-use licenses are issued for operation in the band in which they operate. Amateur operations between 3450 MHz and 3500 MHz must cease within 90 days of the public notice announcing the close of the auction for the 3.45 GHz

Service. Stations in the amateur service may continue to operate in the band 3300-3450 MHz on a secondary basis while the band's future uses are finalized, but stations in the amateur service may be required to cease operations in the band 3300-3450 MHz at any time if the amateur service causes harmful interference to flexible-use operations.

(104) US104 In the band 90-110 kHz, the LORAN radionavigation system has priority in the United States and its insular areas. Radiolocation land stations making use of LORAN type equipment may be authorized to both Federal and non-Federal licensees on a secondary basis for offshore radiolocation activities only at specific locations and subject to such technical and operational conditions (e.g., power, emission, pulse rate and phase code, hours of operation), including on-the-air testing, as may be required on a case-by-case basis to ensure protection of the LORAN radionavigation system from harmful interference and to ensure mutual compatibility among radiolocation operators. Such authorizations to stations in the radiolocation service are further subject to showing of need for service which is not currently provided and which the Federal Government is not yet prepared to render by way of the radionavigation service.

(105) US105 In the band 3550-3650 MHz, non-Federal stations in the radiolocation service that were licensed or applied for prior to July 23, 2015 may continue to operate on a secondary basis until the end of the equipment's useful lifetime.

(106) [Reserved]

(107) US107 In the band 3600-3650 MHz, the following provisions shall apply to earth stations in the fixed-satellite service (space-to-Earth):

(i) Earth stations authorized prior to, or granted as a result of an application filed prior to, July 23, 2015 and constructed within 12 months of initial authorization may continue to operate on a primary basis. Applications for modifications to such earth station facilities filed after July 23, 2015 shall not be accepted, except for changes in polarization, antenna orientation, or ownership; and increases in antenna size for interference mitigation purposes.

(ii) The assignment of frequencies to new earth stations after July 23, 2015 shall be authorized on a secondary basis.

(108) US108 In the band 10-10.5 GHz, survey operations, using transmitters with a peak power not to exceed five watts into the antenna, may be authorized for Federal and non-Federal use on a secondary basis to other Federal radiolocation operations.

(109) US109 The band 3650-3700 MHz is also allocated to the Federal radiolocation service on a primary basis at the following sites: St. Inigoes, MD (38° 10' N, 76° 23' W); Pascagoula, MS (30° 22' N, 88° 29' W); and Pensacola, FL (30° 21' 28" N, 87° 16' 26" W). The FCC shall coordinate all non-Federal operations authorized under part 90 of this chapter within 80 km of these sites with NTIA on a case-by-case basis. For stations in the Citizens Broadband Radio Service these sites shall be protected consistent with the procedures set forth in §§ 96.15(b) and 96.67 of this chapter.

(110) US110 In the band 9200-9300 MHz, the use of the radiolocation service by non-Federal licensees may be authorized on the condition that harmful interference is not caused to the maritime radionavigation service or to the Federal radiolocation service.

(111) US111 In the band 5091-5150 MHz, aeronautical mobile telemetry operations for flight testing are conducted at the locations specified in table 10 to this paragraph (c)(111). Flight testing at additional locations may be authorized on a case-by-case basis.

Table 10 to Paragraph (c)(111)

Location	Test Sites	Lat. (N)	Long. (W)
Gulf Area Ranges Complex (GARC)	Eglin AFB, Tyndall AFB, FL; Gulfport ANG Range, MS; Ft. Rucker, Redstone, NASA Marshall Space Flight Center, AL	30° 28'	86° 31'
Utah Ranges Complex (URC)	Dugway PG; Utah Test & Training Range (Hill AFB), UT	40° 57'	113° 05'
Western Ranges Complex (WRC)	Pacific Missile Range; Vandenberg AFB, China Lake NAWS, Pt. Mugu NAWS, Edwards AFB, Thermal, Nellis AFB, Ft. Irwin, NASA Dryden Flight Research Center, Victorville, CA	35° 29'	117° 16'
Southwest Ranges Complex (SRC)	Ft. Huachuca, Tucson, Phoenix, Mesa, Yuma, AZ	31° 33'	110° 18'
Mid-Atlantic Ranges Complex (MARC)	Patuxent River, Aberdeen PG, NASA Langley Research Center, NASA Wallops Flight Facility, MD	38° 17'	76° 24'
New Mexico Ranges Complex (NMRC)	White Sands Missile Range, Holloman AFB, Albuquerque, Roswell, NM; Amarillo, TX	32° 11'	106° 20'
Colorado Ranges Complex (CoRC)	Alamosa, Leadville, CO	37° 26'	105° 52'
Texas Ranges Complex (TRC)	Dallas/Ft. Worth, Greenville, Waco, Johnson Space Flight Center/Ellington Field, TX	32° 53'	97° 02'
Cape Ranges Complex (CRC)	Cape Canaveral, Palm Beach-Dade, FL	28° 33'	80° 34'
Northwest Range Complex (NWRC)	Seattle, Everett, Spokane, Moses Lake, WA; Klamath Falls, Eugene, OR	47° 32'	122° 18'

St. Louis	St Louis, MO	38° 45'	90° 22'
Wichita	Wichita, KS	37° 40'	97° 26'
Marietta	Marietta, GA	33° 54'	84° 31'
Glasgow	Glasgow, MT	48° 25'	106° 32'
Wilmington/Ridley	Wilmington, DE/Ridley, PA	39° 49'	75° 26'
San Francisco Bay Area (SFBA)	NASA Ames Research Center, CA	37° 25'	122° 03'
Charleston	Charleston, SC	32° 52'	80° 02'

(112) US112 The frequency 123.1 MHz is for search and rescue communications. This frequency may be assigned for air traffic control communications at special aeronautical events on the condition that no harmful interference is caused to search and rescue communications during any period of search and rescue operations in the locale involved.

(113) US113 Radio astronomy observations of the formaldehyde line frequencies 4825-4835 MHz and 14.47-14.5 GHz may be made at certain radio astronomy observatories as indicated in table 11 to paragraph (c)(113). Every practicable effort will be made to avoid the assignment of frequencies to stations in the fixed or mobile services in these bands. Should such assignments result in harmful interference to these observations, the situation will be remedied to the extent practicable.

Table 11 to Paragraph (c)(113)—Bands To Be Observed

4 GHz	14 GHz	Observatory
X		National Astronomy and Ionosphere Center (NAIC), Arecibo, PR

X	X	National Radio Astronomy Observatory (NRAO), Green Bank, WV
X	X	NRAO, Socorro, NM
X		Allen Telescope Array (ATA), Hat Creek, CA
X	X	Owens Valley Radio Observatory (OVRO), Big Pine, CA
X	X	NRAO's ten Very Long Baseline Array (VLBA) stations (see US131)
X	X	University of Michigan Radio Astronomy Observatory, Stinchfield Woods, MI
X		Pisgah Astronomical Research Institute, Rosman, NC

(114) [Reserved]

(115) US115 In the bands 5000-5010 MHz and 5010-5030 MHz, the following provisions shall apply:

(i) In the band 5000-5010 MHz, systems in the aeronautical mobile (R) service (AM(R)S) are limited to surface applications at airports that operate in accordance with international aeronautical standards (*i.e.*, AeroMACS).

(ii) The band 5010-5030 MHz is also allocated on a primary basis to the AM(R)S, limited to surface applications at airports that operate in accordance with international aeronautical standards. In making assignments for this band, attempts shall first be made to satisfy the AM(R)S requirements in the bands 5000-5010 MHz and 5091-5150 MHz. AM(R)S systems used in the band 5010-5030 MHz shall be designed and implemented to be capable of operational modification if receiving harmful interference from the radionavigation-satellite service. Finally, notwithstanding Radio Regulation No. 4.10, stations in the AM(R)S operating in this band shall be designed and implemented to be capable of operational modification to reduce throughput and/or preclude the use of specific frequencies in order to ensure protection of radionavigation-satellite service systems operating in this band.

(iii) Aeronautical fixed communications that are an integral part of the AeroMACS system in the bands 5000-5010 MHz and 5010-5030 MHz are also authorized on a primary basis.

(116) US116 In the bands 890-902 MHz and 935-941 MHz, no new assignments are to be made to Federal radio stations after July 10, 1970, except on case-by-case basis to experimental stations. Federal assignments existing prior to July 10, 1970, shall be on a secondary basis to stations in the non-Federal land mobile service and shall be subject to adjustment or removal from the bands 890-902 MHz, 928-932 MHz, and 935-941 MHz at the request of the FCC.

(117) US117 In the band 406.1-410 MHz, the following provisions shall apply:

(i) Stations in the fixed and mobile services are limited to a transmitter output power of 125 watts, and new authorizations for stations, other than mobile stations, are subject to prior coordination by the applicant in the following areas:

(A) Within Puerto Rico and the U.S. Virgin Islands, contact Spectrum Manager, Arecibo Observatory, HC3 Box 53995, Arecibo, PR 00612. Phone: 787-878-2612, Fax: 787-878-1861, E-mail:

prcz@naic.edu.

(B) Within 350 km of the Very Large Array (34° 04' 44" N, 107° 37' 06" W), contact Spectrum Manager, National Radio Astronomy Observatory, P.O. Box O, 1003 Lopezville Road, Socorro, NM 87801. Phone: 505-835-7000, Fax: 505-835-7027, E-mail: *nrao-rfi@nrao.edu*.

(C) Within 10 km of the Table Mountain Observatory (40° 08' 02" N, 105° 14' 40" W) and for operations only within the sub-band 407-409 MHz, contact Radio Frequency Manager, Department of Commerce, 325 Broadway, Boulder, CO 80305. Phone: 303-497-4619, Fax: 303-497-6982, E-mail: *frequencymanager@its.blrdoc.gov*.

(ii) Non-Federal use is limited to the radio astronomy service and as provided by footnote US13.

(118) - (127) [Reserved]

(128) US128 In the band 10-10.5 GHz, pulsed emissions are prohibited, except for weather radars on board meteorological satellites in the sub-band 10-10.025 GHz. The amateur service, the amateur-satellite service, and the non-Federal radiolocation service, which shall not cause harmful interference to the Federal radiolocation service, are the only non-Federal services permitted in this band. The non-Federal radiolocation service is limited to survey operations as specified in footnote US108.

(129) [Reserved]

(130) US130 The band 10.6-10.68 GHz is also allocated on a primary basis to the radio astronomy service. However, the radio astronomy service shall not receive protection from stations in the fixed service which are licensed to operate in the one hundred most populous urbanized areas as defined by the 1990 U.S. Census. For the list of observatories operating in this band, see paragraph (c)(131) of this section.

(131) US131 In the band 10.7-11.7 GHz, non-geostationary satellite orbit licensees in the fixed-satellite service (space-to-Earth), prior to commencing operations, shall coordinate with the radio astronomy observatories listed in table 12 to this paragraph (c)(131) to achieve a mutually acceptable agreement regarding the protection of the radio telescope facilities operating in the band 10.6-10.7 GHz:

Table 12 to Paragraph (c)(131)

Observatory	North latitude	West longitude	Elevation (in meters)
Arecibo Observatory, PR.....	18° 20' 37"	66° 45' 11"	497
Green Bank Telescope (GBT), WV.....	38° 25' 59"	79° 50' 23"	807
Very Large Array (VLA), Socorro, NM.....	34° 04' 44"	107° 37' 06"	2115
Very Long Baseline Array (VLBA) Stations:			
Brewster, WA.....	48° 07' 52"	119° 41' 00"	250
Fort Davis, TX.....	30° 38' 06"	103° 56' 41"	1606
Hancock, NH.....	42° 56' 01"	71° 59' 12"	296
Kitt Peak, AZ.....	31° 57' 23"	111° 36' 45"	1902

Los Alamos, NM.....	35° 46' 30"	106° 14' 44"	1962
Mauna Kea, HI.....	19° 48' 05"	155° 27' 20"	3763
North Liberty, IA.....	41° 46' 17"	91° 34' 27"	222
Owens Valley, CA.....	37° 13' 54"	118° 16' 37"	1196
Pie Town, NM.....	34° 18' 04"	108° 07' 09"	2365
St. Croix, VI.....	17° 45' 24"	64° 35' 01"	16

(132) US132A In the bands 26.2-26.42 MHz, 41.015-41.665 MHz, and 43.35-44 MHz, applications of radiolocation service are limited to oceanographic radars operating in accordance with ITU Resolution 612 (Rev.WRC-12). Oceanographic radars shall not cause harmful interference to, or claim protection from, non-Federal stations in the land mobile service in the bands 26.2-26.42 MHz and 43.69-44 MHz, Federal stations in the fixed or mobile services in the band 41.015-41.665 MHz, and non-Federal stations in the fixed or land mobile services in the band 43.35-43.69 MHz.

(133) US133 In the bands 14-14.2 GHz and 14.47-14.5 GHz, the following provisions shall apply to the operations of Earth Stations Aboard Aircraft (ESAA):

(i) In the band 14-14.2 GHz, ESAA licensees proposing to operate within radio line-of-sight of the coordinates specified in § 25.228(j)(1) of this chapter are subject to prior coordination with NTIA in order to minimize harmful interference to the ground terminals of NASA's Tracking and Data Relay Satellite System (TDRSS).

(ii) In the band 14.47-14.5 GHz, operations within radio line-of-sight of the radio astronomy stations specified in § 25.228(j)(3) of this chapter are subject to coordination with the National Science Foundation in accordance with the requirements set forth in that rule section.

(134) - (135) [Reserved]

(136) US136 The following provisions shall apply in eight HF bands that are allocated to the broadcasting service (HFBC) on a primary basis in all Regions.

(i) In Alaska, the assigned frequency band 7368.48-7371.32 kHz is allocated exclusively to the fixed service (FS) on a primary basis for non-Federal use in accordance with § 80.387 of this chapter.

(ii) On the condition that harmful interference is not caused to the broadcasting service (NIB operations), Federal and non-Federal stations that communicate wholly within the United States and its insular areas may operate as specified in table 13 to this paragraph (c)(136)(ii). All such stations must take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU Radio Regulations and are limited to the minimum power needed for reliable communications.

(A) *Federal stations.* Frequencies in the 13 HF bands/sub-bands listed in the table below (HF NIB Bands) may be authorized to Federal stations in the FS. In the bands 5.9-5.95, 7.3-7.4, 13.57-13.6, and 13.80-13.87 MHz (6, 7, 13.6, and 13.8 MHz bands), frequencies may also be authorized to Federal stations in the mobile except aeronautical mobile route (R) service (MS except AM(R)S). Federal use of the bands 9.775-9.9, 11.65-11.7, and 11.975-12.05 MHz is restricted to stations in the FS that were authorized as of June 12, 2003, and each grandfathered station is restricted to a total radiated power of 24 dBW. In all other HF NIB Bands (*), new Federal stations may be authorized.

(B) *Non-Federal stations.* Non-Federal use of the HF NIB Bands is restricted to stations in the FS, land mobile service (LMS), and maritime mobile service (MMS) that were licensed prior to March 25, 2007, except that, in the sub-band 7.35-7.4 MHz, use is restricted to stations that were licensed prior to March 29, 2009.

Table 13 to Paragraph (c)(136)(ii)—NIB Operations in Eight HFBC Bands (MHz)

HF NIB Band	Federal (*new stations permitted)	Non-Federal	HFBC Band
5.90-5.95	*FS and MS except AM(R)S	MMS	5.90-6.20
7.30-7.40	*FS and MS except AM(R)S	FS, LMS and MMS	7.30-7.40
9.40-9.50	*9 MHz: FS	FS and LMS	9.40-9.90
9.775-9.90	FS (Grandfathered, restricted to 24 dBW)		
11.60-11.65	*11 MHz: FS	FS	11.60-12.10
11.65-11.70	FS (Grandfathered, restricted to 24 dBW)		
11.975-12.05	FS (Grandfathered, restricted to 24 dBW)		
12.05-12.10	*12 MHz: FS	FS	
13.57-13.60	*FS and MS except AM(R)S	MMS	13.57-13.87
13.80-13.87	*FS and MS except AM(R)S	MMS	
15.60-15.80	*15 MHz: FS	FS	15.10-15.80
17.48-17.55	*17 MHz: FS		17.48-17.90
18.90-19.02	*19 MHz: FS	MMS	18.90-19.02

Note 8 to paragraph (c)(136)(ii): Non-Federal stations may continue to operate in nine HF NIB Bands as follows: in the 6, 7, 13.6, 13.8, and 19 MHz bands, stations in the MMS; in the 7 and 9 MHz bands, stations in the FS and LMS; and in the 11, 12, and 15 MHz band, stations in the FS.

(137) - (138) [Reserved]

(139) US139 Fixed stations authorized in the band 18.3-19.3 GHz under the provisions of §§ 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter may continue operations consistent with the provisions of those sections.

(140) - (141) [Reserved]

(142) US142 In the bands 7.2-7.3 and 7.4-7.45 MHz, the following provisions shall apply:

(i) In the U.S. Pacific insular areas located in Region 3 (*see* § 2.105(a), note 3), the bands 7.2-7.3

and 7.4-7.45 MHz are alternatively allocated to the broadcasting service on a primary basis. Use of this allocation is restricted to international broadcast stations that transmit to geographical zones and areas of reception in Region 1 or Region 3.

(ii) The use of the band 7.2-7.3 MHz in Region 2 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3.

(143) - (144) [Reserved]

(145) US145 The following unwanted emissions power limits for non-geostationary satellites operating in the inter-satellite service that transmit in the band 22.55-23.55 GHz shall apply in any 200 MHz of the passive band 23.6-24 GHz, based on the date that complete advance publication information is received by the ITU's Radiocommunication Bureau:

(i) For information received before January 1, 2020: -36 dBW/200 MHz.

(ii) For information received on or after January 1, 2020: -46 dBW/200 MHz.

(146) - (150) [Reserved]

(151) US151 In the band 37-38 GHz, stations in the fixed and mobile services shall not cause harmful interference to Federal earth stations in the space research service (space-to-Earth) at the following sites: Goldstone, CA; Socorro, NM; and White Sands, NM. Applications for non-Federal use of this band shall be coordinated with NTIA in accordance with § 30.205 of this chapter.

(152) - (155) [Reserved]

(156) US156 In the bands 49.7-50.2 GHz and 50.4-50.9 GHz, for earth stations in the fixed-satellite service (Earth-to-space), the unwanted emissions power in the band 50.2-50.4 GHz shall not exceed -20 dBW/ 200 MHz (measured at the input of the antenna), except that the maximum unwanted emissions power may be increased to -10 dBW/200 MHz for earth stations having an antenna gain greater than or equal to 57 dBi. These limits apply under clear-sky conditions. During fading conditions, the limits may be exceeded by earth stations when using uplink power control.

(157) US157 In the band 51.4-52.6 GHz, for stations in the fixed service, the unwanted emissions power in the band 52.6-54.25 GHz shall not exceed -33 dBW/100 MHz (measured at the input of antenna).

(158) - (160) [Reserved]

(161) US161 In the bands 81-86 GHz, 92-94 GHz, and 94.1-95 GHz and within the coordination distances indicated below, assignments to allocated services shall be coordinated with the following radio astronomy observatories. New observatories shall not receive protection from fixed stations that are licensed to operate in the one hundred most populous urbanized areas as defined by the U.S. Census Bureau for the year 2000.

(i) Within 25 km of the National Radio Astronomy Observatory's (NRAO's) Very Long Baseline Array (VLBA) Stations listed in table 14 to this paragraph (c)(161)(i).

Table 14 to Paragraph (c)(161)(i)

State	VLBA Station	Lat. (N)	Long. (W)
AZ	Kitt Peak	31° 57' 23"	111° 36' 45"
CA	Owens Valley	37° 13' 54"	118° 16' 37"

HI	Mauna Kea	19° 48' 05"	155° 27' 20"
IA	North Liberty	41° 46' 17"	091° 34' 27"
NH	Hancock	42° 56' 01"	071° 59' 12"
NM	Los Alamos	35° 46' 30"	106° 14' 44"
NM	Pie Town	34° 18' 04"	108° 07' 09"
TX	Fort Davis	30° 38' 06"	103° 56' 41"
VI	Saint Croix	17° 45' 24"	064° 35' 01"
WA	Brewster	48° 07' 52"	119° 41' 00"

(ii) Within 150 km of the observatories in table 15 to this paragraph (c)(161)(ii):

Table 15 to Paragraph (c)(161)(ii)

State	Telescope and site	Lat. (N)	Long. (W)
AZ	Heinrich Hertz Submillimeter Observatory, Mt. Graham	32° 42' 06"	109° 53' 28"
AZ	University of Arizona 12-m Telescope, Kitt Peak	31° 57' 12"	111° 36' 53"
CA	Caltech Telescope, Owens Valley	37° 13' 54"	118° 17' 36"
CA	Combined Array for Research in Millimeter-wave Astronomy (CARMA)	37° 16' 43"	118° 08' 32"
HI	James Clerk Maxwell Telescope, Mauna Kea	19° 49' 33"	155° 28' 47"
MA	Haystack Observatory, Westford	42° 37' 24"	071° 29' 18"
NM	NRAO's Very Large Array, Socorro	34° 04' 44"	107° 37' 06"
WV	NRAO's Robert C. Byrd Telescope, Green Bank	38° 25' 59"	079° 50' 23"

Note 9 to paragraph (c)(161)(ii): Satisfactory completion of the coordination procedure utilizing the automated mechanism, see § 101.1523 of this chapter, will be deemed to establish sufficient separation from radio astronomy observatories, regardless of whether the distances set forth above are met.

(162) - (204) [Reserved]

(205) US205 Tropospheric scatter systems are prohibited in the band 2500-2690 MHz.

(206) - (207) [Reserved]

(208) US208 Planning and use of the band 1559-1626.5 MHz necessitate the development of technical and/or operational sharing criteria to ensure the maximum degree of electromagnetic compatibility with existing and planned systems within the band.

(209) US209 The use of frequencies 460.6625, 460.6875, 460.7125, 460.7375, 460.7625, 460.7875, 460.8125, 460.8375, 460.8625, 465.6625, 465.6875, 465.7125, 465.7375, 465.7625, 465.7875, 465.8125, 465.8375, and 465.8625 MHz may be authorized, with 100 mW or less output power, to Federal and non-Federal radio stations for one-way, non-voice bio-medical telemetry operations in hospitals, or medical or convalescent centers.

(210) US210 In the bands 40.66-40.7 MHz and 216-220 MHz, frequencies may be authorized to Federal and non-Federal stations on a secondary basis for the tracking of, and telemetering of scientific data from, ocean buoys and wildlife. Operation in these bands is subject to the technical standards specified in Section 8.2.42 of the NTIA Manual for Federal use, or § 90.248 of this chapter for non-Federal use. After January 1, 2002, no new assignments shall be authorized in the band 216-217 MHz.

(211) US211 In the bands 1670-1690, 5000-5250 MHz and 10.7-11.7, 15.1365-15.35, 15.4-15.7, 22.5-22.55, 24-24.05, 31.0-31.3, 31.8-32.0, 40.5-42.5, 116-122.25, 123-130, 158.5-164, 167-168, 191.8-200, and 252-265 GHz, applicants for airborne or space station assignments are urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference; however, US74 applies.

(212) US212 In, or within 92.6 km (50 nautical miles) of, the State of Alaska, the carrier frequency 5167.5 kHz (assigned frequency 5168.9 kHz) is designated for emergency communications. This frequency may also be used in the Alaska-Private Fixed Service for calling and listening, but only for establishing communications before switching to another frequency. The maximum power is limited to 150 watts peak envelope power (PEP).

(213) US213 The frequency 122.925 MHz is for use only for communications with or between aircraft when coordinating natural resources programs of Federal or State natural resources, agencies, including forestry management and fire suppression, fish and game management and protection and environmental monitoring and protection.

(214) US214 The frequency 157.1 MHz is the primary frequency for liaison communications between ship stations and stations of the United States Coast Guard.

(215) - (217) [Reserved]

(218) US218 The band 902-928 MHz is available for Location and Monitoring Service (LMS) systems subject to not causing harmful interference to the operation of all Federal stations authorized in this band. These systems must tolerate interference from the operation of industrial, scientific, and medical (ISM) equipment and the operation of Federal stations authorized in this band.

(219) [Reserved]

(220) US220 The frequencies 36.25 and 41.71 MHz may be authorized to Federal stations and non-Federal stations in the petroleum radio service, for oil spill containment and cleanup operations. The use of these frequencies for oil spill containment or cleanup operations is limited to the inland and coastal waterway regions.

(221) US221 Use of the mobile service in the bands 525-535 kHz and 1605-1615 kHz is limited to distribution of public service information from Travelers Information stations operating on 530 kHz and 1610 kHz.

(222) US222 In the band 2025-2035 MHz, geostationary operational environmental satellite (GOES) earth stations in the space research and Earth exploration-satellite services may be authorized on a coequal basis for Earth-to-space transmissions for tracking, telemetry, and telecommand at Honolulu, HI (21° 21' 12" N, 157° 52' 36" W); Seattle, WA (47° 34' 15" N, 122° 33' 10" W); and Wallops Island, VA (37° 56' 44" N, 75° 27' 42" W).

(223) [Reserved]

(224) US224 Federal systems utilizing spread spectrum techniques for terrestrial communication, navigation and identification may be authorized to operate in the band 960-1215 MHz on the condition that harmful interference will not be caused to the aeronautical radionavigation service. These systems will be handled on a case-by-case basis. Such systems shall be subject to a review at the national level for operational requirements and electromagnetic compatibility prior to development, procurement or modification.

(225) US225 In addition to its present Federal use, the band 510-525 kHz is available to Federal and non-Federal aeronautical radionavigation stations inland of the Territorial Base Line as coordinated with the military services. In addition, the frequency 510 kHz is available for non-Federal ship-helicopter operations when beyond 100 nautical miles from shore and required for aeronautical radionavigation.

(226) [Reserved]

(227) US227 The bands 156.4875-156.5125 MHz and 156.5375-156.5625 MHz are also allocated to the fixed and land mobile services on a primary basis for non-Federal use in VHF Public Coast Station Areas 10-42. The use of these bands by the fixed and land mobile services shall not cause harmful interference to, nor claim protection from, the maritime mobile VHF radiocommunication service.

(228) - (229) [Reserved]

(230) US230 The bands 422.1875-425.4875 MHz and 427.1875-429.9875 MHz are allocated to the land mobile service on a primary basis for non-Federal use within 80.5 kilometers (50 miles) of Cleveland, OH (41° 29' 51.2" N, 81° 41' 49.5" W) and Detroit, MI (42° 19' 48.1" N, 83° 02' 56.7" W). The bands 423.8125-425.4875 MHz and 428.8125-429.9875 MHz are allocated to the land mobile service on a primary basis for non-Federal use within 80.5 kilometers of Buffalo, NY (42° 52' 52.2" N, 78° 52' 20.1" W).

(231) US231 When an assignment cannot be obtained in the bands between 200 kHz and 525 kHz, which are allocated to aeronautical radionavigation, assignments may be made to aeronautical radiobeacons in the maritime mobile bands at 435-472 kHz and 479-490 kHz, on a secondary basis, subject to the coordination and agreement of those agencies having assignments within the maritime mobile bands which may be affected. Assignments to Federal aeronautical radionavigation radiobeacons in the bands 435-472 kHz and 479-490 kHz shall not be a bar to any required changes to the maritime mobile radio service and shall be limited to non-voice emissions.

(232) - (238) [Reserved]

(239) US239 Aeronautical radionavigation stations (radiobeacons) may be authorized, primarily for off-shore use, in the band 525-535 kHz on a non-interference basis to travelers information stations.

(240) US240 The bands 1715-1725 and 1740-1750 kHz are allocated on a primary basis and the bands 1705-1715 kHz and 1725-1740 kHz on a secondary basis to the aeronautical radionavigation service (radiobeacons).

(241) US241 The following provision shall apply to Federal operations in the band 216-220.035 MHz:

(i) Use of the fixed and land mobile services in the band 216-220 MHz and of the aeronautical

mobile service in the sub-band 217-220 MHz is restricted to telemetry and associated telecommand operations. New stations in the fixed and land mobile services shall not be authorized in the sub-band 216-217 MHz.

(ii) The sub-band 216.965-216.995 MHz is also allocated to the Federal radiolocation service on a primary basis and the use of this allocation is restricted to the Air Force Space Surveillance System (AFSSS) radar system.

(A) AFSSS stations transmit on the frequency 216.98 MHz and other operations may be affected within:

(1) 250 km of Lake Kickapoo (Archer City), TX (33° 2' 48" N, 98° 45' 46" W); and

(2) 150 km of Gila River (Phoenix), AZ (33° 6' 32" N, 112° 1' 45" W) and Jordan Lake (Wetumpka), AL (32° 39' 33" N, 86° 15' 52" W).

(B) AFSSS reception shall be protected from harmful interference within 50 km of:

(1) Elephant Butte, NM (33° 26' 35" N, 106° 59' 50" W);

(2) Fort Stewart, GA (31° 58' 36" N, 81° 30' 34" W);

(3) Hawkinsville, GA (32° 17' 20" N, 83° 32' 10" W);

(4) Red River, AR (33° 19' 48" N, 93° 33' 1" W);

(5) San Diego, CA (32° 34' 42" N, 116° 58' 11" W); and

(6) Silver Lake, MS (33° 8' 42" N, 91° 1' 16" W).

(iii) The sub-band 219.965-220.035 MHz is also allocated to the Federal radiolocation service on a secondary basis and the use of this allocation is restricted to air-search radars onboard Coast Guard vessels.

(242) US242 Use of the fixed and land mobile services in the band 220-222 MHz shall be in accordance with the following plan:

(i) Frequencies are assigned in pairs, with base station transmit frequencies taken from the sub-band 220-221 MHz and with corresponding mobile and control station transmit frequencies being 1 MHz higher and taken from the sub-band 221-222 MHz.

(ii) In the non-Federal exclusive sub-bands, temporary fixed geophysical telemetry operations are also permitted on a secondary basis.

(iii) The use of Channels 161-170 is restricted to public safety/mutual aid communications.

(iv) The use of Channels 181-185 is restricted to emergency medical communications.

Table 16 to paragraph (c)(242)—220 MHz Plan

Use	Base Transmit	Mobile Transmit	Channel Nos.
Non-Federal exclusive	220.00-220.55	221.00-221.55	001-110
Federal exclusive.....	220.55-220.60	221.55-221.60	111-120
Non-Federal exclusive	220.60-220.80	221.60-221.80	121-160

Shared.....	220.80-220.85	221.80-221.85	161-170
Non-Federal exclusive	220.85-220.90	221.85-221.90	171-180
Shared.....	220.90-220.925	221.90-221.925	181-185
Non-Federal exclusive	220.925-221	221.925-222	186-200

(243) [Reserved]

(244) US244 The band 136-137 MHz is allocated to the non-Federal aeronautical mobile (R) service on a primary basis, and is subject to pertinent international treaties and agreements. The frequencies 136, 136.025, 136.05, 136.075, 136.1, 136.125, 136.15, 136.175, 136.2, 136.225, 136.25, 136.275, 136.3, 136.325, 136.35, 136.375, 136.4, 136.425, 136.45, and 136.475 MHz are available on a shared basis to the Federal Aviation Administration for air traffic control purposes, such as automatic weather observation stations (AWOS), automatic terminal information services (ATIS), flight information services-broadcast (FIS-B), and airport control tower communications.

(245) US245 In the bands 3600-3650 MHz (space-to-Earth), 4500-4800 MHz (space-to-Earth), and 5850-5925 MHz (Earth-to-space), the use of the non-Federal fixed-satellite service is limited to international inter-continental systems and is subject to case-by-case electromagnetic compatibility analysis. The FCC's policy for these bands is codified at § 2.108.

(246) US246 No station shall be authorized to transmit in the following bands: 73-74.6 MHz, 608-614 MHz, except for medical telemetry equipment and white space devices, 1400-1427 MHz, 1660.5-1668.4 MHz, 2690-2700 MHz, 4990-5000 MHz, 10.68-10.7 GHz, 15.35-15.4 GHz, 23.6-24 GHz, 31.3-31.8 GHz, 50.2-50.4 GHz, 52.6-54.25 GHz, 86-92 GHz, 100-102 GHz, 109.5-111.8 GHz, 114.25-116 GHz, 148.5-151.5 GHz, 164-167 GHz, 182-185 GHz, 190-191.8 GHz, 200-209 GHz, 226-231.5 GHz, 250-252 GHz. Medical telemetry equipment shall not cause harmful interference to radio astronomy operations in the band 608-614 MHz and shall be coordinated under the requirements found in § 95.1119 of this chapter. White space devices shall not cause harmful interference to radio astronomy operations in the band 608-614 MHz and shall not operate within the areas described in § 15.712(h) of this chapter.

(247) US247 The band 10 100-10 150 kHz is allocated to the fixed service on a primary basis outside the United States and its insular areas. Transmissions from stations in the amateur service shall not cause harmful interference to this fixed service use and stations in the amateur service shall make all necessary adjustments (including termination of transmission) if harmful interference is caused.

(248) - (250) [Reserved]

(251) US251 The band 12.75-13.25 GHz is also allocated to the space research (deep space) (space-to-Earth) service for reception only at Goldstone, CA (35° 20' N, 116° 53' W).

(252) US252 The band 2110-2120 MHz is also allocated to the space research service (deep space) (Earth-to-space) on a primary basis at Goldstone, CA (35° 20' N, 116° 53' W).

(253) [Reserved]

(254) US254 In the band 18.6-18.8 GHz the fixed and mobile services shall be limited to a maximum equivalent isotropically radiated power of +35 dBW and the power delivered to the antenna shall not exceed -3 dBW.

(255) US255 In addition to any other applicable limits, the power flux-density across the 200 MHz band 18.6-18.8 GHz produced at the surface of the Earth by emissions from a space station under assumed free-space propagation conditions shall not exceed -95 dB(W/m²) for all angles of arrival. This limit may be exceeded by up to 3 dB for no more than 5% of the time.

(256) - (257) [Reserved]

(258) US258 In the bands 8025-8400 MHz and 25.5-27 GHz, the Earth exploration-satellite service (space-to-Earth) is allocated on a primary basis for non-Federal use. Authorizations are subject to a case-by-case electromagnetic compatibility analysis.

(259) US259 In the band 17.3-17.7 GHz, Federal stations in the radiolocation service shall operate with an e.i.r.p. of less than 51 dBW.

(260) US260 Aeronautical mobile communications which are an integral part of aeronautical radionavigation systems may be satisfied in the bands 1559-1626.5 MHz, 5000-5250 MHz and 15.4-15.7 GHz.

(261) US261 The use of the band 4200-4400 MHz by the aeronautical radionavigation service is reserved exclusively for airborne radio altimeters. Experimental stations will not be authorized to develop equipment for operational use in this band other than equipment related to altimeter stations. However, passive sensing in the Earth-exploration satellite and space research services may be authorized in this band on a secondary basis (no protection is provided from the radio altimeters).

(262) US262 The band 7145-7190 MHz is also allocated to the space research service (deep space) (Earth-to-space) on a secondary basis for non-Federal use. Federal and non-Federal use of the bands 7145-7190 MHz and 34.2-34.7 GHz by the space research service (deep space) (Earth-to-space) and of the band 31.8-32.3 GHz by the space research service (deep space) (space-to-Earth) is limited to Goldstone, CA (35° 20' N, 116° 53' W).

(263) [Reserved]

(264) US264 In the band 48.94-49.04 GHz, airborne stations shall not be authorized.

(265) [Reserved]

(266) US266 Non-Federal licensees in the Public Safety Radio Pool holding a valid authorization on June 30, 1958, to operate in the frequency band 156.27-157.45 MHz or on the frequencies 161.85 MHz or 161.91 MHz may, upon proper application, continue to be authorized for such operation, including expansion of existing systems, until such time as harmful interference is caused to the operation of any authorized station other than those licensed in the Public Safety Radio Pool.

(267) US267 In the band 902-928 MHz, amateur stations shall transmit only in the sub-bands 902-902.4, 902.6-904.3, 904.7-925.3, 925.7-927.3, and 927.7-928 MHz within the States of Colorado and Wyoming, bounded by the area of latitudes 39° N and 42° N and longitudes 103° W and 108° W.

(268) US268 The bands 890-902 MHz and 928-942 MHz are also allocated to the radiolocation service for Federal ship stations (off-shore ocean areas) on the condition that harmful interference is not caused to non-Federal land mobile stations. The provisions of footnote US116 apply.

(269) US269 In the band 420-450 MHz, the following provisions shall apply to the non-Federal radiolocation service:

(i) Pulse-ranging radiolocation systems may be authorized for use along the shoreline of the conterminous United States and Alaska.

(ii) In the sub-band 420-435 MHz, spread spectrum radiolocation systems may be authorized within the conterminous United States and Alaska.

(iii) All stations operating in accordance with this provision shall be secondary to stations operating in accordance with the Table of Frequency Allocations in this section.

(iv) Authorizations shall be granted on a case-by-case basis; however, operations proposed to be located within the areas listed in paragraph (i) of US270 should not expect to be accommodated.

(270) US270 In the band 420-450 MHz, the following provisions shall apply to the amateur service:

(i) The peak envelope power of an amateur station shall not exceed 50 watts in the following areas, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the Regional Director of the applicable field office and the military area frequency coordinator at the applicable military base. For areas (E) through (G), the appropriate military coordinator is located at Peterson AFB, CO.

(A) Arizona, Florida and New Mexico.

(B) Within those portions of California and Nevada that are south of latitude 37° 10' N.

(C) Within that portion of Texas that is west of longitude 104° W.

(D) Within 322 km of Eglin AFB, FL (30° 30' N, 86° 30' W); Patrick AFB, FL (28° 21' N, 80° 43' W); and the Pacific Missile Test Center, Point Mugu, CA (34° 09' N, 119° 11' W).

(E) Within 240 km of Beale AFB, CA (39° 08' N, 121° 26' W).

(F) Within 200 km of Goodfellow AFB, TX (31° 25' N, 100° 24' W) and Warner Robins AFB, GA (32° 38' N, 83° 35' W).

(G) Within 160 km of Clear AFS, AK (64° 17' N, 149° 10' W); Concrete, ND (48° 43' N, 97° 54' W); and Otis AFB, MA (41° 45' N, 70° 32' W).

(ii) In the sub-band 420-430 MHz, the amateur service is not allocated north of Line A (def. § 2.1).

(271) - (272) [Reserved]

(273) US273 In the bands 74.6-74.8 MHz and 75.2-75.4 MHz, stations in the fixed and mobile services are limited to a maximum power of 1 watt from the transmitter into the antenna transmission line.

(274) [Reserved]

(275) US275 The band 902-928 MHz is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Federal stations authorized in this band or to Location and Monitoring Service (LMS) systems. Stations in the amateur service must tolerate any interference from the operations of industrial, scientific, and medical (ISM) devices, LMS systems, and the operations of Federal stations authorized in this band. Further, the amateur service is prohibited in those portions of Texas and New Mexico bounded on the south by latitude 31° 41' North, on the east by longitude 104° 11' West, and on the north by latitude 34° 30' North, and on the west by longitude 107° 30' West; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range the service is restricted to a maximum transmitter peak envelope power output of 50 watts.

(276) US276 Except as otherwise provided for herein, use of the band 2360-2395 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of aircraft, missiles or major components thereof. The following three frequencies are shared on a co-equal basis by Federal and non-Federal stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles, whether or not such operations involve flight testing: 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile telemetering uses shall not cause harmful interference to, or claim protection from interference from, the above uses.

(277) [Reserved]

(278) US278 In the bands 22.55-23.55 GHz and 32.3-33 GHz, non-geostationary inter-satellite links may operate on a secondary basis to geostationary inter-satellite links.

(279) US279 The frequency 2182 kHz may be authorized to fixed stations associated with the maritime mobile service for the sole purpose of transmitting distress calls and distress traffic, and urgency and safety signals and messages.

(280) [Reserved]

(281) US281 In the band 25 070-25 210 kHz, non-Federal stations in the Industrial/Business Pool shall not cause harmful interference to, and must accept interference from, stations in the maritime mobile service operating in accordance with the Table of Frequency Allocations in this section.

(282) US282 In the band 4650-4700 kHz, frequencies may be authorized for non-Federal communication with helicopters in support of off-shore drilling operations on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations in this section.

(283) US283 In the bands 2850-3025 kHz, 3400-3500 kHz, 4650-4700 kHz, 5450-5680 kHz, 6525-6685 kHz, 10 005-10 100 kHz, 11 275-11 400 kHz, 13 260-13 360 kHz, and 17 900-17 970 kHz, frequencies may be authorized for non-Federal flight test purposes on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations in this section.

(284) [Reserved]

(285) US285 Under exceptional circumstances, the carrier frequencies 2635 kHz, 2638 kHz, and 2738 kHz may be authorized to coast stations.

(286) [Reserved]

(287) US287 In the maritime mobile service, the frequencies 457.525 MHz, 457.550 MHz, 457.575 MHz, 467.525 MHz, 467.550 MHz and 467.575 MHz may be used by on-board communication stations. Where needed, equipment designed for 12.5 kHz channel spacing using also the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz and 467.5625 MHz may be introduced for on-board communications. The use of these frequencies in territorial waters may be subject to the national regulations of the administration concerned. The characteristics of the equipment used shall conform to those specified in Recommendation ITU-R M.1174-2.

(288) US288 In the territorial waters of the United States, the preferred frequencies for use by on-board communication stations shall be 457.525 MHz, 457.550 MHz, 457.575 MHz and 457.600 MHz paired, respectively, with 467.750 MHz, 467.775 MHz, 467.800 MHz and 467.825 MHz. Where needed, equipment designed for 12.5 kHz channel spacing using also the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz and 467.5625 MHz may be introduced for on-board communications. The characteristics of the equipment used shall conform to those specified in Recommendation ITU-R M.1174-2.

(289) US289 In the bands 460-470 MHz and 1690-1695 MHz, the following provisions shall apply:

(i) In the band 460-470 MHz, space stations in the Earth exploration-satellite service (EESS) may be authorized for space-to-Earth transmissions on a secondary basis with respect to the fixed and mobile services. When operating in the meteorological-satellite service, such stations shall be protected from harmful interference from other EESS applications. The power flux density produced at the Earth's surface by any space station in this band shall not exceed $-152 \text{ dBW/m}^2/4 \text{ kHz}$.

(ii) In the band 1690-1695 MHz, EESS applications, other than the meteorological-satellite service, may also be used for space-to-Earth transmissions subject to not causing harmful interference to stations operating in accordance with the Table of Frequency Allocations in this section.

(290) - (295) [Reserved]

(296) US296 In the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Federal stations on a shared basis with Federal stations: 2070.5 kHz, 2072.5 kHz, 2074.5 kHz, 2076.5 kHz, 4154 kHz, 4170 kHz, 6235 kHz, 6259 kHz, 8302 kHz, 8338 kHz, 12 370 kHz, 12 418 kHz, 16 551 kHz, 16 615 kHz, 18 848 kHz, 18 868 kHz, 22 182 kHz, 22 238 kHz, 25 123 kHz, and 25 159 kHz.

(297) US297 The bands 47.2-49.2 GHz and 81-82.5 GHz are also available for feeder links for the broadcasting-satellite service.

(298) US298 The assigned frequencies 27.555, 27.615, 27.635, 27.655, 27.765, and 27.860 MHz are available for use by forest product licensees on a secondary basis to Federal operations including experimental stations. Non-Federal operations on these frequencies will not exceed 150 watts output power and are limited to the states of Washington, Oregon, Maine, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas (eastern portion).

(299) US299 In Alaska, the band 1615-1705 kHz is also allocated to the maritime mobile and Alaska fixed services on a secondary basis to Region 2 broadcast operations.

(300) US300 The frequencies 169.445, 169.505, 169.545, 169.575, 169.605, 169.995, 170.025, 170.055, 170.245, 170.305, 171.045, 171.075, 171.105, 171.845, 171.875, and 171.905 MHz are available for wireless microphone operations on a secondary basis to Federal and non-Federal operations. On center frequencies 169.575 MHz, 170.025 MHz, 171.075 MHz, and 171.875 MHz, the emission bandwidth shall not exceed 200 kHz. On the other center frequencies, the emission bandwidth shall not exceed 54 kHz.

(301) US301 Except as provided in NG30, broadcast auxiliary stations licensed as of November 21, 1984, to operate in the band 942-944 MHz may continue to operate on a co-equal primary basis to other stations and services operating in the band in accordance with the Table of Frequency Allocations in this section.

(302) [Reserved]

(303) US303 In the band 2285-2290 MHz, non-Federal space stations in the space research, space operations and Earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power flux-density at the Earth's surface from such non-Federal stations shall not exceed -144 to -154 dBW/m²/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation 21.16.

(304) - (306) [Reserved]

(307) US307 The band 5150-5216 MHz is also allocated to the fixed-satellite service (space-to-Earth) for feeder links in conjunction with the radiodetermination-satellite service operating in the bands 1610-1626.5 MHz and 2483.5-2500 MHz. The total power flux-density at the Earth's surface shall in no case exceed -159 dBW/m² per 4 kHz for all angles of arrival.

(308) US308 In the bands 1549.5-1558.5 MHz and 1651-1660 MHz, those requirements of the aeronautical mobile-satellite (R) service that cannot be accommodated in the bands 1545-1549.5 MHz, 1558.5-1559 MHz, 1646.5-1651 MHz and 1660-1660.5 MHz shall have priority access with real-time preemptive capability for communications in the mobile-satellite service. Systems not interoperable with the aeronautical mobile-satellite (R) service shall operate on a secondary basis. Account shall be taken of

the priority of safety-related communications in the mobile-satellite service.

(309) US309 In the bands 1545-1559 MHz, transmissions from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links. In the band 1646.5-1660.5 MHz, transmissions from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

(310) US310 In the band 14.896-15.121 GHz, non-Federal space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal stations. The power flux-density (pfd) produced by such non-Federal stations at the Earth's surface in any 1 MHz band for all conditions and methods of modulation shall not exceed:

(i) $-124 \text{ dB(W/m}^2\text{)}$ for $0^\circ < \theta < 5^\circ$, (ii) $-124 + (\theta - 5)/2 \text{ dB(W/m}^2\text{)}$ for $5^\circ < \theta < 25^\circ$, (iii) and $-114 \text{ dB(W/m}^2\text{)}$ for $25^\circ < \theta < 90^\circ$, where θ is the angle of arrival of the radio-frequency wave (degrees above the horizontal). These limits relate to the pfd and angles of arrival which would be obtained under free-space propagation conditions.

(ii) [Reserved]

(311) [Reserved]

(312) US312 The frequency 173.075 MHz may also be authorized on a primary basis to non-Federal stations in the Public Safety Radio Pool, limited to police licensees, for stolen vehicle recovery systems (SVRS). As of May 27, 2005, new SVRS licenses shall be issued for an authorized bandwidth not to exceed 12.5 kHz. Stations that operate as part of a stolen vehicle recovery system that was authorized and in operation prior to May 27, 2005 may operate with an authorized bandwidth not to exceed 20 kHz until May 27, 2019. After that date, all SVRS shall operate with an authorized bandwidth not to exceed 12.5 kHz.

(313) - (314) [Reserved]

(315) US315 In the bands 1530-1544 MHz and 1626.5-1645.5 MHz, maritime mobile-satellite distress and safety communications, *e.g.*, GMDSS, shall have priority access with real-time preemptive capability in the mobile-satellite service. Communications of mobile-satellite system stations not participating in the GMDSS shall operate on a secondary basis to distress and safety communications of stations operating in the GMDSS. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

(316) US316 The band 2900-3000 MHz is also allocated to the meteorological aids service on a primary basis for Federal use. Operations in this service are limited to Next Generation Weather Radar (NEXRAD) systems where accommodation in the band 2700-2900 MHz is not technically practical and are subject to coordination with existing authorized stations.

(317) - (318) [Reserved]

(319) US319 In the bands 137-138 MHz, 148-149.9 MHz, 149.9-150.05 MHz, 399.9-400.05 MHz, 400.15-401 MHz, 1610-1626.5 MHz, and 2483.5-2500 MHz, Federal stations in the mobile-satellite service shall be limited to earth stations operating with non-Federal space stations.

(320) US320 The use of the bands 137-138 MHz, 148-150.05 MHz, 399.9-400.05 MHz, and 400.15-401 MHz by the mobile-satellite service is limited to non-voice, non-geostationary satellite systems and may include satellite links between land earth stations at fixed locations.

(321) - (322) [Reserved]

(323) US323 In the band 148-149.9 MHz, no individual mobile earth station shall transmit on the same frequency being actively used by fixed and mobile stations and shall transmit no more than 1% of the time during any 15 minute period; except, individual mobile earth stations in this band that do not avoid frequencies actively being used by the fixed and mobile services shall not exceed a power density of -16 dBW/4 kHz and shall transmit no more than 0.25% of the time during any 15 minute period. Any single transmission from any individual mobile earth station operating in this band shall not exceed 450 ms in duration and consecutive transmissions from a single mobile earth station on the same frequency shall be separated by at least 15 seconds. Land earth stations in this band shall be subject to electromagnetic compatibility analysis and coordination with terrestrial fixed and mobile stations.

(324) US324 In the band 400.15-401 MHz, Federal and non-Federal satellite systems shall be subject to electromagnetic compatibility analysis and coordination.

(325) US325 In the band 148-149.9 MHz fixed and mobile stations shall not claim protection from land earth stations in the mobile-satellite service that have been previously coordinated; Federal fixed and mobile stations exceeding 27 dBW EIRP, or an emission bandwidth greater than 38 kHz, will be coordinated with existing mobile-satellite service space stations.

(326) [Reserved]

(327) US327 The band 2310-2360 MHz is allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528.

(328) - (333) [Reserved]

(334) US334 In the bands between 17.7 GHz and 20.2 GHz, the following provisions shall apply:

(i) In the bands between 17.8 GHz and 20.2 GHz, Federal space stations in both geostationary (GSO) and non-geostationary satellite orbits (NGSO) and associated earth stations in the fixed-satellite service (FSS) (space-to-Earth) may be authorized on a primary basis. For a Federal GSO FSS network to operate on a primary basis, the space station shall be located outside the arc, measured from east to west, 70-120° West longitude. Coordination between Federal FSS systems and non-Federal space and terrestrial systems operating in accordance with the United States Table of Frequency Allocations in this section is required.

(ii) In the bands between 17.8 GHz and 20.2 GHz, Federal earth stations operating with Federal space stations shall be authorized on a primary basis only in the following areas: Denver, Colorado; Washington, DC; San Miguel, California; and Guam. Prior to the commencement of non-Federal terrestrial operations in these areas, the FCC shall coordinate with NTIA all applications for new stations and modifications to existing stations as specified in §§ 1.924(f), 74.32, and 78.19(f) of this chapter. In the band 17.7-17.8 GHz, the FCC shall also coordinate with NTIA all applications for new stations and modifications to existing stations that support the operations of Multichannel Video Programming Distributors (MVPD) in these areas, as specified in §§ 1.924(f), 74.32, and 78.19(f).

(iii) In the bands between 17.8 GHz and 19.7 GHz, the power flux-density (pfd) at the surface of the Earth produced by emissions from a Federal GSO space station or from a Federal space station in a NGSO constellation of 50 or fewer satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(A) -115 dB(W/m²) for angles of arrival above the horizontal plane (δ) between 0° and 5°,

(B) $-115 + 0.5(\delta - 5)$ dB(W/m²) for δ between 5° and 25°, and

(C) -105 dB(W/m²) for δ between 25° and 90°.

(iv) In the bands between 17.8 GHz and 19.3 GHz, the pfd at the surface of the Earth produced by emissions from a Federal space station in an NGSO constellation of 51 or more satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(A) $-115 - X$ dB(W/m²) for δ between 0° and 5°,

(B) $-115 - X + ((10 + X)/20)(\delta - 5)$ dB(W/m²) for δ between 5° and 25°, and

(C) -105 dB(W/m²) for δ between 25° and 90°; where X is defined as a function of the number of satellites, n, in an NGSO constellation as follows:

For $n \leq 288$, $X = (5/119)(n - 50)$ dB; and

For $n > 288$, $X = (1/69)(n + 402)$ dB.

(335) - (336) [Reserved]

(337) US337 In the band 13.75-13.8 GHz, the FCC shall coordinate earth stations in the fixed-satellite service with NTIA on a case-by-case basis in order to minimize harmful interference to the Tracking and Data Relay Satellite System's forward space-to-space link (TDRSS forward link-to-LEO).

(338) US338A In the band 1435-1452 MHz, operators of aeronautical telemetry stations are encouraged to take all reasonable steps to ensure that the unwanted emissions power does not exceed -28 dBW/27 MHz in the band 1400-1427 MHz. Operators of aeronautical telemetry stations that do not meet this limit shall first attempt to operate in the band 1452-1525 MHz prior to operating in the band 1435-1452 MHz.

(339) [Reserved]

(340) US340 The band 2-30 MHz is available on a non-interference basis to Federal and non-Federal maritime and aeronautical stations for the purposes of measuring the quality of reception on radio channels. See § 87.149 of this chapter for the list of protected frequencies and bands within this frequency range. Actual communications shall be limited to those frequencies specifically allocated to the maritime mobile and aeronautical mobile services.

(341) [Reserved]

(342) US342 In making assignments to stations of other services to which the bands in table 17 to this paragraph (c)(342) are allocated (*indicates radio astronomy use for spectral line observations), all practicable steps shall be taken to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (*see* ITU Radio Regulations at Nos. 4.5 and 4.6 and Article 29).

Table 17 to Paragraph (c)(342)

13 360-13 410 kHz	42.77-42.87 GHz*
25 550-25 670 kHz	43.07-43.17 GHz*
37.5-38.25 MHz	43.37-43.47 GHz*
322-328.6 MHz*	48.94-49.04 GHz*
1330-1400 MHz*	76-86 GHz
1610.6-1613.8 MHz*	92-94 GHz

1660-1660.5 MHz*	94.1-100 GHz
1668.4-1670 MHz*	102-109.5 GHz
3260-3267 MHz*	111.8-114.25 GHz
3332-3339 MHz*	128.33-128.59 GHz*
3345.8-3352.5 MHz*	129.23-129.49 GHz*
4825-4835 MHz*	130-134 GHz
4950-4990 MHz	136-148.5 GHz
6650-6675.2 MHz*	151.5-158.5 GHz
14.47-14.5 GHz*	168.59-168.93 GHz*
22.01-22.21 GHz*	171.11-171.45 GHz*
22.21-22.5 GHz	172.31-172.65 GHz*
22.81-22.86 GHz*	173.52-173.85 GHz*
23.07-23.12 GHz*	195.75-196.15 GHz*
31.2-31.3 GHz	209-226 GHz
36.43-36.5 GHz*	241-250 GHz
42.5-43.5 GHz	252-275 GHz

(343) US343 In the mobile service, the frequencies between 1435 and 1525 MHz will be assigned for aeronautical telemetry and associated telecommand operations for flight testing of manned or unmanned aircraft and missiles, or their major components. Permissible usage includes telemetry associated with launching and reentry into the Earth's atmosphere as well as any incidental orbiting prior to reentry of manned objects undergoing flight tests. The following frequencies are shared on a co-equal basis with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz.

(344) US344 In the band 5091-5250 MHz, the FCC shall coordinate earth stations in the fixed-satellite service (Earth-to-space) with NTIA (see Recommendation ITU-R S.1342). In order to better protect the operation of the international standard system (microwave landing system) in the band 5000-5091 MHz, non-Federal tracking and telecommand operations should be conducted in the band 5150-5250 MHz.

(345) [Reserved]

(346) US346 Except as provided for in table 18 to this paragraph (c)(346) and by US222, Federal use of the band 2025-2110 MHz by the space operation service (Earth-to-space), Earth exploration-satellite service (Earth-to-space), and space research service (Earth-to-space) shall not constrain the deployment of the Television Broadcast Auxiliary Service, the Cable Television Relay Service, or the Local Television Transmission Service. To facilitate compatible operations between non-

Federal terrestrial receiving stations at fixed sites and Federal earth station transmitters, coordination is required. To facilitate compatible operations between non-Federal terrestrial transmitting stations and Federal spacecraft receivers, the terrestrial transmitters in the band 2025-2110 MHz shall not be high-density systems (see Recommendations ITU-R SA.1154 and ITU-R F.1247). Military satellite control stations at the following sites shall operate on a co-equal, primary basis with non-Federal operations:

Table 18 to Paragraph (c)(346)

Facility	Coordinates	
Naval Satellite Control Network, Prospect Harbor, ME	44° 24' 16" N	068° 00' 46" W
New Hampshire Tracking Station, New Boston AFS, NH	42° 56' 52" N	071° 37' 36" W
Eastern Vehicle Check-out Facility & GPS Ground Antenna & Monitoring Station, Cape Canaveral, FL	28° 29' 09" N	080° 34' 33" W
Buckley AFB, CO	39° 42' 55" N	104° 46' 36" W
Colorado Tracking Station, Schriever AFB, CO	38° 48' 21" N	104° 31' 43" W
Kirtland AFB, NM	34° 59' 46" N	106° 30' 28" W
Camp Parks Communications Annex, Pleasanton, CA	37° 43' 51" N	121° 52' 50" W
Naval Satellite Control Network, Laguna Peak, CA	34° 06' 31" N	119° 03' 53" W
Vandenberg Tracking Station, Vandenberg AFB, CA	34° 49' 21" N	120° 30' 07" W
Hawaii Tracking Station, Kaena Pt, Oahu, HI	21° 33' 44" N	158° 14' 31" W
Guam Tracking Stations, Anderson AFB, and Naval CTS, Guam	13° 36' 54" N	144° 51' 18" E

(347) US347 In the band 2025-2110 MHz, non-Federal Earth-to-space and space-to-space transmissions may be authorized in the space research and Earth exploration-satellite services subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to Federal and non-Federal stations operating in accordance with the Table of Frequency Allocations in this section.

(348) [Reserved]

(349) US349 The band 3650-3700 MHz is also allocated to the Federal radiolocation service on a non-interference basis for use by ship stations located at least 44 nautical miles in off-shore ocean areas on the condition that harmful interference is not caused to non-Federal operations.

(350) US350 In the band 1427-1432 MHz, Federal use of the land mobile service and non-Federal use of the fixed and land mobile services is limited to telemetry and telecommand operations as described further:

(i) *Medical operations.* The use of the band 1427-1432 MHz for medical telemetry and telecommand operations (medical operations) shall be authorized for both Federal and non-Federal stations.

(A) Medical operations shall be authorized in the band 1427-1429.5 MHz in the United States and its insular areas, except in the following locations: Austin/Georgetown, Texas; Detroit and Battle Creek, Michigan; Pittsburgh, Pennsylvania; Richmond/Norfolk, Virginia; Spokane, Washington; and Washington DC metropolitan area (collectively, the “carved-out” locations). See Section 47 C.F.R. 90.259(b)(4) for a detailed description of these areas.

(B) In the carved-out locations, medical operations shall be authorized in the band 1429-1431.5 MHz.

(C) Medical operations may operate on frequencies in the band 1427-1432 MHz other than those described in paragraphs (c)(350)(i)(A) and (B) of this section only if the operations were registered with a designated frequency coordinator prior to April 14, 2010.

(ii) *Non-medical operations.* The use of the band 1427-1432 MHz for non-medical telemetry and telecommand operations (non-medical operations) shall be limited to non-Federal stations.

(A) Non-medical operations shall be authorized on a secondary basis to the Wireless Medical Telemetry Service (WMTS) in the band 1427-1429.5 MHz and on a primary basis in the band 1429.5-1432 MHz in the United States and its insular areas, except in the carved-out locations.

(B) In the carved-out locations, non-medical operations shall be authorized on a secondary basis in the band 1429-1431.5 MHz and on a primary basis in the bands 1427-1429 MHz and 1431.5-1432 MHz.

(351) - (352) [Reserved]

(353) US353 In the bands 56.24-56.29 GHz, 58.422-58.472 GHz, 59.139-59.189 GHz, 59.566-59.616 GHz, 60.281-60.331 GHz, 60.41-60.46 GHz, and 62.461-62.511 GHz, space-based radio astronomy observations may be made on an unprotected basis.

(354) US354 In the band 58.422-58.472 GHz, airborne stations and space stations in the space-to-Earth direction shall not be authorized.

(355) [Reserved]

(356) US356 In the band 13.75-14 GHz, an earth station in the fixed-satellite service shall have a minimum antenna diameter of 4.5 m and the e.i.r.p. of any emission should be at least 68 dBW and should not exceed 85 dBW. In addition the e.i.r.p., averaged over one second, radiated by a station in the radiolocation service shall not exceed 59 dBW. Receiving space stations in the fixed-satellite service shall not claim protection from radiolocation transmitting stations operating in accordance with the United States Table of Frequency Allocations in this section. ITU Radio Regulation No. 5.43A does not apply.

(357) US357 In the band 13.75-14 GHz, geostationary space stations in the space research service for which information for advance publication has been received by the ITU Radiocommunication Bureau (Bureau) prior to 31 January 1992 shall operate on an equal basis with stations in the fixed-satellite service; after that date, new geostationary space stations in the space research service will operate on a secondary basis.

(i) Until those geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 cease to operate in this band:

(A) The e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in geostationary-satellite orbit shall not exceed 71 dBW in any 6 MHz band from 13.77 to 13.78 GHz;

(B) The e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in non-geostationary-satellite orbit shall not exceed 51 dBW in any 6 MHz band from 13.77 to 13.78 GHz.

(ii) Automatic power control may be used to increase the e.i.r.p. density in any 6 MHz band in these frequency ranges to compensate for rain attenuation, to the extent that the power flux-density at the fixed-satellite service space station does not exceed the value resulting from use by an earth station of an e.i.r.p. of 71 dBW or 51 dBW, as appropriate, in any 6 MHz band in clear-sky conditions.

(358) [Reserved]

(359) US359 In the band 15.43-15.63 GHz, use of the fixed-satellite service (Earth-to-space) is limited to non-Federal feeder links of non-geostationary systems in the mobile-satellite service. The FCC shall coordinate earth stations in this band with NTIA (see Annex 3 of Recommendation ITU-R S.1340).

(360) US360 The band 33-36 GHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis for Federal use. Coordination between Federal fixed-satellite service systems and non-Federal systems operating in accordance with the United States Table of Frequency Allocations in this section is required.

(361) [Reserved]

(362) US362 The band 1670-1675 MHz is allocated to the meteorological-satellite service (space-to-Earth) on a primary basis for Federal use. Earth station use of this allocation is limited to Wallops Island, VA (37° 56' 44" N, 75° 27' 37" W), Fairbanks, AK (64° 58' 22" N, 147° 30' 04" W), and Greenbelt, MD (39° 00' 02" N, 76° 50' 29" W). Applicants for non-Federal stations within 100 kilometers of the Wallops Island or Fairbanks coordinates and within 65 kilometers of the Greenbelt coordinates shall notify NOAA in accordance with the procedures specified in § 1.924 of this chapter.

(363) [Reserved]

(364) US364 Consistent with US18, stations may be authorized on a primary basis in the band 285-325 kHz for the specific purpose of transmitting differential global positioning system information.

(365) - (377) [Reserved]

(378) US378 In the band 1710-1755 MHz, the following provisions apply:

(i) Federal fixed and tactical radio relay stations may operate indefinitely on a primary basis within 80 km of Cherry Point, NC (34° 58' N, 76° 56' W) and Yuma, AZ (32° 32' N, 113° 58' W).

(ii) Federal fixed and tactical radio relay stations shall operate on a secondary basis to primary non-Federal operations at the 14 sites listed in table 19 to this paragraph (c)(378).

(iii) In the sub-band 1710-1720 MHz, precision guided munitions shall operate on a primary basis until inventory is exhausted or until December 31, 2008, whichever is earlier.

(iv) All other Federal stations in the fixed and mobile services shall operate on a primary basis until reaccommodated in accordance with the Commercial Spectrum Enhancement Act.

Table 19 to Paragraph (c)(378)

80 km radius of operation centered on:

State	Location	Coordinates
CA	China Lake	35° 41' N, 117° 41' W
CA	Pacific Missile Test Range/Point Mugu	34° 07' N, 119° 30' W
FL	Eglin AFB	30° 29' N, 086° 31' W
MD	Patuxent River	38° 17' N, 076° 25' W
NM	White Sands Missile Range	33° 00' N, 106° 30' W
NV	Nellis AFB	36° 14' N, 115° 02' W
UT	Hill AFB	41° 07' N, 111° 58' W

50 km radius of operation centered on:

AL	Fort Rucker	31° 13' N, 085° 49' W
CA	Fort Irwin	35° 16' N, 116° 41' W
GA	Fort Benning	32° 22' N, 084° 56' W
GA	Fort Stewart	31° 52' N, 081° 37' W
KY	Fort Campbell	36° 41' N, 087° 28' W
NC	Fort Bragg	35° 09' N, 079° 01' W
WA	Fort Lewis	47° 05' N, 122° 36' W

(379) US379 In the band 55.78-56.26 GHz, in order to protect stations in the Earth exploration-satellite service (passive), the maximum power density delivered by a transmitter to the antenna of a fixed service station is limited to -28.5 dB(W/MHz).

(380) US380 In the bands 1525-1544 MHz, 1545-1559 MHz, 1610-1645.5 MHz, 1646.5-1660.5 MHz, and 2483.5-2500 MHz, a non-Federal licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of its MSS authorization.

(381) [Reserved]

(382) US382 In the band 39.5-40 GHz, Federal earth stations in the mobile-satellite service (space-to-Earth) shall not claim protection from non-Federal stations in the fixed and mobile services. ITU Radio Regulation No. 5.43A does not apply.

(383) [Reserved]

(384) US384 In the band 401-403 MHz, the non-Federal Earth exploration-satellite (Earth-to-

space) and meteorological-satellite (Earth-to-space) services are limited to earth stations transmitting to Federal space stations.

(385) US385 Radio astronomy observations may be made in the bands 1350-1400 MHz, 1718.8-1722.2 MHz, and 4950-4990 MHz on an unprotected basis, and in the band 2655-2690 MHz on a secondary basis, at the radio astronomy observatories in table 20 to paragraph (c)(385)(ii) of this section.

(i) In the bands 1350-1400 MHz and 4950-4990 MHz, every practicable effort will be made to avoid the assignment of frequencies to stations in the fixed and mobile services that could interfere with radio astronomy observations within the geographic areas given in table 20 to paragraph (c)(385)(ii) of this section. In addition, every practicable effort will be made to avoid assignment of frequencies in these bands to stations in the aeronautical mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

(ii) In the band 2655-2690 MHz, for radio astronomy observations performed at the locations listed in table 20 to this paragraph (c)(385)(ii), licensees are urged to coordinate their systems through the National Science Foundation, Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, 2415 Eisenhower Avenue, Alexandria, VA 22314; Email: *esm@nsf.gov*.

Table 20 to Paragraph (c)(385)(ii)

Allen Telescope Array, Hat Creek, CA	Rectangle between latitudes 40° 00' N and 42° 00' N and between longitudes 120° 15' W and 122° 15' W.	
NASA Goldstone Deep Space Communications Complex, Goldstone, CA	80 kilometers (50 mile) radius centered on 35° 20' N, 116° 53' W.	
National Astronomy and Ionosphere Center, Arecibo, PR	Rectangle between latitudes 17° 30' N and 19° 00' N and between longitudes 65° 10' W and 68° 00' W.	
National Radio Astronomy Observatory, Socorro, NM	Rectangle between latitudes 32° 30' N and 35° 30' N and between longitudes 106° 00' W and 109° 00' W.	
National Radio Astronomy Observatory, Green Bank, WV	Rectangle between latitudes 37° 30' N and 39° 15' N and between longitudes 78° 30' W and 80° 30' W.	
National Radio Astronomy Observatory, Very Long Baseline Array Stations	80 kilometer radius centered on:	
	North latitude	West longitude
Brewster, WA	48° 08'	119° 41'
Fort Davis, TX	30° 38'	103° 57'
Hancock, NH	42° 56'	71° 59'

Kitt Peak, AZ	31° 57'	111° 37'
Los Alamos, NM	35° 47'	106° 15'
Mauna Kea, HI	19° 48'	155° 27'
North Liberty, IA	41° 46'	91° 34'
Owens Valley, CA	37° 14'	118° 17'
Pie Town, NM	34° 18'	108° 07'
Saint Croix, VI	17° 45'	64° 35'
Owens Valley Radio Observatory, Big Pine, CA	Two contiguous rectangles, one between latitudes 36° 00' N and 37° 00' N and between longitudes 117° 40' W and 118° 30' W and the second between latitudes 37° 00' N and 38° 00' N and between longitudes 118° 00' W and 118° 50' W.	

(386) - (388) [Reserved]

(389) US389 In the bands 71-76 GHz and 81-86 GHz, stations in the fixed, mobile, and broadcasting services shall not cause harmful interference to, nor claim protection from, Federal stations in the fixed-satellite service at any of the 28 military installations in table 21 to this paragraph (c)(389).

Table 21 to Paragraph (c)(389)

Military Installation	State	Nearby city
Redstone Arsenal	AL	Huntsville
Fort Huachuca	AZ	Sierra Vista
Yuma Proving Ground	AZ	Yuma
Beale AFB	CA	Marysville
Camp Parks Reserve Forces Training Area	CA	Dublin
China Lake Naval Air Weapons Station	CA	Ridgecrest
Edwards AFB	CA	Rosamond
Fort Irwin	CA	Barstow
Marine Corps Air Ground Combat Center	CA	Twentynine Palms
Buckley AFB	CO	Aurora (Denver)
Schriever AFB	CO	Colorado Springs
Fort Gordon	GA	Augusta
Naval Satellite Operations Center	GU	Finegayan (Guam)
Naval Computer and Telecommunications Area Master Station, Pacific	HI	Wahiawa (Oahu Is.)
Fort Detrick	MD	Frederick
Nellis AFB	NV	Las Vegas
Nevada Test Site	NV	Amargosa Valley

Tonapah Test Range Airfield	NV	Tonapah
Cannon AFB	NM	Clovis
White Sands Missile Range	NM	White Sands
Dyess AFB	TX	Abilene
Fort Bliss	TX	El Paso
Fort Sam Houston	TX	San Antonio
Goodfellow AFB	TX	San Angelo
Kelly AFB	TX	San Antonio
Utah Test and Training Range	UT	---
Fort Belvoir	VA	Alexandria
Naval Satellite Operations Center	VA	Chesapeake

(390) US390 Federal stations in the space research service (active) operating in the band 5350-5460 MHz shall not cause harmful interference to, nor claim protection from, Federal and non-Federal stations in the aeronautical radionavigation service nor Federal stations in the radiolocation service.

(391) US391 In the band 2495-2500 MHz, the mobile-satellite service (space-to-Earth) shall not receive protection from non-Federal stations in the fixed and mobile except aeronautical mobile services operating in that band.

(392) - (396) [Reserved]

(397) US397 In the band 432-438 MHz, the Earth exploration-satellite service (active) is allocated on a secondary basis for Federal use. Stations in the Earth exploration-satellite service (active) shall not be operated within line-of-sight of the United States except for the purpose of short duration pre-operational testing. Operations under this allocation shall not cause harmful interference to, nor claim protection from, any other services allocated in the band 432-438 MHz in the United States, including secondary services and the amateur-satellite service.

(398) - (401) [Reserved]

(402) US402 In the band 17.3-17.7 GHz, existing Federal satellites and associated earth stations in the fixed-satellite service (Earth-to-space) are authorized to operate on a primary basis in the frequency bands and areas listed below. Non-Federal receiving earth stations in the broadcasting-satellite and fixed-satellite services within the bands and areas listed below shall not claim protection from Federal earth stations in the fixed-satellite service.

(i) 17.600-17.700 GHz for stations within a 120 km radius of 38° 49' N latitude and 76° 52' W longitude.

(ii) 17.375-17.475 GHz for stations within a 160 km radius of 39° 42' N latitude and 104° 45' W longitude.

(403) - (430) [Reserved]

(431) US431B The band 3450-3550 MHz is allocated on a primary basis to the Federal radiolocation service and to the non-Federal fixed and mobile, except aeronautical mobile, services on a nationwide basis. Federal operations in the band 3450-3550 MHz shall not cause harmful interference to non-Federal operations, except under the following circumstances.

(i) *Cooperative Planning Areas.* Cooperative Planning Areas (CPAs) are geographic locations in which non-Federal operations shall coordinate with Federal systems in the band to deploy non-Federal operations in a manner that shall not cause harmful interference to Federal systems operating in the band. In addition, operators of non-Federal stations may be required to modify their operations (*e.g.*, reduce

power, filtering, adjust antenna pointing angles, shielding, *etc.*) to protect Federal operations against harmful interference and to avoid, where possible, interference and potential damage to the non-Federal operators' systems. In these areas, non-Federal operations may not claim interference protection from Federal systems. Federal and non-Federal operators may reach mutually acceptable operator-to-operator agreements to permit more extensive non-Federal use by identifying and mutually agreeing upon a technical approach that mitigates the interference risk to Federal operations. To the extent possible, Federal use in CPAs will be chosen to minimize operational impact on non-Federal users. Table 22 to this paragraph (c)(431) identifies the locations of CPAs, including, for information, those with high powered Federal operations. CPAs may also be Periodic Use Areas as described below. Coordination between Federal users and non-Federal licensees in CPAs shall be consistent with rules and procedures established by the FCC and NTIA.

(ii) *Periodic Use Areas.* Periodic Use Areas (PUAs) are geographic locations in which non-Federal operations in the band shall not cause harmful interference to Federal systems operating in the band for episodic periods. During these times and in these areas, Federal users will require interference protection from non-Federal operations. Operators of non-Federal stations may be required to temporarily modify their operations (*e.g.*, reduce power, filtering, adjust antenna pointing angles, shielding, *etc.*) to protect Federal operations from harmful interference, which may include restrictions on non-Federal stations' ability to radiate at certain locations during specific periods of time. During such episodic use, non-Federal users in PUAs must alter their operations to avoid harmful interference to Federal systems' temporary use of the band, and during such times, non-Federal operations may not claim interference protection from Federal systems. Federal and non-Federal operators may reach mutually acceptable operator-to-operator agreements such that a Federal operator may not need to activate a PUA if a mutually agreeable technical approach mitigates the interference risk to Federal operations. To the extent possible, Federal use in PUAs will be chosen to minimize operational impact on non-Federal users. Coordination between Federal users and non-Federal licensees in PUAs shall be consistent with rules and procedures established by the FCC and NTIA. While all PUAs are co-located with CPAs, the exact geographic area used during periodic use may differ from the co-located CPA. The geographic locations of PUAs are identified in table 18 to this paragraph (c)(431). Restrictions and authorizations for the CPAs remain in effect during periodic use unless specifically relieved in the coordination process.

(iii) For the CPA at Little Rock, AR, after approximately 12 months from the close of the auction, non-Federal operations shall coordinate with Federal systems in only the 3450-3490 MHz band segment and the 3490-3550 MHz band segment will be available for non-federal use without coordination. At Fort Bragg, NC, non-Federal operations shall coordinate with Federal systems in only the 3450-3490 MHz band segment.

(iv) Table 22 to this paragraph (c)(431) identifies the coordinates for the location of each CPA and PUA. An area may be represented as either a polygon made up of several corresponding coordinates or a circle represented by a center point and a radius. If a CPA has a corresponding PUA, the PUA coordinates are provided. A location marked with an asterisk (*) indicates a high-power federal radiolocation facility. If a location includes a Shipboard Electronic Systems Evaluation Facility (SESEF) attached to a homeport, it specifies the associated SESEF.

Table 22 to Paragraph (c)(431)—Department of Defense Cooperative Planning Areas and Periodic

Use Areas

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Little Rock	AR	Yes	-	37° 28' 34"	94° 28' 24"	N/A
				37° 42' 55"	88° 54' 36"	
				36° 38' 29"	87° 52' 34"	
				34° 57' 57"	88° 09' 26"	
				32° 09' 36"	92° 06' 54"	
				31° 51' 52"	93° 10' 35"	
				32° 12' 11"	94° 37' 07"	
				33° 42' 22"	95° 49' 52"	
				35° 17' 35"	96° 23' 06"	
				36° 12' 18"	96° 08' 46"	
Yuma Complex (includes Yuma Proving Grounds and MCAS Yuma)	AZ	Yes	Yes	33° 36' 44"	115° 10' 44"	N/A
				34° 03' 08"	114° 41' 08"	
				34° 03' 56"	114° 05' 56"	
				33° 26' 54"	113° 03' 54"	
				32° 51' 17"	113° 02' 17"	
				32° 16' 54"	113° 45' 54"	
				32° 14' 39"	114° 40' 39"	
				32° 20' 06"	114° 55' 06"	
				32° 28' 30"	115° 02' 30"	
				32° 53' 20"	115° 09' 20"	
Camp Pendleton	CA	Yes	-	33° 21' 46"	117° 25' 25"	50

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Edwards Air Force Base	CA	Yes	Yes	35° 19' 16"	118° 03' 16"	N/A
				35° 17' 54"	117° 26' 54"	
				35° 11' 43"	117° 15' 43"	
				35° 00' 52"	117° 10' 52"	
				34° 44' 17"	117° 10' 17"	
				34° 34' 16"	117° 19' 16"	
				34° 26' 55"	117° 47' 55"	
				34° 28' 59"	118° 16' 59"	
				34° 41' 36"	118° 28' 36"	
				35° 07' 32"	118° 25' 32"	
National Training Center	CA	Yes	Yes	36° 03' 31"	117° 00' 45"	N/A
				36° 03' 09"	116° 20' 43"	
				35° 41' 46"	115° 44' 31"	
				35° 07' 24"	115° 44' 09"	
				34° 42' 43"	116° 17' 58"	
				34° 44' 22"	117° 05' 19"	
				35° 02' 28"	117° 35' 18"	
				35° 34' 49"	117° 27' 37"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Naval Air Weapons Station, China Lake*	CA	Yes	Yes	36° 36' 42" 35° 54' 45" 35° 00' 01" 34° 54' 34" 35° 44' 22" 36° 30' 18"	117° 20' 42" 116° 31' 45" 116° 39' 01" 117° 26' 34" 118° 17' 22" 118° 07' 18"	N/A
Point Mugu	CA	Yes	Yes	34° 06' 44"	119° 06' 36"	38
San Diego* (includes Point Loma SESEF range)	CA	Yes	-	33° 4' 10" 32° 27' 19" 32° 33' 29" 32° 47' 16" 33° 1' 20" 33° 20' 36" 33° 24' 36" 32° 52' 54" 33° 04' 10"	117° 35' 40" 118° 0' 37" 116° 51' 8" 116° 28' 5" 116° 31' 5" 116° 47' 10" 117° 0' 51" 117° 9' 35" 117° 35' 40"	N/A
Twentynine Palms	CA	Yes	-	34° 06' 44"	116° 06' 36"	75

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Eglin Air Force Base (includes Santa Rosa Island & Cape San Blas site)	FL	Yes	Yes	Eglin and Santa Rosa Island: 30° 29' 28.5" Cape San Blas: 29° 40' 37"	Eglin and Santa Rosa Island: 86° 45' 00" Cape San Blas: 85° 20' 50"	35
Mayport* (includes Mayport SESEF range)	FL	Yes	-	30° 23' 42"	81° 24' 41"	64
Pensacola*	FL	Yes	Yes	30° 20' 50"	87° 18' 40"	93
Joint Readiness Training Center	LA	Yes	Yes	31° 54' 23" 31° 50' 54" 31° 18' 13" 30° 46' 33" 30° 29' 14" 30° 46' 22" 31° 25' 16"	93° 20' 53" 92° 52' 46" 92° 26' 31" 92° 28' 32" 93° 4' 1" 93° 41' 26" 94° 3' 19"	N/A
Chesapeake Beach*	MD	Yes	Yes	38° 39' 24"	76° 31' 41"	95

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Naval Air Station, Patuxent River	MD	Yes	Yes	38° 26' 22"	76° 14' 12"	N/A
				38° 51' 51"	75° 48' 34"	
				38° 28' 11"	75° 28' 53"	
				38° 03' 40"	75° 30' 31"	
CPA				37° 45' 33"	75° 45' 50"	
				37° 34' 34"	76° 20' 09"	
				37° 38' 10"	76° 44' 37"	
				38° 09' 32"	76° 29' 28"	
				38° 18' 46"	76° 34' 36"	
				38° 26' 59"	76° 26' 27"	
PUA						

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
				38° 33' 38"	76° 07' 29"	
				39° 11' 10"	75° 29' 28"	
				38° 38' 51"	75° 00' 40"	
				37° 52' 13"	75° 03' 24"	
				37° 29' 44"	75° 22' 25"	
				37° 10' 24"	76° 16' 42"	
				37° 20' 05"	77° 06' 52"	
				38° 01' 11"	76° 36' 06"	
				38° 20' 54"	76° 46' 41"	
				38° 35' 47"	76° 30' 02"	
St. Inigoes*	MD	Yes	Yes	38° 08' 41"	76° 26' 03"	87

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Bath*	ME	Yes	Yes	44° 02' 29"	70° 10' 41"	N/A
				43° 52' 27"	70° 10' 29"	
				43° 48' 53"	70° 01' 6"	
				43° 32' 50"	69° 57' 30"	
				43° 27' 16"	69° 42' 52"	
				43° 44' 26"	69° 13' 52"	
				43° 54' 57"	69° 24' 50"	
				44° 06' 56"	69° 25' 13"	
				44° 17' 2"	69° 16' 56"	
				44° 26' 54"	69° 45' 13"	
				44° 36' 16"	69° 56' 50"	
				44° 33' 45"	70° 04' 01"	
				44° 57' 05"	70° 14' 55"	
				44° 56' 27"	70° 19' 38"	
				44° 32' 13"	70° 08' 17"	
				44° 24' 08"	70° 36' 36"	
				44° 02' 29"	70° 10' 41"	
Pascagoula*	MS	Yes	Yes	30° 20' 42"	88° 34' 17"	80
Camp Lejeune	NC	Yes	-	34° 37' 51"	77° 24' 28"	54
Cherry Point	NC	Yes	-	34° 54' 57"	76° 53' 24"	38

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Fort Bragg	NC	Yes	-	37° 35' 01"	79° 31' 19"	N/A
				37° 45' 56"	77° 14' 14"	
				37° 22' 33"	76° 18' 30"	
				36° 38' 56"	75° 51' 26"	
				34° 43' 13"	76° 15' 37"	
				33° 29' 44"	78° 29' 53"	
				33° 24' 04"	80° 29' 07"	
				34° 01' 05"	81° 23' 49"	
				35° 27' 24"	81° 37' 00"	
				36° 27' 46"	81° 22' 49"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Portsmouth*	NH	Yes	Yes	42° 23' 06"	71° 10' 23"	N/A
				42° 25' 05"	71° 05' 43"	
				42° 21' 36"	71° 00' 54"	
				42° 18' 28"	70° 54' 35"	
				42° 13' 01"	70° 44' 53"	
				42° 06' 30"	70° 41' 11"	
				42° 02' 54"	70° 37' 44"	
				42° 08' 03"	70° 33' 35"	
				42° 10' 25"	70° 20' 54"	
				42° 15' 39"	70° 02' 39"	
				42° 22' 44"	69° 48' 42"	
				42° 34' 56"	69° 36' 01"	
				42° 52' 26"	69° 26' 24"	
				43° 13' 48"	69° 28' 18"	
				43° 31' 21"	69° 40' 13"	
				43° 45' 21"	70° 01' 31"	
				43° 59' 20"	70° 30' 21"	
				43° 36' 10"	70° 52' 5"	
				43° 49' 27"	71° 15' 22"	
				43° 27' 40"	71° 24' 47"	
				43° 00' 57"	71° 53' 01"	
				42° 44' 40"	71° 56' 37"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
				42° 51' 47"	71° 27' 07"	
				42° 33' 46"	71° 27' 12"	
				42° 24' 24"	71° 21' 10"	
				42° 23' 06"	71° 10' 23"	
Moorestown*	NJ	Yes	Yes	40° 27' 26"	75° 42' 60"	N/A
				40° 02' 54"	75° 55' 12"	
				39° 48' 19"	75° 55' 55"	
				39° 38' 27"	75° 51' 48"	
				39° 24' 59"	75° 21' 41"	
				39° 17' 18"	74° 54' 09"	
				39° 22' 16"	74° 27' 56"	
				39° 29' 35"	74° 12' 59"	
				39° 54' 43"	74° 00' 05"	
				40° 15' 03"	74° 06' 20"	
				40° 23' 29"	74° 08' 28"	
				40° 42' 46"	74° 21' 54"	
				40° 50' 59"	74° 31' 36"	
				40° 52' 49"	74° 42' 53"	
				40° 47' 42"	75° 03' 00"	
				40° 33' 25"	75° 28' 15"	
				40° 27' 26"	75° 42' 60"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
White Sands Missile Range	NM	Yes	Yes	34° 35' 05"	107° 06' 05"	N/A
				34° 43' 50"	106° 46' 50"	
				34° 43' 17"	106° 03' 17"	
				34° 26' 28"	105° 26' 28"	
				32° 36' 02"	104° 55' 02"	
				31° 45' 47"	105° 22' 47"	
				31° 18' 18"	106° 06' 18"	
				31° 27' 23"	106° 54' 23"	
				32° 38' 49"	107° 25' 49"	
				33° 32' 40"	107° 27' 40"	
Nevada Test and Training Range	NV	Yes	Yes	35° 58' 48"	115° 31' 55"	N/A
				36° 38' 22"	116° 23' 51"	
				36° 22' 37"	117° 41' 35"	
				36° 54' 03"	117° 59' 18"	
				37° 58' 01"	118° 01' 17"	
				38° 59' 48"	116° 46' 01"	
				38° 58' 35"	114° 49' 25"	
				37° 52' 34"	113° 35' 46"	
				36° 20' 30"	113° 39' 51"	
				36° 21' 15"	115° 14' 23"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Fort Sill	OK	Yes	Yes	35° 03' 39"	99° 02' 38"	N/A
				35° 10' 31"	98° 05' 47"	
				34° 42' 54"	97° 45' 20"	
				34° 13' 49"	98° 05' 49"	
				34° 13' 46"	98° 56' 09"	
				34° 38' 26"	99° 16' 57"	
Tobyhanna Army Depot	PA	Yes	-	41° 30' 25"	75° 51' 60"	N/A
				41° 38' 51"	75° 26' 33"	
				41° 31' 41"	75° 1' 39"	
				41° 11' 31"	74° 50' 07"	
				40° 52' 07"	75° 1' 2"	
				40° 44' 53"	75° 23' 50"	
				40° 51' 43"	75° 48' 52"	
				41° 07' 40"	76° 00' 38"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Dahlgren*	VA	Yes	Yes	38° 23' 10"	76° 23' 21"	N/A
				38° 41' 25"	76° 35' 56"	
				38° 46' 14"	76° 44' 44"	
				38° 49' 37"	76° 54' 57"	
				38° 50' 16"	76° 58' 18"	
				38° 46' 30"	77° 01' 57"	
				38° 49' 42"	77° 04' 08"	
				38° 54' 42"	77° 7' 35"	
				38° 55' 37"	77° 12' 04"	
				38° 56' 05"	77° 23' 5"	
				38° 44' 45"	77° 25' 23"	
				38° 44' 22"	77° 28' 48"	
				38° 35' 14"	77° 36' 11"	
				38° 51' 04"	78° 12' 06"	
				38° 26' 52"	78° 29' 02"	
				38° 22' 59"	77° 42' 19"	
				37° 59' 27"	77° 28' 26"	
				37° 47' 08"	76° 53' 47"	
				37° 54' 01"	76° 06' 14"	
				38° 23' 10"	76° 23' 21"	
Newport News*	VA	Yes	Yes	36° 58' 24"	76° 26' 07"	93

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Norfolk* (includes Fort Story SESEF range)	VA	Yes	-	36° 56' 24"	76° 19' 55"	74
Wallops Island*	VA	Yes	Yes	37° 51' 25"	75° 27' 59"	76

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Bremerton*	WA	Yes	Yes	47° 28' 40"	122° 31' 22"	N/A
				47° 31' 16"	122° 31' 26"	
				47° 31' 13"	122° 32' 37"	
				47° 34' 12"	122° 31' 52"	
				47° 45' 36"	121° 32' 28"	
				47° 59' 07"	121° 34' 09"	
				48° 12' 20"	121° 44' 51"	
				47° 39' 46"	122° 29' 60"	
				47° 39' 12"	122° 34' 35"	
				47° 45' 23"	122° 38' 09"	
				47° 44' 48"	122° 45' 18"	
				47° 57' 40"	122° 59' 06"	
				47° 31' 15"	123° 16' 23"	
				47° 35' 53"	122° 49' 28"	
				47° 27' 33"	122° 55' 25"	
				47° 27' 07"	122° 46' 16"	
				47° 24' 25"	122° 42' 48"	
				47° 23' 07"	122° 39' 18"	
				47° 28' 33"	122° 33' 44"	
				46° 50' 25"	121° 49' 24"	
				46° 53' 09"	121° 44' 01"	
				47° 28' 40"	122° 31' 22"	

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
Everett* (includes Ediz Hook SESEF range)	WA	Yes	-	47° 51' 11"	122° 57' 47"	N/A
				47° 25' 13"	123° 18' 6"	
				47° 54' 45"	122° 10' 13"	
				47° 36' 60"	121° 37' 60"	
				47° 51' 57"	121° 22' 57"	
				48° 35' 49"	122° 08' 13"	
				48° 00' 8"	123° 29' 33"	
				47° 51' 10"	122° 57' 47"	

(432) [Reserved]

(433) US433 In the band 3550-3650 MHz, the following provisions shall apply to Federal use of the aeronautical radionavigation (ground-based) and radiolocation services and to non-Federal use of the fixed and mobile except aeronautical mobile services:

(i) Non-Federal stations in the fixed and mobile except aeronautical mobile services are restricted to stations in the Citizens Broadband Radio Service and shall not cause harmful interference to, or claim protection from, Federal stations in the aeronautical radionavigation (ground-based) and radiolocation services at the locations listed at: [ntia.doc.gov/category/3550-3650-mhz](https://www.ntia.doc.gov/category/3550-3650-mhz). New and modified Federal stations shall be allowed at current or new locations, subject only to approval through the National Telecommunications and Information Administration frequency assignment process with new locations added to the list at: [ntia.doc.gov/category/3550-3650-mhz](https://www.ntia.doc.gov/category/3550-3650-mhz). Coordination of the Federal stations with Citizens Broadband Radio Service licensees or users is not necessary. Federal operations, other than airborne radiolocation systems, shall be protected consistent with the procedures set forth in §§ 96.15 and 96.67 of this chapter.

(ii) Non-Federal fixed and mobile stations shall not claim protection from Federal airborne radar systems.

(iii) Federal airborne radar systems shall not claim protection from non-Federal stations in the fixed and mobile except aeronautical mobile services operating in the band.

(434) - (443) [Reserved]

(444) US444 The frequency band 5030-5150 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. In the frequency band 5030-5091 MHz, the requirements of this system shall have priority over other uses of

this band. For the use of the frequency band 5091-5150 MHz, paragraph (c)(444)(i) of this section and Resolution 114 (Rev.WRC-12) of the ITU Radio Regulations apply.

(i) US444A The band 5091-5150 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a primary basis for non-Federal use. This allocation is limited to feeder links of non-geostationary satellite systems in the mobile-satellite service and is subject to coordination under No. 9.11A of the ITU Radio Regulations. In the band 5091-5150 MHz, the following conditions also apply:

(A) Prior to January 1, 2018, the use of the band 5091-5150 MHz by feeder links of non-geostationary-satellite systems in the mobile-satellite service shall be made in accordance with Resolution 114 (Rev.WRC-12);

(B) After January 1, 2016, no new assignments shall be made to earth stations providing feeder links of non-geostationary mobile-satellite systems; and

(C) After January 1, 2018, the fixed-satellite service will become secondary to the aeronautical radionavigation service.

(ii) US444B In the band 5091-5150 MHz, the following provisions shall apply to the aeronautical mobile service:

(A) Use is restricted to:

(1) Systems operating in the aeronautical mobile (R) service (AM(R)S) in accordance with international aeronautical standards, limited to surface applications at airports, and in accordance with Resolution 748 (Rev.WRC-12) (*i.e.*, AeroMACS); and

(2) Aeronautical telemetry transmissions from aircraft stations (AMT) in accordance with Resolution 418 (Rev.WRC-12).

(B) Consistent with Radio Regulation No. 4.10, airport surface wireless systems operating in the AM(R)S have priority over AMT systems in the band.

(C) Operators of AM(R)S and AMT systems at the following airports are urged to cooperate with each other in the exchange of information about planned deployments of their respective systems so that the prospects for compatible sharing of the band are enhanced:

(1) Boeing Field/King County Intl Airport, Seattle, WA;

(2) Lambert-St. Louis Intl Airport, St. Louis, MO;

(3) Charleston AFB/Intl Airport, Charleston, SC;

(4) Wichita Dwight D. Eisenhower National Airport, Wichita, KS;

(5) Roswell Intl Air Center Airport, Roswell, NM; and

(6) William P. Gwinn Airport, Jupiter, FL. Other airports may be addressed on a case-by-case basis.

(D) Aeronautical fixed communications that are an integral part of the AeroMACS system authorized in paragraph (c)(444)(ii)(A)(1) of this section are also authorized on a primary basis.

(445) - (474) [Reserved]

(475) US475 The use of the band 9300-9500 MHz by the aeronautical radionavigation service is limited to airborne radars and associated airborne beacons. In addition, ground-based radar beacons in the aeronautical radionavigation service are permitted in the band 9300-9320 MHz on the condition that harmful interference is not caused to the maritime radionavigation service.

(476) US476A In the band 9300-9500 MHz, Federal stations in the Earth exploration-satellite service (active) and space research service (active) shall not cause harmful interference to, nor claim protection from, stations of the radionavigation and Federal radiolocation services.

(477) - (481) [Reserved]

(482) US482 In the band 10.6-10.68 GHz, the following provisions and urgings apply:

(i) Non-Federal use of the fixed service shall be restricted to point-to-point stations, with each station supplying not more than -3 dBW of transmitter power to the antenna, producing not more than 40 dBW of EIRP, and radiating at an antenna main beam elevation angle of 20° or less. Licensees holding a valid authorization on August 6, 2015 to operate in this band may continue to operate as authorized, subject to proper license renewal.

(ii) In order to minimize interference to the Earth exploration-satellite service (passive) receiving in this band, licensees of stations in the fixed service are urged to: (A) limit the maximum transmitter power supplied to the antenna to -15 dBW; and (B) employ automatic transmitter power control (ATPC). The maximum transmitter power supplied to the antenna of stations using ATPC may be increased by a value corresponding to the ATPC range, up to a maximum of -3 dBW.

(483) - (510) [Reserved]

(511) US511E The use of the band 15.4-15.7 GHz by the radiolocation service is limited to Federal systems requiring a necessary bandwidth greater than 1600 MHz that cannot be accommodated within the band 15.7-17.3 GHz except as described below. In the band 15.4-15.7 GHz, stations operating in the radiolocation service shall not cause harmful interference to, nor claim protection from, radars operating in the aeronautical radionavigation service. Radar systems operating in the radiolocation service shall not be developed solely for operation in the band 15.4-15.7 GHz. Radar systems requiring use of the band 15.4-15.7 GHz for testing, training, and exercises may be accommodated on a case-by-case basis.

(512) - (518) [Reserved]

(519) US519 The band 18-18.3 GHz is also allocated to the meteorological-satellite service (space-to-Earth) on a primary basis. Its use is limited to geostationary satellites and shall be in accordance with the provisions of Article 21, Table 21-4 of the ITU Radio Regulations.

(520) - (531) [Reserved]

(532) US532 In the bands 21.2-21.4 GHz, 22.21-22.5 GHz, and 56.26-58.2 GHz, the space research and Earth exploration-satellite services shall not receive protection from the fixed and mobile services operating in accordance with the Table of Frequency Allocations in this section.

(533) - (549) [Reserved]

(550) US550A In the band 36-37 GHz, the following provisions shall apply:

(i) For stations in the mobile service, the transmitter power supplied to the antenna shall not exceed -10 dBW, except that the maximum transmitter power may be increased to -3 dBW for stations used for public safety and disaster management.

(ii) For stations in the fixed service, the elevation angle of the antenna main beam shall not exceed 20° and the transmitter power supplied to the antenna shall not exceed:

(A) -5 dBW for hub stations of point-to-multipoint systems; or

(B) -10 dBW for all other stations, except that the maximum transmitter power of stations using automatic transmitter power control (ATPC) may be increased by a value corresponding to the ATPC range, up to a maximum of -7 dBW.

(551) - (564) [Reserved]

(565) US565 The following frequency bands in the range 275-1000 GHz are identified for passive service applications:

(i) Radio astronomy service: 275-323 GHz, 327-371 GHz, 388-424 GHz, 426-442 GHz, 453-510 GHz, 623-711 GHz, 795-909 GHz and 926-945 GHz;

(ii) Earth exploration-satellite service (passive) and space research service (passive): 275-286 GHz, 296-306 GHz, 313-356 GHz, 361-365 GHz, 369-392 GHz, 397-399 GHz, 409-411 GHz, 416-434 GHz, 439-467 GHz, 477-502 GHz, 523-527 GHz, 538-581 GHz, 611-630 GHz, 634-654 GHz, 657-692 GHz, 713-718 GHz, 729-733 GHz, 750-754 GHz, 771-776 GHz, 823-846 GHz, 850-854 GHz, 857-862 GHz, 866-882 GHz, 905-928 GHz, 951-956 GHz, 968-973 GHz and 985-990 GHz.

Note 10 to paragraph (c)(565): The use of the range 275-1000 GHz by the passive services does not preclude use of this range by active services. This provision does not establish priority of use in the United States Table of Frequency Allocations in this section, and does not preclude or constrain any active service use or future allocation of frequency bands in the 275-3000 GHz range.

(d) *Non-Federal Government (NG) Footnotes*. Non-Federal Government (non-Federal) footnotes, each in the format “NG” followed by one or more digits, denote stipulations applicable only to non-Federal operations and thus appear solely in the non-Federal Table. The list of non-Federal footnotes follows:

(1) NG1 The band 535-1705 kHz is also allocated to the mobile service on a secondary basis for the distribution of public service information from Travelers Information Stations operating in accordance with the provisions of § 90.242 of this chapter on 10 kilohertz spaced channels from 540 kHz to 1700 kHz.

(2) NG2 Facsimile broadcasting stations may be authorized in the band 88-108 MHz.

(3) NG3 Control stations in the domestic public mobile radio service may be authorized frequencies in the band 72-73 and 75.4-76 MHz on the condition that harmful interference will not be caused to operational fixed stations.

(4) NG4 The use of the frequencies in the band 152.84-153.38 MHz may be authorized, in any area, to remote pickup broadcast base and mobile stations on the condition that harmful interference will not be caused to stations operating in accordance with the Table of Frequency Allocations in this section.

(5) NG5 In the band 535-1705 kHz, AM broadcast licensees and permittees may use their AM carrier on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the band 88-108 MHz, FM broadcast licensees and permittees are permitted to use subcarriers on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the bands 54-72, 76-88, 174-216, 470-608, and 614-698 MHz, TV broadcast licensees and permittees are permitted to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes. Use of the band 614-698 MHz is subject to the provisions specified in paragraph (d)(33) of this section.

(6) NG6 Stations in the public safety radio services authorized as of June 30, 1958, to use frequencies in the band 159.51-161.79 MHz in areas other than Puerto Rico and the Virgin Islands may continue such operation, including expansion of existing systems, on the condition that harmful interference will not be caused to stations in the services to which these bands are allocated. In Puerto Rico and the Virgin Islands this authority is limited to frequencies in the band 160.05-161.37 MHz. No new public radio service system will be authorized to operate on these frequencies.

(7) NG7 In the bands 2000-2065, 2107-2170, and 2194-2495 kHz, fixed stations associated with the maritime mobile service may be authorized, for purposes of communication with coast stations, to use frequencies assignable to ship stations in these bands on the condition that harmful interference will not

be caused to services operating in accordance with the Table of Frequency Allocations in this section. See § 80.371(a) of this chapter for the list of available carrier frequencies.

(8) NG8 In the band 472-479 kHz, non-Federal stations in the maritime mobile service that were licensed or applied for prior to July 14, 2017 may continue to operate on a primary basis, subject to periodic license renewals.

(9) - (13) [Reserved]

(14) NG14 TV broadcast stations authorized to operate in the bands 54-72, 76-88, 174-216, 470-608, and 614-698 MHz may use a portion of the television vertical blanking interval for the transmission of telecommunications signals, on the condition that harmful interference will not be caused to the reception of primary services, and that such telecommunications services must accept any interference caused by primary services operating in these bands. Use of the band 614-698 MHz is subject to the provisions specified in paragraph (d)(33) of this section.

(15) [Reserved]

(16) NG16 In the bands 72-73 MHz and 75.4-76 MHz, frequencies may be authorized for mobile operations in the Industrial/Business Radio Pool, subject to not causing interference to the reception of broadcast television signals on channels 4 and 5.

(17) NG17 Stations in the land transportation radio services authorized as of May 15, 1958 to operate on the frequency 161.61 MHz may, upon proper application, continue to be authorized for such operation, including expansion of existing systems, on the condition that harmful interference will not be caused to the operation of any authorized station in the maritime mobile service. No new land transportation radio service system will be authorized to operate on 161.61 MHz.

(18) - (21) [Reserved]

(22) NG22 The frequencies 156.050 and 156.175 MHz may be assigned to stations in the maritime mobile service for commercial and port operations in the New Orleans Vessel Traffic Service (VTS) area and the frequency 156.250 MHz may be assigned to stations in the maritime mobile service for port operations in the New Orleans and Houston VTS areas.

(23) - (27) [Reserved]

(28) NG28 In Puerto Rico and the United States Virgin Islands, the band 160.86-161.4 MHz is available for assignment to remote pickup broadcast stations on a shared basis with stations in the Industrial/Business Pool.

(29) [Reserved]

(30) NG30 In Puerto Rico, the band 942-944 MHz is alternatively allocated to the fixed service (aural broadcast auxiliary stations).

(31) [Reserved]

(32) NG32 Frequencies in the bands 454.6625-454.9875 MHz and 459.6625-459.9875 MHz may be assigned to domestic public land and mobile stations to provide a two-way air-ground public radiotelephone service.

(33) NG33 In the band 614-698 MHz, the following provisions shall apply:

(i) Until July 13, 2020, stations in the broadcasting service and other authorized uses may operate as follows:

(A) Full power and Class A television (TV) stations, i.e., broadcast TV stations, may operate on a co-equal, primary basis with stations in the fixed and mobile services until such stations terminate operations on their pre-auction television channels in accordance with § 73.3700(b)(4) of this chapter.

(B) Low power TV (LPTV) and TV translator stations may operate on a secondary basis to stations in the fixed and mobile services and to broadcast TV stations, and fixed TV broadcast auxiliary stations may operate on a secondary basis to LPTV and TV translator stations, unless such stations are required to terminate their operations earlier in accordance with § 73.3700(g)(4) or § 74.602(h)(5) and (6) of this chapter.

(C) Low power auxiliary stations (LPAS), including wireless assist video devices (WAVDs), may operate on a secondary basis to all other authorized stations in accordance with §§ 74.802(f) and 74.870(i) of this chapter.

(D) Unlicensed wireless microphones and white space devices (WSDs) may operate on a non-interference basis, unless such devices are required to terminate operations earlier in accordance with § 15.236(c)(2) or § 15.707(a)(1), (2), and (5) of this chapter, respectively.

(ii) After July 13, 2020, only the following types of radiofrequency devices that are authorized in paragraph (d)(33)(i) of this section may continue to operate:

(A) LPTV and TV translator stations may operate on a secondary basis to stations in the fixed and mobile services in the sub-bands 617-652 MHz and 663-698 MHz until required to terminate their operations in accordance with § 73.3700(g)(4) of this chapter.

(B) LPAS may operate in the sub-band 653-657 MHz and unlicensed wireless microphones may operate in the sub-bands 614-616 MHz and 657-663 MHz.

(C) WSDs may operate in:

(1) The sub-bands 617-652 MHz and 663-698 MHz, except in those areas where their use is prohibited in accordance with §§ 15.707(a)(5) and 15.713(b)(2)(iv) of this chapter, and

(2) The sub-band 657-663 MHz, in accordance with § 15.707(a)(4) of this chapter.

(34) NG34 The bands 758-775 MHz and 788-805 MHz are available for assignment to the public safety services, as described in part 90 of this chapter.

(35) NG35 Frequencies in the bands 928-929 MHz, 932-932.5 MHz, 941-941.5 MHz, and 952-960 MHz may be assigned for multiple address systems and associated mobile operations on a primary basis.

(36) - (40) [Reserved]

(41) NG41 In the band 2120-2180 MHz, the following provisions shall apply to grandfathered stations in the fixed service:

(i) In the sub-band 2160-2162 MHz, authorizations in the Broadband Radio Service (BRS) applied for after January 16, 1992 shall be granted on a secondary basis to Advanced Wireless Services (AWS). In the band 2150-2162 MHz, all other BRS stations shall operate on a primary basis until December 9, 2021, and may continue to operate on a secondary basis thereafter, unless said facility is relocated in accordance with §§ 27.1250 through 27.1255 of this chapter.

(ii) In the sub-band 2160-2180 MHz, fixed stations authorized pursuant to part 101 of this chapter may continue to operate on a secondary basis to AWS.

(42) - (49) [Reserved]

(50) NG50 In the band 10-10.5 GHz, non-Federal stations in the radiolocation service shall not cause harmful interference to the amateur service; and in the sub-band 10.45-10.5 GHz, these stations shall not cause harmful interference to the amateur-satellite service.

(51) NG51 In Puerto Rico and the United States Virgin Islands, the use of band 150.8-151.49 MHz by the fixed and land mobile services is limited to stations in the Industrial/Business Pool.

(52) NG52 Except as provided for by paragraph (d)(527) of this section, use of the bands 10.7-11.7 GHz (space-to-Earth) and 12.75-13.25 GHz (Earth-to-space) by geostationary satellites in the fixed-satellite service (FSS) shall be limited to international systems, *i.e.*, other than domestic systems.

(53) NG53 In the band 13.15-13.25 GHz, the following provisions shall apply:

(i) The sub-band 13.15-13.2 GHz is reserved for television pickup (TVPU) and cable television relay service (CARS) pickup stations inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter; and outside these areas, TVPU stations, CARS stations and non-geostationary satellite orbit fixed-satellite service (NGSO FSS) gateway earth stations operate on a co-primary basis.

(ii) The sub-band 13.2-13.2125 GHz is reserved for TVPU stations on a primary basis and for CARS pickup stations on a secondary basis inside a 50 km radius of the 100 television markets delineated in § 76.51 of this chapter; and outside these areas, TVPU stations and NGSO FSS gateway earth stations operate on a co-primary basis and CARS stations operate on a secondary basis.

(iii) In the band 13.15-13.25 GHz, fixed television auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation, subject to periodic license renewals.

(iv) In the sub-band 13.15-13.2125 GHz, NGSO FSS gateway uplink transmissions shall be limited to a maximum e.i.r.p. of 3.2 dBW towards 0° on the radio horizon.

Note 11 to paragraph (d)(53): The provisions of paragraphs (d)(53)(i) through (iii) of this section shall not apply to geostationary satellite orbit (GSO) FSS operations in the band 12.75-13.25 GHz.

(54) - (55) [Reserved]

(56) NG56 In the bands 72-73 and 75.4-76 MHz, the use of mobile radio remote control of models is on a secondary basis to all other fixed and mobile operations. Such operations are subject to the condition that interference will not be caused to common carrier domestic public stations, to remote control of industrial equipment operating in the band 72-76 MHz, or to the reception of television signals on channels 4 (66-72 MHz) or 5 (76-82 MHz). Television interference shall be considered to occur whenever reception of regularly used television signals is impaired or destroyed, regardless of the strength of the television signal or the distance to the television station.

(57) NG57 The use of the band 12.75-13.25 GHz by non-geostationary-satellite systems in the fixed-satellite service is limited to communications with individually licensed earth stations.

(58) NG58 In the band 17.3-17.8 GHz, the following provisions shall apply to the broadcasting-satellite, fixed, and fixed-satellite services:

(i) The use of the band 17.3-17.8 GHz by the broadcasting-satellite and fixed-satellite (space-to-Earth) services is limited to geostationary satellites.

(ii) The use of the band 17.3-17.8 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for broadcasting-satellite service.

(iii) The use of the band 17.7-17.8 GHz by the broadcasting-satellite service is limited to receiving earth stations located outside of the United States and its insular areas.

(iv) In the band 17.7-17.8 GHz, earth stations in the fixed-satellite service may be authorized for the reception of FSS emissions from geostationary satellites, subject to the condition that these earth stations shall not claim protection from transmissions of non-Federal stations in the fixed service that operate in that band.

(59) NG59 The frequencies 37.60 and 37.85 MHz may be authorized only for use by base, mobile, and operational fixed stations participating in an interconnected or coordinated power service utility system.

(60) NG60 In the band 31-31.3 GHz, for stations in the fixed service authorized after August 6, 2018, the unwanted emissions power in any 100 MHz of the 31.3-31.5 GHz Earth exploration-satellite service (passive) band shall be limited to -38 dBW (-38 dBW/100 MHz), as measured at the input to the antenna.

(61) [Reserved]

(62) NG62 In the bands 28.5-29.1 GHz and 29.25-29.5 GHz, stations in the fixed-satellite service shall not cause harmful interference to, or claim protection from, stations in the fixed service operating under the following call signs: KEB35, KGB72, KGC79, KIL20, KME49, KQG58, KQH74, KSA96, KSE73, KVB83, KYJ33, KZS88, WAX78, WLT380, WMK817, WML443, WMP367, and WSL69.

(63) NG63 In the band 37.5-40 GHz, earth station operations in the fixed-satellite service (space-to-Earth) shall not claim protection from stations in the fixed and mobile services, except where individually licensed earth stations are authorized pursuant to § 25.136 of this chapter.

(64) [Reserved]

(65) NG65 In the bands 24.75-25.25 GHz, 47.2-48.2 GHz, and 50.4-51.4 GHz, stations in the fixed and mobile services may not claim protection from individually licensed earth stations authorized pursuant to § 25.136 of this chapter. However, nothing in this footnote shall limit the right of Upper Microwave Flexible Use Service licensees to operate in conformance with the technical rules contained in part 30 of this chapter. The Commission reserves the right to monitor developments and to undertake further action concerning interference between Upper Microwave Flexible Use Service and Fixed-Satellite Service, including aggregate interference to satellite receivers, if appropriate.

(66) NG66 The band 470-512 MHz (TV channels 14-20) is allocated to the broadcasting service on an exclusive basis throughout the United States and its insular areas, except as described in paragraphs (d)(66)(i) through (iv) of this section:

(i) In the urbanized areas listed in table 23 to this paragraph (d)(66)(i), the indicated frequency bands are allocated to the land mobile service on an exclusive basis for assignment to eligibles in the Public Mobile Services, the Public Safety Radio Pool, and the Industrial/Business Radio Pool, except that:

(A) Licensees in the land mobile service that are regulated as Commercial Mobile Radio Service (CMRS) providers may also use their assigned spectrum to provide fixed service on a primary basis.

(B) The use of the band 482-488 MHz (TV channel 16) is limited to eligibles in the Public Safety Radio Pool in or near:

(1) The Los Angeles urbanized area; and

(2) New York City; Nassau, Suffolk, and Westchester Counties in New York State; and Bergen County, NJ.

Table 23 to Paragraph (d)(66)(i)

Urbanized area	Bands (MHz)	TV channels
Boston, MA.....	470-476, 482-488.....	14, 16
Chicago, IL-Northwestern IN.....	470-476, 476-482.....	14, 15

Cleveland, OH.....	470-476, 476-482.....	14, 15
Dallas-Fort Worth, TX.....	482-488.....	16
Detroit, MI.....	476-482, 482-488.....	15, 16
Houston, TX.....	488-494.....	17
Los Angeles, CA.....	470-476, 482-488, 506-512.....	14, 16, 20
Miami, FL.....	470-476.....	14
New York, NY-Northeastern NJ.....	470-476, 476-482, 482-488.....	14, 15, 16
Philadelphia, PA-NJ.....	500-506, 506-512.....	19, 20
Pittsburgh, PA.....	470-476, 494-500.....	14, 18
San Francisco-Oakland, CA.....	482-488, 488-494.....	16, 17
Washington, DC-MD-VA.....	488-494, 494-500.....	17, 18

(ii) In the Gulf of Mexico offshore from the Louisiana-Texas coast, the band 476-494 MHz (TV channels 15-17) is allocated to the fixed and mobile services on a primary basis for assignment to eligibles in the Public Mobile and Private Land Mobile Radio Services.

(iii) In Hawaii, the band 488-494 MHz (TV channel 17) is allocated exclusively to the fixed service for use by common carrier control and repeater stations for point-to-point inter-island communications only.

(iv) The use of these allocations is further subject to the conditions set forth in parts 22 and 90 of this chapter.

(67) - (69) [Reserved]

(70) NG70 In Puerto Rico and the Virgin Islands only, the bands 159.240-159.435 and 160.410-160.620 MHz are also available for assignment to base stations and mobile stations in the special industrial radio service.

(71) - (91) [Reserved]

(92) NG92 The band 1900-2000 kHz is also allocated on a primary basis to the maritime mobile service in Regions 2 and 3 and to the radiolocation service in Region 2, and on a secondary basis to the radiolocation service in Region 3. The use of these allocations is restricted to radio buoy operations on the open sea and the Great Lakes. Stations in the amateur, maritime mobile, and radiolocation services in Region 2 shall be protected from harmful interference only to the extent that the offending station does not operate in compliance with the technical rules applicable to the service in which it operates.

(93) - (110) [Reserved]

(111) NG111 The band 157.4375-157.4625 MHz may be used for one way paging operations in the special emergency radio service.

(112) NG112 The frequencies 25.04, 25.08, 150.980, 154.585, 158.445, 159.480, 454.000 and 459.000 MHz may be authorized to stations in the Industrial/Business Pool for use primarily in oil spill containment and cleanup operations and secondarily in regular land mobile communication.

(113) - (114) [Reserved]

(115) NG115 In the bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-608 MHz, and 614-698 MHz, wireless microphones and wireless assist video devices may be authorized on a non-interference basis, subject to the terms and conditions set forth in part 74, subpart H of this chapter.

(116) - (117) [Reserved]

(118) NG118 In the bands 2025-2110 MHz, 6875-7125 MHz, and 12.7-13.25 GHz, television translator relay stations may be authorized to use frequencies on a secondary basis to other stations in the Television Broadcast Auxiliary Service that are operating in accordance with the Table of Frequency Allocations in this section.

(119) - (123) [Reserved]

(124) NG124 In the bands 30.85-34, 37-38, 39-40, 42-47.41, 150.995-156.25, 158.715-159.465, 453.0125-453.9875, 458.0125-458.9875, 460.0125-465.6375, and 467.9375-467.9875 MHz, police licensees are authorized to operate low power transmitters on a secondary basis in accordance with the provisions of §§ 2.803 and 90.20(e)(5) of this chapter.

(125) - (140) [Reserved]

(141) NG141 In Alaska, the frequencies 42.4 MHz and 44.1 MHz are authorized on a primary basis for meteor burst communications by fixed stations in the Rural Radio Service operating under the provisions of part 22 of this chapter. In Alaska, the frequencies 44.2 MHz and 45.9 MHz are authorized on a primary basis for meteor burst communications by fixed private radio stations operating under the provisions of part 90 of this chapter. The private radio station frequencies may be used by Common Carrier stations on a secondary, noninterference basis and the Common Carrier frequencies may be used by private radio stations for meteor burst communications on a secondary, noninterference basis. Users shall cooperate to the extent practical to minimize potential interference. Stations utilizing meteor burst communications shall not cause harmful interference to stations of other radio services operating in accordance with the Table of Frequency Allocations in this section.

(142) [Reserved]

(143) NG143 In the band 11.7-12.2 GHz, protection from harmful interference shall be afforded to transmissions from space stations not in conformance with ITU Radio Regulation No. 5.488 only if the operations of such space stations impose no unacceptable constraints on operations or orbit locations of space stations in conformance with No. 5.488.

(144) - (146) [Reserved]

(147) NG147 In the band 2483.5-2500 MHz, non-Federal stations in the fixed and mobile services that are licensed under part 74, 90, or 101 of this chapter, which were licensed as of July 25, 1985, and those whose initial applications were filed on or before July 25, 1985, may continue to operate on a primary basis with the mobile-satellite and radiodetermination-satellite services, and in the sub-band 2495-2500 MHz, these grandfathered stations may also continue to operate on a primary basis with stations in the fixed and mobile except aeronautical mobile services that are licensed under part 27 of this chapter.

(148) NG148 The frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz may be authorized to maritime mobile stations for offshore radiolocation and associated telecommand operations.

(149) NG149 The bands 54-72 MHz, 76-88 MHz, 174-216 MHz, 470-512 MHz, 512-608 MHz, and 614-698 MHz are also allocated to the fixed service to permit subscription television operations in accordance with part 73 of this chapter. Use of the band 614-698 MHz is subject to the provisions specified in paragraph (d)(33) of this section.

(150) - (151) [Reserved]

(152) NG152 The use of the band 219-220 MHz by the amateur service is limited to stations participating, as forwarding stations, in point-to-point fixed digital message forwarding systems, including intercity packet backbone networks.

(153) - (154) [Reserved]

(155) NG155 The bands 159.500-159.675 MHz and 161.375-161.550 MHz are allocated to the maritime service as described in part 80 of this chapter. Additionally, the frequencies 159.550, 159.575 and 159.600 MHz are available for low-power intership communications.

(156) - (158) [Reserved]

(159) NG159 In the band 698-806 MHz, stations authorized under part 74, subparts F and G of this chapter may continue to operate indefinitely on a secondary basis to all other stations operating in that band.

(160) NG160 In the band 5895-5925 MHz, the use of the non-Federal mobile service is limited to operations in the Intelligent Transportation System radio service.

(161) - (163) [Reserved]

(164) NG164 The use of the band 18.6-18.8 GHz by the fixed-satellite service is limited to geostationary-satellite networks.

(165) NG165 In the bands 18.8-19.3 GHz and 28.6-29.1 GHz, geostationary-satellite networks in the fixed-satellite service shall not cause harmful interference to, or claim protection from, non-geostationary-satellite systems in the fixed-satellite service.

(166) NG166 The use of the bands 19.4-19.6 GHz and 29.1-29.25 GHz by the fixed-satellite service is limited to feeder links for non-geostationary-satellite systems in the mobile-satellite service.

(167) - (168) [Reserved]

(169) NG169 After December 1, 2000, operations on a primary basis by the fixed-satellite service (space-to-Earth) in the band 3650-3700 MHz shall be limited to grandfathered earth stations. All other fixed-satellite service earth station operations in the band 3650-3700 MHz shall be on a secondary basis. Grandfathered earth stations are those authorized prior to December 1, 2000, or granted as a result of an application filed prior to December 1, 2000, and constructed within 12 months of initial authorization. License applications for primary operations for new earth stations, major amendments to pending earth station applications, or applications for major modifications to earth station facilities filed on or after December 18, 1998, and prior to December 1, 2000, shall not be accepted unless the proposed facilities are within 16.1 kilometers (10 miles) of an authorized primary earth station operating in the band 3650-3700 MHz. License applications for primary operations by new earth stations, major amendments to pending earth station applications, and applications for major modifications to earth station facilities, filed after December 1, 2000, shall not be accepted, except for changes in polarization, antenna orientation or ownership of a grandfathered earth station.

(170) [Reserved]

(171) NG171 In the band 6875-7125 MHz, the following two channels should be used for airborne TV pickup stations, wherever possible: 7075-7100 MHz and 7100-7125 MHz.

(172) NG172 In the band 7025-7075 MHz, use of the primary fixed-satellite service (space-to-Earth) allocation shall be limited to two grandfathered satellite systems. Associated earth stations located within 300 meters of the following locations shall be grandfathered:

- (i) In the band 7025-7075 MHz, Brewster, WA (48° 08' 46.7" N, 119° 42' 8.0" W); and
- (ii) In the sub-band 7025-7055 MHz, Clifton, TX (31° 47' 58.5" N, 97° 36' 46.7" W) and Finca Pascual, PR (17° 58' 41.8" N, 67° 8' 12.6" W).

(173) NG173 In the band 216-220 MHz, secondary telemetry operations are permitted subject to the requirements of § 90.259 of this chapter. After January 1, 2002, no new assignments shall be authorized in the sub-band 216-217 MHz.

(174) [Reserved]

(175) NG175 In the band 38.6-40 GHz, television pickup stations that were authorized on or before April 16, 2003, may continue to operate on a secondary basis to stations operating in accordance with the Table of Frequency Allocations in this section.

(176) - (181) [Reserved]

(182) NG182 In the band 3700-4200 MHz, the following provisions shall apply:

(i) Except as provided in paragraph (d)(182)(iii)(A) of this section, any currently authorized space stations serving the contiguous United States may continue to operate on a primary basis, but no applications for new space station authorizations or new petitions for market access shall be accepted for filing after June 21, 2018, other than applications by existing operators in the band seeking to make more efficient use of the band 4000-4200 MHz. Applications for extension, cancellation, replacement, or modification of existing space station authorizations in the band will continue to be accepted and processed normally.

(ii) In areas outside the contiguous United States, the band 3700-4000 MHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis.

(iii) In the contiguous United States, i.e., the contiguous 48 states and the District of Columbia as defined by Partial Economic Areas Nos. 1-41, 43-211, 213-263, 265-297, 299-359, and 361-411, which includes areas within 12 nautical miles of the U.S. Gulf coastline (*see* § 27.6(m) of this chapter), the following provisions apply:

(A) Incumbent use of the fixed-satellite service (space-to-Earth) in the band 3700-4000 MHz is subject to the provisions of §§ 25.138, 25.147, 25.203(n) and part 27, subpart O of this chapter;

(B) Fixed service licensees authorized as of April 19, 2018, pursuant to part 101 of this chapter, must self-relocate their point-to-point links out of the band 3700-4200 MHz by December 5, 2023;

(C) In the band 3980-4000 MHz, no new fixed or mobile operations will be permitted until specified by Commission rule, order, or notice.

(183) - (184) [Reserved]

(185) NG185 In the band 3650-3700 MHz, the use of the non-Federal fixed-satellite service (space-to-Earth) is limited to international inter-continental systems.

(186) - (337) [Reserved]

(338) NG338A In the bands 1390-1395 MHz and 1427-1435 MHz, licensees are encouraged to take all reasonable steps to ensure that unwanted emissions power does not exceed the following levels in the band 1400-1427 MHz:

- (i) For stations of point-to-point systems in the fixed service: -45 dBW/27 MHz.

(ii) For stations in the mobile service (except for devices authorized by the FCC for the Wireless Medical Telemetry Service): -60 dBW/27 MHz.

(339) - (456) [Reserved]

(457) NG457A Earth stations on vessels (ESVs), as regulated under part 25 of this chapter, are an application of the fixed-satellite service and the following provisions shall apply:

(i) In the band 3700-4200 MHz, ESVs may be authorized to receive FSS signals from geostationary satellites. ESVs in motion are subject to the condition that these earth stations may not claim protection from transmissions of non-Federal stations in the fixed and mobile except aeronautical mobile services. While docked, ESVs receiving in the band 4000-4200 MHz may be coordinated for up to 180 days, renewable. Paragraph d(182) of this section applies to incumbent licensees that provide service to ESVs in the band 3700-4000 MHz.

(ii) In the band 5925-6425 MHz, ESVs may be authorized to transmit to geostationary satellites on a primary basis.

(458) - (526) [Reserved]

(527) NG527A Earth Stations in Motion (ESIMs), as regulated under part 25 of this chapter, are an application of the fixed-satellite service (FSS) and the following provisions shall apply:

(i) In the bands 10.7-11.7 GHz, 19.3-19.4 GHz, and 19.6-19.7 GHz, ESIMs may be authorized for the reception of FSS emissions from geostationary and non-geostationary satellites, subject to the conditions that these earth stations may not claim protection from transmissions of non-Federal stations in the fixed service and that non-geostationary-satellite systems not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(ii) In the bands 11.7-12.2 GHz (space-to-Earth), 14.0-14.5 GHz (Earth-to-space), 18.3-18.8 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 28.35-28.6 GHz (Earth-to-space), and 29.25-30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with geostationary satellites on a primary basis.

(iii) In the bands 11.7-12.2 GHz (space-to-Earth), 14.0-14.5 GHz (Earth-to-space), 18.3-18.6 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 28.4-28.6 GHz (Earth-to-space), and 29.5-30.0 GHz (Earth-to-space), ESIMs may be authorized to communicate with non-geostationary satellites, subject to the condition that non-geostationary-satellite systems may not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(iv) In the band 17.8-18.3 GHz, ESIMs may be authorized for the reception of FSS emissions from geostationary and non-geostationary satellites on a secondary basis, subject to the condition that non-geostationary-satellite systems not cause unacceptable interference to, or claim protection from, geostationary-satellite networks.

(v) In the bands 18.8-19.3 GHz (space-to-Earth) and 28.6-29.1 GHz (Earth-to-space), ESIMs may be authorized to communicate with geostationary and non-geostationary satellites, subject to the condition that geostationary-satellite networks may not cause unacceptable interference to, or claim protection from, non-geostationary satellite systems in the fixed-satellite service.

(vi) In the band 17.3-17.8 GHz, ESIMs may be authorized for the reception of FSS emissions from geostationary satellites on an unprotected basis.

(528) - (534) [Reserved]

(535) NG535A The use of the band 29.25-29.5 GHz by the fixed-satellite service is limited to geostationary-satellite networks and to feeder links for non-geostationary-satellite systems in the mobile-satellite service.

(e) *Federal Government (G) footnotes.* Federal Government (Federal) footnotes, each in the format "G" followed by one or more digits, denote stipulations applicable only to Federal operations and thus appear solely in the Federal Table. The list of Federal footnotes follows:

(1) [Reserved]

(2) G2 In the bands 216.965-216.995 MHz, 420-450 MHz (except as provided for in G129), 890-902 MHz, 928-942 MHz, 1300-1390 MHz, 2310-2390 MHz, 2417-2450 MHz, 2700-2900 MHz, 3300-3500 MHz, 5650-5925 MHz, and 9000-9200 MHz, use of the Federal radiolocation service is restricted to the military services.

(3) - (4) [Reserved]

(5) G5 In the bands 162.0125-173.2, 173.4-174, 406.1-410 and 410-420 MHz, use by the military services is limited by the provisions specified in the channeling plans shown in Sections 4.3.7 and 4.3.9 of the NTIA Manual.

(6) G6 Military tactical fixed and mobile operations may be conducted nationally on a secondary basis:

(i) To the meteorological aids service in the band 403-406 MHz; and

(ii) To the radio astronomy service in the band 406.1-410 MHz. Such fixed and mobile operations are subject to local coordination to ensure that harmful interference will not be caused to the services to which the bands are allocated.

(7) [Reserved]

(8) G8 Low power Federal radio control operations are permitted in the band 420-450 MHz.

(9) - (10) [Reserved]

(11) G11 Federal fixed and mobile radio services, including low power radio control operations, are permitted in the band 902-928 MHz on a secondary basis.

(12) - (14) [Reserved]

(15) G15 Use of the band 2700-2900 MHz by the military fixed and shipborne air defense radiolocation installations will be fully coordinated with the meteorological aids and aeronautical radionavigation services. The military air defense installations will be moved from the band 2700-2900 MHz at the earliest practicable date. Until such time as military air defense installations can be accommodated satisfactorily elsewhere in the spectrum, such operations will, insofar as practicable, be adjusted to meet the requirements of the aeronautical radionavigation service.

(16) - (18) [Reserved]

(19) G19 Use of the band 9000-9200 MHz by military fixed and shipborne air defense radiolocation installations will be fully coordinated with the aeronautical radionavigation service, recognizing fully the safety aspects of the latter. Military air defense installations will be accommodated ultimately out-side this band. Until such time as military defense installations can be accommodated satisfactorily elsewhere in the spectrum such operations will, insofar as practicable, be adjusted to meet the requirements of the aeronautical radionavigation services.

(20) - (26) [Reserved]

(27) G27 In the bands 225-328.6 MHz, 335.4-399.9 MHz, and 1350-1390 MHz, the fixed and mobile services are limited to the military services.

(28) - (29) [Reserved]

(30) G30 In the bands 138-144 MHz, 148-149.9 MHz, and 150.05-150.8 MHz, the fixed and mobile services are limited primarily to operations by the military services.

(31) [Reserved]

(32) G32 Except for weather radars on meteorological satellites in the band 9.975-10.025 GHz and for Federal survey operations (see footnote US108), Federal radiolocation in the band 10-10.5 GHz is limited to the military services.

(33) [Reserved]

(34) G34 In the band 34.4-34.5 GHz, weather radars on board meteorological satellites for cloud detection are authorized to operate on the basis of equality with military radiolocation devices. All other non-military radiolocation in the band 33.4-36.0 GHz shall be secondary to the military services.

(35) - (41) [Reserved]

(42) G42 The space operation service (Earth-to-space) is limited to the band 1761-1842 MHz, and is limited to space command, control, range and range rate systems.

(43) - (55) [Reserved]

(56) G56 Federal radiolocation in the bands 1215-1300, 2900-3100, 5350-5650 and 9300-9500 MHz is primarily for the military services; however, limited secondary use is permitted by other Federal agencies in support of experimentation and research programs. In addition, limited secondary use is permitted for survey operations in the band 2900-3100 MHz.

(57) - (58) [Reserved]

(59) G59 In the bands 902-928 MHz, 3100-3300 MHz, 3500-3650 MHz, 5250-5350 MHz, 8500-9000 MHz, 9200-9300 MHz, 13.4-14.0 GHz, 15.7-17.7 GHz and 24.05-24.25 GHz, all Federal non-military radiolocation shall be secondary to military radiolocation, except in the sub-band 15.7-16.2 GHz airport surface detection equipment (ASDE) is permitted on a co-equal basis subject to coordination with the military departments.

(60) - (99) [Reserved]

(100) G100 The bands 235-322 MHz and 335.4-399.9 MHz are also allocated on a primary basis to the mobile-satellite service, limited to military operations.

(101) - (103) [Reserved]

(104) G104 In the bands 7450-7550 and 8175-8215 MHz, it is agreed that although the military space radio communication systems, which include earth stations near the proposed meteorological-satellite installations will precede the meteorological-satellite installations, engineering adjustments to either the military or the meteorological-satellite systems or both will be made as mutually required to assure compatible operations of the systems concerned.

(105) - (108) [Reserved]

(109) G109 All assignments in the band 157.0375-157.1875 MHz are subject to adjustment to other frequencies in this band as long term U.S. maritime VHF planning develops, particularly that planning incident to support of the National VHF-FM Radiotelephone Safety and Distress System (See Doc. 15624/1-1.9.111/1.9.125).

(110) G110 Federal ground-based stations in the aeronautical radionavigation service may be authorized between 3500-3650 MHz when accommodation in the band 2700-2900 MHz is not technically and/or economically feasible.

(111) - (113) [Reserved]

(114) G114 The band 1369.05-1390 MHz is also allocated to the fixed-satellite service (space-to-Earth) and to the mobile-satellite service (space-to-Earth) on a primary basis for the relay of nuclear burst data.

(115) G115 In the band 13 360-13 410 kHz, the fixed service is allocated on a primary basis outside the conterminous United States. Within the conterminous United States, assignments in the fixed service are permitted, and will be protected for national defense purposes or, if they are to be used only in an emergency jeopardizing life, public safety, or important property under conditions calling for immediate communication where other means of communication do not exist.

(116) G116 The band 7125-7155 MHz is also allocated for Earth-to-space transmissions in the Space Operations Service at a limited number of sites (not to exceed two), subject to established coordination procedures.

(117) G117 In the bands 7.25-7.75 GHz, 7.9-8.4 GHz, 17.375-17.475 GHz, 17.6-21.2 GHz, 30-31 GHz, 33-36 GHz, 39.5-41 GHz, 43.5-45.5 GHz and 50.4-51.4 GHz, the Federal fixed-satellite and mobile-satellite services are limited to military systems.

(118) - (119) [Reserved]

(120) G120 Development of airborne primary radars in the band 2360-2390 MHz with peak transmitter power in excess of 250 watts for use in the United States is not permitted.

(121) [Reserved]

(122) G122 In the bands 2300-2310 MHz, 2395-2400 MHz, 2400-2417 MHz, and 4940-4990 MHz, Federal operations may be authorized on a non-interference basis to authorized non-Federal operations, and shall not constrain the implementation of any non-Federal operations.

(123) - (126) [Reserved]

(127) G127 Federal Travelers Information Stations (TIS) on 1610 kHz have co-primary status with AM Broadcast assignments. Federal TIS authorized as of August 4, 1994, preclude subsequent assignment for conflicting allotments.

(128) G128 Use of the band 56.9-57 GHz by inter-satellite systems is limited to transmissions between satellites in geostationary orbit, to transmissions between satellites in geostationary satellite orbit and those in high-Earth orbit, to transmissions from satellites in geostationary satellite orbit to those in low-Earth orbit, and to transmissions from non-geostationary satellites in high-Earth orbit to those in low-Earth orbit. For links between satellites in the geostationary satellite orbit, the single entry power flux-density at all altitudes from 0 km to 1000 km above the Earth's surface, for all conditions and for all methods of modulation, shall not exceed -147 dB (W/m²/100 MHz) for all angles of arrival.

(129) G129 Federal wind profilers are authorized to operate on a primary basis in the radiolocation service in the frequency band 448-450 MHz with an authorized bandwidth of no more than 2 MHz centered on 449 MHz, subject to the following conditions:

(i) Wind profiler locations must be pre-coordinated with the military services to protect fixed military radars; and

(ii) Wind profiler operations shall not cause harmful interference to, nor claim protection from, military mobile radiolocation stations that are engaged in critical national defense operations.

(130) G130 Federal stations in the radiolocation service operating in the band 5350-5470 MHz, shall not cause harmful interference to, nor claim protection from, Federal stations in the aeronautical radionavigation service operating in accordance with ITU Radio Regulation No. 5.449.

(131) G131 Federal stations in the radiolocation service operating in the band 5470-5650 MHz, with the exception of ground-based radars used for meteorological purposes operating in the band 5600-

5650 MHz, shall not cause harmful interference to, nor claim protection from, Federal stations in the maritime radionavigation service.

(132) G132 Use of the radionavigation-satellite service in the band 1215-1240 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under ITU Radio Regulation No. 5.331. Furthermore, the use of the radionavigation-satellite service in the band 1215-1240 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. ITU Radio Regulation No. 5.43 shall not apply in respect of the radiolocation service. ITU Resolution 608 (Rev.WRC-15) shall apply.

(133) [Reserved]

(134) G134 In the band 7190-7235 MHz, Federal earth stations operating in the meteorological-satellite service (Earth-to-space) may be authorized subject to the following conditions:

(i) Earth stations are limited to those communicating with the Department of Commerce Geostationary Operational Environmental Satellites (GOES).

(ii) There shall not be more than five earth stations authorized at one time.

(iii) The GOES satellite receiver shall not claim protection from existing and future stations in the fixed service (ITU Radio Regulation No. 5.43A does not apply).

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

In the Matter of	)	
	)	
Northwest Communications Cooperative, Inc. and	)	WC Docket No. 22-434
Midstate Telephone Company, LLC Joint Petition	)	
for Waiver of Sections 51.909(a), 51.917(b)(1) and	)	
51.917(b)(7) of the Commission's Rules	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing a Unified Inter-carrier Compensation	)	CC Docket No. 96-45
Regime	)	
	)	

ORDER

Adopted: March 22, 2023

Released: March 22, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, consistent with precedent,¹ we grant the joint petition filed by Northwest Communications Cooperative, Inc. (NCC) and Midstate Telephone Company, LLC (Midstate) (together, Petitioners),² seeking waiver of certain of the Commission's intercarrier compensation rules to facilitate the transfer of an exchange in Portal, North Dakota from Midstate to NCC.³ Based on the record before us, we find good cause to grant the unopposed waiver petition, which will serve the public interest by facilitating the Petitioners' transfer which, in turn, will promote increased productivity and efficiencies, as well as cost-savings that can be passed on to consumers, while having a *de minimis* effect on switched access charge revenue and universal service support.

¹ See e.g., *3 Rivers Telephone Cooperative, Inc., and Siyeh Communications Application for Transfer of Assets Pursuant to Section 214 of the Communications Act of 1934, as Amended, et al.*, WC Docket No. 20-85 et al., Order, 35 FCC Rcd 12983 (WCB 2020) (*3 Rivers Order*) (granting waiver of Commission intercarrier compensation rules and applying Commission precedent where one provider transfers certain assets to another provider resulting in a restructured study area); *Petition of Butler-Bremer Mutual Telephone Company, Inc. for a Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue in Connection with Merger of Affiliated Study Areas in Iowa; et al.*, WC Docket No. 10-90 et al., Order, 33 FCC Rcd 1152, 1157-58, paras. 15-16 (WCB 2018) (*Butler-Panora Order*) (outlining and applying relevant Commission precedent to approve the two merger-related rate-of-return study area waiver petitions).

² Northwest Communications Cooperative, Inc. and Midstate Telephone Company, LLC Joint Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules, WC Docket No. 22-434 (filed Dec. 8, 2022) (Joint Petition).

³ A study area is the geographic territory of an incumbent local exchange carrier's telephone operations. See 47 CFR Part 36 Appx.; *US West Communications, Inc. & Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix—Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772, para. 5 (WCB 1995).

II. BACKGROUND

A. Intercarrier Compensation Reform

2. In the *USF/ICC Transformation Order*,⁴ the Commission capped reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the levels in effect on December 29, 2011.⁵ In that same Order, the Commission adopted a multi-year process for reducing most terminating switched access rates to bill-and-keep.⁶ The Commission adopted a transitional revenue recovery mechanism that allows incumbent local exchange carriers (LECs) to recover a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to an amount defined for each year of the incumbent LEC's transition.⁷ These defined amounts are referred to as "Eligible Recovery."⁸ An incumbent LEC may recover its Eligible Recovery each year from its end users through an Access Recovery Charge (ARC), subject to an annual cap.⁹ If the projected ARC revenues are not sufficient to cover the entire Eligible Recovery amount, the carrier may elect to collect the remainder in Connect America Fund–Intercarrier Compensation (CAF ICC) support.¹⁰

3. The calculation of a rate-of-return incumbent LEC's (rate-of-return LEC's) Eligible Recovery begins with its Base Period Revenue (BPR).¹¹ A rate-of-return carrier's BPR is the sum of certain terminating intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during Fiscal Year (FY) 2011,¹² and the projected revenue requirement for interstate switched access services for the 2011-2012 tariff period.¹³ The BPR for rate-of-return carriers is reduced by 5% each year of the transition.¹⁴ A rate-of-return incumbent LEC's Eligible Recovery is equal to the adjusted BPR for the year in question, less, for each relevant year of the transition, the sum of (1) projected terminating intrastate switched access revenue;¹⁵ (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.¹⁶ A rate-of-return incumbent LEC's BPR is calculated only once, but is used during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.¹⁷

⁴ *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 (WCB 2011) (*USF/ICC Transformation Order*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁵ See 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempt from the rate cap.

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 801 & fig. 9.

⁷ See *id.* at 17956, para. 847.

⁸ *Id.* at 17957, para. 850.

⁹ *Id.* at 17958-61, para. 852; 47 CFR §§ 51.917(d)-(e).

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918; 47 CFR § 51.917(f).

¹¹ See 47 CFR § 51.917(b)(7).

¹² For purposes of the recovery mechanism, FY 2011 is defined as Oct. 1, 2010 through Sept. 30, 2011. See 47 CFR § 51.903(e).

¹³ See 47 CFR § 51.917(b)(7). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

¹⁴ See 47 CFR § 51.917(b)(3).

¹⁵ The carrier would reflect forward any required true-ups resulting from the operation of the pre-merger study areas in the proper year for the merged study area. See e.g., 47 CFR §§ 51.915(b)(13); 51.917(b)(6).

¹⁶ See 47 CFR § 51.917(d).

¹⁷ See *id.*

B. Commission Precedent Waiving Intercarrier Compensation Rules

4. The Commission's rules for calculating Eligible Recovery are based on study area-specific data and do not address the adjustments that may be necessary when study areas are transferred or restructured.¹⁸ Therefore, where carriers restructure, acquire, or merge their study areas, the carriers must recalculate their BPRs and interstate revenue requirements for the restructured, acquired, or merged study areas.¹⁹ The Commission must waive its rules regarding BPRs and interstate revenue requirements calculations in order for the carriers to recalculate these revenues and revenue requirements for the reconfigured study areas.²⁰

5. Since the Eligible Recovery rules have taken effect, several rate-of-return LECs have partially or fully merged study areas or acquired study areas. Because the intercarrier compensation and CAF ICC rules adopted in the *USF/ICC Transformation Order* do not contemplate study area changes, these carriers have had to file petitions for waiver of portions of section 51.917 of the Commission's rules to reset the applicable BPR associated with the study areas they have merged or acquired.²¹

6. The Wireline Competition Bureau (Bureau) has granted waivers of section 51.917(b)(1) and (b)(7) of the Commission's rules where carriers merge, acquire, or restructure study areas.²² Such waivers allowed carriers to recalculate their BPR based on the restructured study area boundaries.²³ In cases where a study area was transferred or restructured, the carriers were permitted to adjust their BPR amounts, based on the relative number of access lines being transferred, to reflect the revised study areas.²⁴ In each case, the Bureau found that such an adjustment would create an appropriate revised BPR to serve as the baseline for calculating the Eligible Recovery of the redefined study areas going forward.²⁵

7. The Bureau has also used the waiver process to adjust the interstate switched access rates that the companies may assess when they transfer a portion of one study area from one carrier to another. To facilitate mergers for entities that participate in the National Exchange Carrier Association, Inc. (NECA) traffic-sensitive tariff, the Bureau has granted waivers of section 51.909(a) of the Commission's

¹⁸ 47 CFR § 51.917(d)-(e); see, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1155, 1157, paras. 10, 15 (discussing relevant precedent and describing approach to calculating Eligible Recovery when study areas consolidate).

¹⁹ *Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules Filed by Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications and Winnebago Cooperative Telecom Association, et al.*, WC Docket No. 10-90 et al., Order, 31 FCC Rcd 10683, 10691, para. 27 (WCB 2016) (*Mutual-Winnebago Order*) (Bureau finding that the Petitioners' BPR allocation is reasonable and will help Petitioners determine study area specific recovery amounts, including the amount of CAF ICC going forward).

²⁰ *Mutual-Winnebago Order*, 31 FCC Rcd at 10691, para. 27.

²¹ See, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157-58, paras. 15-16 (outlining and applying relevant Commission precedent to approve the merger of two rate-of-return study areas); *Connect America Fund Developing a Unified Intercarrier Compensation Regime Tetonka Telephone Company and The Burt Telephone Company Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Communications Rules to Modify 2011 Base Period Revenue, et al.*, WC Docket No. 10-90 et al., Order, 34 FCC Rcd 4777, 4781, paras. 8-10 (WCB 2019).

²² *3 Rivers Order*, 35 FCC Rcd at 12987, para 12.

²³ *Butler-Panora Order*, 33 FCC Rcd at 1157-58, paras. 15-16; see *Telapex, Inc. Petition for Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Base Period Revenue in Connection with Merger of Affiliated Study Areas in Mississippi et al.*, WC Docket No. 10-90 et al., Order, 33 FCC Rcd 11764 (WCB 2018).

²⁴ See, e.g., *Connect America Fund; Mutual-Winnebago Order*, 31 FCC Rcd at 10691, para. 27 (approving allocating BPR amounts using a simple average of the access line count for FY 2011 when only a portion of a study area is involved); *3 Rivers Order*, 35 FCC Rcd at 12990, para. 18.

²⁵ See, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

rules to allow NECA to place the consolidated study area in the rate band that most closely approximates the merged entities' cost characteristics.²⁶ The rate for that rate band then becomes the rate cap for that rate element in the merged or restructured study area.

C. NCC-Midstate Acquisition

8. On February 23, 2023, the Bureau granted an application filed by Midstate and NCC, approving NCC's acquisition of 90 voice access lines served by a Midstate exchange in Portal, North Dakota (Portal Exchange).²⁷ The Bureau also granted a related petition filed by Midstate and NCC for waiver of the part 36 study area boundary freeze to permit Midstate to remove the Portal Exchange from its study area (SAC 381617) and to allow NCC to incorporate the Portal Exchange into its study area (SAC 381625).²⁸ As a result of the transaction, NCC will acquire from Midstate all assets, property, rights, and interests related to 90 voice access line customers associated with the Portal Exchange. The Portal Exchange will be integrated into NCC's study area and NCC will provide telecommunications and Internet access services to customers served by the Portal Exchange.²⁹

D. Petitioners' Requests

9. In connection with the NCC-Midstate transaction, Petitioners filed a joint petition on December 8, 2022 requesting waiver of section 51.909(a) of the Commission's rules to revise their rate band assignments and charges for certain switched access services, as necessary, to reflect the transfer of the Portal Exchange.³⁰ NCC's and Midstate's switched access rates are tariffed pursuant to NECA Tariff F.C.C. No. 5 (NECA tariff) and subject to different rate band assignments for local switching, local transport, and tandem switched transport.³¹ The Midstate study area (SAC 381617) is assigned to rate band 8 for local switching, rate band 8 for local transport, and rate band 1 for tandem switched transport.³² The NCC study area (SAC 381625) is assigned to rate band 4 for local switching, rate band 10 for local transport, and rate band 2 for tandem switched transport.³³ Following transfer, these rate band assignments will remain the same for each study area. Petitioners seek waiver of section 51.909(a) to revise the rate band assignments and charges to reflect the transfer of the 90 access lines served by the Portal Exchange.³⁴ Petitioners also sought waiver of section 51.917(b)(1) and (b)(7) of the Commission's

²⁶ See, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157-58, para. 16; *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781-82, para. 10.

²⁷ *Application Granted for the Acquisition of Certain Assets of Midstate Telephone Company, LLC by Northwest Communications Cooperative, Inc.; Joint Petition Granted for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules*, WC Docket No. 22-397, CC Docket No. 96-45, Public Notice, DA 23-143, 2023 WL 2212748 (WCB Feb. 23, 2023) (*Public Notice*). On February 8, 2023, the North Dakota Public Services Commission issued an order approving the transfer of the exchange in Portal, North Dakota from Midstate to NCC. *Northwest Communications/Midstate Telephone Company, et al.*, Case Nos. PU-22-408, PU-22-409, Order (N.D. Pub. Serv. Comm. Feb. 8, 2023), <https://www.psc.nd.gov/database/documents/22-0409/013-030.pdf>.

²⁸ *Public Notice* at 1.

²⁹ *Id.* at 2.

³⁰ Joint Petition at 1.

³¹ *Id.* at 3.

³² *Id.* The NECA tariff contains several switched access rates depending on what service is ordered. For example, as of July 1, 2022, the NECA local switching per originating access minute rates are as follows: premium non-toll free: rate band 4 (\$0.029158), rate band 8 (\$0.048596); premium toll free: rate band 4 (\$0.014396), rate band 8 (\$0.023993); non-premium non-toll free: rate band 4 (\$0.013121), rate band 8 (\$0.021869); non-premium toll free: rate band 4 (\$0.006478), rate band 8 (\$0.010797). NECA F.C.C. Tariff No. 5, § 17.2.3 (eff. Jul. 1, 2022).

³³ Joint Petition at 3.

³⁴ *Id.*

rules to recalculate Midstate's and NCC's 2011 interstate switched access revenue requirements and 2011 BPRs to reflect the Portal Exchange transfer.³⁵ Petitioners seek a waiver to include the Portal Exchange in NCC's 2011 interstate switched access revenue requirement and 2011 BPR and to exclude the Portal Exchange from Midstate's 2011 interstate switched access revenue requirement and 2011 BPR.³⁶

10. On December 12, 2022, the Bureau released a public notice seeking comment on the Joint Petition for Waiver.³⁷ No comments were filed in response to the public notice. On March 9, 2023, Petitioners filed an *ex parte* letter amending their Petition by replacing Exhibit A with Amended Exhibit A and modifying two sentences in the Petition.³⁸

III. DISCUSSION

11. Generally, the Commission's rules may be waived for good cause shown.³⁹ The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.⁴⁰ 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.⁴¹

12. Consistent with precedent, we find good cause exists to grant Petitioners' joint petition for waiver of the Commission's rules to facilitate the transfer of the Portal Exchange from Midstate to NCC.⁴² We agree with Petitioners that waiving sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's rules will serve the public interest by facilitating the exchange transfer from Midstate to NCC, thereby creating administrative and operational efficiencies. These public interest benefits and reductions to CAF ICC support offset any *de minimis* rate increases for customers.

13. First, we find that good cause exists to grant Petitioners a waiver of section 51.909(a) of the Commission's rules to allow them to revise the rate band assignments applicable to the 90 access lines associated with the Portal Exchange, as necessary, to reflect the transfer. As explained above, NCC's study area and Midstate's study area are assigned different rate bands for local switching, local transport, and tandem switched transport. The switched access rates for these rate bands are capped under section 51.909(a).⁴³ Midstate's study area and NCC's study area will retain their rate band assignments pre- and post-transfer. Waiver of section 51.909(a) is necessary to allow NCC to charge rates for switched access to the 90 lines incorporated into its study area that may be higher than the rate caps these 90 access lines were subject to under Midstate's study area rate bands. We recognize that, depending on the rate band assignments, the transfer of 90 lines alters the relative recovery between access revenues and CAF ICC

³⁵ *Id.* at 1.

³⁶ *Id.* at 4.

³⁷ See *Wireline Competition Bureau Seeks Comment on Northwest Communication Cooperative, Inc. and Midstate Telephone Company, LLC For Waiver of Part 51 Access Charge and Connect America Fund Inter-carrier Compensation Calculation*, WC Docket No. 22-434, Public Notice, DA 22-1305, 2022 WL 18023064 (WCB Dec. 12, 2022).

³⁸ Letter from John Kuykendall, Regulatory Advisor, JSI, on behalf of Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-434, at 1-2 (filed March 9, 2023) (JSI Mar. 9 Letter).

³⁹ 47 CFR § 1.3.

⁴⁰ *Northeast Cellular Telephone Co. L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴¹ The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁴² See, e.g., *3 Rivers Order*, 35 FCC Rcd 12983.

⁴³ 47 CFR § 51.909(a).

support. Petitioners estimate that annual interstate and intrastate switched access revenue is expected to decrease for Midstate by \$4,375 and increase for NCC by \$4,899, yielding a net annual increase of \$524 in total revenues.⁴⁴ As a result, the overall impact on Midstate and NCC is estimated to be a net switched access revenue increase of \$166 per year, after pooling of interstate switched access revenues, and a corresponding net CAF ICC decrease of \$166 per year.⁴⁵

14. While not revenue neutral, we find the nominal differences in switched access revenues and CAF ICC to be offset by the public interest benefits resulting from efficiencies gained from the Portal Exchange transfer. We agree with Petitioners that the relatively small customer base served by the Portal Exchange, which is currently “isolated in a geographic area surrounded by the NCC exchanges,” will “benefit from NCC’s resources and close network proximity.”⁴⁶ We find that the transfer will ultimately facilitate the Commission’s goal of encouraging carriers to become more efficient and increase productivity, resulting in cost-savings that can be passed on to customers or used to enhance service.⁴⁷ We also find the proposed rate band assignments to be reasonable.⁴⁸ Accordingly, we waive section 51.909(a) of the Commission’s rules to allow NCC to charge the customers served by the Portal Exchange rates consistent with NECA rate band 4 for local switching, rate band 10 for local transport, and rate band 2 for tandem switched transport.⁴⁹

15. Second, we find good cause exists to grant Petitioners’ request to waive section 51.917(b)(1) and (b)(7) of the Commission’s rules to adjust their 2011 interstate switched access revenue requirements and 2011 BPR to reflect the transfer from Midstate to NCC of 90 access lines associated with the Portal Exchange.⁵⁰ Waiver is necessary to adjust Midstate’s and NCC’s 2011 BPRs and 2011 switched access revenue requirement, which are used to calculate CAF ICC support, to reflect the 90 access lines being acquired by NCC.⁵¹ Petitioners calculate that NCC’s 2011 BPR will increase by \$25,835 and Midstate’s 2011 BPR will decrease by \$25,835.⁵² Petitioners determine these amounts by multiplying Midstate’s 2011 BPR (including Midstate’s 2011 interstate switched access revenue requirement) by the ratio of the transferred access lines to Midstate’s total access lines (including the transferred lines), using 2022 access line counts. We find this apportionment to be reasonable, as it reflects prior precedent.⁵³ Thus, granting waiver of these rules has no net impact on NCC’s and Midstate’s combined 2011 BPR and interstate revenue requirements. For similar reasons, we find that granting the requested waiver furthers the public interest by facilitating the proposed transfer which, in turn, will result in operational efficiencies that should benefit consumers. We waive section 51.917(b)(1) and (b)(7) of the Commission’s rules to allow Petitioners to reduce Midstate’s 2011 BPR by \$25,835 and

⁴⁴ JSI Mar. 9 Letter at 2.

⁴⁵ Joint Petition at 3.

⁴⁶ *Id.* at 5.

⁴⁷ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902; Joint Petition at 5; see *Butler-Panora Order*, 33 FCC Rcd at 1158, para. 16; *Ace Telephone Order*, 36 FCC Rcd at 5439, para. 14.

⁴⁸ See Joint Petition at Exh. A.

⁴⁹ See *id.* at 4; NECA Tariff F.C.C. No. 5, §§ 17.5.1, 17.2.2, 17.2.3 (eff. Jul. 1, 2022) (local switching, local transport, and tandem switched transport rate bands and per minute charges).

⁵⁰ Joint Petition at 3-4.

⁵¹ See 47 CFR § 51.917(b)(1), (b)(7); see also *Mutual-Winnebago Order*, 31 FCC Rcd. at 10691, para. 27 (finding that apportioning the BPR amounts allows petitioners to “determine study area specific recovery amounts, including the amount of CAF ICC going forward”).

⁵² JSI Mar. 9 Letter at 2.

⁵³ See, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1159, para. 19.

increase NCC's 2011 BPR by \$25,835.⁵⁴ Finally, we grant a waiver of section 51.917(b)(1) of the Commission's rules to allow Petitioners to make corresponding adjustments to their 2011 interstate switched access revenue requirements using the same ratio of transferred access lines to Midstate's total access lines, as the interstate switched access revenue requirement is a component of BPR.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, 201-203 and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, 254(g), and sections 0.91, 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that the Joint Petition for Waiver filed by Northwest Communications Cooperative, Inc. and Midstate Telephone Company, LLC, on December 8, 2022 IS GRANTED as provided herein.

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

Trent B. Harkrader
Chief
Wireline Competition Bureau

⁵⁴ JSI Mar. 9 Letter., Amend. Exh. A; Joint Petition, Exh. A (calculations based on access lines from settlement month as of November 2022).

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

In the Matter of	)	
	)	
VERDI TELEVISION TAX DISTRICT	)	Facility ID No.: 69931
	)	NAL/Acct. No.: 202341420008
Licensee of Station K30HY-D, Verdi/Mogul, NV	)	FRN: 0004528741
	)	LMS File No. 201083
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 22, 2023**Released: March 22, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Verdi Television Tax District (Licensee), for renewal of its license for Station K30HY-D, Verdi/Mogul, Nevada (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Station's license should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of October 1, 2022.⁴ However, the Licensee did not file the Application until September 28, 2022. The Licensee did not provide an explanation for the late filing.

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$1,500. In this case, the Licensee failed to file the Application on or before June 1, 2022, as required by section 73.3539(a) of the Rules.⁵ The Application was not received until September 28, 2022, over three months late.

¹ Application of Verdi Television Tax District for Renewal of License, LMS File No. 201083 (filed. Sep. 28, 2022).

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); See *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

⁵ 47 CFR § 73.3539(a).

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁰

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

6. In this case, the Licensee failed to timely file a license renewal application, as required by section 73.3539(a) of the Rules.¹³ The Licensee did not provide an explanation for the late filing. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁴ we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely renewal application, because, as a digital television translator, the Station is providing a secondary service.¹⁵ Furthermore, as a translator the Station is not originating programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁶ That section provides that if, upon

⁶ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹² 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹³ 47 CFR § 73.3539(a).

¹⁴ *Supra* note 12.

¹⁵ See, e.g., *FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations.... Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

¹⁶ 47 U.S.C. § 309(k).

consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁸

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules¹⁹ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁰ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²¹ and sections 1.80 and 0.283(d) of the Commission’s rules,²² that Verdi Television Tax District, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500)** for its apparent willful violation of section 73.3539(a) of the Commission’s rules.²³

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission’s rules,²⁴ within thirty (30) days of the release date of this *NAL*, Verdi Television Tax District, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission’s online payment system),²⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 47 CFR § 73.3539(a).

²⁰ For example, we do not find here that the Licensee’s operation of the Station “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 1.80 and 0.283.

²³ 47 CFR § 73.3539(a).

²⁴ 47 CFR § 1.80.

²⁵ Payments made using CORES do not require the submission of an FCC Form 159.

is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/core/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/core/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.²⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No.

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁰

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.³¹

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Verdi Television Tax District, P.O. Box 221, Verdi, NV 89439 and by electronic mail to verditvdistrict@gmail.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³¹ 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Durlyn Broadcasting Company	)	Facility ID 52737
Licensee for WPNC-FM,	)	FRN: 0009371071
Plymouth, North Carolina	)	

ORDER TO PAY OR TO SHOW CAUSE

Adopted: March 22, 2023**Released: March 22, 2023**

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

I. INTRODUCTION

1. By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the license held by Durlyn Broadcasting Company (Licensee) for WPNC-FM, Plymouth, North Carolina (Station), for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission).¹ For the reasons set forth below, we direct Licensee to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

2. Under section 9 of the Communications Act of 1934, as amended (Act), and section 1.1151 of the Commission's rules (Rules), the Commission is required to "assess and collect regulatory fees" to recover the cost of carrying out the functions of the Commission."² When the required payment is received late or is incomplete, the Commission must assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³

¹ We previously issued an Order to Pay or to Show Cause to Licensee on July 9, 2019. *Durlyn Broadcasting Company*, Order to Pay or Show Cause, 34 FCC Rcd 5273 (MB/OMD Jul. 9, 2019) (*2019 Order*). Licensee did not file a written response to the *2019 Order*, but did contact the Office of Managing Director (OMD) in August 2019 requesting to pay its regulatory fee debts in installments. In August of 2019, Licensee entered into an installment payment agreement to pay the delinquent regulatory fee debt it owed for Fiscal Years (FYs) 2010, 2012, 2013, 2014, 2015, 2016, and 2018. In March 2020, Licensee made two installment payments, after which it made no further installment payments, thereby defaulting under the agreement. As a consequence, OMD referred the remaining debt to the United States Department of Treasury for further collection. The debt remains unpaid. Moreover, Licensee has failed to pay additional regulatory fees assessed since the *2019 Order* was issued, to wit, the regulatory fee debt it owes for FYs 2019 through 2022. This Order, which has been updated to include the FYs 2019 through 2022 regulatory fee debt, supersedes the *2019 Order* and Licensee is directed to respond to this Order as set forth below.

² 47 U.S.C. § 159(a)(1); 47 CFR § 1.1151.

³ 47 U.S.C. § 159A(c)(1); 47 CFR § 1.1164.

3. For fiscal year (FY) 2010, the deadline for paying regulatory fees was August 31, 2010;⁴ for FY 2012, it was September 13, 2012;⁵ for FY 2013, it was September 20, 2013;⁶ for FY 2014, it was September 23, 2014; for FY 2015, it was September 24, 2015;⁷ for FY 2016, it was September 27, 2016;⁸ for FY 2018, it was September 27, 2018;⁹ for FY 2020, it was September 28, 2020;¹⁰ for FY 2021, it was September 24, 2021;¹¹ and for FY 2022, it was September 30, 2022.¹² When Licensee failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act¹³ and section 1.1164 of the Rules,¹⁴ and interest, penalties, and administrative costs required by section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA), section 159A(c)(2) of the Act and section 1.1940 of the Rules.¹⁵

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of \$1,292.84 for FY 2010; \$1,211.93 for FY 2012; \$967.29 for FY 2013; \$1,845.95 for FY 2014; \$2,523.16 for FY 2015; \$2,587.68 for FY 2016; \$2,052.43 for FY 2018; \$2,076.50 for FY 2020; \$2,059.41 for FY 2021; and \$2,150.00 for FY 2022. Additional charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.¹⁶ When Licensee did not pay the regulatory fee debts for FYs 2010, 2012, 2013, 2014, 2015, 2016, 2018, 2020, and 2021, the Commission

⁴ See *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees*, Public Notice, DA 10-1450, 25 FCC Rcd 10670 (OMD Aug. 9, 2010).

⁵ *Payment Methods and Procedures For Fiscal Year 2012 Regulatory Fees*, Public Notice, DA 12-1294, 27 FCC Rcd 9204 (OMD Aug. 13, 2012).

⁶ See *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, DA 13-1796, 28 FCC Rcd 12635 (OMD Sep. 4, 2013).

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

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

⁹ The Commission established September 25, 2018 as the FY 2018 regulatory fee payment deadline, but extended the deadline to September 27, 2019 for regulatory fee payors affected by Hurricane Florence, including North Carolina, where Licensee is located. *Regulatory Fee Filing Window for those Regulatees Affected by Hurricane Florence is Extended to Thursday, September 27, 2018*, Public Notice, DA 18-975, 33 FCC Rcd 8804 (OMD Sep. 21, 2018); *Payment Methods and Procedures for Fiscal Year 2018 Regulatory Fees*, Public Notice (OMD Aug. 30, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-353883A1.pdf>.

¹⁰ *Regulatory Fee Filing Window is Extended to Monday, September 28, 2020*, Public Notice, DA 20-1131, 35 FCC Rcd 10466 (OMD Sep. 24, 2020).

¹¹ *Payment Methods and Procedures for Fiscal Year 2021 Regulatory Fees*, Public Notice, DA 21-1112, 36 FCC Rcd 13423 (OMD Sep. 7, 2021).

¹² *Fiscal Year 2022 Regulatory Fee Filing Deadline is Extended to Friday, September 30, 2022, for All Regulatory Fee Payors*, Public Notice, DA 22-1023, 2022 WL 4597483 (OMD Sep. 28, 2022).

¹³ 47 U.S.C. § 159(c)(3) (1993); 47 U.S.C. § 159A(c)(1) (2018). The RAY BAUM'S Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, section 9A(c)(1) now sets forth those penalties.

¹⁴ 47 CFR § 1.1164.

¹⁵ 31 U.S.C. § 3717; 47 U.S.C. § 159A(c)(2); 47 CFR § 1.1940.

¹⁶ See 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letters, the Media Bureau notified Durlyn of its delinquency in paying the Station's regulatory fees for FY 2010, FY 2012, FY 2013, and FY 2014. Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Todd Steiner, Harrison & Johnston, PLC (MB dated June 3, 2015).

transferred those debts to the United States Department of Treasury for collection.¹⁷ At the Commission's request, the United States Department of Treasury has returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. The Commission has authority under section 9A(c)(4) of the Act and section 1.1164(f) of the Rules to revoke licenses and authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Licensee to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made or show cause why the payment is inapplicable or should be waived or deferred.¹⁸ Licensee is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f) of the Rules,¹⁹ an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.²⁰ Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.²¹

7. To the extent that Licensee is a respondent in other administrative proceedings, both before this agency and other federal agencies, action in this proceeding is without prejudice to action in those proceedings. Further, the existence of any such proceedings and matters raised therein are not considered in this proceeding.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,²² Durlyn Broadcasting Company is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FYs 2010, 2012, 2013, 2014, 2015, 2016, 2018, 2020, 2021, and 2022, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

9. **IT IS FURTHER ORDERED** that payment of the delinquent regulatory fee debt must be made by wire transfer and must include the FRN referenced above. Additional wire transfer instructions are as follows:

¹⁷ See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917. The Commission retained the FY 2022 regulatory fee debt owed by Licensee and did not refer it to Treasury for further collection.

¹⁸ The Commission may waive, reduce, or defer payment of fee debt where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207-08, paras. 49-51 (2019).

¹⁹ 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

²⁰ 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

²¹ 47 U.S.C. § 159A(c)(4)(C)(ii)(iii); 47 CFR § 1.1164(f)(3).

²² 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.11, 0.61, 0.231, 0.283 and 1.1164(f).

ABA Routing Number 021030004

Receiving Bank:
TREAS NYC
33 Liberty St.
New York, NY 10045

(BNF) Beneficiary: FCC
Account #: 27000001
OBI Field (skip one space between each information item)

Durlyn Broadcasting Company must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

Durlyn Broadcasting Company must fax a copy of the wire transfer confirmation to the FCC at (202) 418-2843 or send the wire transfer confirmation copy to the FCC via email to RROGWireFaxes@fcc.gov on the same day the wire transfer is initiated.

10. **IT IS FURTHER ORDERED** that Durlyn Broadcasting Company must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Forms 159/159.pdf>. When completing the FCC Form 159, Durlyn Broadcasting Company must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): 1042 (for FY 2010); 1242 (for FY 2012); 1342 (for FY 2013); 1442 (for FY 2014); 1542 (for FY 2015); 1642 (for FY 2016); 1842 (for FY 2018); 2042 (for FY 2020); 2142 (for FY 2021); and 2242 (for FY 2022).

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 Commission's rules.²³ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau. 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.²⁴ A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will 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.

²³ 47 CFR §§ 1.16 and 1.80(g)(3).

²⁴ 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).

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Durlyn Broadcasting Company, 930 Highway 32 South, Plymouth, NC 27962, and its counsel, Todd A. Steiner, Esq., Harrison & Johnston, PLC, 21 S. Loudon Street, Winchester, VA 22601.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director

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

In the Matter of	)	
	)	
WASHOE COUNTY TV TAX DISTRICT	)	Facility ID Nos.: 71061, 71060, 59145
	)	NAL/Acct. No.: 202341420009
Licensee of Station K24IB-D, Verdi/Mogul, NV;	)	FRN: 0015121759
K27OD-D, Verdi/Mogul, NV; and K33ER-D,	)	LMS File Nos. 200951, 201084, 201085
Verdi/Mogul, NV	)	
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 22, 2023

Released: March 22, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the applications (Applications)¹ of Washoe County TV Tax District (Licensee), for renewal of the licenses for K24IB-D, Verdi/Mogul, Nevada; K27OD-D, Verdi/Mogul, Nevada;² and K33ER-D, Verdi/Mogul, Nevada (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)³ by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand five hundred dollars (\$4,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."⁴ The applications for renewal of the Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.⁵ However, the Licensee did not file the Applications until September 27 and 28, 2022. The Licensee did not provide an explanation for the late filings.

¹ Application of Washoe County TV Tax District for Renewal of License, LMS File No. 200951 (filed Sep. 27, 2022), Applications of Washoe County TV Tax District for Renewal of License, LMS File Nos. 201084, 201085 (filed Sep. 27, 2022).

² At the time of filing, K27OD-D was assigned the call sign K51DJ-D.

³ 47 CFR § 73.3539(a).

⁴ *Id.*

⁵ See 47 CFR §§ 73.1020, 73.3539(a); See *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$4,500. In this case, the Licensee failed to file the Applications on or before June 1, 2022, as required by section 73.3539(a) of the Rules.⁶ The Applications were not received until September 27 and 28, 2022, over three months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁸ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹¹

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³

6. In this case, the Licensee failed to timely file a license renewal application for three (3) stations, as required by section 73.3539(a) of the Rules.¹⁴ The Licensee did not provide an explanation for the late filings. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁵ we will reduce the forfeiture from the base amount to \$1,500 per station for the failure to file a timely renewal application, because, as digital television translators, the Stations are providing a secondary service.¹⁶ Furthermore, as translators the Stations are not originating

⁶ 47 CFR § 73.3539(a).

⁷ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁸ 47 U.S.C. § 312(f)(1).

⁹ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹¹ 47 U.S.C. § 312(f)(2).

¹² See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹³ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹⁴ 47 CFR § 73.3539(a).

¹⁵ *Supra* note 13.

¹⁶ See, e.g., *FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report (continued....)

programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals. Because the Applications include three (3) stations the total proposed forfeiture amount is \$4,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁷ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.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 as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁹

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules²⁰ does not constitute a “serious violation” warranting designation of the Applications for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²¹ Further, based on our review of the Applications, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Applications.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²² and sections 1.80 and 0.283(d) of the Commission’s rules,²³ that Washoe County TV Tax District, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand five hundred dollars (\$4,500)** for its apparent willful violation of section 73.3539(a) of the Commission’s rules.²⁴

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission’s rules,²⁵ within thirty (30) days of the release date of this *NAL* Washoe County TV Tax District **SHALL**

and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations.... Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ 47 CFR § 73.3539(a).

²¹ For example, we do not find here that the Licensee’s operation of the Stations “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²² 47 U.S.C. § 503(b).

²³ 47 CFR §§ 1.80 and 0.283.

²⁴ 47 CFR § 73.3539(a).

²⁵ 47 CFR § 1.80,

PAY the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁶ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁷

- 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).²⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁹ 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.

²⁶ Payments made using CORES do not require the submission of an FCC Form 159.

²⁷ 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.

²⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁹ See 47 CFR § 1.1914.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.³⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³¹

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.³²

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Washoe County TV Tax District, P.O. Box 221, Verdi, NV 89439; and by electronic mail to verditvdistrict@gmail.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

³¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³² 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-246

Released: March 31, 2023

STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

CC Docket No. 02-6
WC Docket No. 21-93
WC Docket No. 02-60

Pursuant to our procedure for resolving requests for review, requests for waiver, and petitions for reconsideration of decisions related to actions taken by the Universal Service Administrative Company (USAC) that are consistent with precedent (collectively, Requests), the Wireline Competition Bureau (Bureau) grants, dismisses, or denies the following Requests.¹ The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these Requests is 30 days from the release date of this Public Notice.²

Schools and Libraries (E-Rate) **CC Docket No. 02-6**

Dismiss as Moot³

Invoicing Records Demonstrate Full Funding⁴

Uvalde Consolidated Independent School District, TX, Application No. 211010802, Request for

¹ See *Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014). Sections 54.719(b) and 54.1718(a)(2) of the Commission's rules provide that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Sections 54.719(c) and 54.1718(a)(3) of the Commission's rules provide that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. In this Public Notice, we have reclassified as Requests for Waiver any appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules. Similarly, we have reclassified as Requests for Review any appeals seeking a waiver of the Commission's rules but that are, in fact, seeking review of a USAC decision.

² See 47 CFR §§ 1.106(f), 1.115(d); see also *id.* § 1.4(b)(2) (setting forth the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission).

³ See, e.g., *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al Noor High School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 8223, 8224, para. 2 (WCB 2012) (dismissing as moot requests for review where USAC approved the underlying funding request).

⁴ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Diversified Computer Solutions, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5250, 5251, para. 3 (WCB 2012) (dismissing appeals as moot where invoicing records demonstrate that the entity was fully compensated for the funding it requested and all submitted invoices were funded).

Waiver, CC Docket No. 02-6 (filed Jan. 5, 2023)

Dismiss as Moot, in Part, and Deny in Part⁵

Florida Department of Management Services, FL, BEN 17001621, Request for Waiver, CC Docket No. 02-6 (filed Nov. 28, 2022)

Dismissed on Reconsideration⁶

Elk Hill Farm School, VA, Application Nos. 211021204, 211023014, Petition for Reconsideration, CC Docket No. 02-6 (filed Feb. 3, 2023)

Gateway Charter Academy, TX, Application Nos. 211008011, 211011728, 211035279, Petition for Reconsideration, CC Docket No. 02-6 (filed Feb. 3, 2023)

Girls Athletic Leadership School, NV, Application No. 201044234, Petition for Reconsideration, CC Docket No. 02-6 (filed Jan. 26, 2021)

Yeshiva Gedola Midwest Eitz Chaim, IL, Application No. 221040877, Petition for Reconsideration, CC Docket No. 02-6 (filed Mar. 10, 2023)

⁵ We dismiss as moot the Florida Department of Management Services' (Department) request for waiver requesting increased equipment and service substitution flexibility because the Bureau already provided the requested increased service substitution flexibility and waived section 54.504(d) in the *Hurricane Ian Order. Schools and Libraries Universal Service Support Mechanism, Establishing the Emergency Connectivity Fund to Close the Homework Gap, et. al*, CC Docket No. 02-6, Order, 2022 WL 6351643, DA 22-1063, para. 8 (WCB Oct. 4, 2022) (*Hurricane Ian Order*) (waiving section 54.504(d) of the Commission's rules requirement that the substituted service or product must have the same functionality as the service or product it is replacing, allowing the maximum flexibility to substitute services based on local needs without being constrained by categories of service or service types). However, we deny the Department's request to reset its category 2 funding budget because we find that it has not demonstrated that the Department has little to no funds remaining in its budget to replace any necessary internal connections, and we also granted increased flexibility for the use of its funding year 2022 funding requests. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6 Order, 34 FCC Rcd 56, 60, para. 9 (WCB 2019) (*California Wildfire Order*) (denying request to increase category 2 funding budgets where applicant "has not presented evidence . . . that applicants have expended a significant amount of their category two budgets leaving limited to no funds to replace these connections).

⁶ *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (*Allan Shivers Library Order*) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

While Elk Hill Farm School does not raise any new arguments on reconsideration, it continues to assert that it met the statutory requirements or is deserving of a waiver of the red light rule because, though it did not pay its debt in full within 30 days, it made "other satisfactory arrangements" under 47 CFR § 1.1910(b)(3). While Elk Hill Farm might have been working with its school board to authorize payment for the delinquent funds within 30 days, this does not constitute a satisfactory arrangement with USAC or the Commission, because the school did not inform either one of these entities of these factual circumstances. We also reiterate that waiver of the red light rule is not justified by asserting that the parties were late in paying the debt because they failed to receive the notifications. *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc., Wheeling School District 21, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13122, 13126, para. 6 (WCB 2013) (denying E-Rate applicant's request for a waiver of the red light rule and dismissing their funding year 2010 application where the applicant's only justification for not paying the debt was that it was never notified by USAC).

Dismiss to Allow Appeal to be Filed with USAC⁷

Colquitt County School District, GA, Application No. 211037336, Request for Review, CC Docket No. 02-6 (filed Feb. 10, 2023)

Spalding Academy School, NE, Application No. 221038205, Request for Review, CC Docket No. 02-6 (filed Nov. 22, 2022)

Granted⁸*Allowing Extension of Contract End Date⁹*

Carrizo Springs Consolidated Independent School District, TX, Application No. 211034256, Request for Review/and or Waiver, CC Docket No. 02-6 (filed Jan. 3, 2023)

⁷ See *Petitions for Reconsideration by Little Falls Township School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, DA 23-110, para. 10 (WCB Feb. 8, 2023) (*Little Falls Township Order*) (dismissing without prejudice appeals that are filed with the Commission before being reviewed at USAC, and waiving the 60-day appeal filing deadline to allow the party to refile its appeal at USAC).

Parties seeking review of USAC decisions must first file an appeal with USAC. See 47 CFR § 54.719(a). Because the petitioners above filed their appeal with the Commission first, we now provide them 60 days from the release date of this Public Notice to refile their appeal at USAC. Pursuant to the *Little Falls Township Order*, we also waive the 60-day appeal filing deadline, 47 CFR § 54.720(a), to allow the appeal to be considered on the merits by USAC without being considered late. See *Little Falls Township Order*, at para. 10. Appeals for funding year 2016 and forward should be filed in the E-Rate Productivity Center portal, found here: [EPC](#). Appeals from funding year 2015 and prior funding years should be filed by email to Appeals@usac.org.

⁸ We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. See 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline).

⁹ We find that Carrizo Springs Consolidated Independent School District demonstrated that it had an agreement with its service provider in place that met the Commission's rules and procedures at the time their FCC Forms 471 were submitted. See, e.g., *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District et al.; School and Libraries Universal Service Support Mechanism*, 23 FCC Rcd 15526, 15528, para. 5 (WCB 2008) (granting appeals when petitioners demonstrated that they had agreements in place that met the Commission's rules and procedures at the time their FCC Forms 471 were submitted); see also *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8950-51, para. 203 (2014) (easing the signed contract requirement to allow legally binding agreements to be in place, instead of a signed contract); 47 CFR § 54.504(a). We therefore authorize USAC to change the petitioner's category of service from month-to-month to contractual. See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17320, n.20 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting a waiver where the applicant selected the wrong category of service on its FCC Form 471). Finally, we also allow Carrizo Springs Consolidated Independent School District's contract expiration date to be updated to September 30, 2023 to allow the service provider to be able to re-submit its requests for reimbursement for the completed project.

*Approval of Service Reclassification – FCC Form 486 Requirement Satisfied*¹⁰

Westmoreland County Federated Library System, PA, Application No. 161060145, Request for Review, CC Docket No. 02-6 (filed July 29, 2022)

*Discount Calculation*¹¹

Burke County Board of Education, GA, Application No. 530681, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Oct. 29, 2010)

Burke County Board of Education, GA, Application No. 529893, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Oct. 29, 2010)

*Discount Calculation – Allowing Additional Time to Submit*¹²

American Indian Academy of Denver, CO, Application Nos. 221039848, 221039802, Request for Waiver, CC Docket No. 02-6 (filed Mar. 6, 2023)

Baytul-Iman Academy Hazlet Campus, NJ, Application No. 221035476, Request for Waiver, CC Docket No. 02-6 (filed Aug. 30, 2022)

Houston Peace Academy, TX, Application No. 221023827, Request for Waiver, CC Docket No. 02-6 (filed Aug. 29, 2022)

¹⁰ USAC approved Westmoreland County Federated Library System's appeal on December 30, 2019, finding that the library system inadvertently categorized its internal connections funding request as a basic maintenance of internal connections (BMIC) funding request. USAC modified the application to correct the category of service to internal connections by rescinding the original funding request for BMIC services commitment and creating a new funding request (FRN) for the internal connections request. However, the service provider had already invoiced and received payment for its services under the original BMIC FRN when USAC took these actions. On June 14, 2022, USAC issued a demand payment letter for the original BMIC FRN seeking repayment because the library system had not filed another FCC Form 486 for the new FRN that USAC created as part of its appeal decision nor had it worked with the service provider to return the funds that were disbursed for the services invoiced under the original BMIC FRN. We now find that the Westmoreland County Federated Library System timely filed its FCC Form 486 for its original BMIC funding request and is not required to file a second FCC Form 486 for the new FRN that USAC created as part of granting the applicant's appeal. In this instance, we waive sections any procedural deadlines, including the invoice filing deadline, that might be necessary to effectuate our ruling. *See supra* note 8. On remand, USAC should work with the library system and service provider to ensure that its December 30, 2019 decision to approve Westmoreland County Federated Library System's appeal is effectuated.

¹¹ *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Academia Claret et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10703, 10708, para. 12 (*Academia Claret Order*) (remanding applications for further processing when, upon de novo review, the Commission disagreed with USAC's discount calculation determination).

The Bureau previously granted Burke County Board of Education's appeal with respect to a separate competitive bidding issue. *See Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1941, 1941, para 1 (WCB 2012) (*Aberdeen School District Order*) (finding that Burke County Board of Education conducted a fair and open competitive bidding process under Commission rules in effect at the time); *Request for Waiver and Review of a Decision of the Universal Service Administrator by Burke County Board of Education; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 8870, n.5 (WCB 2012) (noting that the Bureau would address the remaining issues concerning Burke County's FCC Form 471 application numbers 530681, 529893, 522743 in a subsequent order).

¹² *See, e.g., Academia Claret Order*, 21 FCC Rcd at 10708, para. 12 (allowing the submission of discount calculation information when the applicant was previously unable to fully comply with the document request within USAC's permitted time period).

Grayson Christian School, TX, Application No. 221025160, Request for Waiver, CC Docket No. 02-6 (filed Aug. 29, 2022)

St. Paul Lutheran School, TX, Application No. 221034687, Request for Waiver, CC Docket No. 02-6 (filed Aug. 29, 2022)

*Grant on Reconsideration – Signed Contract Requirement*¹³

Michigan City Area Schools, IN, Application No. 181029870, Petition for Reconsideration, CC Docket No. 02-6 (filed Sept. 1, 2020)

*Granting on Reconsideration – Waiver of Appeal Filing Deadline*¹⁴

Veritas Academy, MN, Application No. 221013321, Petition for Reconsideration, CC Docket No. 02-6 (filed Mar. 1, 2023)

*Granting Additional Time to Respond to USAC with Information During Invoicing*¹⁵

Crosby-Ironton School District 482, MN, Application No. 211024133, Request for Waiver, CC Docket no. 02-6 (filed Feb. 15, 2023)

Phoenix Union High School District 210, AZ, Application No. 211001654, Request for Waiver, CC Docket no. 02-6 (filed Nov. 28, 2022)

*Incorrect Service Start Date on FCC Form 486*¹⁶

¹³ See, e.g., *Petition for Reconsideration by Fall River Public School District; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 28 FCC Rcd 14650, 14652, para. 4 (WCB 2013) (*Fall River Public School District Order on Reconsideration*) (reversing a prior Bureau decision where evidence on reconsideration does not support the prior determination); *Requests for Review and/or Waiver of the Decisions of the Universal Service Administrator by Amphitheater Unified School District 10 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 7536, 7536-37, para. 2 (WCB 2013) (granting waivers of the signed contract requirement in instances where applicants misunderstood the program rules and submitted their FCC Form 471 applications before signing a contract).

¹⁴ See, e.g., *Fall River Public School District Order on Reconsideration*, 28 FCC Rcd at 14652, para. 4 (reversing a prior Bureau decision where evidence on reconsideration does not support the prior determination); *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Barrow County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 4028, 4029, para. 2 (WCB 2011) (waiving the filing deadline for petitioners that filed an appeal within a reasonable period of time after receiving actual notice of the mistake).

¹⁵ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, para. 14 (WCB Jan. 19, 2023) (granting applicants' requests for review regarding denied requests for reimbursement because they failed to respond to USAC's request for information within the USAC-specified time frame).

¹⁶ See, e.g., *Request for Review and/or Waiver by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 1040, 1042, para. 5 (WCB 2006) (granting appeals when the applicants inadvertently listed the wrong service start date on their FCC Forms 486).

Consistent with precedent, we also find good cause exists to waive section 54.720(a) or (b) of the Commission's rules, which requires that petitioners file their appeals within 60 days of a USAC decision or action. See, e.g., *Barrow County Order*, 26 FCC Rcd at 4029, para. 2 (waiving the filing deadline for petitioners that filed an appeal within a reasonable period of time after receiving actual notice of the mistake).

Killdeer Public School District #16, ND, Application No. 211022957, Request for Review, CC Docket No. 02-6 (filed Feb. 27, 2023)

*Late-Filed FY22 FCC Form 471 Applications Beyond 30 Days Late*¹⁷

O'Fallon Public Library, IL, Application No. 221040703, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2022)

*Ministerial and/or Clerical Errors*¹⁸

Alsip School District 126, IL, Application No. 211009382, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Aug. 30, 2022)¹⁹

Corporation for Education Network Initiatives in California (CENIC), CA, Application No. 221005282, Request for Waiver and/or Review, CC Docket No. 02-6 (Mar. 8, 2023)

Education Service Center Region 10 d/b/a Fiber Network Consortium, TX, Application No. 221035207, Request for Waiver, CC Docket No. 02-6 (filed Feb. 24, 2023)

Macomb School District 185, IL, Application No. 211040713, Request for Waiver, CC Docket No. 02-6 (filed Feb. 24, 2023)

*Ministerial and/or Clerical Errors -- Competitive Bidding Process*²⁰

San Diego County Public Law Library, CA, Application No. 191040882, Funding Request Number 1999074831, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2022)

San Diego County Public Law Library, CA, Application No. 191040882, Funding Request Number 1999074873, Request for Waiver, CC Docket No. 02-6 (filed Aug. 7, 2022)

¹⁷ See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Agri-Business Child Development et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 8278, 8280, para. 7 (WCB 2020) (*Agri-Business Child Development Order*) (finding good cause to waive the FCC Form 471 application filing deadline for applicants impacted by the coronavirus (COVID-19) pandemic that requested a waiver and submitted their applications within 60 days of the close of the filing window). Because the *Agri-Business Child Development Order* was released August 6, 2020 after the funding year 2020 window had closed, the Bureau also found good cause existed to waive the funding year 2020 FCC Form 471 application filing deadline for those applicants filing their applications on or before that date, waiving the filing deadline for applications that were submitted up to 99 days late. We extend this waiver standard to funding year 2022 applicants but emphasize that this additional relief applies only to this subset of applications and applicants should not expect the Commission to grant additional waivers absent a showing of extraordinary circumstances.

¹⁸ See, e.g., *Ann Arbor Public Schools Order*, 25 FCC Rcd at 17319-20, nn.5, 10, 20 (granting waivers where the applicant omitted a service that was included on a source list or mischaracterized a one-time cost as a recurring cost or entered the wrong category of service on its FCC Form 471).

¹⁹ Alsip School District 126 unexpectedly received an increase in its E-Rate-funded bandwidth because of a miscommunication with its service provider. We find that this is permissible because the increase in bandwidth did not increase the amount of E-Rate funding committed and the error was not the fault of the applicant.

²⁰ See, e.g., *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (granting waivers of section 54.504(c) of the Commission's rules when the applicant inserted the wrong contract date on the FCC Form 471, making it appear that there was a violation of the minimum 28-day waiting period before applicants can enter into an agreement with a service provider for the requested services).

*Ministerial and/or Clerical Errors – Invoicing*²¹

Grand Valley Local Schools, OH, Application No. 211022708, Request for Waiver, CC Docket No. 02-6 (filed Mar. 15, 2022)

Salamanca City Central School District, NY, Application No. 191040486, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2022)

Total Communications, Inc. (Southwest Barry County School District R5), MO, Application No. 201002128, Request for Waiver, CC Docket No. 02-6 (filed July 18, 2022 and Mar. 14, 2023)

U.S. TelePacific Corp. (San Bernardino Diocesan Schools Consortium), CA, Application No. 211039598, Request for Waiver, CC Docket No. 02-6 (filed Mar. 2, 2023)

Wyoming Department of Enterprise Technology Services, WY, Application No. 181018576, Request for Waiver, CC Docket No. 02-6 (filed June 12, 2020)

*Ministerial and/or Clerical Errors – Special Construction*²²

Nex-Tech, LLC (Chaparral Schools), KS, Application No. 201035531, Request for Waiver, CC Docket No. 02-6 (filed Feb. 17, 2023)

*Permissible Advance Installation*²³

Archdiocese of St. Louis, MO, Application No. 201024957, Request for Waiver, CC Docket No. 02-6 (filed Oct. 28, 2022)

*Permissible Service Implementation Delay*²⁴

Kerman Unified School District, CA, Application Nos. 191029035, 191029079, 191030371,

²¹ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, paras. 7-9 (WCB Jan. 19, 2023) (granting a waiver where the E-Rate invoice filer entered the wrong service provider identification number or wrong customer billed date on the BEAR or SPI form, entered the wrong application or funding request number on the BEAR or SPI form, or inadvertently requested funding for the wrong funding year on the BEAR or SPI form).

²² Chaparral Schools' timely-filed invoices for its special construction project were rejected because the contract expiration date was before the shipping date. The school system tried twice to correct the issue by extending the contract with FCC Forms 500, but both times it inadvertently listed the wrong date. We grant this appeal and instruct USAC to revise the parties' contract expiration date to June 30, 2022 and service start date to June 1, 2022 to allow reimbursement for the project. See, e.g., *Ann Arbor Public Schools Order*, 25 FCC Rcd at 17320 n.9 (permitting applicant to correct the expiration date of a contract).

²³ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8921-22, paras. 132-33 (2014) (allowing applicants to seek support for category two eligible services purchased on or after April 1 before the funding year).

Consistent with precedent, we also find good cause exists to waive section 54.720(a) or (b) of the Commission's rules, which requires that petitioners file their appeals within 60 days of a USAC decision or action. See, e.g., *Ann Arbor Public Schools Order*, 25 FCC Rcd at 17319, para. 1 (granting waivers of appeal filing deadlines because the appeals involved errors by USAC).

²⁴ See, e.g., *Request for Review/Waiver of the Decision of the Universal Service Administrator by Accelerated Charter et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC (continued....)

191030400, 191030423, 191030431, 191030448, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2022)

*Services Provided Within Funding Year*²⁵

MTM Technologies, Inc. (Christina School District), DE, Application No. 191029597, Request for Waiver, CC Docket No. 02-6 (filed Dec. 14, 2022)

*USAC Decision Issued After Invoice Deadline*²⁶

Cumberland School Department, RI, Application No. 201036069, Request for Waiver, CC Docket No. 02-6 (filed Sept. 12, 2022)

Madera Unified School District, CA, Application No. 201027685, Request for Waiver, CC Docket No. 02-6 (filed June 29, 2022)

Scituate School District, RI, Application No. 201022945, Request for Waiver, CC Docket No. 02-6 (filed Aug. 12, 2022)

*Waiver of Appeal Filing Deadline*²⁷

A&A Technologies International LLC (Broward Junior Academy), FL, Request for Waiver, Application No. 201024668, CC Docket No. 02-6 (filed July 1, 2022 and Feb. 15, 2023)

Rcd 13652, 13652-3, para. 2 (WCB 2014) (granting late-filed extensions of the deadline for service implementation when applicants demonstrated they were unable to complete implementation on time for reasons beyond the service providers' control and made significant efforts to secure the necessary extensions in a timely manner).

²⁵ USAC denied funding after the service provider submitted an invoice containing a billing statement that was dated after the last date for installation for non-recurring services (Sept. 30, 2021). In its appeal, MTM Technologies, Inc. explained that it provided services to the school before September 30, 2021, the last date for the installation of services, even though the billing statement was sent later. While we grant this appeal, on remand USAC should verify that the last date of non-recurring services occurred before September 30, 2021. In this instance, we waive sections any procedural deadlines, including the invoice filing deadline, that might be necessary to effectuate our ruling. *See supra* note 8.

²⁶ *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 14426, 14431, para. 15 (2020) (authorizing the Bureau to grant a waiver in instances where an E-Rate program participant was unable to timely submit an invoice because they were awaiting a post-commitment decision from USAC, or received a decision approving a post-commitment request or granting an appeal of a previously denied or reduced funding request after the invoice filing deadline had passed).

²⁷ *See, e.g., Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, 11019, para. 2 (WCB 2011) (granting waivers of filing deadline for appeals because the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision).

We make no finding on the underlying issues in these appeals and remand these applications back to USAC to make a determination on the merits. *See also supra* note 8.

Granted in Part/Denied in Part*Discount Calculation, Eligible Services and Improperly Disbursed Funds*²⁸

Burke County Board of Education, GA, Application No. 522743, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Oct. 29, 2010)

Denied*Late-Filed FCC Form 471 Applications*²⁹

Dandridge Memorial Library, TN, Application No. 221028917, Request for Waiver, CC Docket No. 02-6 (filed Aug. 11, 2022)

Morehouse Parish School District, LA, Application No. 221040744, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2022)

Oconee County School District, GA, Application No. 221041001, Request for Waiver, CC Docket No. 02-6 (filed Dec. 1, 2022)

Sacred Heart School, PA, Application No. 221040736, Request for Waiver, CC Docket No. 02-6 (filed July 15, 2022)

*Late-Filed Invoice or Invoice Deadline Extension*³⁰

²⁸ We grant Burke County Board of Education's appeal with respect to the issue of discount calculations. *See, e.g., Academia Claret Order*, 21 FCC Rcd at 10708, para. 12 (remanding applications for further processing when, upon de novo review, the Commission disagreed with USAC's discount calculation determination). We deny Burke County Board of Education's appeal with respect to the E-Rate reimbursements for ineligible services. *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by AllWays, Inc. (Prairie Hills School District 144); Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1968, 1968-69, para. 1 (WCB 2012) (upholding denials of funding requests for services that are not eligible for E-rate support). We also find that the applicant made a calculation error and over-invoiced for E-Rate services in the amount of \$6,030.03.

The Bureau previously granted Burke County Board of Education's appeal with respect to a separate competitive bidding issue. *See Aberdeen School District Order*, 27 FCC Rcd at 1941, para 1 (finding that Burke County Board of Education conducted a fair and open competitive bidding process under Commission rules in effect at the time); *See Burke County Board of Education Order*, 27 FCC Rcd at 8870, n.5 (noting that the Bureau would address the remaining issues concerning Burke County's FCC Form 471 application numbers 530681, 529893, 522743 in a subsequent order).

²⁹ *See, e.g., Requests for Waiver and Review of the Decisions of the Universal Service Administrator by Academy of Math and Science, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9261-62, para. 13 (2010) (denying waivers of the FCC Form 471 application filing deadline where petitioners failed to present special circumstances justifying a waiver of our rules).

³⁰ 47 CFR § 54.514. *See also, e.g., Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016) (denying requests for waiver of the Commission's invoice filing deadline rule for petitioners that failed to demonstrate extraordinary circumstances justifying a waiver); *see also Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8966, para. 240 (2014) (establishing that it is generally not in the public interest to waive the Commission's invoicing rules absent extraordinary circumstances).

Charter School of Educational Excellence, NY, Application No. 201014240, Request for Waiver, CC Docket No. 02-6 (filed Nov.8, 2021)

CNYC Charter High School for Computer Engineering, and Innovation, NY, Application No. 201031866, Request for Waiver, CC Docket no. 02-6 (filed Nov. 8, 2021)

East Harlem Scholars Academy, NY, Application No. 201032699, Request for Waiver, CC Docket No. 02-6 (filed Nov. 8, 2021)

East Harlem Scholars Academy II, NY, Application No. 201032724, Request for Waiver, CC Docket No. 02-6 (filed Nov. 8, 2021)

Fatbeam, LLC (Twin Falls School District 411, Emmett School District 221, Wendell School District 232, Weiser School District 431, Orofino JT School District 171, Snake River Public Library), ID, Application Nos. 201011318, 201005943, 201033899, 201033975, 201009348, 201045058, 201018036, 201024351, 201024597, Request for Waiver, CC Docket No. 02-6 (filed Mar. 24, 2022)

Martin County School District, KY, Application No. 211038156 (FRN 2199060710), Request for Waiver, CC Docket No. 02-6 (filed Feb. 27, 2023)

Martin County School District, KY, Application No. 211038156 (FRN 2199061343), Request for Waiver, CC Docket No. 02-6 (filed Feb. 27, 2023)

NYC Charter HS for Architecture, Engineering, and Construction Industries, NY, Application No. 201031862, Request for Waiver, CC Docket No. 02-6 (filed Nov. 8, 2021)

Triad Local Schools, OH, Application No. 201009489, Request for Waiver, CC Docket No. 02-6 (filed Nov. 18, 2021)

Veeya, LLC (Great Hearts Academies), AZ, Application No. 191002112, Request for Waiver, CC Docket No. 02-6 (filed Aug. 9, 2022)

*Ministerial and/or Clerical Errors*³¹

Anna Independent School District, TX, Application Nos. 161001085, 161003721, 171005498, 171014584, 181003056, 191034593, 191012991, 201009046, 201018877, Request for Waiver and/or Review, CC Docket No. 02-6 (filed June 21, 2022)

*Untimely Filed Appeals or Waiver Requests*³²

Bais Chaya Mushka, CA, Application No. 191002705, Request for Waiver, CC Docket No. 02-6 (filed Jan. 16, 2023)

³¹ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Assabet Valley Regional Vocational District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1924, 1925, para. 1 (WCB 2012) (finding that the petitioners did not demonstrate good cause to justify waivers of the Commission's rules permitting changes to the applicants' E-Rate applications after the filing window deadline).

³² See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823, para. 1 (WCB 2014) (denying requests for review and/or waiver on the grounds that
(continued....)

Developmental Disabilities Institute, NY, Application No. 171027139, Request for Waiver, CC Docket No. 02-6 (filed Mar. 1, 2023)

Meritworks Partners, LLC (KIPP Indianapolis, Inc.), Application No. 201033721, Request for Waiver, CC Docket No. 02-6 (filed Feb. 22, 2023)

Mystic & Noank Library, CT, Application No. 211003784, Request for Waiver, CC Docket No. 02-6 (filed Dec. 21, 2022)

United Talmudical Academy of Burough Park, NY, Application No. 756693, Request for Waiver, CC Docket No. 02-6 (filed Feb. 14, 2022)

Emergency Connectivity Fund

WC Docket No. 21-93

Dismissed on Reconsideration³³

Y & S Technologies (Bais Chana Heritage School, Cheder Menachem Mendel, Harkham Hillel Hebrew Academy, Maimonides Academy, Samuel A Fryer Yavneh Hebrew Academy), NY, Application Nos. ECF202113229, ECF222120973, ECF202111777, ECF222120657, ECF202111716, ECF222120372, ECF222120774, Petition for Reconsideration, WC Docket No. 21-93 (filed Mar. 1, 2023)

the petitioners failed to (1) submit their appeals either to the Commission or to USAC within 60 days or failed to submit their waiver requests to the Commission within 60 days as required by the Commission's rules; and (2) did not demonstrate special circumstances required for the Commission to waive the rule).

³³ See, e.g., *Allan Shivers Library Order*, 29 FCC Rcd at 10357, para. 2 (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, we rely on E-Rate program precedent to resolve this petition for reconsideration of the Bureau's decision to deny the petitioner's request for waiver of the Emergency Connectivity Fund program rules.

Rural Health Care Program**WC Docket No. 02-60**Granted*Waiver of the Invoice Filing Deadline—Sua Sponte Waiver*³⁴

Davie Domestic Violence Services & Rape Crisis Center, NC, *Sua Sponte* Waiver, WC Docket No. 02-60, Funding Request No. 21147251

For additional information concerning this Public Notice, please contact James Bachtell in the Telecommunications Access Policy Division, Wireline Competition Bureau, at james.bachtell@fcc.gov or (202) 418-2694.

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³⁴ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District Abbotsford, Wisconsin, et al.*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (waiver of invoice filing deadline due to delays beyond the control of the entities requesting a waiver).



PUBLIC NOTICE

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DA 23-247

Released: March 22, 2023

**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.**

WT Docket No. 20-241

Comment Date: April 24, 2023

Reply Comment Date: May 9, 2023

By this *Public Notice*, we seek comment on a request by the Commonwealth of Virginia, Department of State Police (Commonwealth or VA State Police) for waiver of section 22.565(f) of the Commission's rules to increase the existing limit on its Part 22 transmitter power output (TPO) 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: WQFA919.¹

In 2020, the Commonwealth requested a waiver substantially identical to the instant request, identifying sixty-four (64) Part 22 paging authorizations to which the waiver would apply.² The Commission granted the waiver request (subject to certain conditions) on March 31, 2022.³ The Commonwealth now states that one paging authorization (WQFA919) was unintentionally omitted from the 2020 Waiver Request and that the instant request simply seeks to correct the unintentional exclusion of WQFA919 from the 2020 Waiver Request, by requesting identical relief for the omitted license.

¹ Commonwealth of Virginia, Department of State Police, Request for Waiver, WT Docket No. 20-241 (filed February 16, 2023) (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.

² Commonwealth of Virginia, Department of State Police, Request for Waiver, WT Docket No. 20-241 (filed June 25, 2020) (2020 Waiver Request).

³ *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, DA 22-282 (WTB Mar. 31, 2022).

The Commonwealth also states that the overall purpose of the Request, like the 2020 Waiver Request, is to allow the Commonwealth to increase the capacity on its existing land mobile radio (LMR) network, referred to as the Statewide Agencies Radio System (STARS), by upgrading to P25 Phase 2 Time-Division Multiple Access (TDMA) technology, while maintaining the existing geographic coverage of STARS. STARS is a statewide shared LMR system utilizing Part 90 public safety channels,⁴ Part 80 VHF Public Coast channels,⁵ and Part 22 VHF paging channels licensed by Basic Economic Area (BEA) markets.⁶

We seek comment on the waiver request, especially from any parties whose operations could be impacted by grant of the waiver request.

Procedural Matters

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE; Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>

⁴ 47 CFR Part 90. STARS uses statewide mobile FCC Part 90 Public Safety pool trunked frequencies to transmit talk-in to base stations. The majority of these frequencies are authorized for the mobile maximum TPO of 125 watts, and a maximum ERP of 250 watts. All frequencies are authorized for use with P25 Phase 1 FDMA voice and data, P25 Phase 2 TDMA voice and data, and narrowband analog voice emissions designators. Request at 4.

⁵ 47 CFR Part 80. VA State Police acquired auctioned spectrum for two FCC Part 80 Public Coast Stations. These Part 80 licensed mobile transmit frequencies have a maximum mobile transmitter power output of 125 watts and maximum ERP of 285 watts, based upon *Commonwealth of Virginia*, Order, 19 FCC Rcd 15454 (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).

⁶ In addition to holding Part 90 and Part 80 licenses, the Commonwealth now states that it acquired sixty-five (65) Part 22 paging authorizations (lead call sign WPVE519), sixty-four of which were the subject of the 2020 Waiver Request. In listing the paging authorizations in the 2020 Waiver Request, the Commonwealth now states that it unintentionally omitted one such authorization: WQFA919. Request at 5.

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

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷ 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.

For further information, contact Wilbert Nixon of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-0985, Wilbert.Nixon@fcc.gov.

Action by the Chief, Mobility Division, Wireless Telecommunications Bureau.

- FCC -

⁷ 47 C.F.R. §§ 1.1200 *et seq.*

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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Petition for Reconsideration of a Decision of the	)	
Wireline Competition Bureau	)	
	)	

ORDER ON RECONSIDERATION

Adopted: March 22, 2023

Released: March 22, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. SES Government Solutions (SES-GS) petitions¹ the Wireline Competition Bureau (Bureau) to reconsider a 2017 decision that clarified that the universal service government-only exemption applies only to entities providing service directly and exclusively to government and public safety entities and does not apply to subcontractors.² For the reasons stated below, we dismiss and, in the alternative, deny the Petition for Reconsideration pursuant to sections 1.106 and 1.429 of the Commission's rules.³

II. BACKGROUND

2. In the *Universal Service First Report and Order*, the Commission determined that common carriers and certain private service providers that provide interstate telecommunications to others for a fee generally must contribute to the federal Universal Service Fund (USF or Fund) based on their interstate and international end-user telecommunications revenues.⁴ The Commission also determined that the public interest requires that certain providers of interstate telecommunications should *not*

¹ Petition for Reconsideration of SES Government Solutions for Clarification or Declaratory Ruling of Stratos Government Services, Inc. Order, WC Docket No. 06-122 (filed June 23, 2017) (SES-GS Petition or Petition for Reconsideration).

² *Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, 32 FCC Rcd 4115 (WCB 2017) (*Stratos Order*).

³ SES-GS filed its petition pursuant to section 1.429 of the Commission's rules which governs petitions for reconsideration of final orders in rulemaking proceedings. 47 CFR § 1.429. We note that the standards of review in sections 1.106 and 1.429 are similar as applied to SES-GS's arguments. *See* 47 CFR §§ 1.106(c), (p); 1.429(b)(l).

⁴ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9179, para. 787 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission also requires certain other providers of interstate telecommunications to contribute to the Universal Service Fund. *See, e.g.*, 47 CFR § 54.706; *Universal Service Contribution Methodology*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet protocol providers to contribute to the Universal Service Fund).

contribute to the federal universal service mechanisms.⁵ Specifically, and at issue here, is the government-only exemption that exempts non-governmental (i.e., private sector) providers of interstate telecommunications that exclusively provide service “to public safety or government entities” from contributing to the Fund.⁶

3. In 2009, Stratos Government Services, Inc. filed a petition for clarification, or in the alternative, a declaratory ruling, seeking clarification that the government-only exemption applies not only to companies that provide telecommunications services exclusively to public safety or government entities but also to subcontractors providing services to those entities on behalf of the principal provider.⁷ The Bureau issued an Order denying the petition and confirmed that the exemption from universal service contribution requirements applies to entities providing service directly and exclusively to government and public safety entities and, by definition, does not apply to subcontractors.⁸ The Bureau clarified that the prime contractor providing service to the public safety or government entity is the only entity that has the contractual relationship with the government entity and therefore can rely on the government-only exemption.⁹ The Bureau found that the exemption was intended to be narrowly drawn to further the Commission’s desire to avoid having the contribution rules shape business decisions, and as such the exemption excludes subcontractors that work at the direction of the prime contractor.¹⁰

4. SES-GS filed a petition for reconsideration of the Bureau’s Order in 2017. SES-GS provides telecommunications services to government and public safety entities as a subcontractor under “task orders.”¹¹ SES-GS did not participate in the initial proceeding, asserting that its interests did not appear to be at stake at the time.¹² SES-GS claims that the Order created “substantial confusion and uncertainty over the scope and availability of the exemption and adversely affects SES-GS.”¹³ SES-GS argues that the Bureau’s “formulation” of the exemption disregards the realities of government contracting, and undermines the policy for the exemption.¹⁴

III. DISCUSSION

5. We dismiss and deny SES-GS’s Petition for Reconsideration. Pursuant to sections 1.106(p) and 1.429(l) of the Commission’s rules, the Bureau may dismiss or deny petitions for

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11567, para. 136 (1998). See also *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 et al., Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5475-76, para. 283 (1997).

⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9186, para. 800.

⁷ Petition for Clarification or Declaratory Ruling of Stratos Government Services, Inc., WC Docket No. 06-122 (filed Sept. 15, 2009) (Stratos Petition). The Bureau released a Public Notice announcing the filing of the Stratos Petition and established deadlines for comments and replies. See *Comment Sought on Petition of Stratos Government Services Inc. for Declaratory Ruling or Clarification Regarding Universal Service Fund Contributions*, WC Docket No. 06-122, Public Notice, 24 FCC Rcd 12121 (WCB 2009).

⁸ *Stratos Order*, 32 FCC Rcd at 4115, 4116, para. 4.

⁹ *Id.* at 4116, para. 6.

¹⁰ *Id.* at 4116-18, paras. 6-9.

¹¹ SES-GS Petition at 5.

¹² *Id.*

¹³ *Id.* at 5. SES-GS argues that the Bureau’s decision impacted the manner in which companies providing services to government and public safety entities bid for those services, and claims that it is adversely impacted because the services it provides to government entities are subject to USF contributions. See *id.*

¹⁴ *Id.* at 5-10.

reconsideration that fail to identify any material error, omission, or reason warranting reconsideration.¹⁵ As discussed below, SES-GS has failed to identify any error or other basis for reconsideration, and we therefore dismiss its Petition for Reconsideration. Independently, we deny reconsideration on the merits.¹⁶

6. SES-GS claims that the *Stratos Order* “creates substantial confusion and uncertainty over the scope and availability of the exemption.”¹⁷ The Bureau, however, clearly addressed the contractual relationship necessary to rely on the exemption, concluding that the exemption from universal service contribution requirements applies to prime contractors that have the contractual relationship with the government entity and is providing service directly and exclusively to government and public safety entities.¹⁸ SES-GS’s claim that the *Stratos Order* created confusion lacks specificity and is not supported by evidence, and no other party has made a similar claim.¹⁹ SES-GS also claims that its interests are “adversely affected” by the *Stratos Order* in ways that were “not reasonably apparent” but has not identified how its interests differ from those of Stratos in the original proceeding.²⁰

7. SES-GS also claims that the record underlying the *Stratos Order* was stale, but fails to support its position. SES-GS does not claim that there was any change in the industry between its Petition and the Bureau’s order that would have impacted the Bureau’s decision.²¹ Further, no commenter in the present record has argued that the record requires refreshing. In fact, the contribution factor’s increase in the past several years supports the policy goal articulated in the *Stratos Order* of ensuring exceptions to the contribution requirement remain narrow.²² We therefore decline to reconsider the *Stratos Order* or refresh the record in this proceeding.²³

8. SES-GS further argues that the Bureau’s interpretation of the government-only exemption is irrational, and that the exemption should apply to subcontractors because they “provide” the contracted-for services to government end users.²⁴ First, to the extent this is a new argument, we note that it does not relate to new events or changed circumstances, or facts or arguments unknown to SES-GS in

¹⁵ 47 CFR §§ 1.106(p), 1.429(l)(1); see also, e.g., *Petition for Reconsideration by Detroit Public School District*, Order on Reconsideration, 33 FCC Rcd 10019, 10020, paras. 3-4 (WCB TAPD 2018).

¹⁶ See 47 CFR §§ 1.106(c), 1.429(b).

¹⁷ SES-GS Petition at 5-7. SES argues that the Bureau Order adopted a formulation of the government-only exemption “that qualifies its availability on some undefined aspect of the contractual relationship between the end user and service provider” and fails to “explain, or provide any meaningful guidance to discern, the scope and contours of [the exemption’s] new qualifications.” *Id.*

¹⁸ See *supra*, para. 3; *Stratos Order*, 32 FCC Rcd at 4116-18, paras. 4-9.

¹⁹ No parties filed comments in response to SES-GS’s Petition.

²⁰ See SES-GS Petition at 5.

²¹ We note that parties bear a heavy burden in proving that an Order should be overturned because of a stale record. See *City of Angels Broad., Inc. v. FCC*, 745 F.2d 656, 665 (D.C. Cir. 1984) (citing *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 294-96 (1974)).

²² See *Stratos Order*, 32 FCC Rcd at 4117, para. 8; see e.g., *Proposed First Quarter 2017 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 31 FCC Rcd 12918 (OMD 2016) (announcing 2017 first quarter contribution factor of 16.7 percent); *Proposed First Quarter 2023 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 22-1286 (rel. Dec. 9, 2022) (announcing 2023 first quarter contribution factor of 32.6 percent).

²³ See SES-GS Petition at 5 n.10.

²⁴ *Id.* at 7-8.

the underlying proceeding, and we determine that the public interest does not require us to consider this argument.²⁵ Therefore, pursuant to sections 1.106(c) and 1.429(b) of the rules we reject this argument.

9. On the merits, to the extent it was not already clear in the *Stratos Order*, the subject of this dispute is not the provision of service to the end user, but rather the USF charges paid by providers and passed through to a customer.²⁶ As the Bureau explained in the *Stratos Order*, subcontractors' customers are prime contractors, not the government entity receiving the service.²⁷ Allowing entities to circumvent their USF contribution obligations by claiming to "exclusively provide[]" service to government and public safety customers when a prime contractor, which may not itself exclusively serve governmental entities, uses a subcontractor that serves only governmental end users, would not be consistent with the meaning or purpose of the government-only exemption, and would open the exemption to abuse.²⁸ The expansion of the exemption to include entities that do not directly contract with a government entity and merely act as subcontractors under the direction of a third party would defeat the narrow purpose of the exemption and be detrimental to the stability of the fund. As we noted in the *Stratos Order*, there is a preference for narrow exemptions to USF contribution obligations, and by limiting the exemption to the "subset of providers directly and exclusively serving" government entities we advance that goal.²⁹

10. Finally, we reject SES-GS's challenges to policy considerations that were fully considered by the Bureau in the *Stratos Order*.³⁰ For example, SES-GS argues that adopting a more expansive view of the government-only exemption will not increase the number of entities taking advantage of the exemption, but it does not provide any evidence that was not already fully addressed in the *Stratos Order*.³¹ Similarly, SES-GS claims that the policy discussed in the *Stratos Order* encourages rather than discourages "game playing," but does not describe specific examples of gamesmanship that could occur from the *Stratos Order* or provide any other support for its claim that providers are restructuring their operations to take advantage of the Commission's interpretation of the government-only exemption.³² Accordingly, for the reasons discussed above, we deny reconsideration.

11. Further, and as a separate and independent basis for this disposition, insofar as section 1.106 of the Commission's rules applies to the Petition for Reconsideration, SES-GS has failed to meet its burden to show "good reason" why it was not possible to have participated earlier in the proceeding.³³ Section 1.106(b)(1) of the Commission's rules states that if a petition for reconsideration "is filed by a

²⁵ See 47 CFR §§ 1.106(c) (describing the narrow circumstances under which a petition raising new facts or arguments may be granted); 1.429(b) (same). SES-GS has not provided an adequate explanation for why it was unable to raise this argument in the prior proceeding. See *infra* para. 10.

²⁶ See 47 CFR § 54.712. While in many cases the end user and the customer are the same, that is not the case in the current proceeding.

²⁷ *Stratos Order*, 32 FCC Rcd at 4116-17, para. 6 ("Any subcontracting provider works at the direction of the prime contractor and does not have a contractual relationship with the government entity.").

²⁸ See *id.* at 4116, paras. 7-8.

²⁹ *Id.* at 4116-17, para. 6.

³⁰ See *id.* at 4117-18 (addressing the argument that including subcontractors in the exemption would promote efficiency and competition in the federal government procurement process and explaining policy considerations for excluding subcontractors from the exemption).

³¹ See SES-GS Petition at 9; *Stratos Order*, 32 FCC Rcd at 4117, para. 7.

³² See SES-GS Petition at 9-10. The Bureau previously considered Stratos's claims about the benefits of interpreting the government-only exemption to apply to subcontractors and determined that any benefits were outweighed by keeping the exemption narrow. See *Stratos Order*, 32 FCC Rcd at 4118, para. 9.

³³ 47 CFR § 1.106(b)(1).

person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."³⁴ In explaining why it did not participate when the Commission sought comment on Stratos's petition, SES-GS merely claims "its interests did not appear to be at stake at the time," and that it "was not reasonably apparent" that the *Stratos Order* would have implications for subcontractors serving government and public safety organizations.³⁵ The very issue addressed in the *Stratos Order*, however, was whether subcontractors could claim the government-only exemption.³⁶ In any case, the unanticipated negative impact of a Commission decision after the fact does not constitute "good reason" for excusing non-participation in a proceeding.³⁷

IV. CONCLUSION

12. Based on the foregoing, we dismiss, or in the alternative, deny SES-GS's petition under sections 1.106 and 1.429 of the Commission's rules.³⁸

V. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.91, 0.291, 1.106, and 1.429 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, 1.429, the Petition for Reconsideration filed by SES Government Solutions, is DISMISSED to the extent SES-GS has failed to identify any material error, omission, or reason warranting reconsideration, and as an independent and alternative basis for the decision, the Petition for Reconsideration is also DENIED on the merits.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

³⁴ *Id.*

³⁵ SES-GS Petition at 5.

³⁶ See *Stratos Order*, 32 FCC Rcd at 4116, para. 4.

³⁷ SES-GS Petition at 4. See, e.g., *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks, Lifeline and Link Up Reform and Modernization Connect America Fund*, WC Docket Nos. 14-192, 11-42, and 10-90, 32 FCC Rcd 3885, 3888-89 at para. 11 (2017) (stating that surprise at the outcome of an order is not a "good reason" to excuse non-participation in a proceeding).

³⁸ 47 CFR §§ 1.106, 1.429.



PUBLIC NOTICE

Federal Communications Commission
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DA 23-249

Released: March 27, 2023

WIRELINE COMPETITION BUREAU PROVIDES DATA FIELDS TO BE COLLECTED UNDER THE AFFORDABLE CONNECTIVITY PROGRAM TRANSPARENCY DATA COLLECTION

WC Docket No. 21-450

On November 15, 2022, the Federal Communications Commission (Commission) adopted final rules establishing the Affordable Connectivity Program (ACP) Transparency Data Collection,¹ an information collection mandated by the Infrastructure Investment and Jobs Act² and subject to the requirements of the Paperwork Reduction Act of 1995 (PRA).³ To implement the collection, the Wireline Competition Bureau, in coordination with the Commission's Office of Economics and Analytics and the Universal Service Administrative Company, is developing an online portal through which ACP participating providers will electronically submit data. As required by the PRA, and based on data fields in the online portal, on March 14, 2023, the Commission published a notice in the Federal Register seeking comment on the proposed information collection.⁴ The notice set a comment deadline of May 15, 2023.⁵

To facilitate such comments, a draft of the data fields to be collected via the online portal is included as an Attachment to this Public Notice. The draft is a representative description of the information to be collected and is not intended to be a visual representation of what providers will see, the order in which they will see information, or the exact wording or directions used to collect the information.

Consistent with the direction in the Federal Register Notice, please direct PRA comments associated with the collection to Nicole Ongele, PRA@fcc.gov and nicole.ongele@fcc.gov. For further information about the ACP Transparency Data Collection, contact Eric Wu, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or by email at Eric.Wu@fcc.gov.

- FCC -

¹ *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 22-87 (2022).

² Pub. L. No. 117-58, § 60502(c), 135 Stat. 429, 1243 (2021).

³ Pub. L. No. 104-13, 109 Stat. 163 (1995).

⁴ FCC, Information Collection Being Reviewed by the Federal Communications Commission, Notice and request for comments, 88 Fed. Reg. 15716 (Mar. 14, 2023) (Information Collection Notice). The Information Collection Notice designates the collection as "FCC Form 5651." *Id.*

⁵ *Id.*

ATTACHMENT

Affordable Connectivity Program (ACP) Transparency Data Collection
FCC Form 5651

Company Information					
Item #	Field Description	Field Type	Required or Optional	Field Units	Additional Information
1	Company Name	String	Required	N/A	Name of ACP participating provider.
2	SPIN	Numeric	Required	N/A	Service Provider Identification Number, assigned by USAC to a participating provider when an FCC Form 498 is filed.
3	SAC	Numeric	Required	N/A	Study Area Code, a unique number USAC assigns that identifies a company based on its service area. Companies must have at least one SAC per state in which they operate, but can have more than one SAC within a state if they have more than one service area.
4	Provider FRN	Numeric	Required	N/A	FCC Registration Number.
5	Provider website	String	Required; not applicable if no website	N/A	
6	Data Contact First Name	String	Required	N/A	Contact information for individual who is subject matter expert on company data. Can prepopulate if contact information is the same as system login credentials.
7	Data Contact Last Name	String	Required	N/A	Can prepopulate if contact information is the same as system login credentials.
8	Data Contact Email	String	Required	N/A	Can prepopulate if contact information is the same as system login credentials.
9	Data Contact Phone Number	Numeric	Required	N/A	Can prepopulate if contact information is the same as system login credentials.
10	Data Contact Phone Number Extension	Numeric	Optional	N/A	

11	Certifying Officer First Name	String	Required	N/A	
12	Certifying Officer Last Name	String	Required	N/A	
13	Certifying Officer Contact Phone Number	Numeric	Required	N/A	
14	Certifying Officer Phone Number Extension	Numeric	Optional	N/A	
15	Email of Certifying Officer	String	Required	N/A	
16	Title of Certifying Officer	String	Required	N/A	
17	E-Certification by Officer under Penalty of Perjury as to Accuracy of Data Submitted	Binary	Required	Yes/No	
18	Date of Certification by Certifying Officer	String	Required	N/A	
Plan Information					
*Provider must submit the following plan information for each broadband plan with ACP subscribers					
<u>Item #</u>	<u>Field Description</u>	<u>Required or Optional</u>	<u>Field Type</u>	<u>Field Units</u>	<u>Additional Information</u>
19	Unique Identifier	String	Required	N/A	A “unique identifier” is a machine-readable string of characters uniquely identifying a broadband plan, not containing any special characters. Where a broadband plan is associated with a broadband label under 47 CFR § 8.1(a), the unique identifier must be the same as that in the broadband label. Unique identifiers cannot be reused or refer to multiple plans. A provider must develop a new plan identifier, when a plan’s components change.
20	Service Plan Name	String	Required	N/A	
21	Fixed or Mobile Broadband Service	Categorical	Required	Fixed/Mobile/Both	

22	Legacy Plan	Binary	Required	Yes/No	Indicates whether a plan is a legacy plan: an internet service offering in which an ACP subscriber is enrolled but that a provider is not accepting new enrollment.
23	Bundle Plan	Binary	Required	Yes/No	Indicates whether a plan is a bundle plan. “Bundle” means a combination of broadband internet access service with any non-broadband internet access service offerings, including but not limited to video, voice, and text.
24	Base Monthly Price	Numeric	Required	\$USD	The term “base monthly price” means the monthly price for a broadband internet service offering that would be paid by a household enrolled in the ACP, absent the affordable connectivity benefit. The base monthly price does not include the price of any recurring monthly fees (such as fees providers impose at their discretion, or equipment rental fees), government taxes or fees, or one-time charges (such as installation charges, equipment purchase fee, etc.).
25	Base Monthly Price Introductory	Binary	Optional for legacy plans, required for non-legacy plans	Yes/No	Indicates whether the base monthly price is introductory. Subsequent fields require providers to identify the length of any introductory period and the post introductory base monthly price.

26	Length of Introductory Period	Numeric	Optional for legacy plans, required for non-legacy plans, not applicable if base monthly price is not introductory	Months	
27	Post-Introductory/Non-Discounted Monthly Price	Numeric	Optional for legacy plans, required for non-legacy plans, not applicable if base monthly price is not introductory	\$USD	
28	Monthly Price Requires a Contract	Binary	Optional for legacy plans, required for non-legacy plans	Yes/No	Indicates whether monthly price requires ACP subscriber to commit to service for a specified period of time.
29	If Contract Required, Number of Months of Contract	Numeric	Optional for legacy plans, required for non-legacy plans, not applicable if monthly price does not require a contract	Months	
30	Associated Equipment Required	Binary	Required	Yes/No	Indicates whether the plan requires use of any associated equipment.
31	Associated Equipment Required – Router	Binary	Required; not applicable if no associated equipment is required	Yes/No	

32	Associated Equipment Required – Modem	Binary	Required; not applicable if no associated equipment is required	Yes/No	
33	Associated Equipment Required – Other	Binary	Required; not applicable if no associated equipment is required	Yes/No	Indicates whether plan requires associated equipment other than router or modem.
34	Associated Equipment Required – Other Description	String	Required; not applicable if no associated equipment is required	N/A	Description of associated equipment required other than router or modem.
35	Associated Equipment Included in Base Monthly Cost	Binary	Required; not applicable if no associated equipment is required	Yes/No	
36	Provider Monthly Fee – Modem Rental/Lease	Numeric	Required	\$USD	
37	Provider Monthly Fee – Router Rental/Lease	Numeric	Required	\$USD	
38	Provider Monthly Fee – Combined Modem/Router Rental/Lease	Numeric	Required	\$USD	
39	Provider Monthly Fees – Federal USF Fee	Numeric	Required	\$USD	
40	Provider Monthly Fee - Network Access Fee	Numeric	Required	\$USD	
41	Provider Monthly Fee(s) – Other Amount	Numeric	Optional	\$USD	

42	Provider Monthly Fee(s) – Other Description	String	Required if provider submits data on Provider Monthly Fee -Other Amount; otherwise optional	N/A	Description of provider monthly fees other than those enumerated.
43	One-Time Fee - Installation Fee	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	
44	One-Time Fee - Deposit	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	
45	One-Time Fee - Activation Fee	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	
46	One-Time Fee - Modem Purchase	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	
47	One-Time Fee - Router Purchase	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	
48	One-Time Fee - Combined Router/Modem Purchase	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	
49	One-Time Fee - Termination Fee	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	

50	One-Time Fee(s) - Other Amount	Numeric	Optional for legacy plans, required for non-legacy plans	\$USD	
51	One-Time Fee(s) - Other Description	String	Required if provider submits data on One-Time Fees - Other Amount, otherwise optional	N/A	Description of provider one-time fees other than those enumerated in above “one-time fee” fields.
52	Discounts - Automatic Payments	Numeric	Optional	\$USD	
53	Discounts - Paperless Billing	Numeric	Optional	\$USD	
54	Discounts - Military	Numeric	Optional	\$USD	
55	Discounts - Senior	Numeric	Optional	\$USD	
56	Discounts - Other Amount	Numeric	Optional	\$USD	
57	Discounts - Other Description	String	Required if provider submits data on Discounts - Other Amount, otherwise optional	N/A	Description of provider discounts other than those enumerated in above “discount” fields.
58	All-in Price without ACP	Numeric	Optional	\$USD	“All-in price without ACP” is the actual price that would be paid by an ACP subscriber absent application of the affordable connectivity benefit.
59	All-in Price with ACP (Net-Rate Charged)	Numeric	Optional	\$USD	

60	Maximum Advertised Download Speeds	Numeric	Optional for legacy plans, required for non-legacy fixed/both plans, not applicable for non-legacy mobile plans	Mbps	Mbps = megabits per second.
61	Maximum Advertised Upload Speeds	Numeric	Optional for legacy plans, required for non-legacy fixed/both plans, not applicable for non-legacy mobile plans	Mbps	
62	Minimum Advertised Upload Speeds	Numeric	Optional for legacy plans, required for non-legacy mobile/both plans, not applicable for non-legacy fixed plans	Mbps	
63	Minimum Advertised Download Speeds	Numeric	Optional for legacy plans, required for non-legacy mobile/both plans, not applicable for non-legacy fixed plans	Mbps	

64	Mobile Technology	String	Optional for legacy plans, required for non-legacy mobile/both plans, not applicable for non-legacy fixed plans	N/A	Providers must submit the applicable technology type for mobile broadband internet service (e.g., 4G, 5G).
65	Actual Fixed Download Speed	Numeric	Optional for fixed/both legacy plans, required for fixed/both non-legacy plans, not applicable for mobile plans	Mbps	“Actual speed” means the typical upload and download speeds period for a particular speed tier, either based on Measuring Broadband America (MBA) methodology or other relevant testing data.
66	Actual Fixed Upload Speed	Numeric	Optional for fixed/both legacy plans, required for fixed/both non-legacy plans, not applicable for mobile plans	Mbps	
67	Actual Mobile Download Speed	Numeric	Optional for mobile/both legacy plans, required for mobile/both non-legacy plans, not applicable for fixed plans	Mbps	

68	Actual Mobile Upload Speed	Numeric	Optional for mobile/both legacy plans, required for mobile/both non-legacy plans, not applicable for fixed plans	Mbps	
69	Typical Fixed Latency	Numeric	Optional for fixed/both legacy plans, required for fixed/both non-legacy plans, not applicable for mobile plans	Ms	Ms = milliseconds.
70	Typical Mobile Latency	Numeric	Optional for mobile/both legacy plans, required for mobile/both non-legacy plans, not applicable for fixed plans	Ms	
71	Bundle Monthly Price (Fixed Broadband)	Numeric	Optional for fixed/both bundle plans; not applicable for other plans	\$USD	Price for fixed broadband component of bundle plans.
72	Bundle Monthly Price (Mobile Broadband)	Numeric	Optional for mobile/both bundle plans; not applicable for other plans	\$USD	Price for mobile broadband component of bundle plans.

73	Bundle - Linear Video (MPD or vMVPD) Included	Binary	Required for bundle plans; not applicable for other plans	Yes/No	Indicates whether a bundle plan includes video.
74	Bundle Monthly Price (Linear Video)	Numeric	Optional for bundle plans; not applicable for other plans	\$USD	
75	Bundle - Fixed Voice Included	Binary	Required for bundle plans; not applicable for other plans	Yes/No	Indicates whether a bundle plan includes fixed voice.
76	Bundle Monthly Price (Fixed Voice)	Numeric	Optional for bundled plans that include fixed voice; not applicable for other plans	\$USD	
77	Bundle - Mobile Voice Included	Binary	Required bundle plans, not applicable for other plans	Yes/No	Indicates whether a bundle plan includes mobile voice.
78	Bundle - Number of Mobile Voice Minutes	Numeric	Required for bundle plans that include mobile voice; not applicable for other plans	Minutes	
79	Bundle Monthly Price (Mobile Fixed Voice)	Numeric	Optional for bundled plans that include mobile voice, not applicable for other plans	\$USD	

80	Bundle - Mobile Text Included	Binary	Required for bundle plans; not applicable for other plans	Yes/No	Indicates whether a bundle plan includes text messaging.
81	Bundle - Number of Text Messages	Numeric	Required for bundle plans that include mobile text, not applicable for other plans	Number of SMS messages	
82	Bundle Monthly Price (Mobile Text)	Numeric	Optional for bundle plans that include mobile text not applicable for other plans	\$USD	
83	Bundle - Other Component(s)	String	Optional for bundle plans; not applicable for other plans	N/A	Description of components of bundle plans other than those enumerated (fixed voice, mobile voice, mobile text).
84	Bundle Monthly Price (Other Component(s))	Numeric	Optional for bundle plans; not applicable for other plans	\$USD	
85	Data Cap Type	Categorical	Required	N/A	Field requires provider to specify what sort of data cap is associated with a particular plan, if there is a cap. Options are no data cap, soft data cap (de-prioritization), soft data cap (throttling), hard data cap, multi-tiered data cap, and other data cap.
86	Data Cap Amount	Numeric	Required for plans with a data cap; not applicable if plan has no data cap	GB/month	GB/month = gigabytes per month.

87	Charges for Additional Data Usage	Numeric	Required for plans with a data cap; not applicable if plan has no data cap	\$USD/GB	\$USD/GB = Dollars per gigabyte.
Subscriber Rate Information					
*Provider must submit the following subscribership information for each plan with ACP subscribers for each ZIP Code in which ACP subscribers to the plan reside; i.e. providers must submit the following information for each unique plan/ZIP Code combination for which there are ACP subscribers					
<u>Item #</u>	<u>Field Description</u>	<u>Required or Optional</u>	<u>Field Type</u>	<u>Field Units</u>	<u>Additional Information</u>
88	Unique Identifier	String	Required	N/A	Should match one of the unique identifiers listed in the Plan Information section.
89	Zip Code	Numeric	Required	N/A	
90	SAC	Numeric	Required	N/A	Study Area Code associated with the ZIP code for the plan/ZIP code at issue. See above Item No. 3 for more on SACs.
91	Total ACP Subscribers	Numeric	Required	Households	
92	ACP Subscribers also receiving Lifeline benefit	Numeric	Required	Households	ACP subscribers who also receive the Lifeline benefit for the plan at issue.
93	ACP Subscribers receiving Enhanced Tribal Benefit	Numeric	Required	Households	
94	ACP Subscribers also receiving ACP High-Cost Benefit	Numeric	Required	Households	ACP subscribers who also receive the high-cost benefit.

95	ACP Subscribers Hit Hard Data Cap	Numeric	Required; not applicable if plan does not have a hard data cap.	Households	Number of ACP subscribers to a plan that exceed the plan's hard data cap in most recent complete service month; only applicable if plan has a hard data cap.
96	Average GB Hard Cap Overage	Numeric	Required; not applicable if a plan does not have a hard data cap.	GB/month	GB/month = gigabytes per month. Provides must input the average data overage by ACP subscribers in the most recent complete service month. Data overage refers to data used by ACP subscriber over a data cap, in this case a hard data cap.
97	Average Hard Cap Overage Amount Paid	Numeric	Required; not applicable if a plan does not have a hard data cap	\$USD	Average amount in overage paid by ACP subscribers in the most recent complete service month with respect to a hard data cap.
98	ACP Subscribers Hit Soft Data Cap	Numeric	Required; not applicable if plan does not have a soft data cap.	Households	Number of ACP subscribers to a plan that exceed the plan's soft data cap in most recent complete service month; only applicable if plan has a soft data cap.
99	Average GB Soft Cap Overage	Numeric	Required; not applicable if a plan does not have a soft data cap.	GB/month	GB/month = gigabytes per month. Provides must input the average data overage by ACP subscribers in the most recent complete service month. Data overage refers to data used by ACP subscriber over a data cap, in this case a soft data cap.

100	Average Soft Cap Overage Amount Paid	Numeric	Required; not applicable if a plan does not have a soft data cap	\$USD	Average amount in overage paid by ACP subscribers in the most recent complete service month with respect to a soft data cap.
101	ACP Subscribers on Introductory Prices	Numeric	Optional	Households	
102	ACP Subscribers that Paid a Set-Up or Activation Fee	Numeric	Optional	Households	
103	ACP Subscribers Paying \$0 after All Non-ACP Discounts and ACP Benefit Applied	Numeric	Optional	Households	



PUBLIC NOTICE

Federal Communications Commission
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News Media Information 202-418-0500
Internet: www.fcc.gov
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DA 23-250

Released: March 23, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON ATIS WAIVER REQUEST ON BEHALF OF THE COVERED ENTITIES OF THE HEARING AID COMPATIBILITY TASK FORCE

WT Docket No. 20-3

Comment Date: 30 days after publication in the *Federal Register*

Reply Comment Date: 45 days after publication in the *Federal Register*

1. The Wireless Telecommunications Bureau seeks comment on a petition for waiver (Petition)¹ filed by ATIS requesting waiver of section 20.19(b)(1) and (b)(3) of the Commission's rules² for all entities subject to the hearing aid compatibility rules. The Petition seeks to allow wireless handsets to satisfy a reduced volume control testing methodology to be certified as hearing-aid compatible.³ In particular, we seek comment on this waiver request in the context of the Commission's commitment to attaining 100% hearing aid compatibility of covered wireless handsets, as soon as achievable,⁴ as well as the Commission's previous finding that a volume control requirement is necessary "to ensure the provision of effective telecommunications for people with hearing loss."⁵

2. The Commission's commitment to a volume control requirement dates back to the original hearing aid compatibility order in 2003.⁶ Since then, the Commission has repeatedly explored

¹ 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), <https://www.fcc.gov/ecfs/document/1216020115086/1>. The covered entities of the Hearing Aid Compatibility Task Force (Task Force) include Apple, Inc.; AT&T; Competitive Carriers Association; Consumer Technology Association; CTIA; Google; Mobile & Wireless Forum; Samsung Research America; T-Mobile USA; Telecommunications Industry Association ("TIA"); Union Telephone Company; UScellular; and Verizon. *Id.* at 1 & n.1.

² 47 CFR § 20.19(b)(1), (b)(3).

³ Petition at 1-2.

⁴ See, e.g., *Improvements to Benchmarks and Related Requirements Governing Hearing Aid Compatible Mobile Handsets*, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336, 9337, 9345, paras. 4, 22 (2016) (2016 Revised Benchmark 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, 4566, para. 1 (2021) (2021 HAC Order).

⁵ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Report and Order and Order on Reconsideration, 32 FCC Rcd 9063, 9073-074, para. 23 (2017) (*Volume Control Order*).

⁶ 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, 16778, para. 57 (2003).

the issue⁷ and in 2017 concluded that “the public interest and the objectives mandated by section 710 of the Act will be served by modifying the Commission’s acoustic coupling HAC rules for wireless handsets to include a volume control requirement designed to accommodate people with hearing loss.”⁸ The Commission affirmed its belief “that a volume control requirement that specifies certain levels of amplification as an element of hearing aid compatibility is just as necessary for wireless handsets as it is for wireline phones, to ensure the provision of effective telecommunications for people with hearing loss.”⁹ In deciding to adopt a wireless volume control requirement, the Commission stated that “a volume control requirement will not only improve communications for those using hearing aids and cochlear implants, it also will help millions of Americans with hearing loss who do not use these devices.”¹⁰

3. While the Commission adopted a volume control requirement in 2017, the Commission delayed compliance with the requirement until March 1, 2021.¹¹ At the time the Commission adopted this rule, there was no standard for volume control, but the Commission anticipated that ANSI would adopt a standard that the Commission could incorporate into its rules. The Commission expected to adopt the ANSI volume control standard by 2019 in order to give manufacturers two years following adoption to build the standard into new handsets. It was not until 2019, however, that ANSI submitted to the Commission as part of the 2019 ANSI Standard the ANSI/TIA-5050-2018 Volume Control Standard (ANSI/TIA Volume Control Standard), which is incorporated into the 2019 ANSI Standard.¹² Commenters broadly supported the adoption of the 2019 ANSI Standard and the related ANSI/TIA Volume Control Standard.¹³ Both standards are incorporated into the Commission’s rules by reference (i.e., the standards are part of the Commission’s rules).¹⁴ Under the Commission’s rules, beginning on June 5, 2023, a handset will be considered “hearing aid compatible” if it “meets the 2019 ANSI Standard for all frequency bands that are specified in the ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset has been certified as compliant with the ANSI/TIA-Volume Control Standard.”¹⁵

4. According to ATIS’s Petition, during the course of the hearing aid compatibility Task Force’s work this past spring, the Task Force discovered “significant and material problems with the methodology used for testing volume control.”¹⁶ Specifically, Working Group 3 of the Task Force received data on eighteen mobile handsets that were tested under the new standards.¹⁷ ATIS states that

⁷ *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, 11191-92, paras. 69-70 (2010); *Comments Sought on 2010 Review of Hearing Aid Compatibility Regulations*, Public Notice, 25 FCC Rcd 17566, 17576-77 (WTB 2010); *Updated Information and Comment Sought on Review of Hearing Aid Compatibility Regulations*, Public Notice, 27 FCC Rcd 13448, 13452 (WTB 2012).

⁸ *Volume Control Order*, 32 FCC Rcd at 9073-074, para. 23.

⁹ *Volume Control Order*, 32 FCC Rcd at 9074, para. 23.

¹⁰ *Volume Control Order*, 32 FCC Rcd at 9074, para. 23.

¹¹ *Volume Control Order*, 32 FCC Rcd at 9080-081, paras. 34-35.

¹² *2021 HAC Order*, 36 FCC Rcd at 4568-69, para. 6 & n.19; ANSI/TIA5050:2018, *Telecommunications – Communications Products – Receive Volume Control Requirements for Wireless (Mobile) Devices* (approved Jan. 17, 2018) (ANSI/TIA Volume Control Standard).

¹³ *2021 HAC Order*, 36 FCC Rcd at 4571-72, para. 11.

¹⁴ 47 CFR § 20.19(l).

¹⁵ *Id.* § 20.19(b)(3).

¹⁶ Petition at 3.

¹⁷ Petition at 3.

the ANSI/TIA Volume Control Standard's methodology for testing volume control resulted in every current HAC-certified handset they tested failing to pass the standard.¹⁸

5. Accordingly, ATIS specifically requests a waiver of section 20.19(b)(1) and (b)(3), asking us to allow wireless handsets to satisfy a reduced volume control testing methodology instead of the full ANSI/TIA Volume Control Standard in order to be certified as hearing-aid compatible. ATIS asserts that there is a "problem with the underlying testing methodology" in the ANSI/TIA Volume Control Standard that renders compliance with the ANSI 2019 Standard functionally impossible for handsets.¹⁹ ATIS proposes that, for the duration of the waiver, the Commission allow a handset to be certified as hearing-aid compatible if it:

- i. Meets the following clauses of the 2019 ANSI Standard:
 - a. RF Immunity Test (M – "clause 4") and
 - b. T-Coil Compatibility Test (T – "clause 6")
- ii. Passes the conversational gain test in the ANSI/TIA Volume Control Standard for all available codecs and air interface combinations at the 2N level²⁰; and
- iii. Obtains passing results for at least one of the device's available codecs for the distortion and frequency response requirements in the ANSI/TIA Volume Control Standard.²¹

Under the proposed waiver, ATIS also requests that test codecs be limited to those that are in scope for the ANSI/TIA Volume Control Standard, which include narrowband and wideband codecs.²²

6. ATIS asserts that TIA is in the process of "reinitializing" its standards committee to revise the ANSI/TIA Volume Control Standard. ATIS then notes that stakeholders would need a period of time for testing and implementation of the standard before the Commission considers adopting the revised standard into its rules. ATIS requests that the waiver remain in effect until the Commission has had the opportunity to review the revised standard.

7. In the context of the Commission's commitment to attaining 100% hearing aid compatibility for handsets, to the extent achievable, as well as the significance of the volume control standard for improving accessibility to handsets for consumers with hearing loss, we seek comment on how to address any request for waiver of the volume control standard, as well as the scope of this particular request.

8. We note that when the Commission adopted a volume control requirement for mobile handsets in October 2017, work on a wireless volume control standard was already well underway.²³ In 2019, the current standard was completed and was submitted to the Commission by the ASC C63 Committee with a request that it be incorporated in the Commission's rules.²⁴ In the ensuing rulemaking, industry commenters supported adoption of the standard,²⁵ and no party raised concerns about the

¹⁸ Petition at 3.

¹⁹ Petition at 3-4.

²⁰ Under the waiver requested by petitioners, manufacturers would be relieved of their obligation to certify that handsets pass this test at the 8N force used for testing requirements for persons without hearing aids. Petition at 11, 13.

²¹ Petition at 4.

²² Petition at 4.

²³ *Volume Control Order*, 32 FCC Rcd at 9073, para. 22 (noting that the working groups of the relevant standards development committees were already focused on the issue and "have made considerable progress on the completion of a standard for this purpose").

²⁴ *2021 HAC Order*, 36 FCC Rcd at 4568-69, para. 6.

²⁵ *2021 HAC Order*, 36 FCC Rcd at 4571-72, para. 11.

suitability of the testing requirements for volume control. Accordingly, we seek comment on what steps the covered entities took, prior to the recent testing conducted by the Task Force, to ensure that they would be able to comply with the adopted standard, which was developed by technical committees on which affected manufacturers ordinarily are well represented.²⁶

9. We seek comment on the potential impact of this waiver request on consumers, as well as the application of the Commission's established waiver standard.²⁷ In particular, we seek comment on the impact of the requested waiver of the volume control requirement on the more than 30 million Americans who have hearing loss. Would a grant be consistent with the Commission's commitment to implementing a volume control standard to improve accessibility and with our statutory duties under section 710 of the Communications Act of 1934, as modified?²⁸ How would a denial of the requested waiver impact consumers? In addition, we seek comment on whether and how the requested waiver would further our goal of making 100% of wireless handsets hearing-aid compatible. Do individuals and consumer groups representing individuals who are deaf and hard of hearing support the scope of the waiver request?

10. We also seek comment on the scope of the waiver request. The waiver request seeks a departure from the volume control standard previously supported by parties and adopted into the Commission's rules. Is the alternative volume control testing methodology proposed by ATIS sufficient to ensure that handsets have adequate volume control? Did the covered entities perform any testing to ensure that this alternative volume control testing methodology would ensure that handsets have sufficient volume control? If so, we encourage industry to share data related to this testing in their comments.

11. We seek comment on the portion of the waiver related to conversational gain and the scope of that request. The waiver proposes to test only the 2N force, which replicates the experience of hearing aid users. The ANSI/TIA Volume Control Standard, however, also requires testing of conversational gain at the 8N force, which is intended to replicate the experience of those consumers with hearing loss who do not use hearing aids. The waiver request does not specify why covered entities need a waiver of the 8N force portion of the conversational gain test, other than the "high failure rate" at the 8N force.²⁹ What specific problem with the 8N testing requirement makes compliance with the test problematic? Are there steps manufacturers could take that would address such problems and enable their devices to pass the test? How would the testing methodology proposed by ATIS, which would include a waiver of the requirement to test conversational gain at the 8N force, ensure that a handset's conversational gain is suitable for those consumers with hearing loss that do not use hearing aids? Should we maintain the testing requirement at the 8N force, as specified in the ANSI/TIA Volume Control Standard?

12. We seek comment on the portion of the waiver request related to distortion and frequency response and its scope. Guidance from the Office of Engineering and Technology Knowledge Database (KDB) requires the worst-case test result to be submitted for certification—which ATIS suggests "implicitly require[es] an all-codec approach."³⁰ With this in mind, would it be sufficient to test and

²⁶ Cf. *Blanca Tel. Co. v. FCC*, 743 F.3d 860 (D.C. Cir. 2014) (affirming the Commission's denial of *nunc pro tunc* waivers of hearing aid compatibility rules to non-complying carriers that failed to show they exercised reasonable diligence in attempting to meet compliance deadline set by the Commission); *Section 68.4 of the Commission's Rules Regarding Hearing-Aid Compatible Telephones; Petitions for Waiver of Section 20.19 of the Commission's Rules*, WT Docket 01-309, Memorandum Opinion and Order, 23 FCC Rcd 3352, 3368-69, para. 34 (2008) (noting "inattention does not constitute extraordinary circumstances to support a waiver").

²⁷ See 47 CFR §§ 1.3, 1.925.

²⁸ 47 U.S.C. § 610.

²⁹ Petition at 11.

³⁰ The Commission requires that a handset meet the applicable ANSI standard for all frequency bands and all air interfaces over which it operates to be counted towards the deployment benchmarks. 47 CFR § 20.19(b)(3). KDB guidance explains that the report submitted with equipment authorization will document the worst-case test

(continued....)

document only one of a device's available codecs for the distortion and frequency response requirements of the ANSI/TIA Volume Control Standard, as ATIS requests? What was the basis for the Task Force working group's finding that "meeting the distortion and frequency response requirements when tested with a single codec" is "sufficient to indicate that the amplifier/speaker combination is capable of producing the desired output signal quality and level"?³¹ Did the working group or covered entities perform any testing to ensure that this would be the case? How can we be sure that the consumer experience would not be negatively affected if testing only one of the device's available codecs for distortion and frequency response? If testing only one of a device's available codecs is sufficient, why was the ANSI/TIA Volume Control Standard developed to test both narrowband and wideband codecs?³² Which specific types of codecs are incompatible with the pulse-noise test? If we were to grant a waiver, is there a way to tailor the request more narrowly for relief to address ATIS's concerns with the pulse-noise signal test? For example, could we limit the tests to only those codecs within the scope of the ANSI/TIA Volume Control Standard?

13. We also seek comment on whether we should impose other conditions on the waiver, if granted. For example, should we require labeling specifying that a handset tested under this methodology did not meet the full volume control standard? What other conditions are necessary to ensure that consumers with hearing loss have access to hearing-aid compatible handsets that meet established technical standards?

14. Finally, we seek comment on the timeframe contemplated for the waiver. We note that the request does not seek a specific length of time for the waiver. If granted, should we set additional time limits or reporting requirements on the waiver? For example, should we consider requiring ATIS to submit quarterly reports on the progress of revising the volume control standard? In order to ensure hearing aid compatibility compliance pursuant to the ATIS waiver and because timely hearing aid compatibility compliance is in the public interest, should we consider requiring the waiver's covered entities to participate in the TIA standards-setting process? Should we establish a period of time for testing and implementation of the standard?

15. ATIS cites as evidence the Task Force's concurrently filed Final Report and Recommendation (Report),³³ which recommends revisions to our hearing aid compatibility rules—including revisions to the standards for volume control testing.³⁴ However, we do not seek feedback here on the Report or its recommendations, except to the extent that ATIS relies on studies in the Report as support for its waiver request.³⁵ We only solicit comment on ATIS's specific waiver request, and on any alternate relief that may be appropriate.

16. We note that the Commission adopted an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA) in the proceeding that adopted the volume-control

(Continued from previous page) _____
conditions and document the codec test. See FCC, OET, *Guidance for Performing Volume Control Measurements on Mobile Handsets – KDB 285076 – HAC Guidance v06r01*, at Section 2 (Oct. 25, 2022), <https://bit.ly/3hDX1yZ>. ATIS notes that this "implicitly requir[es] an all-codec approach. Petition at 4 & n.9.

³¹ Petition at 10.

³² In laying out the testing methodology, ANSI/TIA Volume Control Standard specifies using one codec each in narrowband and wideband modes (if supported) over any air-interface available in the device. See ANSI/TIA Volume Control Standard at 5-7.

³³ HAC Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022), <https://www.fcc.gov/ecfs/document/1216940802129/1>.

³⁴ See Petition at 5-6, 8-11, 19.

³⁵ See *Wireless Telecommunications Bureau Requests Comment on the Hearing Aid Compatibility Task Force's Final Report and Recommendation*, WT Docket No. 15-285, DA 23-251 (WTB 2023).

standard.³⁶ The FRFA, among other things, analyzes the objectives and the economic effects on small entities of the requirement that ATIS asks us to waive. We seek comment on how the proposed waiver and the alternatives discussed herein could affect the IRFA and the FRFA previously adopted by the Commission. How could action in response to ATIS's petition ensure that we are minimizing burdens on small entities?

17. *Paperwork Reduction Act.* This document may seek comment on potential new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

18. *Filing Requirements.* Interested parties may file comments on or before the date indicated on the first page of this document.³⁷ All filings must refer to Docket No. 20-3. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).³⁸

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L 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-19.³⁹

19. *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.

³⁶ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket Nos. 07-250, 10-254, Notice of Proposed Rulemaking, 30 FCC Rcd 12219, 12261, Appendix C (2015) Initial Regulatory Flexibility Analysis (IRFA); *Volume Control Order*, 32 FCC Rcd at 9097, Appendix C (2017) Final Regulatory Flexibility Analysis (FRFA).

³⁷ See 47 CFR §§ 1.2, 1.405, and 1.419.

³⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

³⁹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

20. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁰ 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 presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).⁴¹ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

21. For further information regarding this proceeding, please contact Eli Johnson at eli.johnson@fcc.gov.

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⁴⁰ See 47 CFR §§ 1.1200 *et seq.*

⁴¹ *Id.* § 1.1206(b).



PUBLIC NOTICE

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DA 23-251

Released: March 23, 2023

WIRELESS TELECOMMUNICATIONS BUREAU REQUESTS COMMENT ON THE HEARING AID COMPATIBILITY TASK FORCE'S FINAL REPORT AND RECOMMENDATION

WT Docket No. 15-285

Comment Date: 30 days from release

Reply Comment Date: 45 days from release

I. INTRODUCTION AND BACKGROUND

1. By this Public Notice, the Wireless Telecommunications Bureau (WTB) seeks comment on the report recently filed by the Hearing Aid Compatibility Task Force (Task Force) regarding its recommendations for achieving 100% hearing aid compatibility for wireless handsets (Report).¹

2. Beginning in 2003 with the original wireless hearing aid compatibility order, and as reiterated over the years, the Commission has emphasized that—consistent with Congressional intent—it is the policy of the Commission to ensure equal access to communications networks to the fullest extent feasible.² With this policy objective in mind, in 2016 the Commission adopted two new hearing aid compatibility wireless handset deployment benchmarks. Specifically, after a two year transition for handset manufacturers, and with additional compliance time for service providers, the then-applicable benchmarks were increased to 66%.³ After a five-year transition period for handset manufacturers and with additional compliance time for service providers the 66% benchmarks were increased to 85%.⁴ In the 2016 order, the Commission stated, “we also reconfirm our commitment to pursuing 100 percent hearing aid compatibility to the extent achievable.”⁵ This commitment to 100% hearing aid compatibility was supported by three consumer advocacy organizations who joined with three industry trade associations to submit a Joint Consensus Proposal that not only supported the revised benchmarks but

¹ Hearing Aid Compatibility Task Force Final Report and Recommendation, WT Docket No. 15-285 (filed Dec. 16, 2022), <https://www.fcc.gov/ecfs/document/1216940802129/1> (Report).

² 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, 16755, para. 4 (2003); 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, 18 FCC Rcd 11167, 11174, para. 18 (2010); Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336-337, paras. 3-4 (2016) (2016 Revised Benchmark 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, para. 1 (2021) (2021 HAC Order).

³ 2016 Revised Benchmark Order, 31 FCC Rcd at 9336, para. 1.

⁴ 2016 Revised Benchmark Order, 31 FCC Rcd at 9336, para. 1.

⁵ 2016 Revised Benchmark Order, 31 FCC Rcd at 9337, para. 3.

also the goal of moving away from fractional benchmarks and towards a 100% compliance standard.⁶ In the Commission's latest hearing aid compatibility order adopting a new technical standard for determining hearing aid compatibility along with other changes to these rules, the Commission reiterated its goal "to continue on the path to making 100% of wireless handsets hearing aid-compatible."⁷

3. The Commission's rules require wireless handset manufacturers and service providers to make available to consumers a minimum number of handsets that meet specific technical criteria for hearing aid compatibility.⁸ For a handset to be certified as hearing aid-compatible, the handset must meet the technical standard incorporated by reference into the Commission's rules.⁹ Currently, handsets can be certified as hearing aid-compatible either by meeting the 2011 or 2019 American National Standards Institute (ANSI) Standard technical requirements.¹⁰ As of June 5, 2023, the 2019 ANSI Standard becomes the exclusive testing standard for determining hearing aid compatibility and the 2011 ANSI Standard may no longer be used for this purpose.¹¹ The 2019 ANSI Standard updates the 2011 ANSI Standard in many respects and for the first time includes a volume control requirement that previous versions of the standard did not include.¹²

4. In the 2016 hearing aid compatibility order adopting the two revised benchmarks, the Commission stated that it would decide by 2024 whether to require 100% of covered wireless handsets to be hearing aid-compatible.¹³ 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.¹⁴ In addition, the Commission articulated its interest in continuing the "productive collaboration between stakeholders and other interested parties"¹⁵ as the 100% mark is examined, noting certain stakeholders' proposal to form a task force independent of the Commission to "issue a report to the Commission to help inform" the agency "on whether 100 percent hearing aid compatibility is achievable."¹⁶ Stakeholders convened the independent Task Force following the adoption of the 2016 order.¹⁷

5. In December 2022, the Task Force filed its final Report in WT Docket No. 15-285. The Report examines questions that the Commission in its 2016 hearing aid compatibility order asked interested parties to consider. These questions include: (1) whether 100% hearing aid compatibility is achievable; (2) how a 100% deployment benchmark could rely in part or in whole on alternative hearing-aid compatible technologies; (3) whether service providers should be able to legally rely on information in the Accessibility Clearinghouse in connection with meeting applicable benchmarks; and (4) whether

⁶ *2016 Revised Benchmark Order*, 31 FCC Rcd at 9340, para. 11.

⁷ *2021 HAC Order*, 36 FCC Rcd at 4566, para. 1.

⁸ 47 CFR § 20.19(b), (c).

⁹ 47 CFR § 20.19(a)-(c), (l).

¹⁰ *2021 HAC Order*, 36 FCC Rcd at 4576-577, paras 22-25.

¹¹ 47 CFR § 20.19 (b)(1).

¹² *2021 HAC Order*, 36 FCC Rcd at 4570-71, paras. 9-10.

¹³ *2016 Revised Benchmark Order*, 31 FCC Rcd at 9337, 9349, paras. 4, 34.

¹⁴ *2016 Revised Benchmark Order*, 31 FCC Rcd at 9354, paras. 44-45.

¹⁵ *2016 Revised Benchmark Order*, 31 FCC Rcd at 9337, para. 4.

¹⁶ *2016 Revised Benchmark Order*, 31 FCC Rcd at 9342-43, 9350-51, paras. 17, 35.

¹⁷ Report at 11.

the Commission should establish a fixed period of time or shot clock for the resolution of petitions for waiver of the hearing aid compatibility requirements.¹⁸

II. REQUEST FOR COMMENT

6. The Report makes five central recommendations, urging the Commission to: (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.¹⁹ We seek comment on these recommendations in general. Do they further the Commission's goal of attaining 100% hearing aid compatibility? Are they consistent with the policy goals the Commission has historically outlined in these and other hearing aid compatibility-related proceedings, and with our statutory duties under section 710 of the Communications Act of 1934, as amended?²⁰ If so, how would they ensure equal opportunity for all to create, participate, and communicate—with none left behind? If not, why would they not?

7. *Revised definition.* The Report recommends that the Commission revise the definition of hearing aid compatibility to the following more “flexible” definition: “A hearing aid compatible wireless handset (a) has an internal means for compatibility (b) that meets established technical standards for hearing aid coupling or compatibility, and (c) is usable.”²¹ According to the Report, the Commission should also consider factors “such as ease-of-use, reliability, industry adoption, and consumer use and adoption when evaluating what technical standards meet the above proposed [hearing aid compatibility] definition.”²² We seek comment on how this revised definition, which removes the reference to the relevant 2019 ANSI Standard and raises the possibility of using other technical standards, would be consistent with the Commission's goal of ensuring that consumers have access to handsets that are fully hearing-aid compatible. How would the proposed definition allow the Commission to determine hearing aid compatibility with certainty? Would a definition that makes general reference to “established technical standards for hearing aid coupling or compatibility” be consistent with the Administrative Procedure Act (APA) or other legal requirements regarding incorporation of technical standards by reference, or must each applicable technical standard be specified in the Commission's rules?

8. *Adjust the technical standards.* The Report also recommends that the Commission “adjust the technical standards” in the hearing aid compatibility rules, both through short-term waiver of the current transition to the 2019 ANSI Standard and through “medium-term” adjustments to the deployment benchmarks.²³ The Report suggests that a path toward 100% hearing aid compatibility is achievable by allowing alternative coupling methodologies, as described below.²⁴

9. In the “short-term,” the Report recommends granting a waiver of the current transition to the 2019 ANSI Standard, by specifically modifying the current volume control test.²⁵ We note the pendency of a petition for waiver (Petition) filed by ATIS, on behalf of the members of the Task Force covered by the hearing aid compatibility rules, seeking waiver of section 20.19(b)(1) and (b)(3) of our

¹⁸ Report at 8-10.

¹⁹ Report at ii.

²⁰ 47 U.S.C. § 610.

²¹ Report at ii, 16.

²² Report at ii, 17.

²³ Report at ii, 18-19.

²⁴ Report at 18.

²⁵ Report at 21-22.

rules.²⁶ We seek comment on what, if any, impact a waiver of the volume control requirement would have on the rest of the recommendations in the Report (e.g., the path towards 100% hearing aid compatibility). We do not seek comment here on ATIS's specific waiver request, and do not propose any changes to the Commission's rules here; we only solicit feedback on the contents of the Report, as part of the record in the above-captioned dockets.²⁷

10. In the "medium-term," the report recommends a path toward 100% compatibility using Bluetooth as an alternative coupling method.²⁸ Under the Report's recommendations, all handsets would be certified with two coupling methods to be considered hearing-aid compatible: acoustic coupling along with a second method using magnetic (T-Coil) or wireless (Bluetooth). Specifically, the Report recommends the following benchmarks for manufacturers and service providers—which would be required four and five years from the effective date of a new Commission order, respectively:

- i. 100% of wireless handsets passing the RF Immunity Test (acoustic coupling) in the 2019 ANSI Standard;
- ii. 100% magnetic/wireless coupling, as follows:
 - a. at least 85% passing the telecoil (T-Coil) Test in the 2019 ANSI Standard. Any handsets that do not pass the T-Coil test must include Bluetooth coupling capability; and
 - b. at least 15% including Bluetooth coupling capability. Any handsets that do not support Bluetooth must pass the T-Coil Test.²⁹

11. We seek comment on how the Report's recommended approach could be effective in helping achieve the 100% benchmark. Under our current rules, a handset must meet all aspects of the 2019 ANSI Standard to be considered hearing-aid compatible (i.e., RF immunity (acoustic coupling), T-Coil compatibility (magnetic coupling), and the volume control standard). Would the Report's recommendation to separate these elements for determining hearing-aid compatibility weaken the Commission's hearing aid compatibility standard? Why should the Commission limit the final benchmark for telecoil to 85%, which is the current benchmark for manufacturers and most providers? Would consumers with hearing loss who currently rely on telecoil compatibility be able to use devices that lack this capability?

12. The Report does not recommend a benchmark for volume at this time, given the request for waiver of the volume control standard. Instead, the Report recommends that the Commission "incorporate into the FCC's rules an adjusted volume control testing method that accomplishes the goal of increased amplification . . . with an updated testing methodology that better reflects modern wireless handset technologies and operation."³⁰ We seek comment on this approach to the volume control requirement. In particular, we seek comment on how this approach to the volume control requirement would impact the path toward 100% compatibility.

²⁶Petition 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), <https://www.fcc.gov/ecfs/document/1216020115086/1>.

²⁷ See *Wireless Telecommunications Bureau Seeks Comment on ATIS Waiver Request on Behalf of the Covered Entities of the Hearing Aid Compatibility Task Force*, WT Docket No. 20-3, Public Notice, DA 23-250 (WTB 2023).

²⁸ Report at ii.

²⁹ Report at ii.

³⁰ Report at ii, 19.

13. In addition, we seek comment on using Bluetooth as a coupling method towards the 100% benchmark. As noted above, there is not a single Bluetooth standard used by industry or a standard approved by a standards body. In light of that, how could the Commission include Bluetooth as a coupling method in our rules? Would the public interest be served by waiting to incorporate Bluetooth coupling into its rules until a single non-proprietary Bluetooth standard is approved by a standards body and widely adopted? What is the likely timeline for completing such a standard, and how would that timeline affect the Task Force's recommended medium-term timeline for reaching 100% hearing aid compatibility? Could manufacturers reach a 100% benchmark without using Bluetooth?

14. *Explore alternative technologies.* The Report recommends that the Commission “[a]llow for additional exploration of increased reliance on Bluetooth and other alternatives with related decreasing reliance on magnetic coupling, based on future consumer and market trends, over the longer term.”³¹ We seek comment on this recommendation, including whether it could be implemented in a way that serves the needs of all consumers with hearing loss.

15. *Accessibility Clearinghouse.* The Report recommends that the Commission permit service providers to legally rely on the information linked to in the Commission's Accessibility Clearinghouse to determine whether a handset is hearing aid compatible when calculating their deployment percentages for the purposes of meeting applicable benchmarks.³² Specifically, the Report notes that service providers should be able to rely on the information reported in the Global Accessibility Reporting Initiative (GARI) database, which is linked at the Accessibility Clearinghouse website.³³ GARI is an independent database which is a project of the Mobile & Wireless Forum populated by device manufacturers and app developers. The Report asserts that GARI would provide a more up-to-date snapshot of hearing-aid compatible devices than the annual FCC Form 655 report that manufacturers file.³⁴ It also recommends that the Commission adopt a safe harbor for service providers that rely on the information submitted by manufacturers in the GARI database to meet hearing aid compatibility requirements.³⁵ Presently, the Commission allows service providers to rely on the information from a device manufacturer's FCC Form 655 as a safe harbor.³⁶ We seek comment on the Report's recommendations with respect to the Accessibility Clearinghouse and the recommendation to allow service providers to use the Clearinghouse (and GARI in particular) to determine a handset's hearing aid compatibility when calculating their deployment percentages for the purposes of meeting applicable benchmarks. Device manufacturers must certify to the accuracy of their FCC Form 655 report. How would the Commission ensure that the information in the GARI database is accurate?

16. The Report further recommends that if a handset is not in the GARI database, the Commission “automatically and immediately upload” device manufacturers' FCC Form 655 reports to the Accessibility Clearinghouse after they are submitted to the Commission.³⁷ The Commission's Accessibility Clearinghouse website, however, already links to handset manufacturer FCC Form 655

³¹ Report at ii, 22.

³² Report at ii, 27. The Commission's Accessibility Clearinghouse can be found at <https://www.fcc.gov/ach>.

³³ Report at 27.

³⁴ Report at 27; see GARI, Home Page, <https://www.gari.info> (last visited Jan. 23, 2023).

³⁵ Report at 28.

³⁶ *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 17-228, Report and Order, 33 FCC Rcd 11549, 11557, para. 20 (2018). 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 11555-556, para. 18.

³⁷ Report at 28.

filings.³⁸ We seek comment on whether it is necessary for the Commission to upload manufacturers' FCC Form 655 reports to the Accessibility Clearinghouse website, given that 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.³⁹

17. *Shot clock for waivers.* Finally, the 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.⁴⁰ The HAC Task Force believes that 90 days properly balances several factors, including: (1) the low number of expected petitions, and, relatedly, the burden on Commission staff; (2) an opportunity for public notice and comment; and (3) the need for timely resolution of petitions to ensure the deployment of new technologies is not unduly delayed.⁴¹ We seek comment on this recommendation, and whether there are other factors to take into account.⁴² Why would it be necessary to impose a shot clock for requests for waiver of the hearing aid compatibility rules, and would a shot clock encourage the filing of waiver requests?

18. *Data in the Report.* We also solicit comment on the data embodied in the Report, as part of our record in the above-captioned proceedings. We invite commenters to address the conclusions and policy recommendations in the Report—e.g., on the desirability of certain technologies over others as solutions to get to 100% hearing aid compatibility—the Task Force reaches using this data. How do the data support the recommendations in the Report? For instance, is it accurate to describe consumers with hearing loss as “satisfied” with their wireless phone communications, as the Report does?⁴³

III. PROCEDURAL MATTERS

19. *Filing Requirements.* Interested parties may file comments on or before the date indicated on the first page of this document.⁴⁴ All filings must refer to Docket No. 15-285. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁴⁵

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

20. 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.

³⁸ See Accessibility Clearinghouse, <https://www.fcc.gov/ach> (last visited Mar. 8, 2023) (linking at bottom of page to Hearing Aid Compatible Wireless Handsets Status Reports).

³⁹ See [Filing Hearing Aid Compatibility Reports and Certifications | Federal Communications Commission \(fcc.gov\)](https://www.fcc.gov/filing-hearing-aid-compatibility-reports-and-certifications).

⁴⁰ Report at ii, 30-31.

⁴¹ Report at 30-31.

⁴² See *2016 Revised Benchmark Order*, 31 FCC Rcd at 9357, para. 50.

⁴³ Report at 43; *but see* Report at 54-55 (disclosing that 45% of hearing-impaired respondents report experience barriers to satisfactory wireless phone communications).

⁴⁴ See 47 CFR §§ 1.2, 1.405, and 1.419.

⁴⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- 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-19.⁴⁶

21. 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.

22. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁷ 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 presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).⁴⁸ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

23. For further information regarding this proceeding, please contact Eli Johnson at eli.johnson@fcc.gov.

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⁴⁶ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁴⁷ See 47 CFR §§ 1.1200 *et seq.*

⁴⁸ *Id.* § 1.1206(b).



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. 23-252

Report No. SAT-01711

Friday March 24, 2023

Satellite Policy Branch Information

Actions Taken

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

SAT-STA-20230313-00058	E	Space Exploration Holdings, LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 03/20/2023

On March 20, 2023, the Satellite Division granted, with conditions, the request of Space Exploration Holdings, LLC for special temporary authority for a period of 30 days to permit communications between SpaceX satellites and earth stations in polar regions of the United States at elevations of no less than ten degrees. Specifically, SpaceX is authorized to temporarily adjust the minimum elevation angle from 25 degrees to ten degrees at latitudes above 53 degrees for communications in the 10.7-12.7 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

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



PUBLIC NOTICE

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

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

DA 23-253
March 24, 2023

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 28 (EASTERN PENNSYLVANIA, SOUTHERN NEW JERSEY AND DELAWARE
AREA) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES
TO HOLD PLANNING MEETINGS**

PR Docket No. 92-287 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 two planning meetings to seek nominations and hold elections for the positions of Chair and Vice Chair on the following dates. The meetings will be held virtually via Go to Meeting and via conference bridge as indicated below.

Region 28 700 MHz and 800 MHz RPC Planning Meetings

- Tuesday, April 11, 2023 10:00 a.m.
- Tuesday, July 11, 2023 10:00 a.m.

The virtual meeting and dial-in details are as follows:

- Go to Meeting Link: <https://global.gotomeeting.com/join/363395693>
- Alternative via Phone Conference Bridge: +1 (571) 317-3112
- Access Code: 363-395-693

The agenda for the April 11, 2023 meetings include:

- Call to Order - Roll Call & Introductions
- Approval of Minutes from Previous Meeting
- Nominations for Chair and Vice Chair Positions
- Chair Report
- Vice Chair Report
- Secretary Report
- Technical Report 700 and 800 MHz
- Regional State Interoperability Executive Committee Updates
- Old Business
- New Business
- Future Meeting Dates for 2023

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.

The agenda for the July 11, 2023 meetings include:

- Call to Order - Roll Call & Introductions
- Approval of Minutes from Previous Meeting
- Elections for Chair and Vice Chair Positions
- Chair Report
- Vice Chair Report
- Secretary Report
- Technical Report 700 and 800 MHz
- Regional State Interoperability Executive Committee Updates
- Old Business
- New Business
- Future Meeting Dates for 2023

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

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PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
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DA 23-254

Released: March 23, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DATES FOR RURAL HEALTH CARE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

WC Docket No. 17-310

Comment Date: April 24, 2023

Reply Comment Date: May 22, 2023

On January 27, 2023, the Federal Communications Commission (FCC) released an *Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking*. The *Second Further Notice* sought comment on how to strengthen the Rural Health Care (RHC) Program and improve access to telehealth in rural America,¹ and sets deadlines for filing comments and reply comments at 30 and 60 days, respectively, after publication in the Federal Register.²

On March 23, 2023, a summary of the *RHC Consolidated Item* was published in the Federal Register.³ Accordingly, comments will be due on or before **April 24, 2023** and reply comments will be due on or before **May 22, 2023**.⁴ Complete filing instructions are set forth in the *Second Further Notice* and in the Federal Register.⁵

For further information, please contact Kiara Ortiz, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-0272, or via email at Kiara.Ortiz@fcc.gov.

- FCC -

¹ See generally *Promoting Telehealth in Rural America*, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking (Jan. 26, 2023) (*RHC Consolidated Item*).

² *Id.* at 1, paras. 120, 135.

³ FCC, *Promoting Telehealth in Rural America*, 88 Fed. Reg. 17495 (Mar. 23, 2023) <https://www.federalregister.gov/documents/2023/03/23/2023-04990/promoting-telehealth-in-rural-america> (Notice)

⁴ *Id.*

⁵ *RHC Consolidated Item* at paras. 120-122; Notice at 17495.

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

In the Matter of	)	
	)	
EUREKA COUNTY TV DISTRICT	)	Facility ID Nos.: 19848, 19849, 19852,
	)	183840, 183842, 185337, 185347, 185624,
Licensee of Stations K33PI-D, Eureka, NV;	)	185625
K22NG-D, Eureka, NV; K21GJ-D, Eureka, NV;	)	NAL/Acct. No.: 202341420010
K29NK-D, Eureka, NV; K15LU-D, Eureka, NV;	)	FRN: 0007744964
K27NN-D, Eureka, NV; K31LO-D, Eureka, NV;	)	LMS File No. 201165
K36KN-D, Eureka, NV; K25PP-D, Eureka, NV	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 24, 2023

Released: March 24, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Eureka County TV District (Licensee), for renewal of the licenses for K33PI-D, Eureka, Nevada; K22NG-D, Eureka, Nevada; K21GJ-D, Eureka, Nevada; K29NK-D, Eureka, Nevada; K15LU-D, Eureka, Nevada; K27NN-D, Eureka, Nevada; K31LO-D, Eureka, Nevada; K36KN-D, Eureka, Nevada; and K25PP-D, Eureka, Nevada (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (NAL), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of thirteen thousand five hundred dollars (\$13,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.⁴ However, the Licensee did not file the Application until September 29, 2022. The Licensee did not provide an explanation for the late filings.

¹ Application of Eureka County TV District for Renewal of License, LMS File No. 201165 (filed Sep. 29, 2022). K33PI-D, K22NG-D; K21GJ-D, K29NK-D, K15LU-D, K27NN-D, K31LO-D, K36KN-D, and K25PP-D are each digital television translators. In this case, as is permitted, the licensee filed for renewal of the of the licenses of the Stations in a single renewal application.

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); See *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$13,500. In this case, the Licensee failed to file the Application on or before June 1, 2022, as required by section 73.3539(a) of the Rules.⁵ The Application was not received until September 29, 2022, over three months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁰

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

6. In this case, the Licensee failed to timely file a license renewal application for nine (9) stations, as required by section 73.3539(a) of the Rules.¹³ The Licensee did not provide an explanation for the late filings. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁴ we will reduce the forfeiture from the base amount to \$1,500 per station for the failure to file a timely renewal application, because, as digital television translators, the Stations are providing a secondary service.¹⁵ Furthermore, as translators the Stations are not originating

⁵ 47 CFR § 73.3539(a).

⁶ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹² 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹³ 47 CFR § 73.3539(a).

¹⁴ *Supra* note 12.

¹⁵ See, e.g., *FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power* (continued....)

programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application includes nine (9) stations the total proposed forfeiture amount is \$13,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁶ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁸

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules¹⁹ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁰ Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²¹ and sections 1.80 and 0.283(d) of the Commission’s rules,²² that Eureka County TV District, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand five hundred dollars (\$13,500)** for its apparent willful violation of section 73.3539(a) of the Commission’s rules.²³

(Continued from previous page)

Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations.... Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 47 CFR § 73.3539(a).

²⁰ For example, we do not find here that the Licensee’s operation of the Stations “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 1.80 and 0.283.

²³ 47 CFR § 73.3539(a).

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁴ within thirty (30) days of the release date of this *NAL* Eureka County TV District **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

²⁴ 47 CFR § 1.80,

²⁵ Payments made using CORES do not require the submission of an FCC Form 159.

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.²⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁰

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.³¹

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Eureka County TV District, P.O. Box 633, Eureka, NV 89316. A copy shall also be sent to the Station's representative, Paden Hilyard, by electronic mail to fclicense@eaglecomelko.com.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³¹ 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
EUREKA COUNTY TV DISTRICT	)	Facility ID Nos.: 183871, 183873, 185329,
	)	185344, 185345, 185346, 185349, 185350
Licensee of Stations K26JY-D, Duckwater, NV;	)	NAL/Acct. No.: 202341420011
K19IM-D, Duckwater, NV; K17NV-D, Eureka,	)	FRN: 007744964
NV; K16IZ-D, Eureka, NV; K23LF-D, Eureka,	)	LMS File No. 201174
NV; K28LM-D, Eureka, NV; K35KM-D, Eureka,	)	
NV; K14OB-D, Eureka, NV	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 27, 2023

Released: March 27, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Eureka County TV District (Licensee), for renewal of the licenses for K26JY-D, Duckwater, Nevada; K19IM-D, Duckwater, Nevada; K17NV-D, Eureka, Nevada; K16IZ-D, Eureka, Nevada; K23LF-D, Eureka, Nevada; K28LM-D, Eureka, Nevada; K35KM-D, Eureka, Nevada; and K14OB-D, Eureka, Nevada (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.⁴ However, the Licensee did not file the Application until September 29, 2022. The Licensee did not provide an explanation for the late filings.

¹ Application of Eureka County TV District for Renewal of License, LMS File No. 201174 (filed Sep. 29, 2022). K26JY-D, K19IM-D, K17NV-D, K16IZ-D, K23LF-D, K28LM-D, K35KM-D, K14OB-D, are each digital television translators. In this case, as is permitted, the licensee filed for renewal of the of the licenses of the Stations in a single renewal application.

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); See *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$13,500. In this case, the Licensee failed to file the Application on or before June 1, 2022, as required by section 73.3539(a) of the Rules.⁵ The Application was not received until September 29, 2022, over three months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁰

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

6. In this case, the Licensee failed to timely file a license renewal application for eight (8) stations, as required by section 73.3539(a) of the Rules.¹³ The Licensee did not provide an explanation for the late filings. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁴ we will reduce the forfeiture from the base amount to \$1,500 per station for the failure to file a timely renewal application, because, as digital television translators, the Stations are providing a secondary service.¹⁵ Furthermore, as translators the Stations are not originating

⁵ 47 CFR § 73.3539(a).

⁶ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹² 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹³ 47 CFR § 73.3539(a).

¹⁴ *Supra* note 12.

¹⁵ See, e.g., *FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power* (continued....)

programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application includes eight (8) stations the total proposed forfeiture amount is \$12,000.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁶ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁸

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules¹⁹ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁰ Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²¹ and sections 1.80 and 0.283(d) of the Commission’s rules,²² that Eureka County TV District, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000)** for its apparent willful violation of section 73.3539(a) of the Commission’s rules.²³

(Continued from previous page)

Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations.... Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 47 CFR § 73.3539(a).

²⁰ For example, we do not find here that the Licensee’s operation of the Stations “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 1.80 and 0.283.

²³ 47 CFR § 73.3539(a).

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁴ within thirty (30) days of the release date of this *NAL* Eureka County TV District **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
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²⁴ 47 CFR § 1.80,

²⁵ Payments made using CORES do not require the submission of an FCC Form 159.

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

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12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.²⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

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 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁰

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.³¹

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Eureka County TV District, P.O. Box 633, Eureka, NV 89316. A copy shall also be sent to the Station's representative, Paden Hilyard, by electronic mail to fclicense@eaglecomelko.com.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³¹ 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

In the Matter of)
)
Amendment of Part 90 of the Commission's Rules) WP Docket No. 07-100
)

Released: March 24, 2023

2303

Telecommunications Council⁸ and the Industry Council for Emergency Response Technologies,⁹ respectively, filed in support of the extension request.

3. We grant a 14-day extension of the time to file comments and reply comments in this proceeding. It is the general policy of the Commission that extensions of time shall not be routinely granted.¹⁰ Based on the arguments presented by the filers in this proceeding, however, we conclude that a limited 14-day extension of the comment and reply comment deadlines is warranted to facilitate the development of a comprehensive record in this proceeding. Interested parties can use this time to develop complete, fully-supported comments and reply comments.

4. We do not, however, find that an extension of time beyond 14 days is warranted. The Commission released the *4.9 GHz Ninth FNPRM* on January 18, 2023.¹¹ Therefore, by the extended comment deadline, interested stakeholders will have had substantial time to review, and prepare responses to, the issues presented in the *4.9 GHz Ninth FNPRM*. The Petitioners do not allege specific challenges that warrant an additional extension of time and, as PSSA notes, will be able to supplement the record as appropriate once the comment period has closed.

5. 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, 0.331, 0.392, and 1.46 of the Commission's rules, 47 CFR §§ 0.204, 0.331, 0.392, 1.46, the Motion for Extension of Time filed by American Petroleum Institute, American Association of State Highway and Transportation Officials, Enterprise Wireless Alliance, Forestry Conservation Communications Association, International Municipal Signal Association, National Sheriffs' Association, and Utilities Technology Council on January 18, 2023 **IS GRANTED IN PART** to the extent described herein.

6. **IT IS FURTHER ORDERED** that the date for filing comments on the *4.9 GHz Ninth FNPRM* **IS EXTENDED** to April 13, 2023, and the date for filing reply comments on the *4.9 GHz Ninth FNPRM* **IS EXTENDED** to May 15, 2023.

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau

Joel Taubenblatt
Acting Chief
Wireless Telecommunications Bureau

⁸ Letter from Ralph Haller, Chairman, National Public Safety Telecommunications Council, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Mar. 16, 2023).

⁹ Letter from George Kelemen, Executive Director, The Industry Council for Emergency Response Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (filed Mar. 17, 2023).

¹⁰ 47 CFR § 1.46(a).

¹¹ See *4.9 GHz Ninth FNPRM*.



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 23-258
Released: March 27, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-41

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

Domestic Section 214 Application Filed for the Transfer of Control of
FiberComm, L.C. to ImOn Communications, LLC,
WC Docket No. 23-41, Public Notice, DA 23-150 (WCB 2023).

Effective Grant Date: March 27, 2023

For further information, please contact Myrva Charles at (202) 418-1506 or Megan Danner at (202) 418-1151, 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 Street NE
Washington, DC 20554

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

DA 23-259

Released: March 27, 2023

**COMMENT SOUGHT ON CONTINUED FILING OF ALASKA PLAN FCC FORM 477
MOBILE DEPLOYMENT DATA; WAIVER OF INTERIM PR-USVI MOBILE
MILESTONE FILING AND INFORMATION PROVIDED FOR FINAL MILESTONE
FILING**

WC Docket No. 16-271
WC Docket No. 18-143
WC Docket No. 19-195

Comments Due: 15 days after publication in the Federal Register

Reply Comments Due: 25 days after publication in the Federal Register

1. In this Public Notice, the Wireless Telecommunications Bureau (WTB) and Office of Economics and Analytics (OEA) seek comment on the process to continue the filing of mobile deployment data consistent with previous FCC Form 477 filings for mobile participants of the Alaska Plan. This Public Notice also provides information from the Wireline Competition Bureau (WCB) for mobile recipients of the Bringing Puerto Rico Together Fund and Connect USVI Fund to file their FCC Form 477 network coverage data as part of their final milestone requirement. In addition, WCB waives the data reporting requirement for the interim milestone for mobile recipients of the Bringing Puerto Rico Together Fund and the Connect USVI Fund.

2. In 2022, the Commission instituted the Broadband Data Collection (BDC), which required the filing of mobile deployment data similar to that collected through FCC Form 477, though with significant differences.¹ The specified requirements of the BDC² can lead to different coverage area data than what mobile providers submitted pursuant to FCC Form 477.³

¹ See generally *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, FCC 22-93 (rel. Dec. 9, 2022) (*Form 477 Sunset Order*) (discussing the effort to replace Form 477 deployment data with Broadband Data Collection data).

² See Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data at 49-71 (Feb. 7, 2023), <https://us-fcc.app.box.com/v/bdc-availability-spec>.

³ For example, under FCC Form 477 rules, for broadband deployment data, facilities-based providers of mobile wireless were required to submit polygons indicating the minimum advertised upstream and downstream data speeds associated with that polygon, where the boundaries of that polygon represented the coverage area where users should expect to receive those advertised speeds (or, if the provider did not advertise such speeds, the minimum upload and download data speeds that users would expect to receive within the polygon). FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022 at 24-25, <https://us-fcc.app.box.com/v/Form477InstThruJune2022>. FCC Form 477 did not prescribe the variables for providers'

(continued....)

3. On December 9, 2022, as a further step in implementing the BDC, the Commission adopted an order—*Form 477 Sunset Order*—sunsetting the collection of broadband and mobile voice deployment data through FCC Form 477.⁴ The Commission recognized, however, that it currently relies upon information from its FCC Form 477 data collection in other contexts, including, among other things, to assess the deployment of broadband services.⁵ Accordingly, the *Form 477 Sunset Order* (1) delegated authority to WTB and OEA to instruct mobile participants of the Alaska Plan how to submit coverage data specific to Alaska after sunsetting FCC Form 477 deployment data, and (2) delegated authority to WCB to instruct mobile providers that participate in either the Bringing Puerto Rico Together Fund or the Connect USVI Fund on how to submit coverage data for Puerto Rico and USVI, respectively.⁶

A. Alaska Plan

4. WTB and OEA propose to require mobile participants in the Alaska Plan to file deployment data consistent with FCC Form 477 and seek comment on this proposal. The *Alaska Plan Order*⁷ required mobile provider participants of the Alaska Plan to submit performance plans in 2016, with commitments due in 2021 and 2026.⁸ These original performance plans⁹ and any revised plans approved by WTB¹⁰ were based on mobile coverage consistent with the FCC Form 477 requirements.¹¹

(Continued from previous page)

propagation models used to create the deployment files. See FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022 at 24-25, 31, <https://us-fcc.app.box.com/v/Form477InstThruJune2022>; FCC Form 477, Instructions For Filings Through June 30, 2019 at 23-24, 30, <https://us-fcc.app.box.com/v/Form477InstThruJune19>; see also Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data at 49-71 (Feb. 7, 2023), <https://us-fcc.app.box.com/v/bdc-availability-spec>. By contrast, the BDC is much more prescriptive regarding what factors must be included in the mobile providers' propagation modeling, including requiring maps that represent specific speeds. For example, for 4G LTE, the BDC requires mobile broadband service providers to submit deployment data that represent coverage where mobile wireless users should expect to receive minimum user speeds of 5/1 Mbps at the cell edge, with a cell edge probability of not less than 90% and a cell loading of not less than 50%. See, e.g., *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, 7479, para. 44 (2020) (*BDC Second Report and Order and Third Further Notice*).

⁴ *Form 477 Sunset Order*, FCC 22-93. The *Order* became effective December 16, 2022, the date of publication in the Federal Register. Federal Communications Commission, *Establishing the Digital Opportunity Data Collection, Modernizing the Form 477 Data Collection*, 87 Fed. Reg. 76949 (Dec. 16, 2022).

⁵ *Form 477 Sunset Order* at 6, para. 14.

⁶ *Form 477 Sunset Order* at 6, para. 14 (“We delegate authority and direct the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA) to provide instructions to mobile providers that participate in the Alaska Plan on how to submit coverage data after the sunsetting of the Form 477 broadband deployment data collection, including whether to use the BDC filing system for submission of data currently submitted using the Form 477 filing system that are specific to Alaska. We delegate authority and direct the Wireline Competition Bureau (WCB) to provide instructions to providers that participate in either the Bringing Puerto Rico Together Fund or the Connect USVI Fund on how to submit coverage data that are specific to Puerto Rico and the U.S. Virgin Islands to comply with the requirements of those funding mechanisms.”).

⁷ *Connect America Fund et al.*, WC Docket Nos. 10-90, 16-271, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*).

⁸ *Alaska Plan Order*, 31 FCC Rcd at 10166, para. 85.

⁹ See *Wireless Telecommunications Bureau Approves Performance Plans of the Eight Wireless Providers That Elected to Participate in the Alaska Plan*, WC Docket No. 16-271, Public Notice, 31 FCC Rcd 13317, Appx. (WTB 2016) (*Wireless Commitments Notice*) (accepting the eight mobile-provider participants' original performance plans).

¹⁰ See *Wireless Telecommunications Bureau Approves GCI's Revised Performance Plan Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 9539, 9539-41, Appx. (WTB 2020) (accepting
(continued....))

The propagation models and the speeds in these approved performance plans often do not align with BDC requirements.¹² Continued filing of deployment data under the previous FCC Form 477 instructions will allow for like comparisons to the previous deployment data on which Alaska Plan mobile providers based their commitments. WTB and OEA believe such data are, therefore, essential for understanding whether providers met their commitments.

5. WTB and OEA propose that all mobile participants in the Alaska Plan file deployment data consistent with FCC Form 477 instructions, as specified in the Appendix, below.¹³ Mobile Alaska Plan participants would file these deployment data annually until March 1, 2028. These data will allow like comparisons to continue throughout the ten-year Alaska Plan, with an additional year of data after the final commitment. The data would be submitted through the BDC special collections portal, consistent with the data specification provided in the Appendix. For the first year, data representing December 2022 would be due by June 30, 2023. Subsequently, the FCC Form 477-based data would be due March 1 of each year. WTB and OEA seek comment on this proposal.

B. Bringing Puerto Rico Together Fund and the Connect USVI Fund

6. WCB requires Stage 2 mobile recipients of the Bringing Puerto Rico Fund and the Connect USVI Fund to file FCC Form 477 network deployment data for their final 100% network coverage area data submission in the BDC special collections portal. WCB also waives, on its own motion, the requirement for mobile providers receiving support to submit interim milestone reports demonstrating 66% mobile network coverage area.

7. In 2017, Hurricanes Irma and Maria caused massive devastation to Puerto Rico and the United States Virgin Islands (USVI). In response, the Commission created the Bringing Puerto Rico Together Fund and the Connect USVI Fund. As part of Stage 2 of those Funds, the Commission has authorized approximately \$385.9 million in universal service support to facilitate and harden deployment of advanced broadband networks. More than \$250 million of this funding was dedicated to mobile broadband restoration, hardening, and improvement over a three-year period.¹⁴ Specifically as to mobile support recipients, the Commission required, as a condition of support, that providers meet interim and final network coverage area milestones.¹⁵ At the end of the three-year term of support, each mobile support recipient must have restored its mobile network coverage to an area that is equal to or greater than 100% of the pre-hurricane network coverage area when compared with its June 2017 FCC Form 477 coverage data.¹⁶

(Continued from previous page)

GCI's current performance plan, which uses 2016 FCC Form 477 technology codes); *Wireless Telecommunications Bureau Approves ASTAC's and GCI's Revised Performance Plans Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 34 FCC Rcd 12183, 12184, 12186, Appx. (WTB 2019) (accepting ASTAC's current performance plan, which uses 2016 FCC Form 477 technology codes). WTB must accept proposed performance plans for them to be operative. 47 CFR § 54.317(f).

¹¹ See, e.g., *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103 (requiring use of FCC Form 477 for evaluation of commitments); *Wireless Commitments Notice*, 31 FCC Rcd at Appx. (providing technology commitments using 2016 FCC Form 477 technology codes).

¹² The *BDC Second Report and Order and Third Further Notice* carved out an exception for Alaska Plan filers to file 4G LTE at speeds other than 5/1 Mbps, consistent with their commitments. *BDC Second Report and Order and Third Further Notice*, 35 FCC Rcd at 7479, n.120.

¹³ See Appendix, *infra*; see also Instructions For Filings Through June 30, 2019 at 23-24, 26, 30, <https://us-fcc.app.box.com/v/Form477InstThruJune19>. WTB would not collect coverage polygons by frequency band.

¹⁴ *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143, 10-90, Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9110, paras. 1-3 (2019) (*2019 PR USVI Order*).

¹⁵ 47 CFR § 54.1513(b); *2019 PR USVI Order*, 34 FCC Rcd at 9172-74, paras. 126-30.

¹⁶ 47 CFR §§ 54.1509(c), 54.1510.

8. In the *2019 PR USVI Order*, the Commission provided that the filing of coverage data pursuant to FCC Form 477 instructions is essential for like comparisons to assess whether providers fulfilled this requirement.¹⁷ The Commission required PR/USVI Fund mobile recipients to file FCC Form 477 network deployment data for their final 100% network coverage area data submission. The deadline for mobile providers to file their final 100% network coverage area data submission is January 30, 2024.¹⁸ As directed by the Commission, the final network coverage area report would be based on FCC Form 477 data and shall reflect the network coverage area for a provider as of the end of its three-year Stage 2 support term.¹⁹ Providers shall file consistent with previous FCC Form 477 instructions, submitting through the BDC special collections portal utilizing the data specifications in the Appendix below.

9. While WCB is committed to ensuring the full restoration of mobile networks to their pre-hurricane coverage areas, we take this opportunity to waive, on our own motion, the interim milestone report for mobile providers receiving support to demonstrate 66% mobile network coverage area for the Bringing Puerto Rico Together Fund and the Connect USVI Fund.²⁰ WCB finds this waiver for the filing of the network coverage report to be warranted and in the public interest based on the Commission's receipt of FCC Form 477 reporting data, which were submitted and certified by mobile providers subject to the interim milestone report.²¹ An analysis comparing FCC Form 477 data for June 2017 and subsequent filing periods from Puerto Rico and USVI mobile providers verified that each provider has restored more than 66% of its network coverage area that existed prior to the 2017 hurricanes, thus meeting the interim milestone under section 54.1514(a) of the Commission's rules. WCB concludes that limiting the burden on providers and not requiring them to expend their resources to resubmit FCC Form 477 data already in the Commission's possession is in the public interest.

10. While WCB finds a waiver of the 66% interim milestone report is warranted, WCB maintains the Commission's requirement for ensuring mobile providers meet their network performance commitments and their final 100% network coverage area milestone reports and certifications.²² In a separate public notice, WCB and OEA will provide instructions regarding the reporting of drive, drone,

¹⁷ 2019 *PR USVI Order*, 34 FCC Rcd at 9173, para. 128. As with Alaska Plan participants, polygons would not need to be submitted by frequency band. See *Instructions For Filings Through June 30, 2019* at 23-24, 26, 30, <https://us-fcc.app.box.com/v/Form477InstThruJune19>.

¹⁸ 47 CFR § 54.1514(a).

¹⁹ The end of each mobile recipient's three-year support term will vary and is calculated based on the date it was authorized to receive high-cost mobile support. *Wireline Competition Bureau Authorizes Stage 2 Mobile Support for Certain Providers Participating in the Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143, 10-90, Public Notice, 35 FCC Rcd 6321, 6324, Attach. A (WCB 2020) (starting the support period in June 2020 for AT&T, PRTC, and T-Mobile in Puerto Rico, and AT&T in the U.S. Virgin Islands); *Wireline Competition Bureau Authorizes Stage 2 Mobile Support for T-Mobile in Puerto Rico*, WC Docket Nos. 18-143, 10-90, Public Notice, 35 FCC Rcd 10303, 10305, Attach. A (WCB 2020) (authorizing additional mobile support in September 2020 for T-Mobile based on its acquisition of PR Wireless PR, LLC); *Wireline Competition Bureau Authorizes Stage 2 Mobile Support for Viya in the U.S. Virgin Islands*, WC Docket Nos. 18-143, 10-90, Public Notice, 35 FCC Rcd 11555, 11557, Attach. A (WCB 2020) (starting the support period in October 2020 for Viya).

²⁰ The deadline for carriers to file the 66% milestone report, which WCB waives here, would have been March 31, 2023. *Wireline Competition Bureau Announces Revised Filing Deadline of March 31, 2023 for Bringing Puerto Rico Together Fund and the Connect USVI Fund Stage 2 Mobile Coverage*, WC Docket Nos. 18-43, 10-90, Public Notice, DA 23-64 (WCB Jan. 24, 2023).

²¹ WCB reviewed FCC Form 477 network coverage data for multiple filing periods: June 2021, December 2021, and June 2022.

²² 47 CFR § 54.1514(a)-(c).

and/or scattered site test data for network coverage and reporting of network performance as part of the final 100% milestone report.²³

11. *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.²⁴ 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.

12. *Filing of Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.²⁵ Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).²⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

²³ 47 CFR § 54.1514(a)-(b).

²⁴ 47 CFR §§ 1.1200 *et seq.*

²⁵ 47 CFR §§ 1.415, 1.419.

²⁶ See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.²⁷
- Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments.

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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

14. *Additional Information.* For additional information on this proceeding, contact Matthew Warner of the Wireless Telecommunications Bureau, Competition and Infrastructure Policy Division, matthew.warner@fcc.gov, (202) 418-0247; Dangkhwa Nguyen, Wireline Competition Bureau, Telecommunications Access Policy Division, dangkhwa.nguyen@fcc.gov, (202) 418-7865.

- FCC -

²⁷ 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>.

APPENDIX

Data Specification

Field	Data Type	Example	Description / Notes
brandname	String	Acme Wireless	Name of the entity or service advertised or offered to consumers.
technology	Integer	400	Code for the technology used for the deployed service. ²⁸ - <i>Value must be one of the following codes:</i> 200 – 2G 300 – 3G 400 – 4G LTE 500 – 5G-NR
mindown	Decimal (5,3)	10.0	The minimum advertised downstream bandwidth, or the downstream speed users should expect to receive in the coverage area, in Mbps with a precision of three decimal digits. ²⁹ - <i>Value must be greater than or equal to 0.</i>
minup	Decimal (5,3)	1.0	The minimum advertised upstream bandwidth, or the upstream speed users should expect to receive in the coverage area, in Mbps with a precision of three decimal digits. - <i>Value must be greater than or equal to 0.</i>

²⁸ For commitments made using technology codes of FCC Form 477, for technology codes 85 (CDMA) and 86 (GSM), enter them as 200 (2G); for 80 (WCDMA/UMTS/HSPA), 81 (HSPA+), and 82 (EVDO/EVDO Rev A), enter them as 300 (3G); for 83 (LTE), enter as 400 (4G).

²⁹ For voice-only commitments, enter 0 for the minimum speeds. For commitments below 1 Mbps, enter 0 before decimal (e.g., for 256 kbps commitment, enter “0.256”). The data associated with each polygon should indicate the minimum advertised upload and download data speeds associated with that network technology (in Mbps, with a maximum of 3 decimal places), and the coverage area polygon should depict the boundaries where, according to providers, users should expect to receive those *advertised speeds*. If a provider advertises different minimum upload and download speeds in different areas of the country using the same technology (e.g., HSPA+), then the provider should submit separate polygons showing the coverage area for each speed. A variation in technology or speed would require the submission of a separate polygon. If a provider does not advertise the minimum upload and/or download data speeds, the provider must indicate the minimum upload/download data speeds that users should expect to receive within the polygon depicting the geographic coverage area of the deployed technology. See Instructions For Filings Through June 30, 2019 at 23-24, <https://us-fcc.app.box.com/v/Form477InstThruJune19>.



Federal Communications Commission
Washington, D.C. 20554

March 28, 2023

DA 23-260

In Reply Refer To:

1800B3-ARR

Released: March 28, 2023

New Media Humanity Association Inc.
c/o Endre Kovacs
3211 Polo Place
Plant City, FL 33567
(sent by electronic email to: kovacsradio@gmail.com)

Central Baptist Church of Ocala Inc.
c/o James E. Price, III
P.O. Box 1877
LaFayette, GA 30728
(sent by electronic email to: sterlingjamesp@gmail.com)

Call Communications Group, Inc.
c/o Robert Robbins
20808 SW 83rd Ave
Cutler Bay, FL 33189
(sent by electronic email to: radiodataservices@radiodataservices.com)

Ethree Group, Inc.
c/o Charles Keiler
271 NW 53 Court
Deerfield Beach, FL 33064
(sent by electronic email to: ckeiler@ethree.us)

In re: **NCE MX Group 54**

**New Media Humanity Association
Inc.**

New NCE (FM), Weeki Wachee,
Florida
Facility ID No. 768183
Application File No. 0000166731

Central Baptist Church of Ocala Inc.

New NCE (FM), Weeki Wachee,
Florida
Facility ID No. 762579
Application File No. 0000166338

Call Communications Group, Inc.
New NCE (FM), Weeki Wachee,
Florida
Facility ID No. 768626
Application File No. 0000167753

Ethree Group, Inc.
New NCE (FM), Weeki Wachee,
Florida
Facility ID No. 768712
Application File No. 0000167131

Petition to Deny

Dear Applicants:

We have before us four mutually exclusive (MX) applications filed by Call Communications Group, Inc. (CCGI), Ethree Group, Inc. (EGI), New Media Humanity Association Inc. (NMHA), and Central Baptist Church of Ocala Inc. (CBCO) for construction permits for new noncommercial educational (NCE) FM stations in Weeki Wachee, Florida, which the Media Bureau (Bureau) designated as NCE MX Group 54.¹ The Commission identified the NMHA Application as the tentative selectee of the group.² We also have before us a Petition to Deny the NMHA Application³ filed by CCGI. For the reasons set forth below, we grant in part and deny in part the Petition, grant the NMHA Application, and dismiss the CCGI, EGI, and CBCO⁴ Applications.⁵

¹ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Education Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021); *see also* Application File Nos. 0000166731 (NMHA Application); 0000166338 (CBCO Application); 0000167753 (CCGI Application); and 0000167131 (EGI Application).

² *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-5, at 12-13, paras. 39-41 (Jan. 24, 2023) (*Third Comparative Order*).

³ *See* Petition, Pleading File No. 0000210915 (filed Feb. 16, 2023) (Petition). NMHA did not file an opposition to the Petition.

⁴ CCGI also filed an Informal Objection to the CBCO Application. Pleading File No. 0000178411 (filed Jan. 3, 2022). It is the Bureau's well-settled policy to not consider petitions to deny or informal objections filed against non-tentative selectees. *See Centro Familiar de Restauracion y Vida*, Letter Order, DA 22-771 (MB 2022). Moreover, the Informal Objection raised the same issues with the CBCO Application that were raised in the Petition. Accordingly, we will not consider this pleading and dismiss it.

⁵ In the *Third Comparative Order*, the Commission directed Bureau staff to "consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest." *Third Comparative Order* at 26, para. 108. The Commission delegated authority to the Bureau staff "to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies." *Id.* at 26, para. 108.

Background. The subject applications were filed during the November 2021, NCE FM filing window.⁶ In the *Third Comparative Order*,⁷ the Commission determined that because all four applications proposed to serve the same community, they would proceed to a point system analysis.⁸ No applicant claimed points as an established local applicant, and the Commission determined that each applicant was eligible for two diversity of ownership points.⁹ The Commission further determined that no applicant was entitled to a point under the best technical proposal criterion because no applicant proposed to serve at least 10% more area and population than the next best proposal.¹⁰ The applicants thus proceeded to a tie-breaker analysis.¹¹ CCGI and CBCO were eliminated under the first tie-breaker, and NMHA prevailed over EGI under the second tie-breaker.¹² Thus, the Commission ultimately identified NMHA as the tentative selectee of NCE MX Group 54.¹³

In the Petition, CCGI argues that the Group 54 comparative analysis was based on inaccurate information due to CBCO's improper inclusion of significant areas of water in its new coverage area calculation.¹⁴ Specifically, CCGI demonstrates that the coverage area claimed by CBCO is approximately 715.7 square kilometers, or 32% less than the 944.8 square kilometers it originally claimed.¹⁵ CCGI asserts that excluding the CBCO Application, CCGI is eligible for one point under best technical proposal because it would serve 10% more area and population than the next best application, that of NMHA, and thus CCGI should be the new tentative selectee.¹⁶

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended,¹⁷ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹⁸

Neither NMHA nor CBCO refutes CCGI's claims that CBCO erroneously calculated the new area that its proposal would serve, and the Bureau staff has independently verified that the CBCO Application incorrectly included significant areas of water in its calculation. Therefore, we grant the

⁶ *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

⁷ *Third Comparative Order* at 12-13, paras. 39-41.

⁸ *Id.* at 12, para. 39.

⁹ *Id.* at 12, para. 40.

¹⁰ *Id.*

¹¹ *Id.* at 12, para. 40.

¹² *Id.* at 12-13, para. 41.

¹³ *Id.*

¹⁴ Petition at 1-2 and attached map.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ 47 U.S.C. § 309(d).

¹⁸ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

Petition in part. Accepting CCGI's calculation, however, does not automatically render the CCGI application the new tentative selectee as CCGI proposes. CCGI incorrectly suggests that CBCO should be excluded altogether from the best technical proposal calculation. Rather, we will reanalyze the applicants' technical proposals using the revised figures CCGI provided.¹⁹

As noted in the *Third Comparative Order*, CCGI's proposed 60 dBu contour would encompass 847 square kilometers with a population of 110,411; EGI's proposed 60 dBu contour would encompass 693 square kilometers with a population of 88,689; and NMHA's proposed 60 dBu contour would encompass 668 square kilometers with a population of 97,594.²⁰ Using CCGI's calculations, CBCO's proposed 60 dBu contour would encompass 715.7 square kilometers with a population of 105,470. Thus, accepting CCGI's undisputed claim that CBCO's actual coverage area is 715.7 square kilometers, there is still no applicant eligible for points under the best technical proposal criterion because no applicant proposes to serve at least 10% more area *and* population than the next best proposal. CCGI does not challenge any other points calculation. Accordingly, the points total has not changed. Because NMHA still has the highest point total, it remains the tentative selectee, and we need not refer this group to the Commission to conduct a new point system analysis.²¹ Therefore, we deny in part the Petition to the extent it seeks to have CCGI declared the new tentative selectee of NCE MX Group 54.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Petition to Deny filed by Call Communications Group, Inc., on February 16, 2023 (Pleading File No. 0000210915), **IS GRANTED IN PART AND DENIED IN PART**, and the Informal Objection filed by Call Communications Group, Inc., on January 3, 2022 (Pleading File No. 0000178411) **IS DISMISSED**.

IT IS FURTHER ORDERED that the Application filed by New Media Humanity Association Inc. (File No. 0000166731) for a construction permit for a new NCE FM station in Weeki Wachee, Florida **IS GRANTED CONDITIONED UPON** that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions, and **PROVIDED THAT**, New Media Humanity Association Inc. must surrender or otherwise divest itself of its license for WYPW-LP, Brandon, Florida, prior to commencement of program tests of the full service NCE FM station.

¹⁹ See, e.g., *Comparative Consideration of 18 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 26 FCC Rcd 803, 809, para. 16 (2011) (using objector's population figures where it claims a competing applicant's application had incorrect area figures because it erroneously included large area of water and applicant did not provide corrected figures).

²⁰ *Third Comparative Order* at 12, para. 40.

²¹ *Third Comparative Order* at 26, para. 108 ("We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies."). See also *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6162, n.230 (2007) ("If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau's delegated authority." (citations omitted)).

IT IS FURTHER ORDERED that the mutually exclusive application of Ethree Group, Inc. (Application File No. 0000167131) **IS DISMISSED**.

IT IS FURTHER ORDERED that the mutually exclusive application of Call Communications Group, Inc. (Application File No. 0000167753) **IS DISMISSED**.

IT IS FURTHER ORDERED that the mutually exclusive application of Central Baptist Church of Ocala Inc. (Application File No. 0000166338) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of	)	
	)	
CenturyLink Communications, LLC, as the	)	Proceeding No. 22-172
successor to Qwest Communications Corporation,	)	Bureau ID No. EB-22-MD-002
Level 3 Communications, LLC, WilTel	)	
Communications, LLC, and Global Crossing	)	
Telecommunications, Inc.,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Peerless Network, Inc.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 28, 2023

Released: March 28, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. This Memorandum Opinion and Order resolves a formal complaint filed by interexchange carrier (IXC) CenturyLink Communications, LLC, as the successor to Qwest Communications Corporation (Qwest), Level 3 Communications, LLC (Level 3), WilTel Communications, LLC (WilTel), and Global Crossing Telecommunications, Inc. (Global Crossing) (collectively, CenturyLink) against Peerless Network, Inc. (Peerless), a competitive local exchange carrier (LEC).¹ CenturyLink alleges that Peerless violated sections 201(b) and 203 of the Communications Act of 1934, as amended (the Act), by improperly billing access charges on over-the-top Voice over Internet Protocol (VoIP) traffic.² Specifically, CenturyLink objects to Peerless's imposition of end office charges, arguing that Peerless does not provide the "functional equivalent" of end office switching services and, therefore, cannot bill the charges under its Tariff FCC No. 4.³ CenturyLink similarly contends that

¹ Formal Complaint of CenturyLink, LLC, as the successor to Qwest Communications Corporation, Level 3 Communications, LLC, WilTel Communications, LLC, and Global Crossing Telecommunications, Inc., Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed July 8, 2022) (Complaint). CenturyLink filed the Complaint to effectuate a primary jurisdiction referral from the United States District Court for the Northern District of Illinois. Complaint, Exh. C, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114, Memorandum Opinion and Order (N.D. Ill. Mar. 1, 2022) (*Referral Order*); Complaint, Exh. A, Joint Stipulations of Facts, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed July 8, 2022) (Joint Stipulations) at 2, Stipulated Fact No. 8.

² 47 U.S.C. §§ 201(b), 203. Sections 201(b) and 203(c) prohibit telecommunications carriers from engaging in unjust and unreasonable practices and from assessing charges in violation of their tariffs, respectively.

³ Complaint, Exh. D, Peerless Network, LLC FCC Tariff No. 4 (Tariff).

Peerless cannot assess tandem charges “in lieu of” end office charges, because it lacks Tariff authority to do so. In response, Peerless maintains that the Commission’s rules and its Tariff allow it to bill the disputed charges. For the reasons explained below, we agree with CenturyLink and find that Peerless billed CenturyLink for services not covered by its Tariff.

II. BACKGROUND

A. The Parties

2. The CenturyLink entities are Qwest, Level 3, WilTel, and Global Crossing, which all offer various telecommunications services nationally.⁴ For purposes of this proceeding, CenturyLink is an IXC—also known as a long-distance carrier—that purchases interstate switched access services.⁵ Peerless is a competitive LEC that provides interstate switched access services to CenturyLink for long-distance calls.⁶

B. Intercarrier Compensation for VoIP Traffic

3. VoIP-PSTN traffic is traffic that originates or terminates in Internet Protocol (IP) format, but is also exchanged over public switched telephone network (PSTN) facilities.⁷ The Commission’s “VoIP Symmetry Rule” permits a LEC to assess switched access charges for VoIP-PSTN traffic where the LEC or its VoIP partner provides services that are “functionally equivalent” to traditional access services performed in Time Division Multiplexing (TDM) format regardless of the technology used to perform the functions for which it charges.⁸ The LEC or its VoIP partner can only assess charges for services actually performed.⁹ The Commission adopted the VoIP Symmetry Rule in 2011, as part of its comprehensive intercarrier compensation reform.¹⁰ In 2015, the Commission adopted a declaratory ruling

⁴ Joint Stipulations at 1, Stipulated Fact Nos. 1-4. Qwest is a wholly owned subsidiary of Lumen Technologies, Inc. (Lumen), formerly known as CenturyLink, Inc. Level 3 is an indirect subsidiary of Lumen. WilTel is a wholly owned subsidiary, and Global Crossing is an indirect subsidiary, of Level 3. *Id.*

⁵ Joint Stipulations at 2, Stipulated Fact No. 5. *See also* Legal Analysis in Support of Formal Complaint, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed July 8, 2022) (Complaint Legal Analysis) at 2 (describing the Complaint as concerning charges that Peerless assessed on CenturyLink, “an IXC”).

⁶ Joint Stipulations at 2, Stipulated Fact No. 5.

⁷ *See Connect America Fund, et al., Order on Remand and Declaratory Ruling*, 34 FCC Rcd 12692, 12692, para. 2 (2019) (*2019 VoIP Symmetry Declaratory Ruling*). “PSTN,” as used in the Commission’s VoIP traffic intercarrier compensation rules, “refers to the exchange of traffic between carriers in (Time Division Multiplexing) TDM format.” *See Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 18006, n.1891 (2011) (*USF/ICC Transformation Order*), *pets. for review denied, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050 and 135 S. Ct. 2072 (2015).

⁸ 47 CFR § 51.913(b) (permitting a LEC to assess access charges regardless of whether the LEC delivers a call to the called party’s premises via contractual or other arrangements with an affiliated or unaffiliated VoIP service provider). *See USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970; *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12964, para. 8.

⁹ 47 CFR § 51.913(b). *See USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970 (clarifying that “our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner”), n.2028 (noting that, “although access services might functionally be accomplished in different ways depending upon the network technology,” a LEC’s right to charge is limited to the functions performed by “it or its retail VoIP service provider partner”).

¹⁰ The Commission determined that the intercarrier compensation system should move to a default bill-and-keep approach, and provided a transitional path to that end state for most terminating traffic. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34. When extending the traditional intercarrier compensation regime to VoIP-PSTN traffic, the Commission explained that “transitional VoIP-PSTN intercarrier compensation rules focus . . . on whether the exchange of traffic between a LEC and another carrier occurs in TDM format (and

(continued....)

that construed the VoIP Symmetry Rule to allow over-the-top (OTT)-VoIP – LEC partnerships to bill for the functional equivalent of end office switching regardless of whether the LEC or its OTT-VoIP partners physically connect to the last-mile facilities used to serve an end user.¹¹ After the D.C. Circuit vacated and remanded the *2015 Declaratory Ruling*,¹² the Commission issued the *2019 VoIP Symmetry Declaratory Ruling* and concluded that a LEC-VoIP partnership provides the functional equivalent of end office switched access *only if* the LEC or its VoIP provider partner provides a physical connection to last-mile facilities used to serve an end user.¹³ The Commission concluded that the *2019 VoIP Symmetry Declaratory Ruling* had retroactive effect.¹⁴

4. OTT-VoIP is a type of VoIP traffic.¹⁵ Specifically, OTT-VoIP traffic is routed to or from an end user “over the top” of a broadband connection provided by a third-party not affiliated with the LEC or its VoIP partners.¹⁶ Thus, unlike a facilities-based VoIP provider, an OTT-VoIP provider does not provide the physical connection to the last-mile facilities to serve an end user.¹⁷ The physical connection to the last-mile facilities used to serve an end user is the key characteristic of end office switching.¹⁸ Absent this physical connection, a VoIP-LEC partnership is not performing the functional equivalent of end office switching.¹⁹ Thus, LECs are not permitted to tariff or assess end office switched access charges for OTT-VoIP traffic.²⁰

C. Peerless’s Tariff

5. Peerless billed CenturyLink under its Tariff for what it contends is “End Office Switching.”²¹ The Tariff describes “End Office Switching” as a “rate categor[y]” that applies to

(Continued from previous page) —————
not in IP format), without specifying the technology used to perform the functions subject to the associated intercarrier compensation charges.” *Id.* at 18025, para. 969. *See also 2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12694, para. 7. Prior to doing so, the Commission had not addressed intercarrier compensation obligations, including the ability to tariff charges, for VoIP traffic. *See Connect America Fund, et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4754-46, paras. 608-10 (2011).

¹¹ *Connect America Fund et al.*, Declaratory Ruling, 30 FCC Rcd 1587 (2015) (*2015 Declaratory Ruling*), vacated and remanded sub nom. *AT&T Corp. v. FCC*, 841 F.3d 1047 (D.C. Cir. 2016) (*Remand Decision*).

¹² *See Remand Decision*, 841 F.3d at 1056.

¹³ *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12697-99, paras. 14-19.

¹⁴ *Id.* at 12702, para. 26.

¹⁵ *See id.* at 12692, para. 2, 12702, para. 24.

¹⁶ *See 2015 Declaratory Ruling*, 30 FCC Rcd at 1588, para. 2 (distinguishing between facilities-based providers and over-the-top providers), 1592, n.35 (“In 2005, the Commission . . . ‘found it useful to divide VoIP providers into two general types: (1) facilities-based VoIP providers and (2) ‘over-the-top’ VoIP providers.’ Facilities-based VoIP providers, ‘including certain cable VoIP providers,’ are providers that ‘own and control the last mile facility’ and ‘may own or lease the switching and transmission networks that are used to carry VoIP calls.’ The other type of VoIP providers, called ‘over-the-top’ VoIP providers, include ‘providers that require the end user to obtain broadband transmission from a third-party provider, and such VoIP providers can vary in terms of the extent to which they rely on their own facilities.’”) (citations omitted).

¹⁷ *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12702, para. 24.

¹⁸ *Id.* at 12697-98, paras. 14-17.

¹⁹ *Id.*

²⁰ *See id.* at 12693, para. 4, 12702, para. 24.

²¹ *See Joint Stipulations at 2, 6, 8, Stipulated Fact Nos. 6, 25, 30-32. See also Complaint at 80, paras. 225-26; Complaint, Exh. D, Tariff.*

“Switched Access Service” and that “provides the local end office switching functions necessary to complete the transmission of Switched Access communications to and from the end users served by the local end office and the Customer.”²²

6. Peerless also billed CenturyLink under its Tariff for “Tandem Switching and Transport” access charges “in lieu of” End Office Switching charges.²³ The Tariff defines “Tandem Switching and Transport” as a “rate categor[y]” that applies to “Switched Access Service” and that “provides for the use of the Company’s tandem switches.”²⁴ In particular, “Tandem-Switched Transport provides Switched Transport that is switched through a tandem switch, between the customer’s serving wire center and the end offices subtending the tandem” and “is also available between an access tandem and end offices subtending the tandem.”²⁵

D. The Parties’ Dispute

7. On May 1, 2018, CenturyLink sued Peerless in the U.S. District Court for the Northern District of Illinois (Court), alleging that Peerless unlawfully assessed end office and tandem access charges for OTT-VoIP traffic.²⁶ CenturyLink later filed a motion requesting that, under the primary jurisdiction doctrine, the Court refer three issues to the Commission:

(1) what percentage of Peerless’s traffic is OTT-VoIP; (2) whether Peerless may assess tandem switching charges in lieu of end office charges on OTT-VoIP calls; and (3) whether Peerless’s [Tariff] can be interpreted to permit Peerless to assess tandem switching charges on OTT-VoIP calls.²⁷

On March 1, 2022, the Court granted CenturyLink’s motion,²⁸ and sought Commission guidance on those questions, which it deemed to “require the resolution of issues . . . within the [Commission’s] special competence.”²⁹

8. To effectuate the referral, and in accordance with section 1.739 of the Commission’s rules, CenturyLink filed the Complaint.³⁰ In short, the Complaint alleges that Peerless improperly billed

²² Tariff, p. 47, § 6.1.2(B). The Tariff appears to use “End Office Switching” and “End Office” interchangeably. *See id.* at pp. 47, 49, 52, §§ 6.1, 6.1.2, and 6.1.2(B).

²³ *See* Complaint at 5, paras. 11-12; 56-57, paras. 141-43. *See also* Peerless Network, Inc.’s Legal Analysis in Support of Its Request for Relief on the Court’s Referral Order, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed Aug. 8, 2022) (Answer Legal Analysis) at 54-60.

²⁴ Tariff, p. 52, § 6.1.2(C); Joint Stipulations at 6, Stipulated Fact No. 26.

²⁵ Tariff, p. 53, § 6.1.2(C)(1); Joint Stipulations at 6, Stipulated Fact No. 26.

²⁶ Joint Stipulations at 2, Stipulated Fact No. 7. *See* Complaint Exh. B, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. May 1, 2018) (Court Complaint).

²⁷ *See Referral Order* at 4. A court invokes the primary jurisdiction doctrine when the court has jurisdiction over a case, but the court determines that the case requires the resolution of issues that, under a regulatory scheme, an administrative agency is “best suited” to resolve. *E.g., Allnet Commc’n Serv., Inc. v. Nat’l Exch. Carrier Ass’n*, 965 F.2d 1118, 1120 (D.C. Cir. 1992).

²⁸ *See* Joint Stipulations at 2-3, Stipulated Fact No. 8. *See also Referral Order* at 8. The Court did not dismiss the Court Complaint and scheduled further proceedings on various claims that it had not referred to the Commission. *See* Minute Entry, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. Apr. 13, 2022) (ECF No. 252).

²⁹ *Referral Order* at 7 (alteration omitted); *see also id.* at 4-6; Joint Stipulations at 2-3, Stipulated Fact No. 8.

³⁰ 47 CFR § 1.739. *See* Letter from Lisa B. Griffin, Deputy Chief, Market Disputes Resolution Division, FCC Enforcement Bureau, to Charles W. Steese, Counsel for CenturyLink, and Henry T. Kelly, Counsel for Peerless, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (dated Apr. 26, 2022) (*April 26th Letter Ruling*) (setting (continued....))

CenturyLink access charges on OTT-VoIP traffic, in contravention of the Commission's rules and orders and Peerless's Tariff.³¹ CenturyLink contends that Peerless's assessment of end office charges on OTT-VoIP traffic violates the *2019 VoIP Symmetry Declaratory Ruling* and the plain language of the Tariff, because Peerless does not provide the physical interconnection with the last-mile facilities connecting to the end user.³² CenturyLink similarly argues that it is unlawful for Peerless to bill tandem switching charges "in lieu" of end office charges for VoIP-PSTN traffic, because the Tariff permits Peerless to assess tandem switching charges only on calls routed through a traditional tandem switch, and not as a replacement for end office charges that it previously assessed but that the *2019 VoIP Symmetry Declaratory Ruling* now precludes.³³

9. Based on these allegations, the Complaint asserts four claimed violations of the Act.³⁴ Only one of those counts (Count I) turns on the proper application of the Commission's *2019 VoIP Symmetry Declaratory Ruling*: CenturyLink alleges that, under a proper understanding of the *2019 VoIP Symmetry Declaratory Ruling*, Peerless violated section 201(b) of the Act by charging end office switched access charges when Peerless and its VoIP partners do not physically interconnect to the last-mile facilities used to serve end users.³⁵ The remaining counts turn on an interpretation of Peerless's Tariff and what charges it describes. CenturyLink alleges in Count II that the "plain language of Peerless's Tariff . . . does not permit Peerless to assess end office charges when it does not provide the physical interconnection with the last-mile facilities connecting to the end user," and that "assessing charges in contradiction to the language in [the] Tariff" violated section 203 of the Act.³⁶ CenturyLink similarly alleges, in Count IV, that Peerless violated section 203 by charging tandem switching charges "in lieu" of end office charges when the Tariff "did not permit [Peerless] to assess Tandem Switching charges on calls not routed through a tandem switch."³⁷ And Count III provides that, because Peerless charged tandem switching charges that did not meet the Tariff's definitions of tandem switching, Peerless violated the prohibition in section 201(b) of the Act against unjust and unreasonable practices.³⁸ Peerless filed an Answer on August 8, 2022, denying CenturyLink's allegations,³⁹ and CenturyLink filed a Reply on August 24, 2022.⁴⁰

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forth the process to be followed to effectuate the Court's referral).

³¹ See Complaint at 10-56, paras. 27-139; Complaint Legal Analysis at 4-48; Reply at 4-36. CenturyLink's dispute relates to charges billed on Peerless's End Office Billing Account Numbers (E BANS) for services provided between January 2016 through February 2020. See Reply at 37, n.109; Complaint at 80, paras. 223-227. See also Peerless Network, Inc.'s Answer, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed Aug. 8, 2022) (Answer) at 22, para. 40, Answer Exh. BBB, Declaration of James Brewer at 8, para. 23.

³² See Complaint at 79-81, paras. 218-27 (Counts I and II); Complaint Legal Analysis at 16, n.41; Reply in Support of Formal Complaint, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed Aug. 24, 2022) (Reply) at 35-36.

³³ Complaint at 81-82, paras. 228-35. See *id.* at 3-4, paras. 5-7; 6, paras. 14-15; Complaint Legal Analysis at 2, 38, 48, 53; Answer Legal Analysis at 8, 51, 54, 60; Reply at 2-4, 36-39.

³⁴ See Complaint at 79-82, paras. 218-35. Although the Complaint names Peerless Network, Inc. as the sole defendant, the parties have stipulated that the Commission's decision in this proceeding will bind all of Peerless's subsidiaries named in the Court Complaint as if they were named parties in this proceeding. Joint Stipulations at 2, Stipulated Fact No. 6.

³⁵ See Complaint at 79-80, paras. 218-23.

³⁶ *Id.* at 80, paras. 224-27.

³⁷ *Id.* at 81-82, paras. 231-35.

³⁸ 47 U.S.C. § 201(b); see Complaint at 81, paras. 228-30.

³⁹ Answer; Answer Legal Analysis.

III. DISCUSSION

A. Peerless's Assessment of the Disputed End Office and Tandem Switching Access Charges Violates Sections 203 and 201(b)

10. Although the parties argue extensively about the percentage of Peerless's VoIP-PSTN traffic that is OTT-VoIP,⁴¹ that issue is relevant to whether Peerless may bill for such traffic only if Peerless has a valid mechanism in place to bill IXCs for any VoIP-PSTN traffic (whether through end office charges or tandem switching charges "in lieu" of end office charges). Because it does not, answering that question is dispositive as to Counts II through IV of the Complaint and renders moot Count I. As explained below, we find that Peerless cannot bill CenturyLink under the Tariff for end office access charges—or tandem switching charges "in lieu" of end office charges—for any of the VoIP-PSTN traffic at issue.

11. The "filed-rate" doctrine requires that, to charge for services under a tariff, a carrier "must provide its services in exactly the way the carrier describes them in that tariff."⁴² The Act embodies this principle. Specifically, section 203(a) requires common carriers to file schedules showing "all charges" and the "classifications, practices, and regulations affecting such charges,"⁴³ and section 203(c) further bars a carrier from "enforc[ing] any classifications, regulations, or practices affecting" its tariffed charges, "except as specified" in the tariff.⁴⁴ A carrier's tariff must be complete and comprehensive, and deviation from the tariff's terms is impermissible. Thus, the Commission has held that a LEC "may lawfully assess tariffed charges only for those services specifically described in its applicable tariff."⁴⁵ Similarly, the Commission has refused to expand definitions in a LEC's tariff to render them consistent with the provisions of the Act and Commission's rules.⁴⁶ In short, LECs that offer access services pursuant to a tariff are bound by the rates, terms, and conditions of those tariffs.⁴⁷

12. Competitive LECs, such as Peerless, can provide and charge IXCs for interstate access

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⁴⁰ Reply.

⁴¹ See Complaint at 10-56, paras. 10-139; Complaint Legal Analysis at 4-48; Answer at 7-85, paras. 10-139; Answer Legal Analysis at 8-51; Reply at 4-36.

⁴² *CoreTel Va., LLC v. Verizon Va., LLC*, 752 F.3d 364, 374 (4th Cir. 2014) (*CoreTel v. Verizon*) (noting that the filed-rate doctrine is not a "mere technicality" and holding that, because CoreTel had not deployed its own physical facilities to connect it to its customers, it did not provide "terminations in the end office of end user lines" as required by its tariffs).

⁴³ 47 U.S.C. § 203(a).

⁴⁴ *Id.* § 203(c).

⁴⁵ *AT&T Corp. v. YMax Communications Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 5742, 5748, paras. 12-14 (2011) (*AT&T v. YMax*) (finding a violation of sections 203(c) and 201(b) of the Act when a carrier charged under a tariff that failed to "unambiguously describe the kinds of services and functions" that the carrier performed with regard to the traffic at issue).

⁴⁶ *Qwest Communications Corp. v. Farmers and Merchants Mut'l Telephone Co.*, Second Order on Reconsideration, 24 FCC Rcd 14801, 14812, para. 25 (2009) (*Qwest v. Farmers*) (reconsidering an earlier order and granting a complaint against an incumbent LEC because its individualized contracts involved an "exchange of services and business relationship" that was "quite distinct" from the LEC's tariffed switched access service).

⁴⁷ See *MCI WorldCom Network Servs. v. PaeTec Commc'ns, Inc.*, 204 Fed. Appx. 271, 272 n.2 (4th Cir. 2006) (*MCI v. PaeTec*) ("[A] carrier is expressly prohibited from collecting charges for services that are not described in its tariff."); *Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9117, para. 18 (2004) (*Eighth Report and Order*) ("As a rule, . . . access tariffs . . . must clearly identify each of the services offered and the associated rates, terms, and conditions."), 9118-19, para. 21 (extending to competitive LECs the Commission's long-standing policy that LECs should charge only for those services that they provide).

services in two ways: through a tariff that complies with the Commission's rules or through a negotiated agreement.⁴⁸ Thus, absent either a lawful tariff or an agreement, a competitive LEC "lacks authority under the Communications Act to bill for those services."⁴⁹ This requirement extends to VoIP-PSTN traffic through the VoIP Symmetry Rule.⁵⁰ And again, "to the extent these [VoIP-PSTN] charges are imposed via tariff, a carrier may not impose charges other than those provided for under the terms of its tariff."⁵¹ Peerless and CenturyLink do not have a negotiated agreement governing the end office and tandem charges challenged in the Complaint. And Peerless does not dispute that it may impose only charges set forth in its Tariff. Rather, Peerless maintains that the Tariff entitles it to bill access charges relating to VoIP-PSTN traffic exchanged with CenturyLink.⁵² But the Tariff's language does not bear the weight Peerless attaches to it.⁵³

13. The Tariff governs Peerless's provision of traditional, regulated TDM-based access services.⁵⁴ Nothing in the Tariff indicates that it applies to any functionally equivalent VoIP-PSTN service provided by Peerless or its VoIP partners.⁵⁵ It does not authorize Peerless to assess access charges for IP-based service—furnished by it or its VoIP partners—that is the functional equivalent of TDM-based access service. Specifically, the Tariff defines "end office switch" as "[a] local telephone switching system established to provide local exchange service and/or exchange access service."⁵⁶ "Switched

⁴⁸ See 47 CFR § 61.26; *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9925, para. 3 (2001). See also *AT&T Corp. v. Adventure Commc'n Tech., LLC*, 207 F. Supp. 3d 962, 1028-29 (S.D. Iowa 2016) ("the only ways a [competitive LEC] can charge an IXC . . . are under the express terms of its tariff . . . or through an express, negotiated contract"); *Sprint Commc'ns Co. L.P. v. Northern Valley Commc'ns, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10780, 10782, para. 4 (2011) (competitive LECs "have been allowed to assess interstate switched exchange access service charges upon IXCs by either filing tariffs with the Commission or by negotiating contracts with the affected IXCs").

⁴⁹ *CallerID4u, Inc. v. MCI Commc'ns Servs. Inc.*, 880 F.3d 1048, 1060 (9th Cir. 2018). See also *AT&T Corp. v. All Am. Tel. Co.*, Memorandum Opinion and Order, 28 FCC Rcd 3477, 3494, para. 37 (2013) (*AT&T v. All American*) ("[U]ntil a [competitive LEC] files valid interstate tariffs under Section 203 of the Act or enters into contracts with IXCs for the access services it intends to provide, it lacks authority to bill for those services"), Order on Reconsideration, 29 FCC Rcd 6393 (2014), *pet. for review granted in part and denied in part*, *All American Tel. Co., Inc. v. FCC*, 867 F.3d 81 (D.C. Cir. 2017).

⁵⁰ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970, n.2026 (stating that a carrier may not impose charges for functionally equivalent services that are not provided for in its tariff). See also *id.* at 18019-18022, paras. 961-63 (discussing the role of tariffs during the transition of the intercarrier compensation reform); *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12701, n.65 ("We leave carriers to determine the appropriate compensation for such services in accordance with their agreements and applicable tariffs."); 47 CFR §§ 51.905(b); 51.913(b) (referencing a carrier's entitlement to assess and collect transitional access rates set forth in a carrier's tariff).

⁵¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970, n.2026; see *supra* paragraph 11.

⁵² See Answer Legal Analysis at 67 ("Peerless is seeking compensation from CenturyLink for Switched Access Services that CenturyLink received pursuant to the terms of Peerless's tariff."). See also Joint Statement at 2, Stipulated Fact No. 6 (stipulating that Peerless's Tariff "applies to the interstate access services provided by Peerless Network and its subsidiaries affiliates").

⁵³ See Answer Legal Analysis at 56-59. See also Reply at 35-36.

⁵⁴ See, e.g., Tariff, Section 2 – Definitions, pp. 5-9, Section 5 – Access Service Order, pp. 38-46, §§ 5.1-5.7, and Section 6 – Switched Access Service, pp. 47-68, §§ 6.1-6.7.

⁵⁵ The Tariff "applies to interstate access services provided by Peerless Network and its subsidiaries affiliates, connecting, concurring and/or participating carriers, or other telecommunications service providers engaged in the exchange, transit, origination or termination of access service traffic." Tariff, p. 4, Section 1. See Reply at 35-36.

⁵⁶ Tariff at Section 2 – 2nd Revised Page 6.

access service provides . . . for the use of [Peerless's] common switching, and transport facilities and for the use of common subscriber plant."⁵⁷ The end office rate category is described as "provid[ing] the local end office switching functions necessary to complete the transmission of Switched Access communications to and from the end users served by the local end office and the Customer."⁵⁸ The Tariff further states that the "Tandem Switching and Transport" rate category "provides for the use of the Company's tandem switches."⁵⁹ Neither these nor any other Tariff provisions define the covered services to include the functional equivalent of access services permitted by the VoIP Symmetry Rule for VoIP-PSTN traffic.⁶⁰ This lack of express language is fatal to Peerless's position.⁶¹ Without it, Peerless cannot charge for the functional equivalent of end office and tandem access service provided by it or its VoIP partner.⁶²

14. Nevertheless, Peerless contends that its Tariff "does permit it to charge 'tandem rate categories' when an end office switch is providing tandem functions (i.e. connecting [CenturyLink] to one of Peerless's VoIP providers or end user customers)."⁶³ This is so, Peerless argues, because:

[w]hen, by virtue of the OTT VoIP Order, a Peerless end office is processing a telephone call associated with an OTT VoIP call (i.e. on that call the VoIP provider does not interconnect to the enterprise VoIP customer), then that switch is, by definition *according to the OTT Order and the VoIP Symmetry Rule*, performing tandem functions. Under Peerless's tariff, Peerless can assess the "tandem rate categories" for the tandem functions being performed on that call.⁶⁴

In other words, Peerless maintains that it can bill "in lieu" tandem charges because the Tariff must be read in conjunction with the Commission's rules and orders regarding OTT-VoIP. Inclusion of "functional equivalent" language is unnecessary, Peerless says, "because the VoIP Symmetry Rule already makes this the case."⁶⁵ But this analysis ignores the Commission's rules and ample precedent requiring carriers to

⁵⁷ *Id.* at 47, § 6.1.

⁵⁸ *Id.* at 52, § 6.1.2(B).

⁵⁹ *Id.* at 52-53, § 6.1.2(C); Joint Stipulations at 6, Stipulated Fact No. 26.

⁵⁹ *Id.* at 52, § 6.1.2(B).

⁶⁰ *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 18006, n.1891.

⁶¹ Peerless correctly notes that the wording of a CLEC's tariff does not have to be identical to that of an incumbent LEC's tariff. Answer Legal Analysis at 58-59. Yet, a CLEC's tariff still must clearly and explicitly permit the carrier to assess the charges it imposes. *See* 47 CFR § 61.2(a) ("In order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations."). Other carriers have amended their tariffs to contain the term "functional equivalent" or similar language that clearly implements the charges authorized by the VoIP Symmetry Rule. For example, Level 3 describes its tariffed services to include "services and functions that are the *functional equivalent* of access services provided by an incumbent [LEC]." It also describes its "switching system[s]" to include "*functionally equivalent* or analogous facilities," and other access services to include the "*functional equivalent* to facilities and/or services" provided by an incumbent LEC. *See* Complaint at 62-64, para. 157; Complaint Legal Analysis at 60-61; Reply at 35 (emphasis added).

⁶² 47 U.S.C. § 203(a), (c). *See AT&T v. YMax*, 26 FCC Rcd at 5748, para. 12. *See also MCI v. PaeTec*, 204 Fed. Appx. at 272, n.2; *CoreTel v. Verizon*, 752 F.3d at 374; *Eighth Report and Order*, 19 FCC Rcd at 9117, para. 18.

⁶³ Answer Legal Analysis at 56-57.

⁶⁴ *Id.* at 57 (emphasis added).

⁶⁵ *Id.* at 59. Still, Peerless acknowledges that its Tariff must specify the services for which it assesses access charges. *See id.* at 52 (arguing that Peerless's services are covered by the Commission's rules and "the terms of (continued....)

make their tariff charges clear and to bill strictly in accordance with the tariff's terms.⁶⁶ Peerless cites nothing to the contrary, and we will not stretch the Tariff's language beyond its plain terms.⁶⁷ Thus, even if the IP-based access service Peerless has provided since the release of the *2019 VoIP Symmetry Declaratory Ruling* operates as the functional equivalent of tandem switching, the Tariff does not permit Peerless to assess tandem switched access charges for that "functionally equivalent" service.⁶⁸

15. In sum, there is a difference between a carrier having authority under the Commission's rules to assess an access charge and a carrier properly exercising that authority by filing a valid tariff that expressly permits assessment of the charge. Indeed, the Commission "cannot conclude that access charges for end office switching are due in every circumstance" where a LEC or its VoIP partner provides end office switching "[b]ecause such charges ultimately are governed by applicable tariffs."⁶⁹ Instead, a LEC's ability to assess end office charges for VoIP-PSTN traffic is dependent on "applicable tariff language [that] contemplates charging for functionally equivalent services."⁷⁰ To lawfully bill CenturyLink, Peerless's Tariff must contain the appropriate, unambiguous definitions, terms, and rates for it to charge for functionally equivalent VoIP-PSTN end office and tandem access services provided by it or its VoIP partners.⁷¹ The Tariff does not.⁷² As a result, Peerless's Tariff does not permit it to charge CenturyLink for access services relating to the VoIP-PSTN traffic at issue.⁷³ Peerless billed for access

(Continued from previous page) _____
Peerless's tariff"); 60-81 (requesting that the Tariff be interpreted to permit Peerless to assess access charges on OTT-VoIP calls).

⁶⁶ See 47 CFR § 61.2(a). A carrier may not impose charges for functionally equivalent services that are not described in its tariff. See *supra* note 50.

⁶⁷ *Qwest v. Farmers*, 24 FCC Rcd at 14812, para. 24 ("We will not expand the term 'switched access' as used in the tariff before us to encompass more than the tariff itself delineates.").

⁶⁸ Our finding that the Tariff does not authorize Peerless to bill CenturyLink for functionally equivalent services provided by it or its VoIP partner affords CenturyLink all of the relief to which it is entitled. See also *AT&T Corp., et al. v. Wide Voice, LLC*, Memorandum Opinion and Order, 36 FCC Rcd 9771, para. 67 (2021); *AT&T v. YMax*, 26 FCC Rcd at 5761, paras. 52-53, n.147. Consequently, we need not address CenturyLink's arguments that Peerless unlawfully assessed switched access charges on traffic that does not terminate to an "End User" or "Carrier" or its arguments regarding the percentage of Peerless's traffic that is OTT-VoIP. See Complaint at 14-56, paras. 38-140; 68-79, paras. 176-217; Complaint Legal Analysis at 14-53, 67-78; Reply at 4-36, 60-67.

⁶⁹ *2015 Declaratory Ruling*, 30 FCC Rcd at 1596, n.64.

⁷⁰ *Id.* The D.C. Circuit vacated and remanded the *2015 Declaratory Ruling*, and the Commission reached a different conclusion regarding what constitutes end office switching for purposes of assessing end office charges. Nevertheless, neither the Court nor the Commission suggested a different result regarding the necessity of including accurate definitions, terms, and rates in tariffs.

⁷¹ See *AT&T v. Central Office Telephone*, 524 U.S. 214, 223 (1988) ("Rates do not exist in isolation. They have meaning only when one knows the services to which they are attached."). See also *Eighth Report and Order*, 19 FCC Rcd at 9115, para. 14 (same).

⁷² "[I]t is well established that any ambiguity in a tariff is interpreted against the party filing the tariff." See *AT&T v. YMax*, 26 FCC Rcd at 5755, para. 33 (citing *Associated Press v. FCC*, 452 F.2d 1290, 1299 (D.C. Cir. 1971)); *Qwest v. Farmers*, 24 FCC Rcd at 14810, n.83; *Halprin, Temple, Goodman & Sugrue v. MCI*, Order on Reconsideration, 14 FCC Rcd 21092, 21100, para. 19, n.50 (1999); *American Satellite Corp. v. MCI Telecommunications Corp.*, Memorandum Opinion and Order, 57 FCC2d 1165, 1167, para. 6 (1976)). Thus, to the extent that Peerless's Tariff is not clear and thus ambiguous regarding its ability to bill access charges for functionally equivalent access services provided by it or its VoIP partner, we construe the language in its Tariff against Peerless and conclude that it does not permit Peerless to assess access charges for functionally equivalent access services provided by it or its VoIP partner.

⁷³ Peerless therefore can bill for zero percent of the access charges relating to VoIP-PSTN traffic, which includes the OTT-VoIP traffic referenced in the *Referral Order*.

charges not permitted by its Tariff in violation of section 203(c), and that violation constitutes an unreasonable practice that violates section 201(b) of the Act.⁷⁴ Accordingly, we grant Counts II, III, and IV of CenturyLink's Complaint.⁷⁵

16. Because CenturyLink has not requested damages in its Complaint⁷⁶ and intends to pursue damages in court,⁷⁷ we do not address the issue of damages in this Order.⁷⁸ We further dismiss CenturyLink's request for "costs associated with [its] claims."⁷⁹ The request is vague and unsupported by any legal analysis supporting a right to seek costs at the Commission.⁸⁰ CenturyLink can pursue its request with the Court.

B. The Commission Has Jurisdiction to Address Peerless's Liability Under the Act

17. Having explained our determination that Peerless has violated sections 201(b) and 203 by imposing access charges not authorized by its Tariff, we now address Peerless's objection that the Commission lacks jurisdiction to reach that determination. Peerless does not appear to dispute that the Commission has jurisdiction to decide the scope of Peerless's Tariff. The scope of the Tariff was a question that CenturyLink specifically requested the Court refer to the Commission, and the Court granted CenturyLink's motion in full.⁸¹ Peerless argues, however, that the Commission lacks jurisdiction to grant relief requested in the Complaint that extends "beyond the District Court's request that the Commission answer three specific questions set forth in the Referral Order."⁸² Most significantly, Peerless contends that the Commission lacks jurisdiction to decide whether, having assessed charges for

⁷⁴ See *AT&T v. YMax*, 26 FCC Rcd at 5755, para. 34, n.105 (finding that YMax's violation of section 203(c) of the Act constitutes an unreasonable practice that violates section 201(b)); *AT&T v. All American*, 28 FCC Rcd at 3492-93, paras. 35-36 (finding a violation of sections 203 and 201(b) of the Act by billing for services not provided pursuant to a valid and applicable tariff).

⁷⁵ Because Peerless's Tariff does not allow Peerless to charge end office access charges when neither Peerless nor its VoIP partners physically interconnect to the last-mile facilities used to serve end users, we need not address CenturyLink's claim, in Count I, that Peerless violated section 201(b) by assessing end office charges in contravention of the *2019 VoIP Symmetry Declaratory Ruling*. Granting Counts II, III, and IV affords CenturyLink all of the relief to which it is entitled, and we dismiss Count I without prejudice.

⁷⁶ See Complaint at 84, para. 241. See also 47 CFR § 1.723(a) ("the complaint must contain a clear and unequivocal request for damages").

⁷⁷ See Reply in Support of Motion to Refer OTT-VoIP Issues to FCC Under Primary Jurisdiction, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. June 23, 2021) ("The referral to the FCC will not require a separate proceeding for damages Once the FCC has decided the [referred issues], the case can return to this Court for application and resolution of all remaining disputes between the parties.") (ECF No. 240).

⁷⁸ See *April 26th Letter Ruling* at 2 (waiving the requirements of 47 CFR § 1.723 ("Damages") based on CenturyLink's representation). See also Complaint, Tab B (Intake Form) (answering "N/A" to statement "If damages are sought, the Complaint comports with the specifications prescribed by 47 CFR § 1.723").

⁷⁹ See Complaint at 84, para. 242. See also Answer Legal Analysis at 81-84.

⁸⁰ See 47 CFR §§ 1.721(b) (requiring "[a]ll matters concerning a claim, defense or requested remedy [in a pleading], including damages" to be "pleaded fully and with specificity"), (e) (requiring legal arguments in pleadings to be "supported by appropriate statutory, judicial, or administrative authority"); 1.722(e) (requiring complaints to contain "[l]egal analysis relevant to the claims and arguments set forth therein").

⁸¹ See *supra* para. 7.

⁸² Answer Legal Analysis at 81.

services not described in the Tariff, “Peerless violated any law.”⁸³ According to Peerless, the Court has neither “divested itself of its existing jurisdiction to adjudicate [CenturyLink’s] . . . OTT-VoIP claims” nor “given the FCC authority to make any award or judgment in favor of or against Peerless or [CenturyLink] on the OTT-VoIP legal claims.”⁸⁴

18. Peerless’s view of the Court’s primary jurisdiction referral is overly narrow. As the United States Supreme Court explained in *Reiter v. Cooper*, the primary jurisdiction doctrine applies to “claims properly cognizable in court that contain some issue within the special competence of an administrative agency.”⁸⁵ “It requires the court to enable a ‘referral’ to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling.”⁸⁶ The *Reiter* Court noted that “referral” is an imprecise term that is “sometimes loosely described as a process whereby a court refers an issue to an agency.”⁸⁷ Most organic statutes contain “no mechanism whereby a court can on its own authority demand or request a determination from the agency; that is left to the adversary system”⁸⁸ Instead, “the court merely stays its proceedings”⁸⁹ while a party files an administrative complaint. Because the Act contains no mechanism allowing a court to “demand or request” a determination from the Commission, a court simply directs litigants to initiate an administrative proceeding before the Commission seeking resolution of particular issues.

19. The Commission has broad discretion to structure its proceedings to maximize fairness, promote efficiency, and conserve resources.⁹⁰ This discretion extends to establishing procedures to address primary jurisdiction referrals. The Commission determines the means by which it handles matters referred by a court under primary jurisdiction doctrine through an “assessment of the procedural history and nature of the issues involved.”⁹¹ In cases involving common carriers, primary jurisdiction

⁸³ *Id.* at 82. Peerless also contends that the Commission may not entertain CenturyLink’s request, in its Complaint, for “costs.” *Id.* Because we dismiss CenturyLink’s request for costs on other grounds, we focus our response to Peerless’s jurisdictional objection on whether the Commission may entertain CenturyLink’s claims that Peerless violated sections 201(b) and 203 of the Act by assessing charges for services not described in the Tariff.

⁸⁴ *Id.* at 83.

⁸⁵ *Reiter v. Cooper*, 507 U.S. 258, 268-69 (1993).

⁸⁶ *Id.*

⁸⁷ *Id.* at 268, n.3.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See 47 U.S.C. §§ 4(i) (“The Commission may perform any and all acts . . . as may be necessary in the execution of its functions.”), 4(j) (“The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”), 208(a) (“[I]t shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.”). See also *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22501, para. 5 (1997) (“Commission staff retains considerable discretion under the new rules to, and is indeed encouraged to, explore and use alternative approaches to complaint adjudication designed to ensure the prompt discovery of relevant information and the full and fair resolution of disputes in the most expeditious manner possible.”); *id.* at 22510, n.68 (“We emphasize again that the staff retains considerable discretion to use alternative approaches and techniques designed to promote fair and expeditious resolution of complaints.”).

⁹¹ See 47 CFR § 1.739(a) (requiring parties to a case involving claims under the Act that has been referred to the Commission to contact the Enforcement Bureau for guidance before filing any pleadings or otherwise proceeding before the Commission), (b) (stating that the Enforcement Bureau will assess the procedural history of the case and the nature of the issues involved in determining the procedural means by which the Commission will handle the referral). See also *Primary Jurisdiction Referrals Involving Claims Under the Communications Act*, Public Notice, (continued....)

referrals generally are “appropriately filed as formal complaints with the Enforcement Bureau pursuant to section 208 . . . of the Act.”⁹²

20. Consistent with this general practice, CenturyLink advised the Court, in its motion seeking a primary jurisdiction referral, that it would effectuate the requested referral by filing a formal complaint with the Commission.⁹³ After the Court granted CenturyLink’s motion, the Enforcement Bureau reviewed the Referral Order, the Court pleadings, and the parties’ written submissions.⁹⁴ Taking account of the relevant factors of law, policy, and practicality—including an extensive factual record specific to the parties, and the specific language of Peerless’s Tariff—the Enforcement Bureau agreed that a formal complaint proceeding was the appropriate process to effectuate the Court’s primary jurisdiction referral.⁹⁵

21. A party bringing a formal complaint to the Commission must assert that the defendant carrier committed violations of the Act.⁹⁶ CenturyLink advised the Court in its motion that it would file a formal complaint, and the Court granted that motion. The *Referral Order* specifically designated the scope of the Tariff as a subject of the Court’s referral, and Commission precedent is clear that assessing tariffed charges for services not specifically described in a tariff violates section 203(c) and section 201(b).⁹⁷ Thus, it is fully consistent with the Court’s primary jurisdiction referral for the Commission to determine not only that Peerless assessed charges for services not described in the Tariff, but that doing so violated the Act. Indeed, because the Commission “must” address issues “properly presented” in a complaint proceeding,⁹⁸ the Commission is required to decide the ultimate questions of liability that CenturyLink presents in Counts II through IV of the Complaint. We conclude in the circumstances here that addressing those questions will assist the Court and is consistent with the *Referral Order*. Peerless has identified no authority that contradicts this conclusion.

(Continued from previous page)

29 FCC Rcd 738 (EB Jan. 30, 2014) (*PJR Public Notice*) (“The means by which the Commission handles matters referred by a court pursuant to the primary jurisdiction doctrine may vary according to the procedural history and nature of the issues in the referred matter.”).

⁹² *PJR Public Notice*, 29 FCC Rcd at 738. See 47 U.S.C. § 208(a) (“[a]ny person . . . complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition”). See also Reply at 73 (“[G]iven the Commission’s limited jurisdiction to hear claims for violations of the Communications Act, the referred issues must be framed in the context of the provisions of the Act that Peerless is violating.”).

⁹³ See Motion to Refer OTT-VoIP Issues to FCC Under Doctrine of Primary Jurisdiction at 2; Memorandum of Law in Support of Motion to Refer OTT-VoIP Issues to FCC Under Doctrine of Primary Jurisdiction at 2, 15, 16, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. May 11, 2021) (ECF No. 232).

⁹⁴ See Letter to Anthony J. DeLaurentis, Special Counsel, Market Disputes Resolution Division, FCC Enforcement Bureau, from Henry T. Kelly, Counsel for Peerless (Apr. 18, 2022); see also Letter to Anthony J. DeLaurentis, Special Counsel, Market Disputes Resolution Division, FCC Enforcement Bureau, from Charles W. Steese, Counsel for CenturyLink (Apr. 21, 2022).

⁹⁵ See April 26th Letter Ruling. See also 47 CFR § 1.739(b).

⁹⁶ See 47 U.S.C. § 208(a) (“Any person . . . complaining of anything done . . . by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition . . .”) (emphasis added).

⁹⁷ See *supra* paras. 7, 11.

⁹⁸ E.g., *AT&T v. FCC*, 970 F.3d 344, 354 (D.C. Cir. 2020); accord *AT&T Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992).

IV. ORDERING CLAUSES

22. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 4(i), 4(j), 201(b), 203, 208, and 251(b)(5) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203, 208, and 251(b)(5), and sections 1.720-1.740, 51.913(b), 61.2 of the Commission's rules, 47 CFR §§ 1.720-1.740, 51.913(b), 61.2, that Counts II, III, and IV of the Complaint are GRANTED as described herein, and that this proceeding is TERMINATED.

23. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201(b), 203, 208, and 251(b)(5) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203, 208, and 251(b)(5), and sections 1.720-1.740, 51.913(b), 61.2, of the Commission's rules, 47 CFR §§ 1.720-1.740, 51.913(b), 61.2, that Count I of the Complaint is DISMISSED WITHOUT PREJUDICE.

24. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201(b), 203, 208, and 251(b)(5) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203, 208, and 251(b)(5), and sections 1.720-1.740, 51.913(b), 61.2, of the Commission's rules, 47 CFR §§ 1.720-1.740, 51.913(b), 61.2, that CenturyLink's request for costs is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Amendment of section 73.202(b), Table of	)	MB Docket No. 22-373
Allotments, FM Broadcast Stations (South Padre	)	RM-11933
Island, Texas)	)	
	)	
Application for Construction Permit to Modify	)	File No. 0000195197
Station KRIX(FM), Port Isabel, Texas	)	Facility ID No. 198768
	)	

REPORT AND ORDER

Adopted: March 28, 2023**Released: March 28, 2023**

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the Notice of Proposed Rule Making issued in response to a Petition for Rulemaking (Petition) filed by Eduardo Gallegos (Petitioner).¹ The Notice proposed the substitution of Channel 288A for vacant Channel 237A at South Padre Island, Texas. Comments were separately filed by Petitioner and Laura Cisneros (Cisneros).² Petitioner filed Reply Comments. No counterproposals or other comments were received in response to the *Notice*. For the reasons discussed below, we: (1) substitute Channel 288A for vacant Channel 237A at South Padre Island, Texas; (2) grant the above-captioned hybrid modification application (Application) for Station KRIX(FM), Port Isabel, Texas; and (3) modify the license for Station KRIX(FM), Port Isabel, Texas to specify operation on Channel 237A in lieu of Channel 288A.

II. BACKGROUND

2. The *Notice* proposed the substitution of Channel 288A for vacant Channel 237A at South Padre Island, Texas to accommodate the hybrid Application requesting the modification of Station KRIX(FM)'s facilities. The hybrid Application proposes the substitution of Channel 237A for Channel 288A at Port Isabel, Texas, and modification of the Station KRIX(FM) license to specify operation on Channel 237A at Port Isabel, Texas. As stated in the *Notice*, Petitioner claims that grant of the proposal will permit Station KRIX(FM) to immediately provide enhanced service to the community of Port Isabel.³

3. Petitioner filed Comments stating that the hybrid Application will be implemented expeditiously, if the proposal is adopted. Cisneros filed an Express Comment in ECFS opposing the approval of a license to Petitioner due to what Cisneros alleges is private debt of \$12,000 Petitioner owes for breach of contract relating to radio advertising. Cisneros states that it was unable to attach the proper documentation to support its claim. Cisneros further states that it will file additional letters with the State

¹ See *South Padre Island, Texas*, Notice of Proposed Rule Making, DA-22-1167 (MB Nov. 9, 2022) (*Notice*); see also 87 FR 70765 (published Nov. 21, 2022).

² Cisneros timely filed an Express Comment in the Commission's Electronic Comment Filing System (ECFS) that violates 47 C.F.R. § 1.420(a) and (c) because the Express Comment were not served on Petitioner or its counsel nor did it include a certificate of service.

³ See *Notice*, para. 2; see also Petition at 2.

of Texas Attorney General's Office regarding the alleged private contractual matter.

4. Petitioner filed Reply Comments arguing that Cisneros' Express Comment must be rejected and disregarded because it is without merit and provides no argument that is relevant to the issues under consideration in this proceeding. Petitioner claims that the alleged private contractual matter is unsupported by proof or affidavit and is not within the Commission's purview or jurisdiction. Petitioner states that consideration of the Express Comment is inconsistent with Paragraph 8 of the *Notice* since it was not properly served upon Petitioner or its counsel.⁴ Petitioner states also that Cisneros provides no mailing address to serve its Reply Comment.⁵ Petitioner contends that the Express Comment is unacceptable under Commission precedent,⁶ because it violates the Commission's *ex parte* and procedural rules.⁷

III. DISCUSSION

5. Section 316(a) of the Communications Act of 1934, as amended, (Act) permits us to modify a license or construction permit if such action is in the public interest.⁸ We find that grant of the hybrid Application is in the public interest because it would enhanced service for Station KRIX(FM), Port Isabel, Texas. Accordingly, we: (1) substitute Channel 288A for vacant Channel 237A at South Padre Island, Texas;⁹ (2) grant the KRIX(FM) hybrid Application; and (3) modify the KRIX(FM) license to specify operation on Channel 237A in lieu of 288A at Port Isabel, Texas.¹⁰

6. A staff engineering analysis indicates that Channel 288A can be allotted to South Padre Island, Texas, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of 11 km (7 miles) south of the community. The reference coordinates are 26-01-30 NL and 97-09-15 WL.¹¹ As stated in the *Notice*, the 70 dBu city-grade signal only covers 98% of the entire community.¹² Commission practice is generally to deny allocation requests in situations where the principal city-grade coverage does not meet the requirements of Section 73.315(a).¹³ We conclude that under these unique circumstances the proposal is in "substantial compliance" with section

⁴ See *Notice*, para. 8.

⁵ See 47 C.F.R. § 1.420(b).

⁶ Citing *Lebanon and Bolivar, MO*, Report and Order, 2 FCC Rcd 6786, 6788 n.3 (MMB 1987).

⁷ 47 C.F.R., §§ 1.1201(g); 1.1207(d); 1.1229; and 1.420(a).

⁸ 47 U.S.C. § 316(a).

⁹ On December 8, 2021, the Audio Division cancelled the license of station DKZSP, Fac. ID No. 56473, Channel 237A, South Padre Island, TX. See *Broadcast Actions*, Report No. 50134, rel. December 13, 2021. Channel 237A at South Padre Island, Texas is therefore considered a vacant allotment resulting from the license cancellation of FM station DKZSP. Channel 237A at South Padre Island is not currently listed in the FM Table of Allotments.

¹⁰ Channel 237A at Port Isabel, Texas is located 320 kilometers from the Mexican Border. Mexican concurrence has been received.

¹¹ Channel 288A at South Padre Island, Texas is located 320 kilometers from the Mexican Border. Mexican concurrence has previously been received.

¹² See *Notice*, para. 3. South Padre Island is a resort town that is a barrier island off the southern coast of Texas near the Gulf of Mexico. The staff engineering analysis confirms that the small unserved area is unpopulated, very flat, and has no distinguishing labels located across from Ocean Boulevard near the beach access north of Edwin King Atwood Park.

¹³ 47 C.F.R. § 73.215(a); see also *Greenwood, Seneca, Aiken and Clemson, South Carolina, and Biltmore Forest, North Carolina*, Memorandum Opinion and Order, 3 FCC Rcd 4108 (1988) corrected, 3 FCC Rcd 4374 (1988) (stating that it is standard Commission practice to deny waivers of Section 73.315(a) of the Rules at the allotment stage, and requests for waiver of the city grade coverage requirement of Section 73.315 is generally limited to the application context).

73.315(a) given the fact that the unserved area is considered unpopulated and that the 70 dBu signal would provide coverage to 98% of South Padre Island encompassing the entire population of the community.¹⁴

7. The *Notice* stated in paragraph 8 that comments and reply comments shall be served on Petitioner or its counsel, and that certificate of service must accompany such comments pursuant to section 1.420 of the rules.¹⁵ Cisneros failed to serve Petitioner or its counsel with a copy of the Express Comment or to provide a certificate of service as required by section 1.420(a) and (c) of the rules.¹⁶ We agree with Petitioner that, pursuant to section 1.1208 of the rules, this proceeding is considered restricted, and *ex parte* presentations are prohibited.¹⁷ An *ex parte* presentation is any communication that concerns the merits or outcome of a proceeding and is not served on the parties to the proceeding or, if oral, is made without their opportunity to be present.¹⁸ Moreover, section 1.420(a) specifically prescribes that comments in an FM allotment rulemaking proceeding initiated by a petition for rulemaking shall be served on the petitioner.¹⁹ We therefore find that Cisneros violated section 1.420(a) and (c), and that the Express Comment represents a prohibited *ex parte* presentation that cannot be considered in this proceeding, pursuant to sections 1.1202(b)(1) and 1.1208 of the rules.²⁰ In any event, it is the Commission's policy not to adjudicate private contractual matters, and thus we would not consider Cisneros's Express Comment even had it been properly served.²¹

8. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended, do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995. 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.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, that the Petition for Rulemaking filed by Eduardo Gallegos, LLC, on July 18, 2022, IS GRANTED.

10. IT IS FURTHER ORDERED, that the hybrid Application for Station KRIX(FM), Port Isabel, Texas, filed by Eduardo Gallegos, on July 18, 2022 (FCC File No. 0000195197), IS GRANTED.

11. IT IS FURTHER ORDERED, that the license of station KRIX(FM), Port Isabel, Texas,

¹⁴ See *Willows Creek, California*, Report and Order, 26 FCC Rcd. 1986 (MB 2011) (allotment approved, where the 70 dBu city-grade signal contour would not cover the entire Census Designated Place of Willow Creek but would provide coverage to the entire population); see also, *Beatty and Goldfield, Nevada*, Notice of Proposed Rule Making, 23 FCC Rcd 14851 (MB 2008), and Report and Order, 24 FCC Rcd 2225 (MB 2009) (together, "*Beatty*") (allotment approved, where 70 dBu city-grade signal contour would not cover entire census-designated boundary, but would encompass entire town site); see also cases cited in *Beatty*, Notice of Proposed Rule Making, 23 FCC Rcd 14851, n.5).

¹⁵ *Notice*, para. 8.

¹⁶ 47 C.F.R. § 1.420(a) and (c).

¹⁷ 47 C.F.R. § 1.1208.

¹⁸ 47 C.F.R. § 1.1202(a).

¹⁹ 47 C.F.R. § 1.420(a).

²⁰ 47 C.F.R. §§ 1.1202(b)(1) and 1.1208.

²¹ See *Arecibo Radio Corp.*, Memorandum Opinion and Order, 101 FCC 2d 545, 548 (1985) (local court of competent jurisdiction, not the FCC, is the proper forum to resolve private contractual disputes).

IS MODIFIED to specify operation on Channel 237A in lieu of Channel 288A.

12. IT IS FURTHER ORDERED, that pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, effective May 12, 2023, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
South Padre Island, Texas	288A

13. The window period for filing applications for Channel 288A at South Padre Island, Texas will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in a subsequent order.

14. 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).

15. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

16. 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



Federal Communications Commission
Washington, D.C. 20554

March 28, 2023

DA 23-263

CC Docket No. 02-6

Craig Davis
Vice President
Schools and Libraries Division
Universal Service Administrative Company
700 12th St., N.W., Suite 900
Washington, DC 20005

Dear Mr. Davis:

The purpose of this letter is to notify the Universal Service Administrative Company that the Wireline Competition Bureau approves the Schools and Libraries Funding Year 2023 Program Integrity Assurance (PIA) FCC Form 471 Review Procedures, subject to any further modifications and/or instruction from the Commission.

Thank you for your attention to this matter.

Sincerely,

/s/ Johnnay D. Schrieber

Johnnay D. Schrieber

Deputy Division Chief

Telecommunications Access Policy Division

Wireline Competition Bureau

cc: Trent B. Harkrader, Chief, WCB
Sue McNeil, Associate Bureau Chief, WCB
Jodie Griffin, Chief, TAPD
Mark Stephens, Managing Director, OMD



Federal Communications Commission
Washington, D.C. 20554

March 29, 2023

DA 23-264
In Reply Refer to:
1800B3-ATS
Released March 29, 2023

First Dallas Media, Inc.
c/o Joseph C. Chautin, III, Esq.
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Mandeville, LA 70471
(sent by electronic mail to: jchautin@hardycarey.com)

East Texas Community Broadcasting
c/o Guy Betten
3554 FM 747 South
Jacksonville, TX 75766
(sent by electronic mail to gwbetten@gmail.com)

In re: **NCE MX Group 205**

First Dallas Media, Inc.
New NCE FM, Golinda, Texas
Facility ID No. 763726
Application File No. 0000165973

East Texas Community Broadcasting
New NCE FM, Riesel, Texas
Facility ID No. 768280
Application File No. 0000167216

Petitions for Reconsideration

Dear Counsel and Petitioner:

We have before us: 1) the Petition for Reconsideration filed by East Texas Community Broadcasting (ETCB), seeking the rescission of the grant of the application of First Dallas Media, Inc. (FDMI) for a construction permit for a new noncommercial educational (NCE) FM station at Golinda, Texas;¹ 2) the Petition for Reconsideration filed by ETCB, seeking reinstatement of its dismissed application for a construction permit for a new NCE FM station at Riesel, Texas;² and 3) related responsive pleadings.³ The Media Bureau (Bureau) designated these two applications part of NCE MX

¹ Pleading File No. 0000205723 (filed Dec. 19, 2022) (First Petition); *see also* Application File No. 0000165973 (FDMI Application).

² Pleading File No. 0000206492 (filed Jan. 8, 2023) (Second Petition); *see also* Application File No. 0000167216 (ETCB Application).

³ FDMI filed an Opposition on December 29, 2022 (Pleading File No. 0000205723). ETCB subsequently filed an Erratum to the First Petition (Pleading File No. 0000206491 (filed Jan. 8, 2023)) and a Reply to the Opposition

Group 205,⁴ and identified FDMI as the tentative selectee of the group.⁵ For the reasons set forth below, we grant the First Petition and rescind our grant and tentative selection of the FDMI Application; grant the Second Petition and reinstate the ETCB Application; and afford FDMI and ETCB 15 days in which to file amendments to their application before further Bureau or Commission action.

Background. The subject applications were filed during the November 2021 NCE FM filing window.⁶ In the *Fifth Fair Distribution Order*, the Bureau conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended (Act), and determined that the FDMI Application and ETCB Application were eligible for a fair distribution preference based on second NCE service population totals—FDMI claimed it would provide a second NCE service to 14,178 people and ETCB a combined first and second NCE service to 8,575 people.⁷ Because FDMI’s proposal would provide a new second NCE service to at least 5,000 more people than ETCB, the Bureau identified the FDMI Application as the tentative selectee of NCE MX Group 205.⁸ The Bureau established a 30-day period for filing petitions to deny, and stated if no petitions were filed, it would grant the FDMI Application and dismiss the ETCB Application.⁹ No petitions were filed, and on December 9, 2022, the Bureau granted the FDMI Application and dismissed the ETCB Application as a non-tentative selectee.¹⁰

(Pleading File No. 0000206490 (filed Jan. 8, 2023)). The First Petition was filed by “East Texas Community Media.” In the Erratum, ETCB states the reference to “East Texas Community Media” was a typographical error, and that the name of the organization is “East Texas Community Broadcasting.” Erratum at 1. The First Petition was signed by Guy Betten, who is also the signatory for the ETCB Application. Accordingly, we will accept ETCB’s explanation and refer to the petitioner as ETCB.

⁴ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 16452 (MB 2021) (*MX Groups & Settlements Public Notice*).

⁵ *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166 at *6, para. 12 (MB Nov. 9, 2022) (*Fifth Fair Distribution Order*).

⁶ *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

⁷ See *Fifth Fair Distribution Order* at 5, para. 12.

⁸ *Id.*

⁹ *Id.* at 7, para. 21.

¹⁰ At the time of the *Fifth Fair Distribution Order*, NCE MX Group 205 consisted of eight applications, including the FDMI application. Six of remaining seven, including the ETCB Application, were dismissed as non-tentative selectees. Only ETCB sought reconsideration of its dismissal, and the dismissals of the other applications are now final. See *Actions*, Public Notice, Report No. PN-2-221213-01 (MB Dec. 13, 2022) (granting FDMI Application and dismissing mutually exclusive ETCB Application and applications of Ministerio Espiritu Santo (Application File No. 0000167797), Iglesia Cristian Restauracion y Vida (Application File No. 0000167785), Alpha Consulting Christian Education (Application File No. 0000166689), Specialized Educational Broadcasting (Application File No. 0000166809), and Centro Familiar de Restauracion y Vida (Application File No. 0000167080)). See also 47 CFR § 1.4(b)(4). The 30-day period for filing petitions for reconsideration ended on Thursday, January 12, 2023, and the dismissals became final on January 22, 2023. See 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau’s decision for the Commission on its own motion to order the record before it for review). The eighth applicant in NCE MX Group 205, Red-C Apostolate: Religious Education for the Domestic Church (Application File No. 0000167206), filed an amendment after the issuance of the *Fifth Fair Distribution Order*, which rendered its application a singleton.

ETCB filed the First Petition on December 19, 2022, and argues that the grant of the FDMI Application should be rescinded because FDMI misrepresented the fair distribution population figures in its application.¹¹ ETCB argues that it was not previously aware of the error in the FDMI Application and thus did not participate in the proceeding earlier, but notes that the Commission has considered similar petitions for reconsideration where it would serve the public interest.¹²

ETCB notes that FDMI stated in its application that it would provide second NCE service to 14,178 persons.¹³ However, ETCB contends that this number excluded two stations from its calculation; when counting those two stations, FDMI's proposal would only provide new NCE service to 1,706 persons, and therefore, the FDMI application did not meet the requirements to claim a fair distribution preference for second NCE service.¹⁴

In the Opposition, FDMI first notes that its application was pending for 13 months, and ETCB could have raised its arguments at any points during that period.¹⁵ FDMI also argues that the cases cited by ETCB are inapposite because they involved instances where the petitioner had been precluded from participating in the proceeding or was not given proper notice of a pending application.¹⁶ FDMI does not directly address the accuracy of ETCB's claims regarding its fair distribution figures, but states that its engineer that prepared its fair distribution exhibit was not available to explain his calculations.¹⁷

In the Reply, ETCB notes that FDMI has not challenged ETCB's assertion that the fair distribution figures in the FDMI Application were incorrect, and that FDMI will not be able to construct a facility that complies with the conditions placed on its permit.¹⁸ ETCB again argues that the public interest will be served by considering the First Petition.¹⁹ Finally, ETCB states that its own application contained typographical errors in the directional antenna pattern, and that it has filed an amendment that corrects these errors, together with the Second Petition.²⁰

ETCB filed the Second Petition on January 8, 2023, seeking *nunc pro tunc* reinstatement of its application.²¹ The Second Petition also includes a paper copy of a proposed amendment to the ETCB application, which ETCB explains, is necessary because the Commission's filing database, LMS, would not allow it to file an electronic amendment to its dismissed application.²²

¹¹ First Petition at 1-2.

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

¹⁴ *Id.* at 4-5.

¹⁵ Opposition at 3.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at n.7. FDMI also raises arguments regarding defects in the ETCB Application. However, as discussed below, we will not consider the arguments raised in the Opposition at this time. See note 34 *infra*.

¹⁸ Reply at 2.

¹⁹ *Id.* at 3-4.

²⁰ *Id.* at 4. ETCB also responded to arguments raised in the Opposition against its application. As noted, we are not considering these arguments at this time. See note 34 *infra*.

²¹ Second Petition at 1-2.

²² *Id.* at 2.

Discussion. Section 405(a) of the Act permits the filing of petitions for reconsideration by “any party” to a proceeding, or “any other person aggrieved or whose interests are adversely affected thereby.”²³ The Commission implemented section 405(a) through section 1.106(b)(1) of its rules (Rules),²⁴ which states that “any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken.”²⁵ If a petition for reconsideration is filed by a non-party, the non-party must “state with particularity the manner in which the [petitioner’s] interests are adversely affected” and “show good reason why it was not possible ... to participate in the earlier stages of the proceeding.”²⁶ Further, Section 1.106(c)(2) of the Rules permits the Bureau to consider a petition for reconsideration if it determines that “consideration of the facts or arguments relied on is required in the public interest.”²⁷

Although ETCB has not provided any reason why it failed to file a petition to deny or informal objection prior to the grant of the FDMI Application, we nonetheless find that it is in the public interest to consider the merits of the First Petition.²⁸ The FDMI Application was tentatively selected over seven other MX applications based on its fair distribution claim. As ETCB notes, the FDMI Application was ultimately granted conditioned upon FDMI’s compliance with section 73.7002(c) of the Rules, which requires that FDMI operate the station substantially as proposed for four years and not downgrade service to the area on which its 307(b) preference was based.²⁹ Section 73.7002(c) further provides that if the permittee modifies its facilities “any potential loss of first and second NCE service [must be] offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant [must] continue to qualify for a decisive Section 307(b) preference.”³⁰

The construction permit issued to FDMI relied on FDMI’s claim that it would provide second NCE service to 14,178 people. FDMI cannot comply with this requirement because, based on ETCB’s calculations, FDMI will only provide second NCE service to 1,706 people—a clear downgrade.³¹ Because FDMI cannot construct a facility that complies with section 73.7002(c), we will rescind the grant

²³ 47 U.S.C. § 405(a).

²⁴ 47 CFR § 1.106(b)(1).

²⁵ *Id.*

²⁶ *Id.*

²⁷ 47 CFR § 1.106(c)(2).

²⁸ See, e.g., *Caron Broadcasting, Inc., and Common Ground Broadcasting, Inc.*, Letter Order, 32 FCC Rcd 5692, 5695 (MB 2017) (considering merits of petition for reconsideration where petitioner failed to participate earlier in the proceeding, but the public interest warranted consideration of arguments raised therein).

²⁹ 47 CFR § 73.7002(c).

³⁰ *Id.*

³¹ In the Opposition, FDMI neither confirmed nor denied the accuracy of ETCB’s calculation, nor did it provide a revised calculation of its own. The Bureau staff has independently determined that FDMI’s second NCE service claims are overstated.

of the FDMI Application and return it to pending status.³² We further direct FDMI to amend its application to correct its fair distribution population figures.³³

Additionally, as noted in the Second Petition, ETCB seeks to file a corrective technical amendment to its application. We will not consider the paper-filed amendment ETCB filed with the Second Petition. Rather, we will reinstate the ETCB Application in LMS to allow ETCB to electronically file its amendment.³⁴

We will afford FDMI and ETCB **15 days** from the date of this letter in which to file corrective amendments to their applications.³⁵ This will enable us to review accurate data for each applicant and compare the applications. If either applicant fails to file this required amendment, we will dismiss its application pursuant to section 73.3568(a) of the Rules.³⁶

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed on December 19, 2022, by East Texas Community Broadcasting (Pleading File No. 0000205723) **IS GRANTED**.

IT IS FURTHER ORDERED that the grant and tentative selection of the application of First Dallas Media, Inc., for a construction permit for a noncommercial educational FM station at Golinda, Texas (Application File No. 0000165973) **IS RESCINDED**.

IT IS FURTHER ORDERED that the Petition for Reconsideration filed on January 8, 2023, by East Texas Community Broadcasting (Pleading File No. 0000206492) **IS GRANTED**.

³² We reject ETCB's argument that FDMI made a misrepresentation. ETCB provides no evidence that FDMI made an intentional misrepresentation, as opposed to an engineering error. *See, e.g., Rocket Radio Corporation*, Memorandum Opinion and Order, 35 FCC Rcd 10471, 10475-76, para. 13 (MB 2020) (rejecting argument that licensee made a misrepresentation where objector failed to raise a substantial and material question of fact of intent to deceive).

³³ Under section 1.65 of the Rules, and as stated in the *NCE Filing Procedures Public Notice*, following the application filing deadline, "each applicant must continue to maintain the accuracy and completeness of the information in its application. Each applicant must notify the Commission, by electronically filing an amendment, of any substantial change that may be of decisional significance to the application." *See* 47 CFR § 1.65; *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, 36 FCC Rcd 11458, 11468 and n. 68 (MB 2021).

³⁴ We will not, at this time, consider the arguments raised in the Opposition against the ETCB Application. However, FDMI is not precluded from raising those arguments again in a Petition to Deny or Informal Objection if ETCB is subsequently identified as the tentative selectee of NCE MX Group 205.

³⁵ Any such amendment must propose minor changes, must correct all the application defects, including those not identified in this letter, and must comply with all relevant rules. Furthermore, applications that are amended and create any new application conflicts, or that worsen any existing conflicts (such as increasing existing overlap), will be dismissed without additional opportunity to amend. *See MX Groups & Settlements Public Notice*, 36 FCC Rcd at 16455.

³⁶ 47 CFR § 73.3568(a) ("... failure to respond to official correspondence or request for additional information, will be cause for dismissal."); *see also 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).

IT IS FURTHER ORDERED that the application of East Texas Community Broadcasting for a construction permit for a noncommercial educational FM station at Riesling, Texas (Application File No. 0000167216) **IS REINSTATED.**

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

	)	
In the Matter of Progeny LMS, LLC	)	
	)	
Request for Waiver and Extension of Time	)	WT Docket No. 12-202
	)	
Further Request for Waiver and Extension of Time	)	
	)	
Further Waiver Request	)	
	)	
Request for Waiver and Extension of Time	)	

ORDER

Adopted: March 29, 2023

Released: March 29, 2023

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) addresses the requests filed by Progeny LMS, LLC (Progeny or NextNav)¹ for waiver of Section 90.155(d)² of the Commission's rules and extension of time to meet the construction deadlines for 82 of its 900 MHz Multilateration Location and Monitoring Service (M-LMS) Economic Area (EA) licenses (Licenses).³ We address Progeny's waiver and extension requests under the appropriate standard in turn below. Regarding Progeny's request for waiver of section 90.155(d)'s construction requirement to allow it to serve two-thirds of buildings in excess of three stories for its Group 1, 2, and 3 licenses, we find that Progeny may demonstrate that it is providing service consistent with the two-thirds tall buildings coverage approach to satisfy the substantial service requirement in 90.155(d), and therefore dismiss that

¹ Progeny and NextNav LLC are wholly owned subsidiaries of NextNav Holdings LLC, previously named Progeny Holdings LLC.

² 47 CFR § 90.155(d). Pursuant to this rule, M-LMS licensees must construct and operate a sufficient number of base stations to serve one-third and two-thirds of an Economic Area's (EA's) population within five and ten years of the initial license grant, respectively. *Id.* Alternatively, an M-LMS licensee may make a showing of substantial service for its license at the five- and ten-year benchmarks. *Id.* An M-LMS license will automatically terminate as of the construction deadline if the licensee fails to meet the construction requirement. *See* 47 CFR §§ 1.946(c), 1.955(a)(2).

³ *See* Progeny LMS, LLC's Request for Waiver and Extension of Time, WT Docket No. 12-202 (filed Apr. 2, 2019) (Handset Waiver Request); Progeny LMS, LLC's Further Request for Waiver and Extension of Time, WT Docket No. 12-202 (filed Sept. 17, 2020) (Second Construction Deadline Request); Progeny LMS, LLC's Further Waiver Request, WT Docket No. 12-202 (filed Feb. 2, 2021) (Coverage Waiver Request); Progeny LMS, LLC's Request for Waiver and Extension of Time, WT Docket No. 12-202 (filed Mar. 31, 2021) (Third Construction Deadline Request). This Order does not address Progeny's pending requests related to the two A-Block licenses that the Division declined to renew in its *2017 Progeny Order*. Progeny LMS, LLC's Petition for Reconsideration, WT Docket No. 12-202 (filed Feb. 16, 2017); Progeny LMS, LLC's Petition for Modification of A Block M-LMS Licenses, WT Docket No. 12-202 (filed Apr. 4, 2018).

waiver request as moot.⁴ We conclude that, together, this relief will facilitate Progeny's provision of service to wireless carriers to enable them to meet the Enhanced 911 (E911) location accuracy deadlines the Commission adopted in the 2015 and 2020 *Indoor Location Accuracy Orders* to address a critical public safety need for improving indoor location accuracy.⁵

II. BACKGROUND

2. *Progeny's Location and Monitoring Service (LMS).* In 1995, the Commission established LMS as a new service in the 902-928 MHz band, which is shared by a variety of users under a hierarchy of spectrum usage rights.⁶ Specifically, this band is allocated on a primary basis to both Federal radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment.⁷ Federal fixed and mobile services are allocated on a secondary basis to Federal radiolocation systems and ISM equipment. LMS licenses are allocated on a secondary basis to Federal users and to ISM devices and may not cause interference to and must tolerate interference from these users and devices.⁸ LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. The Commission granted the Licenses to Progeny in July 2000.⁹ The Licenses had an initial five-year construction deadline of July 19, 2005.

3. *Progeny 2006 Waiver Order.* On May 24, 2006, the Bureau granted Progeny a three-year extension of time, until July 19, 2008, to meet its five-year renewal date on the basis that Progeny had actively sought to develop M-LMS equipment and applications but the M-LMS band spectrum sharing environment had hindered licensees' ability to secure such equipment.¹⁰

⁴ Today, we provide certain conditional relief for 226 of Progeny's B and C Block licenses previously authorized to commence commercial services. See *Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, WT Docket No. 12-202, Order, 32 FCC Rcd 122, at Attachs. C, D, E (WTB 2017) (2017 *Progeny Order*); see also *infra* at Attachs. A, B, C. As discussed below, we categorize each group of licenses into Group 1, 2, or 3: (1) 42 EA licenses set forth in Attachment A, corresponding to the top 25 most populous CMAs; (2) 40 EA licenses set forth in Attachment B, corresponding to the next 26-50 most populous CMAs; and (3) 144 EA licenses set forth in Attachment C, outside of the top 50 CMAs.

⁵ See *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fourth Report and Order, 30 FCC Rcd 1259 (2015) (2015 *Indoor Location Accuracy Order*); see also *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Report and Order and Order on Reconsideration, 35 FCC Rcd 7752 (2020) (2020 *Indoor Location Accuracy Order*).

⁶ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695 (1995) (adopting rules encompassing the Automatic Vehicle Monitoring (AVM) service for which the Commission had adopted "interim" rules in 1974, and changing the name of the service from AVM to LMS). M-LMS licensees are regulated under Part 90 of the Commission's rules, which generally governs radio communications systems licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services, and M-LMS licensees may provide any service consistent with the Commission's rules and the licensee's regulatory status. See 47 CFR § 90.1 *et seq.*

⁷ 47 CFR §§ 2.106, 18.301, 18.11(c).

⁸ 47 CFR § 90.353(a).

⁹ See, e.g., ULS File No. 0000006894 (lead call sign WPQP847); see also *Wireless Telecommunications Bureau Grants 228 Location and Monitoring Service Licenses to Progeny LMS*, Public Notice, 15 FCC Rcd 12807 (WTB 2000). The Commission auctioned M-LMS licenses in 1999 and 2001 in Auctions 21 and 39. See *Location and Monitoring Service Auction Closes, Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service*, Public Notice, 14 FCC Rcd 3754 (1999); *Public Coast and Location and Monitoring Service Spectrum Auction Closes, Winning Bidders Announced*, Public Notice, 16 FCC Rcd 12509 (2001).

¹⁰ *Request of Progeny LMS, LLC for a Three-Year Extension of the Five-Year Construction Requirement for its Multilateration Location and Monitoring Services Economic Area Licenses*, Memorandum Opinion and Order, 21 FCC Rcd 5928, 5931-32, paras. 12-13 (WTB 2006); see also *Request of Progeny LMS, LLC for Limited Waiver of Construction Requirements*, ULS File Nos. 0002049041-0002094297 (filed Feb. 15, 2005).

4. *Progeny 2008 Waiver Order.* On November 26, 2008, the Bureau again extended Progeny's five-year and ten-year construction deadlines to July 19, 2012, and July 19, 2014, respectively.¹¹ The Bureau noted that there was still no commercially available equipment certified for M-LMS use in the 900 MHz band,¹² and indicated that its extension of the respective mid-term and end-of-term construction benchmarks afforded a reasonable amount of time to develop M-LMS operations.¹³

5. *Progeny 2011 Limited Waiver Order.* The Bureau and the Office of Engineering and Technology (OET) in December 2011 jointly granted Progeny's requests which conditionally granted waiver of: (1) Section 90.155(e)¹⁴ allowing Progeny to take advantage of technical advances in multilateration technologies in deploying its network to provide location-based services;¹⁵ and (2) Section 90.353(g),¹⁶ which requires that M-LMS systems' "primary" operations involve the provision of vehicle location services, to enable Progeny to make its service equally available to other mobile devices, so long as it provides a location service to both vehicular and non-vehicular location services.¹⁷ The Bureau and OET further conditioned the grant on a requirement that Progeny file a field testing report prior to commencing commercial operations demonstrating that its M-LMS system would not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928 MHz band.¹⁸ The *Progeny Limited Waiver Order* provided that if the Commission determined that no significant interference issues were raised by the report, Progeny would be notified that it may commence commercial service.¹⁹

6. *Commission Order Permitting Progeny's Commercial M-LMS Operations.* On June 6, 2013, following review of Progeny's January 2012 field testing reports and Progeny's (and others') October 2012 joint field testing reports, the Commission adopted an order allowing Progeny to commence commercial operations of its M-LMS network on the B and C Block M-LMS spectrum it holds, subject to certain conditions.²⁰ On June 21, 2013, Progeny notified the Commission that it had completed

¹¹ The Bureau afforded the same relief to all other M-LMS licensees. *See Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules*, WT Docket No. 08-60, Order, 23 FCC Rcd 17250 (WTB 2008) (*LMS Extension Order*); *see* Request of Progeny LMS, LLC for Waiver and Limited Extension of Time, ULS File Nos. 0003422772-0003423231 (filed May 1, 2008).

¹² *LMS Extension Order*, 23 FCC Rcd at 17257-58, para. 22. The Bureau acknowledged that the pending M-LMS rulemaking, initiated in 2006, created regulatory uncertainty for M-LMS licensees that may have contributed to a lack of M-LMS equipment development and service deployment. *Id.*; *see also Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Docket No. 06-49, Notice of Proposed Rulemaking, 21 FCC Rcd 2809 (2006) (*M-LMS NPRM*).

¹³ *LMS Extension Order*, 23 FCC Rcd at 17260, para. 30.

¹⁴ 47 CFR § 90.155(e).

¹⁵ *See Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, WT Docket No. 11-49, Order, 26 FCC Rcd 16878, at 16884, para. 14 (WTB/OET 2011) (*Progeny Limited Waiver Order*).

¹⁶ *Id.* at 16886, para. 22; 47 CFR § 90.353(g).

¹⁷ 47 CFR § 90.353(g).

¹⁸ *Progeny Limited Waiver Order*, 26 FCC Rcd at 16889-90, paras. 29, 35. On January 27, 2012, Progeny filed the required Part 15 testing report. *See* Part 15 Test Report & M-LMS Network Description filed by Progeny, WT Docket No. 11-49 (filed Jan. 27, 2012). On October 31, 2012, Progeny filed three additional separate reports. *See generally* Letter from Bruce A. Olcott, Counsel to Progeny LMS, LLC, and Laura Stefani, Counsel for Itron, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 31, 2012).

¹⁹ *Progeny Limited Waiver Order*, 26 FCC Rcd at 16889-90, paras. 29, 35.

²⁰ *See Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, WT Docket No. 11-49, Order, 28 FCC Rcd 8555 (2013) (*Progeny Commercial Service Order*), *recon pending*. The *Progeny Commercial Service Order* limits Progeny's authority to provide commercial M-LMS operations to its B and C Block spectrum. *See id.* at n.45.

construction in each of its top 40 EAs, including Orlando, and was providing service to the required one-third of the population in each EA.²¹

7. *M-LMS Termination Order*. On June 10, 2014, the Commission released an order terminating the *M-LMS NPRM*.²² The Commission concluded that the various proposals for broad revisions to the applicable rules, including considering “whether greater opportunity can be afforded M-LMS licensees to provide services, while ensuring continued access for other licensed and unlicensed uses that share this band,” did not merit further consideration at that time.²³ The *M-LMS Termination Order* stated that based on recent developments in the M-LMS band, the Commission believed that the existing framework could provide M-LMS licensees with sufficient opportunities to provide service offerings.²⁴ The Commission specifically noted Progeny’s ability to commence commercial operations of its M-LMS position location service network, while co-existing with unlicensed operations in the band under the Commission’s initially established framework.²⁵

8. *Commission Orders on 911 Indoor Location Accuracy Requirements*. On January 29, 2015, the Commission adopted the *2015 Indoor Location Accuracy Order*,²⁶ which included measures aimed at enhancing Public Safety Answering Points’ (PSAPs) ability to accurately identify the location of wireless 911 callers when indoors.²⁷ Over two-thirds of 911 calls come from wireless phones,²⁸ and these calls are as likely to come from indoor and outdoor locations. To close the gap in the performance of outdoor vs. indoor 911 location service, the *2015 Indoor Location Accuracy Order* adopted measures requiring Commercial Mobile Radio Service (CMRS) providers to improve their 911 location technology and meet a timeline for implementation of solutions to improve horizontal and vertical location accuracy.²⁹

9. The *2015 Indoor Location Accuracy Order* required, *inter alia*, CMRS providers to provide dispatchable location³⁰ or x/y coordinates³¹ within 50 meters of the caller for: (1) 40 percent of

²¹ See Letter from Bruce A. Olcott, Counsel, Progeny LMS, LLC, to Marlene H. Dortch, Secretary, FCC, Regarding Notification of Completion of Initial Buildout in 40 Economic Areas and Establishment of Website and Toll-Free Help Desk, WT Docket No. 11-49 (filed June 21, 2013) (June 2013 Letter).

²² See generally *Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Docket NO. 06-49, Order, 29 FCC Rcd 6361 (2014) (*M-LMS Termination Order*).

²³ *M-LMS Termination Order*, 29 FCC Rcd at 6364, para. 8 (citing *M-LMS NPRM*, 21 FCC Rcd at 2811, para. 4).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *2015 Indoor Location Accuracy Order*, 30 FCC Rcd 1259.

²⁷ *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1260, para. 1.

²⁸ According to the FCC’s most recent annual 911 fee report, in 2021, American states and territories reported a total of 220,107,525 calls to 911, of which 148,952,960 were wireless calls, representing approximately 68% of the total reported call volume. See FCC, Fourteenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 12 (2022), <https://www.fcc.gov/general/911-fee-reports>.

²⁹ *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1260, para. 3.

³⁰ The rules define “dispatchable location” as “[a] location delivered to the PSAP by the CMRS provider with a 911 call that consists of the street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. The street address of the calling party must be validated and, to the extent possible, corroborated against other location information prior to delivery of dispatchable location information by the CMRS provider to the PSAP.” 47 CFR § 9.10(i)(1)(i).

³¹ The x/y location is an alternative to dispatchable location that is the coordinate-based horizontal location. See *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1287, para. 74.

all wireless 911 calls within two years of the effective date of the order (by 2017);³² (2) 50 percent within three years (by 2018); (3) 70 percent within five years (by 2020); and (4) 80 percent within six years (by 2021).³³ With regard to vertical location, the *2015 Indoor Location Accuracy Order* required CMRS providers to begin delivering uncompensated barometric pressure data³⁴ within three years (by 2018) from any device that is capable of delivering such information.³⁵ In addition, the Commission required providers to deploy z-axis technology that meets a Commission-approved metric in the top 25 Cellular Market Areas (CMAs) by April 3, 2021, and in the top 50 CMAs by April 3, 2023.³⁶ The Commission, however, did not identify any specific approved z-axis metric at that time, and instead deferred adoption of a metric pending further testing.³⁷

10. In the *2019 Indoor Location Accuracy Order*, the Commission adopted a z-axis location accuracy metric of 3 meters above or below the handset (plus or minus 3 meters) for 80% of calls made from z-axis capable devices as demonstrated in the test bed.³⁸ The Commission found that implementing the 3-meter metric within the existing compliance timeline was technically feasible and would yield significant public safety benefits.³⁹ In addition, the Commission required CMRS providers to deliver z-axis information to PSAPs in Height Above Ellipsoid and to provide floor level information when available.⁴⁰

11. In the *2020 Indoor Location Accuracy Order*, the Commission expanded the options for CMRS providers choosing to deploy z-axis technology to meet the 2021 and 2023 deadlines.⁴¹ The Commission provided that instead of deploying z-axis technology to cover 80% of the CMA population, CMRS providers may meet the deadlines by deploying z-axis technology to cover 80% of the buildings that exceed three stories in the CMA.⁴² The Commission also provided an option for CMRS providers to deploy z-axis technology on a nationwide basis or throughout the provider's network footprint, as applicable.⁴³ In addition, the Commission adopted a requirement for CMRS providers by January 6, 2022, to provide dispatchable location with wireless E911 calls if it is technically feasible and cost effective for them to do so,⁴⁴ as well as a requirement for providers by April 3, 2025 to deploy z-axis

³² *Id.* at 1261-62, para. 6; 47 CFR § 20.18(i)(2)(i). The effective date of the relevant rules not requiring PRA approval is April 3, 2015. The effective date of the relevant rules requiring PRA approval is August 3, 2015.

³³ *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1261-62, para. 6. The 2020 and 2021 benchmarks only apply to nationwide CMRS providers.

³⁴ Handsets that can provide barometric pressure readings give an idea of the vertical height of the device. *See id.* at 1303-04, para. 115.

³⁵ *Id.* at 1261-62, para. 6; 47 CFR § 9.10(i)(2)(ii)(A).

³⁶ *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1304, para. 117; *see also* 47 CFR § 9.10(i)(2)(ii)(C)-(D). Non-nationwide CMRS providers serving these CMAs have an additional year to meet these requirements. *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1304, para. 117; *see also* 47 CFR § 9.10(i)(2)(ii)(F).

³⁷ *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1302-03, para. 113.

³⁸ *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fifth Report and Order and Fifth Further Notice of Proposed Rulemaking, 34 FCC Rcd 11592, 11593, 11604, 11617, paras. 2, 24, 54 (2019) (*2019 Indoor Location Accuracy Order*); 47 CFR § 9.10(i)(2)(ii)(C), (i)(2)(ii)(D).

³⁹ *2019 Indoor Location Accuracy Order*, 34 FCC Rcd at 11596, para. 9.

⁴⁰ *Id.* at 11608, 11610-11, paras. 32, 37; 47 CFR § 9.10(i)(2)(ii)(C), (i)(2)(ii)(D).

⁴¹ *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7758-61, paras. 15-20.

⁴² *See* 47 CFR § 9.10(i)(2)(ii)(I)(1).

⁴³ *See* 47 CFR § 9.10(i)(2)(ii)(I)(2).

⁴⁴ *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7775-76, paras. 51-53; *see also* 47 CFR § 9.10(i)(2)(ii)(G).

location technology or dispatchable location to all CMAs nationwide.⁴⁵

12. *2017 Progeny Waiver Order*. In the *2017 Progeny Order*, the Division conditionally granted Progeny a waiver of section 90.155(d) of the Commission's rules⁴⁶ for its B and C Block M-LMS licenses to facilitate Progeny's provision of service to wireless carriers.⁴⁷ This relief enabled Progeny to assist carriers in meeting the E911 location accuracy deadlines the Commission adopted in its *2015 Indoor Location Accuracy Order*.⁴⁸ Based substantially on deadlines established in the *2015 Indoor Location Accuracy Order* for wireless carriers,⁴⁹ Progeny received extended staggered construction deadlines, which could be met either by demonstrating population coverage or substantial service, for its B and C Block licenses in three license groupings that largely tracked the wireless carriers' initial deadlines in meeting their indoor location accuracy requirements.⁵⁰

13. The Division's extension grant was conditioned on Progeny demonstrating that it is in fact supporting the wireless carriers' efforts to comply with their E911 location accuracy requirements.⁵¹ Accordingly, Progeny was required to demonstrate the required population coverage or substantial service at the end-of-term deadline, and also to show its efforts to support the wireless carriers' compliance with their E911 location accuracy requirements.⁵² Further, the *2015 Indoor Location Accuracy Order* required that, by April 2021, nationwide CMRS providers must deploy vertical location technology in the top 25 CMAs nationwide.⁵³ In that regard, the Commission highlighted the NextNav technology as a promising option for wireless providers to use to meet their location accuracy commitments.⁵⁴ In conditionally

⁴⁵ *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7761-63, paras. 21-25; see also 47 CFR § 9.10(i)(2)(ii)(E)-(F) (stating that nationwide CMRS providers must meet the benchmark by April 3, 2025, while non-nationwide CMRS providers will have an additional year to meet the benchmark throughout their network footprint).

⁴⁶ 47 CFR § 90.155(d). Pursuant to this rule, M-LMS licensees must construct and operate a sufficient number of base stations to serve one-third and two-thirds of an EA's population within five and ten years of the initial license grant, respectively. *Id.* Alternatively, an M-LMS licensee may make a showing of substantial service for its license at the five-year and ten-year benchmarks. *Id.*

⁴⁷ See *2017 Progeny Order*, 32 FCC Rcd at 135-36, para. 27.

⁴⁸ See *2017 Progeny Order* (citing *2015 Indoor Location Accuracy Order*).

⁴⁹ See *Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, WT Docket No. 12-202, Order, 32 FCC Rcd 123, 135-36, para. 27; see *Progeny LMS, LLC Request for Waiver and Extension of Time*, Universal Licensing System (ULS) File Nos. 0005273211 et al. (filed June 21, 2012) (2012 Waiver Request); *Progeny LMS, LLC Request for Extension of Time*, ULS File Nos. 0006383272 et al. (filed July 17, 2014) (2014 Waiver Request); *Progeny LMS, LLC Amendment and Restatement to Requests for Waiver and Extension of Time* (filed Mar. 27, 2015) (Amendment); *Progeny LMS, LLC Limited Amendment to Amendment and Restatement to Requests for Waiver and Extension of Time* (filed June 26, 2015) (Limited Amendment) (Amendment and Limited Amendment, together, Amended Waiver Requests). Progeny requested that the Amended Waiver Requests supersede all previously pending waiver and extension requests. Amendment at 2.

⁵⁰ In 2015, the Commission adopted the *2015 Indoor Location Accuracy Order*, which required CMRS providers to improve 911 location accuracy technology and to meet a timeline for implementation of solutions intended to lead to improvements in horizontal and vertical location accuracy. In the *2017 Progeny Order*, Progeny's end-of-term construction deadlines for its B and C Block licenses were extended in three license groupings largely based on dates set forth in the *2015 Indoor Location Accuracy Order*. Progeny's deadlines were extended in its: (1) top 40 EAs, which correspond to the carriers top 25 CMAs, to 2020; (2) next 20 EAs, which corresponds to the carriers top 50 CMAs, to 2021; and (3) final 73 EAs, which corresponds to everything outside of the top 50 CMAs, to 2023.

⁵¹ See *2017 Progeny Order*, 32 FCC Rcd at 138-39, para. 33-35.

⁵² *Id.*

⁵³ *2015 Indoor Location Accuracy Order*, 30 FCC Rcd at 1302-1305, paras. 112-120.

⁵⁴ *Id.* at 1294-95, 1302, paras. 95-96, 113. Progeny's affiliate NextNav LLC developed a technology that uses Progeny's M-LMS licenses to assist carriers in meeting their vertical location accuracy requirements.

granting Progeny's extension in the *2017 Progeny Order*, the Division reasoned that it was important for the NextNav equipment to remain an option for the wireless carriers to improve location accuracy and for Progeny's service to be available for E911 emergency response.⁵⁵

14. *2020 Progeny Waiver Order*. In July 2020, the Division conditionally granted Progeny a six month extension, from April 3, 2020 to October 3, 2020, to satisfy the end-of-term requirements for 42 M-LMS licenses in its top 40 EAs, which correspond to the top 25 CMAs.⁵⁶ The Division granted this extension due to the impact of COVID-19 on Progeny's firefighting end-user customers, and conditioned the grant upon Progeny ensuring that performance of the agreement with the International Association of Fire Chiefs (IAFC) to deliver end user receivers for training and search and rescue exercises had resumed and that the receivers were being used by fire departments.⁵⁷ The Division also reminded Progeny that it must continue to support the wireless carriers' efforts to comply with their E911 location accuracy requirements.⁵⁸ Likewise, the Division instructed Progeny, when filing its amended construction notifications to demonstrate the required population coverage or substantial service, to only include coverage areas where its signal strength is sufficient for carrier compliance.⁵⁹

A. Progeny's Pending Waiver Requests

15. Progeny's pending requests for relief relate to 226 of its B and C Block M-LMS licenses.⁶⁰ The construction deadline for 42 of those licenses, in its top 40 EAs, (Group 1) was extended to October 3, 2020. The second group of 40 of Progeny's licenses subject to requests for relief, in the next 20 EAs, (Group 2) had a construction deadline of April 3, 2021. The final group of 144 Progeny licenses (Group 3) has a construction deadline of April 3, 2023.⁶¹ As described in more detail below, all expired deadlines have been tolled by the timely filing of extension and waiver requests.

16. *MBS-Compatible Handset Reporting Requirement Waiver and Extension Request*. As a condition to the *2017 Progeny Order*, the Bureau required Progeny to file a report, by April 2, 2019, with the Commission demonstrating that Metropolitan Beacon Service (MBS)-compatible handsets are commercially available in the United States (MBS-Compatible Handset Reporting Requirement).⁶² In April 2019, Progeny requested a waiver and 20-month extension of time, from April 2, 2019, to December 2, 2020, to complete the rollout of its MBS-compatible handsets and comply with the MBS-Compatible Handset Reporting Requirement.⁶³ Progeny states that its failure to meet the deadline was due its reliance on other manufacturers to make hardware/software changes that would accommodate

⁵⁵ *2017 Progeny Order*, 32 FCC Rcd at 137, paras. 29-30.

⁵⁶ *Request of Progeny LMS, LLC for Waiver and Extension of Time*, WT Docket No. 12-202, Order, 35 FCC Rcd 7136 (WTB 2020) (*2020 Progeny Order*); see also *2017 Progeny Order*, 32 FCC Rcd at Attach. C (identifying the 42 licenses and construction deadlines). As explained further below, we refer to these licenses collectively as the Group 1 licenses. See *infra* para. 15.

⁵⁷ *2020 Progeny Order*, 35 FCC Rcd at 7139, para. 10.

⁵⁸ *2020 Progeny Order*, 35 FCC Rcd at 7139, para. 10; *2017 Progeny Order*, 32 FCC Rcd at 138, para. 33.

⁵⁹ *2020 Progeny Order*, 35 FCC Rcd at 7139, para. 10; *2017 Progeny Order*, 32 FCC Rcd at 138-39, para. 34.

⁶⁰ See *2017 Progeny Order*, 32 FCC Rcd at Attachs. C, D, E; see also *infra* at Attachs. A, B, C.

⁶¹ Progeny's April 3, 2023 construction deadline coincided with the second vertical location accuracy benchmark for the top 50 CMAs.

⁶² *2017 Progeny Order*, 32 FCC Rcd at 139, para. 35.

⁶³ Handset Waiver Request. This condition parallels the CMRS providers' z-axis deployment requirement whereby providers choosing to deploy z-axis capable handsets must do so on a nationwide basis. See 47 CFR §§ 9.10(i)(2)(ii)(I)(2); 9.10(i)(2)(ii)(J)(3). Providers were required to deploy this z-axis technology by April 3, 2021. 47 CFR § 9.10(i)(2)(ii)(C).

indoor location accuracy services.⁶⁴ In addition, Progeny states that the extension would not delay CMRS providers from meeting the April 2021 deployment deadline because Progeny's handsets would be available prior to the end of 2020.⁶⁵

17. *Second Construction Deadline Extension Request.* The Bureau, in the *2020 Progeny Order*, granted Progeny a six-month extension, from April 3, 2020 to October 3, 2020, to satisfy the end-of-term construction requirements for its Group 1 licenses.⁶⁶ In October 2020, Progeny filed a request seeking an additional six-month extension, from October 3, 2020 to April 3, 2021, to satisfy the end-of-term requirements for these licenses, stating that a further extension of the deadline is necessary due to the impact of COVID-19 on its firefighting end-user customers.⁶⁷ Progeny explains that it had been unable to implement the arrangement with the IAFC whereby Progeny would distribute its handheld vertical location receivers for training with IAFC members.⁶⁸ Progeny reports that the IAFC notified Progeny on September 1, 2020, that it must delay receipt of the receivers because "efforts to isolate and control the pandemic have not been successful" and "the continued state of emergency has 'significantly constrained the ability of IAFC members to address non-essential activities.'"⁶⁹ Progeny therefore states that a further waiver and extension of time is necessary for reasons that are beyond Progeny's control.⁷⁰

18. *Coverage Waiver Request.* Pursuant to section 90.155(d) of the Commission's rules,⁷¹ Progeny is required to provide substantial service or serve two-thirds of the population by its end-of-term construction deadline.⁷² In February 2021, Progeny requested a waiver to substitute meeting the two-thirds population coverage with coverage to two-thirds of buildings in excess of three stories located in each of its markets and/or demonstrating substantial service for all of its remaining 226 B and C-block licenses.⁷³ To justify its waiver request, Progeny relies on the Commission's *2020 Indoor Location Accuracy Order* which afforded CMRS providers the option of deploying z-axis technology to cover two-thirds of the buildings that exceed three stories.⁷⁴ Progeny argues that grant of a waiver will align Progeny's requirements with those of CMRS providers and also afford Progeny more flexibility to satisfy

⁶⁴ Handset Waiver Request at 2-3.

⁶⁵ Handset Waiver Request at 2, 4-5.

⁶⁶ *2020 Progeny Order*; see also *2017 Progeny Order*, 32 FCC Rcd at Attach. C (identifying the 42 licenses and construction deadlines).

⁶⁷ *Second Construction Deadline Request*; *id.* at 2-5.

⁶⁸ See *id.* at 2-3.

⁶⁹ See *id.* at 4-5.

⁷⁰ See *id.* at 5; see also 47 CFR § 1.946(e)(1).

⁷¹ 47 CFR § 90.155(d) ("Multilateration LMS EA-licensees, authorized in accordance with § 90.353, must construct and place in operation a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to one-third of the EA's population within five years of initial license grant, and two-thirds of the population within ten years. Licensees may, in the alternative, provide substantial service to their licensed area within the appropriate five- and ten-year benchmarks.").

⁷² Progeny's end-of-term construction deadline for the (1) Group 1 licenses was April 3, 2020; (2) Group 2 licenses was April 3, 2021; and (3) Group 3 licenses is April 3, 2023. See *2020 Progeny Order*; see also *2017 Progeny Order*, 32 FCC Rcd at Attachs. C, D, E.

⁷³ *Coverage Waiver Request.* Through this waiver request, Progeny also amended its April 2020 construction showings for the Group 1 licenses. Progeny filed these construction showings *prior* to the grant of the *2020 Progeny Order*. Progeny indicated its intent to make a substantial service showing to satisfy its end-of-term construction deadlines, but also acknowledged that Progeny's end user terminals had not been distributed. See *Coverage Waiver Request* at 4-5.

⁷⁴ *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7758-9, paras. 15-17; 47 CFR § 9.10(i)(2)(ii)(I)(1).

its construction requirements.⁷⁵ Progeny notes that the Commission explained, in the *2020 Indoor Location Accuracy Order*, that a compliance approach based on tall buildings “will encourage providers to invest in z-axis solutions that focus on the areas with the greatest need for vertical location information.”⁷⁶ Progeny explains that it “has been focusing its network construction efforts primarily on serving areas with tall buildings, regardless of whether they correspond with residential population centers,” and that “[t]his often means deploying Progeny’s infrastructure in commercial centers and office parks that may not include residential housing clusters.”⁷⁷ Progeny argues that there is good cause for grant of the waiver because it will “facilitate[e] Progeny’s support of public safety and the wireless industry through the provision of highly accurate vertical location service in those areas where it is most needed, in urban centers with large office buildings and multifamily housing.”⁷⁸

19. *Third Construction Deadline Extension Request.* In April 2021, Progeny sought an additional six-month extension to October 3, 2021, for its Group 1 and 2 licenses⁷⁹ in the event that the Bureau denies its Coverage Waiver Request or finds its construction showings insufficient.⁸⁰ While Progeny contends that it has already constructed its vertical location network for its Group 1 and 2 Licenses, it explains that a waiver would support the public interest and is warranted for reasons beyond Progeny’s control.⁸¹ In support of this, Progeny explains that widespread use of its vertical location service has been delayed by the reluctance of the major wireless carriers to implement, by the April 2021 deadline, vertical location technologies that are compliant with the Commission’s rules in the top 25 CMAs.⁸² Progeny states that its ability to meet its requirements relies on carriers’ efforts to meet vertical location accuracy deadlines, and that several carriers, at the time of Progeny’s deadlines, had failed to meet those deadlines.⁸³ Progeny therefore seeks an additional extension for its Group 1 and 2 licenses until October 3, 2021, or 90-days after the Commission releases any adverse decision against Progeny’s request.

B. Status of Progeny’s Compliance with Handset and Construction Requirements

20. *Progeny’s Handset Requirement.* As of September 2021, Progeny states that it has manufactured MBS-compatible handsets, which are commercially available and are being used by the IAFC in 15 of its EAs for situational awareness training and search and rescue exercises, and by third-party contractors in 28 of its EAs to make vertical location determinations for use as reference points to calibrate the barometric pressure sensors in consumer handsets.⁸⁴

⁷⁵ See Coverage Waiver Request at 2, 6-7.

⁷⁶ See *Id.* at 2, 6-7 (citing *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7759, para. 17); 47 CFR § 1.3.

⁷⁷ See Coverage Waiver Request at 2.

⁷⁸ *Id.* at 1.

⁷⁹ Progeny’s end-of-term construction deadline for its Group 1 licenses was April 3, 2020. See *2020 Progeny Order*; see also *2017 Progeny Order*, 32 FCC Rcd at Attach. C. Progeny’s end-of-term construction deadline for its Group 2 licenses was April 3, 2021. See *2017 Progeny Order*, 32 FCC Rcd at Attach. D.

⁸⁰ Third Construction Deadline Request.

⁸¹ Third Construction Deadline Request at 2-3; 47 CFR § 1.946(e)(1).

⁸² Third Construction Deadline Request at 3-4.

⁸³ Third Construction Deadline Request at 3-5 (citing Verizon Petition for Waiver, PS Docket No. 07-114 at 2 (Feb. 12, 2021) (Verizon Petition); Petition for Waiver of AT&T Services, Inc., PS Docket No. 07-114 at 18 (Feb. 12, 2021) (AT&T Petition); Petition for Limited Waiver of T-Mobile USA, Inc., PS Docket No. 07-114 at 19 (Feb. 12, 2021) (T-Mobile Petition)).

⁸⁴ In its progress reports, Progeny detailed its efforts to make handsets commercially available. See Seventh Progress Report of Progeny LMS, LLC, WT Docket No. 12-202, at 2 (filed Mar. 1, 2020) (Seventh Progress Report); Eighth Progress Report of Progeny LMS, LLC, WT Docket No. 12-202, at 1-2 (filed Sept. 1, 2020) (Eighth Progress Report) (continued....)

21. *Progeny's Construction Requirements.* Progeny has pending before the Division construction notifications for its Group 1 and 2 licenses.⁸⁵ Specifically, as of March 1, 2021, Progeny states that it completed construction for its Group 1 and 2 licenses and is operating its M-LMS network in the top 41 EAs, which corresponds to the top 50 CMAs.⁸⁶ Progeny's notifications reflect construction that anticipates a grant of its pending waivers and note that since Progeny's technology is designed to cover tall buildings, the construction showings for its licenses in 39 out of 41 of its EAs purport to demonstrate coverage of two-thirds of tall buildings rather than two-thirds of the population as required under one option provided in the Commission's rules.⁸⁷ Progeny claims that it provides substantial service in its construction showings for the remaining 2 out of 41 EAs.⁸⁸

III. DISCUSSION

22. *Standard of Review.* Licensees may request a waiver of the Commission's rules pursuant to Section 1.925,⁸⁹ or an extension of time to construct pursuant to Section 1.946(e).⁹⁰ The Commission may grant a request for a waiver when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the 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.⁹¹ Section 1.946(e) of the Commission's rules allows for an extension of time to meet construction requirements where a licensee demonstrates that failure to meet the construction deadline is due to circumstances beyond its control, while specifying a number of reasons that would not justify an extension, such as a licensee's failure to obtain financing, antenna sites, or equipment.⁹² The rule provides that requests for extension must be filed before the expiration of the construction period.⁹³ We note that the waiver standard and extension standard must be applied in consideration of Section 309(j), which states that the Commission shall include performance requirements to ensure prompt delivery of services, to prevent stockpiling and warehousing of spectrum by licensees,

Progress Report); Ninth Progress Report of Progeny LMS, LLC, WT Docket No. 12-202, at 1-2 (filed Mar. 1, 2021) (Ninth Progress Report); Tenth Progress Report of Progeny LMS, LLC, WT Docket No. 12-202, at 1-3 (filed Sept. 1, 2021) (Tenth Progress Report); Eleventh Progress Report of Progeny LMS, LLC, WT Docket No. 12-202, at 1-3 (filed Mar. 1, 2022) (Eleventh Progress Report); Twelfth Progress Report of Progeny LMS, LLC, WT Docket No. 12-202, at 1-3 (filed Sept. 1, 2022) (Twelfth Progress Report); Thirteenth Progress Report of Progeny LMS, LLC, WT Docket No. 12-202, at 1-3 (filed Mar. 1, 2023) (Thirteenth Progress Report).

⁸⁵ On April 20, 2020, Progeny filed 32 notifications of construction (NTs) claiming that it met substantial service. In June 2021, Progeny submitted 82 NTs, many of which amend the 42 NTs filed on April 20, 2020. *See* Attach. D (Duplicative filings). The amended filings presume the grant of the currently pending Coverage Waiver Request and Third Construction Deadline Request. *See* Attachs. A, B.

⁸⁶ Ninth Progress Report at 1; *see* Attachs. A, B.

⁸⁷ Coverage Waiver Request; Third Construction Deadline Request; *see also* Attachs. A, B, C.

⁸⁸ Thirteenth Progress Report at 2 ("Progeny employed a substantial service approach for its remaining two largest EAs, Orlando and Baltimore/Washington.").

⁸⁹ 47 CFR § 1.925.

⁹⁰ 47 CFR § 1.946(e).

⁹¹ 47 CFR § 1.925(b)(3).

⁹² 47 CFR § 1.946(e).

⁹³ *Id.* We confirm that Progeny timely filed its extension requests relating to its Group 1 and 2 licenses. Progeny filed its Second Construction Deadline Request for its Group 1 licenses on September 17, 2020, prior to its October 2, 2020 deadline. *See generally* File Number 0009226497. Likewise, Progeny filed its Third Construction Deadline Request for its Group 1 and 2 licenses on March 31, 2021, prior to the April 3, 2021 deadline. *See generally* File Numbers 0009477376 and 0009477378.

and to promote investment and deployment of new technologies and services.⁹⁴ We address Progeny's waiver and extension requests under the appropriate standard in turn below.

A. Extension of Progeny's MBS-compatible Handset Reporting Requirement Deadline

23. Based on our review of the record, we find that Progeny has shown that a waiver of the MBS-Compatible Handset Reporting Requirement deadline is warranted because the underlying purpose of the requirement would be frustrated by application in the instant case and because grant of the requested waiver will serve the public interest.⁹⁵ Accordingly, we waive the MBS-Compatible Handset Reporting Requirement and extend Progeny's handset reporting deadline from April 2, 2019, to April 18, 2020.⁹⁶

24. The underlying purpose of the MBS-Compatible Handset Reporting Requirement contained in the *2017 Progeny Order* was to ensure that there is a "direct link between Progeny's proposed service offering and the likelihood of its carrier customers being able to benefit the public through compliance with the *Indoor Location Accuracy Order* requirements."⁹⁷ In its filings, Progeny demonstrated that it was actively working with wireless carriers to bring MBS-compatible handsets to market.⁹⁸ Progeny also demonstrated that extending the date of compliance with the MBS-Compatible Handset Reporting Requirement did not delay CMRS providers from meeting the April 2021 deployment deadline because Progeny's handsets were available prior to the end of 2020, in advance of the CMRS providers deadline.⁹⁹ Moreover, despite being met with delays due to Progeny's reliance on wireless handset manufacturers to make hardware/software changes that would accommodate Progeny's M-LMS services,¹⁰⁰ Progeny reported that it had "significant success in securing MBS compatibility in handsets"

⁹⁴ 47 U.S.C. § 309(j).

⁹⁵ 47 CFR § 1.925(b)(3). In the *2017 Progeny Order*, the Division required Progeny to "file a report with the Commission demonstrating that compatible handsets are commercially available in the United States" by April 2, 2019. *Id.* at 139, para. 35.

⁹⁶ We note, that although Progeny requested a 20-month extension from the April 2, 2019 deadline, Progeny stated that as of April 18, 2020, it had "distributed its end user receivers to third party contractors in each of the 21 EAs to make vertical location determinations in each city, which can be used as reference points to calibrate the barometric pressure sensors in consumer handsets as a part of Progeny's vertical location solution to support E911 emergency services. *See generally* File Number 0009048443 (Narrative and Link Budget). Likewise, in its Eighth Progress Report, Progeny confirmed that it had "manufactured end user devices that can receive Progeny's M-LMS signals and, coupled with visual displays on smart devices and application software, can calculate and display vertical location within three meters." *See* Eighth Progress Report at 2. We therefore alter this deadline to conform with the date that Progeny submitted its construction notifications.

⁹⁷ *See 2017 Progeny Order*, 32 FCC Rcd at 139, para. 35.

⁹⁸ Handset Waiver Request at 2-5; *see also* Seventh Progress Report at 2 ("Progeny and NextNav have also continued to work diligently with major wireless carriers, chipset vendors, handset manufacturers, and the public safety community on the full commercialization of Progeny's M-LMS licenses through the incorporation of its vertical location technology, including the reception of vertical location data using its M-LMS beacon network, to support E911 emergency first responders.").

⁹⁹ Handset Waiver Request at 2, 4-5; *see also supra* n.85.

¹⁰⁰ Handset Waiver Request at 2-3; *see also* Handset Progress Report of Progeny LMS, LLC, WT Docket No. 12-202 (filed Apr. 2, 2019) (confidential); T-Mobile Petition at 12 ("it is also apparent that the technologies proffered by both NextNav and Polaris require further work to integrate proof-of-concept technologies into commercially available handsets, whether that integration is accomplished via the mobile OS systems or integrated into the devices with the cooperation of the handset OEMs through over-the-top applications."); *id.* at 18 (stating "the third party applications would have to be approved and integrated onto the device platform by the handset OEM or integrated into the mobile OS (which they are not)"); AT&T Petition at 7-8 (stating MBS integration into handsets "was a difficult undertaking because MBS required integration at the system on a chip (SoC) level and there was no support for the MBS Solution by the leading SoC manufacturer").

when it successfully manufactured and distributed end user devices that could receive its M-LMS signals.¹⁰¹ In light of these factors, we find that the underlying purpose of the MBS-Compatible Handset Reporting Requirement would be frustrated by application in the instant case, and that an extension of the reporting deadline is appropriate.

25. We also find that grant of a waiver to extend the reporting deadline is in the public interest. The record demonstrates that Progeny's network holds the potential to offer significant public safety benefits through improved E911 indoor location accuracy and, through our relief, we ensure that Progeny will have the opportunity to continue to provide such service to wireless carriers and to support the wireless carriers' efforts to meet deadlines adopted in the *2015* and *2020 Indoor Location Accuracy Orders*.¹⁰² We find that extending Progeny's handset deadline will promote beneficial use of the spectrum and enable Progeny's services to remain an option for wireless carriers to satisfy the Commission's location accuracy rules and serve the critical public safety need of improved E911 indoor location accuracy.

B. Extension of Progeny's B and C Block Construction Deadlines

26. We also conditionally grant two of Progeny's requests to extend its construction deadlines. First, we grant Progeny an extension of its end-of-term construction deadlines for its Group 1 licenses for an additional six months, from October 3, 2020, to April 3, 2021.¹⁰³ Next, we grant Progeny a waiver of its end-of-term construction requirements for its Group 1 and 2 licenses and extend these construction deadlines from April 3, 2021,¹⁰⁴ to June 17, 2021. We discuss these extensions in further detail below.

27. *Second Construction Deadline Extension Request.* Because we find that Progeny encountered circumstances beyond its control,¹⁰⁵ we find that the public interest is served by grant of an additional six-month extension of Progeny's end-of-term construction deadline, from October 3, 2020, to April 3, 2021, for its Group 1 licenses.¹⁰⁶ In the Second Construction Deadline Request, Progeny argues that an additional extension is warranted because, despite "rapidly construct[ing] its vertical location network" and remaining on track to satisfy its construction requirements for its Group 1 licenses, Progeny has been unable to implement its arrangement to deliver end-user receivers to and initiate service for the

¹⁰¹ Handset Waiver Request at 3; Eighth Progress Report at 2.

¹⁰² See *2017 Progeny Order*, 32 FCC Rcd at 136-7, paras. 28-30; Handset Waiver Request at 7-8 ("Progeny's indoor location technology MBS has consistently proven its ability to meet the 50 meter objective for 80 percent of calls in industry-wide testing" and grant of this waiver will aid in meeting the Commission's goals of achieving "ubiquitous, reliable, and accurate location technology for all Americans"); *id.* at 9-10 (stating "Progeny has consistently demonstrated that its technology can achieve the specific" Commission requirements and the public interest would be advanced significantly by granting the waiver and ensuring Progeny's z-axis capabilities remain available); *id.* at 11-14 (stating the public interest is also served by ensuring that Progeny's MBS technology is available for aiding first responders through FirstNet and providing a potential backup to GPS for DHS and other government agencies).

¹⁰³ Second Construction Deadline Request; see also *2020 Progeny Order* (extending Progeny's end-of-term construction deadline for these licenses to October 3, 2020); *2017 Progeny Order*, 32 FCC Rcd at Attach. C (identifying the 42 licenses and construction deadlines).

¹⁰⁴ In this Order, we extended Progeny's end-of-term construction deadline for its Group 1 licenses to April 3, 2021. See *infra* paras. 27-28 (extending Progeny's deadline from October 3, 2020, to April 3, 2021); see also *2020 Progeny Order* (extending Progeny's deadline from April 3, 2020, to October 3, 2020); *2017 Progeny Order*, 32 FCC Rcd at Attach. C. Progeny's end-of-term construction deadline for its Group 2 licenses was April 3, 2021. See *2017 Progeny Order*, 32 FCC Rcd at Attach. D.

¹⁰⁵ See 47 CFR § 1.946(e). This rule also specifies circumstances for which an extension will not be granted, such as a licensee's failure to obtain financing, antenna sites, or equipment. 47 CFR § 1.946(e)(2).

¹⁰⁶ Second Construction Deadline Request; see also *2020 Progeny Order* (extending Progeny's end-of-term construction deadline for these licenses to October 3, 2020); *2017 Progeny Order*, 32 FCC Rcd at Attach. C (identifying the 42 licenses and construction deadlines).

IAFC.¹⁰⁷ Progeny explains that the IAFC notified Progeny on September 1, 2020, that it had to again delay receipt of the receivers because “efforts to isolate and control the pandemic have not been successful” and “the continued state of emergency has ‘significantly constrained the ability of IAFC members to address non-essential activities.’”¹⁰⁸ Progeny maintains that the IAFC indicated that it would resume work on the deployment of Progeny’s vertical location technology to its members “immediately in advance of the implementation deadline.”¹⁰⁹

28. We find good cause to grant the requested relief, given the impact of COVID-19 and the resulting declarations of emergencies at the local, state, and federal levels at that time.¹¹⁰ We find it relevant to our decision that despite the delays caused by the pandemic, which disrupted delivery of the devices needed to initiate service to the fire departments, Progeny still managed to file its construction notifications in April 2021.¹¹¹ We recognize that the ability of emergency personnel to locate individuals in distress accurately through improved vertical location accuracy is essential. It is imperative that first responders have access to accurate vertical location information, and Progeny’s technology remains an important option for achieving improved accuracy. Given the evolving and unpredictable nature of the pandemic at the time of the construction deadline, which led IAFC to delay its acceptance of the receivers, we find that Progeny has demonstrated that failure to meet the construction deadline is due to circumstances beyond Progeny’s control. We therefore find it in the public interest to grant Progeny’s request for extension of its applicable construction deadlines for an additional six months to April 3, 2021, subject to the conditions below.

29. *Third Construction Deadline Extension Request.* We likewise find good cause to grant Progeny a waiver of its construction deadlines for its Group 1 and 2 licenses and extend such deadlines from April 3, 2021¹¹² to June 17, 2021.¹¹³ Construction notifications for these licenses are currently pending. Based on our review of the record and the totality of the circumstances presented in this case, we find that the underlying purpose of Section 90.155(d), to ensure that M-LMS licensees use spectrum

¹⁰⁷ See Second Construction Deadline Request at 1-4. In the *2020 Progeny Order*, Progeny was granted a six month extension because of the COVID-19 pandemic and related governmental directives to postpone or curtail all non-essential functions. *2020 Progeny Order*, 35 FCC Rcd at 7138-9, paras. 7-10.

¹⁰⁸ See Second Construction Deadline Request at 1-5.

¹⁰⁹ See *id.* at 4.

¹¹⁰ See Executive Office of the President, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidentialactions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>; see also Executive Office of the President, Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic (Feb. 14, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

¹¹¹ See Tenth Progress Report; see also File Number 0009499347 (showing an example of a construction notification filed in April 2021); Verizon Petition at 18-19 (stating that “just over one year in advance of the [April 2021] deadline, one of Verizon’s OS vendors [Progeny] was making significant progress towards achieving +/- 3 meters/80 percents for its products.”).

¹¹² In this Order, we extended Progeny’s end-of-term construction deadline for its Group 1 licenses to April 3, 2021. See *supra* paras. 27-28 (extending Progeny’s deadline from October 3, 2020 to April 3, 2021); *2020 Progeny Order* (extending Progeny’s deadline from April 3, 2020 to October 3, 2020); see also *2017 Progeny Order*, 32 FCC Rcd at Attach. C. Progeny’s end-of-term construction deadline for its Group 2 licenses was April 3, 2021. See *2017 Progeny Order*, 32 FCC Rcd at Attach. D.

¹¹³ Third Construction Deadline Request. We note, that although Progeny requested an additional 6-month extension from the April 3, 2021 deadline, Progeny filed its amended construction notifications on June 14, 2021 and June 17, 2021. See Tenth Progress Report; see also File Numbers 0009498548; 0009498604 (showing an example of an amended construction notification filed on each date). We therefore alter this deadline to conform with the latter dates of Progeny’s amended construction filings.

to provide location-based services to consumers, would not be served if existing construction deadlines are applied here. First, Progeny demonstrated that it actively worked towards meeting its construction requirements by working with wireless carriers to ensure that end user terminals could receive Progeny's M-LMS beacon signals.¹¹⁴ Progeny also ensured that its end-user terminals were made available to aid the IAFC with situational awareness training and search and rescue exercises as well as to third party contractors to make vertical location determinations in support of E911 emergency services.¹¹⁵ Second, as discussed below, the record clearly demonstrates that Progeny's network holds the potential to offer significant public safety benefits through improved E911 indoor location accuracy and, through our conditional relief, we ensure that Progeny will have the opportunity to provide such service to wireless carriers in order for them to meet upcoming deadlines adopted in the 2015 and 2020 *Indoor Location Accuracy Orders*.¹¹⁶ Finally, despite the delays met and the technical issues faced by vertical location vendors, such as Progeny,¹¹⁷ Progeny managed to file its construction notifications by June of 2021, and states that its network "provides vertical location services with an accuracy of within three meters to support emergency response to wireless callers to E911 emergency services."¹¹⁸

30. We also find that a number of factors, taken collectively, justify relief in the public interest provided that Progeny adheres to the conditions specified below.¹¹⁹ Extending Progeny's construction deadlines will promote beneficial use of the spectrum and enable its equipment and services to remain an option for wireless carriers to improve location accuracy and satisfy the Commission's location accuracy rules identified as a critical public safety need. We agree with Progeny that conditionally granting its waiver relief serves the public interest and will "ensure that Progeny's technology remains available for use by public safety and the U.S. federal government for critical safety

¹¹⁴ See Third Construction Deadline Request at 3-4; *see also* Eighth Progress Report at 1-2; Ninth Progress Report at 2; Tenth Progress Report at 2-3.

¹¹⁵ See Third Construction Deadline Request at 3-5; *see also* Eighth Progress Report at 1-2; Ninth Progress Report at 2; Tenth Progress Report at 2-3.

¹¹⁶ See Third Construction Deadline Request at 3-7; 2017 *Progeny Order*, 32 FCC Rcd at 137, paras. 28-29. Progeny has also shown that its services provide a significant public safety benefit through partnerships with a major wireless carrier and other technology providers. See Elisabeth Jeffs, *RapidDeploy Partners with NextNav to Reduce Response Times in 9-1-1 Calls from Multi-Floor Buildings*, NextNav (June 13, 2022), <https://nextnav.com/rapiddeploy-partnership/>; Gillian Smith, *NextNav Selected to Deliver High-Precision Z-Axis Capabilities for 911 by Top Wireless Carrier*, NextNav (Jan. 19, 2022), https://nextnav.com/nextnav_to_deliver_high_precision_zaxis_for_e911/; Gillian Smith, *NextNav and Qualcomm Collaborate to Deliver Precise Vertical Location for E911 Emergency Services*, NextNav (Oct. 14, 2021), <https://nextnav.com/nextnav-qualcomm-deliver-vertical-location-e911/>. Moreover, Progeny's services could aid public safety by serving as a terrestrial backup to GPS "through the provision of highly accurate position, navigation and timing (PNT) services." See Third Construction Deadline Request at 4-6; *see also* Thirteenth Progress Report at 3 (Progeny was selected "by NASA's Ames Research Center in Silicon Valley to use Progeny's M-LMS network to deliver position, navigation and timing ("PNT") services for NASA's urban drone program. Using Progeny's M-LMS network, NASA Ames will capture in-flight horizontal and vertical location data to validate drone flight safety at its Mountain View, California, facility. The research will help support a stronger understanding of PNT management in GPS-denied environments.").

¹¹⁷ Third Construction Deadline Request at 3-4 (*citing* Verizon Petition for Waiver, PS Docket No. 07-114 at 2 (Feb. 12, 2021); Petition for Waiver of AT&T Services, Inc., PS Docket No. 07-114 at 18 (Feb. 12, 2021); Petition for Limited Waiver of T-Mobile USA, Inc., PS Docket No. 07-114 at 19 (Feb. 12, 2021)). Verizon stated that it evaluated solutions from NextNav, but those solutions were not supported by smartphones for a number of reasons. See Verizon Petition at 3-4. AT&T stated that it had to work through technical issues with its z-axis vendor, and in particular, it needed to perform privacy and security reviews of NextNav's technology. See AT&T Petition at 18.

¹¹⁸ See Tenth Progress Report; Thirteenth Progress Report; *see also* File Numbers 0009498548; 0009498604 (showing an example of an amended construction notification filed on June 14th and 17th).

¹¹⁹ See *infra* paras. 33-35.

and security services.”¹²⁰ We also note that the existence of competing technologies spurs innovation and provides choice to consumers, thereby furthering the public interest.

C. Compliance with Progeny’s Construction Coverage Requirements

31. Progeny seeks waiver of section 90.155(d) to allow it to meet its construction requirements by serving two-thirds of buildings in excess of three stories for its Group 1, 2, and 3 licenses.¹²¹ Progeny states that grant of the waiver to meet its construction requirements by serving two-thirds of buildings in excess of three stories would not only align Progeny’s requirements with those of the CMRS providers, but would also afford Progeny more flexibility to satisfy its construction requirements. In the *2020 Indoor Location Accuracy Order*, the Commission gave CMRS providers the option of deploying z-axis technology to cover 80% of the buildings that exceed three stories in the CMA rather than 80% of the population.¹²² In doing so, the Commission, relying on some of Progeny’s comments, found that the compliance approach based on tall buildings could lower the costs of deploying z-axis solutions and could “encourage providers to invest in z-axis solutions that focus on the areas with the greatest need for vertical location information.”¹²³

32. We agree with Progeny that affording it the opportunity to meet its construction requirements by serving two-thirds of buildings in excess of three stories would better align its requirements with those of the CMRS providers. However, we find that in lieu of granting a waiver of Section 90.155(d), Progeny may comply with its construction requirements by demonstrating that it is providing service consistent with the two-thirds tall buildings coverage approach, which would meet the substantial service requirement.¹²⁴ Utilizing the two-thirds tall buildings metric, as described in the *2020 Indoor Location Accuracy Order*, to meet substantial service will promote beneficial use of the spectrum, especially in areas where it is needed most, and ensure that Progeny’s service remains an option for wireless carriers to improve location accuracy and satisfy the Commission’s location accuracy requirements. We confirm here that Progeny may meet its construction deadlines by showing substantial service through serving two-thirds of buildings in excess of three stories for its Group 1, 2, and 3 licenses.¹²⁵ Commission staff will apply this approach to the amended construction showings for

¹²⁰ Third Construction Deadline Request at 7.

¹²¹ Progeny requests a waiver to demonstrate coverage of at least two-thirds of the tall buildings in each EA. See Coverage Waiver Request at 1; *see also id.* at 2-7 (citing *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7759, para. 17); 47 CFR § 1.3.

¹²² *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7758-9, paras. 15-17; 47 CFR § 9.10(i)(2)(ii)(I)(1).

¹²³ *See 2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7758-9, para. 17; *see also* Coverage Waiver Request at 2-7 (citing *2020 Indoor Location Accuracy Order*, 35 FCC Rcd at 7758, para. 16) (“transitioning from a population-based compliance approach to one focused on tall structures would presumably assist emergency personnel by ‘ensuring that vertical location capabilities are made available as much as possible where they are most needed, and not just in low-rise residential areas where the vertical dimension is not a significant factor for public safety.’”).

¹²⁴ Section 90.155(d) allows a licensee to meet its end-of-term construction deadlines by providing either (1) service to two-thirds of the population; or (2) substantial service to their licensed area. The Commission defines substantial service as service that is “sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal.” *See, e.g., Implementation of Section 3(N) and 332 of the Communications Act Regulatory Treatment of Mobile Services; Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission’s Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool*, GN Docket No. 93-252; PR Docket Nos. 93-144 and 89-553, Report and Order, 9 FCC Rcd 7988, 8157 n.712 (1994)(citing 47 CFR § 22.940(a)(1)(i)).

¹²⁵ We confirm that CoStar Analytics is an appropriate data source for tall buildings in this context, although an equivalent source would also be acceptable.

Progeny's Group 1 and 2 licenses, which were filed in June 2021.¹²⁶ This approach will also apply to Progeny's construction showings for its Group 3 licenses, which have a construction deadline of April 3, 2023. Accordingly, because we find that serving two-thirds of buildings in excess of three stories may be used to demonstrate substantial service for these license groups, we dismiss Progeny's request for waiver of Section 90.155(d)'s coverage requirement as moot.¹²⁷

IV. CONCLUSION

33. We find it in the public interest to grant relief to Progeny for its Group 1 and 2 licenses' end-of-term construction requirements and deadlines subject to the conditions outlined below.

34. *Conditions.* The relief granted in this Order is subject to the following conditions. Progeny must meet the construction deadlines established herein and timely file construction notifications acceptable to the Commission for its remaining 144 licenses (Group 3 Licenses).¹²⁸ Consistent with this Order, Progeny shall be permitted to file its construction notifications to meet the substantial service requirement with a demonstration that the required coverage to two-thirds of the buildings in excess of three stories has been achieved, however, Progeny may only include coverage areas where its signal strength is sufficient for wireless carrier compliance with the requirements established in the Commission's relevant rules, its *2015 Indoor Location Accuracy Order*, 30 FCC Rcd 1259, and its *2020 Indoor Location Accuracy Order*, 35 FCC Rcd 7752.¹²⁹ We remind Progeny that the relevant M-LMS licenses will terminate automatically if Progeny fails to meet these required benchmarks pursuant to Sections 1.946(c) and 1.955(a) of the Commission's rules.¹³⁰ Moreover, as an additional condition, Progeny is required to continue to provide location accuracy services on all of its B and C Block licenses for at least a five (5) year period ending April 3, 2028.¹³¹ Until April 3, 2028, Progeny's B and C Block licenses may not be assigned, transferred, partitioned, disaggregated, and/or leased to any third party, unless the potential assignee, transferee, partitionee, disaggregatee, and/or lessee requests a waiver justifying continuation of the waiver relief granted herein and the Bureau grants such relief.

35. In addition, we condition the relief provided on Progeny filing periodic reports electronically in this docket, WT Docket No. 12-202, as outlined below, demonstrating its progress toward meeting the extended construction deadlines. These reports are necessary because a waiver would not be warranted absent a direct link between Progeny's proposed service offering and the likelihood of its carrier customers being able to benefit the public through compliance with the *Indoor Location Accuracy Order* requirements. The record reflects that each step requiring a report is a precursor to Progeny's ultimate ability to comply with its construction deadlines (e.g., handsets to market, agreements

¹²⁶ Progeny LMS, LLC's Further Waiver Request, WT Docket No. 12-202 (filed Feb. 2, 2021) (Coverage Waiver Request). Through this waiver request, Progeny also amended its April 2020 construction showings for the 42 licenses in the top 40 EAs. Progeny filed these construction showings *prior* to the grant of the *2020 Progeny Order*. Progeny indicated its intent to make a substantial service showing to satisfy its end-of-term construction deadlines, but also acknowledged that Progeny's end user terminals had not been distributed. *See* Coverage Waiver Request at 4-5.

¹²⁷ Because we find that Progeny may meet substantial service by demonstrating two-thirds tall building coverage, we do not discuss the merits of Progeny's Coverage Waiver Request.

¹²⁸ Progeny's April 3, 2023 construction deadline coincides with the second vertical location accuracy benchmark for the top 50 CMAs.

¹²⁹ *2015 Indoor Location Accuracy Order*, 30 FCC Rcd 1259; *2020 Indoor Location Accuracy Order*, 35 FCC Rcd 7752.

¹³⁰ 47 CFR §§ 1.946(c), 1.955(a).

¹³¹ This date represents five years from the April 3, 2023 end-of-term construction deadline for its remaining 73 EAs and ensures that, for a reasonable and not unduly burdensome time period, Progeny will continue to provide service to carriers complying with the indoor location accuracy requirements. *See 2017 Progeny Order*, 32 FCC Rcd at 135-36, para. 27; *id.* at Attach. D.

with carriers). This waiver terminates if we determine that any of Progeny's reports do not adequately demonstrate that each of the precursors has been accomplished, unless Progeny separately demonstrates that continuation of the waiver relief is nonetheless in the public interest. Accordingly, we require the following:

- Beginning on June 15, 2023, Progeny must file biannual reports (by June 15 and December 15 of each year, ending on June 15, 2028) detailing its progress toward deployment, testing, and activation in each license area. For licenses that are past the relevant end-of-term deadline, Progeny must include in each semi-annual report a confirmation that such licenses continue to remain in operation providing location accuracy services. Progeny must also include a detailed demonstration as to how Progeny is supporting wireless carriers' efforts to comply with their E911 location accuracy requirement, and must include a copy of the agreement(s) entered into with any carrier(s) regarding this supporting effort.¹³²

V. ORDERING CLAUSE

36. Accordingly, IT IS ORDERED that, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Sections 0.131, 0.331, 1.925, 1.946, and 90.155(d) of the Commission's rules, 47 CFR §§ 0.131, 0.331, 1.925, 1.946, 90.155(d), the Progeny LMS, LLC, Request for Waiver and Extension of time filed March 27, 2015, Progeny LMS, LLC's Request for Waiver and Extension of Time filed April 2, 2019, Progeny LMS, LLC's Further Request for Waiver and Extension of Time filed Sept. 17, 2020, and Progeny LMS, LLC's Request for Waiver and Extension of Time filed March 31, 2021, ARE GRANTED to the extent described and subject to the conditions imposed herein and are otherwise DENIED.

37. It is FURTHER ORDERED that the Progeny LMS, LLC's Further Waiver Request filed Feb. 2, 2021, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

¹³² Progeny may seek confidentiality pursuant to Commission rules 0.457. 0.459, 47 CFR Section 0.457, 0.459, if necessary.

ATTACHMENT A
Group 1 – 42 Licenses in Top 40 EAs
Second Milestone Extension until June 17, 2021

Call Sign	Market Code	Market Description	Channel Block
WPQP849	BEA003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT	B
WPQP850	BEA003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT	C
WPQP863	BEA010	New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT	B
WPQP864	BEA010	New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT	C
WPQP867	BEA012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	B
WPQP868	BEA012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	C
WPQP869	BEA013	Washington-Baltimore, DC-MD-VA-WV-PA	B
WPQP870	BEA013	Washington-Baltimore, DC-MD-VA-WV-PA	C
WPQP899	BEA031	Miami-Fort Lauderdale, FL	B
WPQP900	BEA031	Miami-Fort Lauderdale, FL	C
WPQP905	BEA034	Tampa-St. Petersburg-Clearwater, FL	B
WPQP906	BEA034	Tampa-St. Petersburg-Clearwater, FL	C
WPQP911	BEA040	Atlanta, GA-AL-NC	B
WPQP912	BEA040	Atlanta, GA-AL-NC	C
WPQP931	BEA053	Pittsburgh, PA-WV	B
WPQP932	BEA053	Pittsburgh, PA-WV	C
WPQP939	BEA057	Detroit-Ann Arbor-Flint, MI	B
WPQP940	BEA057	Detroit-Ann Arbor-Flint, MI	C
WPQP947	BEA064	Chicago-Gary-Kenosha, IL-IN-WI	B
WPQP948	BEA064	Chicago-Gary-Kenosha, IL-IN-WI	C
WPQP991	BEA096	St. Louis, MO-IL	B
WPQP992	BEA096	St. Louis, MO-IL	C
WPQQ214	BEA127	Dallas-Fort Worth, TX-AR-OK	B
WPQQ215	BEA127	Dallas-Fort Worth, TX-AR-OK	C
WPQQ218	BEA131	Houston-Galveston-Brazoria, TX	B
WPQQ219	BEA131	Houston-Galveston-Brazoria, TX	C
WPQQ224	BEA134	San Antonio, TX	B
WPQQ225	BEA134	San Antonio, TX	C
WPQQ226	BEA141	Denver-Boulder-Greeley, CO-KS-NE	B
WPQQ227	BEA141	Denver-Boulder-Greeley, CO-KS-NE	C
WPQQ242	BEA158	Phoenix-Mesa, AZ-NM	B
WPQQ243	BEA158	Phoenix-Mesa, AZ-NM	C
WPQQ246	BEA160	Los Angeles-Riverside-Orange County, CA-AZ	B
WPQQ247	BEA160	Los Angeles-Riverside-Orange County, CA-AZ	C
WPQQ248	BEA161	San Diego, CA	B
WPQQ249	BEA161	San Diego, CA	C
WPQQ252	BEA163	San Francisco-Oakland-San Jose, CA	B

WPQQ253	BEA163	San Francisco-Oakland-San Jose, CA	C
WPQQ257	BEA167	Portland-Salem, OR-WA	B
WPQQ258	BEA167	Portland-Salem, OR-WA	C
WPQQ261	BEA170	Seattle-Tacoma-Bremerton, WA	B
WPQQ262	BEA170	Seattle-Tacoma-Bremerton, WA	C

ATTACHMENT B
Group 2 – 40 Licenses in 20 EAs
Second Milestone Extension until June 17, 2021

Call Sign	Market Code	Market Description	Channel Block
WPQP859	BEA008	Buffalo-Niagara Falls, NY-PA	B
WPQP860	BEA008	Buffalo-Niagara Falls, NY-PA	C
WPQP877	BEA019	Raleigh-Durham-Chapel Hill, NC	B
WPQP878	BEA019	Raleigh-Durham-Chapel Hill, NC	C
WPQP879	BEA020	Norfolk-Virginia Beach-Newport News, VA-NC	B
WPQP880	BEA020	Norfolk-Virginia Beach-Newport News, VA-NC	C
WPQP883	BEA023	Charlotte-Gastonia-Rock Hill, NC-SC	B
WPQP884	BEA023	Charlotte-Gastonia-Rock Hill, NC-SC	C
WPQP895	BEA029	Jacksonville, FL-GA	B
WPQP896	BEA029	Jacksonville, FL-GA	C
WPQP897	BEA030	Orlando, FL	B
WPQP898	BEA030	Orlando, FL	C
WPQP925	BEA049	Cincinnati-Hamilton, OH-KY-IN	B
WPQP926	BEA049	Cincinnati-Hamilton, OH-KY-IN	C
WPQP929	BEA051	Columbus, OH	B
WPQP930	BEA051	Columbus, OH	C
WPQP935	BEA055	Cleveland-Akron, OH-PA	B
WPQP936	BEA055	Cleveland-Akron, OH-PA	C
WPQP945	BEA063	Milwaukee-Racine, WI	B
WPQP946	BEA063	Milwaukee-Racine, WI	C
WPQP953	BEA067	Indianapolis, IN-IL	B
WPQP954	BEA067	Indianapolis, IN-IL	C
WPQP959	BEA070	Louisville, KY-IN	B
WPQP960	BEA070	Louisville, KY-IN	C
WPQP961	BEA071	Nashville, TN-KY	B
WPQP962	BEA071	Nashville, TN-KY	C
WPQP963	BEA073	Memphis, TN-AR-MS-KY	B
WPQP964	BEA073	Memphis, TN-AR-MS-KY	C
WPQP977	BEA083	New Orleans, LA-MS	B
WPQP978	BEA083	New Orleans, LA-MS	C
WPQP993	BEA099	Kansas City, MO-KS	B
WPQP994	BEA099	Kansas City, MO-KS	C
WPQQ212	BEA125	Oklahoma City, OK	B
WPQQ213	BEA125	Oklahoma City, OK	C
WPQQ216	BEA130	Austin-San Marcos, TX	B
WPQQ217	BEA130	Austin-San Marcos, TX	C
WPQQ234	BEA152	Salt Lake City-Ogden, UT-ID	B
WPQQ235	BEA152	Salt Lake City-Ogden, UT-ID	C
WPQQ236	BEA153	Las Vegas, NV-AZ-UT	B

WPQQ237

BEA153

Las Vegas, NV-AZ-UT

C

ATTACHMENT C
Group 3 – 144 Licenses in 73 EAs
End-of-term Deadline of April 3, 2023

Call Sign	Market Code	Market Description	Channel Block
WPQP845	BEA001	Bangor, ME	B
WPQP846	BEA001	Bangor, ME	C
WPQP847	BEA002	Portland, ME	B
WPQP848	BEA002	Portland, ME	C
WPQP851	BEA004	Burlington, VT-NY	B
WPQP852	BEA004	Burlington, VT-NY	C
WPQP853	BEA005	Albany-Schenectady-Troy, NY	B
WPQP854	BEA005	Albany-Schenectady-Troy, NY	C
WPQP855	BEA006	Syracuse, NY-PA	B
WPQP856	BEA006	Syracuse, NY-PA	C
WPQP857	BEA007	Rochester, NY-PA	B
WPQP858	BEA007	Rochester, NY-PA	C
WPQP861	BEA009	State College, PA	B
WPQP862	BEA009	State College, PA	C
WPQP865	BEA011	Harrisburg-Lebanon-Carlisle, PA	B
WPQP866	BEA011	Harrisburg-Lebanon-Carlisle, PA	C
WPQP871	BEA015	Richmond-Petersburg, VA	B
WPQP872	BEA015	Richmond-Petersburg, VA	C
WPQP873	BEA017	Roanoke, VA-NC-WV	B
WPQP874	BEA017	Roanoke, VA-NC-WV	C
WPQP875	BEA018	Greensboro-Winston-Salem-High Point, NC-VA	B
WPQP876	BEA018	Greensboro-Winston-Salem-High Point, NC-VA	C
WPQP881	BEA021	Greenville, NC	B
WPQP882	BEA021	Greenville, NC	C
WPQP885	BEA024	Columbia, SC	B
WPQP886	BEA024	Columbia, SC	C
WPQP887	BEA025	Wilmington, NC-SC	B
WPQP888	BEA025	Wilmington, NC-SC	C
WPQP889	BEA026	Charleston-North Charleston, SC	B
WPQP890	BEA026	Charleston-North Charleston, SC	C
WPQP891	BEA027	Augusta-Aiken, GA-SC	B
WPQP892	BEA027	Augusta-Aiken, GA-SC	C
WPQP893	BEA028	Savannah, GA-SC	B
WPQP894	BEA028	Savannah, GA-SC	C
WPQP901	BEA032	Fort Myers-Cape Coral, FL	B
WPQP902	BEA032	Fort Myers-Cape Coral, FL	C
WPQP903	BEA033	Sarasota-Bradenton, FL	B
WPQP904	BEA033	Sarasota-Bradenton, FL	C
WPQP907	BEA035	Tallahassee, FL-GA	B
WPQP908	BEA035	Tallahassee, FL-GA	C

WPQP909	BEA038	Macon, GA	B
WPQP910	BEA038	Macon, GA	C
WPQP913	BEA041	Greenville-Spartanburg-Anderson, SC-NC	B
WPQP914	BEA041	Greenville-Spartanburg-Anderson, SC-NC	C
WPQP915	BEA043	Chattanooga, TN-GA	B
WPQP916	BEA043	Chattanooga, TN-GA	C
WPQP917	BEA044	Knoxville, TN	B
WPQP918	BEA044	Knoxville, TN	C
WPQP919	BEA045	Johnson City-Kingsport-Bristol, TN-VA	B
WPQP920	BEA045	Johnson City-Kingsport-Bristol, TN-VA	C
WPQP921	BEA047	Lexington, KY-TN-VA-WV	B
WPQP922	BEA047	Lexington, KY-TN-VA-WV	C
WPQP923	BEA048	Charleston, WV-KY-OH	B
WPQP924	BEA048	Charleston, WV-KY-OH	C
WPQP927	BEA050	Dayton-Springfield, OH	B
WPQP928	BEA050	Dayton-Springfield, OH	C
WPQP933	BEA054	Erie, PA	B
WPQP934	BEA054	Erie, PA	C
WPQP937	BEA056	Toledo, OH	B
WPQP938	BEA056	Toledo, OH	C
WPQP941	BEA059	Green Bay, WI-MI	B
WPQP942	BEA059	Green Bay, WI-MI	C
WPQP943	BEA062	Grand Rapids-Muskegon-Holland, MI	B
WPQP944	BEA062	Grand Rapids-Muskegon-Holland, MI	C
WPQP949	BEA065	Elkhart-Goshen, IN-MI	B
WPQP950	BEA065	Elkhart-Goshen, IN-MI	C
WPQP951	BEA066	Fort Wayne, IN	B
WPQP952	BEA066	Fort Wayne, IN	C
WPQP955	BEA068	Champaign-Urbana, IL	B
WPQP956	BEA068	Champaign-Urbana, IL	C
WPQP957	BEA069	Evansville-Henderson, IN-KY-IL	B
WPQP958	BEA069	Evansville-Henderson, IN-KY-IL	C
WPQP965	BEA074	Huntsville, AL-TN	B
WPQP966	BEA074	Huntsville, AL-TN	C
WPQP967	BEA075	Tupelo, MS-AL-TN	B
WPQP968	BEA075	Tupelo, MS-AL-TN	C
WPQP969	BEA077	Jackson, MS-AL-LA	B
WPQP970	BEA077	Jackson, MS-AL-LA	C
WPQP971	BEA078	Birmingham, AL	B
WPQP972	BEA078	Birmingham, AL	C
WPQP973	BEA080	Mobile, AL	B
WPQP974	BEA080	Mobile, AL	C
WPQP975	BEA081	Pensacola, FL	B
WPQP976	BEA081	Pensacola, FL	C

WPQP979	BEA084	Baton Rouge, LA-MS	B
WPQP980	BEA084	Baton Rouge, LA-MS	C
WPQP981	BEA085	Lafayette, LA	B
WPQP982	BEA085	Lafayette, LA	C
WPQP983	BEA086	Lake Charles, LA	B
WPQP984	BEA086	Lake Charles, LA	C
WPQP985	BEA088	Shreveport-Bossier City, LA-AR	B
WPQP986	BEA088	Shreveport-Bossier City, LA-AR	C
WPQP987	BEA090	Little Rock-North Little Rock, AR	B
WPQP988	BEA090	Little Rock-North Little Rock, AR	C
WPQP989	BEA094	Springfield, MO	B
WPQP990	BEA094	Springfield, MO	C
WPQP995	BEA100	Des Moines, IA-IL-MO	B
WPQP996	BEA100	Des Moines, IA-IL-MO	C
WPQP997	BEA101	Peoria-Pekin, IL	B
WPQP998	BEA101	Peoria-Pekin, IL	C
WPQP999	BEA102	Davenport-Moline-Rock Island, IA-IL	B
WPQQ200	BEA102	Davenport-Moline-Rock Island, IA-IL	C
WPQQ201	BEA104	Madison, WI-IA-IL	B
WPQQ202	BEA104	Madison, WI-IA-IL	C
WPQQ204	BEA116	Sioux Falls, SD-IA-MN-NE	B
WPQQ205	BEA116	Sioux Falls, SD-IA-MN-NE	C
WPQQ206	BEA118	Omaha, NE-IA-MO	B
WPQQ207	BEA118	Omaha, NE-IA-MO	C
WPQQ208	BEA122	Wichita, KS-OK	B
WPQQ209	BEA122	Wichita, KS-OK	C
WPQQ210	BEA124	Tulsa, OK-KS	B
WPQQ211	BEA124	Tulsa, OK-KS	C
WPQQ220	BEA132	Corpus Christi, TX	B
WPQQ221	BEA132	Corpus Christi, TX	C
WPQQ222	BEA133	McAllen-Edinburg-Mission, TX	B
WPQQ223	BEA133	McAllen-Edinburg-Mission, TX	C
WPQQ228	BEA147	Spokane, WA-ID	B
WPQQ229	BEA147	Spokane, WA-ID	C
WPQQ230	BEA150	Boise City, ID-OR	B
WPQQ231	BEA150	Boise City, ID-OR	C
WPQQ232	BEA151	Reno, NV-CA	B
WPQQ233	BEA151	Reno, NV-CA	C
WPQQ238	BEA156	Albuquerque, NM-AZ	B
WPQQ239	BEA156	Albuquerque, NM-AZ	C
WPQQ240	BEA157	El Paso, TX-NM	B
WPQQ241	BEA157	El Paso, TX-NM	C
WPQQ244	BEA159	Tucson, AZ	B
WPQQ245	BEA159	Tucson, AZ	C

WPQQ250	BEA162	Fresno, CA	B
WPQQ251	BEA162	Fresno, CA	C
WPQQ255	BEA166	Eugene-Springfield, OR-CA	B
WPQQ256	BEA166	Eugene-Springfield, OR-CA	C
WPQQ259	BEA169	Richland-Kennewick-Pasco, WA	B
WPQQ260	BEA169	Richland-Kennewick-Pasco, WA	C
WPQQ263	BEA171	Anchorage, AK	B
WPQQ264	BEA171	Anchorage, AK	C
WPQQ265	BEA172	Honolulu, HI	B
WPQQ266	BEA172	Honolulu, HI	C
WPQQ267	BEA173	Guam and Northern Mariana Islands	B
WPQQ268	BEA173	Guam and Northern Mariana Islands	C
WPQQ269	BEA174	Puerto Rico and the U.S. Virgin Islands	B
WPQQ270	BEA174	Puerto Rico and the U.S. Virgin Islands	C
WPQQ271	BEA176	Gulf of Mexico	B
WPQQ272	BEA176	Gulf of Mexico	C

ATTACHMENT D
42 Licenses in 21 EAs
Duplicative Construction Filings

File Number	Call Sign	Market Code	Market Description	Channel Block
0009048443	WPQP849	BEA003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT	B
0009048444	WPQP850	BEA003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT	C
0009048447	WPQP863	BEA010	New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT	B
0009048448	WPQP864	BEA010	New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT	C
0009048428	WPQP867	BEA012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	B
0009048429	WPQP868	BEA012	Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	C
0009048452	WPQP869	BEA013	Washington-Baltimore, DC-MD-VA-WV-PA	B
0009048453	WPQP870	BEA013	Washington-Baltimore, DC-MD-VA-WV-PA	C
0009048456	WPQP899	BEA031	Miami-Fort Lauderdale, FL	B
0009048457	WPQP900	BEA031	Miami-Fort Lauderdale, FL	C
0009048461	WPQP905	BEA034	Tampa-St. Petersburg-Clearwater, FL	B
0009048462	WPQP906	BEA034	Tampa-St. Petersburg-Clearwater, FL	C
0009048468	WPQP911	BEA040	Atlanta, GA-AL-NC	B
0009048469	WPQP912	BEA040	Atlanta, GA-AL-NC	C
0009048473	WPQP931	BEA053	Pittsburgh, PA-WV	B
0009048474	WPQP932	BEA053	Pittsburgh, PA-WV	C
0009048480	WPQP939	BEA057	Detroit-Ann Arbor-Flint, MI	B
0009048481	WPQP940	BEA057	Detroit-Ann Arbor-Flint, MI	C
0009048484	WPQP947	BEA064	Chicago-Gary-Kenosha, IL-IN-WI	B
0009048485	WPQP948	BEA064	Chicago-Gary-Kenosha, IL-IN-WI	C
0009048488	WPQP991	BEA096	St. Louis, MO-IL	B
0009048489	WPQP992	BEA096	St. Louis, MO-IL	C
0009048493	WPQQ214	BEA127	Dallas-Fort Worth, TX-AR-OK	B
0009048494	WPQQ215	BEA127	Dallas-Fort Worth, TX-AR-OK	C
0009048497	WPQQ218	BEA131	Houston-Galveston-Brazoria, TX	B
0009048498	WPQQ219	BEA131	Houston-Galveston-Brazoria, TX	C
0009048502	WPQQ224	BEA134	San Antonio, TX	B
0009048503	WPQQ225	BEA134	San Antonio, TX	C
0009048505	WPQQ226	BEA141	Denver-Boulder-Greeley, CO-KS-NE	B
0009048506	WPQQ227	BEA141	Denver-Boulder-Greeley, CO-KS-NE	C
0009048510	WPQQ242	BEA158	Phoenix-Mesa, AZ-NM	B
0009048511	WPQQ243	BEA158	Phoenix-Mesa, AZ-NM	C
0009048516	WPQQ246	BEA160	Los Angeles-Riverside-Orange County, CA-AZ	B
0009048517	WPQQ247	BEA160	Los Angeles-Riverside-Orange County, CA-AZ	C
0009048522	WPQQ248	BEA161	San Diego, CA	B
0009048523	WPQQ249	BEA161	San Diego, CA	C

0009048526	WPQQ252	BEA163	San Francisco-Oakland-San Jose, CA	B
0009048527	WPQQ253	BEA163	San Francisco-Oakland-San Jose, CA	C
0009048533	WPQQ257	BEA167	Portland-Salem, OR-WA	B
0009048534	WPQQ258	BEA167	Portland-Salem, OR-WA	C
0009048538	WPQQ261	BEA170	Seattle-Tacoma-Bremerton, WA	B
0009048539	WPQQ262	BEA170	Seattle-Tacoma-Bremerton, WA	C



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-266
Released: March 30, 2023

**Media Bureau Announces Comment and Reply Comment Deadlines for Audio Description FNPRM
MB Docket No. 11-43**

Comment Deadline: April 28, 2023
Reply Comment Deadline: May 15, 2023

On March 16, 2023, the Federal Communications Commission adopted a Further Notice of Proposed Rulemaking in the Matter of *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010* (the FNPRM).¹ In the FNPRM, the Commission proposes to expand its audio description regulations to ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming. Consistent with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),² the Commission proposes to phase in an additional 10 designated market areas (DMAs) each year until audio description is available in all such market areas.³ The Commission set deadlines for filing comments and reply comments at 30 and 45 days, respectively, after publication of the FNPRM in the Federal Register.⁴

By this Public Notice, the Media Bureau announces that the FNPRM was published in the Federal Register on March 29, 2023.⁵ Comments must be submitted no later than April 28, 2023. Reply Comments must be submitted no later than May 15, 2023. Comments should follow the filing instructions provided in paragraph 21 of the FNPRM.⁶ The FNPRM is available on the Commission's website.⁷

For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120. Press inquiries should be directed to Janice Wise, (202) 418-8165.

--FCC--

¹ MB Docket No. 11-43, Further Notice of Proposed Rulemaking, FCC 23-20 (rel. March 17, 2023).

² Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv).

³ See FNPRM at 1.

⁴ *Id.*

⁵ See Federal Communications Commission, Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, 88 Fed. Reg. 18505 (March 29, 2023).

⁶ FNPRM at para. 21.

⁷ See <https://docs.fcc.gov/public/attachments/FCC-23-20A1.docx> (Word), <https://docs.fcc.gov/public/attachments/FCC-23-20A1.pdf> (Acrobat).



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. 23-267

Report No. TEL-02263

Thursday March 30, 2023

International Authorizations Granted

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

The following applications have been granted pursuant to the Commission's processing procedures set forth in sections 63.12, 63.20 of the Commission's rules, 47 CFR §§ 63.12, 63.20, other provisions of the Commission's rules, or procedures set forth in an earlier public notice listing the applications as accepted for filing.

Unless otherwise noted, these grants authorize the applicants: (1) to become a facilities-based international common carrier subject to 47 CFR §§ 63.21, 63.22; and/or (2) to become a resale-based international common carrier subject to 47 CFR §§ 63.21, 63.23; (3) to assign or transfer control of international section 214 authority in accordance with 47 CFR § 63.24; or (4) to exceed the foreign ownership benchmarks applicable to common carrier radio licensees under 47 U.S.C. § 310(b); see Subpart T of Part 1 of the Commission's rules, 47 CFR §§ 1.5000-5004.

THIS PUBLIC NOTICE SERVES AS EACH NEWLY AUTHORIZED CARRIER'S SECTION 214 CERTIFICATE. It contains general and specific conditions, which are set forth below. Newly authorized carriers should carefully review the terms and conditions of their authorizations. Failure to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies, could result in fines and forfeitures.

Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, in regard to the grant of any of these applications may be filed within thirty days of this public notice (see 47 CFR § 1.4(b)(2)).

ITC-T/C-20230126-00008 E

FiberComm L.C.

Transfer of Control

Grant of Authority

Date of Action: 03/24/2023

Current Licensee: FiberComm L.C.

FROM: FiberComm L.C.

TO: ImOn Communications, LLC

FiberComm, L.C. (FiberComm), an Iowa limited company that holds an international section 214 authorization (ITC-214-20160406-00135), has filed an application for the transfer of control of FiberComm to ImOn Communications, LLC (ImOn). Pursuant to a Membership Interest Purchase Agreement, dated January 11, 2023, the parties propose that ImOn will purchase all issued and outstanding membership interests in FiberComm. Upon consummation, FiberComm will become a direct wholly owned subsidiary of ImOn.

ImOn, an Iowa limited liability company, is wholly owned by Hawkeye Intermediate LLC which, in turn, is wholly owned by Hawkeye TopCo Holdings LLC (Hawkeye TopCo), both Delaware limited liability companies. The following entities hold a direct 10% or greater interest in Hawkeye TopCo: WSIP IV Hawkeye (Onshore), L.P. (Hawkeye Onshore) (approx. 17.7%) and WSIP IV Hawkeye (Offshore), L.P. (Hawkeye Offshore) (approx. 49.9%), both Delaware entities.

The limited partner holding approximately 79.8% of Hawkeye Onshore is West Street Global Infrastructure Partners IV, L.P. (West Street Global), a Delaware entity. The State of Texas for the use and benefit of the Permanent School Fund, a Texas entity, holds approximately 61.4% of West Street Global.

The sole limited partner of Hawkeye Offshore is WSIP IV Hawkeye Offshore Fund Holdco (Onshore), LLC (Hawkeye Holdco), a Delaware entity. The sole limited partner of Hawkeye Holdco is WSIP IV Offshore Fund Holdco (Offshore), SLP (WSIP IV Offshore), a Luxembourg entity. The sole limited partner of WSIP IV Offshore is WSIP IV Offshore Investments Aggregator, SLP (WSIP IV Aggregator), a Luxembourg entity. West Street Offshore Infrastructure Partners IV, L.P. (West Street Offshore), a Cayman Islands entity, holds an approximate 76.6% limited partnership interest in WSIP IV Aggregator and West Street European Infrastructure Partners IV, SLP (West Street European), a Luxembourg entity holds the other approximate 23.4% limited partner interests.

West Street Infrastructure Advisors IV, S.a.r.l. (West Street Advisors), a Luxembourg entity, is the general partner for WSIP IV Offshore, WSIP IV Aggregator and West Street European. West Street Infrastructure Advisors IV, LLC (West Street), a Delaware entity, is the general partner for West Street Advisors, Hawkeye Onshore, Hawkeye Offshore, West Street Global and West Street Offshore. The Goldman Sachs Group, Inc., a publicly-traded Delaware corporation, is the sole member of West Street. According to the Applicants, no other individuals or entities will hold a 10% or greater interest in ImOn or Fibercomm.

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). Applicants have made a showing that the only reportable foreign ownership in Hawkeye Holdings is through passive, offshore intermediary holding companies and that 100% of the ultimate control is held by U.S. citizens or entities. We exercised our discretion and did not refer this application to the Executive Branch. While we did not formally refer this application, we did provide a courtesy copy of the Public Notice to the Executive Branch agencies. See id. at 10939, para 30, n. 81.

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

ITC-T/C-20230310-00037 E

Intermountain Infrastructure Group, LLC

Transfer of Control

Grant of Authority

Date of Action: 03/29/2023

Current Licensee: Intermountain Infrastructure Group, LLC

FROM: Intermountain Holdings LLC

TO: Intermountain Holdings LLC

On March 10, 2023, Intermountain Infrastructure Group LLC (IIG), a Delaware limited liability company that holds international section 214 authorizations (ITC-214-20191115-00181 and ITC-214-20191220-00200), filed a notification of the pro forma transfer of control of IIG, effective February 8, 2023. IIG is a wholly owned subsidiary of Intermountain Holdings LLC (Intermountain Holdings).

Prior to the transaction Jeffrey Yount, a U.S. citizen, held a 50.8% and controlling interest in Intermountain Holdings and served as President and CEO of IIG and Intermountain Holdings and held the right to appoint three-fourths of Intermountain Holdings' managers. Brady Adams, a U.S. citizen, held a 16.7% interest in Intermountain Holdings.

On February 8, 2023, PRSOF II IIG Inc. (PRSOF II IIG), a Delaware company, exercised warrants which it held for Intermountain Holdings. As a result PRSOF II IIG now has an approximate 37.1% interest in Intermountain Holdings, and the interests held by Jeffrey Yount and Brady Adams were reduced to 30.5% and 10% respectively. According to the Applicants, this is a pro forma transaction because Jeffrey Yount still exercises control of Intermountain Holdings and IIG by virtue of his ongoing right to appoint the majority of the Intermountain Holdings' managers and his position as CEO and President of Intermountain Holdings and IIG.

PRSOF II IIG is wholly owned by Post Road Special Opportunity Fund II LP (PRSOF), a Delaware limited partnership. Post Road SOF GP II LLC (PRSOF GP II), a Delaware limited liability company, holds a 100% voting and 2% equity interest in PRSOF II. Michael Bogdan, a U.S. citizen, wholly owns Birch Hill Capital LLC, a Delaware limited liability company, that holds a 50% direct voting and approximately 38% direct and indirect equity in Post Road SOF GP II. Kevin Davis, a U.S. citizen, wholly owns Seventh Avenue Capital Group II LLC, a Connecticut limited liability company, that holds a 50% direct voting and approximately 22% direct and indirect equity interest in PRSOF GP II. According to the Applicants no other individuals or entities hold a 10% or greater ownership interest in Intermountain Holdings and IIG.

SURRENDER

ITC-214-19940411-00382

BFI Licenses, LLC

By letter filed on March 21, 2023, BFI Licenses, LLC notified the Commission that it surrendered its international section 214 authorization effective March 21, 2023.

ITC-214-20180515-00097

Alleswolke Wireless LLC

By letter filed on March 17, 2023, Alleswolke Wireless LLC notified the Commission that it surrendered its international section 214 authorization effective March 17, 2023.

ITC-214-20210513-00084

Oktacom Inc.

By letter filed on March 15, 2023, Oktacom Inc. notified the Commission that it surrendered its international section 214 authorization effective March 15, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

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



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-268

Released: March 30, 2023

MEDIA BUREAU OPENS NEW MB DOCKET NO. 23-126

MB Docket 23-126

By this Public Notice, the Media Bureau opens MB Docket No. 23-126, which is captioned “*Implementation of the Low Power Protection Act.*”

Ex Parte Rules. Presentations are subject to “permit-but-disclose” *ex parte* rules. See 47 CFR §§ 1.1206, 1.1200(a). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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

Action by Chief, Media Bureau.

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-269
Released: March 30, 2023

OFFICE OF ENGINEERING AND TECHNOLOGY
OPENS ET DOCKET NO. 23-122

ET Docket No. 23-122

By this Public Notice, the Office of Engineering and Technology opens ET Docket No. 23-122, which is captioned “Principles for Promoting Efficient Use of Spectrum and Opportunities for New Services.”

Presentations are subject to “permit-but-disclose” *ex parte* rules. See 47 C.F.R. §§ 1.1206, 1.1200(a). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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Action by Acting Chief, Office of Engineering and Technology.

– FCC –



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-270

Released: March 30, 2023

WIRELINE COMPETITION BUREAU REMINDS NONDOMINANT INTEREXCHANGE CARRIERS TO FILE ANNUAL SECTION 64.1900 CERTIFICATIONS BY MAY 1, 2023

CC Docket No. 96-61

By this Public Notice, the Wireline Competition Bureau (Bureau) reminds nondominant interexchange carriers (IXCs) to submit annual filings by **May 1, 2023** certifying compliance with their geographic rate averaging and rate integration obligations pursuant to section 64.1900 of the Commission's rules.¹

Section 254(g) of the Communications Act of 1934, as amended (the Act), requires providers of interexchange telecommunications services to charge rates to subscribers in rural and high cost areas that are no higher than urban areas and to charge rates in one state that are no higher than rates charged in other states.² As part of the rules implementing section 254(g) of the Act, the Commission adopted section 64.1900, requiring nondominant IXCs providing detariffed interstate, domestic, interexchange services, to annually certify that they are in compliance with their geographic rate averaging and rate integration obligations pursuant to section 254(g) of the Act.³ The rule requires these certifications to be signed by an officer of the company, under oath.⁴ Consistent with past practice, the annual certifications should continue to be filed by May 1 each year.⁵ Accordingly, the annual section 64.1900 certifications should be filed this year on or before May 1, 2023.

Filing Requirements. Pursuant to section 64.1900 of the Commission's rules, 47 CFR § 64.1900, nondominant IXCs must file their annual certifications on or before May 1, 2023. Certifications must be filed in **CC Docket No. 96-61**.

- **Electronic Filers:** Certifications may be filed electronically via the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.⁶
- **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

¹ 47 CFR § 64.1900.

² 47 U.S.C. § 254(g).

³ 47 CFR § 64.1900; 47 U.S.C. § 254(g); *see Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20773-78, paras. 78-87 (1996); Order on Reconsideration, 12 FCC Rcd 15014 (1997); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999).

⁴ 47 CFR § 64.1900(b).

⁵ *See Common Carrier Bureau Extends Deadline for First Annual Certification of Compliance with Geographic Deaveraging and Rate Integration Requirements to August 1, 2001*, CC Docket No. 96-61, Public Notice, DA 01-473 (Com. Car. Bur. Feb. 21, 2000).

⁶ *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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-19.⁷

People with Disabilities. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), please send an email to fcc504@fcc.gov.

For more information about this Public Notice, please contact Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, Christopher.Koves@fcc.gov.

- FCC -

⁷ 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>.

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

In the Matter of	)	
	)	
EUREKA COUNTY TV DISTRICT	)	Facility ID Nos.: 183874, 183875, 185445,
	)	185493, 185494, 185496, 185501
Licensee of Stations K14NU-D, Beowawe, NV;	)	NAL/Acct. No.: 20234140012
K21OS-D, Beowawe, NV; K18JG-D, Beowawe,	)	FRN: 007744964
NV; K24JL-D, Beowawe, NV; K26KG-D,	)	LMS File No. 201182
Beowawe, NV; K28LH-D, Beowawe, NV;	)	
K30LB-D, Beowawe, NV	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 31, 2023

Released: March 31, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Eureka County TV District (Licensee), for renewal of the licenses for K14NU-D, Beowawe, Nevada; K21OS-D, Beowawe, Nevada; K18JG-D, Beowawe, Nevada; K24JL-D, Beowawe, Nevada; K26KG-D, Beowawe, Nevada; K28LH-D, Beowawe, Nevada; and K30LB-D, Beowawe, Nevada (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand five hundred dollars (\$10,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.⁴ However, the Licensee did not file the Application until September 29, 2022. The Licensee did not provide an explanation for the late filings.

¹ Application of Eureka County TV District for Renewal of License, LMS File No. 201182 (filed Sep. 29, 2022). K14NU-D, K21OS-D, K18JG-D, K24JL-D, K26KG-D, K28LH-D, K30LB-D are each digital television translators. In this case, as is permitted, the licensee filed for renewal of the of the licenses of the Stations in a single renewal application.

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); See *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$10,500. In this case, the Licensee failed to file the Application on or before June 1, 2022, as required by section 73.3539(a) of the Rules.⁵ The Application was not received until September 29, 2022, over three months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁰

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

6. In this case, the Licensee failed to timely file a license renewal application for seven (7) stations, as required by section 73.3539(a) of the Rules.¹³ The Licensee did not provide an explanation for the late filings. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁴ we will reduce the forfeiture from the base amount to \$1,500 per station for the failure to file a timely renewal application, because, as digital television translators, the Stations are providing a secondary service.¹⁵ Furthermore, as translators the Stations are not originating

⁵ 47 CFR § 73.3539(a).

⁶ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹² 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹³ 47 CFR § 73.3539(a).

¹⁴ *Supra* note 12.

¹⁵ See, e.g., *FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power* (continued....)

programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application includes seven (7) stations the total proposed forfeiture amount is \$10,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁶ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁸

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules¹⁹ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁰ Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²¹ and sections 1.80 and 0.283(d) of the Commission’s rules,²² that Eureka County TV District, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand five hundred dollars (\$10,500)** for its apparent willful violation of section 73.3539(a) of the Commission’s rules.²³

(Continued from previous page)

Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations.... Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 47 CFR § 73.3539(a).

²⁰ For example, we do not find here that the Licensee’s operation of the Stations “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 1.80 and 0.283.

²³ 47 CFR § 73.3539(a).

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁴ within thirty (30) days of the release date of this *NAL* Eureka County TV District **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

²⁴ 47 CFR § 1.80,

²⁵ Payments made using CORES do not require the submission of an FCC Form 159.

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.²⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁰

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.³¹

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Eureka County TV District, P.O. Box 633, Eureka, NV 89316. A copy shall also be sent to the Station's representative, Paden Hilyard, by electronic mail to fclicense@eaglecomelko.com.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³¹ 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media 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. 23-272

Report No. SAT-01713

Friday March 31, 2023

Satellite Policy Branch Information

Actions Taken

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

SAT-LOA-20200413-00035	E S3066	Intelsat License LLC
Launch and Operating Authority		

Effective Date:

Nature of Service: Fixed Satellite Service

On March 31, 2023, the Satellite Division granted in part and deferred in part, with conditions, the request of Intelsat License LLC, for a license for the Intelsat 40e space station at the 91.0° W.L. orbital location in order to provide fixed-satellite service in the 10.825-12.2 GHz (space-to-Earth), 17.8-18.8 GHz (space-to-Earth), 19.3-19.4 GHz (space-to-Earth), 19.6-20.2 GHz (space-to-Earth), and 14.0-14.5 GHz (Earth-to-space), 27.5-28.6 GHz (Earth-to-space), and 29.25-30.0 GHz (Earth-to-space) frequency bands. Intelsat 40e will conduct telemetry, tracking and command operations using the following center frequencies: 12197.5 MHz, 12198.0 MHz, 12198.5 MHz, 12199.0 MHz (space-to-Earth), 14000.5 MHz, and 14003.0 MHz (Earth-to-space).

SAT-STA-20230313-00057	E S2704	Intelsat License LLC
Special Temporary Authority		
Grant of Authority		

Effective Date: 03/23/2023

On March 23, 2023, the Satellite Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for a period of 60 days, to operate Intelsat 5 at the 166.15° E.L. orbital location. Intelsat 5 operates in the 3700-4200 MHz, 10.70-10.95 GHz, 11.2-11.7 GHz, (space-to-Earth), 5925-6425 MHz, 12.75-13.25 GHz, and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 5 using the following frequencies: 11.451 GHz, 11.452 GHz, 11.454 GHz (space-to-Earth), 13.999 GHz and 14.498 GHz (Earth-to-space).

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

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

In the Matter of	)	
	)	
DENVER DIGITAL TELEVISION, LLC	)	Facility ID No.: 182846
	)	NAL/Acct. No.: 202341420013
Licensee of Station KBLT-LD, Anchorage, AK	)	FRN: 0017203472
	)	LMS File No. 203343
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 31, 2023

Released: March 31, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Denver Digital Television, LLC (Licensee), for renewal of its license for Station KBLT-LD, Anchorage, Alaska (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Station's license should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of February 1, 2023.⁴ However, the Licensee did not file the Application until November 8, 2022. The Licensee did not provide an explanation for the late filing.

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$1,500. In this case, the Licensee failed to file the Application on or before October 3, 2022,

¹ Application of Denver Digital Television, LLC for Renewal of License, LMS File No. 203343 (filed. Nov. 8, 2022).

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020). Because the first day of the month was Saturday, October 1, 2022, the application was not due until the next business day, which was Monday, October 3, 2022. See 47 CFR § 1.4(j) (permitting the filing of documents the next business if the filing date falls on a holiday, which includes weekends).

as required by section 73.3539(a) of the Rules.⁵ The Application was not received until November 8, 2022, over one month late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁰

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

6. In this case, the Licensee failed to timely file a license renewal application, as required by section 73.3539(a) of the Rules.¹³ The Licensee did not provide an explanation for the late filing. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁴ we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely renewal application, because, as a low power television station, the Station is providing a secondary service.¹⁵

⁵ 47 CFR § 73.3539(a).

⁶ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹² 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹³ 47 CFR § 73.3539(a).

¹⁴ *Supra* note 12.

¹⁵ See, e.g., *FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations.... Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.¹⁶ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁸

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules¹⁹ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁰ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²¹ and sections 1.80 and 0.283(d) of the Commission's rules,²² that Denver Digital Television, LLC, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500)** for its apparent willful violation of section 73.3539(a) of the Commission's rules.²³

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁴ within thirty (30) days of the release date of this *NAL*, Denver Digital Television, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁵ or by wire

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 47 CFR § 73.3539(a).

²⁰ For example, we do not find here that the Licensee's operation of the Station “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules.” *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 1.80 and 0.283.

²³ 47 CFR § 73.3539(a).

²⁴ 47 CFR § 1.80.

²⁵ Payments made using CORES do not require the submission of an FCC Form 159.

transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/core/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/core/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.²⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN:

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
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14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.³¹

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Denver Digital Television, LLC, PO Box 1471, 29833 Ruby Ranch Road, Evergreen, CO 80437 and by electronic mail to ddrucker@wildblue.net. A copy shall also be sent to Station's counsel, James Talens, Esq., by electronic mail to jtalens@verizon.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³¹ 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

ORDER

Adopted: March 31, 2023

Released: March 31, 2023

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies a Petition filed by Northwest Fiber, LLC d/b/a Zippy Fiber (Zippy) requesting waiver of the Commission's Connect America Fund (CAF) performance testing support recovery requirements in section 54.320(d)(2) of the Commission's rules.¹ Zippy contends that it "inherited" from Frontier in May 2020 an aging Digital Subscriber Line (DSL)-based network with a faulty line card, and that this faulty line card caused Zippy to fail the latency testing requirements in the fourth quarter of 2021.² Zippy asserts a waiver is in the public interest because Zippy has demonstrated reasonable efforts to comply with the rules, and that supply chain issues caused hardship in rectifying the network issues.³ For the reasons described below, the Bureau denies Zippy's waiver request.

I. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission concluded that recipients of high-cost support⁴ should be required to test their broadband networks for compliance with speed and latency metrics and to certify and report those results to the Universal Service Administrative Company (USAC), subject to audit.⁵ This testing protects the investment of universal service support by ensuring that carriers receiving support deploy networks that provide the service quality promised to rural consumers.⁶ The Commission's speed and latency standards require support recipients to offer broadband with latency suitable for real-time applications, such as Voice over Internet Protocol (VoIP), and meet the minimum speed standards required by the program from which they receive support.⁷ Recipients of CAF

¹ Network Fiber, LLC d/b/a Zippy Fiber, LLC Petition for Waiver, WC Docket No. 10-90 (filed July 18, 2022) (Zippy Petition).

² *Id.* at 1-2.

³ *Id.* at 10.

⁴ High-cost support recipients must be eligible telecommunications carriers (ETCs). *See* 47 CFR § 54.201.

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17705-06, para. 109 (2011).

⁶ *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10110, para. 2.

⁷ The Commission adopted an order setting forth detailed performance measures requirements in 2018 and expanded those requirements in an order on reconsideration in 2019. *See Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10110, para. 4 (2019) (*Performance Measures Reconsideration Order*).

II Model-based support were required to test and certify that 95 percent of testing hours latency measurements were at or below 100 ms (the latency standard).⁸

3. Carriers failing to meet the required standards are subject to withholding or recovery of support, based on their level of non-compliance.⁹ During the performance measurement testing period, when a non-compliant carrier brings its performance testing into compliance, previously withheld universal service support is restored.¹⁰ However, when a carrier is unable to demonstrate compliance at the end of the support term, the Commission's rules provide that USAC recover support equal to 1.89 times the average amount of support per location received in the support area for the relevant number of locations for that carrier, plus 10% of the carrier's total relevant high-cost support over the support term for that support area. This calculated support recovery amount is then multiplied by the percentage of time since the carrier was last able to demonstrate compliance based on performance testing, on a quarterly basis, i.e. by the percentage of time since a carrier was last able to show full compliance with performance testing requirements prior to the end of the support term on a quarterly basis.¹¹ For example, if a carrier's performance testing has not been in compliance with the Commission's requirements for the 15 preceding quarters of testing, out of a total of 20 annual quarters in which it received support, the calculated support recovery amount would be multiplied by 15/20 or 3/4.

4. Ziplly was a CAF II Model-based support recipient providing broadband data and voice services to customers in the Pacific Northwest, in primarily rural and underserved areas of Idaho, Montana, Oregon, and Washington.¹² In Idaho, the service area at issue in this Petition, Ziplly received \$5,223,120 in annual support – and certified to meeting its required deployment obligation.¹³

5. Ziplly states that it acquired an aging digital subscriber line (DSL)-based network in Idaho from Frontier in May of 2020 and had consistently met the required speed and latency performance benchmark requirements during the applicable testing period through the first three quarters of 2021.¹⁴ Ziplly contends that in the fourth quarter, and for a limited period of time, Ziplly's network performance fell below the benchmark standards for latency due to an unexpected data network event.¹⁵ Ziplly asserts that it acted quickly to restore the network traffic and has implemented steps to ensure network stability going forward.¹⁶ Ziplly further states that the network event was limited to the data network, and that no customer complaints were received in response to the network anomaly.¹⁷

6. Ziplly relays that during a routine review of its fourth quarter 2021 testing results, it identified tests that produced high latency results for end users that were accessing high-capacity applications, such as streaming services.¹⁸ Ziplly states that it was unaware of any network issues until it

⁸ *First Performance Measures Order*, 33 FCC Rcd 6526-27 at para. 48; *see also*, *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15068-74, paras. 19-32 (WCB 2013) (*CAF Phase II Price Cap Service Obligation Order*).

⁹ *Id.* at 10133-38, paras. 65-75; *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67.

¹⁰ *First Performance Measures Order*, 33 FCC Rcd at 6532, para. 64.

¹¹ 47 CFR § 54.320(d).

¹² Ziplly Petition at 1.

¹³ *See* USAC, Connect America Broadband Map, <https://data.usac.org/publicreports/caf-map/> for Northwest Fiber in Idaho. Ziplly was required to deploy to 10,012 locations, and Ziplly certified to deploying 10,031 locations.

¹⁴ Ziplly Petition at 1-2.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 5.

reviewed this report.¹⁹ Zply at first assumed that the errors with its fourth quarter 2021 testing submission results arose from technical issues on USAC's reporting platform.²⁰ After investigating, Zply determined that a data network event (a failed line card) occurred during the testing period from October 22, 2021 through October 28, 2021. This network event caused the primary traffic route leaving Idaho, a third-party provisioned backhaul circuit, to fail, which in turn caused corrupt packet transmission, which increased latency and resulted in 19,682 tests with a high latency result (greater than 100 ms).²¹ Zply reports that the traffic was then routed onto a secondary traffic route over another third-party provisioned backhaul circuit, leading to even fewer successfully completed tests as the increased traffic overwhelmed the third-party provisioned backhaul circuit.²²

7. Zply alleges that the acquired system had no alert mechanism to signal a fault in the network, so Zply was not made aware of the failure.²³ Further, Zply states that the testing software acquired from Frontier does not produce any data summaries nor does it aggregate the reported data of the test results, making it extremely difficult for Zply to have caught the system failure at the time it occurred.²⁴ Zply maintains that it was unable to complete additional testing by the December 21, 2021 deadline because of outdated testing protocols it acquired from Frontier.²⁵

8. Once Zply became aware of the testing issues and the investigation revealed the network event, Zply maintains that it took action to resolve the data network event that triggered latency issues and implemented steps to ensure network stability moving forward.²⁶ Zply asserts that prior to the network event, it had placed an order for an additional line card in December 2020 as a pre-emptive upgrade to the network.²⁷ Zply states that the order for the new line card was severely delayed due to materials shortages and supply chain issues, but it was eventually delivered and installed in May 2022.²⁸

9. As a result of the network failure, 83.49% of Zply's testing hours latency measurements were at or below 100 ms for the test sample in Idaho during the fourth quarter of 2021.²⁹ For the 2021 testing year as a whole, 93.94% of Zply's latency tests met the minimum standard resulting in annual latency compliance percentage of 98.9%³⁰ (non-compliance percentage of 1.1%).³¹ Pursuant to the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 5-6.

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 7.

²⁷ *Id.* at 7-9.

²⁸ *Id.* at 7.

²⁹ See USAC, Performance Measures Quarterly and Annual Testing Results, Quarterly 2021 CAF II Model by Carrier, <https://www.usac.org/wp-content/uploads/high-cost/documents/Compliance/Quarterly-2021-CAFII-Model-by-Carrier.xlsx> (last visited Mar. 31, 2023).

³⁰ Zply conducted 465,716 tests that met latency requirements divided by 495,751 total tests equals 93.94%. Zply's annual compliance percentage of 93.94% divided by 95% (the Commission's latency standard) equals Zply's annual latency compliance percentage of 98.9%. See Appendix.

³¹ See Zply Petition at 6. Calculations based on USAC and Commission Staff analysis of performance measures data.

performance testing support recovery rules, USAC must recover approximately \$1.1 million³² of CAF II Model high-cost support from Ziplly.³³

II. DISCUSSION

10. The Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁴ In addition, the Bureau may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁵ Waiver of the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.³⁶ We find that the circumstances Ziplly describes do not meet this standard and, accordingly, deny Ziplly's petition for waiver.

11. Ziplly argues that the Commission should find that the waiver standard has been met because Ziplly acquired an aged network equipment from Frontier, experienced a network event that was out of its control, has otherwise demonstrated reasonable efforts to comply with the performance measures testing requirements and has a history of compliance, and experienced hardship in obtaining the network card due to supply chain issues.³⁷ Ziplly argues that a waiver of the Commission's rule to impose high-cost universal service support reductions would be in the public interest because the performance testing benchmark framework and its non-compliance penalties are designed to incentivize carriers to deliver broadband service at or above stated standards, rather than penalize providers for limited periods of non-compliance.³⁸ Ziplly relies on the *Performance Measures Reconsideration Order*, where the Commission explains that the compliance regime for the performance testing "is designed to encourage [carriers] to provide high quality broadband, not to punish carriers for failing to perform."³⁹

12. We disagree with Ziplly's contention that granting a waiver is in the public interest. The Commission adopted the performance testing requirements to protect the public's investment and ensure that carriers receiving high-cost support deploy networks that meet the performance standards promised to rural customers.⁴⁰ The performance measures testing promotes accountability and reduces the risks of waste, fraud, and abuse in the Commission's high-cost universal service programs. As such, we consider that the public interest in performance testing is significant.

13. Consistent with the statements made in its petition, Ziplly complied with the Commission's performance measures testing requirements in the first three quarters of 2021 but, as the testing results demonstrate, not in the fourth quarter. Ziplly's argument that it should not be held accountable in 2021 for a network it acquired in 2020 is not compelling. As soon as Ziplly acquired the network from Frontier, it became Ziplly's obligation to ensure that the network was in good working order and had reliable back-up in case the network experienced any service interrupting events. Ziplly states that when the original route failed, traffic was re-routed onto a secondary traffic route over another third-party provisioned backhaul circuit.⁴¹ This re-routing produced even fewer successful latency tests.⁴² We

³² For ease of presentation herein, all figures have been rounded. In the actual calculation of support recovery, no rounding was performed until the final dollar amount. See Appendix.

³³ See 47 CFR § 54.320(d)(2). For a detailed narrative of the support recovery calculation, see Appendix.

³⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁶ *Northeast Cellular*, 897 F.2d at 1166.

³⁷ Ziplly Petition at 8-10.

³⁸ *Id.* at 8.

³⁹ *Id.* at 9; see also *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133, para. 66.

⁴⁰ *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10110, para. 2.

find that, based on its own description, Ziply did not deploy a network capable of meeting performance obligations because what Ziply described is an unreliable back-up plan for when a system may be overwhelmed if it receives additional traffic.⁴³

14. Ziply maintains that the network event that it experienced was limited to the data network only and that voice service was unaffected.⁴⁴ We find that this argument is not relevant. The network event did have an impact on broadband service, which is the basis for the performance testing. Customers using real-time broadband applications would have experienced a negative impact that showed up in the failed latency tests. The proper functioning of Universal Service Fund-supported networks is critical to ensuring that consumers in rural, insular, and high-cost areas receive reasonably comparable service to those in urban areas.

15. Ziply further asserts that because it did not receive any customer complaints in response to the network anomaly, no customers were impacted.⁴⁵ We do not find this argument to be convincing, as customers do not always file complaints when they suffer a service interruption, nor do we find that relying on customer complaints should be a standard consideration for assessing a network's operability. Furthermore, the lack of consumer complaints does not mitigate the network failure. Ziply has failed to show good cause for its network not meeting minimum latency requirements, and to the contrary, has shown that it has not maintained an adequate network design to avoid such failure.

16. Ziply also states that it tried to pre-emptively fix the aging equipment issues by ordering a new line card in December 2020, but the line card was not received and installed until May 2022.⁴⁶ Ziply cites to a Bureau order wherein the Bureau stated that hardship circumstances such as supply chain issues may be considered in granting a waiver.⁴⁷ Ziply argues that for this reason, the Commission should consider supply chain hardship as a reason to grant its waiver request.⁴⁸

17. We find that the circumstances here differ from those in the Bureau order cited by Ziply. That order specified that any carrier experiencing supply chain hardship in obtaining the equipment necessary to perform network testing should file a waiver request, supported by 1) an affidavit signed by a company official explaining that the carrier does not have sufficient testing equipment, the reason that it does not have sufficient testing equipment, and when the company anticipates having sufficient equipment, and 2) documentary evidence showing when the order was placed.⁴⁹ However, Ziply does not contend that it could not obtain the equipment necessary to perform network testing. Rather, Ziply claims it had difficulties obtaining an element of the network—the line card. Such delay does not warrant relief under the precedent Ziply cited.⁵⁰ Moreover, Ziply states it discovered the failing network card and ordered a new one in 2020, but made no effort to monitor its system and maintain an adequate back-up plan knowing that the card had not been received.

(Continued from previous page) _____

⁴¹ Ziply Petition at 6.

⁴² *Id.*

⁴³ *Id.* at 5-6.

⁴⁴ *Id.* at 2.

⁴⁵ *Id.*

⁴⁶ Ziply Petition at 7.

⁴⁷ *Id.* at 3; see also *Connect America Fund*, WC Docket 10-90, Order, DA 22-369 (rel. Apr. 6, 2022).

⁴⁸ *Id.* at 9-10.

⁴⁹ *Connect America Fund*, WC Docket 10-90, Order, DA 22-1 (rel. Jan. 3, 2022).

⁵⁰ Regardless, even if the order Ziply cited did apply in this case, Ziply did not provide the Bureau with an affidavit from a company official explaining that the carrier does not have the necessary equipment, nor did Ziply provide any evidence showing when the equipment order was placed.

18. Zply also asserts that it acted quickly to restore the network traffic;⁵¹ however, Zply contradicts this assertion when it also states in its petition that it was unaware a network event occurred until April 2022 even though the failure occurred on a primary link out of Idaho, the back-up failed, and the failure lasted for at least seven days.⁵² Failure even to detect a network problem for seven days is evidence of inadequate monitoring rather than efficient restoration efforts. Moreover, network restoration does not mitigate failing latency performance measures testing. We note that the latency standard requires 95% of testing latency measurements to be at or below 100 ms; if Zply had restored its network faster, it could still have passed. Further, during this time, Zply made no effort to notify the Commission or USAC until after USAC alerted Zply of the performance testing failure in April 2022. Zply had ample time (nearly six months) to alert the Commission of a possible performance problem. It is concerning that Zply states that it was unaware that the acquired Frontier system equipment had a failing line card until USAC informed it of its failed latency testing several months after its testing period.⁵³ In fact, given Zply was unaware of the failing line card until April 2022, it is likely that the poor network performance continued for much longer than the seven day testing period in October 2021. We find that while Zply may have experienced supply chain issues, the testing failures were not out of Zply's control, and primarily resulted from Zply's failure to properly maintain and monitor its network; therefore, a waiver for the circumstance of hardship is not warranted.

19. For the reasons discussed herein, we deny Zply's petition. Accordingly, contemporaneously with this Order, pursuant 47 CFR § 54.320(d)(2), USAC will recover \$1,106,528.00 of universal service high-cost support from Zply.⁵⁴

III. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the Petition for Waiver of the Commission's Connect America Fund end-of-term performance testing support recovery requirements filed by Northwest Fiber, LLC d/b/a Zply Fiber IS DENIED.

⁵¹ Zply Petition at 2.

⁵² *Id.* at 2, 6.

⁵³ *Id.* at 5.

⁵⁴ For a detailed narrative of the support recovery calculation, *see* Appendix. Zply has thirty (30) days to appeal this Order by filing a petition for reconsideration or application for review, or to pay USAC the amount due. *See* 47 CFR §§1.115, 1.429

21. IT IS FURTHER ORDERED that, pursuant to section 54.320(d)(2) of the Commission's rules, 47 CFR § 54.320(d)(2), the Administrator will recover high-cost support from Ziply Fiber as described herein.

22. 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

**APPENDIX
SUPPORT RECOVERY CALCULATIONS¹**

1. Where a recipient of high-cost support is unable to demonstrate compliance with a final performance testing milestone, section 54.320(d)(2) directs USAC to recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the support area for that carrier over the term of support for the relevant number of locations, plus 10 percent of the eligible telecommunications carrier's total relevant high-cost support over the support term for that support area, the total of which will then be multiplied by the percentage of time since the carrier was last able to demonstrate compliance based on performance testing, on a quarterly basis.²

2. First, we calculate the total latency tests percentage for 2021. To do this, we take the total number of latency tests that met the performance measures criteria in 2021, which for Zippy was 465,716, and divide that by the total latency tests conducted by Zippy in 2021, which was 495,751. That equals 93.94%. We then calculate the percentage of latency compliance using the 95-percent standard. To do this we divide the percentage of the carrier's testing hours' latency measurements at or below the required latency (i.e., 100 ms) by 95 percent.³ Zippy had a total latency tests percentage of 93.94%, so this percentage is calculated by dividing 0.9394 by 0.95, which equals the 2021 annual latency compliance percentage of 98.89%, and therefore a non-compliance percentage of 1.11%.⁴

3. Zippy was required to deploy to 10,012 locations in Idaho and was authorized for \$5,223,120.28 in support per year.⁵ Zippy's average support per line in Idaho was \$521.69, which we calculate by taking annual support of \$5,223,120.28 and dividing it by 10,012 locations.

4. We then calculate support recovery by taking average amount of support per location received in the support area, \$521.69, times the number of locations required, 10,012, times years of support, 7, times 1.89 times the performance measures non-compliance percentage, 1.11%, which equals \$769,929.53. We then add 10% of total support received, which is annual support, \$5,223,120.28 times years of support, 7, times 10%, which equals \$3,656,184.20, for a total of \$4,426,113.72 (\$769,929.53 plus \$3,656,184.20).

5. Next, we multiply the total support recovery calculation by the percentage of time since a carrier was last able to show full compliance with required performance testing requirements prior to the end of the support term on a quarterly basis.⁶ Zippy's quarterly latency testing results for 2021 (the one year of testing) were as follows: 1Q: 97.48%, 2Q: 97.38%, 3Q: 97.51%, and 4Q: 83.49%. Accordingly, Zippy's performance testing in 2021 was not in compliance (below 95%) for the one preceding quarter of testing (4Q 2021) out of a total of four quarters in which it was in testing. We multiply the amount of support to be recovered, \$4,426,113.72, by the percentage of time since the carrier was last able to demonstrate compliance based on performance testing, on a quarterly basis, here 1/4,⁷ for a total support recovery of \$1,106,528.00.

¹ For ease of presentation herein, all figures have been rounded. In the actual calculation of support recovery, no rounding was performed until the final dollar amount. See Appendix table.

² See 47 CFR § 54.320(d)(2); and *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10136, para. 72, n.190.

³ See *First Performance Measures Order*, 33 FCC Rcd at 6532, para. 61.

⁴ *Id.*

⁵ *Wireline Competition Bureau Authorizes Frontier Communications Corporation to Receive Over \$283 Million in Connect America Phase II Support to Serve 1.3 Million Rural Americans in 28 States*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 6310 (WCB 2015).

⁶ See 47 CFR § 54.320(d)(2); *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133, para. 73.

⁷ *Id.*

Description	Calculation	Result
Total Latency Test Percentage 2021	465,716 tests that met latency requirements divided by 495,751 total tests	93.941514994 423 %
Annual Latency Compliance Percentage 2021	Annual compliance percentage 93.941515% divided by 95%	98.885805257 287%
Annual Latency Non-Compliance Percentage 2021	100% minus 98.88580525728% annual latency compliance percentage	1.1141947427 13%
Required number of locations for Idaho deployment	<i>Wireline Competition Bureau Authorizes Frontier Communications Corporation to Receive Over \$283 Million in Connect America Phase II Support to Serve 1.3 Million Rural Americans in 28 States, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 6310 (WCB 2015)</i>	10,012
Annual support authorized in Idaho	<i>Wireline Competition Bureau Authorizes Frontier Communications Corporation to Receive Over \$283 Million in Connect America Phase II Support to Serve 1.3 Million Rural Americans in 28 States, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 6310 (WCB 2015)</i>	\$5,223,120.28
Average annual support per line in Idaho	Annual support authorized in Idaho (\$5,223,120.28) divided by required number of locations for deployment (10,012)	\$521.6860047 94247

Description	Calculation	Result
Total Support Recovery	Average amount of support per location received in the support area (\$521.686004794247) times the number of locations required, (10,012) times years of support (7) times 1.89, times the performance measures non-compliance percentage (1.114194742713%) = \$769,929.528609436 Plus: total support received, which is annual support, (\$5,223,120.28), times years of support (7), times 10%, = \$3,656,184.1960, Total= \$4,426,113.72460944 (\$769,929.528609436 plus \$3,656,184.196) Amount of support to be recovered, (\$4,426,113.72460944), times the percentage of time since the carrier was last in compliance based on performance testing on a quarterly basis, 1/4, = \$1,106,528.43115236	\$1,106,528.00 ⁸

⁸ Total recovery is rounded to the nearest whole dollar amount.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of	)	
	)	
Nievesquez Productions, Inc.,	)	Facility ID 13630
Licensee of WPRX(AM), Bristol, Connecticut	)	FRN: 0007934268

ORDER TO PAY OR TO SHOW CAUSE

Adopted: March 31, 2023**Released: March 31, 2023**

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

I. INTRODUCTION

1. By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the license held by Nievesquez Productions, Inc. (Licensee) for WPRX(AM), Bristol, Connecticut (Station), for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission). For the reasons set forth below, we direct Licensee to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

2. Under section 9 of the Communications Act of 1934, as amended (Act), and section 1.1151 of the Commission's rules (Rules), the Commission is required to "assess and collect regulatory fees" to recover the cost of carrying out the functions of the Commission."¹ When the required payment is received late or is incomplete, the Commission must assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."²

3. For fiscal year (FY) 2010, the deadline for paying regulatory fees was August 31, 2010;³ for FY 2012, it was September 13, 2012;⁴ for FY 2013, it was September 20, 2013;⁵ for FY 2014, it was September 23, 2014; for FY 2016, it was September 27, 2016;⁶ for FY 2017, it was September 26, 2017;⁷

¹ 47 U.S.C. § 159(a)(1); 47 CFR § 1.1151.

² 47 U.S.C. § 159A(c)(1); 47 CFR § 1.1164.

³ See *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees*, Public Notice, DA 10-1450, 25 FCC Rcd 10670 (OMD Aug. 9, 2010).

⁴ *Payment Methods and Procedures For Fiscal Year 2012 Regulatory Fees*, Public Notice, DA 12-1294, 27 FCC Rcd 9204 (OMD Aug. 13, 2012).

⁵ See *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, DA 13-1796, 28 FCC Rcd 12635 (OMD Sep. 4, 2013).

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

⁷ *Payment Methods and Procedures for Fiscal Year 2017 Regulatory Fees*, Public Notice, 2017 WL 3953380 (OMD Sep. 6, 2017).

for FY 2020, it was September 28, 2020;⁸ and for FY 2022, it was September 30, 2022.⁹ When Licensee failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act¹⁰ and section 1.1164 of the Rules,¹¹ and interest, penalties, and administrative costs required by section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA), section 9A(c)(2) of the Act and section 1.1940 of the Rules.¹²

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of \$3,673.43 for FY 2010; \$3,622.18 for FY 2012; \$3,657.14 for FY 2013; \$3,526.92 for FY 2014; \$2,764.66 for FY 2016; \$3,683.92 for FY 2017; \$3,034.89 for FY 2020; and \$3,187.50 for FY 2022. Additional charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.¹³ When Licensee did not pay the regulatory fee debts for FYs 2010, 2012, 2013, 2014, 2016, 2017, 2020, and 2021, the Commission transferred those debts to the United States Department of Treasury for collection.¹⁴ At the Commission's request, the United States Department of Treasury has returned all of the previously transferred regulatory fee debt to the Commission for further collection.

5. The Commission has authority under section 9A(c)(4) of the Act and section 1.1164(f) of the Rules to revoke licenses and authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Licensee to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made or show cause why the payment is inapplicable or should be waived or deferred.¹⁵ Licensee is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f) of the Rules,¹⁶ an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of

⁸ *Regulatory Fee Filing Window is Extended to Monday, September 28, 2020*, Public Notice, DA 20-1131, 35 FCC Rcd 10466 (OMD Sep. 24, 2020).

⁹ *Fiscal Year 2022 Regulatory Fee Filing Deadline is Extended to Friday, September 30, 2022, for All Regulatory Fee Payors*, Public Notice, DA 22-1023, 2022 WL 4597483 (OMD Sep. 28, 2022).

¹⁰ 47 U.S.C. § 159(c)(3) (1993); 47 U.S.C. § 159A(c)(1) (2018). The RAY BAUM'S Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, section 9A(c)(1) now sets forth those penalties.

¹¹ 47 CFR § 1.1164.

¹² 31 U.S.C. § 3717; 47 U.S.C. § 159A(c)(2); 47 CFR § 1.1940.

¹³ See 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letters, the Media Bureau notified Licensee of its failure to pay the Station's regulatory fees for FY 2010, 2012, 2013 and 2014. See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Pedro O. Nieves (MB July 2, 2015).

¹⁴ See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917. The Commission retained the FY 2022 regulatory fee debt owed by Licensee and did not refer it to Treasury for further collection.

¹⁵ The Commission may waive, reduce, or defer payment of fee debt where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207-08, paras. 49-51 (2019).

¹⁶ 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.¹⁷ Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.¹⁸

7. To the extent that Licensee is a respondent in other administrative proceedings, both before this agency and other federal agencies, action in this proceeding is without prejudice to action in those proceedings. Further, the existence of any such proceedings and matters raised therein are not considered in this proceeding.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,¹⁹ Nievezquez Productions, Inc., is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FYs 2010, 2012, 2013, 2014, 2016, 2017, 2020 and 2022, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

9. **IT IS FURTHER ORDERED** that payment of the delinquent regulatory fee debt must be made by wire transfer and must include the FRN referenced above. Additional wire transfer instructions are as follows:

ABA Routing Number 021030004

Receiving Bank:
TREAS NYC
33 Liberty St.
New York, NY 10045

(BNF) Beneficiary: FCC
Account #: 27000001
OBI Field (skip one space between each information item)

Nievezquez Productions, Inc., must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

Nievezquez Productions, Inc., must fax a copy of the wire transfer confirmation to the FCC at (202) 418-2843 or send the wire transfer confirmation copy to the FCC via email to RROGWireFaxes@fcc.gov on the same day the wire transfer is initiated.

10. **IT IS FURTHER ORDERED** that Nievezquez Productions, Inc., must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Forms_159/159.pdf. When completing the FCC Form 159, Nievezquez Productions, Inc., must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): 1026 (for FY 2010); 1226 (for FY 2012); 1326 (for FY 2013); 1426 (for FY 2014); 1626 (for FY 2016); 1726 (for FY 2017); 2026 (for FY 2020); and 2226 (for FY 2022).

¹⁷ 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

¹⁸ 47 U.S.C. § 159A(c)(4)(C)(ii)(iii); 47 CFR § 1.1164(f)(3).

¹⁹ 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.11, 0.61, 0.231, 0.283 and 1.1164(f).

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to section 1.16 Commission's rules.²⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau. 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.²¹ A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will 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.

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Nievezquez Productions, Inc., c/o Pedro Oscar Nieves, 30 Arbor Street, Suite 106 H, Hartford, CT 06106.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director

²⁰ 47 CFR § 1.16.

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 Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

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

In the Matter of	)	
	)	
PTI Pacifica, Inc.	)	GN Docket No. 20-104
	)	
Request for Waiver and Extension of Time of	)	
Mobility Fund Phase I Construction Deadline	)	

ORDER

Adopted: March 31, 2023

Released: March 31, 2023

By the Chief, Office of Economics and Analytics; Chief, Wireline Competition Bureau; and the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, the Office of Economics and Analytics (OEA), the Wireline Competition Bureau, and the Wireless Telecommunications Bureau (the Bureaus), deny in part a request filed by PTI Pacifica, Inc. (PTI Pacifica), and amended several times, seeking waiver of the deadlines for the construction, drive testing, and reporting requirements associated with the receipt of final disbursements of Mobility Fund Phase I (MF-I) support.¹ PTI Pacifica seeks waiver of those deadlines with respect to three census tracts (Rota, Marpi, and Tinian), all of which are located in the Commonwealth of the Northern Mariana Islands (CNMI).² We do not address here PTI Pacifica's requests regarding the Rota and Marpi census tracts. For the Tinian census tract, we find that the request does not present special circumstances warranting extension of the applicable MF-I performance deadlines, and that granting it would not serve the public interest. Accordingly, we deny the request, assess a performance default payment, and order repayment of the MF-I support that PTI Pacifica has already received for the Tinian tract.³

¹ See PTI Pacifica, Inc. Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline for Three Census Tracts, WT Docket No. 10-208 (filed May 16, 2016) (Request); PTI Pacifica, Inc. Supplement To Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 15, 2017) (First Supplement); PTI Pacifica, Inc. Second Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 7, 2018) (Second Supplement); PTI Pacifica, Inc. Third Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 9, 2019); PTI Pacifica, Inc. Fourth Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed July 30, 2020) (Fourth Supplement); PTI Pacifica, Inc. Fifth Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed July 27, 2021) (Fifth Supplement); PTI Pacifica, Inc. Sixth Supplement to Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline For Three Census Tracts, WT Docket No. 10-208 (filed Aug. 1, 2022) (Sixth Supplement).

² The three subject census tracts are T69100950100 (SAC 658001) (Rota), T69110000100 (SAC 658002) (Marpi), and T69120950200 (SAC 658007) (Tinian).

³ 47 CFR § 54.1006(f). We note that PTI Pacifica's Request and its Supplements seek waiver and extension of the deadlines contained in 47 CFR § 54.1006(a). The deadlines in 47 CFR § 54.1006(a) apply to Auction 901 winning (continued....)

II. BACKGROUND

A. Mobility Fund Phase I

2. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund by, among other things, establishing the Mobility Fund, a universal service support mechanism dedicated expressly to mobile services.⁴ For MF-I, the Commission designated a fund of up to \$300 million in one-time universal service support, to be allocated through a reverse auction (Auction 901), for the deployment of mobile voice and broadband services.⁵ Under these rules, winning bidders in Auction 901 committed to extend the availability of mobile voice and broadband services on networks that provide third-generation (3G) or better performance or to accelerate the deployment of fourth-generation (4G) wireless networks in areas that lacked such services.⁶

3. Before the start of Auction 901, each potential bidder was reminded that it was responsible “for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Mobility Fund Phase I support it submits as a bid in Auction 901.”⁷ Bidders were further advised that “[e]ach bidder is responsible for assuring that, if it wins the support, it will be able to build and operate facilities in accordance with the Mobility Fund obligations and the Commission’s rules generally.”⁸ The MF-I rules require winning bidders to provide service to at least 75% of the designated eligible road miles within the relevant area covered by their winning bids.⁹ Winning bidders committing to provide service over a 3G network were required to meet their performance requirements within two years of being authorized to receive support,¹⁰ while winning bidders committing to provide service over

(Continued from previous page) —————

bidders who committed to construct 3G networks; winning bidders who committed to construct 4G networks are bound by the deadlines in 47 CFR § 54.1006(b). Because PTI Pacifica committed to construct 4G networks, the deadlines for which it seeks waiver lie within 47 CFR § 54.1006(b).

⁴ *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, 17773, para. 299 (2011), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

⁵ *See id.*

⁶ *See id.*, 26 FCC Rcd at 17674-75, para. 28.

⁷ *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4748, para. 71 (WTB/WCB 2012) (*Auction 901 Procedures Public Notice*).

⁸ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4748, para. 71.

⁹ An Auction 901 winning bidder is required to provide service covering at least 75% of the eligible road miles within the area covered by its winning bid, and it will receive Mobility Fund support only for the actual road miles covered, up to 100%, within that area. Absent a waiver, a winning bidder that has been authorized to receive MF-I support will be required to repay any support it has received together with an additional performance default payment if it fails to meet its minimum coverage requirement by the specified deadline, fails to meet other service requirements, or fails to fulfill any other term or condition of support. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 461; *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 189; 47 CFR § 54.1006(f). For Auction 901, the additional performance default payment was set at 10% of the total level of support for which the winning bidder is eligible. *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777-78, paras. 189-92. A winning bidder also could be disqualified from receiving MF-I support or other USF support. 47 CFR § 54.1006(f); *see also Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 190.

¹⁰ 47 CFR § 54.1006(a).

a 4G network were required to meet their performance requirements within three years of authorization.¹¹

4. The rules further provide that MF-I support be disbursed to authorized winning bidders in up to three stages: the first disbursement of one-third of the total winning bid amount is made when the winning bidder is authorized to receive support;¹² a recipient becomes eligible to receive a second disbursement when it submits a report demonstrating coverage of 50% of the applicable coverage requirements;¹³ and it becomes eligible to receive the final disbursement when it meets the final construction, testing, and reporting requirements by the applicable deadline.¹⁴

B. PTI Pacifica's Winning Bids and Post-Auction Performance Efforts

5. On August 16, 2013, the Bureaus authorized PTI Pacifica to receive up to approximately \$1.26 million in MF-I support for its Auction 901 winning bids for seven census tracts in the CNMI.¹⁵ The deadline for PTI Pacifica to complete construction of 4G networks, drive testing, and submission of reports demonstrating coverage was August 16, 2016.¹⁶ PTI Pacifica timely completed the performance requirements for four of the seven census tracts covered by its winning bids.¹⁷ For the other three census tracts—Tinian, Rota, and Marpi—PTI Pacifica states that it encountered unforeseen and unexpected delays; this order addresses only the Tinian census tract.¹⁸

6. PTI Pacifica at first requested a one-year extension of the deadline to complete its wireless network, drive testing and data submission for the Tinian census tract.¹⁹ Due to various delays that are described in detail below, PTI Pacifica has made six subsequent requests for further one-year extensions; its most recent submission seeks an extension to August 16, 2023, seven years after the original deadline.²⁰

7. Initially, PTI Pacifica determined that it needed to provide additional network coverage to the northern and southern portions of the Tinian tract in order to meet its 75% coverage obligation. PTI Pacifica was constructing pole-mounted repeaters to cover the southern portion of the tract.²¹ To cover the northern portion, PTI Pacifica negotiated with the United States Department of Defense (DoD) over a potential cell site in the North Field, a DoD-administered area.²² Because DoD had not yet acted, PTI

¹¹ 47 CFR § 54.1006(b).

¹² 47 CFR § 54.1008(b)(1).

¹³ 47 CFR § 54.1008(b)(2). Recipients may request “the remainder of their total support” as a final disbursement upon completion of construction, after demonstrating coverage that meets the applicable requirements of section 54.1006 (a) or (b), as applicable. 47 CFR § 54.1008(b)(3).

¹⁴ 47 CFR § 54.1008(b)(3).

¹⁵ For the Tinian tract, PTI Pacifica's winning bid amount was \$399,970.34. Following staff review of its long-form application, it was authorized to receive an initial disbursement of \$133,323.45. *Mobility Fund Phase I Support Authorized for 50 Winning Bids; Default on Six Auction 901 Winning Bids Determined*, AU Docket No. 12-25, Public Notice, 28 FCC Rcd 12284, 12286 (WTB/WCB 2013) (*MF-I Support Authorization*).

¹⁶ 47 CFR § 54.1006(b).

¹⁷ Request at 2.

¹⁸ See generally Request (initially seeking a one-year extension of the MF-I performance deadlines for the Rota, Marpi, and Tinian census tracts).

¹⁹ Request at 1, 7.

²⁰ See generally First Supplement; Second Supplement; Third Supplement; Fourth Supplement; Fifth Supplement; Sixth Supplement.

²¹ Request at 7.

Pacifica also sought alternative solutions at other sites.²³ Negotiations were still ongoing as of May 2016, when PTI Pacifica requested a one-year extension of its performance deadline, to August 16, 2017.²⁴ In that initial request, PTI Pacifica further stated that additional circumstances beyond its control caused unforeseen delays to its construction of the networks. A typhoon severed the lone undersea fiber optic cable connecting CNMI to Guam in July 2015.²⁵ PTI Pacifica owns the cable and submitted that it had to devote “all of its available resources” to repair it.²⁶ Another typhoon soon followed, and that storm knocked out power on the island of Saipan, which is home to the Marpi census tract.²⁷ Power was not completely restored for four months, and PTI Pacifica stated that during this period it had to focus its resources on preserving communications without interruption.²⁸

8. PTI Pacifica found an alternative potential northern site on Mount Lasso while it awaited DoD’s approval of the North Field location. The Mount Lasso area is also subject to DoD administration, and the CNMI Historic Preservation Office there further required site assessment surveys before it would issue any construction approvals. Accordingly, PTI Pacifica asked for an extension to August 16, 2018.²⁹

9. DoD ultimately did not approve the North Field site, and two prospective sites on Mount Lasso were found to be unsuitable because of their historical significance.³⁰ PTI Pacifica then asked for an additional year—until August 16, 2019—to complete historic surveys of a third potential Mount Lasso location, citing the unpredictability of the approval process timeline.³¹

10. A year later, surveys of the third location were complete, but DoD had yet to issue the long-term lease that PTI Pacifica needed to construct its cell site, so it asked for another extension to August 16, 2020.³² However, by July 2020, PTI Pacifica still had not received final DoD approval. In seeking a further extension of the deadline to August 16, 2021, PTI Pacifica explained that the “process has been mired by additional requests for information, multi-step reviews by various divisions and offices within DoD, and other unexpected delays.”³³

11. Although a necessary electromagnetic radiation study of the location was completed by mid-February 2021, DoD later informed PTI Pacifica that the Naval Facilities Engineering Systems Command would need to inspect the site and issue an Environmental Condition of Property (ECP) report before DoD would issue a long-term lease and construction could begin.³⁴ The ECP process requires an inspector to walk the site.³⁵ PTI Pacifica stated that the COVID-19 pandemic delayed that step, and that it

(Continued from previous page) _____

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 1, 7.

²⁵ *Id.* at 7.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 7-8.

²⁹ First Supplement at 1, 4.

³⁰ Second Supplement at 4.

³¹ *Id.* at 2, 4.

³² Third Supplement at 2, 4.

³³ Fourth Supplement at 2-4.

³⁴ Fifth Supplement at 5.

³⁵ *Id.*

had not received an estimate of when the inspection would be scheduled. DoD represented that PTI Pacifica could sign the lease after the ECP report was complete.³⁶ Because it could not be certain of the government's timeline to complete these final steps, PTI Pacifica requested a sixth extension of the deadline to August 16, 2022.³⁷

12. The ECP report was completed in April 2022. But DoD later identified a road that was absent from a local land authority map, so a revised map was required to finalize the lease, and according to PTI Pacifica, that map was not submitted until July 28, 2022.³⁸ PTI Pacifica now "hopes to finalize the lease expeditiously" but requests a further extension of the deadline to do so.³⁹ PTI Pacifica states that it expects construction of the final site to be complete "within months of receiving the necessary Government approvals."⁴⁰ Because it remains uncertain as to the timeline of the lease's finalization, PTI Pacifica requests a seventh extension, to August 16, 2023.⁴¹

III. DISCUSSION

13. We do not here address PTI Pacifica's requests with respect to the Rota and Marpi census tracts. Despite the typhoons that struck the area in the summer of 2015, the network on the Rota census tract has been operational since October 2016, roughly two months after the initial deadline.⁴² The temporary network on Marpi was operational before the deadline passed, and PTI Pacifica states that it will eventually transition to a permanent network with no interruption to service on the tract.⁴³ PTI Pacifica has submitted its drive test data and awaits the Universal Service Administrative Company's (USAC) verification of PTI Pacifica's coverage in these two tracts. We will withhold our decisions regarding the Rota and Marpi tracts until after USAC has verified that PTI Pacifica's coverage in those tracts meets the coverage requirements associated with its MF-I support.

14. Generally, the Commission's rules may be waived for good cause shown.⁴⁴ Good cause is shown, and thus a waiver is appropriate, only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁴⁵

15. The MF-I rules, including the performance deadlines applicable here, were designed to make 3G or better wireless networks available in areas where additional investment could make as substantial a

³⁶ *Id.*

³⁷ *Id.* at 2, 6.

³⁸ Sixth Supplement at 6.

³⁹ *Id.*

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 2, 7.

⁴² *See, e.g.*, First Supplement at 1-2.

⁴³ *See, e.g.*, Second Supplement at 3.

⁴⁴ 47 CFR § 1.3.

⁴⁵ *See East Kentucky Network, LLC d/b/a Appalachian Wireless, United States Cellular Corporation, GCI Communication Corp., Union Telephone Company, Requests for Waiver of the Performance rules for Mobility Fund Phase I and Tribal Mobility Fund Phase I*, WT Docket No. 10-208, Order, 36 FCC Rcd 178, 188, para. 24 (WCB/WTB/OEA 2021) (*Appalachian Wireless Order*); *Standing Rock Telecommunications, Inc., Amended Request for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations*, WT Docket No. 10-208, Order, 34 FCC Rcd 9598, 9602, para. 11 (WCB/WTB/OEA 2019) (*Standing Rock Order*); *Leaco Rural Telephone Cooperative, Inc. and Pine Belt Cellular, Inc.*, WT Docket No. 10-208, Order, 31 FCC Rcd 9001, 9006, para. 15 (WTB 2016) (*Leaco/Pine Belt Order*); *Ne. Cellular Tel. 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), *cert. denied*, 409 U.S. 1027 (1972)); *see also NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

difference as possible in a transparent, simple, speedy, and effective way.⁴⁶ Prospective bidders were advised before Auction 901 to perform due diligence and confirm the availability of prospective transmitter sites and assure themselves that, if they became winning bidders, they would be able to build and operate facilities that comply with all applicable technical and legal requirements and Mobility Fund obligations, which include performance deadlines.⁴⁷ Furthermore, we have consistently warned that requests to waive or extend construction obligations will not be routinely granted.⁴⁸ When considering waiver requests involving MF-I construction, drive testing, and reporting deadlines, we therefore have made clear that justifications based on impediments that could reasonably have been foreseen, such as employee issues, vendor problems, inclement weather, and last-minute delays, would not in themselves warrant waiver of a performance deadline.⁴⁹

16. PTI Pacifica argues that it faced multiple obstacles as it sought a suitable location for a cell site to fulfill its coverage obligation on the Tinian tract, and encountered further delays in obtaining necessary government approvals to construct its final tower.⁵⁰ Although some previous petitioners who faced delays in permitting, regulatory processes, lease negotiations, or other governmental approvals were granted waivers of the MF-I performance deadlines,⁵¹ each was granted a waiver in part because it sought a reasonable extension in light of the delays it encountered, and no such request was for more than 18 months past the initial deadline.⁵² Moreover, all those petitioners completed their construction, drive testing, and reporting requirements within the additional time requested.⁵³ Accordingly, in those cases, we determined that the requests demonstrated special circumstances that warranted deviation from the general rule, and thereby satisfied the first prong of the waiver standard.

17. However, we find that there are no such special circumstances in PTI Pacifica's case. The circumstances here make this case distinguishable from others in which we granted a waiver to allow a brief delay in meeting the performance deadlines. PTI Pacifica's delay in meeting its MF-I performance

⁴⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17781, para. 322; see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4729, para. 8.

⁴⁷ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4748-49, paras. 71-77.

⁴⁸ See *Skybridge Spectrum Foundation*, Order, 33 FCC Rcd 8138, 8145, para. 17 (WTB-MD 2018); *Wireless Telecommunications Bureau Reminds Wireless Licensees of Construction Obligations*, Public Notice, 32 FCC Rcd 4802, 4802-05 (WTB 2017).

⁴⁹ See, e.g., *Appalachian Wireless Order*, 36 FCC Rcd at 189-90, para. 26 & n.101; *Standing Rock Order*, 34 FCC Rcd at 9603-04, para. 13 & n.51; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9006-07, para. 17 & n.47.

⁵⁰ See, e.g., Second Supplement at 4; Third Supplement at 3-4; Fourth Supplement at 3-4; Fifth Supplement at 4-6; Sixth Supplement at 4-7.

⁵¹ We have explained that those grants should not be construed to diminish the important role of federal, state, and local regulatory processes. Such regulatory processes play a critical function in ensuring the lawfulness of tower construction, and Mobility Fund support recipients have an obligation to factor sufficient time into their construction schedules to allow for completion of regulatory reviews. Rather, our previous grants of such waiver requests recognized that even with proper planning, unforeseeable delays that can neither be avoided nor controlled, particularly in some of the hardest to serve areas, may sometimes occur. See *Appalachian Wireless Order*, 36 FCC Rcd at 190-91, para. 28.

⁵² See *Appalachian Wireless Order*, 36 FCC Rcd at 180-88, 190-91, paras. 5-23, 27-31 (granting requests for extensions ranging from three to eighteen months after the initial deadline); *Standing Rock Order*, 34 FCC Rcd at 9600, 9604-05, paras. 6, 14-16 (granting a six-month request for waiver and extension); *Leaco/Pine Belt Order*, 31 FCC Rcd at 9003-04, 9006-07, paras. 7, 11, 16-18 (granting two-month and six-month requests for waiver and extension).

⁵³ See *Appalachian Wireless Order*, 36 FCC Rcd at 191, para. 29; *Standing Rock Order*, 34 FCC Rcd at 9604, para. 15; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9003-04, 9005, paras. 9, 14.

requirements in the Tinian tract far exceeds any for which we have previously granted an MF-I recipient a waiver. As such, the totality of the circumstances here are not of the type that warrant a waiver of the MF-I deadlines and the resulting disbursement of USF funds. While our decision is not intended to disregard PTI Pacifica's effort to complete the required construction of the Tinian network, we cannot look merely at the circumstances leading to its delay in obtaining a tower site while ignoring the other circumstances present here, which include the extreme length of its delay in providing 4G service that meets the MF-I requirements. PTI Pacifica requests to extend its MF-I performance deadlines for seven years beyond its original deadline.⁵⁴ If permitted to do so, PTI Pacifica's deadline would be ten years after the Bureau initially authorized its support, a result that, regardless of the cause, would be squarely at odds with the express purpose for which the Commission awarded MF-I support to provide "one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas."⁵⁵ We find that a delay of this magnitude outweighs any other circumstances, regardless of whether they could not reasonably have been foreseen, controlled, or avoided.⁵⁶ The Commission adopted MF-I performance default payment obligations in part to prevent situations like this one because long delays before the establishment of the networks burden the program and undermine its goals.⁵⁷ We therefore conclude that deviation from the general rule in light of PTI Pacifica's circumstances is not warranted.

18. We are also not persuaded by PTI Pacifica's claims that the two typhoons, which severed an undersea fiber optic cable and knocked out power on Saipan, support waiver of the performance deadlines for the Tinian tract. We do not here opine on whether inclement weather on the scale of these storms might have been anticipated as part of the normal course of PTI Pacifica's business in the CNMI.⁵⁸ To the extent that they were not foreseeable, both storms occurred in the summer of 2015, just over a year before the initial deadline, and eight years before the most recently requested extension date.⁵⁹ PTI Pacifica has not attributed to the typhoons the additional delays beyond its first request; none of its supplemental filings refer to the storms. Any delays associated with the 2015 typhoons do not support the grant of a waiver and extension of the Commission's MF-I performance requirements on the Tinian census tract to August 16, 2023.⁶⁰

19. We further find that PTI Pacifica's request does not satisfy the second portion of the waiver standard. PTI Pacifica contends that deviation from the general rule will serve the public interest because it constructed a network that covers more than half of the Tinian tract within a few months of the original deadline; it has endeavored in good faith to fulfill its 75% coverage obligation; it lacked control over governmental delays; and it continues to make progress in its efforts to build a network serving a remote

⁵⁴ Request at 1; Sixth Supplement at 2.

⁵⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17674-75, para. 28; *see also* 26 FCC Rcd at 17816, para. 469 (explaining that the Commission's purpose "is to aggressively extend coverage").

⁵⁶ *See Standing Rock Order*, 34 FCC Rcd at 9604-05, paras. 14-15; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9006-07, paras. 17-18.

⁵⁷ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11, para. 446 ("We also recognize that a Mobility Fund recipient's failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for USF.").

⁵⁸ *See Appalachian Wireless Order*, 36 FCC Rcd at 189-90, para. 26; *Standing Rock Order*, 34 FCC Rcd at 9603, para. 12; *Leaco/Pinebelt Order*, 31 FCC Rcd at 9006, para. 16.

⁵⁹ Request at 7.

⁶⁰ *See 1998 Biennial Regulatory Review--Streamlining of Mass Media Applications, Rules, And Processes et al.*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17539, para. 35 (1999) (finding that the effects of delays due to inclement weather on construction timelines are adequately overcome by a three-year construction term making additional time unwarranted).

island territory.⁶¹ We disagree. Granting a waiver that would allow MF-I support to be disbursed despite the performance requirement not having been met for over six years would be contrary to the purpose of the Mobility Fund and therefore not serve the public interest. In establishing the Mobility Fund, the Commission expressly rejected a suggestion to permit a level of service that falls short of the required percentage of coverage for which the recipient could offset its liability for repayment because it would be inconsistent with MF-I's purpose "to aggressively extend coverage."⁶² As noted above, none of the MF-I and Tribal Mobility Fund applicants for whom we found waiver and extension of the deadline to be in the public interest sought more than 18 months of additional time, and all of them completed the performance requirements within the time frame they requested.⁶³

20. By contrast, granting a waiver that extends the deadline for PTI Pacifica to meet its performance obligations for an additional seven years beyond the initial three years would be wholly inconsistent with the MF-I objectives and undermine the Commission's policy of requiring adherence to the performance requirements in a timely manner.⁶⁴ As the Commission explained in the *USF/ICC Transformation Order*, MF-I support funds were made available "[t]o spur *immediate* broadband buildout" in unserved areas.⁶⁵ To that end, the Bureaus authorized PTI Pacifica's MF-I support not simply so that it would one day establish a 4G network on this underserved census tract, but that it would do so expeditiously, even in the face of whatever challenges its due diligence may have revealed.⁶⁶ The extraordinary length of PTI Pacifica's requested extension is at odds with MF-I's foundational purpose to expeditiously extend coverage to unserved areas, and granting it would therefore not serve the public interest in achieving such coverage.⁶⁷ Moreover, granting an extension of this length would undermine our ability to enforce the performance obligations of future recipients of USF high-cost support.⁶⁸ We therefore conclude that granting a waiver and extension request of this duration is not in the public interest.

21. Accordingly, we deny PTI Pacifica's requests for waiver and extension of performance deadlines for the Tinian tract. The Commission's rules provide that a winning bidder authorized to receive MF-I support that fails to meet its performance obligations will be subject to repayment of the support already dispersed, as well as an additional performance default payment.⁶⁹ In the *Auction 901 Procedures Public Notice*, the Bureaus adopted a performance default payment of 10% of the total level of support for which a winning bidder is eligible.⁷⁰ The total level of MF-I support for which PTI Pacifica was eligible for the Tinian tract was \$399,970.34, consequently it now owes a 10% performance default

⁶¹ See, e.g., Fifth Supplement at 6-7.

⁶² *USF/ICC Transformation Order*, 26 FCC Rcd at 17816, para. 469.

⁶³ See *Appalachian Wireless Order*, 36 FCC Rcd at 191, para. 29; *Standing Rock Order*, 34 FCC Rcd at 9604, para. 15; *Leaco/Pine Belt Order*, 31 FCC Rcd at 9003-04, 9005, paras. 9, 14; see also note 52, above.

⁶⁴ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17781, para. 322; *Appalachian Wireless Order*, 36 FCC Rcd at 191, para. 31.

⁶⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17673, para. 22 (emphasis added).

⁶⁶ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4748, para. 71.

⁶⁷ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17816, para. 469.

⁶⁸ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 190 (adopting a performance default payment for Auction 901 because a winning bidder's "failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for the [Universal Service Fund]"); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11, para. 446.

⁶⁹ 47 CFR § 54.1006(f).

⁷⁰ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777-78, paras. 189-92.

payment obligation of \$39,997.03.⁷¹ To date, PTI Pacifica has received \$133,323.45 in support for the tract, and it must also repay that amount.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, under the authority contained in sections 1, 4(i), 4(j), 5(c), 201, 254, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201, 254, and 303(r), and sections 0.21, 0.91, 0.131, 0.271, 0.291, 0.331, and 1.3 of the Commission's rules, 47 CFR §§ 0.21, 0.91, 0.131, 0.271, 0.291, 0.331, and 1.3, PTI Pacifica, Inc.'s Request for Waiver and Extension of Time of Mobility Fund Phase I Construction Deadline for Three Census Tracts, together with its supplements, is DENIED only as to census tract T69120950200 (SAC 658007).

23. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 303(r), and section 54.1006(f) of the Commission's rules, 47 CFR § 54.1006(f), PTI Pacifica, Inc. is ASSESSED a performance default payment in the amount of \$39,997.03 for census tract T69120950200 (SAC 658007), for which it was the winning bidder in Auction 901.

24. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and 303(r), and section 54.1006(f) of the Commission's rules, 47 CFR § 54.1006(f), PTI Pacifica, Inc. repay the support it has received to date for census tract T69120950200 (SAC 658007), in the amount of \$133,323.45.

25. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted to the Universal Service Administrative Company.

26. IT IS FURTHER ORDERED that, under 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

Giulia McHenry
Chief
Office of Economics and Analytics

Trent Harkrader
Chief
Wireline Competition Bureau

⁷¹ *MF-I Support Authorization*, 28 FCC Rcd at 12286; *see also Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 12031, 12041-42, paras. 42-43 (2012).

Joel Taubenblatt
Acting Chief
Wireless Telecommunications Bureau



PUBLIC NOTICE

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

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

DA 23-277

Released: April 4, 2023

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

WC Docket No(s). 23-95
Comments Due: May 4, 2023

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 Discontinuance Application(s) listed herein to be acceptable for filing and subject to the procedures set forth in Section 63.71 of the Commission's rules.¹ The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,² and section 63.71 of the Commission's rules,³ to discontinue, reduce, or impair certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **June 3, 2023**, the 60th 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 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 auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as applicable. Should no petitions for

¹ 47 CFR § 63.71. See the Appendix for additional details regarding specific proceedings.

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 dominant carrier "shall be automatically granted on the 60th day after its filing... unless the Commission has notified the applicant that the grant will not be automatically effective.").

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 **May 4, 2023**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁶ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.⁷ Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or 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

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

⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁷ 47 CFR § 1.1200 *et seq.*

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 contacts 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): Farmers Telecommunications Cooperative, Inc.

WC Docket No. 23-95, Comp. Pol. File No. 1834

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-95%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-95%22)))

Affected Service(s) – intrastate and interstate T1/DS1 special access circuits and T1/DS1 direct trunk transports

Service Area(s) – exchanges of Pisgah, Bryant, Flat Rock, Fyffe, Rainsville, Henagar, and Geraldine counties in Alabama.

Authorized Date(s) – on or after June 3, 2023

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov of the Competition Policy Division, Wireline Competition Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-278

Released: March 31, 2023

PLEADING CYCLE ESTABLISHED FOR COMMENT ON APPLICATIONS FOR STATE CERTIFICATION FOR THE PROVISION OF TELECOMMUNICATIONS RELAY SERVICE

CG DOCKET NO. 03-123

Comments Due: May 1, 2023

Reply Comments Due: May 16, 2023

Notice is hereby given that the states listed below have applied to the Commission for renewal of certification of their state telecommunications relay service (TRS) programs, for the five-year period from July 26, 2023 through July 25, 2028.¹ Each state's application for certification must demonstrate that its TRS program complies with section 225 of the Communications Act² and the Commission's rules governing the provision of TRS.³ This notice seeks public comment on the following state applications for certification, which can be found on the Commission's website at: <https://www.fcc.gov/general/trs-state-and-territories>.

File No: TRS-46-22

Alabama Public Service Commission
State of Alabama

File No: TRS-19-22

Regulatory Commission of Alaska
State of Alaska

File No: TRS-02-22

Commission for the Deaf and Hard of Hearing
State of Arizona

File No: TRS-47-22

Arkansas Deaf and Hearing Impaired
State of Arkansas

File No: TRS-32-22

California Public Utilities Commission
State of California

File No: TRS-23-22

Colorado Public Utilities Commission
State of Colorado

File No: TRS-48-22

Public Utilities Regulatory Authority
State of Connecticut

File No: TRS-35-22

Delaware Department of Technology and Information
State of Delaware

File No: TRS-49-22

Public Service Commission
District of Columbia

File No: TRS-50-22

Florida Public Service Commission
State of Florida

¹ Current state TRS certifications expire July 25, 2023.

² Section 225 states, in pertinent part, that the Commission may approve a state's application if it determines that the state's program makes available TRS "in a manner that meets or exceeds" the Commission's TRS requirements and "the program makes available adequate procedures and remedies for enforcing the requirements of the State program." 47 U.S.C. §§ 225(f)(2)(A), (B).

³ 47 CFR §§ 64.601 *et seq.*

File No: TRS-51-22

Georgia Public Service Commission
State of Georgia

File No: TRS-43-22

Idaho Public Service Commission
State of Idaho

File No: TRS-08-22

Indiana Telephone Relay Access Corporation
State of Indiana

File No: TRS-07-22

Kansas Corporation Commission
State of Kansas

File No: TRS-13-22

Louisiana Relay Administration Board
State of Louisiana

File No: TRS-33-22

Telecommunications Access of Maryland
State of Maryland

File No: TRS-54-22

Michigan Public Service Commission
State of Michigan

File No: TRS-55-22

Mississippi Public Service Commission
State of Mississippi

File No: TRS-56-22

Montana Telecommunications Access Program
State of Montana

File No: TRS-25-22

Department of Health and Human Services
Aging and Disability Services
State of Nevada

File No: TRS-45-22

New Jersey Board of Public Utilities
State of New Jersey

File No: TRS-16-22

New York State Department of Public Service
State of New York

File No: TRS-22-22

Hawaii Public Utilities Commission
State of Hawaii

File No: TRS-10-22

Illinois Telecommunications Access Corporation
State of Illinois

File No: TRS-03-22

Iowa Utilities Board
State of Iowa

File No: TRS-52-22

Kentucky Public Service Commission
Commonwealth of Kentucky

File No: TRS-53-22

Maine Telecommunications Relay Service Council
State of Maine

File No: TRS-34-22

Dept. of Telecommunications and Cable
Commonwealth of Massachusetts

File No: TRS-39-22

Minnesota Department of Commerce
Telecommunications Access Minnesota
State of Minnesota

File No: TRS-15-22

Missouri Public Service Commission
State of Missouri

File No: TRS-40-22

Nebraska Public Service Commission
State of Nebraska

File No: TRS-42-22

New Hampshire Public Utilities
State of New Hampshire

File No: TRS-14-22

Commission for the Deaf and Hard of Hearing
State of New Mexico

File No: TRS-30-22

North Carolina Utilities Commission
State of North Carolina

File No: TRS-12-22

North Dakota Public Service Commission
State of North Dakota

File No: TRS-57-22

Oklahoma Telephone Association
State of Oklahoma

File No: TRS-58-22

Pennsylvania Public Utility Commission
Commonwealth of Pennsylvania

File No: TRS-59-22

Rhode Island Public Utilities Commission
State of Rhode Island

File No: TRS-60-22

SD Department of Human Services
Division of Rehabilitation Services
State of South Dakota

File No: TRS-17-22

Public Utility Commission of Texas
State of Texas

File No: TRS-44-22

Vermont Department of Public Service
State of Vermont

File No: TRS-27-22

Office of the Deaf and Hard of Hearing
State of Washington

File No: TRS-01-22

Public Service Commission of Wisconsin
State of Wisconsin

File No: TRS-37-22

Public Utilities Commission of Ohio
State of Ohio

File No: TRS-36-22

Public Utility Commission of Oregon
State of Oregon

File No: TRS-28-22

Telecommunications Bureau of Puerto Rico
Puerto Rico

File No: TRS-11-22

Office of Regulatory Staff
State of South Carolina

File No: TRS-20-22

Tennessee Public Utility Commission
State of Tennessee

File No: TRS-09-22

Public Service Commission
State of Utah

File No: TRS-04-22

Department for the Deaf and Hard of Hearing
Commonwealth of Virginia

File No: TRS-06-22

West Virginia Public Service Commission
State of West Virginia

File No: TRS-18-22

Wyoming Department of Workforce Services
Division of Vocational Rehabilitation
State of Wyoming

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 & 1.419, interested parties may file comments on or before **May 1, 2023**, and reply comments on or before **May 16, 2023**. All filings must reference **CG Docket No. 03-123** and the relevant state identification number of the state application for which comments are being submitted.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.⁴
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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

For further information regarding this *Public Notice*, contact Dana Warrick, Consumer and Governmental Affairs Bureau, Disability Rights Office at: (202) 418-2247 (voice), or e-mail at: Dana.Warrick@fcc.gov.

- FCC -

⁴ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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

In the Matter of	)	
	)	
One Eye LLC	)	EB-TCD-20-00031678
	)	EB Docket No. 22-174
	)	

INITIAL DETERMINATION ORDER

Adopted: April 3, 2023

Released: April 3, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Initial Determination Order, the Enforcement Bureau (Bureau) apparently finds that One Eye LLC (One Eye or Company) has not complied with the Federal Communications Commission's (Commission or FCC) call blocking rules for gateway providers. Pursuant to section 64.1200(n)(5)(i)(A) of the Commission rules, One Eye has 14 days to respond to this order (Initial Determination Order) with a final response to our apparent finding and to demonstrate compliance with our rules. If One Eye fails to respond to this Initial Determination Order, thereby failing to provide an adequate response, or the Company continues to transmit substantially similar unlawful traffic, the Bureau will issue a Final Determination Order.¹ Any provider immediately downstream from One Eye will then be required to block and cease accepting all traffic received from One Eye beginning 30 days after release of the Final Determination Order.²

II. BACKGROUND

A. Legal Framework for Gateway Provider Mandatory Blocking Rules

2. Protecting consumers in the United States from the dangers and risks of unwanted and illegal robocalls is the Commission's top consumer protection priority.³ Many of these calls originate overseas. Gateway providers are U.S.-based intermediate providers that receive calls directly from a foreign originating provider or foreign intermediate provider at its U.S.-based facilities before transmitting the call downstream to another U.S.-based provider. Such providers serve as critical choke points for reducing the number of illegal calls reaching consumers in the United States.⁴ In recognition of this fact, the Commission adopted the *Gateway Provider Order* on May 19, 2022, increasing the

¹ See 47 CFR § 64.1200(n)(5)(iii).

² *Id.* § 64.1200(n)(6).

³ "Unwanted calls – including illegal and spoofed robocalls - are the FCC's top consumer complaint and our top consumer protection priority." FCC, *Consumer Guide: Stop Unwanted Robocalls and Texts*, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Jan. 24, 2023).

⁴ *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 17-59, Fifth Report and Order in WC Docket No. 17-97, Order on Reconsideration in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59, and Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37, paras. 24-25 (2022) (*Gateway Provider Order*).

obligations of gateway providers to police their own networks and imposing consequences on gateway providers that fail to do so.⁵

3. The *Gateway Provider Order* built upon the Commission's call blocking rules to require gateway providers to block illegal traffic when notified of such traffic by the Commission.⁶ Pursuant to section 64.1200(n)(5)(i)(A) of the Commission's rules, once a gateway provider receives a notification of suspected illegal traffic from the Bureau, the provider has a minimum of 14 days to comply with the notice by investigating and reporting the results of the investigation to the Bureau.⁷ The provider must also block the traffic if its investigation determines that it served as the gateway provider for the traffic.⁸ If the gateway provider did not block the traffic, it must explain to the Bureau why the identified traffic was not illegal.⁹

4. The Bureau may initiate a process to direct any provider immediately downstream from the gateway provider to block the notified gateway provider's traffic if the gateway provider fails to respond to the notice of suspected illegal traffic or continues to transmit substantially similar traffic.¹⁰ The Bureau will then issue an Initial Determination Order with its apparent findings and provide the gateway provider with an opportunity to respond.¹¹ If the Bureau determines that the gateway provider's response to the Initial Determination Order is inadequate (including instances where the gateway provider fails to respond), or if it continues to transmit substantially similar traffic, the Bureau will release a Final Determination Order.¹² All immediate downstream providers must block and cease accepting all traffic that they receive from the provider starting 30 days from release of the Final Determination Order.¹³

B. One Eye's Transmission of Suspected Illegal Robocalls as a Gateway Provider

5. On February 15, 2023, the Bureau issued a Notice of Suspected Illegal Robocall Traffic (Notice) to One Eye for transmitting apparently illegal traffic as a gateway provider.¹⁴ These calls pertained to bank impersonation and claims of "preauthorized orders" placed "on your name."¹⁵ Between

⁵ *Id.* at paras. 1-4.

⁶ *Id.* at para. 72; 47 CFR § 64.1200(n)(5).

⁷ 47 CFR § 64.1200(n)(5)(i)(A); *see also* Letter from Loyaan A. Egal, Chief, FCC Enforcement Bureau, to Kaushal Bhavsar, CEO, One Eye LLC (Feb. 15, 2023) (Notice) (requiring gateway provider to respond within 14 days).

⁸ 47 CFR § 64.1200(n)(5)(i)(A). If the provider served as the gateway for the traffic, its report to the Bureau must include a certification that it is blocking the identified traffic and will continue to do so, as well as a description of the plan to identify and block substantially similar traffic on an ongoing basis. *Id.* § 64.1200(n)(5)(i)(A)(1)-(A)(2).

⁹ *Id.* § 64.1200(n)(5)(i)(B). If the gateway provider concludes that it did not serve as the gateway for the traffic, then it must provide an explanation and identify the upstream provider(s) from which it received the identified traffic. *Id.*

¹⁰ *Id.* § 64.1200(n)(5)(ii)-(iii), (n)(6).

¹¹ *Id.* § 64.1200(n)(5)(ii).

¹² *Id.* § 64.1200(n)(5)(iii).

¹³ *Id.* § 64.1200(n)(5)-(6). A Final Determination Order may be adopted up to one year after release of the Initial Determination Order. *See id.* § 64.1200(n)(5)(iii).

¹⁴ On February 15, 2023, the Commission issued a cease-and-desist letter to One Eye's business address listed in the Robocall Mitigation Database. The Commission published the letter on its website and also sent the letter via certified mail. *See* Notice, *supra* note 7. The Notice is part of the Bureau's cease-and-desist letter initiative, which places obligations on notified providers to investigate and mitigate identified traffic. The Notice and past cease-and-desist letters are available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

¹⁵ ITG Subpoena Response on file at EB-TCD-20-00030805 (Nov. 22, 2022) (ITG Subpoena Response). The call script did not state what the order was for nor how the order was placed. *See id.*

September 14, 2022, and November 1, 2022, USTelecom's Industry Traceback Group (ITG)¹⁶ investigated prerecorded voice message calls that Bank of America and Verizon had flagged as illegal spoofed robocalls or calls made without consent.¹⁷ The ITG conducted tracebacks and determined that the calls originated overseas and that One Eye acted as the gateway provider for the calls.¹⁸ The ITG previously notified One Eye of these calls and provided it access to supporting data identifying each call.¹⁹ One Eye did not respond to these tracebacks.²⁰

6. The Notice required One Eye to investigate and block the traffic and report the results of the investigation to the Bureau by March 2, 2023.²¹ The Notice warned One Eye that a failure to comply with those obligations would result in the Bureau requiring all immediate downstream providers to block its traffic pursuant to section 64.1200(n)(5) and (6).²² One Eye has not responded to the letter or filed any report.²³

7. The Notice also determined that One Eye was associated with a previous recipient of a Bureau cease-and-desist letter, PZ/Illum Telecommunications.²⁴ The CEO of PZ/Illum Telecommunications, Prince Anand, apparently created One Eye following the Bureau's enforcement efforts directed at that entity for transmitting suspected illegal calls.²⁵

III. DISCUSSION

8. The Commission's rules require One Eye to investigate and block traffic identified by the Bureau after receiving a notification of suspected illegal traffic.²⁶ The rules also require One Eye to report the results of its investigation to the Bureau.²⁷ The rules direct the Bureau to provide at least 14 days for One Eye to comply with the Notice.²⁸ The Bureau issued the Notice on February 15, 2023.²⁹ The Notice required One Eye to take the following actions: 1) promptly investigate the transmissions identified in the Notice; 2) if One Eye's investigation determines that One Eye served as the gateway provider for the identified transmissions, block all of the identified traffic within 14 days of the Notice and continue to block the identified traffic as well as substantially similar traffic on an ongoing basis; and

¹⁶ The ITG is the registered industry consortium selected pursuant to the TRACED Act to conduct tracebacks. *See Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870, para. 40 (EB 2022); *see also* Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, Sec. 13(d) (2019) (TRACED Act).

¹⁷ *See* ITG Subpoena Response.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See id.*

²¹ Notice, *supra* note 7, at 3.

²² *Id.* at 3-4.

²³ The Notice also directed One Eye to investigate and mitigate the identified traffic within 48 hours, consistent with section 64.1200(k)(4). *Id.*; *see* 47 CFR § 64.1200(k)(4). One Eye did not meet that deadline either.

²⁴ Letter from Loyaan A. Egal, Chief, FCC Enforcement Bureau, to Prince Anand, CEO, PZ/Illum Telecommunication (Oct. 21, 2022).

²⁵ *See* Notice, *supra* note 7, at 2.

²⁶ 47 CFR § 64.1200(n)(5).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Notice, *supra* note 7, at 1.

3) within 14 days of the date of the Notice, report the results of One Eye's investigation to the Bureau.³⁰ The Notice required One Eye to respond by March 2, 2023.³¹ One Eye has not filed any response with the Bureau.

9. Accordingly, we direct One Eye to reply with a final response to this Initial Determination Order. The reply should provide an explanation as to why the Bureau should not issue a Final Determination Order that would result in all downstream providers being required to block *all* of One Eye's traffic.³² One Eye shall file its response with Bureau within 14 calendar days of the date of this Initial Determination Order. Failure to respond to this Initial Determination Order or submit a response providing a reasonable basis for why the identified traffic, or continued transmission of substantially similar traffic, is legal will result in the Bureau issuing a Final Determination Order.³³ The Final Determination Order will be published in EB Docket No. 22-174 and serve to notify all immediate downstream providers that they must block and cease accepting all traffic received directly from One Eye beginning 30 days after release of the Final Determination Order.³⁴

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), 227(b), 251(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 227(b), 251(e), 403, and sections 0.111, 0.311, 1.1, 1.102(b)(1), and 64.1200 of the Commission's rules, 47 CFR §§ 0.111, 0.311, 1.1, 1.102(b)(1), 64.1200, and the *Gateway Provider Order*,³⁵ One Eye **SHALL FILE** a written final response to this Order **within 14 calendar days** from the release date of this Initial Determination Order.³⁶

11. The response must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division. The response must also be e-mailed to Kristi Thompson, Division Chief, Telecommunications Consumers Division, at kristi.thompson@fcc.gov, and Daniel Stepanicich, Acting Assistant Division Chief, Telecommunications Consumers Division, at daniel.stepanicich@fcc.gov.

³⁰ *Id.* at 3. Section 64.1200(n)(5)(i)(A) states that the report should include a certification that the provider is blocking the traffic identified in the Notice and will continue to do so, as well as provide a description of the provider's plan to identify and block substantially similar traffic on an ongoing basis. 47 CFR § 64.1200(n)(5)(i)(A). Section 64.1200(n)(5)(i)(B) states that if the provider's investigation determined that the identified traffic is not illegal, the report must provide an explanation as to why the provider reasonably concluded that the identified traffic is not illegal and what steps it took to reach that conclusion. If the provider determined that it did not serve as the gateway provider for the identified traffic, the report must provide an explanation as to how the provider reached that conclusion and identify the upstream provider(s) from which the provider received the identified traffic. *Id.* § 64.1200(n)(5)(i)(B).

³¹ Notice, *supra* note 7, at 3.

³² See 47 CFR § 64.1200(n)(5)(ii)-(iii), (n)(6).

³³ *Id.* § 64.1200(n)(5)(iii).

³⁴ *Id.* § 64.1200(n)(6).

³⁵ *Gateway Provider Order*, *supra* note 4, at FCC 22-37, para. 72.

³⁶ 47 CFR § 64.1200(n)(5)(ii).

12. **IT IS FURTHER ORDERED** that copies of this Initial Determination Order shall be filed in EB Docket No. 22-174 and sent by email and registered mail, return receipt requested, to: Kaushal Bhavsar, CEO, One Eye LLC, 500 Delaware Ave., Suite #1-1960, Wilmington, DE 19899.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau



Federal Communications Commission
Washington, D.C. 20554

April 3, 2023

DA 23-280

In Reply Refer To:

1800B3-ARR

Released: April 3, 2023

Kalamazoo Broadcasting Company, Inc.
c/o Aaron P. Shainis, Esq.
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(sent by electronic mail to: aaron@s-plaw.com)

Michael Lueck
2316 Fairfield Avenue
Kalamazoo, MI 49048
(sent by electronic mail to: michael@lueckpere.com)

In re: **Kalamazoo Broadcasting Company,
Inc.**
DWKPR(AM), Kalamazoo, Michigan
Facility ID No. 33280
Application File No. BL-20181105ACL

**Cancellation of License
Petition for Reconsideration**

Dear Counsel and Petitioner,

We have before us a Petition for Reconsideration (Petition)¹ filed by Michael Lueck (Lueck), seeking reconsideration of the cancellation of the license for Station DWKPR(AM), Kalamazoo, Michigan (Station), formerly licensed to Kalamazoo Broadcasting Company, Inc. (KBC). For the reasons set forth below, we dismiss the Petition because Lueck lacks standing.

Background. On January 10, 2023, KBC submitted a letter notifying the Media Bureau (Bureau) that KBC had discontinued Station operations and, pursuant to section 73.1750 of the Commission's rules (Rules), therefore surrendered the Station's license for immediate cancellation.² On January 13, 2023, the Bureau issued a public notice stating that the Station's license was cancelled and its callsign deleted, per licensee's request.³ On February 13, 2023, Lueck filed the Petition seeking reconsideration of cancellation of the Station license.

In the Petition, Lueck argues that as a listener of the Station and resident of Kalamazoo, Michigan, he has standing to file a petition for reconsideration under the Rules.⁴ Substantively, Lueck

¹ Pleading File No. 0000210712 (filed Feb. 13, 2023).

² See Letter from Aaron P. Shainis, Esq., to Marlene H. Dortch, Secretary, FCC (Jan. 10, 2023) (Cancellation Request); see also 47 CFR § 73.1750.

³ See *Broadcast Actions*, Public Notice, Report No. 50406 (MB Jan. 13, 2023).

⁴ Petition at 1.

maintains that: 1) KBC's surrender of the Station's license is invalid because it was signed by KBC's attorney, without a certification from KBC, which is only acceptable under special circumstances; 2) KBC should have included its reasons for discontinuing operations; and 3) KBC should have given listeners notice of its intent to discontinue operation, to afford opportunity for assignment of the license, in light of what Lueck characterizes as "a freeze on AM applications."⁵

Discussion. Section 405(a) of the Communications Act of 1934, as amended (the "Act"), states that any party to an order, decision, report, or action, or any other person aggrieved or whose interests are adversely affected, may petition for reconsideration.⁶ In order to show standing, a petitioner who is not a party to the proceeding must: (1) state with particularity the manner in which its interests are adversely affected by the action taken, and (2) show good reason why it was not possible to participate in the earlier stages of the proceeding.⁷ To determine if a party's interests have been adversely affected, a party must establish: (1) a distinct and palpable injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested.⁸

A petitioner claiming its interest is adversely affected must demonstrate a direct causal link between the challenged action and its alleged injury, and show that the injury would be prevented or redressed by the relief requested.⁹ In the broadcast regulatory context, a non-party attempting to establish standing as someone 'aggrieved' or whose interests were 'adversely affected' generally must show it 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.'¹⁰ Although Lueck is a regular listener of the Station and resident of the Station's service area,¹¹ the Bureau cannot afford Lueck the requested redress. The Bureau cannot require KBC to resume broadcasting,¹² nor can it require KBC to seek out and enter into an agreement with another party to assign the Station.¹³ Accordingly, absent feasible redress, we dismiss the Petition for lack of standing.¹⁴

⁵ *Id.* at 2.

⁶ 47 CFR § 405(a).

⁷ 47 CFR § 1.106(b)(1).

⁸ *Susquehanna Radio Corp.*, Letter Order, 29 FCC Rcd 1905, 1908 (MB 2014) (*Susquehanna Letter Decision*).

⁹ *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 13276, 13277, para. 3 (2014) (*Susquehanna MO&O*), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 13978 (2015).

¹⁰ See *Punjabi American Media, LLC*, Memorandum Opinion and Order, 35 FCC Rcd 6869, 6872, n.26 (2020) (citing *Tribune Media Co.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019)).

¹¹ Petition at 1.

¹² *Susquehanna Letter Decision*, 29 FCC Rcd at 1908 ("The Commission has no authority to require any party to hold or, as is the case here, to reacquire a license and to accept the corresponding duties and responsibilities of a licensee."); see also *New Jersey Public Broadcasting Authority*, Letter Order, 24 FCC Rcd 9064 (MB 2009) ("the Commission cannot force a license upon a party. . . .").

¹³ See *Urbanmedia One*, Order on Reconsideration, 32 FCC Rcd 5264, 5265-66 (2017) (the Commission held that rescinding grant of an application would not provide petitioner redress because, in addition to other limitations in the Rules, a third party could not be required to enter into a time share agreement with petitioner).

¹⁴ See also *Susquehanna MO&O*, 29 FCC Rcd at 13277-78 (dismissing petition for reconsideration of a license cancellation based on petitioners' lack of standing).

We also reject Lueck's claims that KBC's Cancellation Request is invalid because it was signed by KBC's attorney. Lueck does not cite to any Rule that prohibits a licensee's attorney from signing a letter on its behalf, notifying the Bureau of the Station's discontinuance of operation.¹⁵ Lueck likewise cites no requirement that the Cancellation Request should have included a reason for ceasing operations, or notified listeners prior to surrendering the Station's license.¹⁶ Accordingly, we dismiss the Petition.

Conclusion/Actions. For the reasons stated above, **IT IS ORDERED** that the Petition for Reconsideration filed by Michael Lueck on February 13, 2023 (Pleading File No. 0000210712), **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁵ Lueck appears to be referencing section 73.3513(b) of the Rules. 47 CFR § 73.3513(b) ("[a]pplications, amendments thereto, and related statements of fact required by the FCC may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States."). However, a letter notifying the Bureau of discontinuance of operations is not an application or statement of fact and therefore need not adhere to the requirements of this section.

¹⁶ Section 73.1750 requires a licensee to notify the FCC by letter of its permanent discontinuance of operation; it does not require any explanation of the discontinuance. 47 CFR § 73.1750. Section 73.3580 sets out requirements for the local public notice of filing of broadcast applications; since the Cancellation Request is not an application, notice of its filing is not required by this section. 47 CFR § 73.3580.



Federal Communications Commission
Washington, D.C. 20554

DA 23-281

Released: April 3, 2023

In Reply Refer to:

1800B-IB

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In re: DW236DS, Juncos, Puerto Rico
Facility ID No. 203037
File No. BNPFT-20181101AAC

DW287DP, Dorado, Puerto Rico
Facility ID No. 203065
File No. BNPFT-20181101AAD

Petition for Reconsideration of Tolling Denial

W287DR, Barceloneta-Manati, Puerto Rico
Facility ID No. 202952
File No. 0000178388

Petition for Reconsideration of License Grant

Dear Counsel and Petitioner:

The Media Bureau (Bureau) has before it two closely related petitions for reconsideration by Media Power Group, Inc. (MPG). The first petition¹ seeks reconsideration of a Bureau decision² that

¹ MPG, Petition for Reconsideration, Pleading File No. 0000184708 (filed Feb. 10, 2022) (Tolling Petition).

² See Francisco R. Montero, Esq., Letter Order, File Nos. BNPFT-20181101AAC, BNPFT-20181101AAD, Ref. No. 1800B3-VM (MB Jan. 11, 2022) (Tolling Decision).

denied MPG's request to toll the construction deadlines of permits³ to build new FM translator stations at Juncos and Dorado, Puerto Rico (Juncos and Dorado Stations, respectively). The second petition⁴ seeks reconsideration of the Bureau's grant, following the nominal expiration of MPG's permits, of an application by Wilfredo Getulio Blanco-Pi (Blanco-Pi) to license modified facilities for FM translator station W287DR (formerly W221EL) at Barceloneta-Manati, Puerto Rico (Barceloneta Station),⁵ on the channel previously authorized to the Dorado Station.⁶ For the reasons set forth below, we deny both petitions.

Background. These cases raise three related issues: (1) whether MPG timely filed requests to toll the construction deadline of the Juncos and Dorado Permits; (2) whether there was merit to any such requests; and (3) whether the Bureau erred in licensing Barceloneta Station facilities that conflicted with the Dorado Permit.

Under the Commission's rules (Rules), broadcasters receive an unencumbered three-year period to construct a new broadcast station.⁷ Construction permits automatically forfeit on the expiration date if the permittee has not completed construction and filed a covering license application.⁸ If, however, the three-year construction period becomes encumbered by certain limited circumstances identified in the Rules, including natural disasters,⁹ the permittee can, within 30 days of the encumbering event,¹⁰ request tolling, *i.e.*, a temporary stop of the construction clock. If the Bureau has not yet ruled on a timely-filed request for tolling prior to the construction deadline, the Bureau's general practice is to hold any conflicting, post-deadline applications in queue behind that permit while determining whether to grant tolling.

Tolling does not apply to circumstances not named in the Rules, but the Commission may waive construction deadlines in other rare and exceptional circumstances of a similar magnitude beyond the permittee's control.¹¹ It is also Bureau practice to provide brief waivers to permittees that construct by the

³ File No. BNPFT-20181101AAC (granted Nov. 28, 2018) (Juncos Permit); File No. BNPFT-20181101AAD (granted Nov. 30, 2018) (Dorado Permit).

⁴ MPG, Petition for Reconsideration, Pleading File No. 0000184716 (filed Feb. 10, 2022) (Barceloneta Petition).

⁵ The Barceloneta Station rebroadcasts co-owned WBQN(AM), Barceloneta-Manati, Puerto Rico.

⁶ See Application File No. 0000178388 (filed Jan. 3, 2022, granted Jan. 11, 2022) (License Application/Barceloneta License).

⁷ 47 CFR § 73.3598(a).

⁸ *Id.* § 73.3598(e).

⁹ *Id.* § 73.3598(b)(1).

¹⁰ *Id.* § 73.3598(c). The requirement of prompt notification is designed to ensure permittee construction diligence and to avoid *post hoc* permittee temporizing. This time frame generally applies to waiver requests as well. See *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1416 (2003), *recon. denied*, 20 FCC Rcd 5764 (2005) (*Birach*). If a permittee requests tolling more than thirty days after a tolling event, Commission practice is to look back 30 days from the date of the request and, if an encumbrance still existed at that time, to begin tolling treatment on the 30-day look-back date. See *Birach*, 18 FCC Rcd at 1416, para. 8.

¹¹ 1998 Biennial Regulatory Review-Streamlining of Mass Media Applications, Rules and Processes, 14 FCC Rcd 17525, 17541, para. 42 (1999). Such a waiver can apply to the three-year construction deadline and/or the automatic expiration provision. See 47 CFR §§ 73.3598(a), (e).

deadline but experience a short delay in filing a covering license application.¹²

The Bureau granted the Juncos Permit on November 28, 2018 and the Dorado Permit on November 30, 2018, each for a three-year term expiring on November 28, 2021 and November 30, 2021, respectively.¹³ MPG did not file a license application for either station by the permits' respective expiration dates. However, MPG later represented to Bureau staff that it had, by the construction deadline, built the Juncos Station and was very close to completing the Dorado Station. MPG attempted to seek tolling treatment shortly before permit expirations in November 2021 based on natural disasters earlier in the construction period, *i.e.*, hurricanes and the COVID-19 pandemic.¹⁴ As explained below, however, MPG did not properly file its November Request.

At the time that MPG first attempted to seek tolling, Commission staff was teleworking due to closure of FCC headquarters during the COVID pandemic. The traditional method of filing documents with the Office of the Secretary by U.S. mail was, therefore, unavailable. The Bureau encouraged broadcasters to submit filings electronically through the Bureau's database but because electronic filing was not available for some types of submissions, including tolling requests, the Bureau's Audio Division announced alternate filing procedures by public notice.¹⁵ The Procedures Notice instructed radio permittees to e-mail tolling requests to two specific Bureau attorneys who are responsible for processing tolling requests and for manually updating the Bureau's licensing database to reflect tolling requests.¹⁶ On Sunday, November 28, 2021, several hours before expiration of the Juncos Permit and two days before expiration of the Dorado Permit, MPG's counsel incorrectly submitted a tolling request that did not follow the announced procedures. Instead of contacting the attorneys specified in the Procedures Notice, MPG emailed a member of the Bureau's engineering staff not named in the Procedures Notice.¹⁷ As a result, the Bureau attorneys responsible for tolling matters did not receive the e-mail, were unaware of the request, and did not update the database.

Because the Bureau did not receive a properly filed tolling request that would have triggered staff to manually update the Bureau's licensing databases, those databases did not reflect any request for tolling of either permit. Instead, they would have displayed to the public that the permits had expired, they no longer needed to be protected, and that the spectrum was available for other proposed uses. On the November 30, 2021 expiration date of the Dorado Permit, Blanco-Pi filed an application to move the Barceloneta Station from Channel 221 to Channel 287 without protecting the Dorado Permit, which had authorized MPG to use Channel 287.¹⁸ The Modification Application appeared on public notice on

¹² See, e.g., *Clear Channel Broad. Licenses, Inc.*, Letter Order, 21 FCC Rcd 8677, 8680-81 (MB 2006) (permit expiration waived to accept license application filed two days after permit expiration for facilities completed prior to expiration).

¹³ The Juncos and Dorado Stations would retransmit the signals of WLEY(AM), Cayey, PR and WSKN(AM), San Juan, PR, respectively.

¹⁴ See MPG, Tolling Request for Construction Permits BNPFT-20181101AAC and BNPFT-20181101AAD (transmitted by Nov. 28, 2021 e-mail from Sarah Hinckle, Fletcher, Heald & Hildreth, to Robert Gates, FCC, and attached to Tolling Petition as Exh. 1) (November Request).

¹⁵ Audio Division Announces Procedures Related to Coronavirus, Public Notice, DA 20-266 (Mar. 13, 2020) (Procedures Notice).

¹⁶ *Id.*

¹⁷ See Tolling Petition, Exh. 1.

¹⁸ File No. 0000173206 (filed Nov. 30, 2021 and amended Dec. 3, 2021) (Modification Application).

December 7, 2021.¹⁹ No one, including MPG, filed any objection to the Modification Application, which was uncontested.

On December 16, 2021, counsel for MPG inquired about the status of the November Request in e-mails with the Audio Division's Senior Deputy Chief (Deputy Chief), who was named in the Procedures Notice but for matters other than tolling. MPG's counsel described the Juncos Station as "built" but not yet able to operate at full power and the Dorado Station as "very close" to completion²⁰ consistent with representations in the misdirected November Request, a copy of which MPG provided to the Deputy Chief at that time.²¹ The Deputy Chief believed that MPG intended to file an application to license the purportedly "built" Juncos Station shortly²² and reinstated the Juncos Permit in the database on December 17, 2021²³ so that MPG could apply and appropriate legal staff could consider whether to waive the application due date. The Deputy Chief did not immediately reinstate the Dorado Permit, however, because construction was reportedly incomplete. He advised MPG that it would need to pursue tolling, which is granted only upon evidence of encumbrances directly preventing construction.²⁴

MPG submitted the Tolling Amendment on December 21, 2021 by e-mail, providing more information about the purported impact of hurricanes and COVID.²⁵ Again, MPG did not direct this submission to the staff responsible for tolling. MPG disclosed in the Tolling Amendment that the stations were not "built" or "very close" as previously suggested.²⁶ Rather, MPG indicated that it had never been able to obtain access to the permitted sites for either station prior to the construction deadline; had built temporary facilities for the Juncos Station at an undisclosed location with an other-than-authorized

¹⁹ *Broadcast Applications*, Public Notice, Rep. No. PN-1-2111207-01 (Dec. 7, 2021).

²⁰ Tolling Petition, Exh. 2.

²¹ The November Request stated that MPG "has made so much progress in building out its CPs that both Translators would be able to operate at reduced power at this time," that MPG expected to be able to "finalize construction quickly," but that due to "lingering effects from the multitude of natural disasters" and "supply chain problems caused by the COVID-19 pandemic" it was not yet capable of operating at full power. November Request at 1-3. MPG also stated in a December 16, 2021 e-mail that it was "ready to put [the Juncos Station] on the air and file a license to cover if the permit were to be reinstated and tolled." *Id.*, Exh. 3.

²² See Tolling Petition, Exh. 5. ("Since [the Juncos Station] has been constructed already I can reinstate that one so you can file the license ASAP.").

²³ *Id.*, Exh. 6.

²⁴ *Id.*, Exh. 5 ("As for [the Dorado Station], we are only able to provide relief to permittees that have had a direct impact from Covid, hurricanes, or other disaster Otherwise, that one is done.").

²⁵ See MPG, Amended Tolling Request for Construction Permits BNPFT-20181101AAC and BNPFT-20181101AAD (submitted by e-mail Dec. 21, 2021) (Tolling Amendment) (attached to Tolling Petition as Exh. 2).

²⁶ MPG maintains that those prior representations were truthful because they reflected counsel's understanding at the time and the need for tolling. See MPG February Reply at 5. MPG explains that its reference to filing a license application anticipated a waiver request therein to propose operation from different sites, with different equipment, and with lower power than authorized. *Id.* We give no credence to this claim, as MPG offers no precedent and no basis (and we are not aware of any precedent, nor can we conceive of any basis) for allowing an applicant to modify a site location through a "waiver" request submitted with a license application rather than through an application to modify the construction permit for the proposed station.

antenna;²⁷ subsequently dismantled the temporary facilities while looking for a different site;²⁸ and was negotiating a site lease for the Dorado Station.²⁹ MPG attempted to link these site problems to disasters by stating, for example, that approval for the Dorado Station's use of a local government site was delayed because the government had prioritized hurricane response and that equipment delivery was, in general, taking much longer than it had pre-COVID.³⁰

The Deputy Chief reinstated the Dorado Permit on December 23, 2021³¹ so that staff could consider the Tolling Amendment. At virtually the same time on December 23, 2021, however, staff granted Blanco-Pi's uncontested Modification Application for the Barceloneta Station's use of the same channel. On January 3, 2022, Blanco-Pi filed the License Application to cover its Barceloneta Station construction as well as an informal objection to MPG's Tolling Amendment. MPG e-mailed an Opposition to the informal objection to the Deputy Chief on January 11, 2022.³² Also on January 11, 2022, the Bureau granted Blanco-Pi's License Application and dismissed MPG's Tolling Amendment as untimely because it was submitted after permit expiration. Alternatively, the Bureau denied tolling because the primary cause of non-construction was the unavailability of MPG's chosen sites, rather than natural disasters beyond its control.³³ The Bureau also declined to grant any additional construction time

²⁷ This amounts to unauthorized construction. MPG would have been required to file an application to modify the Juncos Permit to receive authority to construct at a new location or with different equipment. MPG notes that it had no access to the authorized Juncos Site and that the Juncos Station equipment needed to be site-specific, but it does not explain its failure to file a modification application.

²⁸ Tolling Amendment at 3, Exh. C. MPG submitted a quote dated December 21, 2021 for an antenna not yet ordered for the Juncos Station. MPG explained that it had been unable to order equipment for the Juncos Station because it would need to be customized to work at a particular location due the shape of its service contour, that MPG had not been able to obtain an affordable lease for the permitted site, and had attempted to build temporarily with borrowed equipment. *Id.* at 3. MPG in response to an Opposition from Blanco-Pi, states that it would have been able to afford the rent prior to the COVID pandemic but that the costs became infeasible due to a COVID-related financial downturn. MPG Opposition to Informal Objection (Jan. 11, 2022) at 8-9, submitted as Barceloneta Petition, Exh. 5 (MPG Opposition). MPG indicated in the Tolling Amendment that it was in negotiations to use a different site and would file an application for consent to construct the Juncos Station at that other location if tolling were granted. Tolling Amendment at 3.

²⁹ MPG reported siting difficulties for the Dorado Station because it was to be located on municipal land. MPG stated that it had only recently obtained permission to use the land and was in the process of drafting a contract to memorialize the agreement. *Id.* As of December 21, 2021, MPG states that it had ordered and received a transmitter for the Dorado Station. *Id.* at 3-4.

³⁰ Similarly, in the misdirected November Request, MPG stated that the local government agency that approves construction has either been non-operational or operating at a very limited capacity throughout the COVID-19 pandemic. *See* November Request at 2-3. MPG later clarified in a response that correspondence reflecting long delivery times for ordered equipment due to COVID pertained to a different station and that MPG had not then ordered equipment for the Juncos and Dorado Stations. *See* MPG Opposition at 6 ("the letter from Nautel is about a different broadcaster's purchase, but Nautel has indicated that the timing is the same for all broadcasters placing transmitter orders – none can be delivered prior to March 2022 from this manufacturer.").

³¹ *See* Tolling Petition, Exh. 6.

³² *See* MPG Opposition. This pleading was uploaded to the database on February 10, 2022.

³³ Specifically, the Tolling Decision stated that: (1) the request was untimely because it was filed after the permits had expired; (2) the primary reason MPG advanced for tolling of each permit was site availability whereas it is longstanding tolling policy that issues related to site choice are within the permittee's control; (3) claims of hurricane activity in the region were general and failed to show any storm damage that specifically affected MPG's ability to construct; and (4) the claimed supply chain delays provided no basis for tolling because it was MPG's

by waiver because it concluded that MPG had not demonstrated good cause or rare and exceptional circumstances beyond the permittee's control.³⁴ On February 10, 2022, MPG concurrently filed the Tolling and Barceloneta Petitions. Blanco-Pi filed a consolidated opposition on February 14, 2022³⁵ and MPG filed a reply on February 28, 2022.³⁶

Discussion. We affirm our dismissal of the Tolling Amendment and grant of the Barceloneta License. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's action or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.³⁷ For the reasons set forth below we find that the Bureau did not err in ruling that MPG did not file timely tolling requests; the requests it attempted to file were without merit; and the Barceloneta License did not need to protect the expired Dorado Permit.

Tolling Petition. We affirm but clarify the Bureau's determination that MPG's attempted tolling submissions were untimely. The Tolling Decision treated the November Request as never filed and the Tolling Amendment as late-filed. We clarify that neither document was "filed" in accordance with the Rules. MPG's argument that it timely requested tolling relies upon section 1.7 of the Rules,³⁸ which considers documents filed when received, read together with the Procedures Notice, which recognizes tolling notifications by e-mail during the relevant period.³⁹ As discussed above, however, MPG directed its e-mails to staff members who had no responsibility for tolling requests, contrary to express instructions in the Procedures Notice. The attempted requests did not meet the requirements of section 1.7, because they were not received at the location the Procedures Notice designated for tolling requests,⁴⁰

choice to delay ordering the equipment until near or after permit expiration based on site availability problems. See Tolling Decision at 2-3.

³⁴ *Id.* at 3.

³⁵ See Pleading File No. 0000184788 (filed Feb. 14, 2022).

³⁶ See Pleading File No. 0000185501, filed Feb. 28, 2022 (MPG February Reply). Blanco-Pi also submitted a reply to MPG's reply on March 1, 2022 (Pleading File No. 0000185715) to which MPG filed a Motion to Strike on March 2, 2022 (Pleading File No. 0000185615). We dismiss Blanco-Pi's March 1, 2022 pleading as unauthorized. See *Christian Family Network, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 2459, para. 1 n.4 (2016) (dismissing unauthorized pleadings). The Rules contemplate that the last document in the pleading cycle is a reply from the petitioner, not from the objector. See 47 CFR § 1.45(c).

³⁷ 47 CFR § 1.106(c)(1); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

³⁸ 47 CFR § 1.7.

³⁹ See Tolling Petition at 2, n.6 (arguing that the November Request was filed "upon receipt by the FCC staff member of the relevant e-mail.").

⁴⁰ See 47 CFR § 1.7 ("[u]nless otherwise provided in this Title, by *Public Notice*, or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their *receipt at the location designated by the Commission*)(emphasis added). MPG opines that staff to whom the e-mail was addressed received it but "forgot to act" because of the Thanksgiving holiday. Tolling Petition at 6. We reject that contention. As explained above, the correct staff did not receive MPG's request because MPG did not follow filing instructions. We further note that MPG e-mailed its November Request on a Sunday, which is outside of Commission business hours. See 47 CFR § 0.403 (Office Hours). If we assume *arguendo* that the Tolling Request arrived immediately in the mailbox of the incorrect staff member to which it was directed, actual receipt could not have occurred until the Commission opened for business on Monday, November 29, which is after the Juncos Permit's automatic expiration. See *id.* § 73.3598(e). Unlike broadcast applications submitted through the Commission's electronic filing system, which are considered filed if received in

i.e., the electronic mailboxes of two specific staff members.⁴¹ Thus, MPG never officially filed *any* tolling request in the manner required under section 1.7. We reject MPG’s contention that the Deputy Chief’s reinstatement of the permits in December 2021 proves otherwise.⁴² The Deputy Chief did not consider whether MPG’s request was timely, properly filed, or viable. His reinstatement of the permits merely ensured that the database would not automatically reject a license application expected from MPG shortly and that other staff could reach whatever decision they might deem appropriate on questions of tolling and waiver, including potential dismissal as untimely.

MPG’s failure to file a timely tolling request moots its other arguments. We will, however, address those arguments in the interest of a complete record. First, even had MPG properly filed either of its attempted tolling submissions, they would have failed on the merits because MPG did not demonstrate any encumbrance beyond its control that existed 30 days prior to either request.⁴³ As stated in the Tolling Decision, the primary reason that MPG did not construct is that it had no lease and/or local permits for the authorized sites it chose. The Commission does not grant tolling for site-related difficulties because choice of a broadcast station’s antenna site is an independent business decision within the permittee’s control, and the Commission has determined that a three-year construction period provides ample opportunity for permittees to overcome unanticipated difficulties, including leasing, zoning, and other siting issues.⁴⁴ The D.C. Circuit has upheld our denial of tolling where the primary reason for non-construction was site loss but the permittee instead based its tolling request on natural disasters.⁴⁵ As the court stated, “even absent those obstacles, construction was impossible. You can’t build a radio station without a place to put it.”⁴⁶ Thus, we reject MPG’s argument that it qualifies for tolling or waiver based on new local land use procedures in Puerto Rico and purported lingering “bureaucratic” delays in issuing local permits following hurricanes and COVID.

the system by midnight (even though offices are then closed) there is no comparable provision for documents submitted in another manner such as by e-mail. *See generally* 47 CFR § 1.4(f) (Computation of Time).

⁴¹ The Tolling Decision incorrectly referred to the Tolling Amendment as “filed” on December 21, 2021. *See* Tolling Decision at 1, n. 1. The Bureau was, however, referencing the date of submission, without making any affirmative finding that the Tolling Amendment met section 1.7 requirements. *See id.* (rejecting claimed November Request and treating the Tolling Amendment as MPG’s first and only tolling request). Appropriate staff learned of the Tolling Amendment only indirectly, when the Deputy Chief shared the document MPG had sent to him.

⁴² *Id.* at 6.

⁴³ *See* 47 CFR § 73.3598(c) (30-day requirement); *Birach*, 18 FCC Rcd at 1416, para. 8 (same 30-day period generally applicable to waiver requests). In the instant proceeding, MPG relied on the 2020 and 2021 hurricane seasons, neither of which occurred within 30 days of November Request or Tolling Amendment. We reject MPG’s contention that it was appropriate to wait until the very end of the construction period to request tolling so as not to appear that it was not being diligent and because it did not yet know whether tolling would be necessary. *See* MPG February Reply at 2-4. This is precisely the type of nonfeasance that the Commission sought to eliminate when it replaced its former permit extension rules with the current tolling system. *See Birach*, 18 FCC Rcd at 1416, para. 7. MPG misreads the language requiring permittees to request tolling “as promptly as possible” to endorse filing more than 30 days after an event. Tolling Petition at 4, citing 47 CFR § 73.3598(c). The full language of the Rule explicitly requires permittees to request tolling “as promptly as possible and, in any event, within 30 days, of any event.” Although it is Bureau policy to look back 30 days from the date of the late-filed request (the earliest that the request could be considered timely), MPG did not show any encumbrance 30 days prior to its requests while the permits were still in effect. *See supra*, n. 10.

⁴⁴ *See Cram Comm.*, Memorandum Opinion and Order, *LLC*, 23 FCC Rcd 658, 661-662, paras. 10-11 (2008).

⁴⁵ *Levine/Schwab Partnership v. FCC*, 61 F.4th 183 (D.C. Cir. 2023), affirming *Levine/Schwab Partnership*, Memorandum Opinion and Order, FCC 22-1 (rel. Jan. 5, 2022).

⁴⁶ *Id.*, 61 F.4th at 185.

MPG's additional COVID-related arguments fail to demonstrate any direct nexus between the pandemic and its failure to construct during the relevant time period.⁴⁷ For example, MPG cites COVID-related supply chain and manufacturing delays for broadcast equipment, but such delays could not have affected construction of the Juncos or Dorado Stations because MPG never timely ordered equipment for either one. MPG also argues that the Juncos site became unaffordable due to a COVID-related economic downturn. A permittee's finances are not generally grounds for tolling and, in any event, MPG never provided any supporting evidence such as financial statements and rental costs pre- and post-COVID.

We reject MPG's contention that the Tolling Decision conflicts with the Bureau's grant of additional construction time to other permittees.⁴⁸ The Commission must provide an adequate explanation before it treats similarly situated applicants differently,⁴⁹ but the facts of the instant case are not similar to the cases MPG cites. In *Caguas*, a COVID-related delay in local government approvals was insufficient on its own for tolling or waiver but supported a waiver when combined with a multitude of other factors, none of which apply to MPG.⁵⁰ The other case, *Yauco*, reflects more liberal treatment of COVID-related difficulties early in the pandemic.⁵¹ Although the *Yauco* decision extended tolling granted under the initial policies, the Bureau warned that it would deny further tolling requests absent evidence of a direct connection to the inability to construct.⁵² In fact, the Bureau denied the *Yauco* permittee's subsequent tolling request for lack of such evidence and the permit expired.⁵³

⁴⁷ MPG's Tolling Amendment provided links to weather websites from September and November 2020 stating that the 2020 Atlantic Hurricane Season had a record-breaking number of storms. Tolling Amendment at 1, n. 2. The Tolling Amendment also provided COVID statistics for Puerto Rico between April 2020 and December 2021 as well as December 2021 correspondence with an equipment manufacturer. *Id.*, Exh. D. Correspondence dated December 17, 2021 stated that that receipt of equipment (ordered for a different station) would take longer than expected. *Id.*, Exh. B.

⁴⁸ See Tolling Petition at 8-9, citing WUJA(TV), Caguas, PR, File No. 0000186748, Letter Order (MB Mar. 21, 2022) (*Caguas*) and WENA(AM), Yauco, PR, File No. BP-20170201AAM, Letter Order (MB June 29, 2021) (*Yauco*).

⁴⁹ See *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965).

⁵⁰ There, a licensed and operating television station was subject to tolling rules in connection with a required channel change under the incentive auction and repacking process. See 47 CFR § 73.3700(b)(5)(i), citing 47 CFR § 73.3598(b). The Caguas permittee ordered all equipment well in advance of expiration, and the public would lose existing service without a waiver. Additionally the Caguas permittee was operating with Special Temporary Authority on its post-auction channel and a waiver would not negatively impact other stations. None of those factors apply to MPG.

⁵¹ The Bureau later returned to standard tolling policies, *i.e.*, requiring evidence directly linking specific circumstances to an inability to construct. See *Availability of Construction Deadline Waivers for Certain FM Translator Stations Awarded in Auction 99 and 100*, Public Notice, 35 FCC Rcd 9555, 9556 (MB 2020) ("this evidence may include financial statements demonstrating the pandemic's economic impact on the individual permittee; affidavits or other evidence of the unavailability of components or tower crews; or copies of equipment orders").

⁵² *Yauco* at 2, n.3 ("Please note that we require any future tolling requests based on COVID-19 related delays to include documentation demonstrating the specific steps the permittee took to commence construction and how COVID-19 impacted those efforts. . . . If a permittee offers no such evidence or any similar evidence of an attempt to construct, any further tolling will be denied.").

⁵³ See WENA(AM), Yauco, PR, Letter Order (MB Apr. 25, 2022) (*Yauco II*). MPG's circumstances are closer to *Yauco II* than *Yauco*. For example, the *Yauco II* order noted discrepancies between the permittee's prior statement that it had obtained all equipment, funding, staffing and approvals and its later contrary claim. Similarly, the Bureau reinstated MPG's permits because MPG stated it had built or was close to completion, but that was not the case. See

Nor do we find any merit to MPG's allegation that the Bureau erred by issuing the Tolling Decision without considering the MPG Opposition pleading that it e-mailed to the Deputy Chief on the same day.⁵⁴ MPG did not file that pleading with the staff responsible for tolling and, thus, they were unaware of the pleading at that time. Moreover, staff did not need to await potential filing of an opposition to Blanco-Pi's objection because staff did not rely on or give any weight to Blanco-Pi's submission because it raised matters that were already known to the Bureau.⁵⁵ To the extent that MPG wanted the Bureau to address arguments that MPG presented in its opposition, including the merits of the November Request⁵⁶ and impact of governmental delays,⁵⁷ we note that the Bureau addresses those matters herein and finds them without merit.

Barceloneta Petition. For reasons similar to those discussed above, we find that there was no error in the Bureau's grant of Blanco-Pi's License Application for the Barceloneta Station. The Communications Act of 1934, as amended, directs the Commission to grant license applications if it finds that all the terms of the application and permit have been fully met, and that there are no new circumstances that would make such grant contrary to the public interest.⁵⁸ MPG's petition is, in reality, an untimely request for reconsideration of the Modification Application's grant.⁵⁹ MPG did not object to the Modification Application or allege that Blanco-Pi failed to construct in accordance with the terms of the resulting permit.⁶⁰ Rather it raises a public interest argument that the Modification and License Applications were never acceptable or grantable because they were "cut off" by MPG's earlier, mutually exclusive Dorado Permit for which it had sought tolling.⁶¹ These are essentially the same arguments we rejected above with respect to the Tolling Petition.

generally Foundation for a Beautiful Life, Memorandum Opinion and Order, 36 FCC Rcd 15933 (2021), *appeal dismissed sub nom. Foundation for a Beautiful Life v. FCC* (D.C. Cir. Feb. 22, 2022 per curiam) (dismissal of license application where permittee mis-certified to completion of authorized construction but had only built temporarily at authorized site and more permanently at an unauthorized location).

⁵⁴ MPG notes that the Rules provide for ten days to submit replies and that MPG timely submitted the MPG Opposition within eight days of Blanco-Pi's objection. *See* 47 CFR § 1.45(b).

⁵⁵ For example, the mechanics by which MPG attempted to request tolling was already set forth in MPG's own Tolling Petition and the Bureau's database already reflected that MPG had not contested Blanco-Pi's applications.

⁵⁶ Tolling Petition at 7.

⁵⁷ *Id.* at 8.

⁵⁸ 47 U.S.C. § 319(c) (grant of license if "all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest.").

⁵⁹ *See* 47 U.S.C. § 405(a) (a petition for reconsideration must be filed within 30 days of public notice of the FCC's action or order); *see also* 47 CFR § 1.106(f) (same).

⁶⁰ MPG suggests that it did not have adequate time to object because there were only about 39 days between Blanco-Pi's filing of the Modification Application and the Bureau's grant of the License Application and it did not expect the Bureau to act or Blanco-Pi to build so quickly. *See* Barceloneta Petition at 7. We note, however, that because the Act calls for greater scrutiny at the permit stage rather than the licensing stage, the 30-day waiting period for action on permit applications does not apply to applications for covering licenses. *See* 47 U.S.C. § 309(C)(2)(c).

⁶¹ Barceloneta Petition at 1, 5 citing 47 CFR § 73.7573(f) ("the first acceptable application cut[s] off the filing rights of subsequent applicants.").

MPG maintains that the November Request prevented the Dorado Permit from expiring, staff should have known of the November Request because MPG made status inquiries, and the database's non-inclusion of the November Request resulted from an "oversight by Commission staff."⁶² We disagree. As discussed above in the context of the Tolling Petition, the November Request and Tolling Amendment were never filed because MPG did not follow filing instructions set forth by Public Notice. The Dorado Permit expired,⁶³ Blanco-Pi filed the Modification Application, and MPG did not contest that application or timely seek reconsideration in accordance with 47 U.S.C. § 405(a) or 47 CFR § 1.106(f). Thus, the Dorado Permit did not "cut off" filing of the Modification Application or grant of the Barceloneta License. We reject MPG's argument that the Bureau's action conflicts with the *Clear Channel* case. There, the Bureau dismissed an application that was mutually exclusive with a permit for a station that was constructed and continued to operate pursuant to valid program test authority but that filed a license application two days late.⁶⁴ Unlike the *Clear Channel* permittee, MPG did not construct, operate authorized facilities with program test authority, or file a license application.

Ordering Clauses.

Accordingly IT IS ORDERED that the February 10, 2022 Petition for Reconsideration (Pleading File No. 0000184708) of Media Power Group, Inc. with respect to tolling of the period to construct FM translator stations DW236DS Juncos, Puerto Rico (Application File No. BNPFT-20181101AAC) and DW287DP, Dorado, Puerto Rico (Application File No. BNPFT-20181101AAD) IS DENIED.

IT IS FURTHER ORDERED that the February 10, 2022 Petition for Reconsideration (Pleading File No. 0000184716) of Media Power Group, Inc. with respect to the licensing of FM translator station, W287DR, Barceloneta-Manati, Puerto Rico (Application File No. 0000178388) IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁶² *Id.* at 2-3, 8.

⁶³ MPG argues that expiration dates of both permits were "paused" as of November 28, 2021 when it e-mailed the November Request. *See* Tolling Petition at 1. The rule MPG cites for this contention, section 73.3598(b), simply sets forth circumstances for grant of tolling and does not contain any such concept of license expiration being paused upon filing of a tolling request. *See* 47 CFR § 73.3598(b). Rather, when a permit has expired but a valid request to toll or to waive the expiration date has been filed, Bureau practice is to hold any mutually exclusive applications in queue behind the expired permit while awaiting a final determination of whether tolling or waiver is appropriate. *See, e.g., Royce Int. Broad. Co.*, Memorandum Opinion and Order, 23 FCC Rcd 9010, 9013-14, para. 9 (2008) (subsequent history omitted). We reject MPG's argument that it filed a timely tolling request, action upon which is non-final. *See* Barceloneta Petition at 6. As discussed previously, MPG did not file a timely tolling request. Blanco-Pi's applications, thus, did not need to be held in queue.

⁶⁴ *See Clear Channel Broad. Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153 (2011) (*Clear Channel*).

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

In the Matter of	)	
	)	
July 1, 2023	)	WC Docket No. 23-9
Annual Access Charge Tariff Filings	)	
	)	

ORDER

Adopted: April 3, 2023

Released: April 3, 2023

By the Chief, Pricing Policy Division:

15-DAY TARIFF FILINGS:	June 16, 2023
EFFECTIVE:	July 1, 2023
PETITIONS:	June 23, 2023
REPLIES:	June 27, 2023
 7-DAY TARIFF FILINGS:	 June 26, 2023
EFFECTIVE:	July 3, 2023
PETITIONS:	June 29, 2023 (due no later than 12:00 p.m. (noon) Eastern Time)
REPLIES:	June 30, 2023 (due no later than 12:00 p.m. (noon) Eastern Time)

I. INTRODUCTION

1. In this Order, we establish procedures for the 2023 filing of annual access charge tariffs and tariff review plans (TRPs) for incumbent local exchange carriers (LECs) subject to price cap regulation, as well as rate-of-return incumbent LECs subject to sections 61.38, 61.39, and 61.50 of the Commission's rules.¹

2. This Order: (1) sets an effective date of July 1, 2023 for 2023 annual access charge tariff filings submitted on 15-days' notice; (2) sets a modified effective date of July 3, 2023 for 2023 annual access charge tariff filings submitted on 7-days' notice pursuant to a limited waiver; (3) establishes the dates for filing petitions to suspend or reject an incumbent LEC's tariff filing and replies to such petitions;² (4) addresses service of the petitions and replies; and (5) reminds carriers that the Commission adopted new tariff filing fees which took effect on March 2, 2023.³

3. In the *USF/ICC Transformation Order*, the Commission adopted rules requiring incumbent LECs to reduce, over a period of years, many of their switched access rates. That rate

¹ 47 CFR §§ 61.38 (rate-of-return carriers that file tariffs based on projected costs and demand), 61.39 (rate-of-return carriers that file tariffs based on historical costs and demand), 61.43 (tariff filings for price cap LECs), and 61.50 (regulation of business data services offered by rate-of-return carriers electing incentive regulation).

² See 47 CFR § 1.773.

³ 47 CFR § 1.1105; *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 2022 WL 17886514, FCC 22-94 (Dec. 16, 2022) (*2022 Application Fees Order*); FCC, Schedule of Application Fees, 88 Fed. Reg. 6169 (Jan. 31, 2023).

transition ended in 2020.⁴ The Commission also established Eligible Recovery which enables incumbent LECs to recover a decreasing portion of their lost revenue attributable to the required switched access rate decreases.⁵ We rely on TRP⁶ worksheets submitted by filing carriers to confirm that the annual adjustments to incumbent LECs' Eligible Recovery have been implemented in accordance with the Commission's rules.⁷ All correspondence and comments in connection with these filings should refer to the caption of this proceeding, *July 1, 2023 Annual Access Charge Tariff Filings*, WC Docket No. 23-9.

II. DISCUSSION

A. Tariff Effective Dates and Tariff Filing Dates

4. The Commission's rules generally require incumbent LECs to file annual access charge tariffs with a scheduled effective date of July 1.⁸ The Commission's rules, however, do not preclude the filing of revisions to annual tariffs effective on dates other than July 1.⁹ An incumbent LEC may submit their annual tariff filings on a streamlined basis pursuant to section 203(a)(3) of the Communications Act of 1934, as amended, either 15 or 7 days prior to the scheduled effective date of their tariff revisions, depending on the type of changes they propose to make.¹⁰ Unless the Commission takes action during the relevant statutory notice periods, rates contained in annual tariff filings filed 15 days (for rate increases) or 7 days (for rate reductions) prior to the effective date are "deemed lawful."¹¹ Incumbent LECs filing tariffs on 15-days' notice must submit their annual tariff filings on June 16, 2023 to be effective July 1, 2023. Incumbent LECs filing tariffs on 7-days' notice must submit their annual tariff filings on June 26, 2023 to be effective July 3, 2023.

5. To establish an effective date of July 3, 2023 for 7-days' notice tariff filings, we grant a limited waiver of sections 69.3(a), 69.3(f), 51.907, and 51.909 of the Commission's rules to the extent

⁴ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17677, 17934-35, 18149, paras. 36, 801 & fig. 9, 1404 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); 47 CFR §§ 51.915, 51.917. Price cap incumbent LECs were required to transition certain tariffed switched access rates effective July 1 on each of those years to bill-and-keep (\$0) over a six-year period that ended in 2018. Rate-of-return incumbent LECs were required to transition certain tariffed switched access rates effective July 1 on each of those years to bill-and-keep (\$0) over a nine-year period that ended in 2020. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-96, para. 801, fig. 9; 47 CFR §§ 51.907(h), 51.909(j).

⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, 17956-96, paras. 36, 847-923; 47 CFR §§ 51.915, 51.917.

⁶ Commission staff works with industry to prepare updated TRP worksheets every year. TRP worksheets display cost support in a consistent manner, facilitating review by Commission staff and interested parties. Carriers are free, however, to create and use their own TRPs, as long as those TRPs comply with the Commission's rules. See *July 1, 2022 Annual Access Charge Tariff Filings*, WC Docket No. 22-108, Order, DA 22-494, 2022 WL 1528248, at *2, para. 2 (PPD May 9, 2022).

⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18149, para. 1404 (delegating authority to the Wireline Competition Bureau, as appropriate, to implement the rules adopted in the *USF/ICC Transformation Order*).

⁸ See 47 CFR §§ 69.3(a), 51.907, 51.909.

⁹ 47 CFR § 69.3(b).

¹⁰ 47 U.S.C. § 204(a)(3) ("A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis...[which]...shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action...before the end of that 7-day or 15-day period, as is appropriate."); 47 CFR § 61.58(a)(2)(i) (pursuant to section 204(a)(3) of the Act, local exchange carriers may file streamlined tariffs on 7-days' notice if it proposes only rate decreases, and on 15-days' notice for any other streamlined tariff including those that propose rate increases).

¹¹ 47 U.S.C. § 204(a)(3).

that those rules would otherwise require rates to be effective July 1, 2023.¹² Absent a waiver, carriers filing on 7-days' notice would need to submit their annual tariff filings on June 24, 2023, a Saturday, to be effective July 1, 2023. A filing received by the Commission on a Saturday, a holiday on which the Commission is technically closed, would be counted as filed on the next business day, June 26, 2023,¹³ which is less than 7 days before the July 1, 2023 effective date. Waiver is necessary to allow incumbent LECs reducing their rates to avail themselves of the 7-days' notice streamlined tariff filing procedures established pursuant to section 204(a)(3) of the Act. Under this limited waiver, incumbent LECs that want to submit their annual tariff filings on 7-days' notice must submit their annual tariff filings on June 26, 2023, with an effective date of July 3, 2023.¹⁴

6. Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year.¹⁵ Incumbent LECs that file tariffs under a rate-of-return ratemaking methodology are required to file every other year. Incumbent LECs filing pursuant to the requirements of section 61.39 of the Commission's rules are required to file annual access charge tariffs this year, an odd-numbered year.¹⁶ Ordinarily, rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules¹⁷ would not be required to file annual access charge tariffs this year, because they file revisions in even-numbered years.¹⁸ Pursuant to the *USF/ICC Transformation Order*, however, rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules must submit tariff filings this year to comply with the requirements of sections 51.917(d)(1)(iv), and 51.917(e) of the Commission's rules.¹⁹

7. In addition, all price cap and rate-of-return incumbent LECs are required to transition their interstate and intrastate toll free (or 8YY) originating end office access service rates to bill-and-keep over a three-year period beginning July 1, 2021.²⁰ As the final step in this transition, this year incumbent LECs are required to refile their interstate switched access tariff and any state tariff to remove any intercarrier charges for intrastate or interstate originating end office access service for toll free calls.²¹ This year, incumbent LECs are also required to reduce intrastate and interstate toll free database query

¹² 47 CFR §§ 69.3(a), 69.3(f), 51.907, 51.909. Generally, the Commission's rules may be waived for "good cause shown." 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). 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. *Id.* The Commission may, on an individual basis, consider evidence of hardship, equity, and more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹³ See 47 CFR § 1.4(e)(1), (j), (k)(1).

¹⁴ See *July 1, 2017 Annual Access Charge Tariff Filings*, WC Docket No. 17-65, Order, 32 FCC Rcd 1918, 1918, 1923, paras. 2 n.2, 15 (PPD 2017) (waiving Commission rules that otherwise would require rates filed on 7-days' notice to be effective on July 1 because the 7-days' notice filing deadline fell on a Saturday).

¹⁵ 47 CFR § 61.43.

¹⁶ 47 CFR §§ 61.39, 69.3(f)(2).

¹⁷ 47 CFR § 61.38.

¹⁸ 47 CFR § 69.3(f)(1).

¹⁹ 47 CFR § 51.917(d)(1)(iv), (e).

²⁰ 47 CFR §§ 51.907(i)-(k), 51.909(l)-(o); *8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594, FCC 20-143, at 10, para. 25 (Oct. 9, 2020) (*8YY Access Charge Reform Order*); 85 Fed. Reg. 75894 (Nov. 27, 2020). The bill-and-keep methodology is defined in 47 CFR § 51.713.

²¹ 47 CFR §§ 51.907(k)(1), 51.909(o)(1).

charges to a transitional rate of no more than \$0.0002 per query.²² Carriers are ordinarily required to implement these rate transitions beginning July 1, 2023. As explained above, however, we waive sections 51.907 and 51.909 of the Commission's rules to the extent necessary to establish an effective date of July 3, 2023 for filings made on 7-days' notice. We maintain the July 1, 2023 effective date for 15 days' notice tariff filings.

B. Tariff and Tariff Review Plan Filing Instructions

8. Incumbent LECs must file all of their tariff materials through the Commission's Electronic Tariff Filing System (ETFS).²³ Incumbent LECs should make every effort to file as early in the day as possible to avoid any complications in meeting the applicable filing deadlines. Incumbent LECs' 15-days' notice tariff filings must be received by ETFS after 7:00 p.m. Eastern Time on June 15, 2023 and before 7:00 p.m. Eastern Time on June 16, 2023 for the filing to be considered officially received on June 16, 2023. Incumbent LECs' 7-days' notice tariff filings must be received after 7:00 p.m. Eastern Time on June 25, 2023 and before 7:00 p.m. Eastern Time on June 26, 2023 for the filing to be considered officially received on June 26, 2023.

9. The public and interested parties may obtain copies of tariffing materials through ETFS. For more information, please contact either Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, Christopher.Koves@fcc.gov, or Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, Richard.Kwiatkowski@fcc.gov.

C. New Tariff Filing Fees and Payment System

10. When carriers submit their annual access charge tariff filings through ETFS, they must also pay the associated complex tariff filing fee through the Commission's Registration System (CORES).²⁴ We remind carriers that the Commission recently revised its part 1 application fees including fees related to tariff filings.²⁵ The new filing fees associated with the annual tariff filing—which is considered a “complex tariff filing”—went into effect on March 2, 2023, and the fees related to the annual tariff filing are reflected in the table below.²⁶

Tariff Filing	Forms	Fee Amount	Payment Code
Complex Tariff Filing (Large – all price cap LECs and entities involving more than 100 LECs)	Corres. & 159	\$7,300	CQL
Complex Tariff Filing (Small – other entities)	Corres. & 159	\$3,650	CQM

D. Pleading Filing Dates and Procedures

11. Petitions to suspend or reject 15 days' notice tariff filings will be due no later than 7:00 p.m. Eastern Time on June 23, 2023, and replies will be due no later than 7:00 p.m. Eastern Time on June 27, 2023. Petitions to suspend or reject 7-days' notice tariff filings will be due no later than 12:00 p.m.

²² 47 CFR §§ 51.907(k)(2), 51.909(o)(2).

²³ See 47 CFR § 61.13(b). Access to ETFS is available here: <https://apps.fcc.gov/etfs/etfsHome.action>.

²⁴ 47 CFR § 1.1105; see *FCC Announces Decommissioning of Fee Filer as Method of Payment and Replacement with New Payment Module Within CORES et al.*, Public Notice (Dec. 1, 2021), <https://www.fcc.gov/document/replacement-fee-filer-new-commission-payment-module>. For more information about the CORES Payment System, please visit: <https://www.fcc.gov/licensing-databases/fees/cores-payment-system>.

²⁵ 2022 *Application Fees Order* at *11, Appx.

²⁶ Schedule of Application Fees, 88 Fed. Reg. at 6174, Tbl. 1 to § 1.1105. For more information about the new fees related to tariff filings, please consult the Wireline Competition Bureau's public notice released March 2, 2023. *Wireline Competition Bureau Reminds Carriers of New Tariff Filing Fees Effective March 2, 2023*, WC Docket No. 23-9, DA 23-172 (WCB Mar. 2, 2023).

(noon) Eastern Time on June 29, 2023, and replies will be due no later than 12:00 p.m. (noon) Eastern Time on June 30, 2023. We waive those portions of sections 1.4(f) and 1.773 of the Commission's rules that are inconsistent with these deadlines.²⁷

12. Pursuant to sections 1.419 and 1.773 of the Commission's rules, interested parties may file petitions to suspend or reject tariff filings, and replies thereto, on or before the dates indicated in this Order.²⁸ Pleadings must reference **WC Docket No. 23-9** and must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Pleadings may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): www.fcc.gov/ecfs.²⁹
- 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-19.³⁰

13. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, *electronic* files, audio format), send an email to fcc504@fcc.gov.

14. *Courtesy Copies.* On the day an electronic filing is submitted, an electronic courtesy copy of any comments, reply comments, petitions, and replies, must also be emailed to Christopher Koves, Christopher.Koves@fcc.gov, and Richard Kwiatkowski, Richard.Kwiatkowski@fcc.gov.

15. *Ex Parte Rules.* The proceeding this Order initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³¹ 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

²⁷ See 47 CFR §§ 1.3, 1.4(f), 1.773(a), (b).

²⁸ *Id.* §§ 1.419, 1.773.

²⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

³⁰ 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>.

³¹ 47 CFR § 1.1200 *et seq.*

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 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.

E. Service

16. Because there is limited time available for review of petitions to suspend or reject tariff filings made pursuant to this Order, we establish the following service requirements for such petitions and responses thereto. Any party filing a petition to suspend or reject such a tariff filing must also serve that petition on the relevant tariff-filer, or the tariff-filer's attorney or other duly-constituted agent, by personal delivery, facsimile transmission, or email.³² Any party responding to a petition to suspend or reject must serve that response on the relevant petitioner, or the petitioner's attorney or other duly-constituted agent, by personal delivery, facsimile transmission, or email. To effectuate these service requirements, we waive those portions of sections 1.47(d), 1.773(a)(4) and 1.773(b)(3) of the Commission's rules that are inconsistent with the requirements set forth above.³³ Parties are instructed to provide contact persons, email addresses, and facsimile numbers in their filings.

III. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 5, and 201-209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201-209, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, this Order IS ADOPTED.

18. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, sections 69.3(a), 69.3(f), 51.907, and 51.909 ARE WAIVED to the extent specified herein in paragraphs 5 and 7.

19. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that sections 1.4(f), 1.47(d), and 1.773 of the Commission's rules, 47 CFR §§ 1.4(f), 1.47(d), 1.773, ARE WAIVED for the limited purposes specified herein in paragraphs 11 and 16.

20. 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

Gil M. Strobel
Chief, Pricing Policy Division
Wireline Competition Bureau

³² See *id.* §§ 1.773(a)(4), (b)(3).

³³ *Id.* §§ 1.3, 1.47(d), 1.773(a)(4), (b)(3).



PUBLIC NOTICE

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

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DA 23-283
April 3, 2023

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

PR Docket No. 90-221 and WT Docket No. 02-378

The Region 21 (Michigan)¹ 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Thursday, May 11, 2023. Beginning at 10:00 a.m., the Region 21 800 MHz RPC meeting will convene at the Huron Valley Ambulance/Emergent Health, 1200 State Circle, Ann Arbor, MI 48108.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – March 16, 2023 meeting
- Correspondence
- Review of Applications
 - Old Applications
 - New Applications
- 800 MHz Subcommittee Reports
 - Interoperable Communication Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Committee
- Old Business
 - Web Site
 - 4.9 GHz
- New Business
 - Mid-band Non- NPSPAC 800 channels
- Next meeting: Roscommon County Road Commission - July 13, 2023, 10 a.m.
- Adjourn

Immediately following the 800 MHz RPC meeting, the 700 MHz RPC meeting will convene.

The agenda for the 700 MHz meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – March 16, 2023 meeting
- Correspondence

¹ The Region 21 (Michigan) 700 MHz regional planning area includes all eighty-three counties in the Upper and Lower Peninsulas in the state of Michigan. The Region 21 800 MHz regional planning area consists of all the Upper Peninsula and all counties in the Lower Peninsula except the counties of Allegan, Barrien, Barry, Cass, Kalamazoo, Ottawa, St. Joseph, and Van Buren, which are part of Region 54 (Great Lakes Area).

- Review of Applications
 - Old Applications
 - New Applications
- 700 MHz Subcommittee Reports
 - Interoperable Communications Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Subcommittee
- Old Business
- New Business
- Next meeting: Roscommon County Road Commission - July 13, 2023, 11 a.m.
- Adjourn

The Region 21 RPC meetings are open to the public. All public safety providers in Region 21 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 21 should plan to attend. For more information, please contact:

Keith M. Bradshaw
 Chair, Region 21 700 MHz and 800 MHz RPCs
 Oakland County Radio Communications Supervisor
 1200 N. telegraph Rd, building 16E
 Pontiac, MI 48341
 Ph: 248-452-9769
bradshawkm@oakgov.com

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 23-284

Released: April 3, 2023

WIRELESS TELECOMMUNICATIONS BUREAU GRANTS 900 MHZ BROADBAND SEGMENT APPLICATION

WT Docket No. 17-200

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces the grant of one 900 MHz broadband segment license application (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 application listed in the Appendix to be complete and in conformance with the Commission's rules. No petitions to deny this application were filed, and the application 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, no section 27.1503(c)(2) anti-windfall payment is due for the license listed in the Appendix. Therefore, the Bureau finds that granting the application for the 900 MHz broadband segment license listed in the Appendix serves the public interest, convenience, and necessity.

Accordingly, by this Public Notice, we announce the grant of the license listed in the Appendix. We grant this license 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. The new 900 MHz broadband licensee may begin operation in the applicable counties, subject to protecting 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 *900 MHz Report and Order*, 35 FCC Rcd at 5229, 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	0010106424	0023948573	D42029	Chester County, PA	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.



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DA 23-285

Released: April 3, 2023

BROADBAND DATA TASK FORCE ANNOUNCES RELEASE OF TRAINING VIDEOS FOR MOBILE WIRELESS INTERNET SERVICE PROVIDERS RESPONDING TO BROADBAND DATA COLLECTION CHALLENGES

WC Docket Nos. 19-195, 11-10

By this Public Notice, the Broadband Data Task Force announces the release of two tutorial videos to educate providers on how to prepare and submit responses to challenges to mobile wireless coverage data filed in the Broadband Data Collection (BDC).

The first video provides an overview of the Commission's rules for responding to a challenge, timelines for mobile service providers to respond to challenges, how a provider can demonstrate mobile coverage in an area, and types of evidence that may be used to rebut a challenge in different scenarios. It is available at: <https://www.youtube.com/watch?v=64IC-pOK3kM>. The second video demonstrates how to access challenge data, concede or dispute a challenge, submit evidence, and track the status of challenges within the BDC system. It is available at: <https://www.youtube.com/watch?v=5RusmxMXQto>.

Consumers and other stakeholders can use the updated FCC Speed Test app to challenge provider reported mobile availability.¹ When initiated by a user, the app can collect the necessary data metrics for challenges and submits them directly to the Commission.² Governments and other entities may also use their own software and hardware to collect data for the challenge process so long as the data contain metrics that are substantially the same as those collected by the FCC Speed Test app.³ Challenge speed

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, 1164-65, para. 98 (2021) (*Third Report and Order*); *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Order, DA 22-241, at 5, para. 10 (WTB/OEA/OET 2022) (*Mobile Technical Requirements Order*); see also FCC, *FCC Speed Test App FAQs*, <https://www.fcc.gov/consumers/guides/fcc-speed-test-app-tip-sheet> (last visited Mar. 28, 2023). Other apps may in the future be approved by the Office of Engineering and Technology for use in submitting challenge and crowdsource data. *Mobile Technical Requirements Order* at 5, para. 10; *Broadband Data Task Force and Office of Engineering and Technology Announce Procedures for Third-Party Mobile Speed Test Applications Seeking Approval for Use in the FCC's Broadband Data Collection*, WC Docket No. 19-195, ET Docket No. 22-152, Public Notice, DA 22-408 (OET 2022).

² See generally FCC Office of Engineering and Technology, 2022 FCC Speed Test App Technical Description (2022), https://www.fcc.gov/sites/default/files/2022_fcc_speed_test_app_technical_description.pdf.

³ *Mobile Technical Requirements Order* at 5, para. 10; see generally *Broadband Data Task Force Establishes Process for Entities to Use Their Own Software and Hardware to Collect On-The-Ground Mobile Speed Test Data as Part of the Broadband Data Collection*, WC Docket No. 19-195, Public Notice, DA 22-962 (BDTF/WTB/OEA/OET 2022). The data required can be found in the data specifications for submitting on-the-ground mobile speed test data, which are available at <https://us-fcc.app.box.com/v/bdc-mobile-speedtest-spec>. Entities submitting data collected using their own software and hardware must submit a complete description of the methodology used to collect the data and substantiate the data and methodology through the certification of a

(continued....)

test results submitted to the FCC by consumers, governmental, and other entities will be aggregated and, if a valid grouping of speed tests shows coverage is not available in a geographic area, will be used to create a challenge, which will be shared with the provider for response.⁴

These training resources are the latest in the Commission's efforts to implement the BDC challenge processes and ensure that consumers, governments, and service providers have the resources needed to help refine the accuracy of the National Broadband Map. Additional technical assistance resources related to the mobile wireless challenge process, including links to a comprehensive webinar, video tutorials, help articles, data specifications, and a BDC system user guide are also available at www.fcc.gov/BroadbandData/Help. Requests for technical support may also be submitted using the "Get Help" link available on that page.

For further information regarding this Public Notice, please contact Will Holloway, William.Holloway@fcc.gov. For media inquiries please contact Anne Veigle, Anne.Veigle@fcc.gov.

-FCC-

qualified engineer or official, and must ensure the data meets the same metrics and parameters as that submitted by consumers. *Id.*

⁴ *Third Report and Order*, 36 FCC Rcd at 1167-68, para. 105; *Mobile Technical Requirements Order* at 6, 12, 19-22, paras. 12, 20, 31-35 (discussing aggregating speed tests), 30-35, paras. 50-56 (discussing the geographic, temporal, and testing thresholds that speed tests will need to meet to create a "cognizable" challenge).



PUBLIC NOTICE

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Internet: <https://www.fcc.gov>

DA 23-286

Released: April 3, 2023

APPOINTMENT OF MEMBERSHIP FOR FIFTH TERM OF DISABILITY ADVISORY COMMITTEE AND ANNOUNCEMENT OF FIRST MEETING DATE

By this Public Notice, the Chairwoman of the Federal Communications Commission (FCC or Commission) announces the appointment of members for the fifth two-year term of the Commission's Disability Advisory Committee (DAC or Committee) and announces the first meeting of the new DAC term. The DAC is organized under, and operated in accordance with, the provisions of the Federal Advisory Committee Act (FACA) and provides advice and recommendations to the Commission on a wide array of disability matters specified by the Commission.¹

On August 30, 2022, the Commission solicited applications for membership for this term of the DAC, which runs from December 14, 2022, through December 14, 2024.² After review of the applications and nominations for membership received, the Chairwoman has selected 36 members and 5 *ex officio* members, as listed below. The membership consists of a diverse mix of organizations representing individuals with disabilities, communications and video programming industries, public safety industry, trade associations, researchers, and other stakeholders.

During the Committee's fifth term, it is anticipated that the members of the Committee will attend a minimum of three (3) one-day plenary meetings per year, either in-person, or, if appropriate, by video conference. In addition, as needed, working groups or subcommittees will be established to facilitate the Committee's work between meetings of the full Committee.

The DAC will hold its first meeting of the fifth term virtually on **Wednesday, April 26, 2023, at 1:00 p.m.**, Eastern time.

DAC members will discuss (i) the roles and responsibilities of the Committee and its members; (ii) issues that the Committee will address; (iii) meeting schedules; and (iv) any other topics relevant to the DAC's work. The meeting will be led by the DAC co-chairs: Kim Charlson, Executive Director of Perkins Library, Perkins School for the Blind, and Kyle Dixon, Vice President and Deputy General Counsel, Program Network Policy, NCTA – The Internet and Television Association. Joshua Mendelsohn, Attorney Advisor, Disability Rights Office, Consumer and Governmental Affairs Bureau (CGB), will serve as the Designated Federal Officer (DFO) of the DAC. The meeting agenda will be available at <https://www.fcc.gov/news-events/events/2023/04/disability-advisory-committee-meeting> and may be modified at the discretion of the DAC co-chairs and the DFO.

¹ 5 U.S.C. § 1001 *et seq.* The Commission announced the establishment of the DAC on December 2, 2014. *FCC Announces the Establishment of the Disability Advisory Committee and Solicits Nominations for Membership*, Public Notice, 29 FCC Rcd 14484 (CGB 2014).

² *FCC Announces Anticipated Renewal of Its Disability Advisory Committee and Solicits Applications for Membership on the Committee*, Public Notice, DA 22-905 (CGB 2022), <https://docs.fcc.gov/public/attachments/DA-22-905A1.pdf>.

The DAC meeting will be open to the public with audio and video coverage of the meeting at www.fcc.gov/live. During the meeting, members of the public may submit questions and comments to the DAC via email: livequestions@fcc.gov. These comments or questions may be addressed during the public comment period.

Open captioning and sign language interpreters will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the CGB at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed and specify how the FCC should contact the requester if more information is needed to fill the request. Please provide at least five business days' advance notice of accommodation requests; last-minute requests will be accepted but may not be possible to accommodate.

To obtain further information about the Committee, visit www.fcc.gov/dac, or contact Joshua Mendelsohn, DFO, (202) 559-7304, or DAC@fcc.gov.

MEMBERS OF THE DISABILITY ADVISORY COMMITTEE
FIFTH TERM

Joshua Mendelsohn, Designated Federal Officer

Co-Chairs:

Kim Charlson, Executive Director of Perkins Library
Perkins School for the Blind

Kyle Dixon, Vice President and Deputy General Counsel, Program Network Policy
NCTA – The Internet & Television Association

Individual Name, Title, and Organization Represented:

American Association of the DeafBlind (AADB)
John Winstead, President

American Council of the Blind (ACB)
Clark Rachfal, Director of Advocacy and Governmental Affairs
Alternate: Swatha Nandhakumar, Advocacy and Outreach Specialist

American Foundation for the Blind (AFB)
Sarah Malaier, Senior Advisor, Public Policy and Research
Alternate: Stephanie Enyart, Chief Public Policy and Research Officer

Amazon.com, Inc.
Shadi Abou-Zahra, Principal Accessibility Standards and Policy Manager
Alternate: Kristine Hackman, Senior Manager, Public Policy

Apple, Inc.
James Craig, Accessibility Standards Manager
Alternate: Megan Stull, Senior Manager, Regulatory Policy and Government Affairs

The Arc
Katy Schmid, Director, Education and Technology

AT&T Corporation
Linda Vandeloop, Assistant Vice President, Federal Regulatory Relations
Alternate: Susan Mazrui, Director of Public Policy

Cerebral Palsy and Deaf Organization (CPADO)
Mark Hill, President

City of Boston, Mayor's Commission for Persons with Disabilities
Carl Richardson, ADA Coordinator

ClearCaptions, LLC
Michael Strecker, Vice President of Regulatory and Strategic Policy
Alternate: Matthew Palmer, Senior Compliance Manager

Comcast NBCUniversal
Thomas Wlodkowski, Vice President,

Accessibility and Multicultural Technology and Product, Comcast
Alternate: Crystal Evans, Counsel, Regulatory Affairs at NBCUniversal
Alternate: Jerry Parkins, Senior Director of Technology and Standards, Comcast Cable
Alternate: Richard Wikoff, Principal Engineer, Product Development Engineering

Communication Service for the Deaf (CSD)

Juli Robinson, Director, Government Markets
Alternate: Karen Peltz Strauss, Consultant

Consumer Technology Association (CTA)

Rachel Nemeth, Senior Director, Regulatory Affairs
Alternate: David Grossman, Vice President, Regulatory Affairs

Convo Communications, LLC

Amanda Montgomery, Chief Legal Officer
Alternate: Thomas Horejes, Director of Legal Compliance and Advocacy

CTIA - the Wireless Association

Sarah Leggin, Director, Regulatory Affairs
Alternate: Avonne Bell, Director, Connected Life

Dicapta

Maria Victoria Diaz, President
Alternate: Judy Mathews, Dicapta Advisory Committee Member

Hamilton Relay, Inc.

Beth Slough, Director of Account Management and Compliance
Alternate: Dixie Ziegler, Vice President

Hearing Loss Association of America (HLAA)

Lise Hamlin, Director of Public Policy
Alternate: Brian Meyer, Public Policy Associate

Helen Keller National Center (HKNC)

Scott Davert, Coordinator of Technology, Research and Innovation Center
Alternate: Christopher Woodfill, Associate Executive Director

InnoCaption

Cristina O. Duarte, Director of Regulatory Affairs
Alternate: Paul Lee, Chief Operating Officer

National Association of Broadcasters (NAB)

Joshua N. Pila, Vice President and Assistant General Counsel, Gray Television, Inc.
Alternate: Larry Walke, Associate General Counsel, National Association of Broadcasters

National Association of the Deaf (NAD)

Zainab Alkebsi, Policy Counsel
Alternate: Howard Rosenblum, Chief Executive Officer

National Association of State Agencies Serving Deaf and Hard of Hearing (NASADHH)

Annie Urasky, NASADHH Secretary; and Director,
Division on Deaf, DeafBlind and Hard of Hearing, Michigan Department of Civil Rights
Alternate: Eric Raff, NASADHH Member-At-Large; and Director,

Virginia Department of the Deaf and Hard of Hearing

National Black Deaf Advocates (NBDA)

Theodore R. Dorsette III, Director of Public Engagement

National Captioning Institute (NCI)

Darlene Parker, Director of Partnership Development

Alternate: Beth Nubbe, Senior Vice President and Chief Administrative Officer

Alternate: Meredith Patterson, Senior Vice President for Operations &
Chief Operating Office

National Emergency Number Association (NENA)

Richard Ray, Co-Chair, NENA Accessibility Committee

National Federation of the Blind (NFB)

Everette Bacon, Secretary

NCTA – The Internet & Television Association

Kyle Dixon, Vice President and Deputy General Counsel, Program Network Policy

Alternate: Radhika Bhat, Vice President & Associate General Counsel

Perkins School for the Blind

Kim Charlson, Executive Director of Perkins Library

Alternate: Kristyn Leigh, Program Manager, iCanConnect

Sorenson Communications, LLC

Michael D. Maddix, Director of Government and Regulatory Affairs

Alternate: Adriana Featherstone, Staff Counsel

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Mark Seeger, Member

Alternate: Blake Reid, Associate Clinical Professor, Director,
Samuelson-Glushko Technology Law & Policy Clinic, Colorado Law

T-Mobile USA, Inc.

Shellie Blakeney, Director, Federal Regulatory Affairs

Alternate: Dennis Selznick, Senior Accessibility Compliance Manager

University of Pittsburgh Rehabilitation Engineering Research Center on Wireless Technologies for People with Disabilities

Dan Ding, Director, Associate Professor

Alternate: Lindsey Morris, Strategy and Operations Lead, Research Scientist

Verizon Communications, Inc.

Zachary Bastian, Manager, Strategic Alliances

Alternate: Ian Dillner, Associate General Counsel, Federal Regulatory

VITAC

Heather York, Vice President

Alternate: Scott Ready, Head of Accessibility

ZP Better Together, LLC

Gregory Hlibok, Chief Legal Officer

Alternate: Mark Stern, Director, Product Management

Ex Officio Federal Government Representatives (Non-Voting Members)

U.S. Access Board

Timothy P. Creagan, Senior Accessibility Specialist

Alternate: Bruce Bailey, Accessibility IT Specialist

U.S. Department of Education, Office of Special Education and Rehabilitative Services (ED – OSERS)

Brianne Burger, Director and Liaison to the Special Institutions

Alternate: Eric Caruso, Education Program Specialist

U.S. Department of Health and Human Services, Administration for Community Living (HHS – ACL)

Lisa Bothwell, Program Analyst

Alternate: Timothy Beatty, Senior Social Science Analyst

U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)

Aaron Kubey, Communications Access Specialist, External Affairs

Alternate: Gay Jones, Strategic Communications Access Specialist,
Office of Disability Integration and Coordination

U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA), National 911 Program

Brian Tegtmeyer, Coordinator

Alternate: Katherine Elkin, Emergency Medical Services and 911 Specialist

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DA 23-287
April 4, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 41 (UTAH) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES
TO HOLD PLANNING MEETINGS

WT Docket 02-378 and PR Docket 91-282

The Region 41 (Utah) 700 MHz Utah Regional Planning Committee (URPC) and the Region 41 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) Planning Committee will hold two consecutive annual planning meetings on Thursday, May 18, 2023, 1:00 p.m. - 2:00 p.m., at the Utah Communications Authority Office, 5215 Wiley Post Way, Ste. 550, Salt Lake City, UT 84116.

The agenda for both meetings include:

- Election of Primary Officers
- Election of URPC Frequency Application Approval Committee

Both of the Region 41 Planning Committee meetings are open to the public. All eligible public safety providers in Utah may utilize these frequencies. It is essential that public safety agencies in all areas of government, including state, county, municipality, and Native American Tribal, as well as non-government 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 in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 41 should plan to attend. Region 41 welcomes all interested parties to attend, participate and volunteer for committee assignments. For further information, please contact:

Philip Krebs
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5215 Wiley Post Way, Suite 550
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- 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 23-288

Released: April 6, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES FINAL LIST OF ENTITIES SELECTED FOR THE AFFORDABLE CONNECTIVITY PILOT PROGRAMS

WC Docket No. 21-450

By this Public Notice, the Wireline Competition Bureau (Bureau) announces the final list of 34 entities selected for the Affordable Connectivity Program (ACP) Pilot Programs, which are aimed at providing ACP outreach and application assistance to eligible households.¹ The two ACP Pilot Programs are: (1) the Your Home, Your Internet Pilot Program, which is focused on ACP outreach and application support to recipients of federal housing assistance; and (2) the ACP Navigator Pilot Program, which provides selected entities access to the National Verifier to help low-income households complete and submit their ACP application. The Bureau confirms the selection of the 32 entities described in the March 15, 2023 notice, and announces two more entities selected to participate in the ACP Navigator Pilot Program: Baltimore County Public Library and Florida Atlantic University.² These two additional entities will participate without grant funding.

On March 15, 2023, the FCC released a list of 23 Your Home, Your Internet Pilot Program entities and nine ACP Navigator Pilot Program entities selected for participation with grant funding.³ With the announcement of the final two additional entities for the ACP Navigator Pilot Program, the Bureau has selected a total of 34 entities to participate in the ACP Pilot Programs: 23 entities selected for the Your Home, Your Internet pilot program, and 11 entities selected for the ACP Navigator Pilot Program. The final list of entities selected to participate in the ACP Pilot Programs is enclosed in the Appendices contained within this Public Notice.

The Bureau will provide information directly to all entities selected to participate in the two ACP Pilot Programs regarding the start of their one-year period of performance. These entities will also receive the requirements for obtaining access to the National Verifier, relevant training, and the available FCC ACP outreach resources. Entities selected to participate in the ACP Pilot Programs without grant funding are required to report the same data concerning their participation in the ACP Pilot Programs as entities that were selected to participate in the ACP Pilot Programs with grant funding.⁴ The Bureau will

¹ Additional information on the two ACP Pilot Programs is available at <https://www.fcc.gov/affordable-connectivity-pilot-programs>.

² While a Notice of Funding Opportunity was released for both ACP Pilot Programs to provide funding to support outreach activities of eligible entities selected to participate in the Your Home, Your Internet Pilot Program and ACP Navigator Pilot Program, entities could still participate in the ACP Pilot Programs without funding.

³ Public Notice, *Consumer and Governmental Affairs Bureau and Wireline Competition Bureau Announce ACP Pilot Program Grants Target Funding*, WC Docket No. 21-450, DA 23-219 (CGB Mar. 15, 2023).

⁴ For more information on the performance measures data requirements established in the Affordable Connectivity Program Outreach Grant Program-Pilot Program Grants Notice of Funding Opportunity, refer to: https://www.fcc.gov/sites/default/files/fy23_acp_pilot_pr_outreach_grants_nofo.pdf.

notify the entities selected to participate without grant funding of the applicable reporting requirements and deadlines.

For information about the ACP Pilot Programs, please email acppilots@fcc.gov.

- FCC -

APPENDIX A

Final List of Entities Selected for the Your Home, Your Internet Pilot Program

#	Name	State
1	Housing Authority of the Birmingham District	Alabama
2	Housing Authority of the City of Santa Barbara	California
3	San Diego Housing Commission	California
4	Adams County Housing Authority dba Maiker Housing Partners	Colorado
5	Housing Authority of the City of Tampa	Florida
6	Chicago Housing Authority	Illinois
7	Lake County Housing Authority	Illinois
8	Fort Wayne Housing Authority	Indiana
9	Louisville Metro Housing Authority	Kentucky
10	Housing Authority of Baltimore City	Maryland
11	Maryland Department of Housing and Community Development	Maryland
12	Sturgis Housing Commission	Michigan
13	Housing Authority of the City of Reno	Nevada
14	Jersey City Housing Authority	New Jersey
15	INLIVIAN	North Carolina
16	Akron Metropolitan Housing Authority	Ohio
17	Cheyenne and Arapaho Housing Authority	Oklahoma
18	Home Forward	Oregon
19	Metropolitan Development and Housing Agency	Tennessee
20	Housing Authority of the City of Austin	Texas
21	Housing Authority of the City of Brownsville	Texas
22	Utah Paiute Tribal Housing Authority, LLC	Utah
23	King County Housing Authority	Washington

APPENDIX B

Final List of Entities Selected for the ACP Navigator Pilot Program

#	Name	State
1	Coconino County	Arizona
2	University of Arkansas for Medical Sciences	Arkansas
3	Florida Atlantic University ¹	Florida
4	City of South Bend	Indiana
5	Baltimore County Public Library ²	Maryland
6	Montgomery County, Maryland	Maryland
7	Jersey City Housing Authority	New Jersey
8	Brooklyn Public Library	New York
9	Cuyahoga County Public Library	Ohio
10	Harris County, Texas	Texas
11	Government of Salt Lake County	Utah

¹ The Bureau selected Florida Atlantic University to participate in the ACP Navigator Pilot Program without grant funding.

² The Bureau selected Baltimore County Public Library to participate in the ACP Navigator Pilot Program without grant funding.



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 23-289

Released: April 4, 2023

COMMENT SOUGHT ON PETITION OF GLOBALVRS FOR VIDEO RELAY SERVICE EXOGENOUS COST REIMBURSEMENT

CG Docket Nos. 03-123 and 10-51

Comments Due: [14 days after date of publication in the Federal Register]

Reply Comments Due: [24 days after date of publication in the Federal Register]

The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) seeks comment on the petition of ASL Services Holdings, LLC dba GlobalVRS (GlobalVRS) for exogenous cost reimbursement for the provision of Video Relay Service (VRS) to people who are deafblind.¹ Specifically, GlobalVRS seeks reimbursement from the Telecommunications Relay Services Fund for costs associated with the development of its call distribution platform, outreach, and other costs associated with its provision of VRS to individuals who are deafblind.²

GlobalVRS has redacted portions of its emergency petition for which it requests confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket.³

Filing Requirements. Interested parties may file comments on the GlobalVRS Petition on or before the dates indicated on the first page of this document.⁴ All filings must reference CG Docket Nos. 03-123 and 10-51. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁵

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding,

¹ See Emergency Petition of ASL Services Holdings, LLC dba GlobalVRS for DeafBlind Video Relay Services Exogenous Cost Reimbursement, CG Docket Nos. 03-123 and 10-51 (filed Mar. 21, 2023) (GlobalVRS Petition), <https://www.fcc.gov/ecfs/document/10321175009780/1> (redacted).

² *Id.* at 1-2.

³ See *Misuse of Internet Protocol (IP) Captioned Telephone Service; 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. 13-24, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (CGB 2018).

⁴ See 47 CFR §§ 1.1, 1.45, 1.49.

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

filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.⁶
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

Ex Parte Requirements. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁷ 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.

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

⁶ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (OMD 2020).

⁷ 47 CFR §§ 1.1200 *et seq.*

For further information, please contact Ross Slutsky by e-mail at Ross.Slutsky@fcc.gov. Individuals who use videophones and are fluent in American Sign Language (ASL) may call the FCC's ASL Consumer Support Line at (844) 432-2275.

-FCC-

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

In the Matter of	)	
	)	
Lingo Telecom, LLC	)	Complaint No. 6068525
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: April 4, 2023

Released: April 4, 2023

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

1. In this Order, we consider a complaint alleging that Lingo Telecom, LLC (Lingo) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.¹ We conclude that Lingo's actions violated the Commission's slamming rules, and we therefore grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.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. 6068525 (filed Mar. 2, 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 Complainant's authorization.⁹ In the complaint, Complainant also states that she received a call from a Lingo representative, who told her "they were only taking over Verizon's billing and that we would see a new bill coming from Lingo instead of Verizon. . . nothing else would change [and] all numbers and service would still be provided by Verizon."¹⁰ Complainant further states that she specifically asked whether her service would stay with Verizon, and the Lingo representative replied yes.¹¹

5. Pursuant to our rules, we notified Lingo of the complaint.¹² Lingo responded, stating that its records show that Complainant signed a three-year contract, indicating that she understood that Lingo and Verizon are not affiliated.¹³ Lingo also provided two audio recordings—a TPV recording and a recording Lingo characterized as a "quality assurance call." Lingo did not, however, address Complainant's misrepresentation allegation and did not provide a recording of the sales call or any other evidence related to the sales call.

6. The Division thoroughly reviewed all the evidence provided by both the Complainant and Lingo. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Lingo has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid.¹⁴ As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁵ We therefore find that Lingo's

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. 6068525.

¹⁰ *Id.*

¹¹ *Id.*

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

¹³ See Lingo Response to Informal Complaint No. 6068525 at 1 (filed Mar. 31, 2023).

¹⁴ We also note that on the TPV recording, the Lingo representative refers to a "billing conversion" and states that "Lingo leases the lines; we handle the billing and customer service." At no time does the representative confirm that the Complainant is authorized to make a carrier change and understands that she is authorizing a carrier change. See 47 CFR § 64.1120(c)(3)(iii).

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)).

actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Lingo's liability below.¹⁶

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

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

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

¹⁷ *See id.* § 64.1160(b).

¹⁸ *See id.* § 64.1160(d).

¹⁹ *See id.* § 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with	)	
Hearing and Speech Disabilities	)	
	)	
ClearCaptions Internet-Based TRS Certification	)	
Application	)	
	)	
	)	
	)	
	)	

ORDER

Adopted: April 4, 2023

Released: April 4, 2023

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (Bureau) grants ClearCaptions, LLC (ClearCaptions), full certification of eligibility to receive compensation from the Interstate Telecommunications Relay Services (TRS) Fund for the provision of Internet Protocol Captioned Telephone Service (IP CTS).¹ This grant of full certification authorizes ClearCaptions to provide IP CTS for a five-year period, through April 3, 2028.

II. BACKGROUND

A. The Certification Process

2. The Commission's certification process for Internet-based TRS providers is set forth in section 64.606 of our rules and was established to ensure that providers receiving TRS Fund compensation are qualified to provide service in compliance with the TRS rules.² Under section 64.606(b), applicants must submit specific documentation to the Commission (described further below), and certification shall be granted upon a determination that the provider will meet all applicable mandatory minimum TRS standards and has adequate procedures and remedies for ensuring compliance

¹ TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability" to communicate with others via wire or radio "in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability." *Id.* § 64.601(a)(42). The TRS Fund compensates eligible providers of Internet-based and interstate TRS for their reasonable costs of providing these services. *See* 47 CFR § 64.604(c)(5)(iii). IP CTS, a form of TRS, "permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an internet Protocol-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the internet, rather than the public switched telephone network." 47 CFR § 64.601(a)(22).

² *See* 47 CFR § 64.606; *Structure and Practices of the Video Relay Service Program*, Second Report and Order, 26 FCC Rcd 10898, 10902-03, paras. 8-9 (2011) (*2011 Internet-based TRS Certification Order*).

with Commission rules.³

3. The Commission may grant conditional certification where additional time is needed to complete evaluation of an applicant's qualifications or verify information contained in the application.⁴ After certification, Internet-based TRS providers must file annual reports updating the information in their application to demonstrate continuing compliance with the Commission's mandatory minimum TRS standards.⁵ Each provider also must include within its annual report a compliance plan describing the provider's policies and procedures for complying with Commission rules prohibiting IP CTS providers from engaging in the unauthorized and unnecessary use of IP CTS.⁶

B. ClearCaptions's Application

4. ClearCaptions initially applied for IP CTS certification in 2016.⁷ As the transferee of an authorization originally granted to Purple Communications, Inc. (Purple),⁸ ClearCaptions is operating pursuant to conditional certification.⁹ On September 25, 2020, ClearCaptions amended its application to request approval to provide fully automatic IP CTS in addition to, and in combination with, its CA-assisted service.¹⁰ On April 13, 2021, the Commission granted ClearCaptions conditional certification to provide ASR-only IP CTS for a two-year period, through April 12, 2023.¹¹

³ 47 CFR § 64.606(b)(2); *2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10909-13, paras. 23-34; *see also Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 *et al.*, Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14895 (2011) (clarifying and modifying the certification requirements adopted in the *2011 Internet-based TRS Certification Order*).

⁴ *2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37. Such conditional certifications are granted without prejudice to the Commission's final determination of the applicant's qualifications and thus preserve the Commission's ability to fully review an application for certification on the merits. *Id.* at 10914, para. 37; *see also Purple IP CTS Conditional Certification*, 29 FCC Rcd at 13735.

⁵ 47 CFR § 64.606(g).

⁶ *See id.* § 64.604(c)(13).

⁷ *See Internet-Based TRS Certification Application of ClearCaptions LLC*, CG Docket No. 03-123 (Apr. 18, 2016) (April 2016 Application), <https://www.fcc.gov/ecfs/document/60001538984/1>;

⁸ *See* Letter from Michael Strecker, Vice President of Regulatory and Strategic Policy, Purple Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 03-123 (filed Dec. 29, 2016), <https://www.fcc.gov/ecfs/document/12291863504185/1> (notifying the Commission of the transfer of Purple's conditional certification to ClearCaptions).

⁹ *See Notice of Grant of Conditional Certification for Purple Communications, Inc., to Provide Internet Protocol Captioned Telephone Service*, CG Docket Nos. 03-123 and 10-51, Public Notice, 29 FCC Rcd 13728 (CGB 2014) (*Purple IP CTS Conditional Certification*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Purple Communications, Inc.: Application for Certification to Provide Internet Protocol Captioned Telephone Service*, CG Docket Nos. 03-123 and 10-51, Order, 29 FCC Rcd 14889 (CGB 2014).

¹⁰ Eighth Amendment to Internet-Based TRS Certification Application, CG Docket No. 03-123 (filed Sept. 25, 2020), <https://www.fcc.gov/ecfs/document/10925098207740/1>. When an applicant is conditionally certified to provide Internet-based TRS, the original application remains in pending status until full certification is granted. *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37; *see also Purple IP CTS Conditional Certification*, 29 FCC Rcd at 13728, note 2; *ClearCaptions ASR-Only Certification*, 36 FCC Rcd at 7246, note 2.

¹¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, 36 FCC Rcd 7246, 48, 54, paras. 5, 17 (CGB 2021) (*ClearCaptions ASR-Only Certification*) (granting conditional certification to provide fully automatic IP CTS for two years, through April 12, 2023).

5. On December 19, 2022, ClearCaptions filed a renewed application for full certification as an IP CTS provider, or, in the alternative, merger of its conditional certification to provide IP CTS using ASR with its conditional certification to provide IP CTS using CAs.¹² On January 30, 2023, the Bureau sought comment on ClearCaptions' December 2022 Application.¹³ No party filed comments or replies.

III. DISCUSSION

6. ClearCaptions's applications provide all the information and documentation required by the Commission's certification rules, including: (1) a description of the services to be provided;¹⁴ (2) a detailed description of how ClearCaptions will meet all non-waived mandatory minimum standards applicable to IP CTS;¹⁵ (3) a description of ClearCaptions's organizational structure, including the names of its 10 percent or more equity interest holders, the names of persons with the power to vote 10 percent or more of the securities of ClearCaptions, and the names of its executives, officers and members of its board;¹⁶ (4) a confidential list of the number of its full-time and part-time employees involved in ClearCaptions's IP CTS operations by position;¹⁷ (5) a confidential list of all sponsorship arrangements relating to the provision of Internet-based TRS;¹⁸ (6) a description of ClearCaptions's complaint procedures;¹⁹ (7) a statement that ClearCaptions will file annual compliance reports;²⁰ and (8) a certification by ClearCaptions's CEO confirming the accuracy and completeness of the information contained in the application.²¹ Further, since 2017, ClearCaptions has filed the required annual reports, to demonstrate compliance with the TRS rules and update the information contained in its applications.²²

7. Based on our review and investigation of the December 2022 Application, the applications previously filed, ClearCaptions's annual reports, and other relevant information regarding ClearCaptions's actual provision of IP CTS, we find that ClearCaptions will provide IP CTS in compliance with the applicable mandatory minimum TRS standards.²³ We also find that ClearCaptions makes available adequate procedures and remedies for compliance with such minimum standards and the

¹² See December 2022 Application at 1-2.

¹³ *Comment Sought on Application of ClearCaptions for Full Certification as a Provider of Internet Protocol Captioned Telephone Service*, CG Docket No. 03-123, Public Notice, DA 23-8 (Jan. 20, 2023), <https://docs.fcc.gov/public/attachments/DA-23-86A1.pdf>.

¹⁴ December 2022 Application at 8; *see also* 47 CFR § 64.606(a)(2)(i).

¹⁵ December 2022 Application at 4-10 and Appendix A; *see also* 47 CFR § 64.606(a)(2)(ii).

¹⁶ January 2023 Supplement at 1-4; *see also* 47 CFR § 64.606(a)(2)(ii)(B).

¹⁷ April 2016 Application at 15; ClearCaptions 2022 Annual Report at Exhibit B (providing a confidential, updated number of employees by position); *see also* 47 CFR § 64.606(a)(2)(ii)(C).

¹⁸ April 2016 Application at 16; ClearCaptions 2022 Annual Report at Exhibit C (providing a confidential, updated list of all sponsorship agreements); *see also* 47 CFR § 64.606(a)(2)(ii)(E).

¹⁹ April 2016 Application at 18; *see also* 47 CFR § 64.606(a)(2)(iii).

²⁰ April 2016 Application at 18; *see also* 47 CFR § 64.606(a)(2)(iv).

²¹ December 2022 Application at 11; *see also* 47 CFR § 64.606(a)(2)(v).

²² *See* ClearCaptions Annual TRS Report, CG Docket No. 03-123 (filed December 22, 2022) (ClearCaptions 2022 Annual Report); ClearCaptions Annual TRS Report, CG Docket No. 03-123 (filed December 23, 2021); ClearCaptions Annual TRS Report, CG Docket No. 03-123 (filed December 18, 2020); ClearCaptions Annual TRS Report, CG Docket No. 03-123 (filed December 12, 2019); ClearCaptions Annual TRS Report, CG Docket No. 03-123 (filed December 27, 2018) ClearCaptions Annual TRS Report, CG Docket No. 03-123 (filed December 15, 2017).

²³ Other relevant information includes, but is not limited to, audit reports, complaint logs, call record and speed of answer compliance data, certifications, and performance testing reports.

requirements of section 64.606. Therefore, we certify ClearCaptions as eligible to receive compensation from the Fund for the provision of IP CTS using CAs and ASR.²⁴ This certification shall remain in effect for a period of five years.²⁵

8. We emphasize that ClearCaptions must continue to operate in compliance with all relevant Commission rules and orders. As with other grants of TRS certification, the Commission reserves the right to conduct ongoing monitoring of the operations of ClearCaptions to ensure continuing compliance and to review any additional documentation necessary to ascertain the veracity of the assertions made in its applications and updates.²⁶ The Commission also reserves the right to investigate compliance by ClearCaptions with the Commission's rules and orders and to take enforcement action for past or future violations, including suspension or revocation of this certification, if circumstances warrant.²⁷ This may include unannounced on-site visits to ClearCaptions's headquarters, offices, or call centers for the purpose of ensuring continued compliance with the certification requirements and the Commission's rules.

9. We remind ClearCaptions that, pursuant to section 64.606(c)(2) of the Commission's rules, a provider seeking renewal of its certification must submit the required documentation at least 90 days prior to the expiration of its current certification.²⁸

IV. PROCEDURAL MATTERS

10. *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.

11. *Additional Information.* For further information regarding this item, please contact Joshua Mendelsohn at (202) 599-7304 or by e-mail at Joshua.Mendelsohn@fcc.gov. Individuals who use videophones and are fluent in American Sign Language (ASL) may call the FCC's ASL Consumer Support Line at (844) 432-2275.

V. ORDERING CLAUSES

12. IT IS ORDERED that, pursuant to the authority contained in sections 4(i) and 4(j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 225, and sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361 and 1.3, this Order IS ADOPTED.

13. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

²⁴ In granting conditional certification, we also granted ClearCaptions' request for waiver of the requirement in Section 64.611(j)(1)(v) of the Commission's rules (47 CFR § 64.611(j)(1)(v)) that a consumer's written self-certification must state that "[t]he consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone." *ClearCaptions ASR-Only Certification*, 36 FCC Rcd at 7259, para. 28. As we noted previously, that statement may not be true with respect to ASR-only IP CTS. *Id.* We also granted a waiver of the requirement in 47 CFR § 64.604(c)(5)(iii)(D)(2)(x) for TRS providers to submit "the URL address through which the call is placed" to receive compensation from the TRS Fund. *Id.* at 7259, para. 29. The URL address requirement was intended to apply only to VRS providers. *Id.* Both waivers remain in effect.

²⁵ See 47 CFR § 64.606(c)(2). Accordingly, ClearCaptions's new certification will expire on April 3, 2028.

²⁶ See *Internet-based TRS Certification Order*, 26 FCC Rcd at 10900, para. 2.

²⁷ See 47 CFR § 64.606(e)(2).

²⁸ 47 CFR § 64.606(c)(2).

Alejandro Roark
Chief
Consumer and Governmental Affairs 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 23-292
Released: April 4, 2023

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL
OF INTERMOUNTAIN INFRASTRUCTURE GROUP, LLC FROM JEFFREY YOUNT TO
WRA II-PIONEER (S) LLC**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-85

Comments Due: April 18, 2023
Reply Comment Due: April 25, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Jeffrey Yount (Yount), Intermountain Infrastructure Group, LLC (IIG), and WRA II-Pioneer (S) LLC (WRA II) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of IIG from Yount to WRA II.²

IIG, a Delaware limited liability company, provides long-haul, regional, and metro fiber network services.³ IIG provides competitive telecommunications services in California, Illinois, Montana, Nevada, Oregon, and Washington.⁴ IIG wholly owns Travail Networks Canada Inc. (Travail), a Canadian corporation that provides facilities-based telecommunications services.⁵

Intermountain Holdings LLC (Holdings), a Delaware holding company, owns 100% of the voting and equity interests in IIG.⁶ Holdings is directly held by Yount, Brady Adams (Adams), and Post Roast Special Opportunity Fund II IIG Inc. (PRSOF II).⁷ Yount, a U.S. citizen, is the President

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

² Application of Jeffrey Yount, Intermountain Infrastructure Group, LLC, and WRA II-Pioneer (S) LLC for Authority to Transfer Control of Section 214 Carriers, WC Docket No. 23-85 (filed Mar. 3, 2023) (Application). Applicants also filed applications for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Id.* at 4.

⁴ *Id.* at 4, 24.

⁵ *Id.* at 3.

⁶ *Id.* at 2, 5.

⁷ *Id.* at 12-13; Exh. A. at 29 (Pre-Transaction Ownership Diagram).

and Chief Executive Officer of IIG and Holdings.⁸ Yount exercises actual working control of IIG through his ownership of approximately 30.5% of the equity and voting interests in Holdings.⁹ Adams, a U.S. citizen, currently holds an approximate 10% economic interest in Holdings, and PRSOF II currently holds an approximate 37.1% economic interest in Holdings.¹⁰

Applicants state that PRSOF II is a U.S. investment company that is directly owned by Post Road Special Opportunity Fund (SOF) II LP (100% voting and equity interest), which, in turn, is directly owned by Post Road SOF GP II LLC¹¹ (100% voting interest and approximately 2% equity interest), both Delaware entities.¹² The direct voting interest in Post Road SOF GP II LLC is held by Birch Hill Capital LLC (50%), a Delaware investment company,¹³ and Seventh Avenue Capital Group II LLC (50%), a Connecticut investment company.¹⁴ The direct and indirect equity interest in Post Road SOF GP II LLC is held by Birch Hill Capital LLC (approximately 38%) and Seventh Avenue Capital Group LLC (approximately 22%).¹⁵ Michael Bogdan, a U.S. citizen, holds 100% of the voting and equity interest in Birch Hill Capital LLC.¹⁶ Additionally, Kevin Davis, a U.S. citizen, holds 100% voting and equity interests in Seventh Avenue Capital Group II LLC.¹⁷

Applicants state that WRA II, a Delaware limited liability company, is an acquisition vehicle that was created for the purposes of the proposed transaction.¹⁸ WRA II is owned by certain investment funds managed by Wafra Inc. (Wafra), a global alternative investment manager.¹⁹ Wafra is indirectly and beneficially owned by the Public Institution for Social Security, a public pension fund that operates as an autonomous agency that is controlled by the Government of Kuwait.²⁰ Wafra is also affiliated with LOGIX Fiber Networks (LOGIX).²¹ Applicants state that LOGIX

⁸ *Id.* at 5.

⁹ *Id.* at 5; Exh. A. at 29. Applicants state that Yount is permitted to appoint three-fourths of Holdings' managers. *Id.*

¹⁰ *Id.* at 12; Exh. A. 29.

¹¹ Applicants state that Post Road Special Opportunity Fund II LP and its owners (Post Road) are the majority owners of Archtop Fiber LLC. *Id.* at 24. Domestic 214 applications for transfer of control of Germantown Telephone Company, Inc. and Valstar, Inc (together, GTel Licensees) and Hancock Telephone Company, Inc. and Hancock Long Distance, Inc. (together, Hancock Licensees) to Archtop Fiber LLC are currently pending. *Id.* at 24-25; *see also Domestic 214 Applications filed for Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC, - Hancock Telephone Company, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421, 23-29, Public Notice, DA 23-147 (WCB 2023).

¹² *Id.* at 12; Exh. A. at 30 (Pre-Transaction Organizational Chart of PRSOF II IIG Inc.).

¹³ *Id.* at 13; Exh. A. at 30.

¹⁴ *Id.*

¹⁵ *Id.* at 13. Applicants state that, other than the equity interests in Post Road Special Opportunity Fund II held by Post Road SOF II LLC, Birch Hill Capital LLC, and Seventh Avenue Capital II LLC, the remaining pre-transaction and post-transaction equity interests in Post Road SOF II LP are held by passive limited partners, none of which individually hold equity interests that equate to an indirect economic interest of 10% or more. *Id.* at 13, 16; Exh. A. at 32 (Post-Transaction Organizational Chart of PRSOF II IIG Inc.).

¹⁶ *Id.* at 13; Exh A. at 30, 32

¹⁷ *Id.* at 13-14; Exh. A. at 30, and 32.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

²⁰ *Id.* at 5, 20.

Communications, LP, Alpheus Communications, LLC, and Alpheus Data Services L.L.C. provide, as LOGIX, telecommunications services in Kansas, Missouri, Oklahoma, and Texas.²² LOGIX provides telecommunications services as a competitive local exchange carrier, primarily in Texas and Oklahoma.²³ LOGIX also provides resold local exchange services in Kansas and Missouri where it is authorized to provide local exchange and/or exchange telecommunications services.²⁴ Applicants maintain that LOGIX does not provide service in any areas served by IIG.²⁵

Pursuant to the terms of the proposed transaction, IIG will remain a direct and wholly-owned subsidiary of Holdings.²⁶ However, according to Applicants, Yount will relinquish working control of Holdings and convert his equity ownership into non-voting Junior Preferred Units.²⁷ As a result, Yount will be entitled to participate in cash distributions in an amount equal to between 15.2% and 17.8%.²⁸ Additionally, Holdings will issue senior preferred units to WRA II and PRSOF II in an amount equal to between 60% and 65%, with Wafra entitled to receive between 19.8% and 21.4%.²⁹ Applicants further state that Holdings will be governed by a seven-member Board of Managers designated by Yount, PRSOF II, and WRA II.³⁰

Applicants state that, following consummation of the proposed transaction, WRA II will be directly and indirectly held by WRA II-Pioneer (B) LLC (WRA II (B)), a Delaware holding company.³¹ WRA II (B) is controlled by Wafra Real Assets & Infrastructure Fund II LP, a Bermuda investment business, which, in turn, is controlled by WRAIF II GP LLC, a Delaware investment business.³² Economic ownership of WRAIF II GP LLC is held by Wafra Advisors LLC (60% economic interest) and Wafra AID LLC (40% economic interest), and control of WRAIF II GP LLC resides with its managing member, Wafra AID Inc., a Delaware holding company.³³ Wafra AID Inc. is wholly owned by Wafra Funds GP Inc., which, in turn is wholly owned by Wafra Inc., both Delaware entities.³⁴ Wafra Inc. is wholly owned by Wafra InterVest Corporation Ltd., a Bermuda holding company, which, in turn, is wholly owned by Wafra International Investment Company K.S.C.C. (Wafra International), a Kuwait holding company.³⁵ Wafra International and economic

²¹ *Id.* at 5.

²² *Id.* at 5, 19.

²³ *Id.* at 24.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 2.

²⁷ *Id.*

²⁸ *Id.* at 2, 14.

²⁹ *Id.* at 6-7; Exh. A at 31 (Post-Transaction Ownership Diagrams).

³⁰ Application at 6. Applicants state that, following consummation of the proposed transaction, each entity will have the right to designate the following number of managers: Yount (2 managers), PRSOF II (1 manager), and WRA II (3 managers). WRA will also have the right to nominate a fourth manager, subject to approval by Yount and PRSOF II. *Id.*

³¹ *Id.* at 17.

³² *Id.* at 18.

³³ *Id.* at 18-19.

³⁴ *Id.* at 19.

ownership of WRAIF II is held by the Public Institution for Social Security, an autonomous agency of the Government of Kuwait.³⁶ Applicants state that no additional individuals or entities will own or control 10% or more equity or voting interest, directly or indirectly, in IIG following consummation of the proposed transaction.³⁷

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.³⁸ 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.³⁹

Referral to Executive Branch Agencies. Pursuant to Commission practice, the Application and the associated international application, FCC File Nos. ITC-214-20191115-00181 and ITC-214-20191220-00200, are 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 Applicants.⁴⁰

Domestic Section 214 Application Filed for the Transfer of Control of Intermountain Infrastructure Group, LLC from Jeffrey Yount to WRA II-Pioneer (S) LLC, WC Docket No. 23-85 (filed Mar. 6, 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 April 18, 2023**, and reply comments **on or before April 25, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

³⁵ *Id.* at 19-20; Exh. A. at 33 (Post-Transaction Organizational Chart of WRA II-Pioneer (S) LLC).

³⁶ *Id.* at 20.

³⁷ *Id.*

³⁸ *See id.* at 3-4, 7-9.

³⁹ 47 CFR § 63.03(c)(1)(v).

⁴⁰ 47 CFR § 1.40001; *see also Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (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).

- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁴¹ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

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

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

- 1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
- 2) Merry Wulff, Competition Policy Division, Wireline Competition Bureau, merry.wulff@fcc.gov;
- 3) David Krech, International Bureau, 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.⁴² 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

⁴¹ 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).

⁴² See 47 CFR § 1.45(c).

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, Wireline Competition Bureau, (202) 418-0809.

For further information, please contact Myrva Charles at (202) 418-1506 or Merry Wulff at merry.wulff@fcc.gov.

-FCC-



PUBLIC NOTICE

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DA 23-293

Released: April 4, 2023

CONNECT AMERICA FUND PHASE II AUCTION POST-AUTHORIZATION DEFAULTS ANNOUNCED

AU Docket No. 17-182
WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB) announces that Gila Local Exchange Carrier, Inc. d/b/a Alluvion Communications, Inc. (GLEC) and Fond du Lac Communications, Inc. (Fond du Lac) have notified the Commission of their decisions to withdraw from the Connect America Fund (CAF) Phase II auction support program.¹ Fond du Lac's and GLEC's letters constitute notification to the Commission that they are defaulting on their obligations to meet their service milestones.² At WCB's direction, the Universal Service Administrative Company (USAC) suspended future support payments for these support recipients, and we now direct USAC to recover CAF Phase II support from GLEC and Fond du Lac pursuant to the Commission's rules.³

On August 28, 2018, GLEC and Fond du Lac Reservation Business Committee were announced as winning bidders in the CAF Phase II auction.⁴ Fond du Lac Reservation Business Committee assigned its winning bids to its wholly-owned communications company, Fond du Lac.⁵ Fond du Lac and GLEC subsequently filed long-form applications seeking to become authorized to receive CAF Phase II auction support for their winning bids.⁶ GLEC was authorized in May 2020 to receive a total of \$104,499.00 in support over a 10-year term to offer voice and broadband service to 29 locations in Arizona, and Fond du Lac was authorized in July 2020 to receive a total of \$55,010.80 in support over a 10-year term to offer voice and broadband service to 13 locations in Minnesota.⁷ In April 2022, WCB sent letters to Fond du

¹ Letter from Duncan Wiston, Interim General Manager, Gila Local Exchange Carrier d/b/a Alluvion Communications, Inc., to Trent B. Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 et al. (filed Dec. 13, 2022) (GLEC Withdrawal Letter); Letter from Kevin R. Dupuis, Sr., Chairman, Aaniin, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Mar. 29, 2023) (Fond du Lac Withdrawal Letter).

² 47 CFR §§ 54.315(c)(4), 54.320(d).

³ *Id.* §§ 54.315(c)(4), 54.320.

⁴ *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, AU Docket No. 17-182 et al., Public Notice, 33 FCC Rcd 8257 (WCB/WTB 2018).

⁵ *134 Long-Form Applicants in the Connect America Fund Phase II Auction (Auction 903)*, AU Docket No. 17-182 et al., Public Notice, 33 FCC Rcd 10967 (WCB/WTB 2018).

⁶ *Id.*

⁷ *Connect America Fund Phase II Auction Support Authorized for 77 Winning Bids*, AU Docket No. 17-182 et al., Public Notice, 35 FCC Rcd 4869, Attach. A (WCB/OEA 2020) (*GLEC Authorization Public Notice*); *Connect America Fund Phase II Auction Support Authorized for 483 Winning Bids*, AU Docket No. 17-182 et al., Public Notice, 35 FCC Rcd 7053, Attach. A (WCB/OEA 2020) (*Fond du Lac Authorization Public Notice*).

Lac and GLEC expressing concern with the carriers' ability to meet upcoming build-out milestones because they had certified in the High Cost Universal Broadband portal that they had deployed voice and broadband services meeting the CAF Phase II auction requirements to zero locations.⁸

GLEC and Fond du Lac filed letters in the relevant dockets notifying the Commission of their decisions to withdraw from the CAF Phase II auction support program in December 2022 and March 2023, respectively.⁹ Accordingly, we consider GLEC and Fond du Lac to have defaulted on their CAF Phase II auction service milestones. Each will receive no further CAF Phase II auction support payments,¹⁰ and we hereby instruct USAC to recover funds consistent with the Commission's rules.¹¹ While GLEC and Fond du Lac will no longer receive CAF II auction support, they remain subject to recordkeeping rules for the high-cost program.¹² GLEC and Fond du Lac also remain subject to all Eligible Telecommunications Carrier (ETC) obligations unless and until they follow the relevant procedures to relinquish their designations.¹³ Additionally, GLEC and Fond du Lac cannot discontinue voice service without Commission approval.¹⁴

- FCC -

⁸ *The Wireline Competition Bureau in Conjunction with the Rural Broadband Auctions Task Force Announce the Availability of Connect America Fund Phase II Auction Deployment Data*, WC Docket No. 10-90 et al., Public Notice, DA 22-391 (WCB Apr. 8, 2022) (referencing letters available at <https://www.fcc.gov/file/22928/download>).

⁹ GLEC Withdrawal Letter, Fond du Lac Withdrawal Letter.

¹⁰ See 47 CFR § 54.315(c)(4) ("Authorization to receive Phase II auction support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted."). See also *GLEC Authorization Public Notice*, 35 FCC Rcd at 4869-74; *Fond du Lac Authorization Public Notice*, 35 FCC Rcd at 7053-59 (providing a non-comprehensive summary of the CAF Phase II auction requirements). After each support recipient notified WCB of its intent to withdraw from the CAF Phase II auction support program, WCB immediately instructed USAC to suspend the support recipient's CAF Phase II auction support payments. 47 CFR § 54.320(c).

¹¹ 47 CFR §§ 54.315(c)(4), 54.320(d)(2). Fond du Lac's and GLEC's decisions to withdraw from the CAF Phase II auction support program and not pursue further support constitute notification that they will not meet the final service milestone and that they will not come into compliance after a 12-month grace period or at any point during the support term. If a support recipient does not repay the required support amount within six months of receiving an invoice from USAC, the Bureau will authorize USAC to draw on the support recipient's letter of credit. *Id.* § 54.315(c)(4)(i).

¹² *Id.* § 54.320(b) ("All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.").

¹³ 47 U.S.C. § 214(e)(4). GLEC, which was designated as an ETC by the Arizona Corporation Commission (ACC), should follow the ACC's rules to the extent it seeks relinquishment. *In the Matter of the Application of Gila Local Exchange Carrier, Inc., for Designation as an Eligible Telecommunications Carrier in the State of Arizona*, Docket No. T-201515A-18-0298, Order, Decision No. 77049, Arizona Corporation Commission (Jan. 16, 2019). As a federally-designated ETC, Fond du Lac remains subject to all ETC obligations unless and until WCB approves an application to relinquish the designation. *Telecommunications Carriers Eligible for Universal Support et al.*, WC Docket No. 09-197 et al., Order, 35 FCC Rcd 4416 (WCB 2020).

¹⁴ 47 U.S.C. § 214(a); 47 CFR § 63.71.



PUBLIC NOTICE

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DA 23-294
Released: April 4, 2023

**OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON
STADLER SIGNALLING DEUTSCHLAND GMBH REQUEST FOR WAIVER OF SECTIONS
15.205(a) AND 15.209(a) OF THE COMMISSION'S RULES FOR OPERATION IN THE 90-110
KHZ BAND.**

ET Docket No. 23-133

Comment Date: May 4, 2023
Reply Comment Date: May 19, 2023

By this public notice, we seek comment on a request by Stadler Signalling Deutschland GmbH (Stadler) to waive Sections 15.205(a) and 15.209(a) of the Commission's rules to allow Stadler's Automatic Train Protection ("ATP") system to operate in the 100 kHz band with higher field strength levels than the rules allow.¹

Stadler states its train protection system is intended to protect train movements, prevent red signal overruns, and train-to-train collisions on tracks used for passenger service.² Stadler's system is comprised of two units: the balise installed along the train track and the coupling coil installed underneath the train.³ An unmodulated 100 kHz signal, intended for near-field inductive coupling, is constantly being transmitted by the coupling coil as long as the vehicle coupling coil is powered.⁴ This 100 kHz signal provides power to the balise that subsequently transmits safety information, via the 850kHz band, to the coupling coil.⁵ Additionally, the ATP system monitors for faultless function using a 50kHz inductively coupled resonant circuit.⁶ Stadler is only seeking a waiver for the 100 kHz transmission and claims the other transmissions comply with our rules.⁷ Stadler claims its system will provide lifesaving information without the risk of causing harmful interference.⁸

¹ Stadler Signalling Deutschland GmbH Request for Waiver of Section 15.205(a) and 15.209(a) of the Commission's Rules for Intentional Radiators, ET Docket No. 23-133 (filed January 31, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/102012575420848> (Stadler Waiver).

² The ATP system influences the train based on its present speed, the track geometry, and the aspect of the next signal. *Stadler Waiver* at 5.

³ *Id.* at 17-18.

⁴ *Id.* at 6 (describing how the coupling coil derives power and its requirements for operation).

⁵ *Id.* at 6-7, 18.

⁶ *Id.* at 18.

⁷ *Id.* at 6.

⁸ *Id.* at 8.

Section 15.205(a) of the Commission's rules does not permit intentional radiators to be operated in the 90-110 kHz band.⁹ The rules only permit spurious emissions in the 90 – 110 kHz band, because the band is allocated for Loran "C" operations.¹⁰ Stadler claims that Loran-C operations have become obsolete and the transmissions from its system will therefore pose no risk of harmful interference.¹¹ Stadler further justifies its request by referencing similar 100 kHz waivers the Commission previously granted for life-saving applications.¹² Stadler seeks a similar waiver to permit its system to operate as an intentional radiator in the 90-110 kHz band.¹³

Section 15.209(a) of the Commission's rules limits an intentional radiator's emissions, based on field strength levels.¹⁴ For an intentional radiator operating within the 9-490 kHz frequency range, the rule requires that the field strength does not exceed 24 microvolts per meter, when measured at 300 meters.¹⁵ Stadler's test results show the 100 kHz transmission exceeds the limit with a field strength of 32.1 microvolts per meter at 300 meters.¹⁶ Stadler claims its system will not cause harmful interference to Loran-C operations and is therefore seeking a waiver to permit its system to exceed the field strength limit of the 90-110 kHz band.¹⁷

We seek comment on Stadler's Waiver Request. To develop a complete record on the issues presented by this request, this proceeding will be treated, for ex parte purposes, as "permit-but-disclose" in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b). Stadler filed its petition electronically as a non-docketed proceeding in the Commission's Electronic Comment Filing System.¹⁸ We have opened a new docket, ET Docket 23-133 to facilitate consideration of this request and have moved Stadler's submission into this docket. Parties should file all comments and reply comments in ET Docket 23-133.

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/>.

⁹ 47 CFR § 15.205(a).

¹⁰ 47 CFR § 87.173(b).

¹¹ *Stadler Waiver* at 7, 9.

¹² *Id.* at 7. (In these waivers, we permitted Respironics to market its "ActiWatch" and Boston Scientific to manufacture and market its "wand" device for a limited time. Both devices were allowed to operate in the 90 – 110 kHz band. See *Respironics, Inc. and Boston Scientific Corporation Requests for Waiver of Section 15.205 of the Commission's Rules to Permit the marketing and operation of certain medical communications devices that operate in the 90-110 kHz band*, ET Docket No. 05-331, Order, 21 FCC Rcd 13450 (18), (2006)).

¹³ *Stadler Waiver* at 7.

¹⁴ 47 CFR § 15.209(a).

¹⁵ 47 CFR § 15.209(a).

¹⁶ *Stadler Waiver* at 7.

¹⁷ *Id.* at 8.

¹⁸ Stadler filed its request in INBOX-PART15 ("Petition for Waiver of Part 15"), which is located under the Non-Docketed Filing tab in the Commission's Electronic Comment Filing System (ECFS).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁹

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).

Parties should also send a copy of their filings to Damian G. Ariza, Office of Engineering and Technology, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20002, or by e-mail to damian.ariza@fcc.gov. Documents associated with this docket will be available for public inspection through the Commission's ECFS.

By the Acting Chief, Office of Engineering and Technology

-FCC-

¹⁹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), available at <https://docs.fcc.gov/public/attachments/DA-20-304A1.pdf>.

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

In re Application of	)	
	)	Facility ID No. 58636
Salem State College Board of Trustees	)	NAL/Acct. No. MB-202341410004
	)	FRN: 0010349694
For Renewal of License for	)	Application File No. 0000186689
Full-service FM Station WMWM(FM)	)	
Salem, Massachusetts	)	

ORDER

Adopted: April 5, 2023

Released: April 5, 2023

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Salem State College Board of Trustees (Licensee), licensee of Station WMWM(FM), Salem, Massachusetts (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 Salem State College Board of Trustees, c/o Melissa Arroyo, Associate Director, Campus Life and Recreation, P.O. Box 01960 Massachusetts 01970.

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	)	
	)	
Salem State College Board of Trustees	)	Facility ID No. 58636
	)	NAL/Acct. No. MB-202341410004
For Renewal of License for	)	FRN: 0010349694
Full-service FM Station WMWM(FM)	)	Application File No. 0000186689
Salem, Massachusetts	)	

CONSENT DECREE

Adopted: April 5, 2023**Released: April 5, 2023**

1. The Media Bureau of the Federal Communications Commission and Salem State College Board of Trustees (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 rules¹ 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 Salem State College Board of Trustees for renewal of the radio broadcast license for station WMWM(FM), Application File No. 0000186689.
 - (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 Salem State College Board of Trustees 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 March 15, 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 December 1, 2021. The Station’s license term ended on April 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. Licensee or its successor-in-interest, as licensee of the Station, as appropriate, will institute the following procedures to ensure compliance with the Commission’s application filing Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

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

⁵ See 47 U.S.C. § 503(b)(2)(E).

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 FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option.

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>.

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 Act⁹ 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

4/5/2023

Date

Rita P. Colucci, Esq.
General Counsel
Salem State University

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

Rita P. Colucci

Rita P. Colucci, Esq.
General Counsel
Salem State University

4.03.2023

Date



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-297

Released: April 5, 2023

MEDIA BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS ACTION

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

This Public Notice is applicable to rate-regulated cable operators that use FCC Forms to justify their cable rates.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 March 30, 2022.²

Operators filing FCC Form 1240 may make an adjustment based on quarterly figures. The fourth quarter 2022 inflation factor for operators using FCC Form 1240 is 3.88%. The adjustment factor of 3.88% is a measure of the annualized change in prices occurring over the period from October 1, 2022 to December 31, 2022. The inflation adjustment factor is calculated by dividing the GNP-PI for the fourth quarter of 2022 (129.473) by the GNP-PI for the third quarter of 2022 (128.248). 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 fourth quarter of 2022 should enter the inflation factor on the appropriate lines of Worksheet 1 of FCC Form 1240 as “0.0388.” 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 “1.0388”.

Each quarter the Commission releases a quarterly inflation factor for use with FCC Form 1240. The following table lists these factors beginning in 2017.³

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#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwYLDNdLCJkYXRhIjpbWyJjYXRIZ29yaWVzIiwuU3VydmV5Il0sWyJOSVBBX1RhYmxlX0xpc3QiLCI0MiJdXX0=>

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

Year	Quarter	Dates Covered	Inflation Factor
2017	First	Jan. 1, 2017 – Mar. 31, 2017	1.96%
2017	Second	Apr. 1, 2017 – Jun. 30, 2017	1.01%
2017	Third	Jul. 1, 2017 – Sep. 30, 2017	2.09%
2017	Fourth	Oct. 1, 2017 – Dec. 31, 2017	2.33%
2018	First	Jan. 1, 2018 – Mar. 31, 2018	2.20%
2018	Second	Apr. 1, 2018 – Jun. 30, 2018	3.04%
2018	Third	Jul. 1, 2018 – Sep. 30, 2018	1.81%
2018	Fourth	Oct. 1, 2018 – Dec. 31, 2018	1.68%
2019	First	Jan. 1, 2019 – Mar. 31, 2019	0.90%
2019	Second	Apr. 1, 2019 – Jun. 30, 2019	2.42%
2019	Third	Jul. 1, 2019 – Sep. 30, 2019	1.81%
2019	Fourth	Oct. 1, 2019 – Dec. 31, 2019	1.28%
2020	First	Jan. 1, 2020 – Mar. 31, 2020	1.41%
2020	Second	Apr. 1, 2020 – Jun. 30, 2020	-1.82%
2020	Third	Jul. 1, 2020 – Sep. 30, 2020	3.51%
2020	Fourth	Oct. 1, 2020 – Dec. 31, 2020	2.04%
2021	First	Jan. 1, 2021 – Mar. 31, 2021	4.32%
2021	Second	Apr. 1, 2021 – Jun. 30, 2021	6.07%
2021	Third	Jul. 1, 2021 – Sep. 30, 2021	5.95%
2021	Fourth	Oct. 1, 2021 – Dec. 31, 2021	7.13%
2022	First	Jan. 1, 2022 – Mar. 31, 2022	8.19%
2022	Second	Apr. 1, 2022 – Jun. 30, 2022	9.00%
2022	Third	Jul. 1, 2022 – Sep. 30, 2022	4.37%
2022	Fourth	Oct. 1, 2022 – Dec. 31, 2022	3.88%

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 Kim Makuch, kim.makuch@fcc.gov, (202) 418-2252.

–FCC–

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

In the Matter of	)	
	)	
Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375

PROTECTIVE ORDER

Adopted: April 5, 2023

Released: April 5, 2023

By the Chief, Wireline Competition Bureau:

1. In this Protective Order, the Wireline Competition Bureau (Bureau) sets forth procedures to limit access to proprietary or confidential information that has been or may be filed in these proceedings. The information submitted by participants in these proceedings and information we request as relevant and material to the issues raised constitute the record on which the Federal Communications Commission (Commission) must base its determinations. While we are mindful of the sensitive nature of some of the information involved, we are also mindful of the general right of the public, and our desire for the public, to participate in these proceedings in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to do so while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them “best conduce[s] to the proper dispatch of [the Commission’s] business and to the ends of justice.”¹

2. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

“Acknowledgment” means the Acknowledgment of Confidentiality attached as the Appendix hereto.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his or her clients involving (a) advice about or participation in the relevant business decisions of the client, or (b) the analysis underlying the relevant business decisions of the client, where the client is in competition with or in a business relationship with the relevant Submitting Party or a relevant Third-Party Interest Holder.

“Confidential Information” means information that is not otherwise available from publicly available sources and that is subject to withholding under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Commission’s implementing rules, unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or sections 0.459 or 0.461 of its rules,² that such information is not entitled to confidential treatment.

¹ 47 U.S.C. § 154(j).

² 47 CFR §§ 0.459, 0.461.

“Counsel” means In-House Counsel and Outside Counsel of Record.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. For the sake of clarity, the term “Document” includes responses created and submitted to the Commission electronically.

“In-House Counsel” means an attorney employed by a Participant in these proceedings or employed by an affiliated entity and who is actively engaged in the conduct of these proceedings, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“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 these proceedings, provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel of Record” includes any attorney employed by a non-commercial Participant in these proceedings, 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 these proceedings, 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 these proceedings, 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, material comments in these proceedings.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) pursuant to paragraphs 6 or 10 of this Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 23-62, 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm(s) and any other third-party contractors and employees of third-party contractors who are assisting in these proceedings, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with these proceedings, 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 these proceedings.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information that is submitted under this Protective Order.

3. *Designation of Information as Confidential.* By designating documents and information as Confidential under this Protective Order, a Submitting Party will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules.³

4. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Commission may also initiate such a review on its own. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days of being served and include a justification for treating the information as Confidential. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.⁴ Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing the FOIA.⁵

5. *Submission of Stamped Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document. Each page of the Stamped Confidential Document shall be stamped "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 23-62, 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System (ECFS) a copy of the respective Redacted Confidential Document and an accompanying cover letter.⁶ Each Redacted Confidential Document shall have the same pagination as the Stamped Confidential Document from which it is derived. Each page of the Redacted Confidential Document and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." To the extent that any page of the filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish the Confidential Information from the non-confidential information. In addition, two further copies of each Stamped Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Stephen Meil, Stephen.Meil@fcc.gov, 202-418-7233, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.

6. *Procedure for Obtaining Access to Confidential Information.* Any person other than Support Personnel seeking access to Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel and any known Third-Party Interest Holders through their appropriate counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information. Where there are multiple relevant Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above. All Acknowledgments filed pursuant to the

³ See 47 CFR § 0.459(a).

⁴ Cf. 47 CFR §§ 0.459(g), 0.461(i).

⁵ See 47 CFR §§ 0.459(h), 0.461.

⁶ If a party is not able to submit a copy of the Redacted Confidential Document via ECFS, it must file two copies of the Redacted Confidential Information with the Secretary's Office along with the appropriately stamped cover letter.

Protective Order adopted in WC Docket No. 12-375 are hereby incorporated by reference into WC Docket No. 23-62.⁷ Reviewing Parties that have previously obtained access to Confidential Information pursuant to the Protective Order in WC Docket No. 12-375 do not need to resubmit executed Acknowledgments.⁸

7. *Procedure for Objecting to the Disclosure of Confidential Information.*⁹ Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information before the period for filing objections has passed, unless both the relevant Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in that information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. 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 shall not have access to the relevant Confidential Information.¹⁰ 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 Confidential Information by the Reviewing Party until the objection is resolved.

8. *Review of Stamped Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of the party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's In-House Counsel. A Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 6. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 19.

9. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of these

⁷ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (WCB 2013).

⁸ A Reviewing Party is, however, required to deliver an Acknowledgment to any new relevant Submitting Party.

⁹ This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential Information pursuant to this Protective Order. If a party timely requests that certain information be entirely withheld from review by *any* individual under the Protective Order, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

¹⁰ An objection ordinarily will first be ruled upon by the 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 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 Confidential Information shall be made available to the Reviewing Party.

proceedings before the Commission and any subsequent judicial proceeding arising directly from these proceedings and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission reveal any Confidential Information in its orders in these proceedings, it will do so either by redacting any such Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential Information under this Protective Order, or as otherwise permitted by law.

10. *Permissible Disclosure.* A Reviewing Party may discuss and share Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder. Information derived from Confidential Information shall be treated as Confidential Information unless the Commission determines otherwise.

11. *Filings with the Commission.* A party making a filing in these proceedings other than a Stamped Confidential Document that contains Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 23-62, 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain this legend. The Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential Information (the "Redacted Confidential Filing"), to the Commission via ECFS.¹¹ Each page of the Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish the Confidential Information from the non-confidential information. Two further copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Stephen Meil, Stephen.Meil@fcc.gov, 202-418-7233, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

12. *Non-Disclosure of Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order or a subsequent Bureau or Commission order, Confidential Information shall not be disclosed further.

13. *Protection of Stamped Confidential Documents and Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information (including Stamped Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information is used only as provided in this Protective Order.

¹¹ If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with sections 0.442 and 0.461 of the Commission's rules.¹²

15. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of these proceedings and any subsequent judicial proceeding(s) arising therefrom and, in the course thereof, relying generally on examination of Confidential Information to which they have access under this Protective Order; *provided, however,* that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information.

16. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

17. *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 Stamped Confidential Documents or Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder 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 each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

18. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of 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 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 Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to any relevant Submitting Party or Third-Party Interest Holder at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

19. *Termination of Proceedings.* The provisions of this Protective Order shall not terminate at the conclusion of these proceedings. Within two weeks after conclusion of these proceedings and any administrative or judicial review, or, where applicable, as otherwise directed by the Bureau, Reviewing Parties shall destroy or return to the Submitting Party all of its Stamped Confidential Documents and all copies of the same. No material whatsoever containing or derived from 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 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 Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of these proceedings. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped

¹² 47 CFR §§ 0.442, 0.461.

Confidential Documents and copies of the same and Confidential Information shall not be construed to apply to the Commission or its staff.

20. *Questions.* Questions concerning this Protective Order should be addressed to Stephen Meil, Stephen.Meil@fcc.gov, (202)-418-7233, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, or to Joel Rabinovitz, Joel.Rabinovitz@fcc.gov, (202)-418-0689, Transaction Team, Office of General Counsel, Federal Communications Commission.

21. *Authority.* This Order is issued pursuant to sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 403, section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291,¹³ and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

¹³ 47 U.S.C. § 155(c).

APPENDIX

Acknowledgment of Confidentiality

WC Docket Nos. 23-62, 12-375

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceedings, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this 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 Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party or Third-Party Interest Holder at law or in equity against me if I use Confidential Information in a manner not authorized by the 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 Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, 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 Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ____ day of _____, 20__.

Signature: _____

Name: _____

Position: _____

Firm: _____

Telephone: _____



PUBLIC NOTICE

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

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DA 23-299

Released: April 5, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU CHANGES *EX PARTE* STATUS FROM “PERMIT-BUT-DISCLOSE” TO “EXEMPT” FOR THE SECURE INTERNET ROUTING PROCEEDING

PS Docket No. 22-90

On February 28, 2022, the Federal Communications Commission adopted a Notice of Inquiry (Notice) seeking comment on Secure Internet Routing.¹ The Notice sought comment on potential vulnerabilities threatening the security and integrity of the Border Gateway Protocol (BGP) and how best to address them.² While Notices of Inquiry are, by default, classified as exempt proceedings under the Commission’s rules governing *ex parte* presentations, this proceeding was designated as permit-but-disclose under section 1.1206 of the Commission’s rules, 47 CFR § 1.1206.³

In order to facilitate the free exchange of exploratory ideas among the staff of Federal agencies and interested stakeholders working toward the important goal of promoting secure Internet routing, by this Public Notice, the Public Safety and Homeland Security Bureau, pursuant to the Commission’s rules,⁴ announces that this proceeding will revert to being treated as an exempt proceeding as set forth under section 1.1204(b)(1) of the Commission’s rules, 47 CFR § 1.1204(b)(1). Accordingly, *ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed.

For further information, contact James Wiley of the Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at james.wiley@fcc.gov or (202) 418-1678 or Minsoo Kim of the Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at minsoo.kim@fcc.gov for (202) 418-1739.

--FCC--

¹ *Secure Internet Routing*, PS Docket No. 22-90, Notice of Inquiry, FCC 22-18 (Feb. 28, 2022) (*Notice*).

² *See id.* at 5-8, paras. 8-19.

³ *Id.* at 8, para. 20.

⁴ 47 CFR § 1.1200(a) (stating that “Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.”).



PUBLIC NOTICE

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DA 23-300

Released: April 6, 2023

BROADCAST STATION TOTALS AS OF MARCH 31, 2023

The Commission has announced the following totals for broadcast stations licensed as of March 31, 2023:

AM STATIONS	4,472	
FM COMMERCIAL	6,681	
FM EDUCATIONAL	4,219	
TOTAL		15,372
UHF COMMERCIAL TV	1,010	
VHF COMMERCIAL TV	365	
UHF EDUCATIONAL TV	264	
VHF EDUCATIONAL TV	119	
TOTAL		1,758
CLASS A UHF STATIONS	351	
CLASS A VHF STATIONS	30	
TOTAL		381
FM TRANSLATORS & BOOSTERS	8,939	
UHF TRANSLATORS	2,461	
VHF TRANSLATORS	658	
TOTAL		12,058
UHF LOW POWER TV	1,560	
VHF LOW POWER TV	327	
TOTAL		1,887
LOW POWER FM	1,999	1,999
TOTAL BROADCAST STATIONS		33,455

- FCC -



PUBLIC NOTICE

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

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DA No. 23-301

Friday April 7, 2023

Report No. SAT-01715

Satellite Policy Branch Information

Actions Taken

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

SAT-AMD-20220408-00039	E S3066	Intelsat License LLC	
Amendment			
Granted in Part/ Deferred in Part			Effective Date: 03/31/2023

Nature of Service: Fixed Satellite Service

On March 31, 2023, the Satellite Division granted-in-part and deferred in part, with conditions, the request of Intelsat License LLC, for a license for the Intelsat 40e space station. On March 31, 2023, the Satellite Division issued a public notice describing this action taken on IBFS File No. SAT-LOA-20200413-00035, but the above-captioned file number was not included. We now provide notice that action was also taken regarding the above-captioned amendment file number. See IBFS File No. SAT-LOA-20200413-00035 for a complete description of the action taken.

SAT-STA-20230224-00041	E S2912	Planet Labs PBC	
Special Temporary Authority			
Grant of Authority			Effective Date: 04/05/2023

On April 5, 2023, the Satellite Division granted, with conditions, the request of Planet Labs PBC for special temporary authority for a period of up to 60 days to operate certain Skysat satellites at different orbital altitudes from what was previously authorized. Specifically, the Division authorized: Skysat satellites 16-18 to operate up to an altitude of 450 km (± 10 km); (2) SkySat satellite 19 to operate up to an altitude of 425 km (± 10 km); and (3) SkySat satellites 20-21 to operate in orbits with a perigee altitude below 400 km, with imaging data communications limited to altitudes above 345 km.

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



PUBLIC NOTICE

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DA 23-302

Released: April 7, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DATES FOR 988 OUTAGE REPORTING NOTICE OF PROPOSED RULEMAKING

PS Docket Nos. 23-5, 15-80; and WC Docket No. 18-336

Comments Due: May 8, 2023

Reply Comments Due: June 6, 2023

On January 26, 2023, the Federal Communications Commission (Commission) adopted a Notice of Proposed Rulemaking (*NPRM*) seeking comment on proposed rules to ensure that the Commission and those parties that provide life-saving crisis intervention services to people calling the 988 Lifeline, which includes the Veterans Crisis Lifeline, receive timely and actionable information about 988 service outages that potentially affect those services' ability to meet the immediate health needs of people in suicidal crisis and mental health distress.¹

The *NPRM* set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after publication of a summary of the *NPRM* in the Federal Register.² On April 7, 2023, the Office of the Federal Register published a summary of the *NPRM*.³ Accordingly, *NPRM* comments must be filed on or before May 8, 2023, and reply comments must be filed on or before June 6, 2023. The *NPRM* contains the comment filing instructions.⁴

For further information regarding Notice, please contact Tara B. Shostek, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at (202) 418-8130, or by email to Tara.Shostek@fcc.gov.

--FCC--

¹ *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Implementation of the National Suicide Hotline Improvement Act of 2018*, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, Notice of Proposed Rulemaking, FCC 23-7 (Jan. 27, 2023) (*NPRM*).

² *Id.* at 1.

³ Federal Communications Commission, *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline; Rules Concerning Disruptions to Communications; Implementation of the National Suicide Hotline Improvement Act of 2018*, Proposed Rule, 88 Fed. Reg. 20790 (April 7, 2023).

⁴ *NPRM* at 18-19, para. 46.



PUBLIC NOTICE

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DA 23-303
April 10, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 15 (IOWA) 700 MHz AND 800 MHz REGIONAL PLANNING COMMITTEES
TO HOLD MEETINGS

PR Docket No. 90-221 and WT Docket 02-378

The Region 15 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive virtual Zoom meetings on Thursday, April 13, 2023. Beginning at 3:30 PM (CDT), the Region 15 700 MHz RPC meeting will convene. The Region 15 800 MHz RPC meeting will convene immediately following the conclusion of the 700 MHz RPC meeting.

Join Zoom meetings from your computer, tablet or smartphone at: <https://polkcountyiowa.gov.zoom.us/j/84219155581?pwd=UmQ3alVWUWNvV2NkTFMzNjZKQ3A3QT09>

Meetings also available by phone. United States: +1-312-626-6799
Meeting ID: 84219155
Access Code: 402756

The agenda for the 700 MHz RPC meeting:

- Call to Order
- Introductions
- Approval of Agenda
- Approval of Minutes: October 13, 2022.
- Public Comment & Correspondence
- Chairperson's Report
- Old Business
- Review of Applications
- New Business
- Next meeting
- Adjourn

The agenda for the 800 MHz RPC meeting:

- Call to Order
- Introductions
- Approval of Agenda
- Approval of Minutes: October 13, 2022
- Public Comment & Correspondence
- Chairperson's Report
- Old Business
 - Discussion and possible action to authorize updating and amending the plan.
- Review of Applications
- New Business

- Next meeting
- Adjourn

The Region 15 RPC meetings are open to the public. All public safety providers in Region 15 may utilize these 700 MHz and 800 MHz frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 15 should plan to attend. For further information, please contact:

Rob Dehnert
Chair, 700 MHz and 800 MHz RPCs
City of West Des Moines, Iowa
Westcom Emergency Medical and Communications Services
Phone: 515-273-0762
Email: rob.dehnert@wdm.iowa.gov

Jason Hoffman
Vice Chair
jhoffman@carrollcountyiowa.org

Curtis Pion
Secretary
curtis.pion@polkcountyiowa.gov

- FCC -



PUBLIC NOTICE

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

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

DA 23-305
Released: April 7, 2023

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL
OF CERTAIN ASSETS OF BROADLIFE COMMUNICATIONS, INC.
TO YELLOWHAMMER NETWORKS, LLC**

**PETITION FILED FOR THE DESIGNATION OF YELLOWHAMMER NETWORKS, LLC AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket Nos. 23-23, 09-197

Comments Due: April 21, 2023

Reply Comment Due: April 28, 2023

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by BroadLife Communications, Inc. (BroadLife) and Yellowhammer Networks, LLC (Yellowhammer) (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 (Commission) rules,¹ requesting consent for the transfer of certain assets from BroadLife to Yellowhammer.² The Bureau also seeks comment on the petition of Yellowhammer for designation as an Eligible Telecommunications Carrier (ETC) in the Assigned Census Blocks.³

BroadLife, a Delaware corporation, is a "developer and potential provider of broadband Internet access service over fiber-based networks."⁴ BroadLife is an ETC that is authorized to receive \$26,461,542 in Rural Digital Opportunity Fund (RDOF) support over ten years to provide service to

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

² Application of BroadLife Communications, Inc. (BroadLife) and Yellowhammer Networks, LLC for Consent to Assignment of Domestic Section 214 Authorization, WC Docket No. 23-23 (filed Jan. 13, 2023), <https://www.fcc.gov/ecfs/document/1011389787924/1> (Application). Applicants filed a supplement to their application on February 15, 2023. Letter from Stephen Coran, Counsel to Yellowhammer Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No.23-23 (filed Feb. 15, 2023) (Supplement Letter).

³ See Yellowhammer Networks, LLC, Petition for Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed Jan. 13, 2023), <https://www.fcc.gov/ecfs/document/101131998121584/1> (ETC Petition). After closing, BroadLife will relinquish its ETC designation for the Assigned Census Blocks. Application at 9.

⁴⁴ Application at 3.

7,483 locations in Alabama, the “Assigned Census Blocks.”⁵ BroadLife does not currently offer domestic telecommunications services in the Assigned Census Blocks.⁶

Yellowhammer, a Delaware limited liability company, and its affiliates are infrastructure development companies that do not currently offer domestic telecommunications services.⁷ Applicants state that Yellowhammer will assume and satisfy BroadLife’s RDOF obligations in the Assigned Census Blocks and provide the supported services consistent with its obligations as an ETC.⁸ Yellowhammer will work with “one or more local partners that will provide sales and customer service support (Local Partners).”⁹ Applicants maintain that Yellowhammer will “engineer, construct, and own the entire lit network from the internet to end users, and will be responsible for day-to-day control and maintenance of network operations.”¹⁰ Applicants state that “Yellowhammer will ensure that Affordable Connectivity Program benefits are made available to all qualifying households in the Assigned Census Blocks.”¹¹ further state that Yellowhammer is held by private equity funds Meridiam Infrastructure North America Fund III, LP and its parallel funds (collectively, Meridiam Fund III), and thus held indirectly through limited partnership and limited liability company interests by numerous investors.¹² Meridiam Fund III and all its subsidiaries, including Yellowhammer, are managed by Meridiam Infrastructure North America Corporation (Meridiam), a Delaware corporation.¹³ Yellowhammer is ultimately controlled Thierry Déau, the President of Meridiam, a citizen of France.¹⁴

Transaction Details and Public Interest

Pursuant to the terms of the proposed transaction, Yellowhammer will acquire the RDOF obligations and support for the Assigned Census Blocks in Alabama.¹⁵ Applicants state that regarding the Assigned Census Blocks, “Yellowhammer will receive all of the RDOF support BroadLife has received

⁵ *Id.* at 3, Exh. 1 (List of Assigned Census Blocks); *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, DA 22-402, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB/OEA/RBATF rel. 2022) ((*RDOF Public Notice*); see *id.* at 8-9 (stating that 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. 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.”).

⁶ Application at 3.

⁷ *Id.* at 4.

⁸ *Id.* at 3.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² *Id.* at 4. The funds that comprise Meridiam Fund III include: Meridiam Infrastructure North America Fund III, LP; Meridiam Infrastructure North America Fund III (Domestic), LP; Meridiam Infrastructure North America Fund III Parallel I, LP; and Meridiam Infrastructure North America Fund III Parallel III, LP. Supplement at 2 (Declaration).

¹³ Application at 4; Supplement at 2 (Declaration).

¹⁴ Supplement at 2 (Declaration).

¹⁵ Application at 8.

as of the closing, net of RDOF support equal to the amount of state and federal income tax owed on the RDOF support received by BroadLife in 2022, and monthly support thereafter.”¹⁶

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.¹⁷ Applicants state that “BroadLife has determined that, due to unanticipated changes to its business circumstances in Alabama, it will be unable to assume the costs and obligations of the RDOF program.”¹⁸ Applicants state that “with the financial, managerial, and technical resources and operational efficiencies Yellowhammer offers, especially in the context of the larger Western Alabama fiber network Meridiam will deploy, consumers will be able to receive RDOF services in the Assigned Census Blocks more quickly than if BroadLife were inclined to move forward.”¹⁹ Applicants contend that “Yellowhammer can leverage its financial resources, infrastructure experience, and operational capabilities to rapidly and cost-effectively build out the Assigned Census Blocks as it expands its broadband operations.”²⁰ Applicants state that Yellowhammer has “set aside dedicated capital to fund the costs of deploying these network facilities to provide RDOF capable service in the Assigned Census Blocks and does not at this time anticipate the need to borrow money or incur debt in order to meet the milestone and performance standards in the Assigned Census Blocks.”²¹ Applicants further state that Yellowhammer will meet BroadLife’s RDOF buildout milestones and RDOF obligations as well as Yellowhammer’s ETC obligations.²² Applicants further maintain that the proposed transaction will not adversely affect competition.²³

Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.²⁴

Domestic Section 214 Application Filed for the Transfer of Control of Certain Authorizations of BroadLife Communications, Inc. To Yellowhammer Networks, LLC
WC Docket No. 23-23 (filed Jan. 13, 2023).

ETC Petition

Yellowhammer seeks ETC designation for the purpose of becoming eligible to receive the RDOF support associated with the Assigned Census Blocks in Alabama pursuant to Commission approval and consummation of the transaction described in the Application.²⁵ The Commission has authorized BroadLife to receive \$26,461,542.00 in RDOF support to serve 7,483 locations within the Assigned Census Blocks.²⁶ Accordingly, Yellowhammer’s ETC designation for the purpose of receiving RDOF support will be conditioned upon approval of the Application and authorization to receive the associated support.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 7-10.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 13.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 12, 18-19.

²³ *Id.* at 14.

²⁴ 47 CFR § 63.03(c)(1)(v).

²⁵ ETC Petition.

²⁶ *RDOF Public Notice*, DA 22-402, Attach. A.

ETC designation is a prerequisite to receiving universal service support available through the high-cost and Lifeline programs.²⁷ To receive an ETC designation, a petitioner must, in addition to meeting high-cost program requirements and other related obligations as specified below, offer the Lifeline discount on all qualifying services in areas where it receives high-cost support, deploy a network capable of delivering service that meets the Lifeline program's minimum service standards, and commercially offer such service pursuant to its high-cost obligations.²⁸

Requirements for FCC ETC Designation

Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”²⁹ Congress gives primary authority for ETC designations to state commissions.³⁰ The Commission has authority only when “a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”³¹ The petitioner for ETC designation must demonstrate that the FCC has jurisdiction and may do so by submitting an “affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”³² The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.³³

A petition for ETC designation by the Commission must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier’s services;³⁴ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;³⁵ (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;³⁶ and (5) a certification that neither the petitioner nor any party to the application is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.³⁷

²⁷ 47 U.S.C. § 254(e).

²⁸ 47 CFR part 54, subpts. D, K-M.

²⁹ 47 U.S.C. § 254(e).

³⁰ *Id.* § 214(e)(2).

³¹ *Id.* § 214(e)(6).

³² See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000); 47 U.S.C. § 214(e)(6).

³³ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

³⁴ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

³⁵ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

³⁶ An ETC’s “service area” is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, requires conformance of a competitive ETC’s service area and an incumbent rural telephone company’s service area, 47 U.S.C. § 214(e)(5), the Commission has separately forbore from imposing such requirements on Auction 904 support recipients. See *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686, 728, paras. 93-94 (2020).

³⁷ 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

In addition, a petitioner must demonstrate its ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive RDOF support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.³⁸ Further, prior to designating a petitioner as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.³⁹

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 filing comments on the transfer of control application must reference **WC Docket No. 23-23**. All pleadings for the ETC Petition must reference **WC Docket Nos. 09-197 and 23-23**.

Comments must be filed **on or before April 21, 2023**, and reply comments **on or before April 28, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <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.⁴⁰ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

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

³⁸ See 47 CFR § 54.202(a).

³⁹ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b). For Auction 904 support recipients, the Bureau waived certain requirements in section 54.202 of the Commission's rules and adopted a presumption that designation will serve the public interest. *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, WC Docket No. 19-126 et al., Public Notice, 35 FCC Rcd 13888, 13901 n.71 (RBATF/OEA/WCB 2020). Because Yellowhammer will stand in the shoes of BroadLife upon approval of the Application with respect to service and support for the Assigned Census Blocks, the Bureau finds that Yellowhammer is in the same position as an RDOF support awardee and is entitled to the same waivers and presumption.

⁴⁰ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

In addition, email one copy of each pleading to each of the following:

- 1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau, Nissa.Laughner@fcc.gov and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

The proceeding in this Public 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).⁴¹ 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.⁴² 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 regarding the transfer of control application, please contact Myrva Charles at (202) 418-1506 or Dennis Johnson at Dennis.Johnson@fcc.gov, Wireline Competition Bureau. For further information regarding the ETC petition, please contact Nissa Laughner at Nissa.Laughner@fcc.gov.

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⁴¹ 47 CFR § 1.1206(b).

⁴² See *id.* § 1.45(c).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-306

Released: April 10, 2023

**COMMENT DATES SET FOR NOTICE IMPLEMENTING THE MARTHA
WRIGHT-REED ACT TO ENSURE JUST AND REASONABLE RATES AND
CHARGES FOR INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES**

WC Docket Nos. 23-62, 12-375

Comments Due: May 8, 2023

Reply Comments Due: June 6, 2023

By this Public Notice, the Wireline Competition Bureau announces that comments in response to the Notice of Proposed Rulemaking seeking comment on issues related to the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Act) are due no later than May 8, 2023, and reply comments are due no later than June 6, 2023.¹

The *Notice*, which seeks comment on matters related to implementing the new Act and establishing just and reasonable rates and charges for incarcerated people's communications services, requires that comments and reply comments be filed no later than 30 days and 60 days after publication in the Federal Register.² On April 7, 2023, the Federal Register published a summary of the *Notice*, establishing May 8, 2023, as the deadline for comments and June 6, 2023, as the deadline for reply comments.³ The *Notice* and the *Federal Register Notice* contain complete filing instructions.⁴

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

For further information, please contact Peter Bean, Pricing Policy Division, Wireline Competition Bureau, at 202-418-0786 or peter.bean@fcc.gov.

-FCC-

¹ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19 (rel. Mar. 17, 2023) (*Notice*).

² *See id.* at 1.

³ Federal Communications Commission, Rates for Interstate Inmate Calling Services, 88 Fed. Reg. 20804 (Apr. 7, 2023) (*Federal Register Notice*).

⁴ *See Notice* at para. 97; *Federal Register Notice* at 20804.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-308

Released: April 10, 2023

MEDIA BUREAU SEEKS COMMENT ON NATIONAL ASSOCIATION OF BROADCASTERS PETITION FOR EXTENSION OF WAIVER OF ACCESSIBLE EMERGENCY INFORMATION REQUIREMENTS

MB Docket No. 12-107

Comments Due: April 24, 2023

Reply Comments Due: May 1, 2023

The National Association of Broadcasters (NAB) has filed a petition¹ requesting that the Commission grant a two-year extension of the Commission's rules requiring broadcasters to provide an aural representation of visual, non-textual emergency information, such as radar maps or other graphics, on a secondary audio stream. Section 79.2(b)(2)(ii) of the Commission's rules requires video programming providers to ensure that emergency information provided visually during non-newscast programming is made accessible to individuals who are blind or visually impaired through the use of a secondary audio stream to provide such information aurally.² In the *Emergency Information Order*, the Commission found that if visual but non-textual emergency information (e.g., maps or other graphic displays) is shown during non-newscast programming, the aural description of this information must accurately and effectively convey the critical details regarding the emergency and how to respond to the emergency.³ The rule set a compliance deadline of May 26, 2015.⁴

On May 26, 2015, the Media Bureau granted NAB's request for an 18-month waiver of the requirement to aurally describe visual but non-textual emergency information to provide the broadcast industry time to develop a technical solution for compliance.⁵ At the time, NAB explained that an

¹ Petition for Extension of Waiver of the National Association of Broadcasters, MB Docket No. 12-107 (filed Apr. 5, 2023) (Petition).

² 47 CFR § 79.2(b)(2)(ii). In particular, the rule provides that the video programming provider or video programming distributor that creates the visual emergency information content and adds it to the programming stream is responsible for providing an aural representation of the information on a secondary audio stream, accompanied by an aural tone. *Id.* See also *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871, 4899, para. 36 (2013) (*Emergency Information Order*).

³ See *Emergency Information Order*, 28 FCC Rcd at 4891-92, para. 24.

⁴ 47 CFR § 79.2(b)(2)(ii). See also *Emergency Information Order*, 28 FCC Rcd at 4900-01, para. 37.

⁵ See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 30 FCC Rcd 5012, 5022-23, para. 17 (2015).

automated text-to-speech solution cannot be used to aurally describe maps and other graphics because they do not contain text files that can be converted to speech, and it noted that further work is needed to develop reliable automated solutions.⁶ The Bureau subsequently granted two requests to extend the waiver of the requirement to aurally describe visual but non-textual emergency information. First, on November 16, 2016, the Bureau granted a joint request of ACB, AFB, and NAB to extend the waiver for an additional 18 months.⁷ Second, on May 25, 2018, the Bureau granted a joint request of ACB, AFB, and NAB to further extend the waiver for an additional five years.⁸ The waiver currently is set to expire on May 26, 2023.

NAB contends that, despite efforts to coordinate with entities potentially capable of developing a technical solution for compliance during the existing waiver period, they remain unable to identify a workable solution based on existing technology that can perform the functions required by the rule.⁹ NAB requests a two-year extension of the waiver to explore technical solutions, for example, possibilities afforded by artificial intelligence (AI)-based systems or the ongoing adoption of ATSC 3.0 in more television markets.¹⁰ NAB also indicates that critical details of an emergency provided in a visual, non-textual graphic are usually duplicative of the information provided in accompanying textual crawls, which are already aurally described and accessible.¹¹ We seek comment on NAB's request, including whether two years is the appropriate timeframe for any extension.

Filing Requirements. All filings responsive to this Public Notice must reference MB Docket No. 12-107. 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.

⁶ See *id.*

⁷ See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 31 FCC Rcd 12540 (2016). See also Joint Petition for Extension of Limited Waiver of the American Council of the Blind, the American Foundation for the Blind, and the National Association of Broadcasters, MB Docket No. 12-107 (filed Sept. 2, 2016).

⁸ See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Memorandum Opinion and Order, 33 FCC Rcd 5059 (2018). See also Joint Petition for Extension of Waiver of the American Council of the Blind, the American Foundation for the Blind, and the National Association of Broadcasters, MB Docket No. 12-107 (filed Mar. 23, 2018).

⁹ See Petition at 2-3. For example, NAB explains that “[o]ne of the obstacles remains how to automatically create an aural description of the information conveyed by a dynamic graphic when the software used to create such graphics for broadcasters does not include text files that can be converted into speech. . . . Moreover, even if such a solution is developed . . . no one has yet figured out how to integrate that element into the existing broadcast system.” *Id.* at 2.

¹⁰ *Id.* at 4-9.

¹¹ *Id.* at 9-11 (“To our knowledge, this remains the case, as broadcasters usually display a radar map or similar graphic to complement or reinforce the emergency information in an accessible accompanying crawl, or verbalized by a reporter. It is extremely rare that a graphic image would convey any distinct or additional information.”).

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).

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

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Additional Information. For additional information, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

-FCC-

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

In the Matter of	)	
	)	
INNOVATIVE MEDIA TECHNOLOGIES	)	Facility ID No.: 185411
	)	NAL/Acct. No.: 202341420014
Licensee of Station K21LB-D, Lincoln City, OR	)	FRN: 0030791537
	)	LMS File No. 203370
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: April 11, 2023

Released: April 11, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Innovative Media Technologies (Licensee), for renewal of its license for Station K21LB-D, Lincoln City, Oregon (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Station's license should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of February 1, 2023.⁴ However, the Licensee did not file the Application until November 9, 2022. The Licensee noted in an attachment that the late filing was inadvertent.⁵

¹ Application of Innovative Media Technologies for Renewal of License, LMS File No. 203370 (filed. Nov. 9, 2022) (Renewal Application).

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020). Because the first day of the month was Saturday, October 1, 2022, the application was not due until the next business day, which was Monday, October 3, 2022. See 47 CFR § 1.4(j) (permitting the filing of documents the next business if the filing date falls on a holiday, which includes weekends).

⁵ Renewal Application, attach. K21LB Statement ("Applicant requests acceptance of late filing of license renewal, as it was inadvertently overlooked due to [the Station] just recently being granted a license to operate.").

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$1,500. In this case, the Licensee failed to file the Application on or before October 3, 2022, as required by section 73.3539(a) of the Rules.⁶ The Application was not received until November 9, 2022, over one month late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁸ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹¹

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³

6. In this case, the Licensee failed to timely file a license renewal application, as required by section 73.3539(a) of the Rules.¹⁴ The Licensee claimed that the late filing was an “inadvertent” oversight.¹⁵ We note that inadvertence is, “at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”¹⁶ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁷ we will reduce the forfeiture from the base

⁶ 47 CFR § 73.3539(a).

⁷ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁸ 47 U.S.C. § 312(f)(1).

⁹ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹¹ 47 U.S.C. § 312(f)(2).

¹² See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹³ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹⁴ 47 CFR § 73.3539(a).

¹⁵ *Supra* note 5.

¹⁶ *Southern California*, 6 FCC Rcd at 4387, para. 3.

¹⁷ *Supra* note 13.

amount to \$1,500 for the failure to file a timely renewal application, because, as a low power television station, the Station is providing a secondary service.¹⁸

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁹ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁰ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”²¹

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules²² does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²³ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.²⁴

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²⁵ and sections 1.80 and 0.283(d) of the Commission’s rules,²⁶ that Innovative Media

¹⁸ See, e.g., *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations.... Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

¹⁹ 47 U.S.C. § 309(k).

²⁰ 47 U.S.C. § 309(k)(1).

²¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²² 47 CFR § 73.3539(a).

²³ For example, we do not find here that the Licensee’s operation of the Station “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²⁴ We note the Station has a pending application for assignment of the Station’s license. That application cannot be acted upon until the instant proceeding is resolved. See Application of Innovative Media Technologies for Assignment of Authorization, LMS File No. 205304 (filed Jan. 27, 2023). Therefore, that application will be acted upon following conclusion of this forfeiture proceeding.

²⁵ 47 U.S.C. § 503(b).

Technologies, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500)** for its apparent willful violation of section 73.3539(a) of the Commission's rules.²⁷

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁸ within thirty (30) days of the release date of this *NAL*, Innovative Media Technologies, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁹ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:³⁰

- 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).³¹ 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/core/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/core/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

(Continued from previous page) _____

²⁶ 47 CFR §§ 1.80 and 0.283.

²⁷ 47 CFR § 73.3539(a).

²⁸ 47 CFR § 1.80.

²⁹ Payments made using CORES do not require the submission of an FCC Form 159.

³⁰ 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.

³¹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

“Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.³² Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.³³ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁴

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.³⁵

³² See 47 CFR § 1.1914.

³³ 47 CFR §§ 1.16 and 1.80(g)(3).

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

³⁵ 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Innovative Media Technologies, 5174 McGinnis Ferry Road, Suite 133, Alpharetta, GA 30005 and by electronic mail to imtmedia6@gmail.com. A copy shall also be sent to Station's representative, Susan Hansen, by electronic mail to stcl@comcast.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
Amendment of section 73.202(b), Table of	)	MB Docket No. 22-337
Allotments, FM Broadcast Stations (Dennison,	)	RM-11930
Ohio)	)	

REPORT AND ORDER

Adopted: April 11, 2023

Released: April 11, 2023

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the *Notice of Proposed Rule Making*,¹ issued in response to a Petition for Rule Making filed by Western Radio Group (Petitioner). Comments were separately filed by Petitioner, REC Networks (REC),² and WJER, LLC (WJER).³ REC filed Reply Comments. No counterproposals or other comments were received in response to the *Notice*. For the reasons discussed below, we amend the FM Table of Allotments, section 73.202(b) of the Commission's rules,⁴ by allotting Channel 272A at Dennison, Ohio.

II. BACKGROUND

2. The *Notice* proposed the allotment of Channel 272A at Dennison, Ohio, as a first local service. Dennison was incorporated in 1873 and is listed in the 2020 U.S. Census with a population of 2,709 persons. Dennison qualifies as a community for allotment purposes: it has a mayor, city council, fire and police departments, zoning board, finance, public safety, economic development, and human resources committees. It also has a high school, middle school, elementary school, and hospital. There are also several attractions located within Dennison such as a railroad depot museum and water park.

3. Petitioner filed Comments reiterating its expression of interest in Channel 272A at Dennison, Ohio.⁵ Petitioner states that, if the channel is allotted, it will apply for the channel in any FM auction for the Dennison allotment, and it will prosecute its application and promptly construct the facilities in the event the Commission grants its application.⁶

¹ See *Dennison, Ohio*, Notice of Proposed Rule Making, DA-22-1096, rel. October 17, 2022 (MB 2022) ("*Notice*"); see also 87 FR 63999 (published 10/21/2022).

² REC is a national regulatory advocate for Low-Power FM (LPFM) broadcast services.

³ Additionally, WDNP-LP's listeners and other local members of Dover, Ohio (the "Parties") timely filed pleadings in the Commission's Electronic Comment Filing System (ECFS). As discussed *infra*, we find the Parties' filings violate 47 CFR § 1.420(a) and (c) because the pleadings were not served on Petitioner or its counsel nor did they include certificate of service, and therefore, cannot be considered in this proceeding. See Appendix.

⁴ 47 CFR § 73.202(b).

⁵ Comments of Western Radio Group (Petitioner Comments) at 1.

⁶ *Id.*

4. WJER, in its comments, states that the proposed Dennison allotment would displace Station WDNP-LP, Dover, Ohio (WDNP), an LPFM service operating on Channel 272 that provides noncommercial programming to Dover, Ohio.⁷ It endorses WDNP's programming, as well as the qualifications and actions of WDNP's volunteer staff and board of directors, especially its training of volunteers in broadcast operations.⁸ WJER maintains that Dennison is already well served by station WBTC(AM), licensed to the neighboring community of Uhrichsville, Ohio, which it claims is owned by Petitioner.⁹ WJER thus requests that the Commission carefully consider allotting Channel 272A at Dennison, Ohio due to the potential displacement of WDNP.¹⁰

5. In its comments, REC acknowledges that LPFM stations are secondary FM services.¹¹ That said, REC contends that section 5(3) of the Local Community Radio Act of 2010 (LCRA), by its wording, does not require that LPFM stations be considered secondary to new FM allotments, but are secondary only to existing and modified full-service FM stations.¹² It notes the numerous submissions from members of the community and listeners of WDNP, arguing that under section 307(a) of the Communications Act,¹³ these opinions must be taken into account when determining whether amending the FM Table of Allotments is in the public interest.¹⁴ REC argues that LPFM licensees are required to maintain a level of localism through the nature of their organizational governance, and thus that a well-operated LPFM station, such as WDNP, becomes part of the fabric of the community. REC argues that because the LCRA does not require that an LPFM station be secondary in status to a new FM full service station, the public benefit of an LPFM station that has been in operation for over seven years should therefore be weighed against the interest in adding a new FM "drop-in" allotment.¹⁵

6. REC contends that WDNP is currently operating on the best channel available in the area. REC conducted a channel study using WDNP's licensed site that shows available channels 272, 245, and 290. It states that WDNP's current Channel 272 is the only channel that meets both section 73.807(a)'s minimum distance separation requirements to existing FM facilities and the recommended distance separation required for an LPFM station to not receive incoming interference.¹⁶ REC asserts that

⁷ Comments of WJER, LLC (WJER Comments) at 1-2.

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ REC Comments at 1, para. 2.

¹² See *Local Community Radio Act*, Pub. L. No. 111-371, 124 Stat 4072 (2011) (LCRA) at §5. ("The Federal Communications Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, shall ensure that (1) licenses are available to FM translator stations, FM booster stations, and low-power FM stations; (2) such decisions are made based on the needs of the local community; and (3) FM translator stations, FM booster stations, and low-power FM stations shall remain equal in status and secondary to existing and modified full-service FM broadcast stations.").

¹³ 47 U.S.C. § 307(a). Section 307(a) of the Communications Act mandates that the Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of the Communications Act, shall grant to any applicant therefor a station license.

¹⁴ REC Comments at 3, paras. 7-8.

¹⁵ REC calls on the Commission and Congress to examine LPFM stations, especially those that have programming and community involvement characteristics, similar to Class A TV broadcast stations, to find methods to improve the ability for LPFM stations to receive additional relief, limited to what is permitted by statute. REC also asks that the Commission reinterpret the LCRA to provide LPFM stations with technical relief in the protection of FM translator stations. See REC Comments at 6, para. 19. We decline to consider these requests, as they are beyond the scope of this allotment proceeding.

¹⁶ 47 CFR § 73.807(a). See REC Comments at 3.

Channels 245 and 290 do not meet the Commission's recommended interference-free requirements, as a result of WRRK, Braddock (Pittsburgh), Pennsylvania,¹⁷ and WXDX-FM, Pittsburgh, Pennsylvania, respectively.¹⁸ REC additionally states that Petitioner's Technical Exhibit also includes LPFM station WNPA-LP, Canton, Ohio as being displaced but its displacement will depend on which party wins the FM auction and the location of the Dennison station.¹⁹

7. With regard to the many comments submitted by WDNP listeners, referenced by REC, Petitioner argues that these comments should be disregarded and treated as prohibited *ex parte* presentations because the listener commenters failed to serve Petitioner or its counsel as required by section 1.420(a) and (c) of the Commission's rules.²⁰ To alleviate commenter concerns about displacement of WDNP, however, Petitioner provides an engineering study demonstrating that alternative FM Channels 245 and 290 are available at Dover, Ohio for WDNP.²¹ In its Reply Comments, REC recognizes that the community listener submissions are considered unauthorized *ex parte* filings pursuant to section 1.1208,²² but contends that the Parties have a right to express grievances over the LPFM station's displacement.²³ REC requests that if the unauthorized *ex parte* filings are stricken from the record, no enforcement action be taken against the Parties for participating in this proceeding.²⁴ No other party filed reply comments.

III. DISCUSSION

8. We find that the proposal complies with the Commission's technical requirements and will modify the Table of Allotments as requested in the Petition.²⁵ We further find that, contrary to REC's interpretation, section 5(3) of the LCRA applies to new full-service FM broadcast stations, *i.e.* FM "drop-in" allotments, making LPFM stations secondary to these stations. The Commission addressed in the *LPFM Third Order* the issue of LPFM station displacement by seeking comment on whether it should amend section 73.809 of the rules to establish a licensing presumption that would protect certain operating LPFM stations from subsequently proposed community of license modifications and whether that presumption should be extended to protect LPFM stations against subsequently filed petitions for rulemaking for new FM allotments and/or modification applications not proposing community of license

¹⁷ REC's study depicts that WRRK, a Class B station, would place a 41.1 dBμ interfering contour at the WDNP-LP transmitter site and a 42.3 dBμ interfering contour at the edge of the LPFM service contour along the bearing from WDNP-LP to WRRK.

¹⁸ REC's study depicts that WXDX-FM places a 41.3 dBμ interfering contour at the WDNP-LP transmitter site and a 42.6 dBμ interfering contour at the edge of the LPFM service contour along the bearing from WDNP-LP to WXDX-FM.

¹⁹ 47 CFR §73.809(a) defines interference from an LPFM station to a subsequently filed full-service FM facility is where interference occurs within the 3.16 mV/m (70 dBμ) of such full-service station, the community of license or any area of the community of license predicted to receive at least a 1 mV/m (60 dBμ) signal.

²⁰ Petitioner Comments at 2. See 47 CFR § 1.420(a), (c).

²¹ Petitioner Comments at 2-3 and Attachment 2. REC's channel study also shows that Channels 245 and 290 are available as alternatives for WDNP-LP. REC Comments at 3-4, paras. 11-12.

²² 47 CFR § 1.1208.

²³ REC Reply Comments (REC Reply) at 2. REC believes that this case should prompt the Commission to reexamine its *ex parte* regulations, given that many of those rules have (in REC's view) become obsolete since the advent of electronic filing. *Id.*

²⁴ *Id.* at 3.

²⁵ See 47 CFR § 73.207.

changes.²⁶ The Commission later stated, in *LPFM Fifth Order*, that adoption of the LCRA rendered these proposals unnecessary.²⁷ We note that the Commission adopted numerous measures to complete implementation of the LCRA that provide service and licensing rules to promote the LCRA's goals, and technical rules to ensure the efficient use of the radio broadcast spectrum.²⁸

9. Although studies were submitted regarding the potential of displacement to WDNP's licensed site, it is well established that at the FM allotment stage, we do not consider the displacement or interference of secondary FM services.²⁹ LPFM and FM translator stations are authorized as secondary FM services subject to service-specific rules restricting their operations and interference caused to other stations to ensure the integrity of existing FM full power stations.³⁰ While we recognize the valuable service being provided by LPFM stations, these facilities are secondary FM services and must protect subsequently authorized full-service primary stations.³¹ The Commission is subject to a Congressional directive to ensure that LPFM stations remain secondary to full-service primary FM stations.³² Further, the integrity of the FM Table of Allotments depends on strict adherence to the current standards governing the relationship between primary and secondary FM operations that were adopted to provide certainty and clarity in the process of allotting and modifying primary FM stations.³³ We therefore will not consider the potential displacement of secondary FM services, such as LPFM station WDNP, as a

²⁶ *LPFM Third Order* at 22 FCC Rcd at 21943, ¶ 75 (2007).

²⁷ See *Creation of a Low Power Radio Service*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, 27 FCC Rcd 3315, 3344, ¶ 72 (2012)(*LPFM Fifth Order*) (declining to move forward with proposed rule changes related to LPFM station displacement, the obligations of full-service new station and modification applicants to potentially impacted LPFM stations, and LPFM-FM translator protection priorities).

²⁸ See LCRA, § 5; *Creation of a Low Power Radio Service*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986 (2011); *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (2012); Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration, 27 FCC Rcd. 3315 (2012)(setting forth proposed changes intended to advance the LCRA's core goals of localism and diversity while preserving the technical integrity of all of the FM services); and Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402 (2012), *granted and denied in part*, Order on Reconsideration, 28 FCC Rcd 14489 (2013). Likewise, the Media Bureau has taken steps to implement Section 8 of the LCRA, which requires the Commission "to conduct an economic study on the impact that low-power FM stations will have on full-service commercial FM stations" and to provide a report to Congress on that study within one year of the LCRA's enactment. See LCRA, § 8; *Media Bureau Seeks Comment on the Economic Impact of Low Power FM Stations on Full-Service Commercial FM Stations*, Public Notice, 26 FCC Rcd 6565 (MB 2011) and *Economic Impact of Low-Power FM Stations on Commercial FM Radio: Report to Congress Pursuant to Section 8 of the Local Community Radio Act of 2010*, Report, 27 FCC Rcd 3 (MB 2012).

²⁹ See *Dubach, Natchitoches, Oil City and Shreveport, Louisiana, and Groesbeck, Longview, Nacogdoches, Tennessee Colony and Waskom, Texas*, Report and Order, 20 FCC Rcd. 19495 (MB 2005)(stating that low power FM stations are secondary services that must protect subsequently authorized full service stations).

³⁰ See, e.g., 47 CFR § 73.809; 47 CFR § 74.1203.

³¹ 47 CFR § 73.809.

³² See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2571-72, n.77, recon. granted in part, 27 FCC Rcd 12829 (2012)(*Rural 2d R&O*)(stating that in Section 5 of the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (to be codified in 47 U.S.C. § 303), Congress directed the Commission to ensure that FM translator and booster stations, and LPFM stations, remain secondary to existing and modified full-service FM stations).

³³ See *Bridgeton and Pennsauken, New Jersey*, Report and Order, 18 FCC Rcd 12192,12193, ¶ 6 (MB 2003).

negative factor when evaluating FM allotment proposals.³⁴ We find that REC's other arguments raise issues that are beyond the scope of this proceeding.³⁵

10. While we do not dispute WJER's assertions regarding WDNP's service to the community and its training of local residents in broadcast operations, as discussed above these considerations are not applicable to the criteria established to evaluate the proposal before us.³⁶ Likewise, the fact that Petitioner's principals are the same as those of WBTC Radio LLC, licensee of WBTC(AM) and FM translator W270CI at neighboring Uhrichsville, Ohio,³⁷ does not mandate rejection of this proposal. Any potential local ownership rule issues will be addressed after the allotment has been subject to competitive bidding and a construction permit application is filed.³⁸ Accordingly, we conclude that the public interest would be served by allotting a first local service at Dennison, Ohio, under Priority (3).³⁹ A staff engineering analysis indicates that Channel 272A can be allotted to Dennison, Ohio, consistent with the minimum distance separation requirements of the Commission's rules (Rules), with a site restriction of 2.7 km (1.7 miles) west of the community.⁴⁰ The reference coordinates are 40-23-54 NL and 81-21-33 WL.

11. Finally, with regard to the *ex parte* submissions of WDNP listeners, the *Notice* stated in paragraph 7 that comments and reply comments shall be served on Petitioner or its counsel, and that certificate of service must accompany such comments pursuant to section 1.420 of the rules.⁴¹ The Parties listed in the Appendix failed to serve Petitioner or its counsel with a copy of their pleading or provide certificate of service as required by section 1.420(a) and (c) of the rules.⁴² We agree with Petitioner. Pursuant to section 1.1208 of the rules, this proceeding is considered restricted, and *ex parte* presentations are prohibited.⁴³ Moreover, section 1.420(a) specifically prescribes that comments in an FM allotment rulemaking proceeding initiated by a petition for rulemaking shall be served on the petitioner. Although the majority of the Parties were individual listeners, the exemption for written *ex parte* presentations submitted by such individuals found in section 1.1204(a)(8) of the rules does not apply, as it is specifically directed to *ex parte* submissions regarding applications rather than rulemaking proceedings.⁴⁴

³⁴ See *Minor Change Applications Informal Objection*, Letter, 35 FCC Rcd. 556 (MB 2020); see also *Fort Walton Beach, Florida*, Report and Order, 32 FCC Rcd 5837 (2017).

³⁵ See *supra* note 15. Additionally, REC requests that we evaluate the "track record" of an LPFM subject to displacement, which is not required by our rules and procedures. See REC Comments at 4-6, paras. 15-16, 19. See also *infra* para. 12 and note 59.

³⁶ See *supra* para. 10; 47 CFR § 73.809.

³⁷ See File No. 0000197075 (WBTC(AM) and W270CI, licensed to WBTC Radio LLC, owned 66% by Trimerge Futures LLC and 33% by CDMW Holdings LLC), and File No. 0000196976 (Western Radio Group owned 66% by Trimerge Futures LLC and 33% by CDMW Holdings LLC).

³⁸ 47 CFR § 73.3555(a).

³⁹ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First full-time aural service, (2) Second full-time aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁴⁰ 47 CFR § 73.207.

⁴¹ See *Notice*, DA 22-1096, rel. October 17, 2022, para. 7.

⁴² 47 CFR § 1.420(a) and (c).

⁴³ 47 CFR § 1.1208. An *ex parte* presentation is any communication that concerns the merits or outcome of a proceeding and is not served on the parties to the proceeding, or, if oral, is made without their opportunity to be present. 47 CFR § 1.1202(a).

⁴⁴ 47 CFR § 1.1204(a)(8).

We therefore find that the Parties violated section 1.420(a) and (c), and their pleadings represent prohibited *ex parte* presentations that cannot be considered in this proceeding.⁴⁵

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,⁴⁶ do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.⁴⁷ This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.⁴⁸ 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 2002.⁴⁹

IV. ORDERING CLAUSES

13. IT IS FURTHER ORDERED that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, effective May 26, 2023, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

Community
Dennison, Ohio

Channel No.
272A

14. The window period for filing applications for Channel 272A at Dennison, Ohio will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in subsequent order.

15. 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).

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

⁴⁵ 47 CFR §§ 1.1202(b)(1) and 1.1208. We further reject REC’s suggestion that the *ex parte* rules infringe upon the Parties’ First Amendment rights. *See Herbert L. Schoenbohm*, Decision, 13 FCC Rcd 15026, 15034-35, para. 23 (1998) (“The *ex parte* rules do not infringe upon an applicant’s constitutional right to discuss the proceeding with others. Rather, they protect the integrity of the administrative process by ensuring that the Commission’s decisions are fair and impartial and that they are based on a public record free of any taint of improper influence from non-record communications between decision makers and outside persons. (citation omitted) We do not believe it violates the First Amendment to require that presentations to the agency be made on the record and to require that solicitations of presentations to the agency be limited to requests for on-the-record presentations.”). As for REC’s expressed concerns, however, we will not take “enforcement action” against the Parties based on these isolated, first-time rule violations, beyond declining to consider the offending presentations.

⁴⁶ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁴⁷ 47 CFR § 73.202(b).

⁴⁸ *See* 44 U.S.C. §§ 3501-3520.

⁴⁹ *See* 44 U.S.C. § 3506(c)(4).

17. 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

APPENDIX

Allison Bechtol
Amanda Currie
Amy Wells
Billie Jo France
Bruce Metzger
Carol Emmons
Dan Slentz
Dana Powers
Daniel E. Slentz
Dawn Brogan
David Keener
David Maus
Deborah Veigel
Denise Mathias
Donald Biancamano
Erin Davidson
Erma Morrison
Frank Huff
James D. Huff
Janet and Steven Warden
Jason Sloan
Jeanmarie Roth
Jennie W. Arbogast
Jennie Breznak
Jennifer Immel
John M Kelly
Joyce Hinds
Julie Courtright
Julie Mercier
Julie Scott
Karie McCrate, Superintendent of Dover City Schools in Dover, Ohio
Lawrence Kolakowski
Lisa Stilgenbauer
Louise Worsham
Lori Feeney
Mary Kay Reed
Matt Ritzert
Matt Shroyer
Mitchell Warden
Nick Patuto
Patricia Strickling
Seema Shah
Shane Gunnoe, Interim Mayor on behalf of the City of Dover Ohio
Steven Morrison
Steven Ryan Shroyer
Steven T Shumaker, Program Director of WDNP-LP, Dover, Ohio
Theresa Stein
Thomas Kolakowski
Timothy C. Sidel

Tina M Reiter
Tod Carper, Chairman of the Board for WDNP-LP, Dover, Ohio
Traci Fawcett
Travis Green

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

In the Matter of	)	
	)	
Amendment of section 73.202(b), Table of	)	MB Docket No. 21-502
Allotments, FM Broadcast Stations (Snowflake,	)	
Arizona; Millerton, Oklahoma; Powers, Oregon;	)	
Mount Enterprise and Paint Rock, Texas;	)	
Hardwick, Vermont; and Meeteetse, Wyoming)	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2023

Released: April 11, 2023

By the Chief, Audio Division, Media Bureau:

1. The Audio Division (“Division”) has before it a Petition for Reconsideration (Petition)¹ filed on behalf of Shire and Shore Communications (“SSC”), directed to the *Report and Order*² issued in this proceeding, which deleted six vacant allotments in various communities in Oklahoma, Oregon, Texas, Vermont and Wyoming. No comments or oppositions were filed in response to the Petition. For the reasons discussed below, we amend the FM Table of Allotments, section 73.202(b) of the Commission’s rules,³ by reinstating Channel 290A at Hardwick, Vermont.

2. **Background.** The Division, on its own motion, proposed the deletion of Channel 259C2 at Snowflake, Arizona; Channel 265C2 at Millerton, Oklahoma; Channel 293C2 at Powers, Oregon; Channel 279A at Mount Enterprise, Texas; Channel 296C3 at Paint Rock, Texas; Channel 290A at Hardwick, Vermont; and Channel 259C at Meeteetse, Wyoming.⁴ All of these allotments were offered in previous FM auctions and received no bids. The *Notice* stated that interested parties must file comments expressing an interest in these vacant allotments to prevent their removal, and provide an explanation as to why they did not participate in our previous competitive bidding process.⁵ In response to the *Notice*, Estrella Broadcasting, LLC (Estrella) filed comments expressing an interest in Channel 259C2 at Snowflake, Arizona, stating that it intends to bid on it in a future auction and has access to existing facilities with the necessary approval to build the station promptly. No other comments were received in response to the *Notice*.

3. In the *Report and Order*, the Division noted the Commission’s policy of refraining from deleting an FM allotment where a *bona fide* expression of interest exists, absent a compelling reason to do

¹ Petition for Reconsideration of Shire and Shore Communications, MB Docket No. 21-502 (submitted June 16, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10616174757277>; *Petition for Reconsideration of Action in Proceeding*, Public Notice, Report No. 3193 (MB Feb. 16, 2023).

² *Snowflake, Arizona et al.*, Report and Order, DA 22-525 (MB May 13, 2022). *See also Snowflake, Arizona et al.*, Report and Order, 87 Fed. Reg. 31433 (May 5, 2022).

³ 47 C.F.R. § 73.202(b).

⁴ *Snowflake, Arizona et al.*, Notice of Proposed Rulemaking, 31 FCC Rcd 18149 (MB Dec. 23, 2021) (*Notice*). *See also Snowflake, Arizona et al.*, Notice of Proposed Rulemaking, 87 Fed. Reg. 3487 (Jan. 24, 2022).

⁵ *See Notice*, para. 2.

so.⁶ Accordingly, the Division stated that it would not delete Channel 259C2 at Snowflake, Arizona, because Estrella filed a *bona fide* expression of interest for the allotment.⁷ The Division stated that it would delete the other vacant allotments from the FM Table of Allotments because no *bona fide* expressions of interest were filed.⁸

4. In the Petition, SSC admits its failure to file comments expressing an interest in Channel 290A at Hardwick, Vermont (MM-FM325-A) by the comment deadline in this proceeding.⁹ However, it remains committed to bidding on this allocation in a future auction should the allocation be restored and to promptly construct and operate the facility if it is the winner of the auction.¹⁰ SSC explains that the economic effects of the COVID pandemic affected its finances, making a bid on the Hardwick allocation financially impossible during the most recent commercial FM auction in 2021.¹¹ SSC states that the aftereffects of the pandemic also affected its ability to promptly reply to the *Notice*.¹² SSC asserts that its financial health has recovered and requests the Commission to consider its late-filed expression of interest in the Channel 290A allotment at Hardwick, Vermont.¹³

5. **Discussion.** We accept SSC's late-filed *bona fide* expression of interest because the proceeding is uncontested and no prejudice would occur to other parties.¹⁴ We therefore grant the Petition by reinstating Channel 290A at Hardwick, Vermont.

6. **Ordering clauses.** Accordingly, pursuant to the authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 CFR sections 0.61, 0.204(b) and 0.283, IT IS ORDERED that effective May 26, 2023, the FM Table of Allotments, 47 CFR section 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

Community
Hardwick, Vermont

Channel No.
290A

⁶ See *Report and Order*, para. 4. See also, e.g., *Montrose and Scranton Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 6305, 6306 (1990) (denying request to delete an allotment because interest had been expressed in its retention); *Enfield, New Hampshire*; *Hartford and White River Junction, Vermont*; and *Keeseville and Morrisonville, New York*, Memorandum Opinion and Order, 26 FCC Rcd 798 (2011).

⁷ See *Report and Order*, para. 4.

⁸ *Id.* at paras. 4-5 (stating that Channel 265C2 at Millerton, Oklahoma; Channel 293C2 at Powers, Oregon; Channel 279A at Mount Enterprise, Texas; Channel 296C3 at Paint Rock, Texas; Channel 290A at Hardwick, Vermont; and Channel 259C at Meeteetse, Wyoming would be deleted effective June 27, 2022, because no *bona fide* expressions of interest were filed).

⁹ See Petition. The deadline for filing comments expressing an interest in the vacant allotments was February 14, 2022. See *Notice*. SSC filed its comments on April 8, 2022. See Comment of Shire and Shore Communications, LLC, MB Docket No. 21-502 (submitted Apr. 8, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10408186454942>. SSC then timely filed the instant Petition consistent with section 1.429 of the Commission's rules. See 47 CFR § 1.429(a), (d) (Any interested party may petition for reconsideration of a final decision in a proceeding... and shall file such petition for reconsideration and any supplement thereto within 30 days from the date of the public notice of such action).

¹⁰ See Petition.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See *Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1998), *aff'd*, 4 FCC Rcd 3412 (1989); *aff'd. sub non. Amor Family Broadcasting v. FCC*, 918 F.2d 960 (D.C. Cir. 1990).

7. IT IS FURTHER ORDERED that the Commission will send a copy of this Memorandum Opinion 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).

8. The window period for filing applications for Channel 290A at Hardwick, Vermont will be announced by the Commission in the near future.

9. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Shire and Shore Communications IS GRANTED.

10. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Dana Bradford, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of	)	
	)	
ELKO TELEVISION DISTRICT	)	Facility ID Nos.: 19376, 19386, 19389,
	)	19399, 129079, 128763, 127034, 128751,
Licensee of Stations K08IO-D, Wells, NV;	)	128750, 127036, 129081
K36PN-D, Beowawe, NV; K20JQ-D, Wells, NV;	)	NAL/Acct. No.: 202341420015
K26JB-D, Wells, NV; K24GE-D, Wells, NV;	)	FRN: 0006952121
K22GW-D, Wells, NV; K16FV-D, Ryndon, NV;	)	LMS File Nos. 195105, 195115, 195116,
K18GT-D, Ryndon, NV; K06NY-D, Ryndon, NV;	)	195285, 195299, 201078
K08NQ-D, Ryndon, NV, K12PT-D, Ryndon, NV	)	
	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: April 11, 2023

Released: April 11, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the applications (Applications)¹ of Elko Television District (Licensee), for renewal of its licenses for K08IO-D, Wells, NV; K36PN-D, Beowawe, NV; K20JQ-D, Wells, NV; K26JB-D, Wells, NV; K24GE-D, Wells, NV; K22GW-D, Wells, NV; K16FV-D, Ryndon, NV; K18GT-D, Ryndon, NV; K06NY-D, Ryndon, NV; K08NQ-D, Ryndon, NV, K12PT-D, Ryndon, NV (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of sixteen thousand five hundred dollars (\$16,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The applications for renewal of the Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.⁴ However, the Licensee did not file the

¹ Applications of Elko Television District for Renewal of License, LMS File Nos. 195105, 195115, 195116 (filed Jul. 15, 2022) (filed for stations K08IO-D, K36PN-D, and K20JQ-D respectively). Application of Elko Television District For Renewal of License, LMS File No. 201078 (filed Sep. 28, 2022) (filed for K12PT-D). As is permitted, the Licensee filed to renew the licenses for stations K26JB-D, K24GE-D, and K22GW-D in a single application. Application of Elko Television District for Renewal of License, LMS File No. 195285 (filed Jul. 19, 2022). In addition it filed to renew the licenses for stations K16FV-D, K18GT-D, K06NY-D, and K08NQ-D in a single application. Application of Elko Television District for Renewal of License, LMS File No. 195299 (filed Jul. 19, 2022).

² 47 CFR § 73.3539(a).

³ *Id.*

Applications until July 15, 2022; July 19, 2022; and September 28, 2022.⁵ The Licensee did not provide an explanation for the late filings.

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$16,500. In this case, the Licensee failed to file the Applications on or before June 1, 2022, as required by section 73.3539(a) of the Rules.⁶ The Applications were not received until July 15, 2022; July 19, 2022; and September 28, 2022; between over one and three months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁸ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹¹

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³

6. In this case, the Licensee failed to timely file a license renewal application for eleven (11) stations, as required by section 73.3539(a) of the Rules.¹⁴ The Licensee did not provide an explanation for the late filings. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁵ we will reduce the forfeiture from the base amount to \$1,500 per

(Continued from previous page)

⁴ See 47 CFR §§ 73.1020, 73.3539(a); See *Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

⁵ See *supra* note 1.

⁶ 47 CFR § 73.3539(a).

⁷ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁸ 47 U.S.C. § 312(f)(1).

⁹ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹¹ 47 U.S.C. § 312(f)(2).

¹² See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹³ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹⁴ 47 CFR § 73.3539(a).

station for the failure to file a timely renewal application, because, as digital television translators, the Stations are providing a secondary service.¹⁶ Furthermore, as translators the Stations are not originating programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals. Because the Applications include eleven (11) stations the total proposed forfeiture amount is \$16,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁷ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.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 as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁹

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules²⁰ does not constitute a “serious violation” warranting designation of the Applications for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²¹ Further, based on our review of the Applications, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Applications.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²² and sections 1.80 and 0.283(d) of the Commission’s rules,²³ that Elko Television

(Continued from previous page) —————

¹⁵ *Supra* note 13.

¹⁶ See, e.g., *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”). See also *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television booster stations....Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ 47 CFR § 73.3539(a).

²¹ For example, we do not find here that the Licensee’s operation of the Stations “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

District, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of sixteen thousand five hundred dollars (\$16,500)** for its apparent willful violation of section 73.3539(a) of the Commission's rules.²⁴

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁵ within thirty (30) days of the release date of this *NAL*, Elko Television District, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁶ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁷

- 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).²⁸ 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,

(Continued from previous page) —————

²² 47 U.S.C. § 503(b).

²³ 47 CFR §§ 1.80 and 0.283.

²⁴ 47 CFR § 73.3539(a).

²⁵ 47 CFR § 1.80.

²⁶ Payments made using CORES do not require the submission of an FCC Form 159.

²⁷ 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.

²⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.³⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³¹

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.³²

²⁹ See 47 CFR § 1.1914.

³⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

³¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³² 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Elko Television District, P.O. Box 456, Elko, NV 89803 and by electronic mail to elkotvdistrict@gmail.com

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	

FIFTH REPORT AND ORDER

Adopted: March 13, 2023

Released: March 15, 2023

By the Commission:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission (Commission) directs the Consumer and Governmental Affairs Bureau (Bureau) to offer an additional funding opportunity of up to \$10 million for the National Competitive Outreach Grant Program (NCOP) and the Tribal Competitive Outreach Grant Program (TCOP), which are components of the Affordable Connectivity Outreach Grant Program (Outreach Grant Program).¹ This maximum of \$10 million will come from a combination of: (a) unspent funding – funding previously allocated to the Outreach Grant Program but not awarded;² and (b) unobligated funding – funding from the \$100 million Affordable Connectivity Program (ACP) outreach budget that we have not yet allocated to specific outreach efforts.³ We direct the Bureau to issue a Notice of Funding Opportunity (NOFO) to initiate the application process for this additional funding.

2. The ACP plays an integral role in helping to bridge the digital divide, which remains a top priority for the Commission.⁴ As part of its efforts to encourage participation in the ACP, the Commission established the Outreach Grant Program in order to engage with partners around the country to help inform ACP-eligible households about the program in their local communities, with funding and

¹ See generally *Affordable Connectivity Program*, Second Report and Order, WC Docket No. 21-450, FCC 22-64 (2022) (*Second ACP Order*) (establishing Outreach Grant Program). The Outreach Grant Program is comprised of four complementary grant programs: the National Competitive Outreach Grant Program (NCOP); the Tribal Competitive Outreach Grant Program (TCOP); the Your Home, Your Internet Outreach Grants; and the ACP Navigator Pilot Program Outreach Grants. The components of the Outreach Grant Program were established in Notice of Funding Opportunity No. FCC-ACOGP-23-001. FCC, *Affordable Connectivity Outreach Grant Program*, Funding Opportunity No. FCC-ACOGP-23-001, Notice of Funding Opportunity at 4 (Nov. 10, 2022) (*Initial NOFO*), https://www.fcc.gov/sites/default/files/acp_outreach_grant_program_nofp.pdf; see also *infra* Part II (describing component programs).

² See *Second ACP Order* at 26-27, paras. 45-47 (allocating at least \$80 million of the Affordable Connectivity Program outreach budget for the Outreach Grant Program).

³ This would be funding beyond that allocated for the Outreach Grant Program and for FCC outreach efforts in support of the Your Home, Your Internet Pilot Program. See *id.* at 26-27, paras. 45-57; *Affordable Connectivity Program*, Third Report and Order, WC Docket No. 21-450, FCC 22-65, at 10, para. 23 (2022) (*Third ACP Order*) (“Additionally, the Commission will target up to an additional \$5 million to fund our own outreach efforts, and may coordinate these efforts with HUD and other federal agency partners.”).

⁴ See *Affordable Connectivity Program, Emergency Broadband Benefit Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, FCC 22-2, at 98, para. 211 (2022) (*ACP Order*) (“Narrowing the digital divide has been an ongoing priority for the Commission....”).

resources to support such outreach and community engagement.⁵ The extensive demand for ACP outreach funding so far underscores the need for these funds and the importance of reaching the eligible households that have not yet enrolled in the ACP.⁶ This new funding opportunity for ACP outreach is intended to provide additional funding awards beyond the outreach grant awards announced by the Commission on March 10, 2023.⁷ Directing the Bureau to offer an additional outreach grant funding opportunity will allow additional eligible entities to receive grant awards to conduct this necessary outreach to increase participation among those Americans most in need of affordable connectivity.

3. Pursuant to the authority provided to the Commission in the Infrastructure Investment and Jobs Act (Infrastructure Act),⁸ we previously designated up to \$100 million for all ACP outreach.⁹ Out of this \$100 million, we directed the Bureau to designate up to \$60 million to be competitively allocated to eligible entities¹⁰ and to also designate a minimum of \$10 million for grants specifically for ACP outreach to persons who live on qualifying Tribal lands.¹¹ In November 2022, consistent with the Commission's funding designations, the Bureau issued a NOFO for up to \$60 million for the National Competitive Outreach Grant Program and a minimum of \$10 million for the Tribal Competitive Outreach Grant Program.¹² Hundreds of applicants applied for these programs, and the demand for national competitive grant funding exceeded the \$60 million budget for this program.

4. To expand the number of entities raising awareness of the ACP with the goal of increasing enrollments among eligible households, we direct the Bureau to offer an additional funding opportunity for the National Competitive Outreach Grant Program and the Tribal Competitive Outreach Grant Program totaling up to \$10 million, to be distributed among each program equally insofar as possible. The additional funding for this funding opportunity will come from unspent Outreach Grant Program funding and ACP outreach funding not previously designated for specific ACP outreach activities, such that total funding including this additional NOFO does not exceed the \$100 million previously designated for all ACP outreach in the *ACP Order*.¹³ This approach carefully balances the demand for additional grant funding with the importance of maintaining fiscal responsibility of the ACP by staying within the \$100 million budget we previously established for all ACP outreach. The Bureau will continue to have the delegated authority outlined in the *Second ACP Order*, in coordination with the Wireline Competition Bureau (WCB), the Office of the General Counsel (OGC), and the Office of the

⁵ *Second ACP Order*, at 2, para. 2.

⁶ *Id.* at 4-6, paras. 4-6 (discussing the need for and importance of ACP outreach).

⁷ *Consumer and Governmental Affairs Bureau Announces ACP Outreach Grant Program Target Funding*, Public Notice, WC Docket No. 21-450, DA 22-194 (CGB Mar. 10, 2023). On March 15, 2023, the Commission announced the awards for the Your Home, Your Internet and Navigator Pilot Programs.

⁸ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60502(a)(3), 135 Stat. 429, 1240 (2021) (codified at 47 U.S.C. § 1752(b)(10)(C)).

⁹ This includes: (1) up to \$60 million for competitive allocation to eligible entities through NCOP; (2) a minimum of \$10 million for competitive allocation to eligible Tribal governments and Tribal organizations (including Tribally Designated Housing Entities) through TCOP; (3) up to \$5 million for the Your Home, Your Internet Outreach Grants; (4) up to \$5 million for the ACP Navigator Pilot Program Outreach Grants; and (5) up to \$5 million for the FCC's own outreach activities in connection with the Your Home, Your Internet Pilot Program. See *Second ACP Order* at 26-27, paras. 46-47 (discussing budget allocations); *Third ACP Order* at 10, para. 23. The remaining balance of the \$100 million not specifically allocated in the Commission's prior orders is available for the FCC's own ACP outreach.

¹⁰ *Second ACP Order* at 26-27, paras. 44-46.

¹¹ *Id.* at 27, para. 46.

¹² *Initial NOFO* at 4, 8.

¹³ *ACP Order* at 91, para. 193.

Managing Director (OMD) as appropriate, to develop, administer, and manage the Outreach Grant Program.¹⁴

II. BACKGROUND

5. Millions of low-income households experience difficulty paying for broadband service needed to participate in 21st century society, including for work, education, healthcare, and civic engagement.¹⁵ Therefore, addressing affordability is a critical step towards closing the digital divide. On November 15, 2021, the Infrastructure Act was enacted, appropriating \$14.2 billion for the ACP.¹⁶ The program addresses affordability barriers to broadband access and adoption by providing eligible households a monthly discount of up to \$30 a month (or up to \$75 a month for eligible households residing on qualifying Tribal lands) toward broadband service and a one-time discount of up to \$100 to purchase a connected device (tablet, laptop, or computer) from a participating provider, with a co-pay of more than \$10 but less than \$50.¹⁷ Currently, over 16 million households are enrolled in the ACP. However, a significant number of eligible households are still not yet aware of and have not enrolled in the program.¹⁸ Therefore, meaningful outreach by a variety of outreach partners and methods is necessary to help maximize the potential impact of the ACP.

6. Recognizing the importance of such outreach, Congress expressly authorized the Commission to use ACP funds to conduct outreach to encourage households to enroll in the ACP, including facilitating consumer research, conducting focus groups, engaging in paid media campaigns, and providing grants to outreach partners.¹⁹ In the *ACP Order*, the Commission allocated up to \$100 million for ACP outreach, including an outreach grant program and Commission outreach activities as authorized in the Infrastructure Act, to be spent over five years.²⁰

¹⁴ See, e.g., *Second ACP Order* at 11, 14, 21, 25, 28, 33, 44, 60, paras. 19, 26, 33, 35, 43, 49, 87 (discussing the delegation of authority to the Bureau).

¹⁵ See, e.g., EducationSuperHighway, *No Home Left Offline, Bridging the Broadband Affordability Gap* at 5-6 <https://www.educationsuperhighway.org/no-home-left-offline/> (2021) (estimating that 18 million households (47 million people) are offline because they are unable to afford broadband); Gabriella Novello, *ACP Grant Details to Come this Summer: Rosenworcel*, Comm. Daily (June 14, 2022) (“The ‘vast majority’ of people that don’t have internet service can’t afford it, said National Urban League Senior Vice President-Policy and Advocacy Joi Chaney.”); Emily A. Vogels, *Digital Divide Persists Even as Lower Income Americans Make Gains in Tech Adoption*, Pew Research Trust (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/> (stating that 13% of low-income households with incomes below \$30,000 do not have access to home broadband services, a smartphone, a desktop or laptop computer and a tablet).

¹⁶ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60502, 135 Stat. 429, 1238 (2021); see Division J, Appropriations, Title IV – Financial Services and General Government of the Infrastructure Act (appropriating \$14.2 billion to the Affordable Connectivity Program). The ACP is the successor program to the Emergency Broadband Benefit Program (EBB Program). The EBB Program was a \$3.2 billion program established pursuant to the Consolidated Appropriations Act of 2021 on December 27, 2020 and launched on May 12, 2021 to provide discounted broadband service to low-income households, including those experiencing economic disruption related to the COVID-19 pandemic. *ACP Order* at 3, para. 3. Consistent with the Infrastructure Act, the EBB Program ended and the ACP commenced on December 31, 2021. See *ACP Order* at 4, para. 6.

¹⁷ 47 CFR § 54.1803(a)-(b).

¹⁸ Anna Read & Kelly Wert, *Enrollment Hurdles Limit Uptake for FCC’s Affordable Connectivity Program*, Pew, Feb. 28, 2023 (discussing ACP enrollment process).

¹⁹ 47 U.S.C. § 1752(b)(10)(C)(ii)(I)-(IV).

²⁰ *ACP Order* at 90, para. 193.

7. The Commission's governmental and non-governmental outreach partners play a critical role in the outreach necessary to ensure that eligible households learn about and can enroll in the ACP.²¹ They are trusted entities in the communities they serve, and many have close ties to eligible populations, yet without additional financial support the extent of ACP outreach they can perform may be limited by budget constraints.²² We established the Outreach Grant Program in August 2022 to better support extensive outreach by a wide range of such outreach partners nationwide by providing them an opportunity to secure the vital funding and resources needed to increase awareness of and encourage participation in the ACP among those Americans most in need of affordable broadband.²³ In the *Second ACP Order*, the Commission established the parameters of the Outreach Grant Program, and directed the Bureau to develop, administer, and manage that program.²⁴ We designated up to \$80 million for outreach grants in the following allocations: (1) up to \$60 million for competitive allocation to eligible entities; (2) a minimum of \$10 million for competitive allocation to eligible Tribal governments and Tribal organizations for outreach to persons residing on qualifying Tribal lands; (3) up to \$5 million for entities selected to participate in the Your Home, Your Internet Pilot Program; and (4) up to \$5 million for entities selected to participate in the ACP Navigator Pilot Program.²⁵

8. In November 2022, the Bureau issued NOFOs for four complementary grant programs that aligned with the funding designations in the *Second ACP Order*: NCOP; TCOP; the Your Home, Your Internet Outreach Grants; and the ACP Navigator Pilot Program Outreach Grants.²⁶ NCOP "funds outreach activities to increase awareness of and encourage participation in the ACP for eligible low-income households," and TCOP "funds outreach activities to increase awareness of and encourage participation in the ACP for households on tribal lands."²⁷ The deadline for submitting grant applications was January 9, 2023.²⁸ Hundreds of entities filed applications seeking a total of \$193 million in grant funding from the national competitive and Tribal grant programs, and the demand for NCOP funding exceeded the \$60 million maximum that the Commission initially designated for this program.

III. DISCUSSION

9. The overwhelming response to the Outreach Grant Program convinces us that it is appropriate to issue a new funding opportunity for NCOP and TCOP, to be distributed equally between the programs to the extent feasible. This necessarily means raising the \$60 million upper limit on funding

²¹ *Second ACP Order* at 6-7, para. 8.

²² *Id.* at 6-7, para. 8.

²³ *See generally id.*

²⁴ *Id.* at 25, 29, paras. 43, 51.

²⁵ *Id.* at 26-27, paras. 46-47. The Your Home, Your Internet Outreach Grants and the ACP Navigator Pilot Program Outreach Grants were designed to provide grant funding to eligible entities selected to participate in the one-year Your Home, Your Internet Pilot Program and the ACP Navigator Pilot Program, respectively. These grant programs are limited to one year and have a more targeted focus than NCOP and TCOP. The Your Home, Your Internet Pilot Program was created to test methods to help recipients of federal housing assistance to learn about and enroll in the ACP. The ACP Navigator Pilot Program was developed to increase awareness and participation in the ACP and includes providing selected participants access to the National Verifier to directly assist low-income consumers with completing and submitting their ACP application. *See FCC, Affordable Connectivity Outreach Grant Program – Pilot Program Grants*, Funding Opportunity No. FCC-ACOGP-23-002 at 6-7 (Nov. 21, 2022) (*ACP Pilot Programs NOFO*), available at https://www.fcc.gov/sites/default/files/fy23_acp_pilot_pr_outreach_grants_nof.pdf.

²⁶ *Initial NOFO* at 4; *ACP Pilot Programs NOFO*.

²⁷ *Initial NOFO* at 4.

²⁸ Press Release, FCC, *FCC Releases Notice of Funding Opportunity for ACP Outreach Grant Program* (Nov. 10, 2022), <https://www.fcc.gov/fcc-releases-notice-funding-opportunity-acp-outreach-grant-program>; *Initial NOFO* at 1 and *ACP Pilot Programs NOFO* at 1 (establishing January 9, 2023 as the deadline for all four components of the Outreach Grant Program).

for NCOP.²⁹ Therefore, we direct the Bureau to release another funding opportunity for up to \$10 million, with the funding to come from unspent Outreach Grant Program funding and funding from the \$100 million ACP outreach budget not already obligated for specific outreach activities. We also direct the Bureau to issue a Notice of Funding Opportunity to solicit applications for this additional funding opportunity.

A. Allocation of Funds

10. Due to the demand for outreach grant funding above the \$60 million cap for the National Competitive Outreach Grant Program set forth in the *Second ACP Order* and NOFO for that program, and due to the continued pressing need for outreach to persons on qualifying Tribal lands, we direct the Bureau to offer a funding opportunity of up to a combined total of \$10 million for NCOP and TCOP. For this funding opportunity, we direct the Bureau to use funding from: (a) the \$100 million ACP outreach budget that has not been obligated to other ACP outreach activities, such as funds available for the FCC's own ACP outreach,³⁰ and (b) any unspent Outreach Grant Program funding, i.e., funding not awarded through the initial notices of funding opportunity for the Outreach Grant Program. Although we intend for the Bureau to divide the maximum of \$10 million equally between NCOP and TCOP (e.g., \$5 million per program), if the amount that will be awarded to applicants to either program is less than \$5 million, we authorize the Bureau to transfer the balance from one program to the other, notwithstanding any funding minimums established in the *Second ACP Order* or this Order.³¹

11. The funding requested by grant applicants in response to the NOFO for the National Competitive Outreach Grant Program³² supports our decision to make available more funding for competitive grants to allow additional trusted outreach partners to increase awareness of and encourage enrollment in the ACP. We established the Outreach Grant Program to provide a range of outreach partners with funding and resources in an effort to help inform households about the ACP and thus increase participation among those Americans most in need of affordable broadband connectivity.³³ We designated funds to the Outreach Grant Program, including the \$60 million maximum for competitive allocation, with the "expect[ation] that the allocated budget . . . will support extensive, meaningful outreach by numerous eligible outreach partners."³⁴ As made apparent by the overwhelming response to our initial Outreach Grant Program funding opportunity, the need for extensive, meaningful ACP outreach has not diminished. Consequently, we raise the \$60 million funding cap for NCOP and direct the Bureau to offer a new funding opportunity for this program.

²⁹ While demand from the *Initial NOFO* has not exceeded the funding allocated for TCOP, we recognize the value of outreach specifically to qualified households residing on qualifying Tribal lands, which warrants opening a second window for eligible applicants to receive TCOP funding.

³⁰ In the *Second ACP Order* and *Third ACP Order*, we specifically allocated approximately \$85 million from the \$100 million ACP outreach budget, leaving the remainder for the FCC's own outreach. *Second ACP Order* at 26-27, paras. 46-47; *Third ACP Order* at 10, para. 23.

³¹ E.g., *Second ACP Order* at 27, para. 46 (directing the Bureau to designate a minimum of \$10 million for competitive outreach to persons living on qualifying Tribal lands). Additionally, we authorize the Bureau, in coordination with OMD, to reallocate unspent funding from any of the Outreach Grant Program component programs or unspent individual outreach grant awards to other ACP outreach efforts or for non-outreach ACP purposes. See, e.g., *id.* at 26, para. 45 ("We make clear that [the Bureau] is not required to spend this full [\$100 million] amount. [The Bureau] is authorized, in coordination with OMD, to decide if and when to reallocate any remaining unused funds from individual outreach grants for any outreach allowed under the statute or none at all.").

³² Although the Bureau has not yet issued final NCOP awards for the first funding opportunity at this time, we anticipate that such awards will exhaust the entire \$60 million initially designated for NCOP.

³³ See *id.* at 1-2, 4-5, paras. 2, 6.

³⁴ *Id.* at 27, para. 48.

12. We also direct the Bureau to make that funding opportunity available for the Tribal Competitive Outreach Grant Program. ACP outreach to persons on qualifying Tribal lands is a Commission priority,³⁵ and an additional funding opportunity for TCOP will facilitate this vital outreach. Our intent is to maximize the number of entities conducting ACP outreach to residents on qualifying Tribal lands, and we thus direct the Bureau to make eligible Tribal governments and Tribal organizations aware of this funding opportunity and how to apply for it, including but not limited to by providing information sessions tailored to prospective Tribal applicants during the TCOP application window and highlighting changes in the NOFO from the initial NOFO for the Tribal program.³⁶

13. We decline at this time, however, to increase the \$100 million budget for all ACP outreach established in the *ACP Order* and reaffirmed in the *Second ACP Order*.³⁷ That budget balances the anticipated need for extensive ACP outreach with the responsibility to ensure that ample funds remain to provide the ACP benefit to qualifying households for as long as possible.³⁸ Therefore, the funding opportunity established in this Order will not result in any changes to this \$100 million figure.

B. Additional Notice of Funding Opportunity

14. We direct the Bureau to issue a Notice of Funding Opportunity for the National Competitive Outreach Grant Program and Tribal Competitive Outreach Grant Program funding designated in this Order.³⁹ The notice will provide detailed information including the entities eligible for the funding, fundable expenses and activities, application and evaluation processes, reporting requirements, and other rules and requirements for the funding.⁴⁰ We further direct the Bureau to limit the additional funding opportunity designated in this Order to entities that do not receive funding from the first round of disbursements in the Outreach Grant Program,⁴¹ including as a pass-through entity or subrecipient. Expanding the number of entities performing ACP outreach will increase the likelihood of contacting consumers not reached by existing efforts.

15. Except as expressly set forth in this Order, the new Notice of Funding Opportunity and awards remain subject to the statutes, regulations, directives, and guidance discussed, promulgated, or otherwise set forth in the *Second ACP Order*. In that order, we established the goal and objectives of the Outreach Grant Program; provided examples of types of eligible entities and types of outreach activities and expenses that could be considered for funding; allocated funding set-asides for specific types of grantees; established important safeguards to promote program integrity and guard against potential waste, fraud, and abuse; adopted and implemented grant regulations; directed the Bureau to develop, manage, and administer the Outreach Grant Program; provided guidance and regulatory requirements for

³⁵ *E.g.*, *id.* at 27, para. 46 (setting aside grant funds for Tribal outreach).

³⁶ Previously, the Bureau held a webinar on TCOP that explained key elements of the program and the application procedures set forth in the *Initial NOFO*. The Bureau also created a webpage with links to relevant Commission documents.

³⁷ *ACP Order* at 90-91, para. 193; *Second ACP Order* at 26, 27-28, paras. 45, 48.

³⁸ *Second ACP Order* at 26, 27, paras. 44, 48.

³⁹ Because we are directing the Bureau to designate additional funding for NCOP, the Bureau's ability to make grant awards for this program is not limited to the funds allocated in the *Second ACP Order*. *See id.* at 28, para. 50 ("We permit [the Bureau] to continue to make grant awards . . . until all grant funds allocated for outreach in this Order is disbursed.") (emphasis added). Rather, the Bureau may make grant awards until all grant funding allocated in the *Second ACP Order* and this Order is disbursed, provided that the forecasted end of the ACP has not been announced pursuant to the wind down procedures as outlined in the *Second ACP Order*. *See id.* at 28-29, para. 50.

⁴⁰ *See id.* at 28-29, para. 52.

⁴¹ This limitation includes funding awarded previously under any of the four components of the Outreach Grant Program: NCOP, TCOP, the Your Home, Your Internet Outreach Grants, and the Navigator Pilot Program Outreach Grants.

the framework of the Outreach Grant Program; and addressed other requirements and administrative aspects of the program.⁴² We believe that these parameters, except to the extent expressly deviated from in this Order, provide the necessary structure and guidelines for this additional round of Outreach Grant Program available funding, consistent with our authority under applicable federal statutes and regulations.

16. We emphasize that the Bureau retains the authority granted in the *Second ACP Order* to administer the Outreach Grant Program in a cost-effective manner.⁴³ This includes the authority to limit the types of entities that may be eligible for a particular notice of funding opportunity;⁴⁴ to prioritize certain types of applications;⁴⁵ to revise allowable costs and cap certain expenses;⁴⁶ to tailor the grant application process templates or submission windows to accommodate different types of grants or funding opportunities;⁴⁷ and to educate prospective applicants about the grant program and the application process.⁴⁸

17. For instance, to ensure the most efficient use and distribution of additional National Competitive Outreach Grant Program funding, the Bureau could, informed by previous experience with the Outreach Grant Program, limit the categories of eligible entities for this additional funding opportunity to the types of entities that would best maximize the reach, impact, and effectiveness of the additional NCOP funding. The Bureau could likewise limit the entities eligible for the Tribal Competitive Outreach Grant Program under the funding opportunity established by this Order. The Bureau could also limit the number of subrecipients permissible for an applicant applying as a pass-through entity or shorten or lengthen any application window to ensure efficient administration of the Notice of Funding Opportunity or otherwise meet the needs of a particular funding opportunity.⁴⁹ Additionally, we emphasize that the Bureau may, prior to issuing a Notice of Funding Opportunity, conduct grant workshops and targeted outreach about the grant program to encourage quality grant applications.⁵⁰

18. Further, because there has already been one opportunity for eligible entities to apply for national competitive grants, for this funding opportunity the Bureau is not bound by the minimum allocation for States and Territories set forth in the *Second ACP Order*,⁵¹ and the Bureau need not

⁴² *Id.* at 6, para. 7.

⁴³ *Id.* at 45, para. 87 (“We also extend to [the Bureau] the flexibility necessary to administer the Grant Program in a cost-effective manner.”); *see also id.* at 25, para. 43 (directing the Bureau to develop, administer, and manage the Outreach Grant Program in compliance with federal law and consistent with the goal and objectives of the program); *id.* at 29, para. 51 (same).

⁴⁴ *Id.* at 33, para. 60 (“[The Bureau] may determine the types of eligible entities outlined in this Order that may be eligible for a particular funding opportunity for the grant program.”); *id.* at 19-21, 23, paras. 35 & n.118, 40.

⁴⁵ *Id.* at 36, para. 69 (“[The Bureau] may decide to use additional prioritization factors to promote the goals of the Outreach Grant Program and maximize the reach, effectiveness, and impact of the grant funds.”); *id.* at 11, para. 19 (directing the Bureau to determine whether certain types of outreach activities should be prioritized based on the program goal and objectives).

⁴⁶ *Id.* at 15, para. 26.

⁴⁷ *Id.* at 33, para. 61.

⁴⁸ *Id.* at 41-42, para. 78.

⁴⁹ For instance, the Bureau could set a longer window for TCOP to give applicants to that program additional time to obtain any approvals necessary before submitting grant applications.

⁵⁰ The Bureau cannot, however, assist applicants in developing proposals or preparing applications due to the competitive nature of the Outreach Grant Program. *Id.* at 41-42, para. 78.

⁵¹ In the *Second ACP Order*, we directed the Bureau to reserve \$27 million of the \$60 million NCOP budget for States and U.S. Territories and to establish minimum funding allocations for these entities. *Id.* at 5, 26-27, paras. 7, 46.

consider such allocations in developing this new funding opportunity.⁵² Nor is the Bureau, for this new funding opportunity, necessarily required to ensure that future NCOP awards be made to “diverse geographic regions and entity sizes or types.”⁵³

IV. PROCEDURAL MATTERS

19. *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 Fifth Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

20. *Paperwork Reduction Act.* Pursuant to section 1752(h) of the Infrastructure Act, the collection of information sponsored or conducted under the regulations promulgated in this Fifth Report and Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521.⁵⁴

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, as amended by section 60502 of Division F, Title V of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), and the authority contained in sections 1, 4(i), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 1752, and the authority contained section 60502 of Division F, Title V of the Infrastructure Investment and Jobs Act, 47 U.S.C. § 1752(b)(10)(C), this Report and Order IS ADOPTED.

22. 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 the 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

⁵² *Contra id.* at 31, para. 56 (directing the Bureau to “determine the allocation of funding for any funding opportunity under the Outreach Grant program consistent with the allocations specified in this Order”).

⁵³ *Id.* at 38, para. 70 (“Accordingly, in developing and administering the grant program, we direct [the Bureau] to consider how best to ensure that grant awards are made to diverse geographic regions and entity sizes or types, whether through the funding announcement or evaluation process, and to consult with OEA and WCB to make these determinations.”).

⁵⁴ 47 U.S.C. § 1752(h)(2).

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

In the Matter of

Thomas Barnes,
La Grande, Oregon

)
)
)
)
)

File No.: EB-FIELDWR-22-00033444
NAL/Acct No.: 202332030001
FRN: 0033398041

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 14, 2023

Released: March 15, 2023

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$80,000 against Thomas Barnes (Barnes) for operating an unauthorized radio station on 100.5 MHz in La Grande, Oregon. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act).¹ Pirate radio stations undermine the Commission's primary mission to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather and other dangers to the public.² Accordingly, Commission enforcement action in this area is essential.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act) which was subsequently codified as section 511 of the Communications Act.³ Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.⁴ Section 511 defines pirate radio as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."⁵ Part 15,

¹ 47 U.S.C. § 511.

² See *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

³ *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

⁴ 47 U.S.C. § 511(a)-(b); see 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,316,034 and 47 U.S.C. § 511(b) at \$115,802); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

among other requirements, states that unlicensed operators in the FM band must not transmit over a certain power limit.⁶ Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).⁷

B. Factual Background

1. Pre-PIRATE Act Investigation

3. According to Commission records, Barnes has been operating a pirate radio station in La Grande, Oregon, since at least 2018.⁸ On April 3, 2018, the Commission received a complaint regarding a pirate radio operator in eastern Oregon. On April 18, 2018, a field agent (Agent) from the Enforcement Bureau's (Bureau) Portland Field Office (Portland Office) began investigating the complaint and observed what appeared to be an unauthorized broadcast station operating on 92.3 MHz in La Grande, Oregon. Using direction-finding techniques, the Agent determined that the source of the signal of the unauthorized station was located at the former Barnes residence at the Orchard Motel, 2206 Adams Avenue, #8, La Grande, OR (Adams Avenue Site). The Agent measured the strength of the station's signal and determined that the transmissions on 92.3 MHz exceeded the limits for operation under part 15 of the Commission's rules.⁹ A review of Commission records reveals that no authorization exists for any FM broadcast station to operate at or near the Adams Avenue Site on any frequency at any time relevant to this NAL. After speaking to Barnes, the Agent identified Barnes as the operator of the station. Barnes then agreed to—and did—voluntarily surrender his transmitter to the Agent. On May 15, 2018, the Portland Office mailed Barnes a Notice of Unlicensed Operation (NOUO) relating to the unauthorized operation that the Agent observed on April 18, 2018.¹⁰ The NOUO notified Barnes that he operated an unauthorized radio station in violation of section 301 of the Act¹¹ and that he could be subject to severe penalties, including, but not limited to, substantial monetary fines, *in rem* seizure of the offending radio equipment, and criminal sanctions, including imprisonment.¹² Barnes did not respond to the NOUO.

(Continued from previous page) _____

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ 47 CFR § 15.203.

⁸ Barnes' Facebook account lists him as the Co-owner/CEO of Pirate Radio Eastern Oregon. *See* Barnes, Thomas Eugene (EasternOregonPirate), Facebook, <https://www.facebook.com/EasternOregonPirate> (last visited May 10, 2022). On July 27, 2018, Barnes, referring to himself as the Eastern Oregon Pirate, uploaded the first of several videos to his Facebook account announcing that he was currently operating a pirate station. *See id.* (July 27, 2018), <https://www.facebook.com/EasternOregonPirate/videos/688375931501308> (on file in EB-FIELDWR-18-00026591) (last visited May, 10 2022).

⁹ Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("µV/m") at three meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed part 15 transmitter.

¹⁰ Thomas Eugene Barnes, Notice of Unlicensed Operation (Portland Office, May 15, 2018) (NOUO), <https://www.fcc.gov/document/thomas-eugene-barnes-orchard-motel-la-grande-oregon-97850>.

¹¹ Prior to the enactment of section 511 of the Act, the Commission assessed forfeitures against pirate radio operators under section 301 of the Act. *See* 47 U.S.C. § 301.

¹² *Id.* The NOUO was mailed by both First Class and Certified mail. The certified mail for the NOUO was returned undelivered.

4. On April 10, 2019, the Commission received a second complaint stating that Barnes was again operating a pirate radio station in La Grande, Oregon. On May 15, 2019, an Agent from the Bureau's Portland Office began investigating the complaint and observed what appeared to be an unauthorized broadcast station operating on 92.3 MHz in La Grande, Oregon. Using direction-finding techniques, the Agent determined that the source of the signal of the unauthorized station was located at the Barnes residence at 2302 Jefferson Avenue, La Grande, Oregon (Jefferson Avenue Site). The Agent measured the strength of the station's signal and determined that the transmissions on 92.3 MHz exceeded the limits for operation under part 15 of the Commission's rules.¹³ A review of Commission records reveals that no authorization exists for any FM broadcast station to operate at or near the Jefferson Avenue Site on any frequency at any time relevant to this NAL. The Agent then spoke to Barnes, who agreed to—and did—voluntarily surrender another transmitter to the Agent. On July 12, 2019, the Bureau sent Barnes a second Notice of Unauthorized Operation.¹⁴ The second NOUO again notified Barnes that he was operating an unauthorized radio station in violation of section 301 of the Act and that he could be subject to severe penalties, including, but not limited to, substantial monetary fines, *in rem* seizure of the offending radio equipment, and criminal sanctions, including imprisonment.¹⁵ Barnes did not respond to the second NOUO.

2. PIRATE Act Investigation

5. The PIRATE Act, among other provisions, codified the definition of pirate radio,¹⁶ increased fines for pirate radio operators¹⁷ and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting,¹⁸ such as the owners or managers of property whose property is used for pirate radio broadcasting.

6. On March 11, 2022, the Commission received a third complaint that an unauthorized radio station was operating in La Grande, Oregon. On March 22, 2022, an Agent from the Bureau's Portland Office began investigating the complaint and observed what appeared to be an unauthorized broadcast station operating on 100.5 MHz in La Grande, Oregon. Using direction-finding techniques, the Agent determined that the source of the signal of the unauthorized station was located at the Barnes residence at the Jefferson Avenue Site. The Agent measured the strength of the station's signal and determined that the transmissions on 100.5 MHz exceeded the limits for operation under part 15 of the Commission's rules.¹⁹ Barnes' wife, Rebecca Barnes, voluntarily surrendered two transmitters to the Agent. The Agent then issued an on-scene Notice of Unauthorized Operation to Thomas Barnes, which was signed by his wife Rebecca Barnes.²⁰ The third NOUO notified Barnes that he was operating an unauthorized radio station and that he could be subject to severe penalties.²¹

¹³ See *supra* note 6.

¹⁴ Thomas Barnes, Notice of Unlicensed Operation (Portland Office, July 12, 2019), <https://www.fcc.gov/document/thomas-barnes-la-grande-oregon>.

¹⁵ *Id.* The second NOUO was mailed by both First Class and Certified mail. The certified mail for the second NOUO was returned undelivered.

¹⁶ 47 U.S.C. § 511(h).

¹⁷ 47 U.S.C. § 511(a)-(b).

¹⁸ See 47 U.S.C. § 511(a) (“Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000.”) (emphasis added).

¹⁹ See *supra* note 6.

²⁰ Barnes, Thomas Eugene, Notice of Unlicensed Operation (Portland Office, Mar. 22, 2022) (on file in EB-FIELDWR-22-00033444). The signature of Barnes' wife on the NOUO issued at the scene is indicia that Mr. Barnes operated the pirate radio station.

²¹ *Id.*

7. On April 8, 2022, just over two weeks after the Agent issued the third NOUO, Barnes uploaded a video to his public Facebook account stating that he was again operating his pirate station.²² Barnes stated in this video that he did not think the Commission could stop his unauthorized broadcasts unless it “locked him up.” On April 14, 2022, Barnes posted yet another video stating that he was “getting ready to go live on 100.5 FM.”²³ After conducting additional research, the Agent also discovered that, in the year prior to the start of the 2022 investigation, Barnes had uploaded over 30 videos to his public Facebook account in which he stated that he was the “Eastern Oregon Pirate of Pirate Radio Eastern Oregon” and that he was broadcasting live or was planning to broadcast live on 100.5 FM in La Grande, Oregon.²⁴

8. On April 12, 2022, the Commission, pursuant to its new authority granted by the PIRATE Act, sent a Notice of Illegal Pirate Radio Broadcasting (NIPRB) to the owner of the Jefferson Avenue Site where Barnes rents a space and transmits his pirate radio signal.²⁵ The NIPRB provided notice to the property owner, Kent Coppinger, that, under section 511(a) of the Act, persons or entities found to willfully and knowingly suffer (*i.e.*, permit) a third party to engage in pirate radio broadcasting on their property can face significant financial penalties.²⁶ Accordingly, the NIPRB notified and warned Coppinger that under the PIRATE Act the FCC may issue a fine of up to \$2,000,000 if the FCC determines that he continued to permit any individual or entity to engage in pirate radio broadcasting from any property that he owned or managed.²⁷ In response, the owner of the Jefferson Avenue site sent a copy of the NIPRB back to the Portland Office, including a hand-written signed statement by Barnes and his wife dated April 15, 2022.²⁸ The statement reads “Kent Coppinger, owner of Jefferson RV, has given us a copy of this letter from the FCC and has informed us that we are not allowed to run a radio station from his property and we agree to comply.”²⁹ On July 22, 2022, the Agent returned to La Grande Oregon. The Agent did not find any evidence that Barnes continued to operate his pirate radio station.

III. DISCUSSION

9. We find that Thomas Barnes apparently willfully and knowingly violated section 511 of the Act by operating a pirate radio station on 100.5 MHz on March 22, 2022.³⁰ An Agent observed Barnes’ pirate radio station operating at the Jefferson Avenue Site on March 22, 2022. The Agent also took field strength measurements and determined that the transmissions from the Jefferson Avenue Site on 100.5 MHz exceeded the limits for operation under part 15 of the Commission’s rules.³¹ Thus, the

²² See Barnes, Thomas Eugene (EasternOregonPirate), Facebook (Apr. 8, 2022), <https://www.facebook.com/EasternOregonPirate/videos/532658584960070> (last visited May 10, 2022) (on file in EB-FIELDWR-22-00033444).

²³ See Barnes, Thomas Eugene (EasternOregonPirate), Facebook (Apr. 14, 2022), <https://www.facebook.com/EasternOregonPirate/videos/357416139762101> (last visited May 10, 2022) (on file in EB-FIELDWR-22-00033444).

²⁴ See Barnes, Thomas Eugene (EasternOregonPirate), Facebook, https://www.facebook.com/EasternOregonPirate/videos_by (last visited May 10, 2022) (on file in EB-FIELDWR-22-00033444).

²⁵ See *Notice of Illegal Pirate Broadcasting*, Kent and Deanna Coppinger, Property Owners Jefferson RV Park, (Apr. 13, 2022) (NIPRB) (on file in EB-FIELDWR-22-00033444).

²⁶ See *id.*; 47 U.S.C. § 511.

²⁷ See NIPRB.

²⁸ See e-mail from Kent Coppinger, attachment (Apr. 15, 2022) (on file in EB-FIELDWR-22-00033444).

²⁹ *Id.*

³⁰ 47 U.S.C. § 511.

³¹ 47 CFR §§ 15.209(a), 15.239(b).

Commission finds that Barnes' actions on March 22, 2022 constituted pirate radio broadcasting in apparent violation of section 511 of the Act.³²

A. Proposed Forfeiture

10. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person “who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.”³³ In exercising our forfeiture authority, we 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.”³⁴ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.³⁵

11. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.³⁶ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$115,802 for each day during which the offense occurs, but not more than \$2,316,034.³⁷

12. Prior to enactment of the PIRATE Act, the Commission imposed a base forfeiture of \$10,000 for operation of a pirate radio station in violation of section 301 of the Act for each violation or each day of a continuing violation.³⁸ While the PIRATE Act did not set a base forfeiture amount, the primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.³⁹ Accordingly, we propose a base forfeiture of \$20,000 for Barnes' apparent willful and knowing violation of section 511 of the Act on March 22, 2022.⁴⁰ Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,⁴¹ we conclude that a significant upward adjustment is warranted. First, we find that Barnes' conduct was intentional. Barnes had been warned multiple times since 2018 that his conduct was illegal, but he nonetheless chose to continue to operate without authorization.⁴² We also find that Barnes showed an egregious disregard for Commission authority in connection with his pirate radio broadcasts, as exemplified in his April 8, 2022, video announcing his return to his illegal activities and declaring that he would have to be put in jail before he stopped his unauthorized broadcasts.⁴³ Last, we find that an upward adjustment is warranted based on Barnes

³² See 47 U.S.C. § 511.

³³ 47 U.S.C. § 511(a).

³⁴ 47 CFR § 1.80(b)(10).

³⁵ *Id.*, Table 4 to paragraph (b)(10).

³⁶ See 47 U.S.C. § 511(a)-(b); 47 CFR § 1.80 (b)(6); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,316,034); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

³⁷ See *id.*

³⁸ 47 CFR § 1.80(b).

³⁹ See S. Rep. No. 116-178, 1 (2019) (“The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.”).

⁴⁰ See 47 U.S.C. § 511. We note that had this been a continuing violation, we would have imposed a \$20,000 base forfeiture for each day of the continuing violation.

⁴¹ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁴² See NOUO and second NOUO, *supra*, notes 10 & 14.

repeated prior operation of a pirate radio station, as demonstrated by the documented March 2018 and April 2019 violations of section 301 of the Act, and the more than 30 videos that Barnes has posted since March 2021 documenting his pirate radio broadcasts (post-enactment of the PIRATE Act).⁴⁴ Consequently, we propose a \$60,000 upward adjustment for Barnes' apparent violation of section 511 of the Act. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Based on the facts of this case, we find none. After applying section 1.80 of the Commission's rules, and the statutory factors, and consistent with the *Forfeiture Policy Statement* we therefore propose a total monetary forfeiture of \$80,000 for which Barnes is apparently liable.⁴⁵

IV. CONCLUSION

13. We have determined that Barnes apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Barnes is apparently liable for a forfeiture of \$80,000.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Thomas Barnes is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Eighty Thousand Dollars (\$80,000) for willful and knowing violation of section 511 of the Act.⁴⁶

15. **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, Thomas Barnes **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 16 below.

16. In order for Thomas Barnes to pay the proposed forfeiture, Thomas Barnes shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, Thomas Barnes shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁴⁷

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⁴³ See Barnes, Thomas Eugene (EasternOregonPirate), Facebook (Apr. 8, 2022), <https://www.facebook.com/EasternOregonPirate/videos/3166862786920543> (last visited May 10, 2022) (on file in EB-FIELDWR-22-00033444).

⁴⁴ See Barnes, Thomas Eugene (EasternOregonPirate), Facebook, https://www.facebook.com/EasternOregonPirate/videos_by (last visited May 10, 2022) (on file in EB-FIELDWR-22-00033444).

⁴⁵ 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.

⁴⁶ 47 U.S.C. § 511.

⁴⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

- 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 159⁴⁸ or printed CORES form⁴⁹ 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).⁵⁰ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

17. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.⁵¹ 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.

18. 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.⁵² The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C.

⁴⁸ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁴⁹ 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>.

⁵⁰ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁵¹ See 47 CFR § 1.1914.

⁵² 47 CFR §§ 1.16, 1.80(g)(3).

20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 C.F.R. § 1.80(b)(10) support that result.

20. **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 Thomas Barnes at 2302 Jefferson Avenue, La Grande, Oregon 97850.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

In the Matter of	)	
	)	
César Ayora and Luis Angel Ayora	)	File No.: EB-FIELDNER-17-00023506
Queens, New York	)	NAL/Acct No.: 202332010001
	)	FRNs: 0033397985, 0033398017

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 14, 2023

Released: March 15, 2023

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$2,316,034 against César Ayora and Luis Angel Ayora (collectively, the Ayoras), jointly and severally, for operating an unauthorized radio station on 105.5 MHz in Queens, New York. The Ayoras appear to have jointly engaged in the longstanding illicit operation of an unauthorized radio station known as Radio Impacto 2. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act).¹ Pirate radio stations undermine the Commission's primary mission to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather and other dangers to the public.² Some of the most egregious pirate radio operations are run by individuals who have ignored prior enforcement actions by the Commission. This is one such case. As such, it merits the strongest possible enforcement measures to the fullest extent of the law.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.³ Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000 and not more than \$100,000 for each day during which such offense occurs.⁴ Section 511 defines pirate radio broadcasting

¹ 47 U.S.C. § 511.

² See *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

³ *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

⁴ 47 U.S.C. § 511(a)-(b); see 47 CFR 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,316,034 and 47 U.S.C. § 511(b) at \$115,802); *Amendment of Section 1.80(b) of* (continued....)

as “the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Federal Communications Commission (Commission), but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.”⁵ Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain power limit.⁶ Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).⁷

B. Factual Background

1. Pre-PIRATE Act Investigation

3. César and Luis Angel Ayora⁸ have operated a pirate radio station on 91.9 MHz and later 105.5 MHz, in Queens, New York, for years.⁹ The station’s website states that “[t]he brothers César and [Luis] Angel Ayora in September 2008 founded the first Ecuadorian FM radio station in New York City. . . . The station never sleeps, because a team of communication professionals are working for you 24 hours

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the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was set at \$151,005. *Acerome Jean Charles*, Notice of Apparent Liability, 34 FCC Rcd 12744 (2019).

⁵ 47 U.S.C. § 511(h).

⁶ 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

⁷ 47 CFR § 15.203.

⁸ Luis Angel Ayora also uses the name Angel Ayora. *See, e.g.*, Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (using the name Angel Ayora); César Ayora, *Radio Impacto 2 Entrevista Ecuavisa YouTube*, YouTube (July 30, 2012) <https://www.youtube.com/watch?v=MsSubPgAo1s> (interview with César and Luis Angel Ayora regarding Radio Impacto 2) (last visited Dec. 7, 2022) (using the name Angel Ayora); *see also* Ayora, Luis Angel (luisangel.ayora.3), Facebook, <https://www.facebook.com/luisangel.ayora.3/> (using the name Luis Angel Ayora).

⁹ *See* Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (describing the founding in 2008 and continued operation of the station by César Ayora and Luis Angel Ayora and the switch from 91.9 MHz to 105.5 MHz in 2016). During its pre-PIRATE Act investigation, the Commission was unaware of the involvement of César Ayora in the operation of Radio Impacto 2. However, in addition to the Radio Impacto 2 website, multiple sources confirm that the Ayoras operate Radio Impacto 2 together. *See, e.g.*, ONDA POSITIVA, *RADIO IMPACTO 2 César Ayora “El Sueño, Americano”*, YouTube (Dec. 24, 2021), <https://www.youtube.com/watch?v=0mT0317qZi0> (confirming that César Ayora has operated Radio Impacto 2 for 13 years) (last visited Nov. 3, 2022); ONDA POSITIVA, *Gerardo Morán DE FOTOGRAFO ! /Me dan posada en Radio Impacto 2 New York*, YouTube (Dec. 17, 2021), <https://www.youtube.com/watch?v=pQ5X3EnsMoo> (interview with César Ayora with a tour of the Radio Impacto 2 studio) (last visited Nov. 3, 2022); Lejos De Mi Patria, *Juanita Burbano entrevista a Angel & Cesar Ayora de La Radio 91.9fm 5c*, YouTube (July 30, 2012), <https://www.youtube.com/watch?v=vtii7HJV-pY> (interview confirming that César and Luis Angel Ayora operate Radio Impacto 2 together); César Ayora, *Radio Impacto 2 Entrevista Ecuavisa YouTube*, YouTube (July 30, 2012), <https://www.youtube.com/watch?v=MsSubPgAo1s> (interview with César and Luis Angel Ayora regarding Radio Impacto 2) (last visited Dec. 7, 2022); Ayora, Luis Angel (luisangel.ayora.3), Facebook, <https://www.facebook.com/luisangel.ayora.3/> (advertising Radio Impacto 2 105.5 and the Rockola.com program) (last visited Dec. 7, 2022); Ayora, César (ayora.cesar.1), Facebook, <https://www.facebook.com/ayora.cesar.1>, (stating that César Ayora works at Radio Impacto 2) (last visited Dec. 7, 2022).

a day. . . .”¹⁰ The station is known as Radio Impacto 2,¹¹ and Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the station identified itself on the air as Radio Impacto 2 on multiple occasions. The Commission first became aware of the Ayoras’ pirate radio station in 2013 when, in response to complaints, the Bureau issued three Notices of Unauthorized Operation (NOUOs) to Luis Angel Ayora.¹² The NOUOs stated that his unauthorized operation of the station was illegal, and that continued operation of it could result in further enforcement action. Each NOUO contained the directive that unlicensed operation of the radio station must be discontinued immediately.¹³ The Ayoras, however, did not discontinue operation. On May 29, 2014, in response to complaints, Agents from the New York Field Office (New York Office) located the source of radio transmissions on 91.9 MHz to an FM transmitter antenna at an apartment building at 41-15 Warren Street, Queens, New York (Warren Street site).¹⁴ The Agents took field strength measurements of the station’s signal and determined that it exceeded the limits for operation under part 15 of the Commission’s rules.¹⁵ Commission records indicated no authorization for any FM broadcast station to operate at or near the Warren Street site on any frequency during the pertinent time period. The building’s owner identified Luis Angel Ayora as the owner of the radio transmitter for the unauthorized station.¹⁶ The owner of the building then called Luis Angel Ayora, who came to the building to claim the equipment and admitted to the Agents that he owned and installed the equipment and operated the pirate radio station.¹⁷ The Agents then hand delivered another NOUO to Luis Angel Ayora and verbally warned him that operation of the unauthorized radio station violated the Act, must cease immediately, and could subject him to significant forfeitures.¹⁸ Despite these warnings, on January 13, 2015, in response to additional complaints of unauthorized operation, Agents from the New York Office determined that Radio Impacto 2 continued to operate above the part 15 power limits without authorization on 91.9 MHz in Queens New York.¹⁹ As a result, on April 14, 2015, the Bureau issued a Notice of Apparent Liability for Forfeiture (2015 NAL) against Luis Angel

¹⁰ See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (translated from Spanish “Los hermanos César y Angel Ayora en septiembre del 2008 fundaron la primera radio ecuatoriana en fm en la ciudad de New York. . . . La estación que nunca duerme, por que un equipo de profesionales de la comunicación están trabajando para usted las 24 horas. . . .”).

¹¹ See Radio Impacto 2, Objetivos Generales, <http://impactosatelital.com> (last visited Dec. 7, 2022).

¹² See *Angel Ayora*, Notice of Unlicensed Operation (New York Field Office, June 10, 2013), <https://www.fcc.gov/document/angel-ayora-queens-ny-2>; *Angel Ayora*, Notice of Unlicensed Operation (New York Field Office, July 12, 2013) <https://www.fcc.gov/document/angel-ayora-queens-ny-1>; *Angel Ayora*, Notice of Unlicensed Operation (New York Field Office, Aug. 1, 2013), <https://www.fcc.gov/document/angel-ayora-queens-ny-0>. At that time, the Bureau was not aware that César Ayora was also involved in the station’s operation. Subsequently, the Bureau determined that, based upon the pirate station’s own promotional materials, César Ayora co-founded and participated in station operations since 2008.

¹³ *Id.* (three NOUOs in 2013).

¹⁴ *Luis Angel Ayora, Queens New York*, Notice of Apparent Liability 30 FCC Rcd 3621, para. 2 (EB 2015) (2015 NAL).

¹⁵ Section 15.239 of the Commission’s rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter (“µV/m”) at three meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed part 15 transmitter.

¹⁶ 2015 NAL, 30 FCC Rcd at 3621, para. 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 3621-3622, para. 3.

Ayora for operating an unauthorized station.²⁰ The Bureau received no response to the 2015 NAL. On June 2, 2015, the Bureau issued a \$20,000 forfeiture order against Luis Angel Ayora for operating this unauthorized radio station.²¹ The Bureau received no response to the order, and the forfeiture was never paid.²²

4. The Ayoras continued to operate their pirate radio station. From July 21, 2015, to October 17, 2016, Agents from the New York Office, using direction-finding techniques, located Radio Impacto 2's signal seven times and each time found that the signal exceeded the part 15 power limits for operating without a license.²³ Commission records indicated no authorization for any FM broadcast station to operate at or near any of the transmission locations on any frequency during the pertinent time period. Consequently, on November 17, 2016, the U.S. Marshals Service, assisted by a multi-agency team comprised of FCC Field Agents, FCC Field Counsel, and members of the NY/NJ Fugitive Task Force, executed a warrant *in rem* issued by the U.S. District Court of the Eastern District of New York and seized the equipment that the Ayoras used to operate Radio Impacto 2 from its studio located at 91-16 43rd Avenue, Elmhurst NY, 11373.²⁴

5. The seizure of their equipment by federal agents did not deter the Ayoras from continuing to operate their pirate radio station. On March 23, 2017, acting on a complaint regarding a pirate radio operator in Queens, New York, Agents from the New York Office began investigating and observed Radio Impacto 2 operating on 91.9 MHz in Queens, New York. From March 23, 2017 to January 11, 2020, Agents from the New York Office located Radio Impacto 2's signal 11 times at multiple locations,²⁵ and each time found that it exceeded the part 15 power limit.²⁶ Commission records indicated no authorization for any FM broadcast station to operate at any of these locations on any frequency during the pertinent time period. COVID-19 travel restrictions prevented further onsite inspections until 2022.²⁷

2. PIRATE Act Investigation

6. The PIRATE Act, among other provisions, codified the definition of pirate radio,²⁸ increased fines for pirate radio operators,²⁹ and granted the Commission new enforcement authority to

²⁰ *Id.* at 3621.

²¹ *Luis Angel Ayora, Queens New York*, Forfeiture Order, 30 FCC Rcd 6033 (EB 2015).

²² The Department of Justice declined to pursue collection of the forfeiture. See letter from Robert L. Capers, U.S. Att'y to Off. of the Gen. Couns., Fed. Comm'n Comm'n (Apr. 7, 2016) (on file EB-FIELDNER-17-00023506).

²³ 47 CFR § 15.239(b). On July 21, 2015; August 31, 2015; February 20, 2016; and July 5, 2016, Agents located the station transmitting from 91-16 43rd Avenue, Queens, New York. On August 26, 2015, Agents located the station transmitting from 95-09 41st Avenue, Queens, New York.

²⁴ See 47 U.S.C. § 510 (granting authority to the office of the United States Attorney General to seize equipment used in violation of sections 301 and 302 of the Act). Radio Impacto 2 continues to operate from this location. See Radio Impacto 2, Contactos, <http://impactosatelital.com/contactos> (last visited Dec. 7, 2022).

²⁵ The transmission sites of Radio Impacto 2's signal included 35-20 97th Street, Queens, New York; 97-01 Northern Boulevard, Queens, New York; 96-10 37th Avenue, Queens, New York; and 37-29 104th Street, Queens, New York.

²⁶ 47 CFR § 15.203.

²⁷ Agents were able to take measurements indicating the station was still on the air on November 14, 2020 and January 16, 2021.

²⁸ 47 U.S.C. § 511(h).

²⁹ *Id.* § 511(a)-(b).

assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.³⁰

7. In 2022, the Ayoras continued to operate Radio Impacto 2,³¹ including both Luis Angel Ayora³² and César Ayora³³ hosting their own weekly on-air programs. On March 26, 2022, an Agent from the New York Office resumed the long-standing investigation and observed Radio Impacto 2 operating on 105.5 MHz in Queens, New York.³⁴ Using direction-finding techniques, the Agent determined that the source of the signal of the unauthorized station was located at a multi-family dwelling at 95-09 41st Avenue, Queens, New York (41st Avenue Site). The Agent measured the strength of the station's signal and determined that the transmissions on 105.5 MHz exceeded the limits for operation under part 15 of the Commission's rules.³⁵ A review of Commission records reveals that no authorization exists for any FM broadcast station to operate at or near the 41st Avenue Site on any frequency at any time relevant to this NAL. The Agent also took photographs of the antenna used to broadcast the signal and determined that it used a standard coaxial connector and was not compliant with the part 15 rules.³⁶

8. On June 23, 2022, August 29, 2022, and September 24, 2022, Agents from the New York Office again found Radio Impacto 2 operating on 105.5 MHz. Using direction-finding techniques, the Agents determined that Radio Impacto 2 continued to transmit from the 41st Avenue Site. The Agents measured the strength of the station's signal and determined that the transmissions on 105.5 MHz exceeded the limits for operation under part 15 of the Commission's rules.³⁷ Commission records reflect

³⁰ See 47 U.S.C. § 511(a) (“Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than \$2,000,000.”) (emphasis added).

³¹ See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022) (describing the founding and continued operation of the station by César Ayora and Luis Angel Ayora).

³² See Radio Impacto 2, <http://impactosatelital.com> (last visited Dec. 7, 2022) (advertising the Rockola.com program hosted by Luis Angel Ayora). Both Luis Angel Ayora and Radio Impacto 2 have posted videos of the Rockola.com program on their respective Facebook accounts in the past year. See, e.g., Ayora, Luis Angel (luisangel.ayora.3), Facebook (Apr. 22, 2022), <https://www.facebook.com/luisangel.ayora.3/videos/1021132605449783> (last visited Dec. 7, 2022); Radio Impacto 2 (impacto2fm), Facebook, <https://www.facebook.com/impacto2fm/videos> (last visited Dec. 7, 2022). Videos of the Rockola.com program were posted on the Radio Impacto 2 Facebook account on April 22, 2022, <https://www.facebook.com/impacto2fm/videos/3187789138101870>; September 16, 2022, <https://www.facebook.com/impacto2fm/videos/1162472371291057>; October 28, 2022, <https://www.facebook.com/impacto2fm/videos/1200687210484441>; and November 4, 2022, <https://www.facebook.com/impacto2fm/videos/2080853242125524>.

³³ See Ayora, César (ayora.cesar.1), Facebook (Oct. 21, 2022) (<https://www.facebook.com/ayora.cesar.1/posts/pfbid0xWU6myEfzZ4a52Ga6fyoHZfVpaTMkG2kXxSy245jAJnZduXDfN1ArwsskEQQ2q4ol>) (advertising the weekly Sentimientos program hosted by César Ayora) (last visited Dec. 7, 2022); Radio Impacto 2 (impacto2fm), Facebook (Sept. 25, 2022) <https://www.facebook.com/impacto2fm/photos/10160577830749824> (advertising the weekly Sentimientos program hosted by César Ayora on 105.5 FM) (last visited Sept. 1, 2022).

³⁴ According to the Radio Impacto 2 website, the Ayoras started transitioning operation on 91.9 MHz to 105.5 MHz in 2016. See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022); see also ECUAMAN TV, *ENTREVISTA A CESAR AYORA IMPACTO TV*, YouTube (Dec. 5, 2017) <https://www.youtube.com/watch?v=E96f4aNCfz0> (interview with César Ayora stating that Radio Impacto 2 operated on 91.9 MHz for nine years before changing to 105.5 MHz) (last visited Dec. 7, 2022).

³⁵ 47 CFR §§ 15.209(a), 15.239(b).

³⁶ *Id.* § 15.203 (“[T]he use of a standard antenna jack or electrical connector is prohibited.”).

³⁷ *Id.* §§ 15.209(a), 15.239(b).

no authorization for any FM broadcast station to operate at or near the 41st Avenue Site on any frequency at any time relevant to this NAL. The Agents took additional photographs of the antenna used to broadcast the signal on each of these dates and determined that it was the same non-part 15 compliant antenna used to broadcast the signal since March 26, 2022.³⁸

9. Agents also discovered that Radio Impacto 2 advertises four ongoing weekly programs on its web site: (1) “Rockola.com” is co-hosted by Luis Angel Ayora and is broadcast every Friday; (2) “Analisis Sin Censura” is broadcast every Saturday; (3) “Sentimentos” hosted by César Ayora is broadcast every Sunday;³⁹ and (4) “Impacto Deportivo” is also broadcast every Sunday.⁴⁰ Thus, according to the illegal station’s own advertising, pirate radio broadcasting occurred at least an additional 77 times between the March 26, 2022 observation and the September 24, 2022 observation.⁴¹ Moreover, as previously discussed, Agents determined that the same non-part 15 compliant antenna was used by the Ayoras to broadcast just before and after this period.⁴²

III. DISCUSSION

10. We find that the Ayoras apparently willfully and knowingly violated section 511 of the Act⁴³ by operating a pirate radio station on 105.5 MHz from March 26, 2022 to September 24, 2022. On March 26, 2022, June 23, 2022, August 29, 2022, and September 24, 2022, an Agent observed the Ayoras’ pirate radio station, Radio Impacto 2, operating at the 41st Avenue Site. Agents also took field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission’s rules.⁴⁴ In addition, the Ayoras advertised Radio Impacto 2 programming on Fridays, Saturdays, and Sundays for the 25 weeks between the March 26, 2022 and the September 24, 2022 observations, totaling at least 77 apparent violations.⁴⁵ Agents determined that the antenna broadcasting all transmissions from the 41st Avenue Site from the March 26, 2022 observation to the September 24, 2022 observation was not compliant with the part 15 requirements.⁴⁶ Therefore, all transmissions from the 41st Avenue Site during this period failed to comply with part 15 of the Commission’s rules.⁴⁷ Commission records indicate no authorization for any FM broadcast station to

³⁸ 47 CFR § 15.203.

³⁹ See Ayora, César (ayora.cesar.1), Facebook (Oct. 21, 2022), (<https://www.facebook.com/ayora.cesar.1/posts/pfbid0xWU6myEfzZ4a52Ga6fyoHZfVpaTMkG2kXxSy245jAJnZduXDfN1ArwsskEQQ2q4ol>) (advertising the weekly Sentimentos program hosted by César Ayora) (last visited Dec. 7, 2022); Radio Impacto 2 (impacto2fm), Facebook (Sept. 25, 2022) <https://www.facebook.com/impacto2fm/photos/10160577830749824> (advertising the weekly Sentimentos program hosted by César Ayora on 105.5 FM) (last visited Sept. 1, 2022).

⁴⁰ Radio Impacto 2, <http://impactosatelital.com/> (last visited Dec. 7, 2022).

⁴¹ The on-scene observations made on June 23, which was a Monday, and August 29, a Thursday, are in addition to the violations established by Radio Impacto 2’s advertised programming.

⁴² See *supra* paras. 7-8.

⁴³ 47 U.S.C. § 511.

⁴⁴ 47 CFR §§ 15.209(a), 15.239(b); see also 47 U.S.C. § 511(h) (stating that pirate radio broadcasting “does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations”).

⁴⁵ See *supra* para. 9.

⁴⁶ 47 CFR § 15.203.

⁴⁷ *Id.*; see also 47 U.S.C. § 511(h) (stating that pirate radio broadcasting “does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations”).

operate at or near any of the Radio Impacto 2 transmission sites at any time relevant to the violations discussed in this NAL.

11. Considering the totality of the circumstances and facts before us, including the multiple violations documented during the pre-PIRATE Act investigations on each day of the week, the numerous apparent violations during the PIRATE Act investigation, including advertised weekend programming, the non-Part 15 compliant antenna used to broadcast the Radio Impacto 2 signal, the Radio Impacto 2 website stating that the station operates 24 hours a day,⁴⁸ and an interview with Luis Angel Ayora in which he admitted that the station operates on workdays after 5:00 pm,⁴⁹ we find that the Ayoras operated a pirate radio station and apparently willfully and knowingly did or caused pirate radio broadcasting on each day between March 26, 2022 and September 24, 2022, resulting in a total of 184 days of apparent violations. Accordingly, the Commission finds that the Ayoras' actions—conservatively,⁵⁰ on a total of 184 days—constituted pirate radio broadcasting in apparent violation of section 511 of the Act.⁵¹

A. Joint and Several Liability

12. As discussed above, we find that the Ayoras are each apparently liable for willfully and knowingly doing or causing pirate radio broadcasting under section 511. The Commission has found in previous enforcement cases that joint and several liability is warranted where more than one party was responsible for a particular violation.⁵² We find that such joint and several liability is appropriate here, in light of the Ayoras' apparent support of and participation in the unauthorized station at issue.

B. Proposed Forfeiture

13. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person that “who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.”⁵³ In exercising our forfeiture authority, we 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.”⁵⁴ We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.⁵⁵

⁴⁸ See Radio Impacto 2, Quienes Somos, <http://impactosatelital.com/noticias> (last visited Dec. 7, 2022).

⁴⁹ See Lejos De Mi Patria, *Juanita Burbano entrevista a Angel & Cesar Ayora de La Radio 91.9fm 5c*, YouTube (July 30, 2012) <https://www.youtube.com/watch?v=vtii7HJV-pY> (last visited Dec. 7, 2022).

⁵⁰ We note that the advertising for the weekly programming is still active on the Radio Impacto 2 website indicating continued operation past the September 24, 2022 observation. See Radio Impacto 2, <http://impactosatelital.com/> (last visited Dec. 7, 2022).

⁵¹ 47 U.S.C. § 511(a), (h).

⁵² *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, FL*, Forfeiture Order, 33 FCC Rcd 6852 (2018) *Telseven, LLC and Patrick B. Hines*, Forfeiture Order, 31 FCC Rcd 1639 (2016); *Scott Malcolm*, Forfeiture Order, 31 FCC Rcd 1652 (2016). Such liability “may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation.” *Andre Alleyne, Jesse White*, Forfeiture Order, 26 FCC Rcd 10372, 10374, para. 8 (EB 2011).

⁵³ 47 U.S.C. § 511(a).

⁵⁴ 47 CFR § 1.80(b)(10).

⁵⁵ *Id.*

14. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.⁵⁶ Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than \$115,802 for each day during which the offense occurs, but not more than \$2,316,034.⁵⁷

15. Prior to the enactment of the PIRATE Act, the Commission imposed a base forfeiture of \$10,000 for operation of a pirate radio station in violation of section 301 of the Act for each violation or each day of a continuing violation.⁵⁸ While the PIRATE Act did not set a base forfeiture amount, the primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.⁵⁹ Accordingly, we propose a base forfeiture of \$20,000 (or twice the prior base forfeiture level for pirate radio violations) for each of the 184 days that the Ayoras apparently willfully and knowingly violated section 511 of the Act for a total proposed base forfeiture of \$3,680,000.⁶⁰

16. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,⁶¹ we conclude that a significant upward adjustment is warranted. First, we find that the Ayoras' conduct was intentional. The Ayoras have been warned that their conduct was illegal, including having their equipment seized by the U.S. Marshals Service,⁶² but, nonetheless, the Ayoras chose to continue to operate Radio Impacto 2 in violation of the law.⁶³ Second, we find that an upward adjustment is warranted based on the Ayoras' history of prior violations of the Act discovered by Commission Agents from 2013 to 2020.⁶⁴ Based on the severity of the facts underlying these factors, we propose the maximum penalty of \$115,802⁶⁵ for each day of the 184 days during which the Ayoras operated their pirate radio station in 2022 for a total penalty of \$21,307,568. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. Finally, we reduce the proposed penalty from \$21,307,568 to \$2,316,034 based on the statutory limits imposed by section 511(a) of the Act.⁶⁶ After applying section 1.80 of the Commission's

⁵⁶ 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

⁵⁷ 47 U.S.C. § 511(a)-(b); see 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at \$2,316,034 and 47 U.S.C. § 511(b) at \$115,802); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

⁵⁸ 47 CFR § 1.80(b).

⁵⁹ See S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

⁶⁰ See 47 U.S.C. § 511.

⁶¹ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10).

⁶² See *supra* para. 4. Luis Angel Ayora also received multiple NOUOs and the Commission issued a Forfeiture Order against him for \$20,000 in 2015 for operation of a pirate radio station. See *supra* para. 3; *Luis Angel Ayora, Queens New York*, Forfeiture Order, 30 FCC Rcd 6033 (EB 2015).

⁶³ See *supra* paras. 5, 7-9.

⁶⁴ See *supra* paras. 3-5; 47 U.S.C. § 301.

⁶⁵ 47 U.S.C. § 511(a); see 47 CFR § 1.80(b)(6); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 22-1356, 2022 WL 18023008, at *5 (EB Dec. 23, 2022) (setting the current inflation adjusted statutory daily maximum for a violation of 47 U.S.C. § 511(a) at \$115,802); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, we therefore propose a total monetary forfeiture of \$2,316,034 for which the Ayoras are apparently jointly and severally liable.⁶⁷

IV. CONCLUSION

17. We have determined that César Ayora and Luis Angel Ayora apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, César Ayora and Luis Angel Ayora are apparently jointly and severally liable for a forfeiture of \$2,316,034.

V. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, César Ayora and Luis Angel Ayora are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Two Million Three Hundred Sixteen Thousand and Thirty-four Dollars (\$2,316,034) for willful and knowing violation of section 511 of the Act.⁶⁸

19. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, César Ayora and Luis Angel Ayora **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22 below.

20. In order for César Ayora and Luis Angel Ayora to pay the proposed forfeiture, César Ayora and Luis Angel Ayora shall notify the Office of the Field Director at field@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, César Ayora and Luis Angel Ayora shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁶⁹

- 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 159⁷⁰ or printed CORES form⁷¹ 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

(Continued from previous page) —————

⁶⁶ 47 U.S.C. § 511(a). Section 511(a) limits the maximum forfeiture for pirate radio broadcasting to \$2,000,000 which has subsequently been adjusted for inflation to \$2,316,034. *See supra*. note 4.

⁶⁷ 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.

⁶⁸ 47 U.S.C. § 511.

⁶⁹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

⁷⁰ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁷¹ 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>.

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).⁷² 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/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/core/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.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.⁷³ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.⁷⁴ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally

⁷² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁷³ See 47 CFR § 1.1914.

⁷⁴ 47 CFR §§ 1.16, 1.80(f)(3).

accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 CFR § 1.80(b)(10) support that result.

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to César Ayora and Luis Angel Ayora at the Radio Impacto 2 studio at 91-16 43rd Avenue Elmhurst NY, 11373.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

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

SIXTH REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 16, 2023

Released: March 17, 2023

Comment Date: 30 days after publication in the Federal Register

Reply Comment Date: 60 days after publication in the Federal Register

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND	4
A. The STIR/SHAKEN Caller ID Authentication Framework	4
B. Fifth Further Notice of Proposed Rulemaking	11
III. SIXTH REPORT AND ORDER	14
A. Strengthening the Intermediate Provider Authentication Obligation	15
1. Requiring the First Intermediate Provider to Authenticate Unauthenticated Calls	15
2. Applicable STIR/SHAKEN Standards for Compliance	21
3. Compliance Deadlines	27
B. Mitigation and Robocall Mitigation Database Filing Obligations	28
1. Applying the “Reasonable Steps” Mitigation Standard to All Providers	29
2. Expanded Robocall Mitigation Database Filing Obligations	36
C. Enforcement	53
1. Per Call Maximum Forfeitures	54
2. Provider Removal from the Robocall Mitigation Database	56
3. Expedited Removal Procedure for Facially Deficient Filings	59
4. Consequences for Continued Violations	65
5. Other Enforcement Matters	74
D. STIR/SHAKEN Obligations of Satellite Providers	76
E. Differential Treatment of International Roaming Traffic	83
F. Summary of Cost Benefit Analysis	86
G. Legal Authority	90
IV. SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING	97
A. Third-Party Caller ID Authentication	97
B. Eliminating the Implementation Extension for Providers Unable to Obtain an SPC Token	107
C. Legal Authority	109
D. Digital Equity and Inclusion	111
V. PROCEDURAL MATTERS	112
VI. ORDERING CLAUSES	122
APPENDIX A—FINAL RULES	
APPENDIX B—FINAL REGULATORY FLEXIBILITY ANALYSIS	
APPENDIX C—INITIAL REGULATORY FLEXIBILITY ANALYSIS	

I. INTRODUCTION

1. Protecting Americans from the consequences of unwanted and illegal robocalls remains the Commission's top consumer protection priority. We receive more complaints about unwanted calls, including illegal robocalls, than any other issue, with approximately 119,000 complaints submitted in 2022 alone.¹ The Federal Trade Commission (FTC) reports that 36% of the fraud reports that it received in 2021 had a phone call as the contact method, with approximately \$692 million defrauded from consumers due to these calls.² That amount is a fraction of the \$13.5 billion that the Commission has estimated is lost by consumers due to illegal robocalls,³ which does not account for the non-quantifiable losses suffered by consumers such as lost time and eroded confidence in the nation's telephone network.⁴

2. The Commission has worked diligently to combat the scourge of robocalls on multiple fronts.⁵ One key component in that fight is the STIR/SHAKEN caller ID authentication framework, which protects consumers from illegally spoofed robocalls by verifying that the caller ID information transmitted with a particular call matches the caller's telephone number.⁶ While the caller ID authentication technology used in the STIR/SHAKEN framework is effective as designed,⁷ its overall success in curtailing illegally spoofed robocalls depends on broad implementation by providers.

¹ The Commission received approximately 193,000 such complaints in 2019, 157,000 in 2020, 164,000 in 2021, and 119,000 in 2022. FCC, *Consumer Complaint Data Center*, <https://www.fcc.gov/consumer-help-center-data> (last visited Mar. 14, 2023).

² FTC, *Consumer Sentinel Network Data Book 2021* at 12 (2022), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf.

³ 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, 3263, paras. 47-48 (2020) (*First Caller ID Authentication Report and Order and Further Notice*).

⁴ See *id.*

⁵ For example, in enforcement actions, the Commission has taken action to mitigate the impact of robocalls associated with student loan debt and auto warranty scams. See *Urth Access, LLC*, File No. EB-TCD-22-00034232, Order, DA 22-1271 (EB Dec. 8, 2022), <https://docs.fcc.gov/public/attachments/DA-22-1271A1.pdf> (directing all U.S.-based voice service providers to take immediate steps to mitigate suspected illegal student loan-related scam robocall traffic); *Sumco Panama SA et al.*, Notice of Apparent Liability for Forfeiture, FCC 22-99, at 16, 32, paras. 36, 72 (Dec. 23, 2022) (*Sumco NAL*) (proposing a forfeiture of \$299,997,000 against providers associated with auto warranty scam robocalls). In October 2022, the Enforcement Bureau adopted orders to begin the process of removing seven providers from the Robocall Mitigation Database for failing to identify steps taken to avoid serving as the origination point of illegal robocall traffic. Press Release, Federal Communications Commission, FCC Plans to Remove Companies from Key Database for Non-Compliance with Anti-Robocall Rules (Oct. 3, 2022), <https://www.fcc.gov/document/fcc-remove-companies-robocall-database-non-compliance>. The FCC has also entered into Memoranda of Understanding with 44 state jurisdictions, the District of Columbia, and Guam to establish critical information sharing and cooperation regarding robocalls. See FCC, *State Robocall Investigation Partnerships*, <https://www.fcc.gov/fcc-state-robocall-investigation-partnerships> (last updated Feb. 17, 2023); Press Release, Federal Communications Commission, FCC Chairwoman and Illinois Attorney General Announce Robocall Enforcement Partnership (Feb. 17, 2023), <https://docs.fcc.gov/public/attachments/DOC-391161A1.pdf>.

⁶ *Call Authentication Trust Anchor*, WC Docket No. 17-97, Fourth Report and Order, 36 FCC Rcd 17840, para. 1 (2021) (*Small Provider Order*). Call "spoofing" is a practice that involves falsifying caller ID information in order to trick unsuspecting Americans into thinking that calls are trustworthy because the caller ID information appears as if the call came from a neighbor or a familiar or reputable source. See *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, para. 1 (2021).

⁷ FCC, *Triennial Report on the Efficacy of the Technologies Used in the STIR/SHAKEN Caller ID Authentication Framework* at 9-11 (Dec. 30, 2022), <https://www.fcc.gov/document/triennial-report-efficacy-stirshaken> (*Triennial STIR/SHAKEN Report*).

Accordingly, in this *Sixth Report and Order*, we continue to strengthen and expand caller ID authentication requirements in the STIR/SHAKEN ecosystem by requiring non-gateway intermediate providers that receive unauthenticated calls directly from an originating provider to use STIR/SHAKEN to authenticate those calls.

3. Further, with this *Sixth Report and Order*, we expand robocall mitigation requirements for all providers, including those that have not yet implemented STIR/SHAKEN because they lack the necessary infrastructure or are subject to an implementation extension. We empower the Enforcement Bureau with new tools and penalties to hold providers accountable for failing to comply with our rules. We also define the STIR/SHAKEN obligations of satellite providers. Finally, we adopt a *Sixth Further Notice of Proposed Rulemaking* to seek comment on additional measures that may strengthen and expand the Commission's caller ID authentication regime and stem the tide of illegally spoofed robocalls.

II. BACKGROUND

A. The STIR/SHAKEN Caller ID Authentication Framework

4. The STIR/SHAKEN caller ID authentication framework⁸ protects consumers from illegally spoofed robocalls by enabling authenticated caller ID information to securely travel with the call itself throughout the entire call path.⁹ The Commission, consistent with Congress's direction in the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act,¹⁰ adopted rules requiring voice service providers¹¹ to implement STIR/SHAKEN in the IP portions of their voice networks by June 30, 2021,¹² subject to certain exceptions.¹³

⁸ The STIR/SHAKEN framework is a set of technical standards and protocols that enable providers to authenticate and verify caller ID information transmitted with Session Initiation Protocol (SIP) calls. A working group of the Internet Engineering Task Force (IETF) called the Secure Telephony Identity Revisited (STIR) developed several protocols for authenticating caller ID information. The Alliance for Telecommunications Industry Solutions (ATIS), in conjunction with the SIP Forum, produced the Signature-based Handling of Asserted information using toKENs (SHAKEN) specification, which standardizes how the protocols produced by STIR are implemented across the industry. See *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1862-63, para. 7 (2020) (*Second Caller ID Authentication Report and Order*).

⁹ See *id.* at 1862, para. 6.

¹⁰ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105 (2019) (codified in 47 U.S.C. § 227b) (TRACED Act).

¹¹ Because the TRACED Act defines "voice service" in a manner that excludes intermediate providers, our authentication and Robocall Mitigation Database rules use "voice service provider" in this manner. See 47 U.S.C. § 227b(a)(2)(A); 47 CFR § 64.6300(n) (defining voice service as "any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end-user using resources from the North American Numbering Plan or any successor"). Our rules in 47 CFR § 64.1200, many of which the Commission adopted prior to adoption of the TRACED Act, use a definition of "voice service provider" that includes intermediate providers. In that context, use of the TRACED Act definition of "voice service" would create inconsistency with our existing rules. See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221, 15222 n.2 (2020) (*Fourth Call Blocking Order*). To avoid confusion, for purposes of this item, we use the term "voice service provider" consistent with the TRACED Act definition and where discussing caller ID authentication or the Robocall Mitigation Database. In all other instances, we use "provider" and specify the type of provider as appropriate. Unless otherwise specified, we mean any provider, regardless of its position in the call path.

¹² 47 CFR § 64.6301; *First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3252, para. 24.

¹³ 47 CFR §§ 64.6304, 64.6306; see also *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1876-83, paras. 36-51.

5. The STIR/SHAKEN framework consists of two components: (1) the technical process of authenticating and verifying caller ID information; and (2) the certificate governance process that maintains trust in the caller ID authentication information transmitted along with a call.¹⁴ The first component relies on public key cryptography to securely transmit the information that an originating voice service provider knows about the caller and its relationship to the phone number it is using along with the call itself, allowing the terminating voice service provider to verify the information on the other end.¹⁵ This encrypted information is contained in a unique part of the SIP message known as the “Identity” header field.¹⁶ After the originating voice service provider authenticates this caller ID information for a particular call and adds this information, it travels along with the call from the originating voice service provider, through any intermediate providers, and then to the terminating voice service provider.¹⁷ When the terminating voice service provider receives the call with the Identity header attached, it can decrypt it, verify the caller ID information, and then use that information, along with other information, to protect its subscribers from unwanted and illegal calls.¹⁸

6. The second component relies on digital certificates issued to a provider through a neutral governance system to maintain trust and accountability among providers.¹⁹ The provider first obtains a Service Provider Code (SPC) token from the STIR/SHAKEN Policy Administrator and then presents that token to a STIR/SHAKEN Certificate Authority to obtain a certificate, which states, in essence, that the provider is the entity it claims to be and that it has the right to authenticate the caller ID information.²⁰ This system is overseen by a Governance Authority—a role filled by an entity called the Secure Telephone Identity Governance Authority²¹—which establishes the policies and procedures regarding how providers may acquire and maintain certificates.²² The Policy Administrator applies the rules set by the Governance Authority,²³ and third-party Certification Authorities (themselves subject to Policy Administrator approval)²⁴ issue the digital certificates to providers.²⁵ This robust system of checks and

¹⁴ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1862-63, para. 7.

¹⁵ *Id.* at 1863, para. 8.

¹⁶ *Id.*

¹⁷ *See id.*

¹⁸ *See First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3244-45, para. 6. For example, caller ID authentication information may be incorporated with other analytics to determine whether a call should be blocked under our existing safe harbors for call blocking. *See* 47 CFR § 64.1200(k)(3), (11).

¹⁹ *First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3246, para. 9.

²⁰ *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1864, para. 11.

²¹ *Id.* at 1864, para. 11; *see also* Secure Telephone Identity Governance Authority (STI-GA), *STI Governance Authority*, <https://sti-ga.atis.org> (last visited Mar. 14, 2023).

²² *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1864, para. 11.

²³ *First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3246, para. 10. The role of Policy Administrator is currently held by iconectiv. *See* iconectiv, *Industry Players*, <https://authenticate.iconectiv.com/industry-players> (last visited Mar. 14, 2023).

²⁴ *See First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3246, para. 10. The Policy Administrator has approved 9 certification authorities. *See* iconectiv, *Approved Certification Authorities*, <https://authenticate.iconectiv.com/approved-certification-authorities> (last visited Mar. 14, 2023).

²⁵ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1864, para. 11. Under the current Governance Authority rules, a provider must meet certain requirements to receive a certificate. *See* STI-GA, Policy Decision Binder Version 4.1, Policy Decision 001: SPC Token Access Policy Version 1.2, at 5 (Oct. 29, 2021), <https://sti-ga.atis.org/wp-content/uploads/sites/14/2022/12/221025-STIGA-Board-Policy-Decision-Binder-v4-1-Final-1.pdf>. To obtain a token, the Governance Authority policy requires that 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] (continued....)

balances ensures that providers can trust one another based on the certificates transmitted along with STIR/SHAKEN-authenticated calls.

7. The Commission requires voice service providers subject to a STIR/SHAKEN implementation extension—including facilities-based small voice service providers²⁶ and voice service providers with non-IP technology—to adopt and implement robocall mitigation practices in lieu of caller ID authentication.²⁷ To comply with this requirement, mitigation programs must include “detailed practices that can reasonably be expected to significantly reduce” either the carrying and processing (for gateway providers) or the origination (for voice service providers) of illegal robocalls.²⁸ The provider must “comply with the practices its plan requires,” and its program will be deemed insufficient if it “knowingly or through negligence” carries or processes (for gateway providers) or originates (for voice service providers) calls for illegal robocall campaigns.²⁹ Providers subject to an implementation extension must commit to responding “fully and in a timely manner to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocalls that use its service to originate calls.”³⁰ In adopting this requirement, the Commission explained that, if it determined that its standards-based approach to mitigation was not sufficient, it would “not hesitate to revisit the obligations we impose through rulemaking at the Commission level.”³¹

8. Voice service providers were required, by June 30, 2021, to submit a certification to the Robocall Mitigation Database stating whether they had implemented STIR/SHAKEN on all or part of their networks, or not at all, and, if they had not fully implemented STIR/SHAKEN, describe their robocall mitigation program and “[t]he specific reasonable steps the voice service provider has taken to

(Continued from previous page)

(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).” *Id.*

²⁶ Non-facilities-based small voice service providers were required to fully implement STIR/SHAKEN in the IP portions of their networks by June 30, 2022, and “facilities-based” providers have been granted an implementation extension until June 30, 2023. See 47 CFR § 64.6304(a)(1) (providing an extension of the implementation deadline for small voice service providers); *id.* § 64.6304(a)(1)(i) (limiting the extension for non-facilities-based small voice service providers to June 30, 2022).

²⁷ 47 CFR §§ 64.6304, 64.6305; see also *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1876-83, 1897-907, paras. 36-51, 74-94.

²⁸ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78 (obligation for voice service providers); see also *Advanced Methods to Target and Eliminate Unlawful Robocalls*, *Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order, Fifth Report and Order, Order on Reconsideration, Order, Seventh Further Notice of Proposed Rulemaking, Fifth Further Notice of Proposed Rulemaking, FCC 22-37, at 43-44, para. 103 (2022) (obligation for gateway providers) (*Gateway Provider Order* or *Fifth Caller ID Authentication Further Notice*).

²⁹ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78 (obligation for voice service providers); *Gateway Provider Order* at 44, para. 103 (obligation for gateway providers).

³⁰ 47 CFR § 64.6305(a)(2). Congress required the Commission to select a single consortium to “conduc[t] private-led efforts to trace back the origin of suspected unlawful robocalls.” TRACED Act § 13(d)(1). Pursuant to this directive, the Commission’s Enforcement Bureau selected the Industry Traceback Group (ITG) as the industry traceback consortium. See *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 35 FCC Rcd 7886, 7889, para. 10 (EB 2020). All providers, regardless of whether they are subject to an implementation extension, are currently required to respond to traceback requests from the Commission, civil and criminal law enforcement, and the industry traceback consortium fully and in a timely manner, and gateway providers must respond within 24 hours. 47 CFR § 64.1200(n)(1).

³¹ See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1902, para. 81.

avoid originating illegal robocall traffic.”³² The Commission prohibited intermediate providers³³ and terminating voice service providers from accepting calls directly from a domestic voice service provider if that voice service provider has not filed in the Robocall Mitigation Database.³⁴ As of April 11, 2023, domestic providers are also prohibited from accepting calls carrying U.S. North American Numbering Plan (NANP) numbers from a foreign originating or foreign intermediate provider if the foreign provider has not filed in the Robocall Mitigation Database.³⁵

9. In addition to placing these obligations on voice service providers, the Commission required intermediate providers to implement STIR/SHAKEN in their IP networks. In the *Second Caller ID Authentication Report and Order*, the Commission required intermediate providers with IP networks to pass authenticated caller ID information unaltered to the next provider in the call path³⁶ and either authenticate caller ID information for all SIP calls it receives for which the caller ID information has not been authenticated³⁷ or, in the alternative, cooperatively participate with the industry traceback consortium and respond fully and in a timely manner to all traceback requests regarding calls for which it acts as an intermediate provider.³⁸

10. In May 2022, the Commission extended robocall mitigation and caller ID authentication obligations to gateway providers.³⁹ Specifically, by June 30, 2023, gateway providers must authenticate

³² 47 CFR § 64.6305(c)(1)-(2). As of March 13, 2023, 6,887 voice service providers have filed in the Robocall Mitigation Database: 2,393 attest to full STIR/SHAKEN implementation; 1,555 state that they have implemented a mix of STIR/SHAKEN and robocall mitigation; and 2,939 state that they rely solely on robocall mitigation. FCC, Robocall Mitigation Database, https://fccprod.servicenowservices.com/rmd?id=rmd_listings (last visited Mar. 14, 2023).

³³ 47 CFR § 64.6300(g) (defining an “intermediate provider” as “any entity that carries or processes traffic that traverses or will traverse the public switched telephone network at any point insofar as that entity neither originates nor terminates that traffic”).

³⁴ See 47 CFR § 64.6305(e)(1); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1904, para. 86.

³⁵ 47 CFR § 64.6305(e)(2); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1904, para. 87; *Wireline Competition Bureau Announces Deadlines for Gateway Provider Robocall Mitigation Requirements and Additional Compliance Dates and Filing Instructions*, WC Docket No. 17-97, Public Notice, DA 22-1303, at 4 (WCB Dec. 12, 2022); see also 47 CFR § 64.6300(c) (defining foreign voice service provider). An earlier version of this prohibition was stayed while the Commission examined whether it should be modified. See *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Fifth Further Notice of Proposed Rulemaking in CG Docket No. 17-59 & Fourth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, 36 FCC Rcd 14971, 15007-08, para. 106 (2021) (*Gateway Provider Further Notice*). The Commission adopted the current prohibition in the *Gateway Provider Order*. See *Gateway Provider Order* at 50, para. 122. The Commission emphasized that these rules did not constitute the exercise of jurisdiction over foreign voice service providers. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1910, para. 99 n.370. Because the rules did not require foreign voice service providers to submit a certification into the Robocall Mitigation Database, they did not have an impermissible, direct effect on foreign voice service providers. See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1910, para. 99 n.370; *Gateway Provider Order* at 49-50, para. 120 & n.354.

³⁶ 47 CFR § 64.6302(a). The Commission created two exceptions from this rule under which an intermediate provider may remove the authenticated caller ID information: (1) where necessary for technical reasons to complete the call; and (2) where the intermediate provider reasonably believes the caller ID authentication information presents an imminent threat to its network security. *Id.* § 64.6302(a)(1)-(2).

³⁷ *Id.* § 64.6302(b).

³⁸ *Id.* § 64.6302(b)(1)-(2).

³⁹ *Gateway Provider Order* at 28, para. 59; see also 47 CFR § 64.6300(d) (defining “gateway provider” as a “U.S.-based intermediate provider that receives a call directly from a foreign originating provider or foreign intermediate provider at its U.S.-based facilities before transmitting the call downstream to another U.S.-based provider”).

unauthenticated SIP traffic carrying a U.S. NANP number in the caller ID field,⁴⁰ and, as of January 11, 2023, must have developed and implemented robocall mitigation programs with respect to calls that are carrying a U.S. number in the caller ID field.⁴¹ Gateway providers must also submit certifications to the Robocall Mitigation Database stating whether they have fully, partially, or not implemented STIR/SHAKEN on the IP portions of their networks⁴² and describing how they are complying with the “know-your-upstream-provider” obligation,⁴³ which requires gateway providers to take reasonable and effective steps to ensure that the immediate upstream foreign provider is not using the gateway provider to carry or process a high volume of illegal traffic onto the U.S. network.⁴⁴

B. Fifth Further Notice of Proposed Rulemaking

11. In May 2022, the Commission adopted the *Fifth Caller ID Authentication Further Notice*, which proposed and sought comment on extending the Commission’s robocall mitigation and caller ID authentication rules to cover additional providers along the call path, as well as several additional measures to help protect American consumers from illegal robocalls.⁴⁵ First, we proposed to require all U.S. intermediate providers to use STIR/SHAKEN to authenticate caller ID information for SIP calls that are carrying a U.S. number in the caller ID field⁴⁶ and to require all voice service providers, intermediate providers, and gateway providers to comply with the most recent versions of the STIR/SHAKEN standards “adopted as of the compliance deadline” for non-gateway intermediate providers.⁴⁷

12. Second, we sought comment on extending certain robocall mitigation duties that are currently only applicable to subsets of providers to *all* domestic providers, including: (1) extending the requirement to respond to traceback requests from the Commission, civil and criminal law enforcement, and the industry traceback consortium within 24 hours of receipt of the request to all U.S.-based providers in the call path;⁴⁸ (2) requiring all domestic providers in the call path to block illegal traffic when notified of such traffic by the Commission;⁴⁹ (3) requiring providers to take affirmative, effective measures to prevent new and renewing customers from originating illegal calls;⁵⁰ (4) requiring intermediate providers and terminating providers to block traffic from bad-actor providers when notified by the Commission,

⁴⁰ 47 CFR § 64.6302(c); *Gateway Provider Order* at 28, para. 59.

⁴¹ See 47 CFR § 64.6305(b); *Gateway Provider Order* at 15, 16, paras. 32, 34; *Wireline Competition Bureau Announces Deadlines for Gateway Provider Robocall Mitigation Requirements and Additional Compliance Dates and Filing Instructions*, WC Docket No. 17-97, Public Notice, DA 22-1303, at 2 (WCB Dec. 12, 2022). The robocall mitigation programs must include: (1) reasonable steps to avoid carrying or processing illegal robocall traffic; (2) a commitment to respond fully and within 24 hours to all traceback requests from the Commission, law enforcement, and the industry traceback consortium; and (3) a commitment to cooperate with such entities in investigating and stopping any illegal robocallers that use the gateway provider’s service to carry or process calls. 47 CFR § 64.6305(b)(2).

⁴² 47 CFR § 64.6305(d)(1).

⁴³ 47 CFR § 64.6305(d)(2)(ii); *id.* § 64.1200(n)(4) (know-your upstream provider requirement); *Gateway Provider Order* at 17, para. 37.

⁴⁴ 47 CFR § 64.1200(n)(4); *Gateway Provider Order* at 41, para. 96.

⁴⁵ *Fifth Caller ID Authentication Further Notice* at 63-88, paras. 157-225. The Commission also sought comment on several issues outside of the scope of this *Sixth Report and Order*. See *id.* at 68-75, 87-88, paras. 174-94, 218-23, 225.

⁴⁶ *Id.* at 63-64, 66, paras. 160, 162, 167.

⁴⁷ *Id.* at 67, para. 172.

⁴⁸ *Id.* at 69-70, paras. 177-80.

⁴⁹ *Id.* at 70, para. 181.

⁵⁰ *Id.* at 70-71, paras. 183-86.

regardless of whether or not the bad actor is a gateway provider;⁵¹ and (5) extending a general mitigation standard to all domestic intermediate providers and voice service providers that have implemented STIR/SHAKEN in the IP portions of their networks, including the duty to take “reasonable steps” to avoid originating or terminating (for voice service providers) or carrying or processing (for intermediate providers) illegal robocall traffic.⁵²

13. Third, we proposed to extend robocall mitigation database filing obligations to all domestic intermediate providers regardless of their STIR/SHAKEN status.⁵³ Fourth, we sought comment on certain rules regarding caller ID authentication and attestation in the Robocall Mitigation Database, including whether to allow third-party authentication and whether to require all domestic providers to authenticate caller ID information using their own SPC tokens.⁵⁴ Finally, we also sought comment on several additional measures to protect American consumers against illegal robocalls, including: (1) strengthening the Commission’s enforcement rules;⁵⁵ (2) clarifying aspects of the STIR/SHAKEN framework for providers lacking facilities necessary to implement STIR/SHAKEN;⁵⁶ and (3) addressing issues related to satellite voice service providers.⁵⁷

III. SIXTH REPORT AND ORDER

14. Today, we take further steps to combat illegally spoofed robocalls by expanding caller ID authentication and robocall mitigation obligations and creating new mechanisms to hold bad actors accountable for violations of our rules. Specifically, we adopt the first mandatory authentication requirement for intermediate providers to capture calls that are not authenticated by originating providers. We require *all* providers to take reasonable steps to mitigate illegal robocalls and file mitigation plans in the Robocall Mitigation Database—regardless of their STIR/SHAKEN status or whether they have the facilities necessary to implement STIR/SHAKEN. We also give the Enforcement Bureau new tools to impose penalties against bad actors, including the ability to remove the section 214 and other Commission authorizations, licenses, and certifications of repeat offenders and establish a process to expel providers that commit certain violations of our rules from the Robocall Mitigation Database on an expedited basis. Finally, we define the STIR/SHAKEN obligations of satellite providers.

A. Strengthening the Intermediate Provider Authentication Obligation

1. Requiring the First Intermediate Provider to Authenticate Unauthenticated Calls

15. Under the Commission’s caller ID authentication rules, intermediate providers are required to authenticate any unauthenticated caller ID information for the SIP calls they receive or, alternatively, cooperate with the industry traceback consortium and timely and fully respond to all traceback requests received from the Commission, law enforcement, and the industry traceback consortium.⁵⁸ In the *Fourth Call Blocking Order*, however, the Commission required all providers in the path of a SIP call—including gateway providers and other intermediate providers—to respond fully and

⁵¹ *Fifth Caller ID Authentication Further Notice* at 71-72, para. 187.

⁵² *Id.* at 72-75, paras. 188-94.

⁵³ *Id.* at 76-79, paras. 195-200.

⁵⁴ *Id.* at 87, para. 224.

⁵⁵ *Id.* at 79-82, paras. 207-12.

⁵⁶ *Id.* at 82-83, paras. 213-15.

⁵⁷ *Fifth Caller ID Authentication Further Notice* at 83-84, paras. 216-17.

⁵⁸ See 47 CFR § 64.6302(b)(1)-(2); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1926, para. 140. The Commission took this approach to minimize concerns about costs to intermediate providers and burdens on their networks. See *id.* at 1927-29, paras. 144-146, n.504-510.

in a timely manner to traceback requests.⁵⁹ As a result of that action, intermediate providers may decline to authenticate caller ID information given that compliance with the traceback alternative has been made mandatory.⁶⁰ In the *Fifth Caller ID Authentication Further Notice*, we proposed closing this gap in the STIR/SHAKEN caller ID authentication regime by requiring all U.S. intermediate providers in the path of a SIP call carrying a U.S. number in the caller ID field to authenticate unauthenticated caller ID information, irrespective of their traceback obligations.⁶¹ Based on our review of the record, we adopt our proposal to establish a mandatory caller ID authentication obligation for intermediate providers, but do so on an incremental basis. Specifically, we amend our rules to require any non-gateway intermediate provider that receives an unauthenticated SIP call directly from an originating provider to authenticate the call. Stated differently, the first intermediate provider in the path of an unauthenticated SIP call will now be subject to a mandatory requirement to authenticate the call.

16. The Commission has previously recognized that the STIR/SHAKEN framework has beneficial network effects and becomes more effective as more providers implement it.⁶² The record in this proceeding supports expanding STIR/SHAKEN implementation by requiring non-gateway intermediate providers to authenticate unauthenticated calls, regardless of their traceback obligations.⁶³ As NCTA observes, “[t]he greater the number of providers that have implemented STIR/SHAKEN on their networks, the harder it will be for malicious callers to evade call authentication and harm consumers.”⁶⁴ Similarly, Comcast notes that “the benefits of STIR/SHAKEN will multiply as implementation becomes more widespread.”⁶⁵ Although originating providers are required to authenticate calls under the Commission’s rules—with limited exceptions⁶⁶—some originating providers are not capable of implementing STIR/SHAKEN.⁶⁷ In other cases, unscrupulous providers may deliberately fail to comply with our rules.⁶⁸ The record shows that the failure of originating providers to

⁵⁹ *Fourth Call Blocking Order*, 35 FCC Rcd at 15227-29, paras. 15-21; see 47 CFR § 64.1200(n)(1). The Commission later enhanced this obligation for gateway providers to require response within 24 hours. *Gateway Provider Order* at 30-33, paras. 65-71.

⁶⁰ See *Fifth Caller ID Authentication Further Notice* at 64, para. 162.

⁶¹ See *id.* at 63-67, paras. 160-71.

⁶² *Gateway Provider Order* at 27-28, para. 58.

⁶³ See, e.g., Comcast Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 5 (rec. Aug. 17, 2022) (Comcast Comments); NCTA Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (rec. Aug. 17, 2022) (NCTA Comments); INCOMPAS Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 6-7 (rec. Aug. 17, 2022) (INCOMPAS Comments).

⁶⁴ NCTA Comments at 2 (encouraging the Commission to “bring all U.S. providers within the STIR/SHAKEN regime by adopting its proposal to require that intermediate providers authenticate unauthenticated calls they receive”).

⁶⁵ Comcast Comments at 3-5 (supporting widespread adoption of the STIR/SHAKEN authentication framework and stating that “the time is now ripe,” for the Commission to require “all U.S. intermediate providers to authenticate unsigned calls they receive using STIR/SHAKEN before passing them along to another provider”).

⁶⁶ See 47 CFR § 64.6304(a)(1) (providing an extension of the implementation deadline for facilities-based small voice service providers until June 30, 2023).

⁶⁷ See 47 CFR § 64.6304(b) (SPC token access extension); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1868, para. 19 (citing *First Caller ID Authentication Report and Order*, 35 FCC Rcd at 3260, para. 40) (excluding from a STIR/SHAKEN implementation obligation those providers that lack control over the necessary network infrastructure).

⁶⁸ YouMail Comments, CG Docket No. 17-59 at 12 (Aug. 16, 2022) (YouMail Comments) (“While most originating providers are actively working to identify and stop sources of robocalls, others are factually or implicitly ‘partners’ with fraudsters, failing to take needed actions to stop robocalls.”); Fifty-One State Attorneys General Reply, CG (continued....)

sign calls is one of the key weaknesses in the STIR/SHAKEN regime.⁶⁹ By requiring intermediate providers to authenticate unauthenticated SIP calls they receive directly from an originating provider, we close an important loophole in our caller ID authentication scheme, and incorporate calls that would otherwise go unauthenticated into the STIR/SHAKEN framework. Further, intermediate provider authentication will facilitate analytics, blocking, and traceback efforts by providing more information to downstream providers.⁷⁰

17. We recognize, however, that a mandatory authentication obligation could subject intermediate providers to significant costs.⁷¹ For example, Verizon argues that “[a]n intermediate provider attestation mandate would involve substantial carrier work streams and vendor development costs,” and cause technical challenges for terminating providers.⁷² USTelecom argues that, while intermediate providers “have ensured that their networks can pass along STIR/SHAKEN information they receive, it is an entirely different—and expansive and costly—effort to ensure that each and every switch can sign calls.”⁷³ We therefore opt to take an incremental approach to imposing mandatory authentication obligations on intermediate providers, requiring only the first intermediate provider in the path of a SIP call to authenticate unauthenticated caller ID information, rather than requiring all intermediate providers

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Docket No. 17-59, WC Docket No. 17-97, at 3 (rec. Sept. 16, 2022) (State AGs Reply); ZipDX Reply, CG Docket No. 17-59, WC Docket No. 17-97, at 5-6 (rec. Sept. 19, 2022) (ZipDX Reply).

⁶⁹ USTelecom Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 10 (rec. Aug. 16, 2022) (USTelecom Comments) (arguing that bad-actor originating providers “do not sign their calls” and attempt to evade detection by relying on downstream providers to authenticate illegal traffic with the downstream provider’s token, thereby “undermin[ing] the accountability the STIR/SHAKEN framework is intended to impose”); ZipDX Reply at 5-6 (“[T]he biggest Call Authentication issue with robocalls . . . is that they are not being signed by the originating provider despite existing rules.”).

⁷⁰ See North American Numbering Council, Call Authentication Trust Anchor Working Group, Best Practices for Terminating Voice Service Providers using Caller ID Authentication Information § 2.1.2 at 7 (Feb. 9, 2022), https://nanc-chair.org/docs/CATA_Report_Best_Practices_for_Terminating_VSPs_using_Caller_ID_Authentication_Information_Feb_2022.pdf (noting that information sent along with the authentication allows the traceback process to quickly identify who signed the call, regardless of the attestation level); *Fifth Caller ID Authentication Report and Order* at 25-27, para. 57; Comcast Comments at 5-6; INCOMPAS Comments at 6; see also Telnyx Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 1 (rec. Aug. 17, 2022) (Telnyx Comments) (acknowledging that intermediate provider authentication will “expedit[e] the traceback process,” but arguing that such a requirement “might do more harm than good”).

⁷¹ USTelecom Comments at 11-12; USTelecom Reply, CG Docket No. 17-59, WC Docket No. 17-97, at 3, 14 (rec. Sept. 16, 2022) (USTelecom Reply); Verizon Reply, CG Docket No. 17-59, WC Docket No. 17-97, at 6-9 (rec. Sept. 16, 2022) (Verizon Reply).

⁷² Verizon Reply at 7-9.

⁷³ USTelecom Comments at 11. Some commenters also argue that requiring all non-gateway intermediate providers to authenticate unauthenticated SIP calls could result in calls that were given an A-level attestation by originating providers being later given a C-level attestation if the call traverses a non-IP network, and that this increase in C-level attestations could impede efforts by downstream providers, analytics vendors, and others to accurately identify illegal robocalls in some situations. See, e.g., INCOMPAS Comments at 8; Telnyx Comments at 2; USTelecom Comments at 11; Verizon Reply at 6-8. While we generally agree that higher-level attestations are more advantageous than C-level attestations, as we stated in the *Gateway Provider Order*, where a call is unauthenticated, a C-level attestation is better than no attestation and has value. *Gateway Provider Order* at 25-27, para. 57. Nevertheless, for the reasons stated herein, we believe that the goals of the STIR/SHAKEN framework and the public interest are best served by taking a targeted approach to intermediate provider authentication that focuses on the first intermediate provider in the call path.

in the path to do so at this time.⁷⁴ We find that this approach, which focuses on the beginning of the call path, will directly address the problem of calls entering the call path without being authenticated by originating providers, as described above. We agree with YouMail that this targeted approach is likely to have the greatest impact on stopping illegally spoofed robocalls.⁷⁵ While the Commission may consider expanding a call authentication requirement to all intermediate providers in the future, this targeted approach will provide the Commission with an opportunity to evaluate this first mandatory obligation for intermediate providers, together with other pending expansions of the caller ID authentication regime,⁷⁶ and determine whether an authentication requirement for more downstream intermediate providers is warranted.⁷⁷

18. We are not persuaded by the arguments submitted by commenters favoring a mandatory authentication requirement for all intermediate providers. For instance, some commenters argue that the

⁷⁴ Intermediate providers should know whether they receive calls directly from an originating provider pursuant to contracts that provide information to the intermediate provider about the originating provider's customers and expectations for handling their traffic. See *Rural Call Completion*, WC Docket No. 13-39, Fourth Report and Order, 34 FCC Rcd 1781, 1786, para. 24 (2019) (noting that intermediate providers maintain contractual relationships with the upstream providers from which they receive traffic and imposing requirements based on those contractual relationships). Further, as explained in Section III.B below, we require non-gateway intermediate providers to take "reasonable steps" to mitigate illegal robocall traffic. That duty, along with other requirements of our rules, may require an intermediate provider to perform the due diligence necessary to understand the sources of the traffic it receives. See 47 CFR § 64.6305(e). Accordingly, in the unlikely event that an intermediate provider does not know through its contracts whether it receives calls directly from an originating provider, it should obtain that information to comply with this and other aspects of the Commission's rules. See *Cloud Communications Alliance Comments*, CG Docket No. 17-59, WC Docket No. 17-97, at 9 (rec. Aug. 17, 2022) (CCA Comments) (writing in favor of expanding robocall mitigation requirements and noting that "[a]ll providers should take basic, reasonable steps to vet their customers, whether the customer is a business end user or another provider, before initiating service"); *USTelecom Comments* at 8-9 (advocating for the Commission to expand robocall mitigation requirements to all providers and writing that for intermediate providers, "robocall mitigation efforts should include at least a basic level of vetting of the providers immediately upstream from whom they accept traffic"); *Verizon Reply* at 5 (suggesting that the Commission should encourage the industry to "undertake [know your customer] evaluations of upstream service providers and to create an end-to-end 'chain of trust' between good callers and terminating service providers").

⁷⁵ See *YouMail Comments* at 10 ("In determining which rules should apply to which service providers, [the Commission] should focus on the effect those providers can have on minimizing the number of robocalls received by consumers."). As YouMail argues, apart from the originating provider, the "best entity to identify and stop the sources of robocalls is the first 'downstream' provider (i.e., the next provider in line that receives calls placed on the originating provider's network)." *Id.* at 13.

⁷⁶ See *Gateway Provider Order* at 22-28, paras. 51-63; 47 CFR § 64.6302(c) (requiring gateway providers to implement STIR/SHAKEN to authenticate SIP calls that are carrying a U.S. number in the caller ID field by June 30, 2023); *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 1 (WCB Dec. 16, 2022) (*Second Reevaluation of STIR/SHAKEN Extensions Public Notice*) (noting that "[t]he extension for facilities-based small voice service providers will lapse on June 30, 2023, marking a significant step toward the Commission's goal of achieving ubiquitous STIR/SHAKEN implementation").

⁷⁷ See *RingCentral Comments*, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (rec. Aug. 17, 2022) (RingCentral Comments) (supporting the Commission's "recent actions to broaden the scope of providers and traffic subject to call authentication requirements" but cautioning that some of these requirements are not yet in effect and that "more time is needed to determine the efficacy of these measures" before adopting "sweeping new measures"); *YouMail Comments* at 13-14 (arguing that "imposing additional requirements on the first downstream provider is reasonable and an efficient area for FCC action"); see also CCA Comments at 3 (arguing that "it may be prudent to take a pause" prior to "adopting further rules or extending existing obligations"); *INCOMPAS Comments* at 4 (urging the Commission "not to create, extend, or clarify obligations without conducting a thorough assessment of the impact its existing requirements are having on illegal robocalls and providers").

Commission’s justifications for adopting a mandatory gateway provider authentication requirement apply with equal force to all non-gateway intermediate providers in the call path.⁷⁸ We disagree. The gateway provider caller ID authentication rules adopted by the Commission in May 2022 apply to the first domestic intermediate provider in the path of a foreign-originated call.⁷⁹ The authentication requirement we adopt today similarly applies to the first intermediate provider in the path of a U.S.-originated call. Further, there are fewer gateway providers than other domestic intermediate providers.⁸⁰ Therefore, the overall industry cost of an authentication obligation imposed on all domestic intermediate providers is likely to be significantly higher than that of the gateway provider obligation.⁸¹ The record in this proceeding simply does not support requiring all intermediate providers to incur those costs at this time if imposing an authentication obligation on the first intermediate provider that receives an unauthenticated call directly from an originating provider can close significant gaps in our caller ID authentication regime.⁸² We find that the incremental approach we adopt today will target a critical gap in our call authentication regime while minimizing the impact of our requirements on industry, including new entrants to the market.⁸³

19. We also decline to impose an authentication obligation on all intermediate providers at this time to address instances in which authentication information is “stripped out” by the call transiting a non-IP network.⁸⁴ The Commission has launched an inquiry into solutions to enable caller ID

⁷⁸ See Comcast Comments at 5 (“The Commission notably just imposed this very obligation on gateway providers, and the same justifications cited in that context support extending this obligation to all U.S. intermediate providers.”); State AGs Reply at 5.

⁷⁹ See *Gateway Provider Order* at 12, 22-24, paras. 25, 51-54 (defining the term “gateway provider” and explaining the scope of the authentication requirement for such providers).

⁸⁰ There are currently 145 gateway provider filings (including combined gateway provider/voice service provider filings) and 1,147 non-gateway intermediate provider filings (including filings imported from the Intermediate Provider Registry) in the Robocall Mitigation Database. FCC, Robocall Mitigation Database, https://fccprod.servicenowservices.com/rmd?id=rmd_listings (last visited Mar. 14, 2023).

⁸¹ As noted above, we only apply this requirement to the first downstream intermediate provider in a given call path. Therefore, downstream intermediate providers that carry the call throughout the rest of a given call path will not face compliance costs related to this rule. Per our existing rules, however, any intermediate provider is still required to pass unaltered the authenticated caller identification information it receives for a SIP call to the subsequent intermediate or voice service provider in the call path, subject to limited exceptions. 47 CFR § 64.6302; *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1922-1929, paras. 133-39, 148.

⁸² See RingCentral Comments at 1, 6 (arguing that “[s]weeping requirements that are not targeted specifically at illegal traffic will . . . impose heavy burdens on service providers, and harm competition and market entry,” and that the Commission should consider the impact of new requirements on new entrants to the market, including small and women-and minority-owned businesses).

⁸³ See Letter from Christopher L. Shipley, Executive Director of Public Policy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 et al., at 2 (filed Mar. 10, 2023) (“Requiring the first intermediate provider to authenticate unauthenticated calls will ensure that calls receive the appropriate authentication earlier in the call path and will take advantage of the network effects that STIR/SHAKEN offers. At the same time, this incremental step spares intermediate providers from the costs and challenges associated with potentially signing all calls.”) (INCOMPAS March 10 *Ex Parte*); Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-97, at 1 (filed Mar. 8, 2023) (“[The Commission’s] incremental approach to require intermediate providers to sign unsigned SIP calls only when they receive them directly from originating providers is reasonable, particularly in light of the significant costs a broader requirement would impose.”) (USTelecom March 8 *Ex Parte*).

⁸⁴ See State AGs Reply at 4 (arguing that the Commission should require “all intermediate providers to comply with STIR/SHAKEN so that they no longer strip” information required by STIR/SHAKEN authentication protocols from calls); ZipDX Reply at 5. As noted above, our rules already require intermediate providers to “[p]ass unaltered to
(continued....)

authentication over non-IP networks, the nexus between non-IP caller ID authentication and the IP transition generally, and on specific steps the Commission can take to encourage the industry's transition to IP.⁸⁵ Widespread adoption of a non-IP authentication solution or IP interconnection would result in authenticated caller ID information being preserved and received by the terminating provider.⁸⁶ We therefore decline to impose an authentication obligation on all intermediate providers to address circumstances where a call traverses a non-IP network, but may revisit the subject after the Commission concludes its inquiry into whether non-IP authentication or IP interconnection solutions are feasible and can be timely implemented.⁸⁷

20. Finally, we note that the requirement we adopt here for the first intermediate provider to authenticate a call will arise in limited circumstances, such as where the originating provider failed to comply with their own authentication obligation or where the call is sent directly to an intermediate provider from the limited subset of originating providers that lack an authentication obligation.⁸⁸ Indeed, the first intermediate provider in the call path may completely avoid the need to authenticate calls if it implements contractual provisions with its upstream originating providers stating that it will only accept authenticated traffic.⁸⁹

2. Applicable STIR/SHAKEN Standards for Compliance

21. Voice service providers and gateway providers are obligated to comply with, *at a minimum*, the version of the STIR/SHAKEN standards ATIS-1000074, ATIS-1000080, and ATIS-1000084 and all of the documents referenced therein in effect at the time of their respective compliance deadlines, including any errata as of those dates or earlier.⁹⁰ In the *Fifth Caller ID Authentication Further*

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the subsequent intermediate provider or voice service provider in the call path any authenticated caller identification information it receives with a SIP call,” subject to limited exceptions. 47 CFR § 64.6302.

⁸⁵ See generally *Non-IP Authentication Notice of Inquiry*.

⁸⁶ See *Non-IP Authentication Notice of Inquiry* at 4, 17-18, paras. 6, 37; INCOMPAS Comments at 8 (while supporting intermediate provider authentication, arguing that IP interconnection would solve the same problem without “flooding the ecosystem with ‘B’ or ‘C’ level calls”); Telnyx Comments at 2 (arguing the Commission should focus on the promotion of IP interconnection instead of intermediate provider authentication).

⁸⁷ See Letter from David Frankel, CEO, ZipDX LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-97, at 1 (filed Mar. 8, 2023) (arguing that providers that believe that non-IP interconnection is impairing the efficacy of STIR/SHAKEN should indicate the steps they are taking to deploy alternate effective mechanisms to prevent illegal calls via non-IP interconnection) (ZipDX March 8 *Ex Parte*).

⁸⁸ If the originating provider complies with its authentication obligation, the first intermediate provider in the call chain need only meet its preexisting obligation to pass-on that authentication information to the next provider in the chain. 47 CFR §§ 64.6301(a)(2); 64.6302(a). There are two exceptions to this rule under which an intermediate provider may remove the authenticated caller ID information: (1) where necessary for technical reasons to complete the call; and (2) where the intermediate provider reasonably believes the caller ID authentication information presents an imminent threat to its network security. See 47 CFR § 64.6302(a)(1)-(2).

⁸⁹ USTelecom requests that the Commission clarify that non-gateway intermediate providers be deemed in compliance with their authentication obligations if they enter into contractual provisions with originating providers and such providers represent and warrant that they do not originate any unsigned traffic and thereafter “have no reason to know, and do not know, that their upstream provider is sending unsigned traffic it originated.” USTelecom March 8 *Ex Parte* at 1. We decline to do so, finding that such a clarification is unnecessary. If a non-gateway intermediate provider were to claim that it has complied with the authentication obligation that we adopt today pursuant to terms of a contract with an originating provider, the Commission would evaluate such a claim on a case-by-case basis.

⁹⁰ *First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3258-59, para. 36; see also *Gateway Provider Report and Order* at 23-24, para. 53. Prior and current versions of the standards are available on the ATIS website. See, e.g., ATIS & SIP Forum, Signature-based Handling of Asserted information using toKENs (SHAKEN), ATIS-1000074v.3 (2022), https://access.atis.org/apps/group_public/download.php/67436/ATIS-

(continued....)

Notice, we proposed that non-gateway intermediate providers comply with, at a minimum, the versions of these standards in effect at the time of their compliance deadline.⁹¹ We also sought comment on whether all providers should be required to comply with the same versions of the standards as non-gateway intermediate providers and whether we should establish a mechanism for updating the standard that providers must comply with going forward, including through delegation to the Wireline Competition Bureau.⁹²

22. We adopt our proposal that non-gateway intermediate providers subject to the authentication obligation described above must comply with, at a minimum, the versions of the standards in effect at the time of their authentication compliance deadline (which is addressed in the following section), along with any errata. Like other providers, non-gateway intermediate providers will have the “flexibility to assign the level of attestation appropriate to the call based on the applicable level of the standards and the available call information.”⁹³ This approach is supported in the record.⁹⁴

23. We do not at this time require gateway and voice service providers to comply with versions of the standards that came into effect after their respective compliance deadlines. As USTelecom notes, the implementation costs of a new version of the standards may outweigh its benefits, particularly for providers that have already spent time and expense implementing an older version of the standard and where the new standard may provide only marginal benefits.⁹⁵ We reiterate, however, that our requirement that providers must comply with a specific version of a standard “at a minimum,” means that while providers are required to comply with these standards, they are *permitted* to comply with any version of the standard that has been ratified by ATIS subsequent to the standard in effect at the time their authentication implementation deadline.⁹⁶

24. We nevertheless conclude that there may be significant benefits for all providers to comply with standards as they are updated, particularly where updated versions contain critical new features or functions. Requiring all providers to comply with a single, updated standard would also facilitate enforcement of our rules and ensure that any new features and functions contained in revised standards spread throughout the STIR/SHAKEN ecosystem. Therefore, we adopt a process to incorporate

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[1000074.v003.pdf](#) (ATIS-1000074); ATIS, Signature-based Handling of Asserted information using toKENs (SHAKEN): Governance Model and Certificate Management, ATIS-1000080.v005 (2022), https://access.atis.org/apps/group_public/download.php/69428/ATIS-1000080.v005.pdf (ATIS-1000080); ATIS & SIP Forum, Technical Report on Operational and Management Considerations for SHAKEN STI Certification Authorities and Policy Administrators, ATIS-1000084.v002 (2020), https://access.atis.org/apps/group_public/download.php/55473/ATIS-1000084.v002.pdf (ATIS-1000084).

⁹¹ *Fifth Caller ID Authentication Further Notice* at 66, para. 168.

⁹² *Id.* at 67, para. 172.

⁹³ *Id.* para. 171 (proposing a flexible approach for all intermediate providers consistent with the rules applicable to voice service providers and gateway providers); *see also id.* at 24, para. 54 (adopting rule for gateway providers); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1926-27, paras. 142-43 (adopting rule for voice service providers).

⁹⁴ *See e.g.*, Comcast Comments at 6; NCTA Comments at 2 n.3.

⁹⁵ USTelecom Comments at 13 & n.32.

⁹⁶ *First Caller ID Authentication Report and Order*, 35 FCC Rcd at 3258-59, para. 36 (noting that the ATIS standards were designed to evolve and improve over time and stating that the Commission, “intend[ed] for [the Commission’s] rules to provide this same room for innovation, while maintaining an effective caller ID authentication ecosystem.”). However, any later-adopted or improved version of the standards that a provider chooses to incorporate into its STIR/SHAKEN authentication framework must maintain the baseline call authentication functionality exemplified by the versions of ATIS-1000074, ATIS-1000080, and ATIS-1000084 in effect at the time of its respective compliance date. *Id.*

future standards into our rules where appropriate, similar to the process we have adopted to require compliance with updated technical standards in other contexts.⁹⁷

25. Specifically, we delegate to the Wireline Competition Bureau the authority to determine whether to seek comment on requiring compliance with revised versions of the three ATIS standards associated with the STIR/SHAKEN authentication framework, and all documents referenced therein. We also delegate to the Wireline Competition Bureau the authority to require providers subject to a STIR/SHAKEN authentication requirement to comply with those revised standards, and the authority to set appropriate compliance deadlines regarding such revised standards.⁹⁸ Providers will only be required to implement new standards if the benefits to the STIR/SHAKEN ecosystem outweigh any compliance burdens. Additionally, a process based on delegated authority may allow the adoption of revised standards more quickly than would be the case through Commission-level notice and comment procedures.

26. As with voice service and gateway providers, we also require any non-gateway intermediate provider subject to the authentication obligation described in this section to either upgrade its network to allow for the initiation, maintenance, and termination of SIP calls and fully implement the STIR/SHAKEN framework, or “[m]aintain and be ready to provide the Commission on request with documented proof that it is participating, either on its own or through a representative, including third party representatives, as a member of a working group, industry standards group, or consortium that is working to develop a non-internet Protocol caller identification authentication solution, or actively testing such a solution.”⁹⁹ We find that expanding the requirements of section 64.6303 to non-gateway intermediate providers will ensure regulatory parity and promote the development of non-IP authentication solutions, while offering flexibility to providers that rely on non-IP infrastructure.

3. Compliance Deadlines

27. We set a December 31, 2023 deadline for the new authentication obligations adopted in this section. By that date, the first non-gateway intermediate provider in the call chain must authenticate unauthenticated calls it receives. We adopt a deadline longer than the six-month deadline we suggested in the *Fifth Caller ID Authentication Further Notice* because intermediate providers need time to deploy the technical capability to comply with our requirement to authenticate calls, and providers may wish to amend their contracts with upstream originating providers to meet this new requirement.¹⁰⁰ While the record reflects disagreement as to an appropriate intermediate authentication provider deadline,¹⁰¹ we

⁹⁷ See, e.g., 47 CFR § 20.19(k)(1) (delegating authority for adoption of ANSI C63 standards for wireless handset hearing-aid-compatibility “provided that the standards do not impose with respect to such frequency bands or air interfaces materially greater obligations than those impose on other services subject to this section”); *id.* § 52.26(b)(4) (providing process for adopting the North American Numbering Council number portability recommendations).

⁹⁸ See *Fifth Caller ID Authentication Further Notice* at 67, para. 172.

⁹⁹ 47 CFR § 64.6303. In the *Fifth Caller ID Authentication Further Notice*, we sought comment on whether to “require all providers to adopt a non-IP caller ID authentication solution,” and noted that under the Commission’s rules “[v]oice service providers and gateway providers currently have a choice whether to implement a non-IP caller ID authentication solution or, in the alternative, participate with a working group, standards group, or consortium to develop a solution.” *Fifth Caller ID Authentication Further Notice* at 67-68, para. 173 (citing 47 CFR § 64.6303).

¹⁰⁰ The *Fifth Caller ID Authentication Further Notice* sought comment on, but did not propose, a specific compliance deadline. See *Fifth Caller ID Authentication Further Notice* at 67, para. 169 (seeking comment on whether we should “require all intermediate providers to authenticate all unauthenticated SIP calls carrying U.S. NANP numbers within six months after we adopt an order released pursuant to this Further Notice”).

¹⁰¹ See Comcast Comments at 6 (arguing for a deadline no sooner than June 30, 2023); INCOMPAS Comments at 8 (arguing for a 12-month deadline to “more closely match the deadlines offered to other voice providers that have
(continued....)

conclude that a later deadline is not necessary. Implementation of call authentication technology has likely become faster and less costly for many providers than when the Commission first adopted caller ID authentication requirements, particularly for those that have already implemented STIR/SHAKEN in their other roles in the call stream.¹⁰² Moreover, a non-gateway intermediate provider can avoid the need to implement STIR/SHAKEN where it agrees to only accept authenticated traffic from originating providers.¹⁰³

B. Mitigation and Robocall Mitigation Database Filing Obligations

28. We next take action to strengthen the robocall mitigation requirements and Robocall Mitigation Database filing obligations of all providers. As we proposed in the *Fifth Caller ID Authentication Further Notice*, we require *all* providers—including intermediate providers and voice service providers without the facilities necessary to implement STIR/SHAKEN—to: (1) take “reasonable steps” to mitigate illegal robocall traffic; (2) submit a certification to the Robocall Mitigation Database regarding their STIR/SHAKEN implementation status along with other identifying information; and (3) submit a robocall mitigation plan to the Robocall Mitigation Database.¹⁰⁴ Consistent with our proposal, we also require downstream providers to block traffic received directly from all intermediate providers that are not in the Robocall Mitigation Database.¹⁰⁵ These actions have significant support in the record.¹⁰⁶ While we do not require providers to take specific steps to meet their mitigation obligations, we do expand the subjects that providers must describe in their filed mitigation plans and the information that providers must submit to the Robocall Mitigation Database.

1. Applying the “Reasonable Steps” Mitigation Standard to All Providers

29. We adopt our proposal in the *Fifth Caller ID Authentication Further Notice* to expand to all providers the obligation to mitigate illegal robocalls under the general “reasonable steps” standard.¹⁰⁷

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been required to adopt the STIR/SHAKEN framework”); State AGs Reply at 5 (arguing for action “as soon as possible”).

¹⁰² See *Gateway Provider Further Notice*, 36 FCC Rcd at 14988, para. 42; see also *Gateway Provider Order* at 24, para. 56 (noting that gateway providers’ authentication costs will be limited for those providers that have implemented authentication as voice service providers); ZipDX Comments at 5-6 (noting that “many intermediates also serve as originating providers and so have been subject to authentication requirements in that role”).

¹⁰³ The Commission has previously found that six months is sufficient time for providers to evaluate and renegotiate contracts to address new regulatory requirements. See *Rural Call Completion*, WC Docket No. 13-39, Second Report and Order, 33 FCC Rcd 4199, 4222, para. 50 (2018) (finding that a six-month transition period would provide sufficient time for providers to “evaluate and renegotiate contracts with intermediate providers” in order to comply with the rural call completion monitoring rule). Accordingly, we find that the approximate nine-month period afforded by the December 31, 2023 deadline provides sufficient time for intermediate providers to amend their contracts with originating providers, if necessary, to comply with our authentication requirement.

¹⁰⁴ See *Fifth Caller ID Authentication Further Notice* at 72-73, 75, paras. 188, 195.

¹⁰⁵ *Id.* at 79, para. 205.

¹⁰⁶ We discuss the record support in response to the *Fifth Caller ID Authentication Further Notice* below. There was also significant support for taking some of these actions in response to the *Gateway Provider Further Notice*, but we did not act at that time given the limited scope of that proceeding. *Gateway Provider Order* at 19, paras. 42-43; see also CTIA Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 7 (rec. Dec. 10, 2021); iBasis Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 13 (rec. Dec. 13, 2021); Twilio Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 3 (rec. Dec. 10, 2021); USTelecom Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 4-7 (rec. Dec. 10, 2021) (USTelecom *Gateway Provider Further Notice* Comments); ZipDX Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 32-33 (rec. Dec. 7, 2021) (ZipDX *Gateway Provider Further Notice* Comments).

¹⁰⁷ *Fifth Caller ID Authentication Further Notice* at 72, para. 188.

Specifically, we now require all non-gateway intermediate providers, as well as voice service providers that have fully implemented STIR/SHAKEN, to meet the same “reasonable steps” general mitigation standard that is currently applied to gateway providers and voice service providers that have not fully implemented STIR/SHAKEN under the Commission’s rules.¹⁰⁸ We also conclude that voice service providers without the facilities necessary to implement STIR/SHAKEN must mitigate illegal robocalls and meet this same mitigation standard.¹⁰⁹

30. Requiring all providers to mitigate calls under the “reasonable steps” standard will ensure that every provider in the call chain is subject to the same duty to mitigate illegal robocalls, promoting regulatory symmetry and administrability.¹¹⁰ There is significant support in the record for this approach.¹¹¹ For providers with a STIR/SHAKEN authentication obligation, these mitigation duties will serve as an “effective backstop” to that authentication obligation and, for those without such an obligation, they will act as a key bulwark against illegal robocalls.¹¹² As the Commission has noted, STIR/SHAKEN is not a silver bullet¹¹³ and has a limited effect on illegal robocalls where the number was obtained lawfully and not spoofed.¹¹⁴ Requiring all providers to take reasonable steps to mitigate illegal robocalls will help address these limitations in the STIR/SHAKEN regime.¹¹⁵

¹⁰⁸ 47 CFR § 64.6305(a)(2), (b)(2); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1899, para. 76 (for voice service providers); *Gateway Provider Order* at 43, para. 102 (for gateway providers). The general mitigation standard we adopt here for all providers is separate from and in addition to the new robocall mitigation program description obligations for all providers discussed below. See *infra* Section III.B.2; cf. 47 CFR § 64.6305(c)(2) (robocall mitigation program description requirement for voice service providers), (d)(2) (robocall mitigation program description requirement for voice service providers).

¹⁰⁹ *Fifth Caller ID Authentication Further Notice* at 82, para. 214 (seeking comment on requiring these providers to perform robocall mitigation).

¹¹⁰ Comcast Comments at 10-11; State AGs Reply at 10-11 (arguing that extending mitigation requirements “to all domestic providers will also simplify rules for all stakeholders . . . subjecting them to the same obligations for all calls, regardless of the providers’ respective roles in the call path”).

¹¹¹ See, e.g., CCA Comments at 5; Comcast Comments at 10-11 (supporting imposing mitigation and mitigation plan filing obligations on voice service providers that have implemented STIR/SHAKEN and intermediate providers); INCOMPAS Comments at 14-15 (supporting applying general mitigation standard to all providers, but without prescribing specific steps); NCTA Comments at 3-4; New York State Public Service Commission (NYPSC) Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 1-2 (rec. Aug. 17, 2022); USTelecom Comments at 8; Voice On The Net Coalition (VON) Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 4 (rec. Aug. 17, 2022); State AGs Reply at 4; TransNexus Reply, CG Docket No. 17-59, WC Docket No. 17-97, at 12 (rec. Sept. 16, 2022) (TransNexus Reply); USTelecom March 8 *Ex Parte* at 1; Letter from David Frankel, CEO, ZipDX LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-97, at 2 (filed Mar. 3, 2023) (ZipDX March 3 *Ex Parte*).

¹¹² See *Fifth Caller ID Authentication Further Notice* at 72, para. 188; INCOMPAS Comments at 16-17 (“INCOMPAS believes providers that are otherwise unable to implement STIR/SHAKEN should be required to conduct some essential robocall mitigation tasks that will protect consumers from illegal robocalls.”).

¹¹³ *Gateway Provider Order* at 44, para. 105; State AGs Reply at 4; see also Comcast Comments at 4 (noting that “STIR/SHAKEN is not a panacea”); USTelecom Reply at 2 (noting that “there is no magic bullet solution that will once and for all solve the illegal robocall problem”).

¹¹⁴ See *Gateway Provider Order* at 44, para. 105; USTelecom Comments at 8 (“STIR/SHAKEN alone will not prevent bad actors from making illegal robocalls because, while it provides important information about whether the calling number can be trusted, STIR/SHAKEN does not address whether a given call is legal or illegal. Indeed, robocallers already have responded by making bad calls with numbers they obtain lawfully. Merely signing calls is not enough, because a bad call from a bad actor could still be signed.”).

¹¹⁵ We explain our authority for imposing these obligations below. See *infra* Section III.G.

31. As proposed,¹¹⁶ we retain a general standard that requires providers to take “reasonable steps” to mitigate illegal robocall traffic,¹¹⁷ rather than mandate that providers include specific measures as part of their mitigation plans.¹¹⁸ Pursuant to this standard, a provider’s program is “sufficient if it includes detailed practices that can reasonably be expected to significantly reduce” the carrying or processing (for intermediate providers) or origination (for voice service providers) of illegal robocalls.¹¹⁹ Each provider “must comply with the practices” that its program requires,¹²⁰ and its program is insufficient if the provider “knowingly or through negligence” carries or processes calls (for intermediate providers) or originates (for voice service providers) unlawful robocall campaigns.¹²¹ Providers’ programs must also commit to respond fully, within the time period required by our rules,¹²² to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping illegal robocallers that use its service to originate, carry, or process illegal robocalls.¹²³

¹¹⁶ *Fifth Caller ID Authentication Further Notice* at 72-73, para. 188.

¹¹⁷ We note, however, that what constitutes a “reasonable step” may depend upon the specific circumstances and the provider’s role in the call path. See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78 (“[W]e agree with Verizon that ‘different types of network providers should have different types of robocall mitigation programs,’ and we welcome voice service providers adopting approaches that are innovative, varied, and adapted to their networks.”) (footnote omitted).

¹¹⁸ While some commenters argue that we should require providers to take specific measures under the “reasonable steps” standard, see CCA Comments at 8-9; Electronic Privacy Information Center and National Consumer Law Center (EPIC/NCLC) Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 12 (rec. Aug. 17, 2022) (EPIC/NCLC Comments) (arguing that if a “robocall mitigation plan truly consists of ‘reasonable steps,’ those steps should include call analytics and possibly also content analytics to identify and stop illegal calls in their tracks”); TransNexus Reply at 13; ZipDX March 3 *Ex Parte* at 1; ZipDX March 8 *Ex Parte* at 1, we agree that providers should retain “the necessary flexibility in determining which measures to use to mitigate illegal calls on their networks.” INCOMPAS Comments at 15; see also Telnix Comments at 2 (opposing “prescribed robocalling mitigation requirements due to industry and end-customer diversity”); *id.* at 3 (“[m]andating certain mitigation methods may also allow bad actors to evolve their tactics to evade” such methods). For this reason, we reject ZipDX’s request that we require providers to describe specific practices in their robocall mitigation plans, including specific know-your-upstream provider and analytics practices. See ZipDX March 3 *Ex Parte* at 2; ZipDX March 8 *Ex Parte* at 1. That said, we agree that promptly investigating and mitigating illegal robocall traffic that is brought to the provider’s attention through measures such as internal monitoring and tracebacks would constitute reasonable steps. See ZipDX March 3 *Ex Parte* at 2; ZipDX March 8 *Ex Parte* at 1.

¹¹⁹ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78 (obligation for voice service providers); *Gateway Provider Order* at 43-44, para. 103 (obligation for gateway providers).

¹²⁰ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78; *Gateway Provider Order* at 44, para. 103.

¹²¹ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78; *Gateway Provider Order* at 44, para. 103. We decline to adopt VON’s proposal for a safe harbor from contract breach for providers invoking contract termination provisions against providers originating illegal robocall traffic. VON Comments at 6. VON does not explain why such a safe harbor is necessary or the legal authority for the Commission to adopt such a provision, and we find it outside the scope of this proceeding.

¹²² 47 CFR § 64.6305(a)(2) (requiring any robocall mitigation program for voice service providers to include a commitment to respond fully in a timely manner), (b)(2) (requiring any robocall mitigation program for gateway providers to include a commitment to respond fully within 24 hours).

¹²³ *Id.* § 64.6305(a)(2) (requirement for voice service provider robocall mitigation programs), (b)(2) (requirement for gateway provider robocall mitigation programs).

32. We decline to adopt EPIC/NCLC's proposal to replace the "reasonable steps" general mitigation standard with the "affirmative, effective measures" standard found elsewhere in our rules.¹²⁴ Under EPIC/NCLC's proposal, a provider would fail to meet this standard if they allow the origination of any illegal robocalls, even where the provider may have taken "reasonable steps" to mitigate such calls.¹²⁵ We disagree with EPIC/NCLC's reading of our rules and conclude that these standards work hand-in-hand to prevent illegal robocalls. A key purpose of the "reasonable steps" standard is to ensure that providers enact a robocall mitigation program and describe that program in the Robocall Mitigation Database. If the program is not reasonable as described, or if it is not followed, the provider may be held liable.¹²⁶ Further, if the steps described in a mitigation program are followed but are not actually effective in stopping illegal robocalls, the originating provider could be held liable for failing to put in place "affirmative, effective" measures to stop robocalls if they do not take further action.¹²⁷ Regardless of the mitigation standard we adopt, we disagree with EPIC/NCLC that providers should be held strictly liable for allowing the origination of any illegal robocalls regardless of whether they have taken "reasonable steps" to mitigate such calls, as explained in more detail below.¹²⁸

33. We also do not adopt VON's proposal of a "gross negligence" standard to evaluate whether a mitigation program is sufficient,¹²⁹ rather than the Commission's existing standard, which assesses whether a provider "knowingly or through negligence" originates, carries, or processes illegal robocalls.¹³⁰ We disagree that our existing standard "essentially impose[s] strict liability on providers," as VON asserts.¹³¹ On the contrary, if a provider is taking sufficient "reasonable steps" to mitigate illegal robocall traffic pursuant to a robocall mitigation program that complies with the Commission's rules, the provider is likely not acting negligently.

34. Lastly, we decline to adopt a heightened mitigation obligation solely for VoIP providers.¹³² We acknowledge that there is evidence that VoIP providers are disproportionately involved in the facilitation of illegal robocalls.¹³³ However, we agree with commenters opposing such a heightened standard, because "[t]he threat of illegal robocalls is an industry issue and impacts every type of

¹²⁴ EPIC/NCLC Comments at 8-10; *see* 47 CFR § 64.1200(n)(3); *Fourth Call Blocking Order*, 35 FCC Rcd at 15232-33, paras. 32-36 (adopting requirement that voice service providers adopt affirmative, effective measures to prevent new and renewing customers from using their network to originate illegal calls). EPIC/NCLC argues that "where providers have a responsibility to take reasonable steps to detect and mitigate illegal call traffic," its proposed "should have known" liability rule would require them to monitor call traffic. EPIC/NCLC Comments at 12.

¹²⁵ EPIC/NCLC Comments at 10-11.

¹²⁶ *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 77.

¹²⁷ 47 CFR § 64.1200(n)(3). Similarly, the provider may also be liable if its program "knowingly or through negligence" allows the origination, carrying, or processing of illegal robocalls. *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78 (obligation for voice service providers); *Gateway Provider Order* at 44, para. 103 (obligation for gateway providers).

¹²⁸ *See infra* Section III.C.5.

¹²⁹ VON Comments at 4.

¹³⁰ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78 (standard for voice service providers); *Gateway Provider Order* at 44, para. 103 (standard for gateway providers).

¹³¹ VON Comments at 4. We discuss EPIC/NCLC's strict liability proposal more generally below. *See infra* para. 75.

¹³² *See Fifth Caller ID Authentication Further Notice* at 74, para. 192 (seeking comment on whether there should be a higher burden for VoIP providers to meet the "reasonable steps" standard).

¹³³ *See* EPIC/NCLC Comments at 18; State AGs Reply at 3-4 (stating that "[i]llegal robocallers depend upon a relatively small number of unscrupulous VoIP providers who integrate their call traffic into the larger body of legitimate call traffic").

provider.”¹³⁴ We find that applying our obligations to providers regardless of the technology used to transmit calls better aligns with the competitive neutrality of the TRACED Act.¹³⁵

35. *Deadlines.* Consistent with the obligation placed on other providers and the limited comments filed in the record, we require providers newly covered by the general mitigation standard to meet that standard within 60 days following Federal Register publication of this Report and Order.¹³⁶

2. Expanded Robocall Mitigation Database Filing Obligations

36. We next take steps to strengthen our Robocall Mitigation Database filing obligations to increase transparency and ensure that all providers act to mitigate illegal robocalls. The Commission previously required voice service providers with a STIR/SHAKEN implementation obligation¹³⁷ and those subject to an extension to file certifications in the Robocall Mitigation Database regarding their efforts to mitigate illegal robocalls on their networks—specifically, whether their traffic is either “signed with STIR/SHAKEN or . . . subject to a robocall mitigation program.”¹³⁸ Those voice service providers that certified that some or all of their traffic is “subject to a robocall mitigation program” were required to submit a robocall mitigation plan detailing the specific “reasonable steps” that they have taken “to avoid originating illegal robocall traffic.”¹³⁹ The Commission did not specifically require voice service providers without the facilities necessary to implement STIR/SHAKEN to file certifications in the database and had previously concluded that they were “not subject to [the Commission’s] implementation requirements.”¹⁴⁰

37. We adopt our proposal to expand the obligation to file a robocall mitigation plan along with a certification in the Robocall Mitigation Database to all providers regardless of whether they are required to implement STIR/SHAKEN—including non-gateway intermediate providers and providers

¹³⁴ INCOMPAS Comments at 15; *see also* Telnix Comments at 3; VON Comments at 5. Transaction Network Services (TNS) notes that while VoIP providers are the greatest source of “high-risk calls,” the distribution of such calls among VoIP providers “decreased slightly” in the first half of 2022. TNS, 2022 Robocall Investigation Report Ninth Ed. at 19 (Oct. 2022) (stating that inconsistent attestation practices make attestation data “less reliable as an analytical input”) (TNS October Robocall Report).

¹³⁵ TRACED ACT § 4(a)(2) (defining voice service as “any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor”).

¹³⁶ *See Fifth Caller ID Authentication Further Notice* at 74-75, para. 194 (seeking comment on compliance deadline for the proposed extension of robocall mitigation program requirements to additional providers and specifically asking if a deadline “30 or 60 days after the effective date of any order” would be sufficient); INCOMPAS Comments at 15 (“If the Commission adopts an extension to the General Mitigation Standard, the agency should provide 60 days for providers to comply.”). No commenter argued that a greater length of time is needed to comply, and we find no reason to depart from the same compliance timeframe previously established for other providers.

¹³⁷ By “STIR/SHAKEN implementation obligation,” we mean the applicable requirement under the Commission’s rules that a provider implement STIR/SHAKEN in the IP portions of their networks by a date certain, subject to certain exceptions. *See* 47 CFR § 64.6301 (implementation requirement for voice service providers); *id.* § 64.6302 (implementation requirement for intermediate providers, including gateway providers); *supra* para. 4. When referencing those providers “without” a STIR/SHAKEN implementation obligation, we mean those providers that are subject to an implementation extension, such as a provider with an entirely non-IP network or one that is unable to obtain the necessary SPC token to authenticate caller ID information, or that lack control over the facilities necessary to implement STIR/SHAKEN. *See* 47 CFR § 64.6304 (extension of implementation deadline); *First Caller ID Authentication Report and Order*, 35 FCC Rcd at 3260, para. 40.

¹³⁸ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1902, para. 82 (citation omitted).

¹³⁹ *Id.* (citations omitted); *see supra* para. 29.

¹⁴⁰ *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1868, para. 19 (citing *First Caller ID Authentication Report and Order*, 35 FCC Rcd at 3260, para. 40); *see supra* para. 29.

without the facilities necessary to implement STIR/SHAKEN¹⁴¹—and expand the downstream blocking duty to providers receiving traffic directly from non-gateway intermediate providers not in the Robocall Mitigation Database.¹⁴² As proposed, providers with a new Robocall Mitigation Database filing obligation must submit the same basic information as providers that had previously been required to file.¹⁴³ We also require all providers to file additional information in certain circumstances, as explained below.¹⁴⁴

38. *Universal Robocall Mitigation Database Filing Obligation.* There was overwhelming record support for broadening the Robocall Mitigation Database certification and mitigation plan filing obligation to cover all providers.¹⁴⁵ ACA Connects notes that expanding the certification requirement “could promote transparency and improve the consistency of the data contained in the database.”¹⁴⁶ Like the expanded mitigation obligation above, this approach will ensure that every provider in the call chain is covered by the same basic set of rules and will increase transparency and accountability. We also agree with USTelecom that requiring non-gateway intermediate providers to file a certification and mitigation plan in the Robocall Mitigation Database will facilitate our enforcement efforts for those providers,¹⁴⁷ as it will for voice service providers newly obligated to file a mitigation plan.

39. Consistent with our proposal¹⁴⁸ and existing providers’ obligations, all providers’ robocall mitigation plans must describe the specific “reasonable steps” the provider has taken to avoid, as applicable, the origination, carrying, or processing of illegal robocall traffic as part of its robocall mitigation program.¹⁴⁹ A provider that plays more than one “role” in the call chain should explain the mitigation steps it undertakes in each role, to the extent those mitigation steps are different.¹⁵⁰

40. *New Robocall Mitigation Program Description Obligations for All Providers.* Under the

¹⁴¹ *Fifth Caller ID Authentication Further Notice* at 75, para. 195.

¹⁴² *Id.* at 79, para. 205.

¹⁴³ *Id.* at 75-76, para. 197.

¹⁴⁴ *Id.* at 77, para. 201.

¹⁴⁵ CCA Comments at 10; INCOMPAS Comments at 15-17 (arguing for a broad Robocall Mitigation Database filing obligation, including by those that do not have the facilities necessary to implement STIR/SHAKEN); NCTA Comments at 3; Professional Association for Customer Engagement (PACE) Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 4 (rec. Aug. 17, 2022) (arguing that a Robocall Mitigation Database filing requirement for intermediate providers will “create[e] uniformity across provider-types and network segments”); USTelecom Comments at 8; VON Comments at 4; State AGs Reply at 10-11; TransNexus Reply at 12.

¹⁴⁶ ACA Connects Reply, CG Docket No. 17-59, WC Docket No. 17-97, at 2-3 (rec. Sept. 16, 2022) (discussing a certification requirement “for providers lacking control over the infrastructure necessary to implement STIR/SHAKEN (e.g., voice resellers),” and noting that “many such providers already filed voluntarily”).

¹⁴⁷ USTelecom Reply at 7 (“For example, a provider identified in tracebacks as accepting significant volumes of illegal traffic from one or more providers with late and/or suspiciously recent entries to the RMD may be indicative of substandard due diligence efforts. Downstream providers that accept traffic from [Robocall Mitigation Database] filers that submit incomplete or incomprehensible robocall mitigation plans, or that include inconsistencies or other questionable information in their . . . filings, may too be indicative of a problem worthy of Commission scrutiny.”).

¹⁴⁸ *See Fifth Caller ID Authentication Further Notice* at 76, paras. 195, 197.

¹⁴⁹ *See* 47 CFR § 64.6305(c)(2)(ii), (d)(2)(ii).

¹⁵⁰ *See infra* para. 44 (revising the Commission’s rules to require all providers to submit additional information regarding their role(s) in the call chain in robocall mitigation plans); *Fifth Caller ID Authentication Further Notice* at 76, para. 198 (proposing that, as part of the Bureau’s delegated authority to specify the form and format of any submissions, providers amending their current plan to cover different roles in the call path explain the mitigation steps they undertake as one type of provider and what mitigation steps they undertake as a different type of provider, to the extent they are different).

Commission’s current rules, voice service providers are required to describe the specific “reasonable steps” that they have taken “to avoid originating illegal robocall traffic” as part of their robocall mitigation programs.¹⁵¹ Gateway providers are required to address this topic and provide a description of how they have complied with the know-your-upstream provider requirement in section 64.1200(n)(4) of the Commission’s rules.¹⁵² We now impose specific additional requirements for the contents of robocall mitigation plans filed in the Robocall Mitigation Database.¹⁵³ Specifically, as part of their obligation to “describe with particularity” their robocall mitigation techniques, (1) voice service providers must describe how they are meeting their existing obligation to take affirmative, effective measures to prevent new and renewing customers from originating illegal calls;¹⁵⁴ (2) non-gateway intermediate providers and voice service providers must, like gateway providers, describe any “know-your-upstream provider” procedures in place designed to mitigate illegal robocalls;¹⁵⁵ and (3) all providers must describe any call analytics systems they use to identify and block illegal traffic, including whether they use a third-party vendor or vendors and the name of the vendor(s).¹⁵⁶ To comply with the new requirements to describe their “new and renewing customer” and “know-your-upstream provider” procedures, providers must describe any contractual provisions with end-users or upstream providers designed to mitigate illegal robocalls.¹⁵⁷ We conclude that the obligation to describe these procedures is particularly important for voice service providers without a STIR/SHAKEN implementation obligation.¹⁵⁸

¹⁵¹ 47 CFR § 64.6305(c)(2)(ii).

¹⁵² *Id.* § 64.6305(d)(2)(ii); *see also id.* § 64.1200(n)(4) (“A voice service provider must . . . [i]f the provider acts as a gateway provider, take reasonable and effective steps to ensure that any foreign originating provider or foreign intermediate provider from which it directly receives traffic is not using the gateway provider to carry or process a high volume of illegal traffic onto the U.S. network.”).

¹⁵³ *See Fifth Caller ID Authentication Further Notice* at 78, para. 203 (seeking comment on the specific areas or topics to be described in mitigation plans submitted to the Robocall Mitigation Database).

¹⁵⁴ 47 CFR § 64.1200(n)(3). We do not expect providers to necessarily submit contractual provisions, but to describe them in general terms, including whether such provisions are typically included in their contracts.

¹⁵⁵ While we do not currently require intermediate providers other than gateway providers to engage in “know-your-upstream provider” procedures, if they have put such procedures in place, they must be documented in their robocall mitigation plan.

¹⁵⁶ While we do not specifically require providers to use call analytics as EPIC/NCLC urges, *see* EPIC/NCLC Comments at 12 (arguing that a provider should not be able to evade liability under the reasonable steps standard by asserting that it did not have the tools to monitor call traffic), doing so may be a “reasonable step” to mitigate illegal robocall traffic, depending on the circumstances. For example, if a provider is a reseller, it is likely to rely on any analytics software adopted by its wholesale provider to monitor call traffic. In that case, the reseller should describe this practice in its robocall mitigation plan.

¹⁵⁷ INCOMPAS Comments at 15-16.

¹⁵⁸ CCA Comments at 12-13 (arguing that resellers exempt from implementing STIR/SHAKEN are in the “best position to vet new customers” and should be required to file in the Robocall Mitigation Database and describe their “know-your-customer” process if they serve end-users). In the *Gateway Provider Order*, we required gateway providers to comply with a new requirement to “know” their upstream provider and required gateway providers to include in their Robocall Mitigation Database-filed mitigation plan a description of how they have complied with this obligation. *Gateway Provider Order* at 17, para. 37; 47 CFR § 64.6305(d)(2)(ii). In the *Fifth Caller ID Authentication Further Notice*, we sought comment on expanding these two requirements to non-gateway intermediate providers. *See Fifth Caller ID Authentication Further Notice* at 70-71, paras. 183-86. We continue to study the record on whether to do so. Similarly, we continue to consider whether to adopt our proposal to require all providers to respond to traceback requests within 24 hours as gateway providers are currently required to do. *See id.* at 69, para. 177.

41. We impose these new requirements because it has become increasingly clear that provider due diligence and the use of call analytics are key ways to stop illegal robocalls.¹⁵⁹ The public and the Commission's understanding of the steps providers take to scrutinize their relationships with other providers in the call path and analyze their traffic will facilitate compliance with and enforcement of our rules.¹⁶⁰ Recent actions by the Enforcement Bureau demonstrating that some providers are not including meaningful descriptions in their mitigation plans warrants more prescriptive obligations.¹⁶¹ There is also specific record support for these new requirements.¹⁶²

42. *Baseline Information Submitted with Robocall Mitigation Database Certifications.* Consistent with existing providers' filing obligations and our proposal in the *Fifth Caller ID Authentication Further Notice*, all providers newly obligated to submit a certification to the Robocall Mitigation Database pursuant to the requirements adopted herein must submit the following information: (1) whether it has fully, partially, or not implemented the STIR/SHAKEN authentication framework in the IP portions of its network; (2) the provider's business name(s) and primary address; (3) other business name(s) in use by the provider; (4) all business names previously used by the provider; (5) whether the provider is a foreign provider; and, (6) the name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues.¹⁶³ The certification must be signed by an officer of the company.¹⁶⁴ Consistent with our proposal and current rules, providers with a new filing obligation must update any information submitted within 10 business days of "any change in the information" submitted, ensuring that the information is

¹⁵⁹ See, e.g., CCA Comments at 8-9 ("Most providers routinely engage in some level of due diligence in the customer acquisition and onboarding process. . . . A compliant robocall mitigation plan should include at least this level of customer due diligence."); Credit Union National Association et al. (CUNA) Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (rec. Aug. 17, 2022); EPIC/NCLC Comments at 12 (citing NCLC, Scam Robocalls: Telecom Providers Profit at 16-18 (June 1, 2022), <https://www.nclc.org/resources/scam-robocalls-telecom-providers-profit/>) (arguing that taking "reasonable steps" should include call analytics and possibly also content analytics); ZipDX Comments at 4; Letter from Joshua M. Bercu, Executive Director, ITG, to Marlene H. Dortch, Secretary, FCC, GC Docket No. 17-59, WC Docket No. 17-97, at 3-5 (filed Sept. 1, 2022) (ITG Sept 1 *Ex Parte*).

¹⁶⁰ Verizon Reply at 1 (arguing that the Commission should support "emerging industry-driven innovations, such as [know-your-customer] tools that service providers can use to establish a 'chain of trust' between callers and recipients as well as to facilitate compliance with the Commission's robocall mitigation rules); see also CCA Comments at 5; USTelecom Comments at 5.

¹⁶¹ See, e.g., *Akabis, LLC*, Order, DA 22-1032, at 3, paras. 5-7 (EB Oct. 3, 2022) (finding provider filed deficient certification because its robocall mitigation plan consisted only of "a slide that appears to have been created by a third party, Inteliquent, describing the process to obtain a STIR/SHAKEN certificate" rather than a description of "reasonable steps"); *Cloud4 Inc.*, Order, DA 22-1038, at 3, paras. 5-7 (EB Oct. 3, 2022) (finding provider filed deficient certification because its robocall mitigation plan consisted only of a request for confidentiality); *Global UC Inc.*, Order, DA 22-1037, at 3, paras. 5-7 (EB Oct. 3, 2022) (deficient mitigation plan consisting only of background technical information) (*Global UC Notice Order*); *Horizon Technology Group LLC*, Order, DA 22-1036, at 3, paras. 5-7 (EB Oct. 3, 2022) (deficient mitigation plan consisting only of screenshot of Commission website); *Morse Communications Inc.*, Order, DA 22-1035, at 3, paras. 5-7 (EB Oct. 3, 2022); *Sharon Telephone Company*, Order, DA 22-1034, at 3, paras. 5-7 (EB Oct. 3, 2022); *Southwest Arkansas Telecommunications and Technology, Inc.*, Order, DA 22-1033, at 3, paras. 5-7 (EB Oct. 3, 2022) (all on file in EB-TCD-22-00033932).

¹⁶² See, e.g., CCA Comments at 13 (supporting a requirement that resellers describe their know-your-customer process); INCOMPAS Comments at 15-16 (supporting a requirement that providers describe their know-your-customer process); VON Comments at 8 & n.16; TransNexus Reply at 13 ("The Commission should require certifying providers to describe in sufficient detail how they vet customers and upstream providers and monitor traffic.").

¹⁶³ *Fifth Caller ID Authentication Further Notice* at 75, para. 197 (citing 47 CFR § 64.6305).

¹⁶⁴ Cf. 47 CFR § 64.6305(c)(3)(ii) (obligation for voice service providers); *id.* § 64.6305(d)(3)(ii) (obligation for gateway providers); *id.* § 1.16.

kept up to date.¹⁶⁵ Certifications and robocall mitigation plans must be submitted in English or with a certified English translation.¹⁶⁶

43. *Additional Information to be Submitted with Mitigation Plans.* In order to effectively implement our new and modified authentication obligations, in addition to the baseline information currently required of all filers, we also require providers to submit additional information in their Robocall Mitigation Database certifications.¹⁶⁷ We require all providers: (1) to submit additional information regarding their role(s) in the call chain; (2) asserting they do not have an obligation to implement STIR/SHAKEN to include more detail regarding the basis of that assertion; (3) to certify that they have not been prohibited from filing in the Robocall Mitigation Database; and (4) to state whether they are subject to a Commission, law enforcement, or regulatory agency action or investigation due to suspected unlawful robocalling or spoofing and provide information concerning any such actions or investigations.

44. First, to increase transparency for the industry and regulators and better facilitate our evaluation of the mitigation plans detailed in the Robocall Mitigation Database, we require providers to submit additional information to indicate the role or roles they are playing in the call chain. Specifically, providers must indicate whether they are: (1) a voice service provider with a STIR/SHAKEN implementation obligation serving end-users; (2) a voice service provider with a STIR/SHAKEN obligation acting as a wholesale provider originating calls; (3) a voice service provider without a STIR/SHAKEN obligation; (4) a non-gateway intermediate provider with a STIR/SHAKEN obligation; (5) a non-gateway intermediate provider without a STIR/SHAKEN obligation; (6) a gateway provider with a STIR/SHAKEN obligation; (7) a gateway provider without a STIR/SHAKEN obligation; and/or (8) a foreign provider. This requirement expands upon the existing rule that providers indicate in their Robocall Mitigation Database filings whether they are a foreign provider, voice service provider, and/or gateway provider.¹⁶⁸ We note that certain provider classes have different obligations under our rules and, as explained above, the “reasonable steps” necessary to meet our mitigation standard may differ based on the provider’s role in the call path. We conclude, therefore, that the collection of this information is necessary to allow the public and the Commission to determine whether a specific provider’s mitigation steps are reasonable.

45. Second, we expand our requirement that providers with a current Robocall Mitigation Database filing obligation must state in their mitigation plan whether a STIR/SHAKEN extension

¹⁶⁵ See *Fifth Caller ID Authentication Further Notice* at 76, para. 199; 47 CFR § 64.6305(c)(5) (“A voice service provider shall update its filings within 10 business days of any change to the information it must provide pursuant to paragraphs (c)(1) through (4) of this section.”); *id.* § 64.6305(d)(5) (parallel obligation for gateway providers).

¹⁶⁶ Cf. 47 CFR § 64.6305(c)(2) (obligation for voice service providers); *id.* § 64.6305(d)(2) (obligation for gateway providers); see also *Gateway Provider Order* at 17-18, para. 38; 47 CFR § 1.355 (“Every document, exhibit, or other paper written in a language other than English, which shall be filed in any proceeding, or in response to any order, shall be filed in the language in which it is written together with an English translation thereof duly verified under oath to be a true translation. Each copy of every such document, exhibit, or other paper filed shall be accompanied by a separate copy of the translation.”); *id.* § 63.53(c) (“Applications submitted under Section 214 of the Communications Act [of 1934, as amended] for international services and any related pleadings that are in a foreign language shall be accompanied by a certified translation in English.”); *U.S. v. Rivera-Rosario*, 300 F.3d 1, 5 (1st Cir. 2002) (“It is clear, to the point of perfect transparency, that federal court proceedings must be conducted in English.”).

¹⁶⁷ In the *Fifth Caller ID Authentication Further Notice*, we sought comment on whether some or all providers should submit additional information to the Robocall Mitigation Database. See *Fifth Caller ID Authentication Further Notice* at 75-76, 77-78, paras. 197-98, 201-203.

¹⁶⁸ See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1903, para. 84; *Gateway Provider Order* at 17, para. 36.

applies,¹⁶⁹ and apply that rule to all current and new Robocall Mitigation Database filers. Specifically, a filer asserting it does not have an obligation to implement STIR/SHAKEN because of an ongoing extension, or because it lacks the facilities necessary to implement STIR/SHAKEN, must both explicitly state the rule that exempts it from compliance¹⁷⁰ and explain in detail why that exemption applies to the filer.¹⁷¹ We conclude that this limited expansion of our existing rule is necessary to permit the public and Commission to evaluate why a provider believes it is not subject to all or a subset of our rules and whether that explanation is reasonable.

46. Third, we require new and existing filers to certify that they have not been prohibited from filing in the Robocall Mitigation Database pursuant to a law enforcement action, including the new enforcement requirements adopted herein.¹⁷² Filers will be required to certify that they have not been barred from filing in the Robocall Mitigation Database by such an enforcement action. This includes, but is not limited to, instances in which a provider has been removed from the Robocall Mitigation Database and has been precluded from refiling unless and until certain deficiencies have been cured¹⁷³ and those in which a provider's authorization to file has been revoked due to continued violations of the Commission's robocall mitigation rules.¹⁷⁴ This information will enhance the effectiveness of the new enforcement measures we adopt herein to impose consequences on repeat offenders of our robocall mitigation rules.¹⁷⁵ We also adopt our proposal to require providers to submit information regarding their principals, affiliates, subsidiaries, and parent companies in sufficient detail to facilitate the Commission's ability to determine whether the provider has been prohibited from filing in the Robocall Mitigation Database.¹⁷⁶

47. Fourth, we require all providers to: (1) state whether, at any time in the prior two years, the filing entity (and/or any entity for which the filing entity shares common ownership, management, directors, or control) has been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing due to the filing entity transmitting, encouraging, assisting, or otherwise facilitating illegal robocalls or spoofing, or a

¹⁶⁹ 47 CFR § 64.6305(c)(2)(i), (d)(2)(i).

¹⁷⁰ For example, by explaining that it lacks the necessary facilities to implement STIR/SHAKEN or it cannot obtain an SPC token. *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1868, para. 19 (citing *First Caller ID Authentication Report and Order*, 35 FCC Rcd at 3260, para. 40); *id.* at 1882-83, para. 50; 47 CFR § 64.6304.

¹⁷¹ For example, by explaining that it is a pure reseller with some facilities, but that they are not sufficient to implement STIR/SHAKEN, or the steps it has taken to "diligently pursue" obtaining a token. *See Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1882-83, para. 50.

¹⁷² *See infra* Section III.C (adopting additional enforcement measures for violations of the Commission's robocall mitigation rules).

¹⁷³ *See October 2022 Robocall Mitigation Database Compliance/Removal Orders*, EB-TCD-22-00034406, Public Notice, DA 22-1220, at 2 (EB Nov. 22, 2022) (directing that the filer removed from the Robocall Mitigation Database "shall not refile until and unless the Wireline Competition Bureau and the Enforcement Bureau determine that [the filer] has addressed and resolved any deficiencies or shortcomings in its Robocall Mitigation Database certification") (*Removal Order*).

¹⁷⁴ *See infra* paras. 65-73 (defining when entities may be subject to revocations of section 214 authority and other Commission authorizations based on continued violations of the Commission's robocall mitigation rules).

¹⁷⁵ *See id.* We disagree with CCA that the same purpose can be served by indicating whether a provider filed under a prior name. CCA Comments at 10. This is not sufficient information to facilitate our rule barring related entities of repeated bad actors from filing in the Robocall Mitigation Database.

¹⁷⁶ *See Fifth Caller ID Authentication Further Notice* at 78, para. 201; *infra* paras. 47, 71-73. Consistent with the delegation to the Wireline Competition Bureau to determine the form and format of providers' filings, *see infra* para. 52, we delegate to the Wireline Competition Bureau to determine the form and format of such data. *See infra* paras. 47, 73.

deficient Robocall Mitigation Database certification or mitigation program description; and, if so (2) provide a description of any such action or investigation, including all law enforcement or regulatory agencies involved, the date that any action or investigation was commenced, the current status of the action or investigation, a summary of the findings of wrongdoing made in connection with the action or investigation, and whether any final determinations have been issued.¹⁷⁷ We limit this reporting requirement to formal actions and investigations that have been commenced or issued pursuant to a written notice or other instrument containing findings by the law enforcement or regulatory agency that the filing entity has been or is suspected of the illegal activities itemized above, including, but not limited to, notices of apparent liability, forfeiture orders, state or federal civil lawsuits or criminal indictments, and cease-and-desist notices.¹⁷⁸ This information will help the Commission evaluate claims made by providers in their mitigation program descriptions and identify potential violations of our rules. We agree with commenters, however, that providers should not be required to submit information concerning mere inquiries from law enforcement or regulatory agencies or investigations that do not include findings of actual or suspected wrongdoing.¹⁷⁹ Thus, for example, traceback requests,¹⁸⁰ Enforcement Bureau letters of inquiry or subpoenas, or investigative demand letters or subpoenas issued by regulatory agencies or law enforcement would not trigger this obligation because they are not accompanied by findings of actual or suspected wrongdoing.¹⁸¹ We find that inquiries or investigations that do not contain findings of actual or suspected wrongdoing by the law enforcement or regulatory agency would be of limited value to the

¹⁷⁷ In the *Fifth Caller ID Authentication Further Notice*, we sought comment on whether to adopt a requirement for providers to inform the Commission through an update to their Robocall Mitigation Database filing if the provider is subject to a Commission, law enforcement, or regulatory agency action, investigation, or inquiry due to its robocall mitigation plan being deemed insufficient or problematic, or due to suspected unlawful robocalling or spoofing. *Fifth Caller ID Authentication Further Notice* at 76, para. 199. We note that similar requirements for VoIP providers remain pending in the Direct Access proceeding. See *Numbering Policies for Modern Communications et al.*, WC Docket No. 13-97 et al., Further Notice of Proposed Rulemaking, 36 FCC Rcd 12907, 12914-15, para. 15 (2021) (*Direct Access Further Notice*).

¹⁷⁸ Providers that must include confidential information to accurately and fully comply with this reporting requirement, as explained below, may seek confidential treatment of that information pursuant to section 0.459 of the Commission's rules. 47 CFR § 0.459; see also *infra* para. 49. We do not adopt USTelecom's request that the reporting requirement we adopt today be limited to public actions and investigations. See USTelecom March 8 *Ex Parte* at 2. We find that limiting the reporting requirement to formal actions and investigations that are public would simply reduce the scope of the reporting requirement and is not necessary to clarify it.

¹⁷⁹ See VON Comments at 6 (arguing that providers should not be required to submit information regarding inquiries about alleged robocall traffic); USTelecom March 8 *Ex Parte* at 1-2.

¹⁸⁰ INCOMPAS Reply, CG Docket No. 17-59, WC Docket No. 17-97, at 5 (rec. Sept. 16, 2022) (arguing that "the number of traceback requests that a provider receives is not indicative of its responsibility for illegal robocall campaigns") (citing ITG Sept 1 *Ex Parte* at 6); ITG Sept 1 *Ex Parte* at 6 ("Absent proper context and appropriate investigation, raw traceback data can understate the complicity of purposefully evasive bad actors while at the same time incorrectly stating or overstating the responsibility of a voice provider, including lesser-known small providers.").

¹⁸¹ We do not adopt INCOMPAS's proposal that we exempt formal actions and investigations accompanied by findings of actual or suspected wrongdoing that rely "solely" on tracebacks from the disclosure requirement we adopt today. See INCOMPAS March 10 *Ex Parte* at 3-4. As stated above, we exclude traceback requests from the disclosure requirement when they are not accompanied by findings of actual or suspected wrongdoing. When a formal action or investigation based solely on traceback requests is accompanied by findings of actual or suspected wrongdoing made by the Commission, law enforcement, or a regulatory agency, disclosure of that information may be useful in evaluating claims made by providers in their mitigation program descriptions and identifying potential violations of our rules. We also decline INCOMPAS's proposal to seek further comment on the requirement to file a description of relevant actions or investigations. See *id.* at 4.

Commission in evaluating the certifications and robocall mitigation plans submitted to the Robocall Mitigation Database.¹⁸²

48. Finally, we require filers to submit their OCN if they have one.¹⁸³ An OCN is a prerequisite to obtaining an SPC token, and we conclude that filing the OCN or indicating that they do not have one will allow us to more easily determine whether a provider is meeting its requirement to diligently pursue obtaining a token in order to authenticate their own calls and provides an additional way to determine relationships among providers. We do not require filers to include additional identifying information discussed in the *Gateway Provider Further Notice*.¹⁸⁴ There was no support for doing so, and we find the incremental benefits of providing additional information beyond the OCN are unclear.¹⁸⁵

49. *Robocall Mitigation Database Filing Deadlines.* Providers newly subject to our Robocall Mitigation Database filing obligations must submit a certification and mitigation plan to the Robocall Mitigation Database by the later of: (1) 30 days following publication in the Federal Register of notice of approval by the Office of Management and Budget (OMB) of any associated Paperwork Reduction Act (PRA) obligations; or (2) any deadline set by the Wireline Competition Bureau through Public Notice. This approach provides additional flexibility to the Wireline Competition Bureau to provide an extended filing window where circumstances warrant.¹⁸⁶ Existing filers subject to new or modified requirements adopted in this *Sixth Report and Order* must amend their filings with the newly required information by the same deadline. If a provider is required to fully implement STIR/SHAKEN but has not done so by the Robocall Mitigation Database filing deadline, it must so indicate in its filing. It must then later update the filing within 10 business days of completing STIR/SHAKEN implementation.¹⁸⁷ We recognize that some of this information may be considered confidential. Providers may make confidential submissions consistent with our existing confidentiality rules.¹⁸⁸

50. *Refusing Traffic From Unlisted Providers.* As proposed, we extend the prohibition on

¹⁸² See, e.g., Robocall Facilitators Must Cease and Desist, FCC (2023), <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist> (last visited Mar. 14, 2023).

¹⁸³ *Gateway Provider Further Notice*, 36 FCC Rcd at 15005, para. 100 (seeking comment on whether the Commission should collect providers' OCN); ZipDX Comments at 13 (arguing that the OCN should be collected).

¹⁸⁴ *Gateway Provider Further Notice*, 36 FCC Rcd at 15005, para. 100 (in addition to their OCN, seeking comment on whether we should require filers to provide their Carrier Identification Code and/or Access Customer Name Abbreviation); see also CCA Comments at 10 (opposing requiring providers to file additional information).

¹⁸⁵ INCOMPAS Comments at 16 (arguing that the "additional information requirements suggested by the Commission may be unnecessarily burdensome and are unlikely to enhance compliance"). We also do not adopt TransNexus's proposal for providers to submit their registration information from the STI-GA website. TransNexus Reply at 13-14. We conclude that while such information may be helpful in determining whether a provider is participating in STIR/SHAKEN, reliance on the posting on a third-party website may complicate compliance (for example, if the STI-GA alters its website or modifies the information it chooses to post).

¹⁸⁶ ACA Connects Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 7 (rec. Aug. 17, 2022) (asking for a deadline of no earlier than six months following approval of the relevant information collection obligations); State AGs Reply at 11 (asking for the Commission to adopt the shortest proposed compliance deadlines).

¹⁸⁷ See 47 CFR § 64.6305(c)(5) (requirement for voice service providers); *id.* § 64.6305(d)(5) (requirement for gateway providers).

¹⁸⁸ *Wireline Competition Bureau Adopts Protective Order for Robocall Mitigation Program Descriptions*, WC Docket No. 17-97, Public Notice, Attach. (Protective Order), 36 FCC Rcd 14562, 14566, para. 2 (WCB 2021) (defining confidential information filed as part of a robocall mitigation plan as information filed consistent with the Protective Order or sections 0.459 or 0.461 of the Commission's rules) (*Protective Order Public Notice*). As USTelecom noted previously, providers may only redact filings to the extent appropriate under our confidentiality rules. See USTelecom *Gateway Provider Further Notice* Comments at 8-9; *Protective Order Public Notice*, 36 FCC Rcd at 14565 ("[F]ilings which are overly redacted are not appropriate We will not hesitate to act should we identify improper confidentiality requests.").

accepting traffic from unlisted (including de-listed) providers to non-gateway intermediate providers.¹⁸⁹ This proposal is well supported in the record and will close the final gap in our Robocall Mitigation Database call blocking regime.¹⁹⁰ Under this rule, downstream providers will be prohibited from accepting any traffic from a non-gateway intermediate provider not listed in the Robocall Mitigation Database, either because the provider did not file or their certification was removed as part of an enforcement action.¹⁹¹ We conclude that a non-gateway intermediate provider Robocall Mitigation Database filing requirement and an associated prohibition against accepting traffic from non-gateway intermediate providers not in the Robocall Mitigation Database will ensure regulatory symmetry. By extending this prohibition to non-gateway intermediate providers, we ensure that downstream providers will no longer be required to determine the “role” of the upstream provider on a call-by-call basis to determine whether the call should be blocked.¹⁹² Consistent with our proposal, and the parallel requirements adopted for accepting traffic from gateway providers and voice service providers, compliance will be required no sooner than 90 days following the deadline for non-gateway intermediate providers to submit a certification to the Robocall Mitigation Database.¹⁹³

51. As a result of non-gateway intermediate providers’ affirmative obligation to submit a certification in the Robocall Mitigation Database, downstream providers may not rely upon any non-gateway intermediate provider database registration imported from the intermediate provider registry.¹⁹⁴ Any imported Robocall Mitigation Database entry is not sufficient to meet a non-gateway intermediate provider’s Robocall Mitigation Database filing obligation or to prevent downstream providers from blocking traffic upon the effective date of the obligation for downstream providers to block traffic from non-gateway intermediate providers.

52. *Bureau Guidance.* Consistent with the Commission’s prior delegations of authority concerning the Robocall Mitigation Database submission process,¹⁹⁵ we direct the Wireline Competition Bureau to make the necessary changes to the Robocall Mitigation Database and to provide appropriate

¹⁸⁹ See *Fifth Caller ID Authentication Further Notice* at 79, para. 205.

¹⁹⁰ Comcast Comments at 11 (arguing that it would be a “natural extension of this obligation once intermediate providers are required to submit a Database certification”); NYPSC Comments at 1-2; USTelecom Reply at 5-6; ZipDX *Gateway Provider Further Notice* Comments at 32-33 (arguing that all providers should be required to file in the Robocall Mitigation Database and have their traffic blocked if they are not listed); see also USTelecom Comments at 8-9 (arguing for a database filing obligation for all intermediate providers); Verizon Reply, CG Docket No. 17-59, WC Docket No. 17-97, at 5 (rec. Jan. 10, 2022).

¹⁹¹ See, e.g., *Removal Order* at 2-3.

¹⁹² USTelecom Reply at 5 (arguing that the intermediate provider blocking rule would “simplif[y] the Commission’s regime” so that the Commission’s rules would “simply prohibit any provider from accepting traffic from any other provider that has not certified to its robocall mitigation practices in the [Robocall Mitigation Database]”).

¹⁹³ See *Fifth Caller ID Authentication Further Notice* at 79, para. 206.

¹⁹⁴ See *id.* at 79, para. 205. Previously, all intermediate providers were imported into the Robocall Mitigation Database from the rural call completion database’s Intermediate Provider Registry so that all intermediate providers would be represented therein, giving voice service providers “confidence that any provider not listed in the Robocall Mitigation Database” was not in compliance with the Commission’s rules. *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1904, para. 87 n.340.

¹⁹⁵ See, e.g., *Gateway Provider Order* at 21, paras. 39, 45, 47-48 (delegating to the Wireline Competition Bureau the authority to specify the form and format of gateway provider submissions and to make necessary changes to the Robocall Mitigation Database and portal, and directing the Wireline Competition Bureau to provide filing instructions and to release a public notice setting deadlines and announcing its determinations regarding the management of imported and de-listed filings); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1902-903, para. 83 (directing the Wireline Competition Bureau to establish the Robocall Mitigation Database and portal, to provide appropriate filing instructions and training materials, and to release a Public Notice when voice service providers may begin filing certifications).

Robocall Mitigation Database filing instructions and training materials as necessary and consistent with this Report and Order. We delegate to the Wireline Competition Bureau the authority to specify the form and format of any submissions as well as necessary changes to the Robocall Mitigation Database submission interface. We also delegate to the Wireline Competition Bureau the authority to make the necessary changes to the Robocall Mitigation Database to indicate whether a non-gateway intermediate provider has made an affirmative filing (as opposed to being imported as an intermediate provider) and whether any provider's filing has been de-listed as part of an enforcement action, and to announce its determination as part of its guidance. We also direct the Wireline Competition Bureau to release a public notice upon OMB approval of any information collection associated with our Robocall Mitigation Database filing requirements, announcing OMB approval of our rules, effective dates, and deadlines for filing and for providers to block traffic from non-gateway intermediate providers that have not filed.

C. Enforcement

53. In order to further strengthen our efforts to hold illegal robocallers accountable for their actions, we adopt several enforcement proposals described in the *Fifth Caller ID Authentication Further Notice*.¹⁹⁶ Specifically, we: (1) adopt a per-call forfeiture penalty for failure to block traffic in accordance with our rules and set maximum forfeitures for such violations; (2) require the removal of non-gateway intermediate providers from the Robocall Mitigation Database for violations of our rules, consistent with the standard applied to other filers; (3) establish an expedited process for provider removal for facially deficient certifications; and (4) establish rules that would impose consequences on repeat offenders of our robocall mitigation rules. The adoption of more robust enforcement tools is supported in the record.¹⁹⁷ As USTelecom notes, strong enforcement action can significantly reduce the prevalence of illegal robocall campaigns.¹⁹⁸

1. Per Call Maximum Forfeitures

54. We first adopt our proposal to establish a forfeiture penalty on a per-call basis for violations of our robocall blocking rules in 47 CFR § 64.1200 *et seq.*¹⁹⁹ and 47 CFR § 64.6300 *et seq.*²⁰⁰ Commenters generally agreed that aggressive penalties are appropriate.²⁰¹ Mandatory blocking is an important tool for protecting American consumers from illegal robocalls.²⁰² As we have found in our previous robocalling orders and enforcement actions, illegal robocalls cause significant consumer harm.²⁰³

¹⁹⁶ See *Fifth Caller ID Authentication Further Notice* at 80, para. 207.

¹⁹⁷ See generally CCA Comments at 2 (advocating for strong enforcement steps); USTelecom Comments at 7 (same); ACA Connects Reply at 3 (same); Verizon Reply at 1 (same); see also NCTA Comments at 4 (writing that “[s]trong enforcement of the Commission’s call authentication and blocking rules is essential to protecting the public”); ZipDX Comments at 14.

¹⁹⁸ See USTelecom Comments at 15.

¹⁹⁹ See 47 CFR §§ 64.1200(n)(5) (requiring gateway providers to block illegal traffic following Commission notice); § 64.1200(n)(6) (requiring providers to block traffic from an immediately upstream gateway provider that itself has failed to block pursuant to (n)(5)); § 64.1200(o) (requiring gateway providers to block calls sent from a number on a “reasonable do-not originate list”).

²⁰⁰ 47 CFR § 64.6305(e); Appx. A § 64.6305(g) (requiring providers to not accept traffic from upstream providers not in the robocall mitigation database).

²⁰¹ See CCA Comments at 11 (while supporting the application of relevant mitigating and aggravating factors where appropriate, agreeing that maximum penalties are appropriate for bad actors); NCTA Comments at 4 (stating that “NCTA does not oppose the penalties proposed” but suggesting that the Commission adopt a “good faith” standard when imposing forfeitures); ZipDX Comments at 14 (agreeing that “penalties should be on a per-call basis”).

²⁰² *Fifth Caller ID Authentication Further Notice* at 331, para. 73.

²⁰³ See, e.g., *Gateway Provider Order* at 3, para. 5; *John C. Spiller*; *Jakob A. Mears*; *Rising Eagle Capital Group LLC*; *JSquared Telecom LLC*; *Only Web Leads LLC*; *Rising Phoenix Group*; *Rising Phoenix Holdings*; *RPG Leads*; (continued....)

Penalties for failure to comply with mandatory blocking requirements must deter noncompliance and be sufficient to ensure that entities subject to these requirements are unwilling to risk suffering serious economic harm.

55. Consistent with our proposal, we authorize the maximum forfeiture amount for each violation of the mandatory blocking requirements of \$23,727 per call.²⁰⁴ This is the maximum forfeiture amount our rules permit us to impose on non-common carriers.²⁰⁵ Although common carriers may be assessed a maximum forfeiture of \$237,268 for each violation,²⁰⁶ we find that we should not impose a greater penalty on one class of providers than another for purposes of the mandatory blocking requirements. We also set a base forfeiture amount of \$2,500 per call because we conclude that the failure to block results in a similar consumer harm as the robocall itself (e.g., the consumer receives the robocall itself). We find that a \$2,500 base forfeiture is reasonable in comparison to the \$4,500 base forfeiture for violations of the Telephone Consumer Protection Act of 1991 (TCPA).²⁰⁷ While the failure to block produces significant consumer harm, the harm is not as great and does not carry the same degree of culpability as the initiator of an illegal robocall campaign who may have committed a TCPA violation. While we sought comment on whether we should consider specific additional mitigating or aggravating factors, we did not receive sufficient comment to provide a basis for doing so.²⁰⁸ As with other violations of our rules, however, existing upward and downward adjustment criteria in section 1.80 of the Commission's rules may apply.²⁰⁹ Additionally, there may be pragmatic factors in our prosecutorial discretion in calculating the total forfeiture amount—particularly when there is a very large number of calls at issue—as we have done in our enforcement actions pursuant to the TCPA and those actions taken against spoofing.²¹⁰

2. Provider Removal from the Robocall Mitigation Database

56. We also adopt our proposal to provide for the removal of non-gateway intermediate

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and *Rising Eagle Capital Group – Cayman*, Forfeiture Order, 36 FCC Rcd 6225, 6237-39, paras. 26-29 (2021) (*Rising Eagle Forfeiture Order*); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, 33 FCC Rcd 4663, 4668, para. 15 (2018) (*Abramovich Forfeiture Order*).

²⁰⁴ *Fifth Caller ID Authentication Further Notice* at 80, para. 209. We note that the maximum forfeiture amounts have increased since the adoption of the *Fifth Caller ID Authentication Further Notice*, which sought comment on a maximum \$22,021 forfeiture amount. *Amendment of Section 1.80(b) of the Commission's Rules et al.*, Order, DA 22-1356 at 1, para. 1 (EB Dec. 23, 2022) (“This Order amends section 1.80(b) of the Commission's rules to adjust the forfeiture penalties for inflation”); *id.* Appx. A § 1.80(b)(9) (setting maximum forfeiture for violations “for any case not previously covered” at \$23,727).

²⁰⁵ 47 CFR § 1.80(b)(9).

²⁰⁶ *Id.* § 1.80(b)(2).

²⁰⁷ *Sumco NAL* at 34, para. 77 (“The Commission has on multiple occasions used a base forfeiture of \$4,500 for violations involving section 227(b) [and we] propose to follow that same approach here.”).

²⁰⁸ CCA Comments at 11 (stating that the Commission “should tailor penalties based on a variety of aggravating or mitigating factors[.]” including “the provider’s history of compliance and responsiveness to traceback requests or other Commission notifications, reasonable steps the provider took to mitigate illegal traffic on its network, and the robustness of its mitigation plan and its implementation”).

²⁰⁹ 47 CFR § 1.80(b)(10) tbl. 3.

²¹⁰ See *Abramovich Forfeiture Order*, 33 FCC Rcd at 4665, para. 7 (using a sampling methodology); *John C. Spiller*; *Jakob A. Mears*; *Rising Eagle Capital Group LLC*; *JSquared Telecom LLC*; *Only Web Leads LLC*; *Rising Phoenix Group*; *Rising Phoenix Holdings*; *RPG Leads*; and *Rising Eagle Capital Group – Cayman*, Notice of Apparent Liability, 35 FCC Rcd 5948, 5963-64, paras. 38-39 (2020) (*Spiller NAL*) (enumerating pragmatic factors); *Abramovich Forfeiture Order*, 33 FCC Rcd at 4671, para. 25 (upholding a forfeiture below the statutory maximum).

providers from the database for violations of our rules.²¹¹ In the *Second Caller ID Authentication Report and Order*, the Commission set forth consequences for voice service providers that file a deficient robocall mitigation plan or that “knowingly or negligently” originate illegal robocall campaigns, including removal from the Robocall Mitigation Database.²¹² Gateway providers are now subject to the same rules for calls that they carry or process.²¹³ To promote regulatory symmetry, we conclude that non-gateway intermediate providers should face similar consequences.²¹⁴

57. Specifically, we find that a non-gateway intermediate provider with a deficient certification—such as when the certification describes a program that is unreasonable, or if we determine that a provider knowingly or negligently carries or processes illegal robocalls—we will take appropriate enforcement action.²¹⁵ This may include, among other actions, removing a certification from the database after providing notice to the intermediate provider and an opportunity to cure the filing, requiring the intermediate provider to submit to more specific robocall mitigation requirements, and/or proposing the imposition of a forfeiture. We decline, however, to adopt other reasons to remove providers from the database. We conclude that the existing basis for removal is appropriately tailored to the underlying purpose of the Robocall Mitigation Database—to facilitate detection and elimination of illegal robocall traffic.²¹⁶ As proposed, we explicitly expand our delegation of authority to the Enforcement Bureau to delist or exclude a provider from the Robocall Mitigation Database to include the removal of non-gateway intermediate providers.²¹⁷

58. Downstream providers must refuse traffic sent by a non-gateway intermediate provider that is not listed in the Robocall Mitigation Database, as described above and consistent with the existing safeguards applicable to our existing rules for refusing traffic for calls to 911, public safety answering points, and government emergency numbers.²¹⁸ We agree with VON that any sanctions for failure to block calls from a provider removed from the database should not occur without sufficient notice to the industry.²¹⁹ We conclude, however, that the existing Enforcement Bureau process, where providers are given two business days to block calls following Commission notice of removal from the database, is sufficient, as it appropriately balances the public’s interest in blocking unwanted robocalls against the need to allow providers sufficient time to take the necessary steps to block traffic.²²⁰

3. Expedited Removal Procedure for Facially Deficient Filings

59. We agree with commenters that there are certain instances in which a provider should be

²¹¹ See *Fifth Caller ID Authentication Further Notice* at 80, para. 210.

²¹² See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1903, para. 83.

²¹³ *Gateway Provider Order* at 18, para. 40.

²¹⁴ See *Fifth Caller ID Authentication Further Notice* at 80, para. 210.

²¹⁵ See *id.* at 81, para. 210.

²¹⁶ There was limited comment on other bases of removal from the Robocall Mitigation Database, although we agree with several parties that the number of traceback requests is not a valid reason for removal. See, e.g., INCOMPAS Reply at 4; CCA Comments at 12. As explained below, we conclude that the number of traceback requests received should not serve as a basis for any sanction. See *infra* para. 74.

²¹⁷ *Fifth Caller ID Authentication Further Notice* at 81, para. 210.

²¹⁸ 47 CFR § 64.6305(e)(4) (public safety safeguards).

²¹⁹ VON Comments at 7.

²²⁰ See *Global UC Inc.*, EB-TCD-22-00034406, Removal Order, DA 22-1219, at 4, para. 8 (EB Nov. 22, 2022) (*Global UC Removal Order*) (requiring providers to cease accepting traffic from Global UC within two business days). Additionally, we have not received any complaints about this time period from providers required to block traffic following the removal of a provider from the database.

removed from the Robocall Mitigation Database on an expedited basis.²²¹ Specifically, we find that where the Enforcement Bureau determines that a provider's filing is facially deficient, the Enforcement Bureau may remove a provider from the Robocall Mitigation Database using an expedited two-step procedure, which entails providing notice and an opportunity to cure the deficiency. This streamlined process will allow the Enforcement Bureau to move more quickly against providers whose filings clearly fail to meet our requirements.

60. In the *Second Caller ID Authentication Report and Order*, the Commission required that providers be given notice of any deficiencies in their certification and an opportunity to cure prior to removal from the Robocall Mitigation Database, but did not prescribe a specific removal procedure.²²² Pursuant to that requirement and our prior delegation, the Wireline Competition Bureau and Enforcement Bureau have implemented the following three-step removal procedure: (1) the Wireline Competition Bureau contacts the provider, notifying it that its filing is deficient, explaining the nature of the deficiency, and providing 14 days for the provider to cure the deficiency;²²³ (2) if the provider fails to rectify the deficiency, the Enforcement Bureau releases an order concluding that a provider's filing is deficient based on the available evidence and directing the provider to explain, within 14 days, "why the Enforcement Bureau should not remove the Company's certification from the Robocall Mitigation Database" and giving the provider a further opportunity to cure the deficiencies in its filing;²²⁴ and (3) if the provider fails to rectify the deficiency or provide a sufficient explanation why its filing is not deficient within that 14-day period, the Enforcement Bureau releases an order removing the provider from the Robocall Mitigation Database.²²⁵

61. While this procedure is appropriate in cases where there may be questions about the sufficiency of the steps described in a mitigation plan, we conclude that an expedited approach is warranted where the certification is facially deficient. A certification is "facially deficient" where the provider fails to submit a robocall mitigation plan within the meaning of our rules. That is, it fails to submit any information regarding the "specific reasonable steps" it is taking to mitigate illegal robocalls. While it is not practical to provide an exhaustive list of reasons why a filing would be considered "facially deficient," examples include, without limitation, instances where the provider only submits: (1) a request for confidentiality with no underlying substantive filing; (2) only non-responsive data or documents (e.g., a screenshot from the Commission's website of a provider's FCC Registration Number data or other document that does not describe robocall mitigation efforts); (3) information that merely states how STIR/SHAKEN generally works, with no specific information about the provider's own robocall mitigation efforts; or (4) a certification that is not in English and lacks a certified English translation. In these and similar cases, the Commission need not reach the question of whether the steps the provider is taking to mitigate robocalls are reasonable because the provider has failed to submit even the most basic information required to do so.

62. We conclude that where a provider's filing is facially deficient, it has "willfully" violated its Robocall Mitigation Database filing obligation within the meaning of that term in section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 558(c), which applies to revocations of licenses.²²⁶ This

²²¹ See EPIC/NCLC Comments at 18-19; ZipDX Comments at 11-12.

²²² *Second Caller ID Authentication Order*, 36 FCC Rcd at 1903, para. 83.

²²³ See, e.g., *Global UC Notice Order* at 2-3, para. 4 ("The FCC's Wireline Competition Bureau . . . contacted the Company on October 19, 2021, via the email listed in its certification, to inform it that its robocall mitigation program attachment contained with its certification may have been uploaded in error as it did not satisfy the Commission's rules to describe robocall mitigation efforts."); *id.* at 3, para. 2.

²²⁴ *Id.* at 3, para. 6.

²²⁵ See generally, *Global UC Removal Order*.

²²⁶ The term "license" is broadly defined under the APA to include "the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." 5 U.S.C. (continued....)

finding is consistent with precedent concluding that a party acts “willfully” within the meaning of section 558(c) where it acts with “careless disregard.”²²⁷ As such, where a “willful” violation has occurred, the provider’s Robocall Mitigation Database certification may be removed without a separate notice prior to the initiation of an “agency proceeding” to remove the certification.²²⁸ Therefore, we adopt the following two-step expedited procedure for removing a facially deficient certification: (1) issuance of a notice by the Enforcement Bureau to the provider explaining the basis for its conclusion that the certification is facially deficient and providing an opportunity for the provider to cure the deficiency or explain why its certification is not deficient within 10 days; and (2) if the deficiency is not cured or the provider fails to establish that there is no deficiency within that 10-day period, the Enforcement Bureau will issue an order removing the provider from the database.²²⁹ We note that a number of providers have responded within 14 days to Enforcement Bureau requests to correct their deficient filings and conclude that employing a marginally shorter time period for this expedited process will further the Commission’s interest in swiftly resolving these willful violations without materially affecting a providers’ ability to respond to the Enforcement Bureau’s notice.

63. We find that this expedited two-step procedure is also consistent with providers’ Fifth Amendment due process rights under the Supreme Court’s three factor test.²³⁰ While providers have a

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§ 551(8). Although we do not reach a definitive conclusion here, the removal of a provider’s certification from the Robocall Mitigation Database—which will lead to the mandatory blocking of the provider’s traffic by downstream providers—is arguably equivalent to the revocation of a license.

²²⁷ *Coosemans Specialties, Inc. v. Dep’t of Agric.*, 482 F.3d 560, 567 (D.C. Cir. 2007) (“[A]n action [under 5 U.S.C. § 558(c)] is willful if a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements.”) (quoting *Finer Foods Sales Co. v. Block*, 708 F.2d 774, 778 (D.C. Cir. 1983)); *Potato Sales Co., Inc. v. Dep’t. of Agric.*, 92 F.3d 800, 805 (9th Cir. 1996) (“In this circuit, a violation is ‘willful’ if the violator ‘(1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or (2) acts with careless disregard of statutory requirements.’”) (quoting *Lawrence v. Commodity Futures Trading Comm’n*, 759 F.2d 767, 773 (9th Cir. 1985)); *Goodman v. Benson*, 286 F.2d 896, 900 (7th Cir. 1961) (“We think it clear that if a person 1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or 2) acts with careless disregard of statutory requirements, the violation is willful.”); see also *Capital Produce Co., Inc. v. U.S.*, 930 F.2d 1077, 1079 (4th Cir. 1991) (“‘[W]illfulness’ for the purposes of Section 558(c) means an intentional misdeed or such gross neglect of a known duty as to be the equivalent thereof.”) (internal quotations omitted).

²²⁸ See 5 U.S.C. § 558(c) (holding that an agency may only withdraw or revoke a “license” through “an agency proceeding” if the agency has already provided “notice by the agency in writing of the facts or conduct which may warrant the action and an opportunity to demonstrate or achieve compliance with all lawful requirements” except “in cases of willfulness or those in which public health, interest or safety requires otherwise”). While we do not specifically conclude that a Robocall Mitigation Database certification is a license within the meaning of that section, our expedited procedure would be compliant with section 558 if we reached such a conclusion. We do not adopt PACE’s proposal to provide a complete list of reasons for why a provider’s filing might be facially deficient, and the specific steps it must take in response to avoid removal. See Letter from Michele A. Shuster, Esq. and Joshua O. Stevens, Esq., Counsel for PACE, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 21-402 et al., at 3 (filed Mar. 9, 2023). As we explain herein, it is not practical to provide an exhaustive list of all potential examples of facially deficient filings and methods to cure such deficiencies. Further, attempting to do so would limit the Commission’s flexibility to respond to changing tactics by bad actors and could provide a roadmap for bad actors to avoid expedited removal. Moreover, we conclude that PACE’s due process concerns are addressed under the expedited removal process we adopt: the Enforcement Bureau’s notice to the provider in the first step will explain the basis for its conclusion that the filing is facially deficient, while the second step offers providers an opportunity to cure that deficiency prior to removal.

²²⁹ We also note that the Enforcement Bureau could adopt a similar two-step procedure in cases of “a threat to the public health, interest or safety.” 5 U.S.C. § 558(c).

²³⁰ See *Mathews v. Eldridge*, 424 U.S. 319, 329-35 (1976) (concluding that a single notice and opportunity to respond prior to revocation of social security benefits was sufficient to meet Fifth Amendment due process

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significant “private interest” under the first factor of the test that would be affected by removal from the Robocall Mitigation Database, the “risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards” under the second factor is exceedingly low, given that (1) the filings in question are facially deficient, and (2) providers would have a reasonable opportunity to cure the deficient filings by submitting a valid robocall mitigation plan. Given the extremely low risk of erroneous deprivation of a private interest in these situations, we find that these first two factors do not outweigh the third factor—the “Government’s interest”—which is very weighty here: the Government has a strong interest in ensuring that providers adopt valid robocall mitigation plans as soon as possible to further its continuing efforts to reduce the number of illegal robocalls and harm to consumers, and in blocking traffic of providers that are unable or unwilling to implement or document effective mitigation measures.²³¹

64. We conclude that this expedited approach is preferable to EPIC/NCLC’s proposal to automatically remove certain “high-risk” VoIP providers from the Robocall Mitigation Database or impose forfeitures through a bespoke, expedited process.²³² As explained above, we do not believe that a separate set of rules for VoIP providers is appropriate and the expedited procedure we adopt today complies with the APA and due process. EPIC/NCLC do not explain how removal from the database prior to any opportunity to respond is consistent with the APA or due process.

4. Consequences for Continued Violations

65. In order to address continued violations of our robocall mitigation rules, we proposed in the *Fifth Caller ID Authentication Further Notice* to subject repeat offenders to proceedings to “revoke their section 214 operating authority and to ban offending companies and/or their individual company owners, directors, officers, and principals from future significant association with entities regulated by the Commission.”²³³ We further proposed to find that providers that are not common carriers operating pursuant to blanket section 214 authority hold other Commission authorizations sufficient to subject them to the Commission’s jurisdiction for purposes of enforcing our rules pertaining to preventing illegal robocalls.²³⁴ We also proposed to find that providers not classified as common carriers but that are registered in the Robocall Mitigation Database hold a Commission certification such that they are subject to the Commission’s jurisdiction.²³⁵ We adopt our proposal to revoke the section 214 operating authority

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requirements and an evidentiary hearing was not required under the three-factor due process test); *id.* at 334-35 (“[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”).

²³¹ Cf. *China Telecom (Americas) Corp. v. FCC*, No. 21-1233, 2022 WL 18232291, at *9-11 (D.C. Cir. Dec. 20, 2022) (*China Telecom*) (holding that the first two factors did not outweigh the Government’s interest with regard to the revocation of China Telecom’s section 214 authorization).

²³² EPIC/NCLC Comments at 24 (urging the adoption of a temporary restraining order-like process). We disagree with EPIC/NCLC that because we required small non-facilities-based voice service providers to implement STIR/SHAKEN sooner than other voice service providers, we should similarly subject non-facilities-based VoIP providers to an expedited enforcement procedure. *Id.* at 18. The decision to require certain providers to implement STIR/SHAKEN on an accelerated timeline was based on an assessment of the likelihood of *future* rule violations and a balancing of the benefits and burdens of earlier implementation. *Small Provider Order*, 36 FCC Rcd at 17844-46, paras. 10-13. EPIC/NCLC does not explain why a subset of providers should be subject to a separate enforcement process once the Commission determines a rule violation has likely occurred.

²³³ *Fifth Caller ID Authentication Further Notice* at 79, para. 207.

²³⁴ *Id.* at 81-82, para. 212.

of entities that engage in continued violations of our robocall mitigation rules. We also find that non-common carriers holding Commission authorizations and/or certifications are similarly subject to revocation of their authorizations and/or certifications. We further find that we will consider whether it is in the public interest for individual company owners, directors, officers, and principals of entities for which we have revoked an authority or a certification, or for other entities with which those individuals are affiliated, to obtain future Commission authorizations, licenses, or certifications at the time that they apply for them.

66. *Revocation of Section 214 Authority and Other Commission Authorizations.* In the *Fifth Caller ID Authentication Further Notice*, we proposed to find that entities engaging in “continued violations of our robocall mitigation rules,”²³⁶ be subject to revocation of their section 214 operating authority, where applicable.²³⁷ We conclude that the “robocall mitigation rules” within the scope of this requirement means the specific obligations to: (1) implement a robocall mitigation program that includes specific “reasonable steps” to mitigate illegal robocalls and comply with the steps outlined in the plan; (2) submit a plan describing the mitigation program to the Robocall Mitigation database; and (3) not accept traffic from providers not in the Robocall Mitigation database.²³⁸

67. We conclude that this requirement also pertains to continued violation of providers’ authentication obligations.²³⁹ While in certain instances we have referred to provider mitigation obligations as separate from authentication, we have also concluded that they work hand in hand to stop illegal robocalls.²⁴⁰ Indeed, analytics providers often use authentication information to determine whether to block or label a call.²⁴¹ We therefore conclude that call authentication serves to mitigate illegal robocalls, and failure to follow our authentication rules falls within the scope of the enforcement authority we adopt today.

68. We did not receive comments regarding the scope of the specific rules covered by the consequences proposed in the *Fifth Caller ID Authentication Further Notice*. We find, however, that it is reasonable to fully enforce the foregoing robocall mitigation rules by holding accountable those who engage in continued violations of those rules. We will exercise our ability to revoke the section 214 authorizations for providers engaging in continued violations of those rules, consistent with our long-standing authority to revoke the section 214 authority of any provider for serious misconduct.²⁴²

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²³⁵ *Id.*

²³⁶ *Id.* at 81, para. 211.

²³⁷ *Id.*

²³⁸ This includes obligations that the Commission previously adopted as well as those that we today in this *Sixth Report and Order*. 47 CFR § 64.6305; *infra* Appx. A § 64.6305.

²³⁹ 47 CFR §§ 64.6301, 64.6302; *infra* Appx. A §§ 64.6301, 64.6302.

²⁴⁰ *Gateway Provider Order* at 44-45, paras. 104-107 (concluding that authentication is not a “silver bullet” to stop robocalls, justifying requiring gateway providers to also mitigate robocalls under the “reasonable steps” standard).

²⁴¹ Neustar *First Reevaluation of STIR/SHAKEN Extensions Public Notice* Comment at 4, WC Docket No. 17-97 (rec. Oct. 3, 2022) (arguing that accurate attestation information levels “provide[s] terminating voice service providers with better information to inform robocall analytics services for protecting consumers from illegally spoofed robocalls”).

²⁴² See *Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996*, CC Docket No. 97-11, Report and Order & AAD File No. 98-43, Second Memorandum Opinion and Order, 14 FCC Rcd 11364, 11372, para. 12 (1999) (stating that the Commission, with the grant of blanket section 214 operating authority, retains the ability to stop “abusive practices against consumers by withdrawing the blanket section 214 authorization that allows the abusive carrier to operate”); *OneLink Communications, Inc. et al.*, File No. EB-TCD-13-00007004 et al., Order to Show Cause, 32 FCC Rcd 1884, 1886, para. 8 (EB & WCB 2017) (initiating a proceeding to determine whether to revoke the domestic section 214 authorizations); *LDC Telecommunications, Inc.*, File No.: ITC-214-20080523-

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69. The Commission's authority to revoke section 214 authority in order to protect the public interest is well established.²⁴³ We intend to apply that authority as necessary to address entities engaging in continued violations of our rules. Specifically, an entity engaging in continued violations of our robocall mitigation rules as defined in this section will be required to explain to the Enforcement Bureau why the Commission should not initiate proceedings to revoke its domestic and/or international section 214 authorizations.²⁴⁴ Consistent with established Commission procedures, we may then adopt an order to institute a proceeding to revoke domestic and/or international section 214 authority.²⁴⁵ Should the entity fail to address concerns regarding its retention of section 214 authority, we would then issue an Order on Revocation consistent with our authority to revoke section 214 authority when warranted to protect the public interest.²⁴⁶

70. We also adopt our proposals that providers not classified as common carriers but that hold other types of Commission authorizations, including a certification as a result of being registered in the Robocall Mitigation Database, are subject to the Commission's jurisdiction for the purpose of the consequences we adopt in this section.²⁴⁷ The *Fifth Caller ID Authentication Further Notice* listed the providers that we contemplated would be subject to our enforcement authority.²⁴⁸ These providers have domestic and international section 214 authorizations, have applied for and received authorization for direct access to numbering resources,²⁴⁹ are designated as eligible telecommunications carriers under section 214(e) of the Communications Act of 1934, as amended (Communications Act or Act) in order to receive federal universal service support,²⁵⁰ or are registered in the Robocall Mitigation Database. Where the Commission grants a right or privilege, it unquestionably has the right to revoke or deny that right or

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00238, Revocation Order, 31 FCC Rcd 11661, 11662, para. 5 (EB, IB & WCB 2016) (revoking domestic and international section 214 authorizations for failure to pay regulatory fees and respond to multiple Commission inquiries).

²⁴³ See 47 CFR § 0.91(q) (stating that the Wireline Competition Bureau may issue orders revoking a common carrier's operating authority); *China Telecom (Americas) Corp.*, GN Docket No. 20-109, Order on Revocation and Termination, 36 FCC Rcd 15966, 15968-70, 15975, 15977-83, paras. 4-5, 10-11, 14-22 (2021) (*China Telecom Order on Revocation*) (describing the Commission authority, applicable standard of proof, and public interest standard for revoking section 214 authority, including stating that the Commission has an ongoing responsibility to evaluate all aspects of the public interest in determining whether a provider is subject to revocation; also explaining revocation procedures), *aff'd*, *China Telecom (Americas) Corp. v. FCC*, No. 21-1233, 2022 WL 17814481 (D.C. Cir. 2022).

²⁴⁴ *China Telecom Order on Revocation*, 36 FCC Rcd at 15975, at para. 10 (describing Order to Show Cause).

²⁴⁵ *Id.* at para. 11 (describing Institution Order).

²⁴⁶ *Id.* at 15977, para. 14.

²⁴⁷ *Fifth Caller ID Authentication Further Notice* at 81-82, para. 212 (stating that many providers that might engage in continued violations may not be classified as common carriers and thus may not operate subject to the blanket section 214 authority applicable to domestic interstate common carriers under section 63.01 of the Commission's rules, 47 CFR § 63.01). Interconnected VoIP providers are subject to Title II of the Act through their requirement to file applications to discontinue service under section 214 and section 63.71 of the Commission's rules. *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039, 6044-48, paras. 9-13 (2009). As explained below, this approach does not constitute an improper exercise of jurisdiction over domestic non-common carriers or foreign providers.

²⁴⁸ See *Fifth Caller ID Authentication Further Notice* at 81-82, para. 212.

²⁴⁹ See *Numbering Policies for Modern Communications et al.*, WC Docket No. 13-97 et al., Report and Order, 30 FCC Rcd 6839, 6878, para. 78 (2015), *appeal dismissed*, *NARUC v. FCC*, 851 F.3d 1324 (D.C. Cir. 2017).

²⁵⁰ 47 U.S.C. § 251(e).

privilege in appropriate circumstances.²⁵¹ In addition, holders of these and all Commission authorizations have a clear and demonstrable duty to operate in the public interest.²⁵² Continued violations of our robocall mitigation rules are wholly inconsistent with the public interest, and we find it necessary to exercise our authority to institute a proceeding and, if warranted, revoke the authorizations, licenses, and/or certifications of all repeat offenders.²⁵³ Indeed, there is no opposition in the record to the Commission instituting revocation proceedings when warranted, and we agree with VON that when providers, including those without section 214 authority, have clearly and repeatedly been responsible for originating or transporting illegal robocalls and have had a sufficient opportunity to be heard through the enforcement process, there may be grounds for termination of Commission authorizations.²⁵⁴ Our established section 214 revocation process described above satisfies due process requirements,²⁵⁵ and we intend to apply it to all entities that we find to be continually violating our robocall mitigation rules.

71. *Future Review of Entities, Individual Company Owners, Directors, Officers, and Principals Applying for Commission Authorizations, Licenses, or Certifications.* Once we have revoked the section 214 or other Commission authorization, license, or certification of an entity that has engaged in continued violations of our robocall mitigation rules, we will consider the public interest impact of granting other future Commission authorizations, licenses, or certifications to the entity that was subject to the revocation, as well as individual company owners, directors, officers, and principals (either individuals or entities) of such entities.²⁵⁶ We will consider the public interest impact as part of our established review processes for Commission applications at the time that they are filed. For example, a

²⁵¹ See, e.g., *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3887, para. 36 (1995) (“We recognize that our approach necessarily entails limiting the activities of certain competitors in U.S. markets. Specifically, we may prohibit foreign carriers (or their affiliates) that have market power from offering service along routes where they can exercise such power In our judgment, the benefits of allowing these foreign carriers unlimited access into the U.S. international services market are outweighed substantially by the ultimate costs.”); cf. *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999) (finding that “the Commission does not exceed its authority simply because a regulatory action has extraterritorial consequences”).

²⁵² See 47 U.S.C. § 214 (stating that no carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there “shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity” requires it); *id.* § 214(e)(6); 47 CFR §§ 54.202(b) (stating that prior to designating an eligible telecommunications carrier, the Commission must determine that such designation is in the public interest), 52.15(g)(iii) (stating that the Wireline Competition Bureau may halt the auto-grant of an application for access to numbering resources if the Bureau determines that the application requires further analysis to determine whether granting the application services the public interest), 63.04 (stating that applications for domestic section 214 transfer of control must show how the application is consistent with the public interest, convenience and necessity), 63.18 (stating that applications for domestic and international 214 authorizations must demonstrate how a grant of the applications will serve the public interest, convenience, and necessity).

²⁵³ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Gen. Docket Nos. 81-500, 78-100, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (stating that the Commission may determine whether the public interest would be served by granting a particular application in the broadcast, common carrier, wireless, and other services, and that it is especially “concerned with misconduct which violates . . . a Commission rule or policy.”).

²⁵⁴ VON Comments at 7.

²⁵⁵ See *China Telecom Order on Revocation*, 36 FCC Rcd at 15983-87, paras. 23-32.

²⁵⁶ We expect that owners, directors, officers, and principals, whether or not they have control of the entity, have influence, management, or supervisory responsibilities for the entity subject to the revocation. See 47 CFR § 63.24(d), Note 1 (describing factors that could indicate influence or control such as authority to appoint executives for day-to-day operations, authority to make management decisions, or pay financial obligations).

principal of a provider that had its section 214 authority revoked or that was removed from the Robocall Mitigation Database as a result of an enforcement action may be subject to a denial of other Commission authorizations, licenses, or certifications, including for international section 214 authority, or for approval to acquire an entity that holds blanket domestic section 214 authority or international section 214 authority. This is consistent with our current process in which we review many public interest factors in determining whether to grant an application, including whether an applicant for a license has the requisite citizenship, character, financial, technical, and other qualifications.²⁵⁷ To ensure that we can accurately identify individual company owners, directors, officers, and principals of an entity for which we revoked authority, we intend to rely on information contained in providers' registrations filed in the Robocall Mitigation Database. Where that information is insufficient for this purpose, we will require entities undergoing revocation proceedings to identify their individual company owners, directors, officers, and principals as part of the revocation process.

72. We proposed in the *Fifth Caller ID Authentication Further Notice* that principals and others associated with entities subject to revocation would be banned from holding a 5% or greater ownership interest in "any entity that applies for or already holds any FCC license or instrument of authorization for the provision of a regulated service subject to Title II of the Act or of any entity otherwise engaged in the provision of voice service for a period of time to be determined."²⁵⁸ No commenter addressed this proposal. The record contains no information on how we would undertake the complex process of identifying the providers or applicants that would be impacted by the 5% ownership trigger threshold, or whether we would risk negatively impacting the operations and customers of providers associated with the targeted principal, but which were not involved in the robocall offenses. Should we see an increased volume of repeat offenses of the robocall mitigation rules, we will consider whether to adopt rules permanently barring principals and others associated with entities subject to revocation from holding both existing and future Commission authorizations. Going forward now, we will generally consider whether it is in the public interest for individual company owners, directors, officers, and principals associated with an entity for which we have revoked a Commission authorization to obtain new Commission authorizations or licenses at the time that they, or an entity with which they are affiliated, apply for them. This is consistent with our stated intent in the *Fifth Caller ID Authentication Further Notice* to consider the impact these principals and others may have on "future" significant association with entities regulated by the Commission.²⁵⁹

73. We conclude that these new enforcement tools, acting in tandem with our new requirement for providers to submit their related entities and principals in their robocall mitigation plans, will ensure that bad actor providers and their principals will face potentially serious consequences for their repeated violation of our robocall mitigation rules.²⁶⁰ These potential consequences reach beyond a forfeiture and appropriately subject these entities and principals to specified consequences and a thorough public interest review as required. We make clear that revoking a Commission authorization or license does not transform entities that have not been classified as common carriers into common carriers or extend our general jurisdiction over foreign providers.²⁶¹ Rather, this consequence merely allows the

²⁵⁷ See, e.g., *Applications of T-Mobile US, Inc., and Sprint Corporation, Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10596-97, para. 43 (2019).

²⁵⁸ *Fifth Caller ID Authentication Further Notice* at 81, para. 211.

²⁵⁹ *Id.* at 79, para. 207.

²⁶⁰ See EPIC/NCLC Comments at 16 (arguing for enforcement actions against "any provider who is affiliated with individuals or providers that have been previously subject to Commission action.").

²⁶¹ VON Comments at 7 ("[T]he Commission should proceed cautiously [in] suggesting that filing in the RMD extends" a section 214 operating authority to a foreign provider"); INCOMPAS Reply at 5 ("INCOMPAS is concerned that the Commission's proposal to find that non-common carrier providers registered in the RMD 'hold a
(continued....)"

Commission discretion to revoke a Commission authorization or license that a provider, person, or entity would otherwise be eligible for or to deny an application for a Commission license or authorization by a principal of an entity subject to revocation. For this reason, we need not exempt foreign providers from this rule, as some commenters argue.²⁶²

5. Other Enforcement Matters

74. We decline to adopt a number of other enforcement proposals filed in the record. We do not adopt EPIC/NCLC's proposal to base enforcement actions, including removal from the Robocall Mitigation Database, solely on the number of tracebacks a provider receives.²⁶³ We agree with commenters that while receiving a high number of traceback requests may be evidence of malfeasance in certain instances,²⁶⁴ this is not always the case.²⁶⁵ As CCA notes, "multiple traceback efforts . . . may simply reflect that the provider is a traffic aggregator serving numerous providers."²⁶⁶ Our rules independently require providers to commit to respond to traceback requests—and to actually respond to such requests—in a certain time period, and they may be subject to forfeiture or removal for failure to do so.²⁶⁷ We also decline to adopt licensing or bonding requirements for certain VoIP providers as EPIC/NCLC proposes.²⁶⁸ As we have explained, we do not believe that separate robocall rules or obligations are appropriate for VoIP providers,²⁶⁹ and EPIC/NCLC has not explained how to readily administer such a requirement,²⁷⁰ or whether our current or proposed direct access requirements for VoIP providers address the same concerns.²⁷¹

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Commission certification such that they are subject to the Commission's jurisdiction' may have unintended consequences that impact the effectiveness of the RMD.").

²⁶² See CCA Comments (urging that the Commission specifically exempt foreign providers from this rule and that failure to do so would discourage them from filing); INCOMPAS Reply at 5 (same).

²⁶³ EPIC/NCLC Comments at 19 (proposing that "high-risk" providers be subject to expedited Robocall Mitigation Database suspension "after receiving a third traceback request within a 12-month period").

²⁶⁴ In enforcement actions, the Commission has considered a high volume of tracebacks as a factor in determining whether a provider engaged in egregious and intentional misconduct. See *Rising Eagle Forfeiture Order*, 36 FCC Rcd at 6257-58, paras. 60-63.

²⁶⁵ See ITG Sept 1 *Ex Parte* at 6 (explaining that "raw traceback data can be both misleading and harmful. Absent proper context and appropriate investigation, raw traceback data can understate the complicity of purposefully evasive bad actors while at the same time incorrectly stating or overstating the responsibility of a voice service provider, including lesser-known small providers."); see also CCA Reply at 5-6; USTelecom Reply at 3 (opposing EPIC/NCLC's proposed "three strikes" traceback rule); Verizon Reply at 3 (arguing that basing liability on the number of tracebacks would "embrace unsupported presumptions about service provider culpability"); VON Reply at 3.

²⁶⁶ CCA Comments at 12; see also VON Reply at 3 (arguing that there is no "rational basis" for Robocall Mitigation Database removal after three traceback requests within 12 months, but "[t]he critical issues are whether the voice service provider cooperated with the Industry Traceback Group and whether it's complying with its illegal robocall mitigation obligations."); INCOMPAS Reply at 3-4.

²⁶⁷ See, e.g., 47 CFR §§ 64.6305(a)(2) (requiring voice service providers to commit to respond to traceback requests "fully and timely"); 64.1200(n)(ii) (requiring gateway providers to respond to traceback requests within 24 hours).

²⁶⁸ EPIC/NCLC Comments at 30.

²⁶⁹ See *supra* para. 34.

²⁷⁰ See VON Reply at 2-3 ("There are multiple problems with the Epic proposals. Most glaringly, there is no definition of 'non-facilities-based' VoIP providers, leaving to conjecture which providers the new application, licensing and bonding requirements would apply . . . also, how will the Commission determine the 'degree of risk associated with the applicant.'").

75. We decline to adopt EPIC/NCLC's strict liability standard for forfeiture or removal from the Robocall Mitigation Database for failure to block any illegal calls regardless of the circumstances, or their suggestion of an "interim" standard of assessing liability for transmitting illegal robocall traffic based on whether a provider "knew or should have known that [a] call was illegal."²⁷² Most parties opposed strict liability, and we again conclude that expectations to stop all illegal calls are not realistic and that a strict liability standard could lead to significant market disruptions.²⁷³ EPIC/NCLC has not adequately explained why we should take a different approach now or why its proposed standards are consistent with the Act and our rules.²⁷⁴ Similarly, we decline to adopt NCTA or ACA Connect's proposed "good faith"²⁷⁵ or CCA's proposed "reasonableness" standards.²⁷⁶

D. STIR/SHAKEN Obligations of Satellite Providers

76. We conclude that satellite providers that do not use NANP numbers to originate calls or only use such numbers to forward calls to non-NANP numbers are not "voice service providers" under the TRACED Act and therefore do not have a STIR/SHAKEN implementation obligation. We also provide an ongoing extension from TRACED Act obligations to satellite providers that are small voice service providers and use NANP numbers to originate calls on the basis of a finding of undue hardship.²⁷⁷

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²⁷¹ See, e.g., *Direct Access Further Notice*, 36 FCC Rcd at 12910-21, paras. 6-29 (seeking comment on additional requirements for VoIP provider applications for direct access to numbers).

²⁷² EPIC/NCLC Comments at 10-12 (arguing that, among other things, a provider has duty to implement call analytics to "know" whether it is transmitting illegal robocalls and its failure to either do so or block any illegal calls from a particular source would result in liability).

²⁷³ INCOMPAS Comments at 13-14; CCA Reply at 4 ("A strict liability standard would have extremely negative consequences for enterprises that lawfully send higher volume traffic, increasing their costs, while reducing competitive options."); VON Reply at 3; *Gateway Provider Order* at 42, para. 99 ("We therefore reiterate that, as with our prior rule [for voice service providers], we do not expect perfection [from gateway providers].").

²⁷⁴ 47 U.S.C. §§ 312, 501-503; 47 CFR § 1.80(a); see also 47 U.S.C. § 312(f)(1) ("[T]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.").

²⁷⁵ NCTA Comments at 4 ("NCTA encourages the Commission to ensure that the proposal to impose forfeitures for failures to block calls after Commission notice on a per-call basis does not ensnare providers acting in good faith."); ACA Connects Reply at 3 (agreeing with NCTA's proposal and arguing that "[p]roviders making a good-faith effort to comply with any Commission call blocking requests—especially smaller providers or other providers receiving such a request for the first time—should not be subject to major penalties in the event that some illicit calls inadvertently make it through").

²⁷⁶ CCA Comments at 9 ("Whether and when to hold a provider liable for passing illegal calls should be based on a reasonableness standard that incorporates factors such as the adequacy of, and compliance with, a mitigation plan and a history of responsiveness to traceback requests and actions taken after notice of illegal traffic."). EPIC/NCLC also proposes that we make tracebacks public. We do not consider this proposal in this item. See EPIC/NCLC Comments at 31-33.

²⁷⁷ We note that in its earlier request, the Satellite Industry Association (SIA) sought relief for all small voice service satellite providers, noting that their "use of NANP resources is extremely limited." Satellite Industry Association Comments, WC Docket Nos. 20-68, 17-97, at 4 (filed Nov. 12, 2021) (SIA Nov. 2021 Comments). In their comments in response to the *Fifth Further Notice of Proposed Rulemaking*, SIA sought relief for "non-NANP" small voice service satellite providers, even in "de minimis" instances where calls are originated with NANP numbers. SIA Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 8 (filed Aug. 17, 2022) (SIA Comments). Because SIA's earlier and later justifications for relief largely overlap and because SIA does not provide an administrable way to distinguish "non-NANP" satellite providers that use NANP numbers infrequently from other satellite providers that use them more frequently, we grant relief to all small voice service satellite

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77. The Commission previously provided small voice services providers, including satellite providers, an extension from STIR/SHAKEN implementation until June 30, 2023.²⁷⁸ When the Wireline Competition Bureau reevaluated this extension in 2021, it declined to grant a request from the Satellite Industry Association (SIA) for an indefinite extension for satellite providers and stated that it would seek further comment on SIA's request before the June 30, 2023 extension expires.²⁷⁹ In the *Fifth Caller ID Authentication Further Notice*, we sought comment on whether the TRACED Act requirements apply to some or all satellite providers and, if so, whether we should grant certain satellite providers a STIR/SHAKEN extension.²⁸⁰ In addition to the questions raised in the *Fifth Caller ID Authentication Further Notice*, the Wireline Competition Bureau in August 2022 sought comment on the small provider extension generally and its applicability to satellite providers.²⁸¹ While several parties filed comments on the applicability of the TRACED Act and extensions to satellite providers in response to the *Fifth Caller ID Authentication Further Notice*,²⁸² no party filed comments on these issues in response to the *August 2022 Notice*. Therefore, the Wireline Competition Bureau deferred consideration of an extension for satellite providers and stated that the "arguments raised in . . . comments" in response to the *Fifth Caller ID Authentication Further Notice* "will be considered as part of that proceeding."²⁸³

78. *Satellite Providers Originating Calls Using Non-NANP Numbers.* We find that the record is sufficiently developed and now conclude that, where satellite providers originate calls using non-NANP numbers, they are not acting as "voice service providers" within the meaning of the TRACED Act. This conclusion is consistent with the TRACED Act's definition of voice service which requires that voice communications must use resources from the NANP.²⁸⁴ We also agree with SIA that where satellite providers "utilize NANP resources for call forwarding to non-NANP numbers," such calls also fall

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providers. However, as explained, the legal basis for that relief differs depending on whether a call is originated with a NANP number or not in a particular instance.

²⁷⁸ See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1877, paras. 40-42.

²⁷⁹ *Wireline Competition Bureau Reevaluates STIR/SHAKEN Extensions Pursuant to Section 4(b)(5) of the TRACED Act*, WC Docket No. 17-97, Public Notice, 36 FCC Rcd 17748, 17750 (WCB 2021) (*WCB Dec. 2021 STIR/SHAKEN Extension Reevaluation Public Notice*).

²⁸⁰ *Fifth Caller ID Authentication Further Notice* at 83-84, paras. 216-17. See *WCB Dec. 2021 STIR/SHAKEN Extension Reevaluation Public Notice*, 36 FCC Rcd at 17750. The TRACED Act requires that the Commission, 12 months after the date of the TRACED Act's enactment, and thereafter "as appropriate," assess burdens or barriers to implementation of STIR/SHAKEN. See 47 U.S.C. § 227b(b)(5)(A)(i). The TRACED Act further provides the Commission discretion to extend compliance with the implementation mandate "upon a public finding of undue hardship." *Id.* § 227b(b)(5)(A)(ii). Not less than annually thereafter, the Commission must consider revising or extending any delay of compliance previously granted and issue a public notice regarding whether such delay of compliance remains necessary. *Id.* § 227b(b)(5)(F). The Commission directed the Wireline Competition Bureau to make these annual assessments and to reevaluate the Commission's granted extensions and revise or extend them as necessary. See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1896, para. 71.

²⁸¹ See *Wireline Competition Bureau Seeks Comment on Two Periodic TRACED Act Obligations Regarding Caller ID Authentication*, WC Docket No. 17-97, Public Notice, DA 22-831, at 3-4 (WCB Aug. 5, 2022) (*August 2022 Notice*).

²⁸² See, e.g., SIA Comments; YouMail Comments at 5 & n.10; ZipDX Comments at 14-15; Satellite Industry Association Reply, CG Docket No. 17-59, WC Docket No. 17-97 (filed Sept. 16, 2022) (SIA Reply); ZipDX Reply at 7.

²⁸³ See *Second Reevaluation of STIR/SHAKEN Extensions Public Notice* at 3, n.17. The Commission has previously found that whether or not a provider is a voice service provider should be determined on a call-by-call basis. See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1870, para. 23.

²⁸⁴ See TRACED Act § 4(a)(2)(defining "voice service" as a service that "that furnishes voice communications to an end user using resources from the North American Numbering Plan").

outside of the definition of voice service.²⁸⁵ This finding is consistent with the underlying purpose of the STIR/SHAKEN regime. One of the key aims of the TRACED Act, STIR/SHAKEN, and the Commission's implementing rules, is to prevent call spoofing.²⁸⁶ Where a phone number is not displayed to the end user, as is the case in the satellite call forwarding scenario, call spoofing is not a concern.²⁸⁷ SIA also argues that requiring satellite providers that originate calls using non-NANP numbers to implement STIR/SHAKEN would be an "undue hardship."²⁸⁸ We need not reach that question because such providers are not acting as voice service providers when they originate calls with non-NANP numbers.

79. *Satellite Providers Originating Calls Using NANP Numbers.* We next permit an indefinite extension of time for small voice providers that are satellite providers originating calls using NANP numbers. SIA explains that there are "de minimis instances where satellite [providers] may assign NANP resources to their subscribers for caller ID purposes."²⁸⁹ While we find that, in these cases, satellite providers are acting as voice service providers, we believe it is also appropriate to provide an indefinite extension for STIR/SHAKEN implementation to these providers by applying the TRACED Act's "undue hardship" standard.

80. The TRACED Act directed the Commission to assess burdens or barriers to the implementation of STIR/SHAKEN,²⁹⁰ and granted the Commission discretion to extend the implementation deadline for a "reasonable period of time" based upon a "public finding of undue hardship."²⁹¹ In considering whether the hardship is "undue" under the TRACED Act—as well as whether an extension is for a "reasonable period of time"—it is appropriate to balance the hardship of compliance due to the "the burdens and barriers to implementation" faced by a voice service provider or class of voice service providers with the benefit to the public of implementing STIR/SHAKEN expeditiously.²⁹²

81. We conclude that an indefinite extension is appropriate under this standard for small voice providers that are satellite providers originating calls using NANP numbers. According to SIA, the number of satellite subscribers using NANP resources "is miniscule."²⁹³ Both SIA and YouMail argue that there is little evidence that satellite providers or their users are responsible for illegal robocalls²⁹⁴ and that satellite service costs make the high-volume calling necessary for robocallers uneconomical.²⁹⁵ The balancing of the benefits and burdens, therefore, counsels against requiring such providers to implement

²⁸⁵ SIA Comments at 6.

²⁸⁶ *Gateway Provider Order* at 5-6, para. 8.

²⁸⁷ SIA Comments at 7 ("Since a NANP resource used exclusively for call forwarding purposes is not, and cannot be spoofed, such 'use' does not fall under the definition of 'voice service' contained in the TRACED Act and the Commission's implementing regulations.").

²⁸⁸ SIA Comments at 9.

²⁸⁹ *Id.* at 8.

²⁹⁰ TRACED Act § 4(b)(5)(A).

²⁹¹ *Id.* at § 4(b)(5)(A)(ii).

²⁹² *Small Provider Order*, 36 FCC Rcd at 17857, para. 35.

²⁹³ SIA Comments at 8.

²⁹⁴ *Id.* at 15-17; YouMail Comments at 5, n.10.

²⁹⁵ SIA Comments at 16 ("The inherent design and functioning of satellite voice service makes it an immensely economically inhospitable platform for use by illegal robocallers.").

STIR/SHAKEN. While ZipDX opposes SIA's proposed extension, it does not address the specific arguments raised by SIA and YouMail.²⁹⁶

82. We note that the Commission must annually reevaluate TRACED Act extensions granted, ensuring that the Commission will be able to act quickly to prevent any unforeseen abuses.²⁹⁷ While we provide small voice service satellite providers an extension from STIR/SHAKEN implementation, we make clear that they must, like other voice service providers with an extension, submit a certification to the Robocall Mitigation Database pursuant to our existing rules and the new obligations we adopt in this Report and Order.

E. Differential Treatment of International Roaming Traffic

83. We next decline to adopt rules in this Report and Order concerning the differential treatment of international roaming traffic.²⁹⁸ In the *Fifth Caller ID Authentication Further Notice*, we sought comment on stakeholders' assertions that international cellular roaming traffic involving NANP numbers (i.e., traffic originated abroad from U.S. mobile subscribers carrying U.S. NANP numbers and terminated in the U.S.) is unlikely to carry illegal robocalls and therefore should be treated with a "lighter" regulatory touch.²⁹⁹ As part of that inquiry, we also asked whether any separate regulatory regime for such traffic could be "gamed" by illegal robocallers by disguising their traffic as cellular roaming traffic.³⁰⁰

84. The record on this proposal is limited, and commenters addressing this issue disagree as to whether differential treatment of international roaming traffic is appropriate. CCA argues that a lighter treatment is appropriate because such traffic does not generally carry robocalls,³⁰¹ and that it should be exempted from authentication requirements and the prohibition on accepting calls carrying U.S. NANP numbers sent directly from foreign providers not in the Robocall Mitigation Database.³⁰² Other commenters oppose treating this traffic differently.³⁰³

85. Given the limited record on this issue, particularly with respect to whether and how providers could readily identify or segregate such traffic for differential treatment, we direct the Wireline Competition Bureau to refer the issue to NANC for further investigation.

²⁹⁶ ZipDX Comments at 14-15 (arguing that satellite providers can readily adopt hosted STIR/SHAKEN solutions and arguing against an indefinite extension); ZipDX Reply at 7 (arguing that non-NANP providers could get a waiver from STIR/SHAKEN obligations). As we explain, when a satellite provider transmits a call without NANP number, it is not acting as a voice service provider with a STIR/SHAKEN obligation.

²⁹⁷ TRACED Act § 4(b)(5)(F)(i); YouMail Comments at 5, n.10 ("YouMail does not believe that STIR/SHAKEN requirements should be extended to satellite providers at this time because there is no evidence of significant satellite use for robocalls. However, the Commission should monitor this situation and act quickly if that fact changes.").

²⁹⁸ We also decline to adopt rules concerning differential treatment of non-conversational traffic in this Report and Order. We continue to consider the record on this issue. See *Fifth Caller ID Authentication Further Notice* at 70-71, paras. 184-86; ZipDX Comments at 8-10.

²⁹⁹ See *Fifth Caller ID Authentication Further Notice* at 89, para. 225.

³⁰⁰ See *id.*

³⁰¹ CCA Comments at 14.

³⁰² *Id.* at 13-14. According to CCA, these exceptions should only apply where "the U.S. provider can definitively identify the traffic as roaming traffic, for example, where [it] utilizes segregated trunks." *Id.* at 14.

³⁰³ Telnix Comments at 4; ZipDX Comments at 16-17.

F. Summary of Cost Benefit Analysis

86. We find that the benefits of the rules we adopt today will greatly outweigh the costs imposed on providers. As we explained in the *First Caller ID Authentication Report and Order*, we concluded that our STIR/SHAKEN rules are likely to result in, at a minimum, \$13.5 billion in annual benefits.³⁰⁴ In the *Fifth Caller ID Authentication Further Notice*, we sought comment on our belief that our proposed rules and actions “would achieve a large share of the annual \$13.5 billion benefit” and that the benefits “will far exceed the costs imposed on providers.”³⁰⁵ After reviewing the record in this proceeding, we confirm this conclusion.

87. Limiting the ability of illegal robocallers to evade existing rules will preserve and extend the benefits of STIR/SHAKEN. The new enforcement tools we adopt, as well as expanded call authentication and robocall mitigation obligations, will increase the effectiveness of our authentication regime, thereby allowing more illegal robocalls to be readily identified and stopped. As we found previously, we again conclude that an overall reduction in illegal robocalls from new rules will lower network costs by eliminating both unwanted traffic congestion and the labor costs of handling numerous customer complaints. This reduction in robocalls will also help restore confidence in the U.S. telephone network and facilitate reliable access to emergency and healthcare services.³⁰⁶

88. While several providers argue that a broad intermediate provider authentication obligation would impose significant costs without a material benefit,³⁰⁷ in this Report and Order we adopt a more targeted obligation applicable to the first intermediate provider in the call path.³⁰⁸ As we explained, by limiting the authentication obligation to the intermediate provider at the beginning of the call chain, we maximize the benefits of our requirement while minimizing its costs.³⁰⁹ Indeed, intermediate providers can avoid any authentication burden if they require their upstream providers to only send them authenticated traffic.³¹⁰

89. We acknowledge that the revised and expanded mitigation and Robocall Mitigation Database filing obligations we adopt today will impose limited short-term implementation costs.³¹¹ Nevertheless, we conclude that the benefits of bringing all providers within the mitigation and Robocall Mitigation Database regime will produce significant benefits to the Commission and the public by increasing transparency and accountability, and by facilitating the enforcement of our rules.³¹²

³⁰⁴ See *First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3252, para. 25 (estimating that the benefits of eliminating the wasted time and nuisances caused by illegal scam robocalls will exceed \$3 billion annually, and expecting “STIR/SHAKEN paired with call analytics to serve as a tool to effectively protect American consumers from fraudulent robocalls schemes that cost Americans approximately \$10 billion annually”).

³⁰⁵ See *Fifth Caller ID Authentication Further Notice* at 63, para. 159.

³⁰⁶ See *Gateway Provider Order* at 46-47, paras. 109, 111; see also *Spiller NAL*, 35 FCC Rcd at 5961, para. 33 (“Spoofed robocalls harm carriers by (1) burdening the carriers’ networks with illegal calls, and (2) inducing enraged recipients of the illegal robocalls to complain, thereby adding to the workload of customer service agents, decreasing the perceived value of the service, and increasing carrier costs.”).

³⁰⁷ See, e.g., CCA Comments at 1-2 (arguing that “further extending the authentication requirement to all intermediate providers will not materially reduce illegal robocalls”); Telnyx LLC Comments at 1-2; USTelecom Comments at 11-12; Verizon Reply at 6-8.

³⁰⁸ See *supra* Section III.A.

³⁰⁹ See *supra id.*

³¹⁰ See *supra* para. 20.

³¹¹ See *supra* Section III.B.

³¹² See *supra id.*

G. Legal Authority

90. Consistent with our proposals, we adopt the foregoing obligations pursuant to the legal authority we relied on in prior caller ID authentication and call blocking orders. We note that no commenter questioned our proposed legal authority to adopt these rules.

91. *Caller ID Authentication.* We conclude that the same authority through which we imposed caller ID authentication obligations on gateway providers—a subset of intermediate providers—applies equally to our rules that impose caller ID authentication obligations on non-gateway intermediate providers.³¹³ Specifically, we find authority to impose caller ID authentication obligations on the first intermediate providers in the call chain under section 251(e) of the Act and the Truth in Caller ID Act.³¹⁴ In the *Second Caller ID Authentication Report and Order*, the Commission found it had the authority to impose caller ID authentication obligations on intermediate providers under these provisions.³¹⁵ It reasoned that “[c]alls that transit the networks of intermediate providers with illegally spoofed caller ID are exploiting numbering resources” and so found authority under section 251(e).³¹⁶ The Commission found “additional, independent authority under the Truth in Caller ID Act” on the basis that such rules were necessary to “prevent . . . unlawful acts and to protect voice service subscribers from scammers and bad actors,” stressing that intermediate providers “play an integral role in the success of STIR/SHAKEN across the voice network.”³¹⁷ The Commission relied on this reasoning in adopting authentication obligations on gateway providers³¹⁸ and we therefore rely on this same legal authority to impose an authentication obligation on the first intermediate providers in the call chain.

92. *Robocall Mitigation.* We adopt our robocall mitigation provisions for non-gateway intermediate providers and voice service providers, including those without the facilities necessary to implement STIR/SHAKEN, pursuant to sections 201(b), 202(a), and 251(e) of the Communications Act; the Truth in Caller ID Act; and our ancillary authority, consistent with the authority we invoked to adopt analogous rules in the *Gateway Provider Order* and *Second Caller ID Authentication Report and Order*.³¹⁹ We conclude that section 251(e) of the Act and the Truth in Caller ID Act authorize us to prohibit domestic intermediate providers and voice service providers from accepting traffic from non-gateway intermediate providers that have not filed in the Robocall Mitigation Database. In the *Second Caller ID Authentication Report and Order*, the Commission concluded that “section 251(e) gives us authority to prohibit intermediate providers and voice service providers from accepting traffic from both domestic and foreign voice service providers that do not appear in [the Robocall Mitigation Database],” noting that its “exclusive jurisdiction over numbering policy provides authority to take action to prevent the fraudulent abuse of NANP resources.”³²⁰ The Commission observed that “[i]llegally spoofed calls

³¹³ *Gateway Provider Order* at 12-13, 47-48, paras. 25-27, 113 (defining “gateway providers” as a subset of intermediate providers).

³¹⁴ See 47 U.S.C. §§ 227(e), 251(e).

³¹⁵ See *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1931-32, paras. 153-55.

³¹⁶ *Id.* at 1931, para. 153.

³¹⁷ *Id.* at 1931, para. 154 (quoting *First Caller ID Authentication Report and Order and Further Notice*, 35 FCC Rcd at 3262, para. 44).

³¹⁸ See *Gateway Provider Order* at 47-48, para. 113.

³¹⁹ See *id.* at 48-49, paras. 114-19; *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1909-10, paras. 97-100. We sought comment on whether we should impose a mitigation duty on voice providers without the facilities necessary to implement STIR/SHAKEN on the basis of an ongoing extension from the TRACED Act. See *Fifth Caller ID Authentication Further Notice* at 82, para. 214. We conclude that because such providers were not granted an initial extension as a class under the TRACED Act, the clearest basis of authority for imposing a mitigation obligation is found in sections 201(b), 202(a), and 251(e) of the Communications Act; the Truth in Caller ID Act; and our ancillary authority.

exploit numbering resources whenever they transit any portion of the voice network—including the networks of intermediate providers” and that “preventing such calls from entering an intermediate provider’s or terminating voice service provider’s network is designed to protect consumers from illegally spoofed calls.”³²¹ The Commission found that the Truth in Caller ID Act provided additional authority for our actions to protect voice service subscribers from illegally spoofed calls.³²²

93. The Commission concluded that it had the authority to adopt these requirements pursuant to sections 201(b), 202(a), and 251(e) of the Act, as well as the Truth in Caller ID Act, and its ancillary authority.³²³ Sections 201(b) and 202(a) provide the Commission with “broad authority to adopt rules governing just and reasonable practices of common carriers.”³²⁴ Accordingly, the Commission found that the new blocking rules were “clearly within the scope of our section 201(b) and 202(a) authority” and “that it is essential that the rules apply to all voice service providers,” applying its ancillary authority in section 4(i).³²⁵ The Commission also found that section 251(e) and the Truth in Caller ID Act provided the basis “to prescribe rules to prevent the unlawful spoofing of caller ID and abuse of NANP resources by all voice service providers,”³²⁶ a category that includes VoIP providers and, in the context of our call blocking orders, intermediate providers.³²⁷ We conclude that the same authority provides a basis to adopt the mitigation obligations we adopt in this Report and Order to the extent that providers are acting as common carriers.

94. While we conclude that our direct sources of authority provide an ample basis to adopt our proposed rules on all providers, our ancillary authority in section 4(i)³²⁸ provides an independent basis to do so with respect to providers that have not been classified as common carriers. The Commission may exercise ancillary jurisdiction when two conditions are satisfied: (1) the Commission’s general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject; and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.³²⁹ We conclude that the regulations adopted in this Report and Order satisfy the first prong because providers that interconnect with the public switched telephone network and exchange IP traffic clearly offer “communication by wire and radio.”³³⁰

95. With regard to the second prong, requiring providers to comply with our proposed rules is reasonably ancillary to the Commission’s effective performance of its statutory responsibilities under sections 201(b), 202(a), and 251(e) of the Communications Act and the Truth in Caller ID Act as described above. With respect to sections 201(b) and 202(a), absent application of our proposed rules to

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³²⁰ *Gateway Provider Order* at 48, para. 115; (quoting *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1910, para. 99).

³²¹ *Id.* (quoting *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1910, para. 115).

³²² *Id.* (citing *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1910, para. 100).

³²³ *Id.* at 48-49, para. 117 (citing *Fourth Call Blocking Order*, 35 FCC at 15233-34, paras. 37-38).

³²⁴ *Id.* at 49, para. 117 (quoting *Fourth Call Blocking Order*, 35 FCC Rcd at 15233, para. 37).

³²⁵ *Id.* at 49, para. 117 (quoting *Fourth Call Blocking Order*, 35 FCC Rcd at 15233-34, para. 37); *see also* 47 U.S.C. § 154(i).

³²⁶ *Gateway Provider Order* at 49, para 117 (quoting *Fourth Call Blocking Order*, 35 FCC Rcd at 15234, para. 37).

³²⁷ *Id.* (citing *Fourth Call Blocking Order*, 35 FCC Rcd at 15222, n.2 (defining voice service providers to include intermediate providers for the purpose of the call blocking rules)).

³²⁸ 47 U.S.C. § 154(i).

³²⁹ *See, e.g., Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010); *American Library Ass’n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).

³³⁰ 47 U.S.C. § 152(a).

providers that are not classified as common carriers, originators of robocalls could circumvent our proposed scheme by sending calls only via providers that have not yet been classified as common carriers.

96. *Enforcement.* We adopt our additional enforcement rules above pursuant to sections 501, 502, and 503 of the Act.³³¹ These provisions allow us to take enforcement action against common carriers as well as providers not classified as common carriers following a citation.³³² We rely on this same authority to revise section 1.80 of our rules by adding new maximum and base forfeiture amounts.³³³

IV. SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING

A. Third-Party Caller ID Authentication

97. The Commission's rules require that a voice service provider "[a]uthenticate caller identification information for all SIP calls it originates and . . . to the extent technically feasible, transmit that call with authenticated caller identification information to the next voice service provider or intermediate provider in the call path."³³⁴ In the *Fifth Caller ID Authentication Further Notice*, we sought comment on whether the Commission should amend its rules to address whether originating voice service providers may use third parties to perform their third-party authentication obligations.³³⁵ The resulting record confirms that third-party authentication is occurring.³³⁶ It does not, however, provide sufficient information to fully assess the impact that explicitly authorizing or prohibiting third-party authentication may have on the STIR/SHAKEN ecosystem. For instance, the record before us is not sufficient for us to understand the full scope of the various arrangements that exist between providers and third parties that authenticate their calls. Nor does it allow us to determine whether these third-party arrangements satisfy the requirements of the Commission's authentication rules, how and what information is shared within those arrangements, whether that information sharing implicates privacy, security, or other legal concerns, and whether they have a net positive or negative effect on the reliability of the STIR/SHAKEN framework and its objective to curtail illegal spoofing. We thus seek further comment on the use of third-party solutions to authenticate caller ID information and whether any changes should be made to the Commission's rules to permit, prohibit, or limit their use.

98. We start by seeking comment on the types of third-party authentication solutions being used by providers. Are originating or other providers entering into agreements with third parties to perform their authentication obligations under the Commission's rules and the ATIS technical standards? If so, who are these third parties, what is the nature of their relationship to the provider that has retained them, and how does any agreement between the provider and the third-party purport to assign responsibility for compliance with the Commission's authentication rules and the ATIS standards? We note that the ATIS technical standards acknowledge several scenarios in which providers may authenticate calls where they lack a direct relationship with the end user of a voice service.³³⁷ These

³³¹ *Id.* §§ 501-503.

³³² *Id.* § 503(b)(5).

³³³ 47 CFR § 1.80; *see also infra* Appx. A § 1.80 (adding maximum and minimum forfeiture amounts for per call violations of certain robocall rules).

³³⁴ 47 CFR § 64.6301(a)(2).

³³⁵ *See Fifth Caller ID Authentication Further Notice* at 87, para. 224.

³³⁶ *See, e.g.,* Comcast Comments at 12; INCOMPAS Comments at 17; ZipDX Comments at 15-16; ACA Connects Reply at 2.

³³⁷ ATIS & SIP Forum, A Framework for SHAKEN Attestation and Origination Identifier, ATIS-1000088 at 10-11 (2022), https://access.atis.org/apps/group_public/download.php/51435/ATIS-1000088.pdf (ATIS-1000088) ("[I]n a number of cases the end user is not the same entity as the 'customer,' so the customer identity is not directly tied to the end user. In these cases an end user identity is not needed for . . . authentication procedures As might be required in certain attestation scenarios, there may be a need for the [service provider] to establish (directly or indirectly through the customer) that the customer . . . is servicing a particular end user entity for [telephone

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cases—including those involving providers serving enterprise, communications reseller, and value-added service provider customers³³⁸—generally involve an authenticating service provider that originates calls on behalf of a customer that itself maintains the direct relationship with the end user of the communications service.³³⁹ Are third-party authentication arrangements limited to these types of situations or are providers outside of these limited scenarios contracting with third parties to perform all or part of their authentication responsibilities? For instance, are providers that originate calls themselves entering into arms-length agreements with third parties for authentication services? Are there third parties marketing caller ID authentication services for originating and other providers? We ask that commenters detail the different types of third-party authentication arrangements that are currently being employed by providers, address how prevalent each type of third-party authentication arrangement is in the STIR/SHAKEN ecosystem, and provide any available data substantiating how effective they are at facilitating the authentication of caller ID information.

99. Along those lines, we seek comment on whether, and under what circumstances, a third party may authenticate calls on behalf of a provider with A- or B-level attestations consistent with the ATIS standards. Pursuant to ATIS-1000074, in order to apply a B-level attestation for a call, the signing party must originate the call onto the IP-based service network and have a direct authenticated relationship with the customer.³⁴⁰ An A-level attestation additionally requires the signing provider to establish a verified association with the telephone number used for the call.³⁴¹ Can a third-party authenticating a call on behalf of an originating provider satisfy all or any these criteria, and if so, how? Does the answer to that question depend on the nature of the relationship between the originating provider and the third party? For instance, is it possible for a third party that is a wholesale provider for a reseller, or an intermediate provider, to apply A- or B-level attestations on behalf of an originating provider in a manner that complies with the ATIS attestation-level criteria, but not a different type of third party? Are there third parties authenticating calls on behalf of originating providers that can only apply C-level attestations under the ATIS criteria? If commenters contend that third parties can meet the ATIS criteria for signing calls with A- and B-level attestations because they effectively stand in the shoes of the originating provider with the direct relationship with the customer, we ask that they specify the legal bases for that conclusion, e.g., the specific grounds for an agency theory, if any, and/or how the terms of the ATIS standards may be construed to include the third-party arrangement.

100. To the extent commenters contend that third parties may satisfy the criteria to sign calls with A- or B-level attestations, what information must be shared between originating providers and third parties for those attestation levels to be applied, is that information sharing occurring, and does it

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number] authorization purposes.”); *id.* at 5 (defining “customer” as “[t]ypically a service provider’s subscriber, which may or not be the ultimate end-user of the telecommunications service,” and which “may be a person, enterprise, reseller, or value added service provider,” and defining “end user” as “[t]he entity ultimately consuming the VoIP-based telecommunications service”); *see also* ATIS-1000074 at 12 (stating that, for full attestation, the “signing service provider is asserting that their customer can ‘legitimately’ use the [telephone number] that appears as the calling party (i.e., the Caller ID)” and that determining the “legitimacy of the [telephone numbers] the originator of the call can use is subject to signer-specific policy . . .”).

³³⁸ ATIS-1000088 at 17-18.

³³⁹ *Id.* at 13 (“In some . . . scenarios the [telephone number] assignments and/or authorizations apply to the indirect end user or call-initiation functions executed on behalf of the reseller’s or [value-added service provider’s] own customer. In those cases the [service provider’s] customer should provide assurances that they can trace the identity of an indirect end user and that user’s authorization to utilize a calling [telephone number]. The customer should be able to certify that only the authorized party (or calls originated on their behalf) will use the particular set of authorized [telephone numbers], and any traceback to the ultimate source will rely on the cooperation of the [service provider’s] customer.”).

³⁴⁰ ATIS-1000074 at 12-13.

³⁴¹ *Id.* at 12.

implicate any legal or public interest concerns, including privacy concerns? For instance, does any of the information shared constitute customer proprietary network information?³⁴² Should any action taken by the Commission to explicitly authorize third-party authentication solutions be conditioned upon any particular restrictions or protections related to that information sharing? Should any explicit authorization of third-party authentication practices be conditioned upon providers ensuring that third parties have the information needed to apply A- or B-level attestations consistent with the ATIS standards?

101. We seek comment on whether there is a distinction between scenarios in which a third-party entity is retained to authenticate calls on behalf of a provider and the technical solutions described in the 2021 Small Providers Report produced by the NANC.³⁴³ In that report, the NANC stated that small service providers may wish to “leverage [a] number of vendor solutions” offering third-party call signing services in order to comply with their STIR/SHAKEN implementation obligations under the Commission’s rules,³⁴⁴ identifying three options: (1) “hosted SHAKEN;”³⁴⁵ (2) “carrier SHAKEN;”³⁴⁶ and (3) “SHAKEN software.”³⁴⁷ Although each option involves different features, they each require the originating provider to “determin[e] the proper ‘A’ ‘B,’ or ‘C’ level attestation” for a given call and to use the third-party platform to sign the call using the originating provider’s SPC token.³⁴⁸ The NANC states that these options offer a cost-effective means for providers—particularly small providers—to implement STIR/SHAKEN consistent with the ATIS standards.³⁴⁹ We seek comment on these technical solutions and the extent to which they are currently in use by providers. If commenters agree that they satisfy the criteria for signing calls under the ATIS standards, is that because the solutions require the originating provider to make the attestation level determinations and sign calls using the originating provider’s SPC token, as opposed to arrangements in which a third party is allowed to make attestation level determinations and sign calls using a different SPC token? Do these technical solutions, in fact, result in A- B-, and C-level attestations being accurately applied?

102. The record developed in response to the *Fifth Caller ID Authentication Further Notice* indicates that there could be benefits to explicitly authorizing third-party authentication arrangements. For instance, some commenters suggest that third-party authentication can strengthen the caller ID authentication regime by enabling STIR/SHAKEN to be applied to calls that would otherwise be transmitted without authentication.³⁵⁰ We seek comment on the full range of benefits that could result

³⁴² 47 U.S.C. § 222.

³⁴³ North American Numbering Council, Call Authentication Trust Anchor Working Group, Deployment of STIR/SHAKEN by Small Voice Service Providers (Oct. 13, 2021) (NANC Small Providers Report), <https://docs.fcc.gov/public/attachments/DOC-377426A1.pdf>.

³⁴⁴ *Id.* at 6.

³⁴⁵ *Id.* at 7 (“Hosted SHAKEN describes a turn-key SHAKEN authentication and verification solution offered in a public or private cloud that includes all the required SHAKEN components for offering a comprehensive standards-compliant solution . . .”).

³⁴⁶ *Id.* at 7-8 (“Carrier SHAKEN describes another category of turn-key SHAKEN services offered by a growing number of Direct Inward Dialing (DID) or wholesale providers that also provide SIP termination to the PSTN. This service combines SHAKEN authentication service with SIP termination to the PSTN (transit service).”).

³⁴⁷ *Id.* at 8 (“SHAKEN Software is . . . a software-based SHAKEN solution deployed in-network by the [originating service provider] or [terminating service provider] in their respective data centers.”).

³⁴⁸ *Id.* at 7-8.

³⁴⁹ *Id.* at 6-7.

³⁵⁰ See ACA Connects Comments at 4 (“[P]artnership with a wholesale provider has enabled many ACA Connects member companies to receive the benefits of STIR/SHAKEN *two years ahead* of the implementation deadline that applies to non-reseller providers of their size.”) (emphasis in original); Comcast Comments at 12; CCA Comments at 12-13; INCOMPAS Comments at 17 (“For those that cannot maintain the framework natively, third party authentication has been a way for these providers to adequately meet the Commission’s current requirements to

(continued....)

from authorization of different third-party authentication arrangements. We also seek comment on the potential pitfalls of third-party authentication. For example, some commenters suggest that improper third-party signing practices are resulting in misleading and improper attestations, which in turn undermine the efficacy of the STIR/SHAKEN framework³⁵¹ and impair the analytics tools that rely on accurate attestation data to make blocking and labelling recommendations to their clients.³⁵²

103. Accordingly, we seek comment on whether the Commission should amend its rules to explicitly authorize third-party authentication and what, if any, limitations we should place on that authorization to ensure compliance with authentication requirements and the reliability of the STIR/SHAKEN framework. For instance, should we limit third-party authentication to scenarios akin to those described in the ATIS standards, where the entity authenticating the call is originating the call for a customer, such as a reseller or an enterprise customer? Notwithstanding the definitions provided by the ATIS standards,³⁵³ should we “clarify that, for the purposes of the STIR/SHAKEN standard, a ‘customer’ means an end user and not a wholesale upstream provider” as USTelecom suggests?³⁵⁴ Should we limit an authorization to the technical solutions described in the NANC’s 2021 Small Providers Report? Alternatively, should we explicitly authorize third-party authentication more broadly but require the provider with the authentication obligation to make attestation-level determinations, rather than allowing them to rely on the third-party to make those determinations? If we were to explicitly authorize third-party authentication, should we also require third parties to sign calls using the provider’s SPC token?³⁵⁵ Should we prohibit providers from certifying to having implemented STIR/SHAKEN in the Robocall Mitigation Database unless their calls are signed with their own SPC token, whether directly or through a third party? Would such a requirement improve accountability by third-party authenticators? Is the ability to obtain SPC tokens likely to present a barrier to providers’ compliance with such a requirement? If so, in what circumstances? Are there security or other concerns implicated by a provider sharing its SPC token with another entity for the purpose of signing calls? Would that undermine trust in the STIR/SHAKEN regime?

104. We ask that commenters address the specific costs that would be incurred and gains that would be realized if we were to explicitly authorize or prohibit specific third-party authentication practices. Are there any other rules that the Commission would need to change if it were to explicitly authorize certain third-party authentication practices? What measures would the Commission need to implement to monitor compliance with the Commission’s rules if third-party authentication arrangements are employed? For instance, should we amend our rules to explicitly require providers to identify any third-party solutions they rely upon in their Robocall Mitigation Database certifications and robocall

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transmit authenticated caller ID information to the next voice service provider.”); RingCentral Comments at 10-11 (noting that “[t]hird-party authentication removes barriers to entry and enables integration of communications into a wide variety of services and applications”).

³⁵¹ TransNexus Comments at 4 (arguing that improper third-party signing practices “undermin[e] the accountability designed into the STIR/SHAKEN framework”); USTelecom Comments at 10 (arguing that improper third-party attestation practices “undermine the accountability the STIR/SHAKEN framework is intended to impose” and “water down the reliability of attestation levels”); ZipDX Comments at 16.

³⁵² Neustar *First Reevaluation of STIR/SHAKEN Extensions Public Notice* Comments, WC Docket No. 17-97 at 4 (rec. Oct. 3, 2022) (arguing that improper A-level attestations “mak[e] it more difficult for analytics tools to separate good calls from bad calls”); CTIA *First Reevaluation of STIR/SHAKEN Extensions Public Notice* Reply, WC Docket No. 17-97 at 7 (rec. Oct. 21, 2022); TNS October Robocall Report at 4 (stating that inconsistent attestation practices make attestation data “less reliable as an analytical input”).

³⁵³ See *supra* n.337.

³⁵⁴ USTelecom Comments at 11.

³⁵⁵ See, e.g., Comcast Comments at 12; TransNexus Comments at 1; USTelecom Comments at 10-11; ZipDX Comments at 16.

mitigation plans, including the identity of the third party providing the solution, any requirements the provider has imposed on the third party to ensure compliance with the requirements of the ATIS technical standards and the Commission's rules, and what the provider itself does to ensure compliance with those requirements under the third-party arrangement? Are there any other compliance or enforcement measures that the Commission should adopt if it explicitly authorizes third-party authentication?

105. We also invite comment on whether a rulemaking is necessary to address third-party authentication or if another procedural device would be appropriate. For instance, to the extent commenters argue that third-party authentication is already authorized in the limited scenarios described in the ATIS standards, and no other third-party authentication arrangement should be permitted, should the Commission instead address these issues through a declaratory ruling? To the extent commenters advocate for imposing rules on third parties that authenticate calls on behalf of providers, rather than upon the providers themselves, we seek comment on the Commission's legal authority to do so.

106. Lastly, if the Commission were to explicitly authorize the use of third parties to authenticate caller ID information, we seek comment on whether we should require providers that are not currently required to implement STIR/SHAKEN because they do not have the facilities necessary to do so or are subject to an implementation extension to engage a third-party authentication solution for the SIP calls they originate. Would this significantly increase the number of calls authenticated with STIR/SHAKEN or is the impact likely to be minimal given the authentication obligation we adopt today for the first intermediate provider in the path of a SIP call and the fact that the implementation extension for facilities-based small providers will lapse on June 30, 2023?

B. Eliminating the Implementation Extension for Providers Unable to Obtain an SPC Token

107. We seek comment on whether to eliminate the STIR/SHAKEN implementation extension for providers that cannot obtain an SPC token. In the *Second Caller ID Authentication Report and Order*, the Commission granted voice service providers that are incapable of obtaining an SPC token due to Governance Authority policy a STIR/SHAKEN implementation extension until they are capable of obtaining said token.³⁵⁶ The Wireline Competition Bureau recently found that "token access no longer stood as a significant barrier to full participation in STIR/SHAKEN," however, it retained the SPC token extension because "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."³⁵⁷

108. We seek comment on whether the Commission should eliminate this extension. What are the benefits of, or drawbacks to, retaining the extension? Given changes in token access policy since the *Second Caller ID Authentication Report and Order* making it easier to obtain an SPC token, which, if any, providers are likely to qualify for this extension today, and under what circumstances? Assuming some providers remain unable to obtain an SPC token, are there other ways the Commission could account for these providers in our rules, apart from an implementation extension? Alternatively, would the Commission's standard waiver provisions be sufficient protection for any providers unable to obtain an SPC token?³⁵⁸ Are there other solutions that would allow any providers who remain unable to obtain an SPC token to participate in the STIR/SHAKEN framework? We seek comment on these and any alternative approaches to eliminating the SPC token extension.

C. Legal Authority

109. We propose to rely upon section 251(e) of the Act and the Truth in Caller ID Act to

³⁵⁶ 47 CFR § 64.6304(b); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1882-83, paras. 49-50. To participate in STIR/SHAKEN, a voice service provider must obtain an SPC token issued through the STIR/SHAKEN governance system.

³⁵⁷ *Second Reevaluation of STIR/SHAKEN Extensions Public Notice* at 1.

³⁵⁸ 47 CFR § 1.3.

require providers to meet any such requirements we adopt.³⁵⁹ We seek comment on this approach and whether there are any alternative sources of authority that we should consider.

110. We propose to rely on the TRACED Act to require originating providers to ensure that their calls are signed with their own token.³⁶⁰ To eliminate the extension for token access, we propose to rely on our authority under the TRACED Act to revise any granted extensions.³⁶¹ We seek comment on these proposals. We also seek specific comment on our authority to eliminate an existing TRACED Act extension by Commission action outside of the annual extension reevaluation process mandated by the TRACED Act.³⁶² Are there any other sources of authority we should consider?

D. Digital Equity and Inclusion

111. The Commission, as part of its continuing effort to advance digital equity for all,³⁶³ 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 considerations³⁶⁴ 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.

³⁵⁹ See 47 U.S.C. §§ 227 (e), 251(e).

³⁶⁰ TRACED Act § 4(b)(1) (requiring the Commission to adopt call authentication framework for voice service providers).

³⁶¹ *Id.* at § 4(b)(5)(F).

³⁶² *Id.* at § 4(b)(5)(F). The Wireline Competition Bureau recently completed such an assessment on delegated authority. See Triennial STIR/SHAKEN Report.

³⁶³ 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.

³⁶⁴ 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).

V. PROCEDURAL MATTERS

112. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),³⁶⁵ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Fifth Caller ID Authentication Further Notice*.³⁶⁶ The Commission sought written public comment on the possible significant economic impact on small entities regarding the proposals addressed in the *Fifth Caller ID Authentication Further Notice*, including comments on the IRFA.³⁶⁷ Pursuant to the RFA, a Final Regulatory Flexibility Analysis (FRFA) is set forth in Appendix B. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Sixth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³⁶⁸

113. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the policies and rules addressed in this *Sixth Further Notice*. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Sixth 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. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Sixth Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the SBA.³⁶⁹

114. *Paperwork Reduction Act.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Specifically, the rules adopted in 47 CFR §§ 64.6303(c), 64.6305(d), 64.6305(e) and 64.6305(f) 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.³⁷⁰

115. The *Sixth Further Notice* also may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

116. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that this rule is "major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will

³⁶⁵ *See* 5 U.S.C. § 603.

³⁶⁶ *Fifth Caller ID Authentication Further Notice* at Appx. D.

³⁶⁷ *Id.*

³⁶⁸ *See* 5 U.S.C. § 603(a).

³⁶⁹ *See id.*

³⁷⁰ *See infra* Appx. B at paras. 34-35.

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).

117. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Sixth Further Notice* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁷¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.³⁷²

118. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Currently, the Commission does not accept any hand-delivered or messenger-delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission’s office located at 9050 Junction Drive, Annapolis, Maryland 20701.³⁷³

119. Pursuant to section 1.49 of the Commission’s rules, 47 CFR § 1.49, parties to this proceeding must file any documents in this proceeding using the Commission’s Electronic Comment Filing System (ECFS): www.fcc.gov/ecfs.

120. *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).

121. *Additional Information.* For further information about the *Further Notice*, contact Jonathan Lechter, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at Jonathan.lechter@fcc.gov (202) 418-0984.

³⁷¹ 47 CFR §§ 1.1200 *et seq.*

³⁷² 47 CFR § 1.49(f).

³⁷³ *Amendment of the Commission’s Rules of Practice and Procedure*, Order, 35 FCC Rcd 5450 (OMD 2020).

VI. ORDERING CLAUSES

122. Accordingly, pursuant to sections 4(i), 4(j), 201, 202, 214, 217, 227, 227b, 251(e), 303(r), 501, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 202, 214, 217, 227, 227b, 251(e), 303(r), 501, 502, and 503, IT IS ORDERED that this *Sixth Report and Order* IS ADOPTED.

123. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 4(j), 201, 202, 217, 227, 227b, 251(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 202, 217, 227, 227b, 251(e), and 303(r), this *Sixth Further Notice of Proposed Rulemaking* IS ADOPTED.

124. IT IS FURTHER ORDERED that parts 0, 1, and 64 of the Commission's rules ARE AMENDED as set forth in Appendix A.

125. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this *Sixth Report and Order*, including the rule revisions and redesignations described in Appendix A, SHALL BE EFFECTIVE 60 days after publication in the Federal Register, except that: (1) the additions of 47 CFR §§ 64.6303(c) and 64.6305(f) and the revisions to redesignated 47 CFR §§ 64.6305(d) and 64.6305(e) as described in Appendix A will not be effective until OMB completes any review that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act; and (2) the revisions to redesignated 47 CFR § 64.6305(g) as described in Appendix A will not be effective until an effective date is announced by the Wireline Competition Bureau. The Commission directs the Wireline Competition Bureau to announce effective dates for the additions of and revisions to 47 CFR §§ 64.6303(c), 64.6305(d), 64.6305(e), 64.6305(f) and 64.6305(g), as redesignated by this *Sixth Report and Order*, by subsequent Public Notice.

126. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this *Sixth 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).

127. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Sixth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

128. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Sixth Further 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
FINAL RULES

The Federal Communications Commission amends Parts 0, 1, 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 by revising paragraph (a)(28) and adding new paragraph (a)(29) to read as follows:

* * * * *

(28) * * *

(i) Whose certification required by § 64.6305 is deficient after giving that provider notice and an opportunity to cure the deficiency; or

(ii) Who accepts calls directly from a provider not listed in the Robocall Mitigation Database in violation of § 64.6305(g).

(29) Take enforcement action, including revoking an existing section 214 authorization, license, or instrument for any entity that has repeatedly violated sections 64.6301, 64.6302, or 64.6305. The Commission or the Enforcement Bureau under delegated authority will provide prior notice of its intent to revoke an existing license or instrument of authorization and follow applicable revocation procedures, including providing the authorization holder with a written opportunity to demonstrate why revocation is not warranted.

PART 1—PRACTICE AND PROCEDURE

Subpart A—General Rules of Practice and Procedure

2. Amend section 1.80 by redesignating paragraphs (b)(9) as (b)(10), (b)(10) as (b)(11), and (b)(11) as (b)(12), adding new paragraph (b)(9), and revising paragraphs (b)(10), (b)(11), and (b)(12) to read as follows:

* * * * *

(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 the Commission's rules shall be liable to the United States for a forfeiture penalty of no more than \$23,727 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 (b)(9) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$23,727 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 \$177,951 for any single act or failure to act described in paragraph (a) of this section.

(11) * * *

Table 1 to Paragraph (b)(11) - Base Amounts for Section 503 Forfeitures

Forfeitures	Violation amount
Misrepresentation/lack of candor	(1)
Failure to file required DODC required forms, and/or filing materially inaccurate or incomplete DODC information	\$15,000
Construction and/or operation without an instrument of authorization for the service	10,000
Failure to comply with prescribed lighting and/or marking	10,000
Violation of public file rules	10,000
Violation of political rules: Reasonable access, lowest unit charge, equal opportunity, and discrimination	9,000
Unauthorized substantial transfer of control	8,000
Violation of children's television commercialization or programming requirements	8,000
Violations of rules relating to distress and safety frequencies	8,000
False distress communications	8,000
EAS equipment not installed or operational	8,000
Alien ownership violation	8,000
Failure to permit inspection	7,000
Transmission of indecent/obscene materials	7,000
Interference	7,000
Importation or marketing of unauthorized equipment	7,000
Exceeding of authorized antenna height	5,000
Fraud by wire, radio or television	5,000
Unauthorized discontinuance of service	5,000
Use of unauthorized equipment	5,000
Exceeding power limits	4,000
Failure to Respond to Commission communications	4,000
Violation of sponsorship ID requirements	4,000
Unauthorized emissions	4,000
Using unauthorized frequency	4,000
Failure to engage in required frequency coordination	4,000

Construction or operation at unauthorized location	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests	4,000
Violation of transmitter control and metering requirements	3,000
Failure to file required forms or information	3,000
Per call violations of the robocall blocking rules	2,500
Failure to make required measurements or conduct required monitoring	2,000
Failure to provide station ID	1,000
Unauthorized pro forma transfer of control	1,000
Failure to maintain required records	1,000

Table 2 to Paragraph (b)(11) - Violations Unique to the Service

* * * * *

Table 3 to Paragraph (b)(11) - Adjustment Criteria for Section 503 Forfeitures

* * * * *

Table 4 to Paragraph (b)(11) - Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors¹

* * * * *

¹ 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).

Note 2 to paragraph (b)(11): *Guidelines for Assessing Forfeitures*. The Commission and its staff may use the guidelines in tables 1 through 4 of this paragraph (b)(11) in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceilings per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in paragraph (b)(12) of this section. These statutory maxima became effective September 13, 2013. Forfeitures issued under other sections of the Act are dealt with separately in table 4 to this paragraph (b)(11).

(12) *Inflation adjustments to the maximum forfeiture amount.*

* * * * *

Table 5 to Paragraph (b)(12)(ii)

* * * * *

Note 3 to paragraph (b)(12): Pursuant to Public Law 104-134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart HH—Caller ID Authentication

3. Amend section 64.6300 by redesignating paragraphs (i) as (j), (j) as (k), (k) as (l), (l) as (m), (m) as (n), and (n) as (o), and adding new paragraph (i) to read as follows:

§ 64.6300 Definitions.

* * * * *

(i) ***Non-gateway intermediate provider.*** The term “non-gateway intermediate provider” means any entity that is an intermediate provider as that term is defined by paragraph (g) of this section that is not a gateway provider as that term is defined by paragraph (d) of this section.

* * * * *

4. Amend section 64.6302 by adding paragraph (d) to read as follows.

§ 64.6302 Caller ID authentication by intermediate providers.

* * * * *

(d) Notwithstanding paragraph (b) of this section, 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.

5. Amend section 63.6303 by adding paragraph (c) to read as follows.

§ 64.6303 Caller ID authentication in non-IP networks.

* * * * *

(c) Except as provided in § 64.6304, not later than December 31, 2023, a non-gateway intermediate provider receiving a call directly from an originating provider shall either:

(1) Upgrade its entire network to allow for the processing and carrying of SIP calls and fully implement the STIR/SHAKEN framework as required in § 64.6302(d) throughout its network; or

(2) Maintain and be ready to provide the Commission on request with documented proof that it is participating, either on its own or through a representative, including third party representatives, as a member of a working group, industry standards group, or consortium that is working to develop a non-internet Protocol caller identification authentication solution, or actively testing such a solution.

6. Amend section 64.6304 by revising paragraphs (a), (b), and (d) to read as follows:

§ 64.6304 Extension of Implementation Deadline

(a) * * *

(1) * * *

(ii) A small voice service provider notified by the Enforcement Bureau pursuant to § 0.111(a)(27) of this chapter that fails to respond in a timely manner, fails to respond with the information requested by the Enforcement Bureau, including credible evidence that the robocall traffic identified in the notification is not illegal, fails to demonstrate that it taken steps to effectively mitigate the traffic, or if the Enforcement Bureau determines the provider violates § 64.1200(n)(2), will no longer be exempt from the requirements of § 64.6301 beginning 90 days following the date of the Enforcement Bureau's determination, unless the extension would otherwise terminate earlier pursuant to paragraph (a)(1) introductory text or (a)(1)(i), in which case the earlier deadline applies; and

(iii) Small voice service providers that originate calls via satellite using North American Numbering Plan numbers are deemed subject to a continuing extension of § 64.6301.

* * * * *

(b) ***Voice service providers, gateway providers, and non-gateway intermediate providers that cannot obtain an SPC token.*** Voice service providers that are incapable of obtaining an SPC token due to Governance Authority policy are exempt from the requirements of § 64.6301 until they are capable of obtaining an SPC token. Gateway providers that are incapable of obtaining an SPC token due to Governance Authority policy are exempt from the requirements of § 64.6302(c) regarding call authentication. Non-gateway intermediate providers that are incapable of obtaining an SPC token due to Governance Authority policy are exempt from the requirements of § 64.6302(d) regarding call authentication.

* * * * *

(d) ***Non-IP Networks.*** Those portions of a voice service provider, gateway provider, or non-gateway intermediate provider's network that rely on technology that cannot initiate, maintain, carry, process, and terminate SIP calls are deemed subject to a continuing extension. A voice service provider subject to the foregoing extension shall comply with the requirements of § 64.6303(a) as to the portion of its network subject to the extension, a gateway provider subject to the foregoing extension shall comply with the requirements of § 64.6303(b) as to the portion of its network subject to the extension, and a non-gateway intermediate provider receiving calls directly from an originating provider subject to the foregoing extension shall comply with the requirements of § 64.6303(c) as to the portion of its network subject to the extension.

* * * * *

7. Amend section 64.6305 by redesignating paragraph (c) as (d), (d) as (e) and (e) as (g), revising paragraphs (a), (d), (e) and (g), and adding new paragraphs (c) and (f) to read as follows:

§ 64.6305 Robocall mitigation and certification.

(a) * * *

(1) Each voice service provider shall implement an appropriate robocall mitigation program.

* * * * *

(c) *Robocall Mitigation program requirements for non-gateway intermediate providers.*

(1) Each non-gateway intermediate provider shall implement an appropriate robocall mitigation program.

(2) Any robocall mitigation program implemented pursuant to paragraph (c)(1) of this section shall include reasonable steps to avoid carrying or processing illegal robocall traffic and shall include a commitment to respond fully and in a timely manner to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to carry or process calls.

(d) * * *

(1) A voice service provider shall certify that all of the calls that it originates on its network are subject to a robocall mitigation program consistent with paragraph (a), that any prior certification has not been removed by Commission action and it has not been prohibited from filing in the Robocall Mitigation Database by the Commission, and to one of the following:

(i) It has fully implemented the STIR/SHAKEN authentication framework across its entire network and all calls it originates are compliant with § 64.6301(a)(1) and (2);

(ii) It has implemented the STIR/SHAKEN authentication framework on a portion of its network and all calls it originates on that portion of its network are compliant with § 64.6301(a)(1) and (2); or

(iii) It has not implemented the STIR/SHAKEN authentication framework on any portion of its network.

(2) A voice service provider shall include the following information in its certification in English or with a certified English translation:

(i) Identification of the type of extension or extensions the voice service provider received under § 64.6304, if the voice service provider is not a foreign voice service provider, and the basis for the extension or extensions, or an explanation of why it is unable to implement STIR/SHAKEN due to a lack of control over the network infrastructure necessary to implement STIR/SHAKEN;

(ii) The specific reasonable steps the voice service provider has taken to avoid originating illegal robocall traffic as part of its robocall mitigation program, including a description of how it complies with its obligation to know its customers pursuant to § 64.1200(n)(3), any procedures in place to know its upstream providers, and the analytics system(s) it uses to identify and block illegal traffic, including whether it uses any third-party analytics vendor(s) and the name(s) of such vendor(s).

(iii) A statement of the voice service provider's commitment to respond fully and in a timely manner to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to originate calls; and

(iv) State whether, at any time in the prior two years, the filing entity (and/or any entity for which the filing entity shares common ownership, management, directors, or control) has been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing due to the filing entity transmitting, encouraging, assisting, or otherwise facilitating illegal robocalls or spoofing, or a deficient Robocall Mitigation Database certification or mitigation program description; and, if so, provide a description of any such action or investigation, including all law enforcement or regulatory agencies involved, the date that any action or investigation was commenced, the current status of the action or investigation, a summary of the findings of wrongdoing made in connection with the action or investigation, and whether any final determinations have been issued.

(3) All certifications made pursuant to paragraph (d)(1) and (2) of this section shall:

(i) Be filed in the appropriate portal on the Commission's website; and

(ii) Be signed by an officer in conformity with 47 CFR 1.16.

(4) A voice service provider filing a certification shall submit the following information in the appropriate portal on the Commission's website:

(i) The voice service provider's business name(s) and primary address;

(ii) Other business names in use by the voice service provider;

(iii) All business names previously used by the voice service provider;

(iv) Whether the voice service provider is a foreign voice service provider;

(v) The name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues;

(vi) Whether the voice service provider is (1) a voice service provider with a STIR/SHAKEN implementation obligation directly serving end users; (2) a voice service provider with a STIR/SHAKEN implementation obligation acting as a wholesale provider originating calls on behalf of another provider or providers; or (3) a voice service provider without a STIR/SHAKEN implementation obligation; and

(vii) The voice service provider's OCN, if it has one.

(5) A voice service provider shall update its filings within 10 business days of any change to the information it must provide pursuant to paragraphs (d)(1) through (4) of this section.

* * * * *

(e) * * *

(1) A gateway provider shall certify that all of the calls that it carries or processes on its network are subject to a robocall mitigation program consistent with (b)(1) of this section, that any prior certification has not been removed by Commission action and it has not been prohibited from filing in the Robocall Mitigation Database by the Commission, and to one of the following:

(i) * * * * *

(2) A gateway provider shall include the following information in its certification made pursuant to paragraph (e)(1), in English or with a certified English translation:

(i) Identification of the type of extension or extensions the gateway provider received under § 64.6304 and the basis for the extension or extensions, or an explanation of why it is unable to implement STIR/SHAKEN due to a lack of control over the network infrastructure necessary to implement STIR/SHAKEN;

(ii) The specific reasonable steps the gateway provider has taken to avoid carrying or processing illegal robocall traffic as part of its robocall mitigation program, including a description of how it complies with its obligation to know its upstream providers pursuant to § 64.1200(n)(4), the analytics system(s) it uses to identify and block illegal traffic, and whether it uses any third-party analytics vendor(s) and the name(s) of such vendor(s);

(iii) A statement of the gateway provider's commitment to respond fully and within 24 hours to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to carry or process calls; and

(iv) State whether, at any time in the prior two years, the filing entity (and/or any entity for which the filing entity shares common ownership, management, directors, or control) has been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing due to the filing entity transmitting, encouraging, assisting, or otherwise facilitating illegal robocalls or spoofing, or a deficient Robocall Mitigation Database certification or mitigation program description; and, if so, provide a description of any such action or

investigation, including all law enforcement or regulatory agencies involved, the date that any action or investigation was commenced, the current status of the action or investigation, a summary of the findings of wrongdoing made in connection with the action or investigation, and whether any final determinations have been issued.

(3) All certifications made pursuant to paragraph (e)(1) and (2) of this section shall:

- (i) Be filed in the appropriate portal on the Commission's website; and
- (ii) Be signed by an officer in conformity with 47 CFR 1.16.

(4) A gateway provider filing a certification shall submit the following information in the appropriate portal on the Commission's website:

- (i) The gateway provider's business name(s) and primary address;
- (ii) Other business names in use by the gateway provider;
- (iii) All business names previously used by the gateway provider;
- (iv) Whether the gateway provider or any affiliate is also foreign voice service provider;
- (v) The name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues.
- (vi) Whether the gateway provider is (1) a gateway provider with a STIR/SHAKEN implementation obligation; or (2) a gateway provider without a STIR/SHAKEN implementation obligation; and
- (vii) The gateway provider's OCN, if it has one.

(5) A gateway provider shall update its filings within 10 business days to the information it must provide pursuant to paragraphs (e)(1) through (4) of this section, subject to the conditions set forth in (d)(5)(i) and (ii) of this section.

(f) *Certification by non-gateway intermediate providers in the Robocall Mitigation Database.*

(1) A non-gateway intermediate provider shall certify that all of the calls that it carries or processes on its network are subject to a robocall mitigation program consistent with paragraph (c), that any prior certification has not been removed by Commission action and it has not been prohibited from filing in the Robocall Mitigation Database by the Commission, and to one of the following:

- (i) It has fully implemented the STIR/SHAKEN authentication framework across its entire network and all calls it carries or processes are compliant with § 64.6302(b);
- (ii) It has implemented the STIR/SHAKEN authentication framework on a portion of its network and calls it carries or processes on that portion of its network are compliant with § 64.6302(b); or
- (iii) It has not implemented the STIR/SHAKEN authentication framework on any portion of its network for carrying or processing calls.

(2) A non-gateway intermediate provider shall include the following information in its certification made pursuant to paragraph (f)(1) in English or with a certified English translation:

- (i) Identification of the type of extension or extensions the non-gateway intermediate provider received under § 64.6304, if the non-gateway intermediate provider is not a foreign provider, and the basis for the extension or extensions, or an explanation of why it is unable to implement STIR/SHAKEN due to a lack of control over the network infrastructure necessary to implement STIR/SHAKEN;
- (ii) The specific reasonable steps the non-gateway intermediate provider has taken to avoid carrying or processing illegal robocall traffic as part of its robocall mitigation program, including a description of any procedures in place to know its upstream providers and the analytics system(s) it uses to identify and block illegal traffic, including whether it uses any third-party analytics vendor(s) and the name of such vendor(s);

(iii) A statement of the non-gateway intermediate provider's commitment to respond fully and in a timely manner to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to carry or process calls; and

(iv) State whether, at any time in the prior two years, the filing entity (and/or any entity for which the filing entity shares common ownership, management, directors, or control) has been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing due to the filing entity transmitting, encouraging, assisting, or otherwise facilitating illegal robocalls or spoofing, or a deficient Robocall Mitigation Database certification or mitigation program description; and, if so, provide a description of any such action or investigation, including all law enforcement or regulatory agencies involved, the date that any action or investigation was commenced, the current status of the action or investigation, a summary of the findings of wrongdoing made in connection with the action or investigation, and whether any final determinations have been issued.

(3) All certifications made pursuant to paragraph (f)(1) and (2) of this section shall:

(i) Be filed in the appropriate portal on the Commission's website; and

(ii) Be signed by an officer in conformity with 47 CFR 1.16.

(4) A non-gateway intermediate provider filing a certification shall submit the following information in the appropriate portal on the Commission's website:

(i) The non-gateway intermediate provider's business name(s) and primary address;

(ii) Other business names in use by the non-gateway intermediate provider;

(iii) All business names previously used by the non-gateway intermediate provider;

(iv) Whether the non-gateway intermediate provider or any affiliate is also foreign voice service provider;

(v) The name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues;

(vi) Whether the non-gateway intermediate provider is (1) a non-gateway intermediate provider with a STIR/SHAKEN implementation obligation; or (2) a non-gateway intermediate provider without a STIR/SHAKEN implementation obligation; and

(vii) The non-gateway intermediate service provider's OCN, if it has one.

(5) A non-gateway intermediate provider shall update its filings within 10 business days of any change to the information it must provide pursuant to paragraphs (f)(1) through (f)(5) subject to the conditions set forth in paragraphs (d)(5)(i) and (ii) of this section.

(g) * * *

(1) **Accepting traffic from domestic voice service providers.** Intermediate providers and voice service providers shall accept calls directly from a domestic voice service provider only if that voice service provider's filing appears in the Robocall Mitigation Database in accordance with paragraph (d) of this section and that filing has not been de-listed pursuant to an enforcement action.

(2) **Accepting traffic from foreign providers.** Beginning April 11, 2023, intermediate providers and voice service providers shall accept calls directly from a foreign voice service provider or foreign intermediate provider that uses North American Numbering Plan resources that pertain to the United States in the caller ID field to send voice traffic to residential or business subscribers in the United States, only if that foreign provider's filing appears in the Robocall Mitigation Database in accordance with paragraph (d) of this section and that filing has not been de-listed pursuant to an enforcement action.

(3) **Accepting traffic from gateway providers.** Beginning April 11, 2023, intermediate providers and voice service providers shall accept calls directly from a gateway provider only if that gateway provider's

filing appears in the Robocall Mitigation Database in accordance with paragraph (e) of this section, showing that the gateway provider has affirmatively submitted the filing, and that filing has not been de-listed pursuant to an enforcement action.

(4) ***Accepting traffic from non-gateway intermediate providers.*** Intermediate providers and voice service providers shall accept calls directly from a non-gateway intermediate provider only if that non-gateway intermediate provider's filing appears in the Robocall Mitigation Database in accordance with paragraph (f) of this section, showing that the non-gateway intermediate provider affirmatively submitted the filing, and that filing has not been de-listed pursuant to an enforcement action.

(5) ***Public Safety Safeguards.*** Notwithstanding paragraphs (g)(1) through (4) of this section:

APPENDIX B

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 into the *Further Notice of Proposed Rulemaking* adopted in May 2022 (*Fifth Caller ID Authentication Further Notice*).² The Commission sought written public comment on the proposals in the *Fifth Caller ID Authentication Further Notice*, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Order

2. The *Sixth Report and Order* takes important steps in the fight against illegal robocalls by strengthening caller ID authentication obligations, expanding robocall mitigation rules, and granting an indefinite extension for small voice service providers that are also satellite providers originating calls using NANP numbers on the basis of undue hardship.⁴ The decisions we make here protect consumers from unwanted and illegal calls while balancing the legitimate interests of callers placing lawful calls.

3. First, the *Sixth Report and Order* requires any non-gateway intermediate provider that receives an unauthenticated SIP call directly from an originating provider to authenticate the call.⁵ Second, it requires non-gateway intermediate providers subject to the authentication obligation to comply with, at a minimum, the version of the standards in effect on December 31, 2023, along with any errata.⁶ Third, it requires all providers—including intermediate providers and voice service providers without the facilities necessary to implement STIR/SHAKEN—to: (1) take “reasonable steps” to mitigate illegal robocall traffic; (2) submit a certification to the Robocall Mitigation Database regarding their STIR/SHAKEN implementation status along with other identifying information; and (3) submit a robocall mitigation plan to the Robocall Mitigation Database.⁷ Fourth, it requires all providers to commit to fully respond to traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping illegal robocallers that use its services to originate, carry, or process illegal robocalls.⁸ Fifth, it requires downstream providers to block traffic received directly from non-gateway intermediate providers that have not submitted a certification in the Robocall Mitigation Database or have been removed through enforcement actions.⁹ Finally, the *Sixth Report and Order* grants an ongoing STIR/SHAKEN implementation extension on the basis of undue hardship for satellite providers that are small service providers using NANP numbers to originate calls.¹⁰

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *Fifth Caller ID Authentication Further Notice* at Appx. D.

³ See 5 U.S.C. § 604.

⁴ See *Sixth Report and Order* Section III.

⁵ *Id.* Section III.A.1.

⁶ *Id.* Section III.A.2-3.

⁷ *Id.* Section III.B.1-2.

⁸ *Id.* Section III.B.1.

⁹ *Id.* Section III.B.2.

¹⁰ *Id.* Section III.D.

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 Fifth Caller ID Authentication Further Notice IRFA.¹¹ Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹² The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁴ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹⁵ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁶

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹⁷ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁸ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹⁹

8. Next, the type of small entity described as a “small organization” is generally “any not-

¹¹ *Fifth Caller ID Authentication Further Notice* at 122-35, Appx. D.

¹² 5 U.S.C. § 604(a)(3).

¹³ See 5 U.S.C. § 603(b)(3).

¹⁴ See 5 U.S.C. § 601(6).

¹⁵ See 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.”

¹⁶ See 15 U.S.C. § 632.

¹⁷ See 5 U.S.C. § 601(3)-(6).

¹⁸ See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

¹⁹ *Id.*

for-profit enterprise which is independently owned and operated and is not dominant in its field.”²⁰ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.²¹ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.²²

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²³ U.S. Census Bureau data from the 2017 Census of Governments²⁴ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁵ Of this number there were 36,931 general purpose governments (county²⁶, municipal and town or township²⁷) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²⁸ with enrollment

²⁰ See 5 U.S.C. § 601(4).

²¹ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “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.

²² See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

²³ See 5 U.S.C. § 601(5).

²⁴ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

²⁵ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²⁶ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁷ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁸ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.²⁹ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”³⁰

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.³¹ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services.³² By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³³ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁴

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁶ Of this number, 2,964 firms operated with fewer than 250 employees.³⁷ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.³⁸ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.³⁹ Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

²⁹ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

³⁰ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

³¹ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³² *Id.*

³³ *Id.*

³⁴ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

³⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³⁹ *Id.*

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 Carriers⁴⁰ is the closest industry with an SBA small business size standard.⁴¹ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴² The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴³ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁵ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.⁴⁶ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.⁴⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *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 Carriers⁴⁸ 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 2021 Universal Service Monitoring

⁴⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴² Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁴³ *Id.*

⁴⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁶ 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>.

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&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.

Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.⁵³ Of these providers, the Commission estimates that 929 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 Carriers⁵⁶ 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.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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.⁶⁰ Of these providers, the Commission estimates that 3,808 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 Carriers⁶² 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

⁵³ 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>.

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>.

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.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.*

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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.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 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.⁶⁹ Based on industry data, only six cable system operators have more than 677,000 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

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁶⁸ 47 U.S.C. § 543(m)(2).

⁶⁹ *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).

⁷⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited Mar. 14, 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).

providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷² 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.⁷⁷ Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.⁷⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.⁸⁴ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.⁸⁵ Consequently, using the SBA's small business size standard, most of these providers can be

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&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 (2021), <https://docs.fcc.gov/pub/d.lic/attachments/DOC-379181A1.pdf>.

⁷⁸ *Id.*

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: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&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 (2021), <https://docs.fcc.gov/pub/d.lic/attachments/DOC-379181A1.pdf>.

⁸⁵ *Id.*

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 \$35 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.⁹⁰ Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.⁹¹ Consequently using the SBA’s small business size standard, a little more than of these providers can be considered small entities.

20. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.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

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&hidePrevious=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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

firms operated with fewer than 250 employees.⁹⁸ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.⁹⁹ Of these providers, the Commission estimates that 289 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 Resellers¹⁰¹ is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.¹⁰² Mobile virtual network operators (MVNOs) are included in this industry.¹⁰³ The SBA small business size standard for Telecommunications Resellers 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.¹⁰⁷ Of these providers, the Commission estimates that 495 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 Resellers¹⁰⁹ 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

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 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.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.*

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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=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 (2021), <https://docs.fcc.gov/pub/ld.lic/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>.

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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.¹¹⁵ Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.¹¹⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

23. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.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

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: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

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: EC1700SIZEREVFIEM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIEM&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.

considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

24. The *Sixth Report and Order* requires providers to meet certain obligations. These changes affect small and large companies equally and apply equally to all the classes of regulated entities identified above. Specifically, the *Sixth Report and Order* adopts a limited intermediate provider authentication requirement. It requires a non-gateway intermediate provider that receives an unauthenticated SIP call directly from an originating provider to authenticate the call.¹²³ The requirement will arise in limited circumstances—where the originating provider failed to comply with their own authentication obligation, or where the call is sent directly to an intermediate provider from the limited subset of originating providers that lack an authentication obligation. Indeed, if the first intermediate provider in the call path implements contractual provisions with its upstream originating providers stating that it will only accept authenticated traffic, it will completely avoid the need to authenticate calls.¹²⁴ Non-gateway intermediate providers that are subject to the authentication obligation have the flexibility to assign the level of attestation appropriate to the call based on the current version of the standards and the call information available.¹²⁵ A non-gateway intermediate provider using non-IP network technology in its network has the flexibility to either upgrade its network to allow for the initiation, maintenance, and termination of SIP calls and fully implement the STIR/SHAKEN framework, or provide the Commission, upon request, with documented proof that it is participating, either on its own or through a representative, as a member of a working group, industry standards group, or consortium that is working to develop a non-IP solution, or actively testing such a solution.¹²⁶ Under this rule, a non-gateway intermediate provider satisfies its obligation if it participates through a third-party representative, such as a trade association of which it is a member or vendor.¹²⁷

25. The *Sixth Report and Order* also requires all providers to take “reasonable steps” to mitigate illegal robocalls.¹²⁸ The new classes of providers subject to the “reasonable steps” standard are not required to implement specific measures to meet that standard, but providers’ programs must include detailed practices that can reasonably be expected to significantly reduce the carrying, processing, or origination of illegal robocalls.¹²⁹ In addition, all providers must implement a robocall mitigation program and comply with the practices that its program requires.¹³⁰ The providers must also commit to respond fully to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping illegal robocalls.¹³¹

26. All providers must submit a certification and robocall mitigation plan to the Robocall Mitigation Database regardless of whether they are required to implement STIR/SHAKEN, including providers without the facilities necessary to implement STIR/SHAKEN.¹³² The robocall mitigation plan must describe the specific “reasonable steps” that the provider has taken to avoid, as applicable, the

¹²³ *Sixth Report and Order* Section III.A.1.

¹²⁴ *Id.*

¹²⁵ *Id.* Section III.A.2.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* Section III.B.1.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* Section III.B.2.

origination, carrying, or processing of illegal robocall traffic.¹³³ The *Sixth Report and Order* also requires providers to “describe with particularity” certain mitigation techniques in their robocall mitigation plans. Specifically, (1) voice service providers must describe how they are complying with their existing obligation to take affirmative effective measures to prevent new and renewing customers from originating illegal calls; (2) non-gateway intermediate providers and voice service providers must describe any “know-your-upstream provider” procedures; and (3) all providers must describe any call analytics systems used to identify and block illegal traffic. To comply with the new requirements to describe their “new and renewing customer” and “know-your-upstream provider” procedures, providers must describe any contractual provisions with end-users or upstream providers designed to mitigate illegal robocalls.¹³⁴

27. All providers with new filing obligations must submit a certification to the Robocall Mitigation Database that includes the following baseline information:

- (1) whether the provider has fully, partially, or not implemented the STIR/SHAKEN authentication framework in the IP portions of its network;
- (2) the provider’s business name(s) and primary address;
- (3) other business name(s) in use by the provider;
- (4) all business names previously used by the provider;
- (5) whether the provider is a foreign service provider;
- (6) the name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues.¹³⁵

28. Certifications and robocall mitigations plans must be submitted in English or with certified English translation, and providers with new filing obligations must update any submitted information within 10 business days.¹³⁶

29. The *Sixth Report and Order* also adopts rules requiring providers to submit additional information in their Robocall Mitigation certifications. Specifically, (1) all providers must submit additional information regarding their role(s) in the call chain; (2) all providers asserting they do not have an obligation to implement STIR/SHAKEN must include more detail regarding the basis of that assertion; (3) all providers must certify that they have not been prohibited from filing in the Robocall Mitigation Database pursuant to a law enforcement action; (4) all providers must state whether they have been subject to a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing due to unlawful robocalling or spoofing and provide information concerning any such actions or investigations; and (5) all filers must submit their OCN if they have one.¹³⁷ Submissions may be made confidentially, consistent with our existing confidentiality rules.¹³⁸

30. The *Sixth Report and Order* requires downstream providers to block traffic received from a non-gateway intermediate provider that is not listed in the Robocall Mitigation Database, either because the provider did not file or their certification was removed as part of an enforcement action.¹³⁹ After

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

receiving notice from the Commission that a provider has been removed from the Robocall Mitigation Database, downstream providers must block all traffic from the identified provider within two business days.¹⁴⁰

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. The RFA requires an agency to describe any significant 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 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.¹⁴¹

32. Generally, the decisions we made in the *Sixth Report and Order* apply to all providers, and do not impose unique burdens or benefits on small providers. We took several steps to minimize the economic impact of the rules adopted in today's *Sixth Report and Order* on small entities.

33. The *Sixth Report and Order* imposes a limited intermediate provider authentication obligation that requires the first non-gateway intermediate provider in the call chain to authenticate unauthenticated calls received directly from an originating provider.¹⁴² Limiting the application of the authentication obligation to first non-gateway intermediate providers helps reduce the burden on intermediate providers, including small providers, and minimizes the potential costs associated with a broader authentication requirement for all intermediate providers that were identified in the record.¹⁴³

34. We also allowed flexibility where appropriate to ensure that providers, including small providers, can determine the best approach for compliance based on the needs of their networks. For example, non-gateway intermediate providers have the flexibility to assign the level of attestation appropriate to the call based on the applicable level of the standards and the available call information.¹⁴⁴ Additionally, the new classes of providers subject to the "reasonable steps" standard have the flexibility to determine which measures to use to mitigate illegal robocall traffic on their networks.¹⁴⁵ In reaching this approach, we considered and declined to adopt a "gross negligence" standard for evaluating whether a mitigation program is sufficient.¹⁴⁶ We also declined to adopt a heightened mitigation obligation solely for VoIP providers in order to ensure that the obligation applies to providers regardless of the technology used to transmit calls.¹⁴⁷ Likewise, we allowed non-gateway intermediate providers subject to our call authentication requirements that rely on non-IP infrastructure the flexibility to either upgrade their networks to implement STIR/SHAKEN or participate as a member of a working group, industry standards group, or consortium that is working to develop a non-IP caller ID authentication solution.¹⁴⁸ This flexibility will reduce compliance costs for non-gateway intermediate providers, including small providers. We also declined to require providers to submit information concerning inquiries from law enforcement or regulatory agencies or investigations that do not include findings of actual or suspected

¹⁴⁰ *Id.* Section III.C.2.

¹⁴¹ 5 U.S.C. § 603.

¹⁴² *Sixth Report and Order* Section III.A.1.

¹⁴³ *Id.*

¹⁴⁴ *Id.* Section III.A.2.

¹⁴⁵ *Id.* Section III.B.1.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* Section III.A.2.

wrongdoing.¹⁴⁹ And we declined to require Robocall Mitigation Database filers to include certain additional identifying information discussed in the *Gateway Provider Further Notice* beyond their OCN.¹⁵⁰

35. The *Sixth Report and Order* also grants an indefinite STIR/SHAKEN implementation extension to satellite providers that are small voice service providers and use NANP numbers to originate calls.¹⁵¹

G. Report to Congress

36. The Commission will send a copy of the *Sixth Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁵² In addition, the Commission will send a copy of the *Sixth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Sixth Report and Order* (or summaries thereof) will also be published in the Federal Register.¹⁵³

¹⁴⁹ *Id.* Section III.B.2.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* Section III.D.

¹⁵² 5 U.S.C. § 801(a)(1)(A).

¹⁵³ *See id.* § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (*Sixth Further Notice or Further Notice*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In order to continue the Commission's work of protecting American consumers from illegal calls, the *Sixth Further Notice* seeks comment on the use of third-party caller ID authentication solutions and whether any changes should be made to the Commission's rules to permit, prohibit, or limit their use.⁴ It also seeks comment on whether to eliminate the STIR/SHAKEN implementation extension for voice service providers that cannot obtain an SPC token.⁵

B. Legal Basis

3. The *Sixth Further Notice* proposes to find authority largely under those provisions through which it has previously adopted rules. Specifically, the *Sixth Further Notice* proposes to find authority under section 251(e) of the Communications Act of 1934, as amended, the Truth in Caller ID Act, and the TRACED Act.⁶ The *Sixth Further Notice* solicits comment on these proposals.⁷

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, if adopted.⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.¹⁰ A "small-business concern" is one which: (1) is independently

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ *Sixth Further Notice* Section IV.A.

⁵ *Id.* Section IV.B.

⁶ *Id.* Section IV.C.

⁷ *Id.*

⁸ See 5 U.S.C. § 603(b)(3).

⁹ See *id.* § 601(6).

¹⁰ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and (continued....)"

owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹

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.¹² First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹³ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹⁴

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."¹⁵ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁶ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁷

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."¹⁸ U.S. Census Bureau data from the 2017 Census of Governments¹⁹ indicate there were 90,075 local governmental jurisdictions consisting of general

(Continued from previous page) _____
publishes such definition(s) in the Federal Register."

¹¹ See 15 U.S.C. § 632.

¹² See 5 U.S.C. § 601(3)-(6).

¹³ See SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

¹⁴ *Id.*

¹⁵ See 5 U.S.C. § 601(4).

¹⁶ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file."

<https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁷ See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁸ See 5 U.S.C. § 601(5).

¹⁹ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

purpose governments and special purpose governments in the United States.²⁰ Of this number there were 36,931 general purpose governments (county²¹, municipal and town or township²²) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²³ with enrollment populations of less than 50,000.²⁴ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁵

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁶ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services.²⁷ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁸ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁹

²⁰ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²¹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²² See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²³ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²⁴ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁵ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²⁶ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³¹ Of this number, 2,964 firms operated with fewer than 250 employees.³² Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.³³ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.³⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³⁵ is the closest industry with an SBA small business size standard.³⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁰ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.⁴¹ Of these providers, the Commission estimates that 4,737 providers have 1,500 or

³⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/12, NAICS Code 517111).

³¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

³² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

³⁴ *Id.*

³⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁷ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁸ *Id.*

³⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁴⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

fewer employees.⁴² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴³ is the closest industry with an SBA small business size standard.⁴⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁷ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.⁴⁸ Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.⁴⁹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

12. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁵⁰ Wired Telecommunications Carriers⁵¹ is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵³ Of this number, 2,964 firms operated with fewer than

⁴² *Id.*

⁴³ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁵ *Id.*

⁴⁶ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁴⁹ *Id.*

⁵⁰ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁵¹ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

250 employees.⁵⁴ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.⁵⁵ Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.⁵⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small-business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation."⁵⁷ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁵⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁹ is the closest industry with a SBA small business size standard.⁶⁰ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶² Of this number, 2,964 firms operated with fewer than 250 employees.⁶³ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.⁶⁴ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

⁵⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵⁶ *Id.*

⁵⁷ 5 U.S.C. § 601(3).

⁵⁸ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

⁵⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶¹ *Id.*

⁶² See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=EC1700SIZEEMPFI&hidePreview=false>.

⁶³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

15. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a “small cable operator,” which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”⁶⁵ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.⁶⁶ Based on industry data, only six cable system operators have more than 677,000 subscribers.⁶⁷ Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁶⁸ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁶⁹ is the closest industry with a SBA small business size standard.⁷⁰ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁷² Of this number, 2,964 firms operated with fewer than 250 employees.⁷³ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were

⁶⁵ 47 U.S.C. § 543(m)(2).

⁶⁶ *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to 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).

⁶⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited Mar. 14, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

⁶⁸ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. See 47 CFR § 76.910(b).

⁶⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁰ See 13 CFR § 121.201, NAICS Code 517311.

⁷¹ *Id.*

⁷² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=EC1700SIZEEMPFIEM&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.

115 providers that reported they were engaged in the provision of other toll services.⁷⁴ Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.⁷⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁷⁶ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁷⁷ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁷⁹ Of that number, 2,837 firms employed fewer than 250 employees.⁸⁰ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.⁸¹ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.⁸² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Satellite Telecommunications*. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."⁸³ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$35 million or less in annual receipts as small.⁸⁴ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.⁸⁵ Of this number, 242 firms had revenue of less than

⁷⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

⁷⁵ *Id.*

⁷⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁷⁷ *Id.*

⁷⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁷⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁸⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

⁸² *Id.*

⁸³ See U.S. Census Bureau, *2017 NAICS Definition*, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁸⁴ See 13 CFR § 121.201, NAICS Code 517410.

⁸⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIEM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIEM&hidePreview=false>.

\$25 million.⁸⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.⁸⁷ Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.⁸⁸ Consequently using the SBA's small business size standard, a little more than of these providers can be considered small entities.

19. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁸⁹ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁹⁰ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁹¹ Mobile virtual network operators (MVNOs) are included in this industry.⁹² The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁹³ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁹⁴ Of that number, 1,375 firms operated with fewer than 250 employees.⁹⁵ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.⁹⁶ Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.⁹⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁹⁸ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises

⁸⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁸⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/publd.lic/attachments/DOC-379181A1.pdf>.

⁸⁸ *Id.*

⁸⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁹⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁹⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/publd.lic/attachments/DOC-379181A1.pdf>.

⁹⁷ *Id.*

⁹⁸ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁹⁹ Mobile virtual network operators (MVNOs) are included in this industry.¹⁰⁰ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.¹⁰¹ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.¹⁰² Of that number, 1,375 firms operated with fewer than 250 employees.¹⁰³ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.¹⁰⁴ Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.¹⁰⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers¹⁰⁶ 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.¹⁰⁷ Mobile virtual network operators (MVNOs) are included in this industry.¹⁰⁸ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.¹⁰⁹ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.¹¹⁰ Of that number, 1,375 firms operated with fewer than 250 employees.¹¹¹

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

¹⁰² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

¹⁰⁵ *Id.*

¹⁰⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

¹¹⁰ 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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&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.

Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.¹¹² Of these providers, the Commission estimates that 57 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.

22. *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.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹¹⁷ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹¹⁸ Of those firms, 1,039 had revenue of less than \$25 million.¹¹⁹ 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

23. The *Sixth Further Notice* seeks comment on imposing several obligations on various providers, many of whom may be small entities. Specifically, the *Sixth Further Notice* seeks comment on the types of third-party authentication solutions being used by providers and the nature of any agreements or relationships with third parties, including whether providers are entering into agreements with third parties to perform their authentication obligations under the Commission's rules and the ATIS technical standards.¹²⁰

24. The *Sixth Further Notice* seeks comment on whether, and under what circumstances, a third party may authenticate calls on behalf of a provider with A- or B-level attestations consistent with the ATIS standards.¹²¹ To the extent that commenters contend that third parties can meet the ATIS standards for signing calls with A- and B-level attestations, the *Sixth Further Notice* seeks comment on

¹¹² 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>.

¹¹³ *Id.*

¹¹⁴ See U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹¹⁸ 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>.

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. 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.

¹²⁰ *Sixth Further Notice* Section IV.A.

¹²¹ *Id.*

the specific legal bases for that conclusion and the information that must be shared between originating providers and third parties for such attestation levels to be applied.¹²² It also seeks comment on whether the Commission should condition any explicit authorization of third-party authentication solutions upon any particular restrictions or protections related to information sharing, including ensuring that third parties have the information needed to apply A- or B-level attestations consistent with the ATIS standards.¹²³

25. The *Sixth Further Notice* further seeks comment on whether the Commission should amend its rules to explicitly permit third-party authentication and any limitations the Commission should place on any such authorization, including: (1) whether to limit authorization to scenarios akin to those described in the ATIS standards; (2) whether to limit authorization to the technical solutions described in the NANC's 2021 Small Providers Report; (3) whether to only permit third-party authentication if the third party signs the call using the provider's SPC token; (4) whether to require providers with the authentication obligation to make attestation-level determinations; and (5) whether to prohibit providers from certifying that they have implemented STIR/SHAKEN in the Robocall Mitigation Database unless their calls are signed with their own SPC token, whether directly or through a third-party.¹²⁴

26. The *Sixth Further Notice* seeks comment on whether the Commission should change any other rules if certain third-party authentication practices are explicitly authorized.¹²⁵ In particular, it seeks comment on whether the Commission should require providers to explicitly identify certain additional information in their Robocall Mitigation Database certifications and plans, including: (1) any third-party solutions; (2) the identity of the third party providing the solution; and (3) any requirements the provider has imposed on the third party to ensure compliance with the requirements of the ATIS technical standards and Commission's rules, and any action taken by the provider to ensure compliance with those requirements.

27. The *Sixth Further Notice* seeks comment on whether there are any other compliance or enforcement measures that the Commission should adopt if it explicitly authorizes third-party authentication.¹²⁶ It also seeks comment on whether a rulemaking is necessary to address third-party authentication or if another procedural device would be appropriate.¹²⁷ To the extent that third-party caller ID authentication is explicitly authorized, the *Sixth Further Notice* seeks comment on whether the Commission should require providers that are not currently required to implement STIR/SHAKEN because they do not have the facilities necessary to do so or are subject to an implementation extension to engage a third-party authentication solution for the SIP calls they originate.¹²⁸

28. Lastly, the *Sixth Further Notice* also seeks comment on whether to eliminate the STIR/SHAKEN implementation extension for providers that cannot obtain an SPC token.¹²⁹

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 alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1)

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* Section IV.B.

the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.¹³⁰

30. The *Sixth Further Notice* seeks comment on the particular impacts that the proposed rules may have on small entities. In particular, it seeks comment regarding the different types of third-party authentication arrangements currently being employed by providers, the prevalence of each type of third-party authentication arrangement in the STIR/SHAKEN ecosystem, and any available data substantiating how effective they are at facilitating the authentication of caller ID information.¹³¹

31. The *Sixth Further Notice* seeks comment on whether third-party authentication providers are able to satisfy all or any of the ATIS standards, and whether the answer to such question is dependent on the nature of the relationship between the originating provider and the third party.¹³²

32. The *Sixth Further Notice* seeks comment on the information that must be shared between originating providers and third parties for A- or B-level attestations to be applied and whether information sharing practices implicate any legal or public interest concerns.¹³³ It seeks comment on whether the Commission should condition any explicit authorization of third-party authentication practices upon providers ensuring that third parties have the information needed to apply A- or B-level attestations consistent with the ATIS standards.¹³⁴

33. The *Sixth Further Notice* seeks comment on whether there is a distinction between scenarios in which third parties authenticate calls on behalf of a provider and the technical solutions described in the 2021 Small Providers Report produced by the NANC.¹³⁵ The *Sixth Further Notice* notes that the NANC described the technical solutions as a cost-effective means for providers—particularly small providers—to implement STIR/SHAKEN consistent with the ATIS standards, and sought comment on these solutions.¹³⁶ The *Sixth Further Notice* seeks comment on whether the Commission should limit any authorization of third-party authentication to the technical solutions described in the NANC’s 2021 Small Provider Report.¹³⁷ It also seeks comment on only permitting third-party authentication if the third party signs the call using the provider’s SPC token and prohibiting providers from certifying that they have implemented STIR/SHAKEN in the Robocall Mitigation Database unless their calls are signed with their own SPC token.¹³⁸ In so doing, it specifically seeks comment on whether the ability to obtain an SPC token is likely to present a barrier to providers’ compliance with such a requirement.¹³⁹

34. The *Sixth Further Notice* further seeks comment on the full range of potential benefits that could result from authorization of different third-party authentication arrangements, as well as the potential pitfalls of third-party authentication.¹⁴⁰ It also seeks comment on the specific costs that would

¹³⁰ 5 U.S.C. § 603(c)(1)-(4).

¹³¹ *Sixth Further Notice* Section IV.A.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

be incurred and gains that would be realized if the Commission were to explicitly authorize or prohibit specific third-party authentication practices.¹⁴¹ In addition, the *Sixth Further Notice* seeks comment on whether there are any other rules that the Commission would need to change if it were to explicitly authorize certain third-party authentication practices.¹⁴² Moreover, if third-party caller ID authentication is explicitly permitted, the *Sixth Further Notice* seeks comment on whether to require providers that are not currently required to implement STIR/SHAKEN because they do not have the facilities necessary to do so or are subject to an implementation extension to engage a third-party authentication solution for the SIP calls they originate.¹⁴³

35. Lastly, the *Sixth Further Notice* seeks comment on whether to eliminate the STIR/SHAKEN implementation for providers that cannot obtain an SPC token, as well as any benefits or drawbacks to retaining the extension.¹⁴⁴

36. Small entities may provide input in these areas addressing, among other considerations, any particular implementation challenges faced by small entities. The Commission expects to evaluate the economic impact on small entities, as identified in comments filed in response to the *Further Notice* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

37. None.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* Section IV.B.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Notice of Proposed Rulemaking (March 16, 2023).

The scammers behind robocalls are relentless. They are always looking for loopholes and new ways to advance old schemes. But today we shut down a gap we found in our policies, demonstrating that we can be even more nimble than the bad actors responsible for these junk calls.

In this order, we require the first intermediate providers in a calling path to use call authentication technology. What does this mean? For some time, we have required carriers that originate and terminate calls to use technology like STIR/SHAKEN to prove that a caller truly is who they say they are and not a scammer using the network to further some fraud. But the intermediate providers who may help carry a call from one carrier to another never had the same consistent obligation to use call authentication technology. This was a gap in our rules, a way to let junk calls sneak into our networks and reach unassuming consumers. No more. Today we close this loophole and require intermediate providers that are the first to pick up a call from an originating carrier to use STIR/SHAKEN. We also insist that they, along with all other providers, register in our Robocall Mitigation Database. Then we go one step further and prohibit downstream carriers from accepting calls from intermediate providers not listed in the database. Finally, we ask questions in a rulemaking to further explore how third-party caller ID authentication can help build on this framework to stop unauthorized traffic.

Thank you to the Robocall Response Team for this effort. Thank you also to our Enforcement Bureau because they have already demonstrated the power of this database. In fact, last year, they used it to kick seven voice providers off our networks for sending junk calls. Now that it will be even more comprehensive, we are going to have more tools to go after those behind these scams. Thank you also to the Attorneys General we have partnered with in a Memorandum of Understanding to crack down on illegal robocalls. We are up to 44 state Attorneys General nationwide. To the six who are remaining, you will be hearing from us, and I promise we can be relentless, too.

Thank you to the staff responsible for this order and rulemaking, including Allison Baker, Erik Beith, Callie Coker, Elizabeth Drogula, CJ Ferraro, Trent Harkrader, Jonathan Lechter, Jodie May, Zach Ross, and Merry Wulff from the Wireline Competition Bureau; Kenneth Carlberg, David Furth, and Debra Jordan from the Public Safety and Homeland Security Bureau; Jerusha Burnett, Aaron Garza, Alejandro Roark, Karen Schroeder, Mark Stone, Kristi Thornton, and Kimberly Wild from the Consumer and Governmental Affairs Bureau; Loyaan Egal, Daniel Stepanicich, Kristi Thompson, and Lisa Zaina from the Enforcement Bureau; Denise Coca, Kimberly Cook, Jim Schlichting, and Thomas Sullivan from the International Bureau; Michele Ellison, Valerie Hill, Richard Mallen, William Richardson, and Derek Yeo from the Office of General Counsel; Eugene Kiselev, Giulia McHenry, Virginia Metallo, Mark Montano, Michelle Schaefer, and Emily Talaga from the Office of Economics and Analytics; and Cara Grayer and Joy Ragsdale from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Notice of Proposed Rulemaking (March 16, 2023).

Our meetings, conversations, and even meals continue to be interrupted by robocalls. They remain the Commission's number one source of complaints, and something we have been working hard to stem, adopting five Report and Orders on STIR/SHAKEN so far. But, there's good news as we adopt the sixth Report and Order today. The Commission's efforts to deter robocalls and authenticate Caller ID are making a difference. According to a recent release from the Federal Trade Commission it received 1.8 million complaints about robocalls in 2022. But, that number decreased from 3.4 million complaints in 2021.¹ That is real progress. And I'm enthusiastic that it will continue.

STIR/SHAKEN works best by improving transparency and accountability among providers and consumers. So, today we strengthen both. We strengthen the transparency of our STIR/SHAKEN regime by closing one of the loopholes that allowed unauthenticated calls into the call path. Now, the first intermediate provider in the call path must authenticate a Session Initiation Protocol unauthenticated call directly received from an originating provider. Trusting that a caller's number is accurate is a necessity if we're going to eliminate this problem and this should stop unauthenticated calls as early as possible.

Separately, we improve accountability as well as transparency by strengthening the Robocall Mitigation Database. We require all providers, including intermediate providers and voice service providers that have yet to implement STIR/SHAKEN, to file detailed information and certifications in the Database and to take reasonable steps to mitigate robocall traffic. Simply put, the more providers that have to describe how they are meeting their obligations to take measures to prevent the origination of illegal calls in the Database, the better. If a carrier isn't doing enough, it is public. That transparency will directly lead to additional accountability, which will lead to fewer robocalls.

But, I think the most important part of today's item, and maybe my favorite as a former enforcement official, is what we do to strengthen our enforcement authorities. We ensure that providers follow our robocall blocking rules by setting a strong max forfeiture for each call for failure to block. We're talking real money on a per-call basis.

We also adopt rules to remove non-gateway intermediate providers from the Database for violating our rules, and we establish an expedited process to remove providers from the Database for facially deficient certifications. This is vital, because under our rules other voice service providers may not accept traffic from a voice service provider that is not in the Database. And last, we establish rules that impose strong consequences for repeat offenders of our robocall mitigation rules, including revoking their section 214 operating authority and taking such actions into consideration when owners and principals of these bad actors attempt to obtain FCC licenses or certifications going forward. This is common sense. We should not be giving bad actors another bite at the apple if they've shown their true colors. Having an FCC license, authorization, or certification is a privilege.

Ultimately, we've made good progress blunting the growth of robocalls, and I'm confident that these new requirements, and our significant and real improvements to our enforcement capabilities, will continue the trend. Thank you to the FCC staff that worked on this item. It has my approval.

¹ *FTC Releases Updated Do Not Call Registry Data Book; Impersonator Fraud Tops List of Consumer Complaints*, Federal Trade Commission, Nov. 21, 2022, Press Release, <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-releases-updated-do-not-call-registry-data-book-impersonator-fraud-tops-list-consumer-complaints>.

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

In the Matter of	)	
	)	
Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	

NOTICE OF PROPOSED RULEMAKING AND ORDER

Adopted: March 16, 2023

Released: March 17, 2023

Comment Date: 30 days after publication in the Federal Register

Reply Comment Date: 60 days after publication in the Federal Register

By the Commission: Chairwoman Rosenworcel and Commissioners Carr and Starks issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND	3
A. The Martha Wright-Reed Just and Reasonable Communications Act of 2022	3
B. History of Proceeding to Date	5
III. NOTICE OF PROPOSED RULEMAKING	10
A. The Martha Wright-Reed Act: Technical Amendments	13
1. Section 2(a)—Amendments to Section 276(b)(1)(A) of the Communications Act	13
2. Section 2(b)—Amendments to Section 3(1) of the Communications Act	29
3. Section 2(c)—Amendment to Section 2(b) of the Communications Act	37
B. Implementation of the Martha Wright-Reed Act	39
1. Approach to Ratemaking	39
2. Use of Data in Ratemaking	47
3. Necessary Safety and Security Costs	52
4. Size and Type of Correctional Institution	58
C. Effect on Other Laws	66
D. Necessary Rule Changes	73
E. Other Reforms Related to Incarcerated People’s Communications Services	80
F. Digital Equity and Inclusion	82
IV. ORDER	83
V. PROCEDURAL MATTERS	89
VI. ORDERING CLAUSES	95
APPENDIX A – INITIAL REGULATORY FLEXIBILITY ANALYSIS	

I. INTRODUCTION

1. Nearly twenty years have passed since Martha Wright-Reed and her fellow petitioners first sought Commission relief from the exorbitant telephone rates they had to pay to talk to their incarcerated family members. More than a decade has passed since the Commission began to respond to

those petitioners' request and embarked on a process to pursue just and reasonable rates for telephone calls between incarcerated people and their loved ones.¹ The Commission's ability to achieve that objective, however, was limited by statutory provisions,² as explained by the United States Court of Appeals for the District of Columbia Circuit in *GTL v. FCC*.³ Recently, Congress, through the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), addressed these limitations and significantly expanded the Commission's jurisdiction over incarcerated people's communications services.⁴ In response to the D.C. Circuit's decision, and recognizing the increasing role of advanced communications, including video, in connecting incarcerated people with their families and friends, Congress now expressly directs that the Commission "ensure just and reasonable charges for telephone and advanced communications services in correctional and detention facilities."⁵

2. In this item, we build on the Commission's efforts to date, bolstered by the new tools Congress has bestowed, and begin the process of implementing the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people's audio and video communications services.⁶ We seek comment on how we should interpret the Act's language to ensure that we implement the statute in a manner that fulfills Congress's intent. We also seek comment on how the Act affects our ability to ensure that such services and associated equipment are accessible to and usable by incarcerated people with disabilities. Relatedly, we reaffirm the Commission's prior delegation of data collection authority to the Wireline Competition Bureau and the Office of Economics and Analytics and direct them to update and restructure their most recent data collection as appropriate in light of the requirements of the new statute, so that we may meet our statutory obligation to ensure that the rates and charges for communications services between incarcerated people and their friends and families are just and reasonable.

II. BACKGROUND

A. The Martha Wright-Reed Just and Reasonable Communications Act of 2022

3. On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act.⁷ The Act was the product of efforts by multiple individuals and committed stakeholders over a number of years to comprehensively address the persistent problem of unreasonably high rates and charges incarcerated people and their families pay for communications services. At its core, the Act removes the principal

¹ See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9523-25, 9527-30, paras. 12-15, 22-25, 28 (2021) (*2021 ICS Order* or *2021 ICS Notice*).

² 47 U.S.C. §§ 152(b), 201(b), 276(b)(1)(A) (1996).

³ *Global Tel*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017) (*GTL v. FCC*) (amending 859 F.3d 39 (D.C. Cir. 2017)); see *2021 ICS Order*, 36 FCC Rcd at 9525-27, paras. 16-21.

⁴ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act); 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

⁵ Martha Wright-Reed Act pmb.; 168 Cong. Rec. H10027-28 (daily ed. Dec. 22, 2022) (statements of Reps. Pallone and Rush) (referencing the *GTL v. FCC* decision that the Commission lacked authority over intrastate rates).

⁶ This item continues ongoing efforts to reform providers' rates, charges, and practices in connection with interstate and international inmate calling services. See, e.g., *2021 ICS Order*, 36 FCC Rcd 9519; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (Sept. 30, 2022) (*2022 ICS Order* or *2022 ICS Notice*). At the same time, this item initiates a new docket, WC Docket No. 23-62, to specifically address implementation of, and changes required by, the provisions of the Martha Wright-Reed Act.

⁷ Martha Wright-Reed Act.

statutory limitations that have prevented the Commission from setting comprehensive and effective just and reasonable rates for incarcerated people's communications services.

4. Specifically, the Martha Wright-Reed Act modifies section 276 of the Communications Act of 1934 (Communications Act)⁸ to explicitly enable the Commission to require that rates for incarcerated people's communications services be just and reasonable, irrespective of the "calling device" used.⁹ It also expands the definition of payphone service in correctional institutions to encompass all advanced communications services (other than electronic messaging), including "any audio or video communications service used by inmates . . . regardless of technology used."¹⁰ In addition, the new statute amends section 2(b) of the Communications Act to make clear that the Commission's jurisdiction extends to intrastate as well as interstate and international communications services used by incarcerated people.¹¹ And, in direct response to the *GTL v. FCC* decision, the Act expressly allows the Commission to "use industry-wide average costs," as well as the "average costs of service of a communications service provider" in setting just and reasonable rates.¹² The Martha Wright-Reed Act also requires that the Commission "shall consider," as part of its ratemaking, "costs associated with any safety and security measures necessary to provide" telephone service and advanced communications services.¹³ Finally, the statute directs the Commission to promulgate regulations necessary to implement the statutory provisions not earlier than 18 months and not later than 24 months after the date of its enactment.¹⁴

B. History of Proceeding to Date

5. In 2003, Martha Wright and her fellow petitioners, then-current and former incarcerated people and their relatives and legal counsel (collectively, the Wright Petitioners) filed petitions seeking a rulemaking to address "excessive" rates for incarcerated people's telephone services.¹⁵ The Wright Petitioners filed an alternative petition in 2007, in which they emphasized the urgent need for the Commission to act on "exorbitant" rates for calling services for incarcerated people.¹⁶ In 2012, the Commission commenced a rulemaking proceeding, releasing the *2012 ICS Notice* seeking comment on the Wright Petitioners' petitions and on establishing rate caps for interstate calling services for incarcerated people.¹⁷ In the *2013 ICS Order* that followed, the Commission adopted interim interstate rate caps and adopted the Commission's first mandatory data collection regarding inmate calling services

⁸ 47 U.S.C. § 151 *et seq.*

⁹ Martha Wright-Reed Act § 2(a).

¹⁰ *Id.* § 2(a)(2), (b).

¹¹ *Id.* § 2(c).

¹² *Id.* § 3(b); *see also* *GTL v. FCC*, 866 F.3d at 414-15.

¹³ Martha Wright-Reed Act § 3(b)(2).

¹⁴ *Id.* § 3(a).

¹⁵ Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking by Martha Wright et al., CC Docket No. 96-128, at 1 (filed Nov. 3, 2003). The petition sought to prohibit "exclusive inmate calling service agreements contracts and collect call-only restrictions" in correctional facilities. *Id.* at 3. Ms. Wright-Reed went on to lead a campaign for just communications for incarcerated people for over a decade. She passed away in 2015, before fully realizing her dream.

¹⁶ Petitioners' Alternative Rulemaking Proposal by Martha Wright et al., CC Docket No. 96-128, at 2 (filed Feb. 28, 2007). In the alternative petition for rulemaking, the Wright Petitioners proposed benchmark rates for interstate long distance inmate calling services calls and reiterated their request that providers offer debit calling as an alternative option to collect calling. *Id.* at 5, 10.

¹⁷ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16629, 16629-30, 16636, paras. 1, 17 (2012) (*2012 ICS Notice*). Unless specifically noted, references herein to "interstate" include both interstate and international communications services.

(ICS), requiring all providers of those services to submit data on their underlying costs of service.¹⁸ It also adopted an annual reporting obligation requiring providers to provide specific information on their operations, including their rates and ancillary service charges.¹⁹ In 2015, in light of record evidence of continued “egregiously high” rates, the Commission adopted a comprehensive framework for regulating rates and charges for both interstate and intrastate calling services for incarcerated people, re-adopting the interim interstate rate caps, and extending them to intrastate calls.²⁰ As part of that framework, the Commission concluded that site commissions—payments made by inmate calling providers to correctional facilities or state authorities—were not costs reasonably related to the provision of inmate calling services and thus excluded those payments from the cost data used to set the rate caps.²¹

6. Several parties appealed the Commission’s *2015 ICS Order*, as well as a subsequent Commission Order on Reconsideration. The D.C. Circuit addressed the appeal of the *2015 ICS Order* in its 2017 decision in *GTL v. FCC*, holding that the Commission lacked statutory authority to regulate intrastate rates and vacating the intrastate rate caps adopted in the *2015 ICS Order*.²² The Court also ruled that the Commission’s use of industry-wide average costs to set its interstate rate caps “lack[ed] justification in the record and [was] not supported by reasoned decisionmaking” in the *Order*,²³ and it vacated a reporting requirement related to video visitation services, finding the requirement was “too attenuated to the Commission’s statutory authority.”²⁴ Finally, the Court concluded that the “Commission’s categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of

¹⁸ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) (*2013 ICS Order*). Prior to the effective date of the *2013 ICS Order*, the D.C. Circuit stayed some of the rules adopted but allowed other aspects of the decision to take effect, including the interim interstate rate caps and Mandatory Data Collection. See *Securus Techs v. FCC*, No. 13-1280, 2014 U.S. App. LEXIS 13669, at *3 (D.C. Cir. Jan. 13, 2014).

¹⁹ *2013 ICS Order*, 28 FCC Rcd at 14169, para. 116; see also *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12891-92, paras. 266-67 (2015) (*2015 ICS Order*); 47 CFR § 64.6060.

²⁰ *2015 ICS Order*, 30 FCC Rcd at 12769-70, para. 9. . The Commission used industry-wide average costs based on data from the First Mandatory Data Collection, explaining that this approach would allow providers to “recover average costs at each and every tier.” *Id.* at 12790, para. 52 & n.170. The Commission readopted the interim interstate rate caps it had adopted in 2013 and extended them to intrastate calls, pending the effectiveness of the new rate caps. *Id.* at 12769, para. 9. The Commission also adopted a Second Mandatory Data Collection to enable it to identify trends in the market and adopt further reforms. *Id.* at 12862, para. 198. In 2016, the Commission continued its reform of the inmate calling services marketplace by, among other things, amending its rate caps to better allow inmate calling service providers to recover costs incurred as a result of providing such services, including certain correctional facility costs that the Commission found, based on the record then before it, were reasonably and directly related to the provision of inmate calling services. See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order on Reconsideration, 31 FCC Rcd 9300, 9307-08, paras. 12, 15 (2016) (*2016 Order on Reconsideration*).

²¹ *2015 ICS Order*, 30 FCC Rcd at 12819, para. 118. The Commission’s rules define “Site Commissions” to mean “any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide Inmate Calling Services, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility.” 47 CFR § 64.6000(t).

²² *GTL v. FCC*, 866 F.3d at 402, 412.

²³ *Id.* at 402.

²⁴ *Id.* at 414-15.

doing business incurred by [inmate calling services] providers.”²⁵ The Court directed the Commission to “assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not.”²⁶

7. Subsequently, the Commission sought comment on additional steps to address unreasonable rates in the *2020 ICS Notice*,²⁷ and released the comprehensive *2021 ICS Order*,²⁸ in which, among other actions, it reformed the treatment of site commissions, set new interim interstate rate caps for prisons and jails with average daily populations of 1,000 or more incarcerated people, and capped international calling rates for the first time.²⁹

8. In the *2021 ICS Order*, the Commission also sought to improve the data it collected on calling services for incarcerated people as part of its efforts to set reasonable permanent rate caps. It delegated authority to the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) to establish a Third Mandatory Data Collection to collect uniform cost data to use in setting rate caps that more closely reflect inmate service providers’ costs of providing service at correctional facilities.³⁰ After seeking public comment,³¹ in January 2022, WCB and OEA released an Order adopting the data collection.³² Parties’ responses to the Third Mandatory Data Collection were due June 30, 2022, and we affirmatively incorporate those responses into the record in this proceeding.

9. Finally, in September 2022, while analyzing the data from the Third Mandatory Data Collection, the Commission issued the *2022 ICS Order*, which adopted requirements to improve access to communications services for incarcerated people with communication disabilities and targeted reforms to lessen the financial burden on incarcerated people and their loved ones when using calling services.³³ We also issued the *2022 ICS Notice* seeking additional stakeholder input and evidence relating to additional reforms concerning incarcerated people with communication disabilities and providers’ rates, charges, and practices in connection with interstate and international calling services.

²⁵ *Id.* at 413.

²⁶ *Id.* at 414. In view of the its decision in *GTL*, the D.C. Circuit separately dismissed the separate appeal of the Commission’s *2016 Order on Reconsideration* and vacated the Order on Reconsideration, “insofar as it purport[ed] to set rate caps on inmate calling service,” with the consent of all parties to that appeal. *Securus Techs., Inc. v. FCC*, No. 16-1321, 2017 U.S. App. LEXIS 26360, at *4-5 (D.C. Cir. Dec. 21, 2017) (per curiam).

²⁷ See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485 (2020) (*2020 ICS Order* or *2020 ICS Notice*). The Commission proposed to lower the interstate rate caps on an interim basis, and to cap international rates. *Id.* at 8509, paras. 67-68.

²⁸ *2021 ICS Order*, 36 FCC Rcd 9519. In the *2021 ICS Notice*, the Commission sought comment on, among other matters, the methodology to be employed in setting permanent interstate and international rate caps. *Id.* at 9521, para. 5.

²⁹ *Id.* at 9530, para. 28.

³⁰ *Id.* at 9619-20, para. 221. As indicated above, the Commission conducted two prior mandatory data collections seeking this type of uniform cost data. *Supra* note 20.

³¹ *WCB and OEA Seek Comment on Upcoming Third Mandatory Data Collection for Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 36 FCC Rcd 13859 (WCB/OEA 2021).

³² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-52 (WCB/OEA Jan. 18, 2022). In September 2022, the Commission sought comment on how to use inmate calling services providers’ responses to establish “reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people.” *2022 ICS Notice* at 52, para. 125.

³³ *2022 ICS Order* at 3, paras. 3-4 (discussing adopted reforms).

III. NOTICE OF PROPOSED RULEMAKING

10. The ability to communicate through affordable audio and video communications is essential to allowing incarcerated people to stay connected to their family and loved ones, clergy, counsel, and other critical support systems. Studies consistently show that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates.³⁴ We interpret the Martha Wright-Reed Act as providing us with the authority we need to ensure that the charges associated with communications services for incarcerated people are just and reasonable and do not create an unnecessary deterrent to their ability to stay connected with the world outside their correctional facilities. We invite comment on this interpretation.

11. As a threshold matter, we interpret the Martha Wright-Reed Act, taken as a whole, as enhancing and supplementing the Commission's existing jurisdiction, and effectively addressing the constraints imposed by the D.C. Circuit's interpretation of the Commission's jurisdiction in *GTL v. FCC*, and seek comment on this interpretation. Specifically, we interpret the statute as expanding our existing jurisdiction over communications services for incarcerated people as specified in the technical amendments and implementation sections of the law.³⁵ In our view, through this Act, Congress effectively granted the Commission broad, plenary authority over the rates and charges for "any [inmate] audio or video communications service."³⁶ We propose to read the Act, in the context of the *GTL* decision and its aftermath, as removing any limitations on the Commission's authority over incarcerated people's audio and video communications services and empowering us to prohibit unreasonably high rates and charges for, and in connection with, all such services, including intrastate services.³⁷ We seek comment on this interpretation. To the extent that parties have a more limited view of our authority or suggest that we must make additional jurisdictional findings, we ask that they describe in detail those limits and additional findings. We further seek comment on the ultimate goal of Congress in passing the Martha Wright-Reed Act, described in the legislative history as legislation that "will help reduce financial burdens that prevent [incarcerated] people from being able to communicate with loved ones and friends."³⁸

12. We encourage all parties to comment on the issues raised in this Notice, and specifically invite previous participants in this proceeding to update their prior submissions to reflect changed circumstances stemming from the passage of the Martha Wright-Reed Act. We thus seek renewed comment on all the issues raised in our prior Notices in light of the statutory amendments contained in the

³⁴ See, e.g., *2021 ICS Order*, 36 FCC Rcd at 9534-35, paras. 34-37 (discussing the impact of high calling rates on consumers and society).

³⁵ The Martha Wright-Reed Act does not contain language limiting our pre-existing authority over international services. As a result, our authority over international services remains intact and will now include all incarcerated people's international communications services covered by the statute.

³⁶ Martha Wright-Reed Act § 2(b)(3).

³⁷ The Commission has historically used the term "inmate calling services" or "ICS" when referencing payphone service in the incarceration context. We will now use the term "incarcerated people's communications services" or "IPCS" instead of "inmate calling services" or "ICS" to refer to the broader range of communications services subject to the Commission's jurisdiction as a result of the Act. In connection with this change in terminology, we are also changing references to "inmates" to "incarcerated people" at the request of public interest advocates. See Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed July 29, 2020) (United Church of Christ July 29, 2020 *Ex Parte* Letter) (urging the Commission to "eliminate the term 'inmate,'" explaining that "[m]any incarcerated people and advocates view the term 'inmate' as dehumanizing and disparaging"). We seek comment on codifying this updated terminology in the Notice below. See *infra* Section III.F. To avoid confusion, however, when discussing the Commission's prior actions or current rules in this item, we may continue to use the terms "inmate calling services" or "ICS."

³⁸ 168 Cong. Rec. H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Pallone).

Martha Wright-Reed Act.³⁹ We emphasize that unresolved issues previously raised in WC Docket No. 12-375 remain pending and are now incorporated in this dual-captioned proceeding to be addressed in forthcoming Commission orders considering the record developed in response to this Notice to the extent applicable.⁴⁰ As part of their responses, parties are welcome to update filings previously submitted regarding these pending matters in light of the enactment of the Martha Wright-Reed Act.

A. The Martha Wright-Reed Act: Technical Amendments

1. Section 2(a)—Amendments to Section 276(b)(1)(A) of the Communications Act

a. Purpose and Scope of Amendments Taken as a Whole

13. As part of our effort to fulfill Congress’s directives in the Martha Wright-Reed Act, we seek comment on the effect of the amendments Congress made to the authority granted to the Commission in section 276(b)(1)(A) of the Communications Act.⁴¹ Do commenters agree that, taken as a whole, these amendments fundamentally expand the scope of our authority pursuant to sections 2(b) and 276 and effectively moot the concerns the D.C. Circuit raised about the Commission’s jurisdiction in *GTL v. FCC*?⁴²

14. Prior to the enactment of the Martha Wright-Reed Act, section 276(b)(1)(A) focused on requiring that service providers be “fairly compensated” for “each and every” completed call.⁴³ Congress has now eliminated the “each and every” call language and added a new dimension to section 276 of the Communications Act by requiring the Commission to “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services “are just and reasonable.”⁴⁴ We seek comment on whether the amendments to section 276(b)(1)(A) change the central focus of the section from ensuring that payphone service providers are “fairly compensated” for voice calls with little, if any, “considerations of fairness to the consumer,”⁴⁵ to a more balanced approach emphasizing consumers’ (particularly incarcerated people’s) and providers’ right to just and reasonable rates and charges for each audio and video communications service now encompassed within the statutory definition of “payphone service.”⁴⁶ How should we balance these interests going forward? Does the addition of “just and

³⁹ See, e.g., 2021 ICS Notice, 36 FCC Rcd 9519; 2022 ICS Notice.

⁴⁰ See Letter from Michael H. Pryor, Counsel to Securus Technologies, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 12-375 & 23-62, at 5 (Securus Mar. 8, 2021 *Ex Parte* Letter).

⁴¹ 47 U.S.C. § 276(b)(1)(A); Martha Wright-Reed Act § 2(a)(1).

⁴² *GTL v. FCC*, 866 F.3d at 402 (holding that the Commission’s proposed rate caps on intrastate rates exceeded its authority).

⁴³ 47 U.S.C. § 276(b)(1)(A) (2021); see, e.g., 2021 ICS Order, 36 FCC Rcd at 9600, para. 185 (discussing the requirements of section 276(b)(1)(A)); see also *GTL v. FCC*, 866 F.3d at 409 (finding “unfounded” the Commission’s assertion that “the interests of both the payphone service providers and the parties paying the compensation must be taken into account” in determining whether payphone providers are fairly compensated) (quoting 2015 ICS Order, 30 FCC Rcd at 12814, n.335).

⁴⁴ 47 U.S.C. § 276(b)(1)(A).

⁴⁵ *GTL v. FCC*, 866 F.3d at 409.

⁴⁶ See 47 U.S.C. § 153(1) (defining “advanced communications services”); *id.* § 276(d) (defining “payphone service” to include “the provision of inmate telephone service and advanced communications services described in sub-paragraphs (A), (B), (D), and (E) of section 3(1) in correctional institutions, and any ancillary services”); see also *id.* § 153(25), (27), (36) (respectively defining “interconnected VoIP service,” “interoperable video conferencing service,” and “non-interconnected VoIP service”).

reasonable” inform the meaning of “fair compensation?”⁴⁷ If not, what are we to make of Congress’ apparent emphasis on affordability for consumers?⁴⁸ Conversely, does the requirement that providers be “fairly compensated” for completed calls inform the meaning of “just and reasonable?” In this regard, we seek comment, generally, on the relationship between the requirement that providers be “fairly compensated” and the requirement that their rates and charges be “just and reasonable.”⁴⁹

15. Relatedly, we seek comment on Congress’s intent in striking the “per call” and “each and every [call]” language from section 276(b)(1)(A), particularly the effect of these changes to the “fairly compensated” requirement in the context of communications services for incarcerated people under this new Act. As originally conceived, the “fairly compensated” requirement of section 276(b)(1)(A) was designed to fix the specific problem of uncompensated payphone calls at that time.⁵⁰ But the situation is quite different in the context of communications services for incarcerated people. Providers generally receive compensation for the calls they carry through the per-minute rates charged to consumers of calling services for incarcerated people.⁵¹ No other entity receives compensation for calls other than through a contractual arrangement with the provider.⁵² It is therefore difficult to discern what the “fairly compensated” requirement adds to the “just and reasonable” requirement in the context of

⁴⁷ See, e.g., *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984) (pointing out that historically, rates had been seen as just and reasonable when they fell “within a ‘zone of reasonableness,’ where rates are neither ‘less than compensatory’ [for providers] nor ‘excessive’ [for consumers]”) (quoting Supreme Court decisions) (internal citations omitted).

⁴⁸ See, e.g., Martha Wright-Reed Act pmbl. (characterizing the legislation as requiring the Commission to “ensure just and reasonable charges for telephone and advanced communications services in correctional and detention facilities”); 168 Cong. Rec. H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Latta) (explaining that the bill “would require the Federal Communications Commission to ensure that charges for payphone services, including advanced communications services in correctional institutions, are just and reasonable”); *id.* H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Jackson Lee) (“We have heard over and over again how exorbitant the cost is for grandmothers, mothers and fathers, and sisters and brothers to keep connections to individuals”); *id.* H10028 (daily ed. Dec. 22, 2022) (statement of Rep. Rush) (“The bill ends the practice of phone companies charging families astronomically high rates to call incarcerated loved ones in prison. These rates are unjust and unreasonable, and I am elated that this bill will finally put an end to them.”).

⁴⁹ See 47 U.S.C. § 276(b)(1)(A).

⁵⁰ When originally enacted, the “fairly compensated” requirement was premised, at least in part, on the fact that payphone providers were “largely uncompensated” for certain types of calls, including “dial-around” calls in which a caller “makes a long distance call using a long distance carrier other than the payphone’s presubscribed long distance carrier.” See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2548, paras. 3-4 (1999); see also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716, 6721, 6725, paras. 8, 15-16 (1996) (*1996 Pay Telephone Notice*) (explaining that some payphone providers “do not receive any revenue directly from [interLATA operator-service] calls,” and proposing to use the “fairly compensated” mandate to “prescribe compensation only when payphone providers are not already ‘fairly compensated’”). Against this backdrop and considering the prior requirement of section 276(b)(1)(A) to ensure fair compensation for “each and every” completed call, the Commission concluded in 1996 that it should ensure that “all calls are fairly compensated, including those for which the [payphone service provider] currently receives no revenue.” *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, CC Docket Nos. 96-128 and 91-35, Report and Order, 11 FCC Rcd 20541, 20566, para. 48 (1996).

⁵¹ See, e.g., 47 CFR § 64.6030 (specifying interim rate caps for calling services for incarcerated people).

⁵² See, e.g., *1996 Pay Telephone Notice*, 11 FCC Rcd at 6721, paras. 7-8 (discussing payphone provider compensation arrangements).

communications services for incarcerated people, especially given the historical backdrop underlying this provision.⁵³

16. We interpret the elimination of the “per call” and “each and every [call]” language from section 276 as a signal of Congress’s intent to restrict the application of the “fairly compensated” requirement with respect to communications services for incarcerated people by no longer requiring the Commission to ensure that its compensation plan allows for “fair” compensation for “each and every” completed call. We seek comment on this interpretation. This interpretation appears to be consistent with Congress’s decision to allow the Commission to set rates based on average costs.⁵⁴ Do commenters agree that the Commission is no longer required to ensure that providers are “fairly compensated” for *every* call they carry or facilitate? Does elimination of the “per call” language give the Commission additional flexibility to consider rates or rate caps that apply to units others than minutes? What independent meaning does the “fairly compensated” requirement have for communications services for incarcerated people in light of the other provisions of the Martha Wright-Reed Act, including the newly-added requirement to ensure “just and reasonable” rates and charges? For example, does the “fairly compensated” requirement circumscribe the Commission’s analysis of “just and reasonable” rates?⁵⁵ Does it require the Commission to ensure that providers are able to recover their costs of providing incarcerated people’s communications services, at least on average, even if not on a per-call basis? Does the fair compensation requirement affect the Commission’s analysis of other issues related to incarcerated people’s communications services, such as the payment of site commissions or the imposition of ancillary service charges? We seek comment on these questions.

b. Addition of “Other Calling Devices”

17. The Martha Wright-Reed Act extends our authority over communications services to include not just incarcerated people’s audio and video communications using traditional payphones, but also their communications using “other calling device[s].”⁵⁶ Given the absence of additional qualifying language in the new statute, we propose to interpret “other calling device[s]” broadly to encompass all devices that incarcerated people either use presently or may use in the future to communicate with individuals not confined within the incarcerated person’s correctional institution. Under this proposed

⁵³ Prior to the enactment of the Martha Wright-Reed Act, the Commission treated the requirement that providers be “fairly compensated for each and every completed . . . call” in section 276(b)(1)(A) as supplementing the “just and reasonable” standard in section 201(b) in the context of audio calling services for incarcerated people, even though section 276(b)(1)(A) was designed to solve a problem affecting the payphone market that no longer applied to the market for communications services for incarcerated people. *See, e.g., 2021 ICS Order*, 36 FCC Rcd at 9530, para. 28 (framing calling services reforms as balancing the need to ensure that incarcerated people and their families “obtain essential communications capability at just and reasonable rates” and “remain[ing] faithful to [the Commission’s] obligations under section 276 of the Act”). Thus, the Commission reasoned that “fair compensation” in the context of audio calling services for incarcerated people “does not mean that each and every completed call must make the same contribution to a provider’s indirect costs. Nor does it mean a provider is entitled to recover the total ‘cost’ it claims it incurs in connection with each and every separate inmate calling services call.” *Id.*, 36 FCC Rcd at 9602, para. 189. Instead, the Commission found compensation to be fair “if the price for each service or group of services ‘recovers at least its incremental costs, and no one service . . . recovers more than its stand-alone cost.’” *Id.* at 9602, para. 189 (quoting *Implementation of Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3255-56, para. 18 (2002)).

⁵⁴ Martha Wright-Reed Act § 3(b)(1).

⁵⁵ As the Supreme Court has held, “[r]ates which enable [a] company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate investors for the risk assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so called ‘fair value’ rate base.” *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 605 (1944) (*Hope Natural Gas*).

⁵⁶ Martha Wright-Reed Act § 2(a)(1); 47 U.S.C. § 276(b)(1)(A).

interpretation, “other calling device[s]” would encompass all wireline and wireless phones, computers, tablets, and other communications equipment capable of sending or receiving the audio or video communications described in section 276(d), regardless of transmission format. That interpretation also would encompass all wireline and wireless equipment, whether audio, video, or both, that incarcerated people with disabilities presently use to communicate, through any payphone service, with the non-incarcerated, including but not limited to videophones, captioned telephones, and peripheral devices for accessibility, such as braille display readers, screen readers, and TTYs.⁵⁷ Our interpretation would also encompass other potential devices, not yet in use, to the extent incarcerated people use them in the future to communicate with people not confined within the incarcerated person’s correctional institution. We seek comment on this proposal. Are there any additional devices that should be included within “other calling device[s]”? Conversely, are there any devices that are excluded from our jurisdiction? If so, what is the statutory basis for concluding that Congress intended to exclude audio or video communications using those devices from our jurisdiction?

c. Addition of “Just and Reasonable” Language

18. We next seek comment on the Martha Wright-Reed Act’s addition to section 276(b)(1)(A) requiring that the Commission “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services be “just and reasonable.”⁵⁸ This language mirrors the “just and reasonable” language in section 201(b) of the Communications Act and other federal statutes, which has a long interpretive history.⁵⁹

19. *Just and Reasonable.* The “traditional regulatory notion of the ‘just and reasonable’ rate was aimed at navigating the straits between gouging utility customers and confiscating utility property.”⁶⁰ Setting “just and reasonable” rates therefore “involves a balancing of the investor and the consumer interests.”⁶¹ Given the parallel between the “just and reasonable” language in section 276(b)(1)(A) and the same language in section 201(b) and other federal statutes, we propose to interpret “just and reasonable” in section 276(b)(1)(A) to have the same meaning given to that term in section 201(b) and relevant precedent interpreting that standard in the ratemaking context.⁶² We seek comment on this proposal. To the extent commenters disagree, how should we understand the “just and reasonable” requirement in section 276(b)(1)(A) and how would we distinguish between the “just and reasonable” requirement in section 276(b)(1)(A) and the “just and reasonable” requirement in section 201(b) if they are not the same?

⁵⁷ Where a person with a disability must use a peripheral device to access an advanced communications service or device, that service or device is required to be compatible with such peripheral devices, unless that is not achievable. 47 U.S.C. § 617(c); 47 CFR § 14.20(a)(3).

⁵⁸ See Martha Wright-Reed Act § 2(a)(1)(B); 47 U.S.C. § 276(b)(1)(A).

⁵⁹ Section 201(b) of the Communications Act requires that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign communication by wire or radio] shall be just and reasonable.” 47 U.S.C. § 201(b).

⁶⁰ *Verizon Commc’ns., Inc. v. FCC*, 535 U.S. 467, 481 (2002).

⁶¹ *Hope Natural Gas*, 320 U.S. at 603; see also *NAACP v. FPC*, 425 U.S. 662, 666-69 (1976) (holding that the Federal Power Commission’s statutory authority to “establish ‘just and reasonable’ rates” gave the agency “ample authority” to prevent a regulatee from charging consumers for “unnecessary or illegitimate costs” that the regulatee might incur through “racially discriminatory employment practices”).

⁶² See, e.g., *2021 ICS Order*, 36 FCC Rcd at 9575-76, 9587, paras. 126, 128-29, 153 (citing and discussing precedent supporting the Commission’s implementation, in the context of audio calling services for incarcerated people, of the “just and reasonable” standard in section 201(b)).

20. We also seek comment on how the “just and reasonable” standard in section 276(b)(1)(A) relates to the issue of site commission payments.⁶³ How should section 276(b)(1)(A)’s requirement that rates for communications services for incarcerated people be “just and reasonable” affect our treatment of site commission payments? In implementing the “just and reasonable” requirement in section 201(b), the Commission traditionally relies on the “used and useful” framework to separate costs and expenses that may be recovered through rates from those that may not.⁶⁴

21. Under the “used and useful” framework, the determination of “just and reasonable” rates focuses on affording the regulated entity an opportunity to “recover[] prudently incurred investments and expenses that are ‘used and useful’ in the provision of the regulated service for which rates are being set.”⁶⁵ That framework, which “is rooted in American legal theory and particularly in the constitutional limitations on the taking of private property for public use,”⁶⁶ balances the “equitable principle that public utilities must be compensated for the use of their property in providing service to the public” with the “[e]qually central . . . equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them.”⁶⁷ In applying these principles, “the Commission considers whether the investment or expense ‘promotes customer benefits, or is primarily for the benefit of the carrier.’”⁶⁸ Should we apply the “used and useful” ratemaking concept as a limiting factor in considering the costs and expenses allowable in the rates for communications services for incarcerated people? Why or why not? If not, what principle or framework should we use in evaluating “just and reasonable” rates and charges under section 276(b)(1)(A) and why would any such principle or framework be preferable to the well-established framework the Commission routinely uses when implementing identical language in section 201(b)?

⁶³ See 47 CFR § 64.6000(t) (defining “Site Commission”).

⁶⁴ See, e.g., *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 580, para. 7 (2019) (*Sandwich Isles Reconsideration Order*) (explaining that the ‘used and useful’ standard “provides the foundation for Commission decisions evaluating whether particular investments and expenses are reasonable” under section 201(b)).

⁶⁵ *2021 ICS Order*, 36 FCC Rcd at 9575, para. 126 (citing Commission precedent).

⁶⁶ *American Tel. and Tel. Co.*, Docket No. 19129, Phase II Final Decision and Order, 64 F.C.C.2d 1, 38, para. 111 (1977) (*AT&T Phase II Order*).

⁶⁷ *Id.* at 38, paras. 111-12.

⁶⁸ *2021 ICS Order*, 36 FCC Rcd at 9575, para. 126 (quoting *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 17997, para. 19 n.47 (2007)). There are several elements of the Commission’s used and useful analysis. First, the Commission considers the need to compensate providers “for the use of their property and expenses incurred in providing the regulated service.” *Sandwich Isles Reconsideration Order*, 34 FCC Rcd at 580, para. 7 (citing *AT&T Phase II Order*, 64 F.C.C.2d at 38, para. 111). Second, the Commission looks to the “equitable principle that ratepayers should not be forced to pay a return except on investments that can be shown to benefit them.” *Sandwich Isles Reconsideration Order*, 34 FCC Rcd at 580, para. 7 (citing *AT&T Phase II Order*, 64 F.C.C.2d at 38, para. 112). In this regard, the Commission considers “whether the expense was necessary to the provision of interstate telecommunications services.” *Sandwich Isles Reconsideration Order*, 34 FCC Rcd at 580, para. 7. And third, the Commission considers “whether a carrier’s investments and expenses were prudent (rather than excessive).” *Sandwich Isles Reconsideration Order*, 34 FCC Rcd at 580, para. 7 (citing *AT&T Communications Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13, and 14 Applications for Review*, CC Docket No. 87-611, Memorandum Opinion and Order, 5 FCC Rcd 5693, 5695, para. 17 (1990)). Though the Commission has identified these “general principles regarding what constitutes ‘used and useful,’” it “has recognized ‘that these guidelines are general and subject to modification, addition, or deletion. The particular facts of each case must be ascertained in order to determine what part of a utility’s investment is used and useful.’” *Sandwich Isles Communications, Inc.*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC Rcd 13647, 13652, para. 12 (WCB 2010) (quoting *AT&T Phase II Order*, 64 F.C.C.2d at 39, para. 114).

22. We invite comment on how we should apply the “used and useful” concept, or any alternative principle or framework commenters suggest, to providers’ site commission payments. The Commission has previously sought broad comment on the ratemaking treatment of those payments, including on whether it is appropriate to permit providers to recover any portion of their site commission payments from end users through calling services rates⁶⁹ and on whether it “should preempt state and local laws that impose these payments on interstate and international” inmate calling services.⁷⁰ We incorporate our prior questions on site commissions into this Notice,⁷¹ and request that commenters address each of them in relation to each incarcerated people’s communications service now subject to our ratemaking authority. Should our ratemaking calculations include providers’ site commission payments only to the extent, if any, that they compensate facilities for used and useful costs that the facilities themselves incur? Why or why not? And if we take that approach, how should we determine the facilities’ used and useful costs? Should we make generalized findings as to what used and useful costs facilities typically incur and allow each facility to show through the waiver process that its costs exceed the typical amount? Or should we instead allow those costs only to the extent an individual facility establishes the extent to which it incurs used and useful costs?

23. *Fairly Compensated.* We also invite comment on how the requirement that providers be “fairly compensated . . . for completed intrastate and interstate communications” should affect our ratemaking decisions, including our treatment of site commissions. What factors should we consider in determining whether a provider is fairly compensated for completed communications? Does the “fairly compensated” requirement mean that we must include all or part of providers’ site commission payments in our ratemaking calculus irrespective of their utility in the completion of incarcerated people’s communications?⁷² Why or why not? How should our answers to these questions affect our policies regarding site commissions and, in particular, our decision on whether we should preempt state and local laws that impose site commission payments on incarcerated people’s communications services providers?

24. *Rates and Charges.* We next seek comment on what constitutes the “rates and charges” mentioned in the amendments to section 276(b)(1)(A). We propose to interpret “rates” to refer to the amounts paid by consumers of incarcerated people’s communications services for calls or other audio or video communications covered by the statute or our rules.⁷³ And we propose to interpret “charges” to refer to all other amounts assessed on consumers of incarcerated people’s communications services in connection with those services. These would include ancillary service charges, authorized fees, mandatory taxes and fees, and any other charges a provider may seek to impose on consumers of communications services for incarcerated people. These interpretations are consistent with the Commission’s rules, which currently carve out ancillary service charges, authorized fees, and mandatory taxes and fees as separate from our rate caps.⁷⁴ Do commenters agree with our proposed interpretations of these terms? If not, what alternative interpretations do commenters propose and what is the justification for these alternative interpretations?

⁶⁹ 2021 ICS Notice, 36 FCC Rcd at 9660-61, paras. 313-14.

⁷⁰ *Id.* at 9661, para. 315.

⁷¹ *Id.* at 9659-66, paras. 311-24.

⁷² See Securus Mar. 8, 2021 *Ex Parte* Letter at 5 (suggesting that the “requirement that providers be ‘fairly compensated’” may “counterbalance the use of ‘used and useful’ as a potential limiting factor”); *id.* (asking whether the D.C. Circuit’s holding that “site commissions ‘obviously are costs of doing business incurred by [inmate calling services] providers,’” *GTL v. FCC*, 866 F.3d at 413, suggests that a “failure to include any site commission cost recovery in rates [may] preclude providers from being fairly compensated”).

⁷³ 47 CFR § 64.6030 (setting forth interim rate caps for communications services for incarcerated people). Under the Commission’s rules the term “Consumer” means “the party paying a Provider of Inmate Calling Services.” *Id.* § 64.6000(e).

⁷⁴ See 47 CFR §§ 64.6000(a)-(b), (n), 64.6020, 64.6070.

25. *Compensation Plan.* We also propose finding that setting industry-wide rate caps or rate caps applying to groups of providers, as opposed to separate rates for individual providers, would be sufficient to “establish a compensation plan,” as required by the Act.⁷⁵ We note that setting industry-wide rate caps for incarcerated people’s communications services would be consistent with the Commission’s previous rules regulating rates for these services.⁷⁶ Do commenters agree that mandatory rate caps would constitute a “compensation plan” within the meaning of section 276(b)(1)(A)? Are there other rate regimes that the Commission should consider that are consistent with—or required by—section 276(b)(1)(A)? If so, what are they and how do they square with the statutory language and Congress’s intent?

26. Our current rate caps for inmate calling services limit the amount providers may charge any individual consumer for any particular call. Other forms of rate cap regulation allow providers to charge different amounts for particular services as long as the total charges (weighted by demand) for all services do not exceed an overall cap,⁷⁷ or specify that the providers’ total revenues must not exceed a specified revenue cap. We seek comment on whether a regime that constrains rates and ancillary service charges collectively across all service categories (e.g., audio communications services and video communications services) and allows providers to set different rates and charges for the various different services (e.g., lower rates and charges for audio communications services and higher rates and charges for video communications services or vice versa) would constitute a “compensation plan” sufficient to ensure just and reasonable rates and that providers are fairly compensated for completed communications, as required by the Act. Commenters should address how such a regime would protect individual consumers against unreasonably high rates. Would sub-caps on rates and charges for different services within each service category be needed and, if so, how should they be structured?

27. We seek comment on whether section 276(b)(1)(A)’s mandate that we “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services be “just and reasonable” extends to ensuring that the providers’ practices, classifications, and regulations for or in connection with those services are just and reasonable. Specifically, does Congress’s reference to a “compensation plan” in section 276(b)(1)(A) allow—or require—that we go beyond simply “determining just and reasonable rates,” as set forth in section 3(b) of the Martha Wright-Reed Act, and ensure that providers implement those rates justly and reasonably? We ask for detailed comment on this area, including on the extent of our section 276(b)(1)(A) authority, if any, to address providers’ practices, classifications, and regulations, as well as any limitations on that authority. What other authority, if any, do we have to address the practices, classifications, and regulations for or in connection incarcerated people’s communications services?

28. We also ask how our authority to address unjust and unreasonable “practices, classifications, and regulations” under section 201(b) of the Communications Act should affect our treatment of practices, classifications, and regulations for or in connection with incarcerated people’s communications services. The Commission has previously recognized that where it “has jurisdiction under section 201(b) . . . to regulate rates, charges, and practices of interstate communications services, the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services ‘where it is impossible or impractical to separate the service’s intrastate from interstate components’ and state regulation of the intrastate component would interfere with valid federal rules

⁷⁵ 47 U.S.C. § 276(b)(1)(A). These rate caps could potentially vary based on facility size “or other characteristics.” See *infra* Section III.B.4 (discussing section 3(b)(2) of the Martha Wright-Reed Act).

⁷⁶ See, e.g., *2013 ICS Order*, 28 FCC Rcd at 14111, para. 5 (setting interim rate caps); *2015 ICS Order*, 30 FCC Rcd at 12769, para. 9 (adopting tiered rate caps); *2021 ICS Order*, 36 FCC Rcd at 9520-21, para. 2 (adopting interim rate caps for prisons and jails with 1,000 or more incarcerated people).

⁷⁷ Our price cap rules for rate of return local exchange carriers establish this type of rate cap regime. See 47 CFR pt. 69.

applicable to the interstate component.”⁷⁸ Given the provisions of the Martha Wright-Reed Act granting us authority over intrastate communications services and advanced communications services generally in the incarceration context,⁷⁹ we ask whether we may similarly extend our section 201(b) authority to regulate practices, classifications, and regulations for or in connection with incarcerated people’s intrastate communications services that were previously subject to state regulation and video services that were unregulated prior to the enactment of the Act. Can providers practicably separate incarcerated people’s communications services into interstate and intrastate, or regulated and nonregulated, components?

2. Section 2(b)—Amendments to Section 3(1) of the Communications Act

29. Prior to the enactment of the Martha Wright-Reed Act, our authority under section 276 was limited to “payphone service,” a term then defined as “the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.”⁸⁰ The new Act expands our authority over services in correctional institutions under section 276 to include “advanced communications services,” as defined in sections 3(1)(A), (B), (D), and new (E) of the Communications Act.⁸¹ Those provisions of section 3(1), in turn, define “advanced communications services” as including (1) “interconnected VoIP service,” (2) “non-interconnected VoIP service,” (3) “interoperable video conferencing service,” and (4) “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.”⁸² Apart from the restriction to communications with individuals “outside the correctional institution” in section 3(1)(E), and the exclusion of “electronic messaging service” from the revised definition of “payphone service,”⁸³ the language in the new statute appears to confer on the Commission broad jurisdiction to develop a compensation plan for the categories of audio and video communications now included in the definition of “payphone services” and includes no other limitation except for a limitation to communications “by wire and radio” arising from sections 1 and 2(a) of the Communications Act.⁸⁴ We seek comment on this

⁷⁸ 2020 ICS Order, 35 FCC Rcd at 8496, para. 31 (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22413, para. 17 (2004)); see also *Pub. Serv. Comm’n of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990); *Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 113 (D.C. Cir. 1989).

⁷⁹ Martha Wright-Reed Act §§ 2(a)-(c) (amending 47 U.S.C. §§ 153(1), 152(b), 276(b)(1)(A), (d)).

⁸⁰ 47 U.S.C. § 276(d) (1996).

⁸¹ Martha Wright-Reed Act § 2(a)(2); 47 U.S.C. § 153(1)(A)-(B), (D)-(E).

⁸² 47 U.S.C. §§ 153(1)(A)-(B), (D)-(E), 276(d). The Communications Act’s definitions of “interconnected VoIP service,” “interoperable video conferencing service,” and “non-interconnected VoIP service” are set forth in 47 U.S.C. §§ 153(25), (27), and (36), respectively.

⁸³ The Communications Act defines “electronic messaging service” as “a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.” 47 U.S.C. § 153(19). “Electronic messaging services” include “services such as e-mail, short message service (SMS) text messaging, and instant messaging.” See, e.g., *Consumer and Governmental Affairs Bureau Seeks Comment on Tentative Findings for the 2022 Twenty-First Century Communications and Video Accessibility Act Biennial Report*, CG Docket No. 10-213, Public Notice, DA 22-661, at 2, para. 7 (CGB June 22, 2022). In connection with text messaging, the Commission has recognized that “the content that can be sent by wireless messaging is not limited to mere text. In particular, [multimedia messaging service] is an extension of the SMS protocol and can deliver a variety of media, and enables users to send pictures, videos, and attachments over wireless messaging channels.” *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7, Declaratory Ruling, 33 FCC Rcd 12075, 12078, para. 8 (2018). “Electronic messaging service” is nonetheless included in the definition of “advanced communications services,” and is required to be accessible to and usable by people with disabilities, including in carceral facilities, under section 716 of the Communications Act. See, e.g., 47 U.S.C. §§ 610, 617.

⁸⁴ 47 U.S.C. §§ 151, 152(a).

unequivocal expansion of our statutory authority under section 276, including how each of the first three types of “advanced communications services” provides additional statutory authority under section 276 beyond what is added by new subsection 3(1)(E) and how each type applies to communications services for incarcerated people.

30. The Martha Wright-Reed Act extends our ratemaking authority to “interoperable video conferencing service” by including sub-paragraph 3(1)(D) of the Communications Act in the definition of “payphone service” in section 276(d) of that Act.⁸⁵ The Communications Act defines “interoperable video conferencing service” as “a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.”⁸⁶ We seek comment on which video services used, or potentially used, by incarcerated people are included within this definition and whether any are excluded. Are video visitation services used by incarcerated people “interoperable video conferencing service[s]” under this statutory definition? How should we interpret the phrases “real-time video communications” and “enable users to share information of the user’s choosing” in the context of incarcerated people’s communications services? Are there types of video communications services for incarcerated people that are not real-time? If so, what are they? Would it include real-time video that is based in applications or other technologies? Additionally, given the statutory phrase “any audio or video communications . . . regardless of technology used” in new section 3(1)(E), we seek comment on how to address non-traditional audio and video communications technologies or applications that could effectively enable providers of communications services to incarcerated people to circumvent our rate-making authority. Consistent with Congressional intent, we will be vigilant in overseeing the provision of all forms of audio and video communications, and invite comment on the steps we should take to ensure that our rules adequately address all forms of audio and video communications subject to our authority.

31. We seek comment on the proper scope of the limiting phrase “used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held” as used in new section 3(1)(E) of the Communications Act. We note that phrase appears only in section 3(1)(E) and there is no language within section 3(1)(E), or elsewhere in the Communications Act or the Martha Wright-Reed Act, extending this limitation to the other categories of advanced communications services identified in section 2(a)(2) of the Martha Wright-Reed Act. More specifically, we interpret the use of the limiting phrase of new subsection 3(1)(E) as not applying to the other subsections of section 3(1) that are now referenced in section 276(d). In addition, this limiting phrase has no application to any other aspect of section (3)(1) outside the context of section 276. We invite comment on the proper scope of the limitation included in section 3(1)(E).

32. We propose to interpret the phrase “any audio or video communications service” in subsection 3(1)(E) as encompassing every method that incarcerated people may presently, or in the future, use to communicate, by wire or radio, by voice, sign language, or other audio or visual media. We seek comment on this proposal. We also seek comment on how to interpret the phrase “used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.” Does this phrase include all types of audio or video communications services—regardless of whether the communication is interstate, intrastate, or international—that an incarcerated person uses to communicate with a person not confined within the incarcerated person’s correctional institution, regardless of that person’s physical location at the time of the communication? In other words, if a calling service is typically used for communicating with family, friends, or loved ones, is that person’s physical location at the time of the call determinative, so that, for

⁸⁵ Martha Wright-Reed Act § 2(a)(2).

⁸⁶ 47 U.S.C. § 153(27). We note that the Commission has a pending proceeding seeking further comment on the kinds of services encompassed by the term “interoperable video conferencing services.” *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Interoperable Video Conferencing Services*, CG Docket No. 10-213, Public Notice, DA 22-463, at 1 (Apr. 27, 2022) (refreshing the record on the meaning of the term “interoperable” in the context of video conferencing services and equipment).

example, our authority over an incarcerated person's calls to family members' cell phones might cease when the family members enter the incarcerated person's correctional institution as opposed to when they are at their homes?

33. We seek comment on the meaning of the phrase "outside the correctional institution where the inmate is held" with reference to the audio and video communications services covered by section 2(b)(3) of the Martha Wright-Reed Act. Does it refer to any physical location not subject to involuntary confinement restrictions? As we discuss below, a chief defining characteristic of correctional institutions is that they are places where people are involuntarily confined.⁸⁷ Could physical locations "outside" the correctional institution include any location not used for confinement purposes, including rooms designated for communicating with, or visitation by, persons not subject to confinement, including family, friends, and members of the general public not subject to confinement? Similarly, could "individuals outside the correctional institution" refer to people who are neither confined in nor employed by the institution, even if they are temporarily located on the premises of the institution for purposes of communicating with incarcerated individuals through some form of audio or video communications service? We invite comment on these potential interpretations. Are there additional types of communications encompassed within these statutory phrases? Conversely, are there other types of communications that fall outside those phrases? For example, should we interpret the statutory language as excluding all audio and video communications between employees of the correctional institution and incarcerated people from the definition of "payphone service" as revised by the Act?

34. Under certain of the interpretations suggested above, our newly expanded authority under section 276(b)(1)(A) could extend to onsite video visitation services (i.e., services in which video communication between persons located within the same building or site substitute for traditional in-person visitation), either because: (1) they are interoperable video conferencing services within the meaning of section 3(1)(D) or because (2) they are video services within the meaning of section 3(1)(E). In the latter case, incarcerated people would use onsite video visitation services to communicate with persons not confined in or employed by a correctional institution—and with whom the incarcerated person is only allowed to communicate via an audio or video communications service and only when they are at a location where the incarcerated person is unable to be. We seek comment on whether these interpretations of the Martha Wright-Reed Act are consistent with the language of the statute and would further the purposes of the Act. We note that on-site video visitation services are typically operated by providers of inmate calling services as currently defined in our rules, and the same services and equipment may be used by an incarcerated person regardless of whether the "visitor" is on-site, at home, or at another remote location.⁸⁸

35. We also seek comment on whether the phrase "regardless of technology used" in section 3(1)(E) of the Communications Act encompasses the technology used for video visitation, now and in the future. The record shows that some institutions are restricting or prohibiting in-person visits in favor of video visitation and a visitor may lack sufficient broadband service or equipment to enable video visitation from their home or elsewhere.⁸⁹ To the extent a service provider charges for video visitation at the facility, should those charges be subject to our ratemaking authority?

⁸⁷ See *infra* Section III.B.4 (Size and Type of Correctional Institution).

⁸⁸ See 2021 ICS Notice, 36 FCC Rcd at 9648-49, para. 281 ("[T]he record indicates that remote video visitation, where available, is often provided by an inmate calling service provider.").

⁸⁹ See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, 13229, para. 151 (2014) ("[T]he record shows that some correctional institutions have eliminated all in-person visitation and replaced it with video visitation."); see also 2022 ICS Order at 12, para. 24 (discussing the exponential demand for video visitation services since the onset of the COVID-19 pandemic); *Petition of Network Communications International Corporation for Forbearance pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Inmate Calling Services*; *Securus Technologies, LLC, Request for Waiver of Section 54.706 of the Commission's Rules*, WC Docket No. 19-232, Order, 35 FCC Rcd 8348, 8353, para. (continued....)

36. In light of these concerns, we seek comment on interpreting the Act broadly to achieve its stated goal of ensuring “just and reasonable charges for telephone and advanced communications services in correctional and detention facilities.”⁹⁰ Further, we seek comment on whether a broad interpretation will advance the goal of section 716 of the Communications Act to ensure that services and equipment used for advanced communications services are accessible to and usable by people with disabilities.⁹¹ We invite comment on whether a broad interpretation would be a correct reading of section 2(b)(3) of the Martha Wright-Reed Act. Are there other onsite audio and video services that we should consider within our authority under this interpretation of the statutory language? Finally, if we interpret video communications services as including onsite video visitation, we seek comment on how the Commission can ensure that all forms of onsite video visitation services within the scope of our authority that are used to communicate with non-incarcerated people are subject to the rules we adopt to implement the Act. Are there instances where correctional institutions impose charges on video visitation or predicate its use on charges for other related or unrelated services?

3. Section 2(c)—Amendment to Section 2(b) of the Communications Act

37. The Martha Wright-Reed Act amends section 2(b) of the Communications Act, which generally acts as a limitation on the Commission’s jurisdiction over intrastate communications, as well as a rule for interpreting other provisions of the Communications Act.⁹² Section 2(b) enumerates certain statutory provisions that are not subject to the generally applicable limitation on the Commission’s jurisdiction.⁹³ When Congress enacted the Martha Wright-Reed Act, it added section 276 of the Communications Act to section 2(b)’s list of exceptions to the general limitation on the Commission’s authority over intrastate communications.⁹⁴ This change, when coupled with the broad language in the amended section 276, suggests that Congress intended to grant the Commission authority over all intrastate communications services between incarcerated people and non-incarcerated people with whom they wish to communicate.⁹⁵ Do commenters agree?

38. We propose finding that, in combination, the amendments to section 276 and the addition of section 276 to the exceptions contained in section 2(b) of the Communications Act grant the Commission plenary authority over intrastate communications services provided to incarcerated people.⁹⁶

(Continued from previous page) _____

16 (2020) (finding that pre-pandemic many incarcerated persons were not permitted in-person visits and already were limited to video visitations).

⁹⁰ Martha Wright-Reed Act pmb1.

⁹¹ 47 U.S.C. § 617.

⁹² Martha Wright-Reed Act § 2(c); 47 U.S.C. § 152(b)(1); *see La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 373 (1986) (holding that section 2(b)(1) of the Communications Act provides “not only a substantive jurisdictional limitation on the FCC’s power, but also a rule of statutory construction” in interpreting the Act’s provisions).

⁹³ 47 U.S.C. § 152(b)(1) (“Except as provided in [certain enumerated sections of the Act] . . . nothing in this Act shall be construed to apply or give the Commission jurisdiction” over intrastate communications services.).

⁹⁴ Martha Wright-Reed Act § 2(c); 47 U.S.C. § 152(b)(1).

⁹⁵ *See, e.g.*, 168 Cong. Rec. at H10028 (daily ed. Dec. 22, 2022) (statement of Rep. Rush) (explaining that the “legislation would confirm the FCC’s regulatory power to protect all prison and jail phone calls, not just those that cross state lines”); *id.* H10027 (daily ed. Dec. 22, 2022) (statement of Rep. Pallone) (stating that the bill would give the FCC authority to regulate “the rates charged for calls made between confinement facilities and people within the same State”).

⁹⁶ 47 U.S.C. §§ 152(a)-(b), 276. The Commission’s authority to adopt rules for intrastate incarcerated people’s communications service is further supported by section 276(b)(1)’s directive that the Commission adopt regulations to implement, among other things, section 276(b)(1)(A), along with the broad authority in provisions such as section 201(b) of the Communications Act, which authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.” *Id.* § 201(b).

In addition, we propose finding that our expanded jurisdiction over intrastate communications extends to any communications service now covered by section 276, including the “advanced communications services” added to the definition of “payphone service.”⁹⁷ We seek comment on these proposed findings and on whether the inclusion of section 276 in the section 2(b) exemption list now provides the Commission with definitive authority to regulate all audio and video communications services covered by section 276.

B. Implementation of the Martha Wright-Reed Act

1. Approach to Ratemaking

39. Section 3(a) of the Martha Wright-Reed Act directs the Commission to “promulgate any regulations necessary to implement” that Act,⁹⁸ including its mandate that “all rates and charges” for completed payphone communications be “just and reasonable.”⁹⁹ Below, we seek comment on how we can best discharge this statutory mandate.

40. The Commission’s prior efforts to ensure just and reasonable rates for inmate calling services focused on capping, on an industry-wide basis, the rates and ancillary services charges providers could assess for, or in connection with, voice calls, based on providers’ costs.¹⁰⁰ We seek comment on whether we should follow this approach with regard to all communications services provided to incarcerated people. Should we instead set separate caps on rates and charges for different types of providers or, alternatively, for each individual provider? We ask that commenters address the relative benefits and burdens of each approach, including the potential impact on consumers, providers, and Commission resources.

41. We also seek comment on whether we should set separate rate and ancillary services rate caps for audio and video services. Do the costs of providing audio and video services vary significantly? Do the costs of ancillary services depend on whether these services are ancillary to audio or video services? Would separate caps for different services benefit incarcerated people and their families, and other consumers? Would providers incur additional costs if separate rate caps were implemented, and if so, how would these costs compare to any benefits consumers might receive from separate caps? Is there a risk that separate caps for different services could be exploited in a way that would harm consumers? What burdens, if any, would separate rates and charges impose on providers? Would it be difficult for providers to separate their costs in a meaningful way for different services for purposes of submitting the data the Commission would need to set separate rate caps? Are there any voice and video services that are, or could be, combined such that it would be burdensome to assess separate rates and charges for them? If so, what are they? Should we allow voice and video services to be offered as bundles? If so, should we require that all rates, charges, and terms and conditions of service be included in the same contract, and the rates and charges for each type of service and bundle be separately listed so as to be easily identifiable?

42. In the event we decide to set separate caps for audio and video services, should we subdivide either category into different types of services for ratemaking purposes? If so, what should those subcategories be? What types of audio and video services do providers offer? Do providers offer different audio and video services as part of a package? Do different types of audio and video services make different demands on provider resources and, if so, how should we reflect those differences in our

⁹⁷ The revised definition of advanced communications services includes “any audio or video communications service used by inmates . . . regardless of technology used,” which was added to the definition of “payphone service” for purposes of section 276 of the Communications Act. Martha Wright-Reed Act §§ 2(a)(2), 2(b)(3).

⁹⁸ Martha Wright-Reed Act § (3)(a).

⁹⁹ *Id.* pmb., § 2(a)(1)(B).

¹⁰⁰ *See, e.g., 2021 ICS Order*, 36 FCC Rcd at 9536-9604, paras. 39-193.

ratemaking? If we were to set separate caps for different services, how would we decide what caps to apply to any new covered services providers may introduce in the future?

43. Assuming that the Martha Wright-Reed Act expands the Commission's existing jurisdiction over ratemaking to include all communications services for incarcerated people, including intrastate services, the Commission must ensure that intrastate rates are also just and reasonable. In the past, the Commission did not distinguish between costs for interstate and intrastate voice services in setting rate caps for interstate inmate calling services. Rather it adopted a total industry cost approach, explaining that:

Our calculations use total industry costs, both interstate and intrastate, because the available data do not suggest that there are any differences between the costs of providing interstate and intrastate inmate calling services. Nor do such data suggest a method for separating reported costs between the intrastate and interstate jurisdictions that might capture such differences, if any. Finally, providers do not assert any such differences.¹⁰¹

The Commission followed this total cost approach in the *2021 ICS Order*, as detailed in the Appendices to that *Order*.¹⁰² We propose to take a similar approach in implementing the Martha Wright-Reed Act and to continue to treat costs for interstate voice services and intrastate voice services as having identical per-unit costs. Do commenters agree with this approach? If not, they should address in detail how costs differ between interstate and intrastate voice services and how to measure these differences. Commenters should also address whether such differences are substantial enough to warrant different rate caps based on the jurisdiction of a voice call, taking into account the burden associated with such a separation. In the time since the *2020 ICS Notice*, have providers developed ways to separate intrastate voice costs from interstate voice costs?¹⁰³ What burdens would be associated with such a separation process?

44. We also seek comment on whether we should take a total cost approach to video services and assume that the average costs for intrastate video communications services are identical to the average costs for interstate video communications. If parties disagree with that assumption, they should explain how costs differ based on the jurisdictional nature of video communications. Can the jurisdictional nature of video communications services even be determined or are such services inherently interstate? Parties should also address whether such differences are substantial enough to warrant different rate caps for interstate and intrastate video communications services. Is there a way for providers to separate the costs associated with interstate video services in a meaningful way from the costs associated with intrastate video services? What burdens would be associated with such a separation?

45. We invite comment on the types of pricing plans we should allow for the audio and video communications services subject to our section 276 ratemaking authority. Our rules currently prohibit providers from charging incarcerated people or their loved ones for calls on a per-call or per-connection basis and require providers to price their interstate, international, and jurisdictionally indeterminate calling services at or below specific per-minute rate caps.¹⁰⁴ This structure results in incarcerated persons

¹⁰¹ *2020 ICS Notice*, 35 FCC Rcd at 8513-14, para. 83.

¹⁰² *2021 ICS Order*, 36 FCC Rcd at 9542, 9544-46, paras. 54, 60-65; *see also id.* Appx. E, paras. 9, 17, 34, 36 (referencing total costs).

¹⁰³ We note that no provider submitting data in response to the Third Mandatory Data Collection attempted to separate its interstate and intrastate costs.

¹⁰⁴ 47 CFR § 64.6030 (setting forth the Commission's interstate and international interim rate caps); *id.* § 64.6080 (prohibiting per-call or per-connection charges); *id.* § 64.6090 (prohibiting flat-rate calling); *see also id.* § 64.6070 (limiting the taxes and governmental fees that providers may pass through to consumers). For convenience, we refer to 47 CFR §§ 64.6030, 64.6080, 64.6090 as the "pricing structure rules." Separately, our rules allow incarcerated people's communications services providers to charge consumers for any of five specified types of ancillary services charges, each subject to their own respective caps. *Id.* § 64.6020.

and their families paying for their interstate and international phone calls on a per-minute basis.¹⁰⁵ In the *2022 ICS Notice*, we sought comment on whether we should authorize pilot programs under which providers of incarcerated people's calling services could offer alternative pricing structures for voice calls, including structures under which an incarcerated person would receive a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge.¹⁰⁶ Do commenters agree that nothing in the Act precludes us from adopting alternative pricing structures for audio or video communications, should the record support this action?

46. We seek comment on whether we should require a specific pricing structure for incarcerated people's video communications services. If so, what should that structure be? Should we require that providers offer such video communications services at per-minute rates? If not, what alternative structure do commenters support, and what would the benefits and burdens be of any alternative structure? How can we best ensure that the rates for video communications services are just and reasonable? We seek broad comment on the pricing structures under which providers presently offer video services to incarcerated people and whether those structures can harm consumers or lead to unreasonably high rates. What would be the benefits or burdens of allowing providers to continue to use their current pricing structures for video communications services, either under pilot programs or on a permanent basis? Should we allow providers to use these alternative structures for audio services? If so, what conditions should we impose on providers to ensure just and reasonable rates for both incarcerated people's audio and video communications services?

2. Use of Data in Ratemaking

47. Section 3(b)(1) of the Martha Wright-Reed Act specifies that the Commission “may use industry-wide average costs of telephone service and advanced communications services” in promulgating implementing regulations and determining just and reasonable rates.¹⁰⁷ That section also specifies that the Commission may use “the average costs of service of a communications service provider” for such purposes.¹⁰⁸ In our view, these authorizations, when read in conjunction with the elimination of the requirement that providers be “fairly compensated for each and every” completed call,¹⁰⁹ respond directly to the D.C. Circuit's holding that, in the *2015 ICS Order*, the Commission had improperly used industry-wide average costs in setting interstate rate caps.¹¹⁰ We invite comment on our view that the language of the new statutory provisions allows, but does not require, the Commission to rely on average costs—either on an industry-wide, or provider-specific basis—to set rate caps for all forms of incarcerated people's communications services.

48. We also seek comment on the meaning of “industry-wide,” as used in section 3(b)(1) of the Act. Should we interpret “industry-wide” as referring exclusively to entities that provide “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used”?¹¹¹ Or should we read “industry-wide” as referring collectively to all providers of “telephone service and advanced communications services”? Alternatively, should we interpret “industry-wide” to refer only to some subset of providers of incarcerated people's communications services? Similarly, does the phrase

¹⁰⁵ See generally *2021 ICS Order*, 36 FCC Rcd at 9547, para. 68 (determining that per-minute rates are preferable to per-call rates).

¹⁰⁶ *2022 ICS Notice* at 60-65, paras. 148-60.

¹⁰⁷ Martha Wright-Reed Act § 3(b)(1).

¹⁰⁸ *Id.*

¹⁰⁹ 47 U.S.C. § 276 (1996).

¹¹⁰ *GTL v. FCC*, 866 F.3d at 414-15.

¹¹¹ Martha Wright-Reed Act § 2(b)(3).

“average costs of service of a communications service provider” refer to all communications service providers? Or only to providers of incarcerated people’s communications service or even an individual provider of communications services for incarcerated people? We ask that parties explain the basis for their preferred interpretation of these statutory phrases.

49. We seek comment on the best approach to using industry-wide average costs to determine just and reasonable rates for both traditional telephone service and advanced communications services provided to incarcerated people. Are there any circumstances under which setting rates based on industry-wide average costs would result in unreasonably high or unreasonably low rates for any particular group of providers or consumers? If so, does the statutory language permit us to divide the relevant industry into groups based on their average costs per unit of service or specific cost-related characteristics, such as whether the provider serves facilities primarily located in rural or urban areas; and, if so, which specific cost-related characteristics should we consider? If we take that step, what additional steps should we take to discharge our obligation, under section 3(b)(2) of the Martha Wright-Reed Act, to “consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities.”¹¹²

50. We also seek comment on how we might use “the average costs of service of a communications service provider” to set just and reasonable rates.¹¹³ Would this statutory language allow us to use the average costs of an efficient (i.e., least cost) provider holding quality and provided services constant, or a group of efficient providers, to set industry-wide rates or to set rates for a subset of the industry?¹¹⁴ Does any commenter view the statutory language as allowing—or even requiring—us to set rates for each provider based on that provider’s average costs of service? Assuming we have the flexibility to adopt rate caps on an industry-wide or individual-provider basis, which approach would best allow us to ensure that rates and charges are just and reasonable? Additionally, we seek comment on whether using average costs of service to set rates for smaller subsets of the industry would raise any confidentiality concerns and whether those concerns might be outweighed by the public interest benefits of using average costs.

51. In the accompanying Order, we conclude that it is necessary to update and restructure the most recent data collection to ensure that rates and charges for all incarcerated people’s communications services are “just and reasonable,” and we delegate authority to WCB and OEA to implement such a data collection.¹¹⁵ We ask for detailed comment on how should we proceed if a particular provider or a group of providers do not provide reliable and accurate information in response to the forthcoming data collection. We also ask how we should proceed if the submitted information does not allow us to determine with precision the costs attributable to any particular service or function or groups of services or functions for which WCB and OEA request data.

3. Necessary Safety and Security Costs

52. We seek comment on the directive in section 3(b)(2) of the Martha Wright-Reed Act that the Commission “shall consider costs associated with any safety and security measures necessary to provide” telephone service and advanced communications services to incarcerated people.¹¹⁶ As an initial matter, we seek comment on what “shall consider” means. How much discretion, if any, does that phrase give the Commission in evaluating safety and security costs? Is the Commission required to treat all

¹¹² *Id.* § 3(b)(2).

¹¹³ *Id.* § 3(b)(1).

¹¹⁴ *Cf. GTL v. FCC*, 866 F.3d at 414-15 (taking issue with the Commission’s efficient providers approach because the sampled providers represented less than one percent of the market).

¹¹⁵ *See infra* Section IV.

¹¹⁶ Martha Wright-Reed Act § 3(b)(2).

safety and security costs identified by providers or facilities as costs recoverable through rates for communications services for incarcerated people? Could the Commission “consider” such costs, but ultimately decide to exclude all of them from its rate calculations as unnecessary? Is there a middle ground whereby the Commission could consider safety and security costs and decide to include some of those costs, but exclude others, from its rate calculations? To what extent does the Commission’s duty to consider “costs” depend on the strength or credibility of the record documenting such costs?

53. We seek comment on several aspects of the phrase “necessary safety and security measures.”¹¹⁷ How are we to understand the word “necessary” here? How does a standard of “necessary” compare to the “used and useful” standard the Commission traditionally uses in analyzing whether rates are just and reasonable under section 201(b)? The Commission has, in the past, interpreted “necessary” as having essentially the same meaning as “used and useful.”¹¹⁸ But the D.C. Circuit has previously found that interpretation overly broad, explaining that “necessary” “must be construed in a fashion that is consistent with the ordinary and fair meaning of the word, *i.e.*, so as to limit ‘necessary’ to that which is required to achieve a desired goal.”¹¹⁹ The D.C. Circuit also observed that “courts have frequently interpreted the word ‘necessary’ to mean less than absolutely essential, and have explicitly found that a measure may be ‘necessary’ even though acceptable alternatives have not been exhausted.”¹²⁰ How should we implement the D.C. Circuit’s guidance in this context? What is the “ordinary and fair meaning” of the word “necessary” as used in section 3(b)(2) of the Martha Wright-Reed Act? Should we interpret “necessary” in that section to mean something less than absolutely essential or indispensable? Is it something more than “used and useful”? What interpretation do commenters suggest, and why?

54. We seek detailed, specific comment on which safety and security measures are “necessary” to the provision of telephone and advanced communications services for incarcerated people and why those measures are “necessary.”¹²¹ Are any safety and security measures “necessary” to the provision of those services?¹²² Or are such measures core features of the correctional environment, rather than features needed to adapt communications services to that environment?¹²³

¹¹⁷ *Id.*

¹¹⁸ See, e.g., *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4776-77, para. 28 (1999) (interpreting “necessary” in section 251(c)(6) of the Communications Act as requiring incumbent local exchange carriers to allow “collocation of any equipment that is ‘used or useful’ for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment”).

¹¹⁹ *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 423 (D.C. Cir. 2000) (*GTE*) (italics in original). The Commission later revised its interpretation of “necessary” in line with *GTE*. The Commission concluded that equipment is “necessary” for purposes of interconnection or access to unbundled network elements under section 251(c)(6) if “an inability to deploy equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements.” *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order, 16 FCC Rcd 15435, 15441, para. 12 (2001), *aff’d sub nom. Verizon Tel. Cos. v. FCC*, 292 F.3d 903 (D.C. Cir. 2002).

¹²⁰ *Natural Resources Defense Council, Inc. v. Thomas*, 838 F.2d 1224, 1236 (D.C. Cir. 1988) (citations omitted); see also *FTC v. Rockefeller*, 591 F.2d 182, 188 (2d Cir. 1979) (“Obviously however, the word ‘necessary’ is not always used in its most rigid sense.”).

¹²¹ The Commission has previously sought comment on similar issues regarding telephone service for incarcerated people. See *2021 ICS Notice*, 36 FCC Rcd at 9664-65, para. 323; *2022 ICS Notice* at 53, para. 131.

¹²² See, e.g., National Sheriffs’ Association Comments, WC Docket No. 12-375, at 4 (filed Sept. 27, 2021) (characterizing security and administrative duties as “necessary” for communication services for incarcerated people); Pay Tel Communications, Inc., Reply, WC Docket No. 12-375, at 9-10 (filed Dec. 17, 2021) (arguing that certain security functions may be required for the provision of communications services for incarcerated people in certain contexts); Global Tel*Link Corporation Reply, WC Docket No. 12-375, at 8-9 (filed Dec. 17, 2021)

(continued....)

55. Some commenters assert that safety and security measures can cover a wide range of tasks, including, but not limited to, enrolling incarcerated people into voice biometrics systems, call monitoring, responding to alerts, blocking and unblocking numbers, and analyzing call recordings.¹²⁴ We seek comment not only on what constitute safety and security measures, but also which of those measures, if any, are “necessary” within the meaning of the statutory language.¹²⁵ Commenters should identify and describe any safety and security measures they consider “necessary” to the provision of any form of communications services for incarcerated people and to explain in detail why they deem each identified service to be “necessary.” Conversely, we invite comment on why specific safety and security measures, or even broad categories of such measures, are not “necessary” to the provision of communications services for incarcerated people. We also seek comment on whether we should interpret the Martha Wright-Reed Act’s use of the term “safety and security” as having the same or different meaning as the term “security and surveillance” previously used in this proceeding.¹²⁶

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(explaining that “security and surveillance are a core function of [inmate calling services]” and that such costs are “inextricably intertwined with the provision of” those services).

¹²³ See, e.g., Worth Rises Comments, WC Docket No. 12-375, at 1-4 (filed Sept. 27, 2021) (arguing that security is a “core function of correctional agencies and is related to the standard operation of correctional facilities” and that “[i]n all cases, except when layered onto communication services, these security and surveillance products and services are paid for out of agencies’ operating budget[s]”); United Church of Christ et al. Comments, WC Docket No. 12-375, at 12 (filed Sept. 27, 2021) (UCC OC, Inc., Comments) (explaining that “security and surveillance are procured in the interest of correctional facilities”); National Sheriffs’ Association Reply, WC Docket No. 12-375, at 7 (filed Dec. 21, 2021) (acknowledging that the “primary duty of Sheriffs and jails is to ensure security in the facility and in the community and access to [incarcerated people’s communications services] cannot override this”). Worth Rises traces the development of safety and security services in this context, explaining that such services were historically sold to correctional facilities by “standalone security firms” separate from communications services. Worth Rises Comments at 2. Worth Rises asserts that as new providers entered the market for telecommunications services following the breakup of AT&T, these security firms “quickly began providing communications services to their correctional customers” and “layered their security and surveillance services on top of their new communications services and shifted their cost onto [calling services] consumers.” Worth Rises Comments at 3. Since that time, “providers have continued to expand their suite of security and surveillance services through R&D and the acquisition of other security firms, technologies, and patents.” Worth Rises Comments at 3.

¹²⁴ See, e.g., National Sheriffs’ Association Comments at 3; Prison Policy Initiative Comments, WC Docket No. 12-375, at 18 (filed Sept. 27, 2021); Pay Tel Communications, Inc., Comments, WC Docket No. 12-375, Exh. 2 (filed Sept. 27, 2021) (Pay Tel Comments).

¹²⁵ Compare Inmate Calling Solutions, LLC, Comments, WC Docket No. 12-375, at 15 (filed Jan. 12, 2015) (suggesting that a “basic” telephone system only requires security for “allowing calls with simple call control: (a) identifying the inmate calling; (b) restricting who the inmate can and cannot call; (c) providing the called party with the ability to accept, reject, or block the caller; and (d) providing the facility with the ability to monitor and record the calls”), Worth Rises Comments at 12 (contending that the only relevant security services are “those required on all communications by the Communications Assistance for Law Enforcement Act”), and UCC OC, Inc., Comments at 12 (arguing that there is “no reason that the staff time of a correctional officer should be reflected in rates for phone service, and security and surveillance should not be a profit center for incarcerating institutions”), with Praeses LLC Comments, WC Docket No. 12-375, at 13 (filed Sept. 27, 2021) (arguing, broadly, that the Commission “should defer to Facilities on issues regarding the welfare and security of inmates”) and National Sheriffs’ Association Comments at 3 (explaining that “security duties include: enrollment and management of inmates into voice biometrics system; responding to [inmate calling services] system alerts; forwarding alerts and recorded calls to investigators; conducting real-time monitoring of inmate conversations; analyzing call recording of inmate conversations; burning CDs of conversations for further review by investigators; and responding to law enforcement requests and subpoenas for call detail records and recordings”).

¹²⁶ Letter from Gregory R. Capobianco, counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62, 12-375, at 2 (filed Mar. 10, 2023).

56. In addition, we invite comment on the extent to which resources (e.g., labor, tangible and intangible assets, and materials) of the provider—as opposed to the resources of carceral facilities or authorities—are used to provide any “necessary” safety and security measures. To the extent more data are required from providers regarding safety and security measures, WCB and OEA should seek to obtain those data in the forthcoming supplemental data collection.¹²⁷ We also invite comment on how we can determine the “costs associated with” any necessary safety and security measures to the extent resources of the facilities are used to provide these measures.¹²⁸ We ask for detailed comment on what steps, if any, we should take to determine those costs and on how we should proceed if we are unable to determine those costs. We also seek comment on how we should address any information we have regarding those costs in setting just and reasonable rates for communications services for incarcerated people. For example, if we determine that a particular safety or security measure is necessary to provide a covered service, would it be appropriate to include the underlying costs in rates and let the provider and facility determine how to appropriately share those costs?

57. Finally, we invite detailed comment on the relationship, if any, between safety and security measures and site commission payments. For example, to what extent do monetary site commission payments compensate correctional institutions for costs they bear in connection with “necessary” safety and security services they incur, if any, using their own resources? Do providers offer safety and security products and services at discounted rates or at no cost to correctional institutions?¹²⁹ If so, what are these products and services? Do correctional facilities instruct providers to furnish safety and security products and services on their behalf? If so, what products and services do correctional facilities typically ask providers to furnish? Do providers introduce new security and surveillance services during the contract negotiation process or at some point during the duration of a contract?¹³⁰ If so, why do they do so and what effect do such services have on end-user rates?¹³¹ To the extent commenters argue that safety and security measures are embedded in site commission payments, to what extent, if any, do these payments serve to reimburse correctional facilities for costs they incur to ensure that the provision of communications services for incarcerated people does not pose any associated safety or security risk?¹³² If so, what information do correctional facilities have documenting those costs? Do correctional facilities ever provide data regarding their safety and security costs during the contract negotiation process? We invite comment on these and any other matters that would assist the

¹²⁷ Our action today includes an Order delegating authority to the Wireline Competition Bureau and the Office of Economics and Analytics to update and restructure the existing data collection. See *infra* Section IV.

¹²⁸ See, e.g., National Sheriffs’ Association Comments 4 (suggesting that the correctional officials perform certain security and administrative tasks “in many” facilities instead of the calling services provider); Pay Tel Comments, Exh. 2 (providing a chart listing various security and administrative tasks and whether the calling services provider or the facility performs them).

¹²⁹ Letter from Bianca Tylek, Executive Director, Worth Rises, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Mar. 24, 2021) (Worth Rises Mar. 24, 2021 *Ex Parte*) (explaining that providers have offered “to provide security and surveillance products and services that were not requested to sweeten a bid and distract from the stated purpose of the procurement process”).

¹³⁰ *Id.* (arguing that providers have “routinely introduced new security and surveillance services,” sometimes mid-contract, and that these new services are “not associated with any increase in rates”).

¹³¹ *Id.* (contending that new security and surveillance services become “normalized” such that “[s]ubsequent procurement processes then require or prefer these new technologies” effectively allowing providers to “perpetually introduce new security and surveillance services that they sell to correctional facilities but force incarcerated people and their families to pay for or use to justify high calling rates”).

¹³² See, e.g., *id.* at 3 (suggesting that correctional officials “have claimed that the commissions they are paid are for security and surveillance costs borne by their facilities” but that this is really “meant to justify longstanding commission payments”).

Commission in understanding the relationship between safety and security measures and site commission payments.

4. Size and Type of Correctional Institution

58. The Martha Wright-Reed Act directs that the Commission “shall consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities.”¹³³ We seek comment on certain questions raised by this language.

59. We first seek comment on the Martha Wright-Reed Act’s use of differing terms to refer to incarceration facilities, apparently interchangeably, including “correctional institutions,” “correctional facilities,” “detention facilities,” and “facilities.”¹³⁴ We propose to interpret each of these statutory terms as generically and interchangeably referencing places where people are involuntarily confined. We seek comment on this proposal. We also seek comment on the meaning of the terms “detention facility” and “detention facilities,” as used in the Martha Wright-Reed Act.¹³⁵ The statute neither defines these terms nor provides direction on how the Commission should interpret them. Neither do the Commission’s rules. Should we interpret the term “detention facilities” as having the same meaning as the Commission’s existing definition of “correctional institution” or “correctional facility?”¹³⁶ Does “detention facility” have a meaning different from jails and prisons? Are there compelling reasons to make any definitional distinctions between correctional institutions and detention facilities?

60. We also seek comment on whether the terms currently defined in our rules—“correctional facility or correctional institution”—could be used as generic terms to encompass the different terms used in the Martha Wright-Reed Act. We propose to continue to interpret these terms as applying to all portions of a correctional institution, collectively, to avoid the risk of any particular institution being divided into multiple entities of differing sizes in an effort to take advantage of whatever size-based rate tiers we may adopt as part of our rate structure for incarcerated people’s communications services.¹³⁷ We invite comment on this proposal.

61. Our current rules define “Correctional Facility or Correctional Institution” as “a jail or a prison” and then separately define “Jail” and “Prison.”¹³⁸ We propose to continue to interpret the term “Correctional Institution” to include all the facilities encompassed within the current definitions of “Prison” and “Jail.”¹³⁹ We seek comment on this proposal, as well as on whether we should expand those definitions to include other types of facilities.¹⁴⁰ By way of example, the Commission has previously sought comment on including “civil commitment facilities, residential facilities, group facilities, and nursing facilities in which people with disabilities, substance abuse problems, or other conditions are routinely detained” as part of the definition of “Correctional Facility.”¹⁴¹ Should we include those, or any other additional facilities, in our definitions of “Jail,” “Prison,” or “Correctional Facility”?

62. The Martha Wright-Reed Act states that the Commission “shall consider . . . differences

¹³³ Martha Wright-Reed Act § 3(b)(2).

¹³⁴ *Id.* pmb., §§ 2(b)(3), 3(b)(2), 4. Similarly, the Commission’s rules use “Correctional Facility” and “Correctional Institution” interchangeably. 47 CFR § 64.6000(f) (definition of Correctional Facility or Correctional Institution).

¹³⁵ *Id.* § 4. We note that both uses of these terms occur outside the operative portions of the statute and therefore provide guidance on the intent of Congress or context for limiting the statute’s effect on other laws.

¹³⁶ *See* 47 CFR § 64.6000(f).

¹³⁷ *See, e.g., 2015 ICS Order*, 30 FCC Rcd at 12783-84, paras. 40-41.

¹³⁸ 47 CFR § 64.6000(f).

¹³⁹ *Id.* § 64.6000(m), (r).

¹⁴⁰ *2022 ICS Notice* at 65, para. 161.

¹⁴¹ *Id.*

in the costs . . . by small, medium or large facilities or other characteristics,” as part of its rate-setting process.¹⁴² We seek comment on how to interpret “small, medium, or large facilities.” What size categories should the Commission adopt to implement this language? What size thresholds should apply to each category? What metrics should we use to define size categories, and what data should we consider in setting size thresholds? We also seek comment on whether the directive to consider size differences is only relevant if the Commission uses cost-averaging in setting rates for incarcerated people’s communications services, as addressed in section 3(b)(1) of the Act. In other words, if the Commission were to base its rates on something other than industry-wide average costs, would it still be obligated to consider potential cost differences associated with serving different-sized facilities?

63. Our current rate structure distinguishes among different types and sizes of correctional institutions, establishing separate rate caps for prisons and jails, as well as separate rate tiers for different-sized jails. This seems consistent with the Martha Wright-Reed Act’s reference to “small, medium, or large facilities,” but we seek comment on whether the Act allows or requires any change in the Commission’s current approach to analyzing providers’ costs based on the type and size of correctional institution being served. Does the Martha Wright-Reed Act require us to implement more or fewer rate tiers based on type or size? We invite parties to provide information in support of any claims they may make in regard to the differences or similarities in the costs associated with serving different types or sizes of facilities. Could the Commission set the same rates for small, medium, and large facilities after considering cost differences, if any?

64. To the extent we continue to use multiple rate tiers for different-sized correctional institutions, we seek comment on our continued use of average daily population as the primary metric for measuring the size of correctional institutions. We incorporate and renew prior calls for comments on how average daily population should factor into our rate caps, if at all.¹⁴³ Should we adjust our current distinction between jails with average daily populations below 1,000, and jails with average daily populations at or above 1,000 based on the Act’s use of the terms “small, medium, or large”? Should the Commission adopt other size thresholds to account for differing cost characteristics of different-sized correctional institutions? Are there compelling reasons to adopt a different metric for determining size other than average daily population?

65. The Martha Wright-Reed Act also directs the Commission to consider “other characteristics” besides size-based distinctions in setting rates for incarcerated people’s communications services.¹⁴⁴ We seek comment on what other characteristics we should consider in setting rates, including correctional institution type (whether it is a prison, jail, or other kind of institution), geographic location (whether it is in an urban, as opposed to a rural, area), and the technology used (whether it is wireline as opposed to wireless, internet protocol-based as opposed to circuit-switched, or is connected to the public switched telephone network (PSTN) as opposed to transmitted only via the Internet). How do these characteristics affect costs? Should the Commission use “other characteristics” in tandem with the size of a facility when setting new rate caps? If so, how do these characteristics impact costs? How much weight should be given to the impact of other characteristics on the underlying costs? Is the primary driver of costs for some types of calls the number of calls, minutes, bits, phones, tablets, incarcerated people, network capacity, some combination of these, or something else? How does this vary with the nature of the call, for example, whether it is connected to the PSTN or is an app-to-app call, or whether it is a video or audio call regardless of the mode of transmission? Can the Commission disregard the size of the facility if some “other characteristic” provides more compelling cost-related differences?

¹⁴² Martha Wright-Reed Act § 3(b)(2).

¹⁴³ See, e.g., 2021 ICS Notice, 36 FCC Rcd at 9658-59, paras. 306-10.

¹⁴⁴ Martha Wright-Reed Act § 3(b)(2).

C. Effect on Other Laws

66. Section 4 of the Martha Wright-Reed Act states that: “[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require telephone service or advanced communications services at a State or local prison, jail, or detention facility or prohibit the implementation of any safety and security measures related to such services at such facilities.”¹⁴⁵ Below, we seek comment on the meaning and purpose of this provision. As an initial matter, we propose finding that the phrase “this Act,” as used in section 4, refers specifically to the Martha Wright-Reed Act, as opposed to the Communications Act. This seems to be the most logical reading of that reference, and we seek comment on this proposed finding.

67. We next invite comment on the meaning of the language in the first clause of section 4 of the new Act providing that “[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require telephone service or advanced communications services at a State or local prison, jail, or detention facility.”¹⁴⁶ We seek comment on how we should interpret this language as a general matter. Does the language of this clause simply mean that the Martha Wright-Reed Act does not create any new obligation for state or local facilities to provide any form of incarcerated people’s calling services?¹⁴⁷ Does the language carry any different or additional meanings? Should we interpret “to require” in this context as referring to all Federal, State, and local laws that affirmatively mandate the provision of telephone service or advanced communications services? Are there other possible meanings of the phrase in this provision? We observe that the statute uses the phrase “to require,” as opposed to “to provide,” or “to offer.” What is the significance of the choice of the word “require” in section 4? We invite comment about any of the other language in this clause and about the interplay between this language and any of the proposals contained in this Notice.

68. We also seek comment on how we should interpret the second clause of section 4, which specifies that nothing in the Act shall “prohibit the implementation of any safety and security measures related to such services at such facilities.”¹⁴⁸ Does the language of this clause simply mean that the just and reasonable ratemaking focus of the Martha Wright-Reed Act is not intended to interfere with any correctional official’s decision on whether to implement any type of safety or security measure that the official desires in conjunction with audio or video communications services? Why or why not? How broadly should the Commission interpret the phrase “safety and security measures” in this section? Should the Commission rely on prior definitions of safety and security measures in these types of facilities? We also seek comment on how we should construe the word “related.” What does it mean when safety and security measures are “related” to telephone service or advanced communications services?

69. We note that the Martha Wright-Reed Act also references “safety and security measures” in section 3(b)(2), which requires the Commission to consider the costs associated with “necessary” safety and security measures in determining just and reasonable rates.¹⁴⁹ How do commenters propose that the Commission reconcile the language of this clause with the Commission’s duty under the Act to ensure that rates are “just and reasonable”? The provision in section 3(b)(2) requires that the Commission consider certain costs when determining just and reasonable rates, whereas the reference in section 4 ensures that correctional officials retain the ability to implement “related” safety and security measures. Thus, under section 4, correctional officials remain free to implement any safety and security measures

¹⁴⁵ *Id.* § 4.

¹⁴⁶ *Id.*

¹⁴⁷ For example, if a federal law requires provision of a particular form of disability access in prisons, jails, or detention facilities, this clause would not modify or affect that federal law.

¹⁴⁸ Martha Wright-Reed Act § 4.

¹⁴⁹ *Id.* § 3(b)(2).

related to inmate telephone service or advanced communications services. We seek comment on this analysis.

70. Consistent with the above analysis, we seek comment on what relationship, if any, section 4 may have with the Commission’s consideration of “necessary” safety and security costs in its ratemaking calculus under section 3. We have recognized that, in some circumstances, correctional officials may have used monetary site commission payments to implement safety and security measures that, for ratemaking purposes, are not necessary for the provision of incarcerated people’s communications services.¹⁵⁰ Contracts between correctional officials and incarcerated people’s communications services providers also may require, as in-kind site commission payments, that the providers implement safety and security measures unrelated to the provision of communications services. Do commenters agree that our decision to exclude the costs of such “unnecessary” measures from our ratemaking calculus will not proscribe correctional facilities’ prerogatives to implement them as contemplated by section 4? If not, why not? Are there other considerations we should take into account with respect to the “safety and security measures” clause in section 4?

71. Finally, we seek comment on the relationship of section 4 to section 276(c) of the Communications Act, as amended,¹⁵¹ which remains unchanged by the Martha Wright-Reed Act. Section 276(c) provides that, “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.”¹⁵² In practice, the Commission has relied on the “impossibility exception” to preempt intrastate rates and charges where it is impossible or impracticable to separate the intrastate components of a service from interstate components regulated by the Commission’s rules.¹⁵³ The impossibility exception applied to such “jurisdictionally mixed” rates and charges when the Commission adopted rate caps pursuant to its authority under section 201(b) of the Act.¹⁵⁴ Since we propose to interpret the Martha Wright-Reed Act to provide the Commission clear authority to establish a compensation plan ensuring “just and reasonable” rates and charges and fair compensation for providers for both interstate and intrastate services under section 276 of the Communications Act,¹⁵⁵ we propose to find that state regulations that exceed the rates or rate caps we adopt pursuant to the Martha Wright-Reed Act shall be preempted under section 276(c).¹⁵⁶

¹⁵⁰ Cf. *2021 ICS Order*, 36 FCC Rcd at 9585, para. 148 (explaining that the Commission has been unable to determine “whether security and surveillance costs that correctional facilities claim to incur in providing inmate calling services are ‘legitimate’ inmate calling services costs that should be recoverable through interstate and international calling rates”); *2021 ICS Notice*, 36 FCC Rcd at 9665, para. 323 (suggesting that site commission payments may cover “security-related costs . . . that should more appropriately be deemed to be general security services that are added on to inmate calling services but not actually necessary to the provision of the calling service itself”); see also *Worth Rises* Mar. 24, 2021 *Ex Parte* at 3 (arguing that correctional officials justify site commission payments by claiming that such payments compensate them for security and surveillance costs they bear).

¹⁵¹ 47 U.S.C. § 276(c).

¹⁵² *Id.*

¹⁵³ See, e.g., *Qwest Corp. v. Minnesota Pub. Utils. Comm’n*, 380 F.3d 367, 372 (8th Cir. 2004) (explaining that “[t]he FCC has authority to preempt state regulation of telecommunications where it is not possible to separate the interstate and intrastate aspects of a communications service, and where the Commission concludes that federal regulation is necessary to further a valid federal regulatory objective”).

¹⁵⁴ See, e.g., *2020 ICS Order*, 35 FCC Rcd at 8495-8500, paras. 29-46 (discussing and applying the impossibility exception to determine whether intrastate and jurisdictionally mixed ancillary service charges are subject to the Commission’s ancillary service charge caps); *2021 ICS Order*, 36 FCC Rcd at 9617, para. 217 (justifying the preemption of state regulation of jurisdictionally mixed services under the impossibility exception).

¹⁵⁵ *Supra* Section II.A.1.c.

¹⁵⁶ 47 U.S.C. § 276(c).

72. We also seek comment on the proper exercise of our preemption authority as it relates to state laws that mandate lower rates and charges for incarcerated people's communications services or that mandate that such services be offered free to consumers.¹⁵⁷ In light of our proposal to find that we have plenary authority over intrastate communications services provided to incarcerated people, we invite comment on what steps, if any, the Commission should consider following a state mandate where a provider is able to claim, and clearly substantiate its claim, that an unreasonably low rate leads to unfair compensation to providers.¹⁵⁸ Additionally, to be clear, we propose to find that section 4 is no bar to the Commission's preemption authority with respect to establishing the rates and charges for audio and video communications in correctional facilities and prohibiting state or local requirements that would require higher rates or charges. We seek comment on these proposed findings. Further, we propose to find that nothing in section 4 affects the Commission's prior preemption policies under the impossibility exception, and we seek comment on this proposed finding. To the extent a party contends there is such an effect, we ask for detailed comment on how we should take that effect into account in our regulation of incarcerated people's communication services. Finally, we seek comment broadly on the scope of the Commission's preemption authority in light of the Martha Wright-Reed Act, including in particular, our authority over site commissions.¹⁵⁹

D. Necessary Rule Changes

73. *Changes to Part 64, Subpart FF.* The Martha Wright-Reed Act specifies that the Commission "shall promulgate any regulations necessary to implement this Act and the amendments made by this Act" not earlier than 18 months and not later than 24 months after the date of enactment.¹⁶⁰ As discussed above, we interpret the statutory amendments to sections 2, 3, and 276 of the Communications Act as providing the Commission plenary authority over all audio or video communications services (other than electronic messaging), by wire or radio, between incarcerated people and individuals not subject to involuntary confinement. As part of the Act, the Commission must ensure that all payphone providers are fairly compensated and that all rates and charges are just and reasonable.¹⁶¹ In addition, some entities that are not subject to our current inmate calling services rules are now "payphone service providers" within the meaning of section 276(b)(1) of the Communications Act and thus will be subject to our new rules implementing these statutory mandates.¹⁶² We seek

¹⁵⁷ Cal. Penal Code § 2084.5 (West 2023) (providing that state prison or youth residential placement or detention centers operated by the Department of Corrections and Rehabilitation "shall provide persons in their custody and confined in a correctional or detention facility with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication"); Cal. Welf. & Inst. Code § 208.1 (West 2023) (requiring county or city youth residential placement or detention centers to provide "persons in their custody with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication"); 2021 Conn. Legis. Serv. P.A. No. 21-54 (S.B. 972), § 1(b) (West) (requiring the Commissioner of Correction to "provide voice communication service to persons who are in the custody of the commissioner and confined in a correctional facility . . . free of charge to such persons and any communication, whether initiated or received through any such service, shall be free of charge to the person initiating or receiving the communication").

¹⁵⁸ See Securus March 8, 2023 *Ex Parte* (suggesting that we consider "establish[ing] unitary [intra]state and interstate rate caps and prevent any variation by the states).

¹⁵⁹ See Corrected Petition for Reconsideration of United Church of Christ Media Justice Ministry and Public Knowledge, WC Docket No. 12-375 (filed Dec. 15, 2022).

¹⁶⁰ Martha Wright-Reed Act §§ 2-3.

¹⁶¹ *Id.* § 2.

¹⁶² See Letter from Nick Galvin, Public Policy & Advocacy Manager, Ameelio, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 12-375 & 23-62 (Ameelio Mar. 10, 2023 *Ex Parte* Letter) (asking how the Commission's inmate calling services accessibility rules should be applied to entities that qualify as incarcerated people's communications service providers).

comment on what specific rule changes or new rules are necessary to effectuate the Martha Wright-Reed Act. Any comments proposing new or amended rules should include, as part of the commenter's submission, a draft rule or markup of an existing rule to be incorporated into Subpart FF of Part 64 of the Commission's rules.¹⁶³ We note that while the Act precludes our implementing rules from becoming effective earlier than July 2024, the statutory amendments became effective upon enactment and are effective today.¹⁶⁴ Pending the effective date of any new rules we adopt, any entity that is an inmate calling services provider within the meaning of our existing rules must comply fully with those rules.¹⁶⁵

74. The Act allows or requires that we make certain types of data analyses in promulgating implementing regulations.¹⁶⁶ We propose to interpret the Act as allowing us to perform any and all acts and issue any orders, including orders requiring the submission of data and other information from audio and video communications service providers now covered by the Act, conducive to the discharge of these and our other implementation responsibilities under the Martha Wright-Reed Act.¹⁶⁷ We invite comment on this proposal.

75. *Accessibility Rule Changes Necessitated by the Expanded Definition of Advanced Communications Services.* We also seek comment on the extent to which the Martha Wright-Reed Act expands our ability to ensure that any audio and video communications services used by incarcerated people are accessible to and usable by people with disabilities. With the addition of this new category of services to the definition of "advanced communications services," some of these services, as well as some equipment used for such services, regardless of technology used, may be newly subject to accessibility requirements under section 716 of the Communications Act.¹⁶⁸ Section 716, added to the Communications Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),¹⁶⁹ requires providers of advanced communications services and manufacturers of equipment used with such services to ensure that such services and equipment are accessible to and usable by people with disabilities, unless doing so is not achievable.¹⁷⁰ If accessibility is not achievable either by building it into the service or equipment or by using third party accessibility solutions, then a manufacturer or service provider must ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment, unless not achievable.¹⁷¹ Each provider of advanced communications services has a duty not to install network features, functions, or capabilities that impede accessibility or usability.¹⁷² In 2011, the Commission adopted Part 14 of its rules, which implements these statutory provisions, requiring service providers and equipment manufacturers of all types of

¹⁶³ 47 CFR §§ 64.6000-64.6130.

¹⁶⁴ Martha Wright-Reed Act § 3(a). The Act became effective upon its being signed into law on January 5, 2023.

¹⁶⁵ See 47 CFR § 64.6000(j), (s).

¹⁶⁶ Martha Wright-Reed Act § 3(b).

¹⁶⁷ Cf. 47 U.S.C. § 154(i).

¹⁶⁸ 47 U.S.C. § 617.

¹⁶⁹ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of U.S.C. tit. 47) (CVAA). The law was enacted on October 8, 2010. See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (also enacted on October 8, 2010; making technical corrections).

¹⁷⁰ 47 U.S.C. § 617(a)(1), (b)(1), (e).

¹⁷¹ *Id.* § 617(c).

¹⁷² *Id.* § 617(d).

advanced communications services and equipment to meet specific obligations, performance objectives, recordkeeping, and reporting requirements.¹⁷³

76. We seek comment generally on what changes to Part 14 of our rules are needed to implement the amended definition of “advanced communications services.” We specifically propose to amend the Part 14 definition of “advanced communications services” to incorporate the amended statutory definition, and seek comment on this proposal. Is there any reason we should not adopt the statutory definition verbatim? Are there specific terms in the new category of advanced communications services, apart from those raised above,¹⁷⁴ that we should separately define in section 14.10 of our rules, and if so, how should they be defined?

77. We also seek comment on whether any changes are needed to other provisions of Part 14 to reflect the inclusion of these services and equipment. For example, are there specific performance objectives or recordkeeping requirements that should be added or modified to ensure that providers of covered communications services and manufacturers of associated equipment used by incarcerated people are in full compliance with their accessibility obligations?

78. *Payphones Other Than in the Incarceration Context.* Although the Martha Wright-Reed Act specifically addresses payphones in the incarceration context, certain amendments to section 276 of the Communications Act apply to payphones more generally, including both those used by incarcerated people and those used by the public, in the case of more traditional payphones. For payphone service outside of the incarceration context, we propose to find that no new regulations are “necessary” to implement the Martha Wright-Reed Act and its amendments to the Communications Act pursuant to section 3(a) of the Act. Accordingly, we propose relying on our existing rules governing traditional payphone service to ensure that all payphone providers outside of the incarceration context are fairly compensated and that their rates and charges are just and reasonable, consistent with section 276(b)(1)(a), as amended.¹⁷⁵ We seek comment on the proposal to find new payphone service rules unnecessary and to continue relying on our existing rules to satisfy any of the new statutory requirements that apply outside the incarceration context.

¹⁷³ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision; Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011); *see also* 47 CFR §§ 14.20, 14.21, 14.31.

¹⁷⁴ *See supra* Section III.A.2.

¹⁷⁵ Martha Wright-Reed Act § 2(a)(1)(B); 47 U.S.C. § 276(b)(1)(a). In 1999, the Commission determined that traditional (i.e., non-inmate calling services) payphones do not require pricing regulation because that portion of the payphone market was sufficiently competitive. *Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2548, para. 2 (1999) (*1999 Traditional Payphone Order*) (“The Commission also deregulated the local coin rate for payphone calls to allow the competitive market place to set fair compensation for such calls.”). In addition, advancements in mobile and wireless technology have made traditional payphones virtually obsolete. *See, e.g., 1999 Traditional Payphone Order*, 14 FCC Rcd at 2550, para. 9 (asserting that the rapid growth of cellphone technology provides an alternative to traditional payphones, leading to “a reduction in the deployment of payphones in some areas”); *Modernization of Payphone Compensation Rules; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; 2016 Biennial Review of Telecommunications Regulations*, WC Docket Nos. 17-141 and 16-123, CC Docket No. 96-128, Report and Order, 33 FCC Rcd 2589, 2589-90, 2591, paras. 1, 4-6 (2018) (“eliminat[ing] rules that are no longer needed to ensure that payphone service providers (PSPs) receive the compensation to which they are entitled” and finding that “the steady and steep decline over more than a decade of the number of payphones in service demonstrates that they no longer play as critical a role in society’s communications as they once did, as would-be users rely instead on mobile subscriptions”).

79. *Effect on Small Entities.* We recognize that our actions in this proceeding may affect several groups of small entities. For example, payphone service providers that provide only limited communications services to incarcerated people, or that provide communications services to incarcerated people via technologies not previously covered by section 276, will be subject to new regulatory requirements. In addition, our implementation of the Martha Wright-Reed Act may subject entities currently subject to our inmate calling services rules to new regulatory obligations. We therefore seek comment on how we should take into account the impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face, in effectuating the mandates set forth in the Martha Wright-Reed Act and the Communications Act. Parties should also address any alternative proposals that would minimize the burdens on small businesses.

E. Other Reforms Related to Incarcerated People’s Communications Services

80. In addition to seeking comment on actions the Commission should take to implement the Martha Wright-Reed Act, we propose revisions to our rules to reflect updated language used to refer to calls made by incarcerated people. Our rules currently use “inmate calling services” or “ICS” to refer to “a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service.”¹⁷⁶ With the Martha Wright-Reed Act’s expansion of the Commission’s authority beyond calling services to include all audio and video communications services used by incarcerated people, the Commission uses today and will use going forward the term “incarcerated people’s communications services” or “IPCS” to refer to these broader service offerings.¹⁷⁷ In connection with this change in terminology, we have also changed references to “inmates” to “incarcerated people” at the request of public interest advocates.¹⁷⁸ To reflect this evolution in terminology, we propose codifying these changes in our existing rules and in any new rules we adopt pursuant to this proceeding.¹⁷⁹ We seek comment on this proposal.

81. Finally, we invite parties to comment on any other matters that may be relevant to our implementation of the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people’s audio and video communications services.

F. Digital Equity and Inclusion

82. The Commission, as part of its continuing effort to advance digital equity for all,¹⁸⁰ 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 considerations¹⁸¹ and benefits (if any) that may be

¹⁷⁶ 47 CFR § 64.6000(j).

¹⁷⁷ See *supra* note 37.

¹⁷⁸ See United Church of Christ July 29, 2020 *Ex Parte* Letter at 1-2 (urging the Commission to “revise the title of this docket and eliminate the term ‘inmate,’” explaining that “[m]any incarcerated people and advocates view the term ‘inmate’ as dehumanizing and disparaging”).

¹⁷⁹ See 47 CFR §§ 64.1200(a)(9)(ii), 64.6000-64.6120.

¹⁸⁰ Section 1 of the Communications Act provides that the Commission “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

¹⁸¹ The term “equity” is used here consistent with Executive Order 13985, to mean “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....)

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. ORDER

83. The Martha Wright-Reed Act directs the Commission to promulgate regulations necessary to implement its provisions not earlier than 18 months and not later than 24 months after the date of its enactment, and includes specific language addressing the use of data in promulgating implementing regulations.¹⁸² The statutory language provides both guidance and directives regarding data, including allowing the Commission to “use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider” in determining just and reasonable rates.¹⁸³ It further states that the Commission “shall consider costs associated with safety and security measures necessary to provide a service” and “differences in costs” by “small, medium and large facilities or other characteristics.”¹⁸⁴ These provisions contemplate and require the collection and analysis of advanced communications services' costs and related data, especially for video communications, among other data that, prior to the Act, the Commission either had no jurisdiction to collect or reason for doing so.¹⁸⁵ The data analysis to implement the statute's mandate that rates and charges be “just and reasonable” must be completed within the required 18 to 24 month timeframe.

84. To ensure that we have the data we need, in the timeframe to meet this statutory mandate, and given the procedurally complex and time-consuming process for data collections such as these, we reaffirm the Commission's prior delegation of authority to WCB and OEA and direct them to update the prior data collection to encompass, and collect, data on all incarcerated people's communications services from all providers of those services now subject to our expanded authority under the Martha Wright-Reed Act and the Communications Act.¹⁸⁶ Specifically, we delegate authority to WCB and OEA to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act.¹⁸⁷ The Commission has conducted three data collections related to incarcerated people's calling services in the past ten years. To allow for consistent data reporting, the Commission directed the Commission staff to develop a template for providers to use when submitting their data and to furnish providers with

(Continued from previous page) _____
Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

¹⁸² Martha Wright-Reed Act § 3(a)-(b).

¹⁸³ *Id.* § 3(b)(1).

¹⁸⁴ *Id.* § 3(b)(2).

¹⁸⁵ See *GTL v. FCC*, 866 F.3d at 413 (vacating a Commission reporting requirement related to video visitation services, as “too attenuated to the Commission's statutory authority”).

¹⁸⁶ For example the most recent data collection, limited only to inmate telephone services data, took nearly 14 months from the date the Commission delegated authority to WCB and OEA to conduct the data collection on May 24, 2021, to obtaining OMB approval of the data collection instructions and templates, issuing the order directing providers to file their responses and waiting for the data responses to be filed on June 30, 2022 (a total 402 days for Commission staff to receive responses from the date of delegation of authority). See *2021 ICS Order*, 36 FCC Rcd at 9618, para. 218; see also *Wireline Competition Bureau Announces the Due Date for Responses to the Commission's Inmate Calling Services Third Mandatory Data Collection*, WC Docket No. 12-375, Public Notice, DA 22-214 (WCB Mar. 2, 2022) (establishing the response due date of June 30, 2022). In addition to these steps, WCB and OEA will need time to compile the data into a consistent and meaningful format, analyze the data, and make recommendations for Commission consideration to result in the Act's implementing rules.

¹⁸⁷ Martha Wright-Reed Act §§ 2-3.

instructions to implement the collection.¹⁸⁸ The Commission also directed staff to review the providers' submissions and delegated to the staff the authority to require providers to submit additional data as necessary to perform its review.¹⁸⁹

85. We conclude that we must immediately begin the process of updating and restructuring the most recent data collection if we are to meet both our procedural obligations (to consider certain types of data) and our substantive responsibilities (to set just and reasonable rates and charges) under the Martha Wright-Reed Act and the Communications Act.¹⁹⁰ We therefore delegate to WCB and OEA authority to implement any appropriate modifications to this data collection, including with respect to information concerning "any audio or video communications service used by inmates for the purpose of communicating with individuals outside of the correctional institution where the inmate is held, regardless of technology used."¹⁹¹ We direct WCB and OEA to modify the template and instructions for the collection¹⁹² to the extent appropriate to timely collect such information to cover the additional services and providers now subject to our authority.¹⁹³ We also delegate to WCB and OEA the authority to require providers now covered by section 276 of the Communications Act to submit any additional information that they find will assist the Commission in implementing the Martha Wright-Reed Act, including, but not limited to, the authority to request more recent data for additional years not covered by the most recent data collection. Finally, we delegate to WCB and OEA the authority to conduct the requisite Paperwork Reduction Act analysis for any new or modified data collection(s) that they implement pursuant to this Order. Any new or modified requirements that require approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act shall be effective on the date specified in a notice published in the Federal Register announcing OMB's approval.

86. *Annual Reports.* We also reaffirm and update the Commission's prior delegation of authority to WCB and the Consumer and Governmental Affairs Bureau (CGB) to revise the instructions and reporting template for the Annual Reports that all service providers are required to file each year.¹⁹⁴ Specifically, we delegate authority to WCB and CGB to modify, supplement, and update those instructions and that template as appropriate to supplement the information we will be receiving in response to the Mandatory Data Collection described above. We find that this additional information is needed to enable us to understand the rates and ancillary service fees incarcerated people's communications services providers charge for or in connection with all the audio and video services now subject to our authority.¹⁹⁵ Finally, we delegate to WCB and CGB the authority to conduct the requisite Paperwork Reduction Act analysis for any changes to the Annual Report requirements that are implemented pursuant to this Order.

87. *Effective Date of Delegations of Authority.* Our delegations of authority to WCB, OEA, and CGB will take effect immediately upon publication of this Order in the Federal Register. Making the

¹⁸⁸ 2021 ICS Order, 36 FCC Rcd at 9620, para. 221; 2015 ICS Order, 30 FCC Rcd at 12863, para. 201; 2013 ICS Order, 28 FCC Rcd at 14173, para. 126.

¹⁸⁹ 2021 ICS Order, 36 FCC Rcd at 9622, para. 227; 2015 ICS Order, 30 FCC Rcd at 12863, para. 201; 2013 ICS Order, 28 FCC Rcd at 14173, para. 126.

¹⁹⁰ See Martha Wright-Reed Act § 3.

¹⁹¹ *Id.* § 2.

¹⁹² See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-52 (WCB/OEA Jan. 18, 2022).

¹⁹³ See 2021 ICS Order, 36 FCC Rcd at 9620, para. 221.

¹⁹⁴ See 2022 ICS Order at 25, para. 52.

¹⁹⁵ We note that incarcerated people's communications services providers that do not provide any services classified as inmate calling services under our current rules will not be subject to this reporting requirement. See 47 CFR §§ 64.6000(j), (s), 64.6060.

delegations effective at that time will enable WCB, OEA, and CGB to move as expeditiously as practicable toward modifying, supplementing, and updating the Third Mandatory Data Collection to include additional information to facilitate our ability to fully implement the Martha Wright-Reed Act. Indeed, the Martha Wright-Reed Act directs the Commission to “promulgate any regulations necessary” to establish just and reasonable rates “not later than 24 months” after enactment.¹⁹⁶ Any unnecessary delay in our efforts to collect appropriate information would be inconsistent with, and undermine the Commission’s ability to meet the deadlines contained in, the Act. Furthermore, given the importance of these areas to incarcerated people, including those with communication disabilities, any unnecessary delay in these initiatives would be inconsistent with the public interest.

88. For purposes of administrative efficiency and to further assist the Commission in its efforts to implement the Martha Wright-Reed Act, we intend to consider the extensive record developed in WC Docket No. 12-375, Rates for Interstate Inmate Calling Services, and hereby incorporate the record of that proceeding into WC Docket No. 23-62.

V. PROCEDURAL MATTERS

89. *Filing of Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.¹⁹⁷ Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹⁹⁸

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 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-19.¹⁹⁹

¹⁹⁶ Martha Wright-Reed Act § 3.

¹⁹⁷ 47 CFR §§ 1.415, 1.419.

¹⁹⁸ See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

¹⁹⁹ 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>.

- Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate our internal review process.

90. *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.

91. *Ex Parte Rules.* The proceeding that the Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁰⁰ 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 the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b).²⁰¹ In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

92. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²⁰² 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."²⁰³ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix A.

93. *Paperwork Reduction Act.* This Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA).²⁰⁴ In addition, therefore, it does not contain any new or

²⁰⁰ 47 CFR § 1.1200 *et seq.*

²⁰¹ *Id.* § 1.1206(b).

²⁰² 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).

²⁰³ *Id.*

²⁰⁴ Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520).

modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.²⁰⁵

94. *Initial Paperwork Reduction Act of 1995 Analysis.* The Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the PRA.²⁰⁶ If the Commission adopts any new or modified information collection requirements, they will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in these proceedings. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,²⁰⁷ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”²⁰⁸

VI. ORDERING CLAUSES

95. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022), this Notice of Proposed Rulemaking and Order ARE ADOPTED.

96. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022), and sections 0.201 and 1.103(a) of the Commission’s rules, 47 CFR §§ 0.201, 1.103(a), this Order delegating authority to the Wireline Competition Bureau, the Office of Economics and Analytics, and the Consumer and Governmental Affairs Bureau SHALL BE EFFECTIVE upon publication in the Federal Register.

97. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 30 days after publication of a summary of this Notice of Proposed Rulemaking in the Federal Register and reply comments on or before 60 days after publication of a summary of this Notice of Proposed Rulemaking in the Federal Register.

98. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking and Order to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁰⁵ 44 U.S.C. § 3506(c)(4).

²⁰⁶ Pub. L. No. 104-13.

²⁰⁷ Pub. L. No. 107-198.

²⁰⁸ 44 U.S.C. § 3506(c)(4).

APPENDIX A

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 Notice of Proposed Rule Making.² 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 Notice of Proposed Rulemaking. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³ In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.⁴

A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, the Commission seeks comment on implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), enacted by Congress to ensure just and reasonable rates for telephone and advanced communications services in correctional and detention facilities. The Act was passed in an effort to remedy decades of exorbitant rates for telecommunications services paid by family members, clergy, counsel, and other critical support systems.

3. The Commission seeks comment on the purpose and scope of the amendments made to the Commission's authority and how the Act expands its authority over incarcerated people's communications services, including over advanced communications services, intrastate services, and "any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used."⁵ The Commission also seeks comment on the Act's directions regarding how it should consider implementing the Act, including when the Commission is to adopt rules, the use of data to set just and reasonable rates, the costs of facility safety and security measures, and the size of correctional facilities. Lastly, the Commission also seeks comment on how the Act affects its ability to ensure that incarcerated people's communications services and associated equipment promote digital equity and are accessible to and usable by incarcerated people with disabilities.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat 6156 (2022).

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 This item continues ongoing efforts to reform providers' rates, charges, and practices in connection with interstate and international inmate calling services. See, e.g., *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519 (2021); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (Sept. 30, 2022).

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁸ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

6. *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.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

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.”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

⁶ 5 U.S.C. § 603(b)(3).

⁷ See 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, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf> (Dec. 2021).

¹² *Id.*

¹³ See 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “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 do 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.

(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.”¹⁶ U.S. Census Bureau data from the 2017 Census of Governments¹⁷ indicate that 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 (county¹⁹ or municipal and town or township²⁰) with populations of less than 50,000 and 12,040 special purpose governments—-independent school districts²¹ 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

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²⁴ Transmission facilities may be based on a single technology or a

(Continued from previous page)

The data utilized for purposes of this description were extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. These data do 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, or 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 do not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts are included in the special purpose governments category.

²³ This total is derived from the sum of the number of general purpose governments (county, or 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>.

combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including Voice over Internet Protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services.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

10. 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.³¹ Of these providers, the Commission estimates that 4,737 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.

11. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³³ is the closest industry with a 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

²⁵ *Id.*

²⁶ *Id.*

²⁷ Fixed Local Service Providers include the following types of providers: incumbent LECs, Competitive Access Providers (CAPs) and competitive LECs, Cable/Coax competitive LECs, 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 are 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: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

³⁰ *Id.* The available U.S. Census Bureau data do 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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³² *Id.*

³³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁴ See 13 CFR § 121.201, NAICS Code 517311 (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.*

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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.³⁹ Of these providers, the Commission estimates that 4,737 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. *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 Carriers⁴¹ is the closest industry with a SBA small business size standard.⁴² The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴³ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁵ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.⁴⁶ Of these providers, the Commission estimates that 929 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. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴⁸

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁸ *Id.* The available U.S. Census Bureau data do 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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁴⁰ *Id.*

⁴¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴² See 13 CFR § 121.201, NAICS Code 517311.

⁴³ *Id.*

⁴⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁵ *Id.* The available U.S. Census Bureau data do 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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁴⁷ *Id.*

⁴⁸ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (competitive LECs, Cable/Coax competitive LECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

Wired Telecommunications Carriers⁴⁹ 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.⁵⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁵² Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.⁵³ Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.⁵⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁵ is the closest industry with a SBA small business size standard.⁵⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁹ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.⁶⁰ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

15. *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

⁴⁹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵² *Id.* The available U.S. Census Bureau data do 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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵⁴ *Id.*

⁵⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁷ *Id.*

⁵⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵⁹ *Id.* The available U.S. Census Bureau data do 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 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

a SBA small business size standard.⁶¹ 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.⁶² Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶³ Mobile virtual network operators (MVNOs) are included in this industry.⁶⁴ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁵ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁶ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁷ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.⁶⁸ Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.⁶⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁷⁰ 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.⁷¹ MVNOs are included in this industry.⁷² The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷³ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷⁴ Of that number, 1,375 firms operated with fewer than 250

⁶¹ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁶ 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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁷ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁸ 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>.

⁶⁹ *Id.*

⁷⁰ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷⁴ 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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

employees.⁷⁵ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.⁷⁶ Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.⁷⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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 Carriers⁷⁸ is the closest industry with a SBA small business size standard.⁷⁹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁸² Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.⁸³ Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.⁸⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA have developed a small business size standard specifically for payphone service providers, a group that includes incarcerated people's communications services providers. Telecommunications Resellers⁸⁵ 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.⁸⁶ Mobile virtual network operators (MVNOs) are

⁷⁵ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁷⁷ *Id.*

⁷⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁹ See 13 CFR § 121.201, NAICS Code 517311.

⁸⁰ *Id.*

⁸¹ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁸² *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸³ 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>.

⁸⁴ *Id.*

⁸⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁶ *Id.*

included in this industry.⁸⁷ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁸ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁸⁹ Of that number, 1,375 firms operated with fewer than 250 employees.⁹⁰ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.⁹¹ Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.⁹² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Telecommunications Relay Service (TRS) Providers.* Telecommunications relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services.⁹³ Internet-based TRS (*iTRS*) connects an individual with a hearing or a speech disability to a TRS communications assistant using an Internet Protocol-enabled device via the Internet, rather than the public switched telephone network.⁹⁴ Video Relay Service (VRS) one form of *iTRS*, 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.⁹⁵ Internet Protocol Captioned Telephone Service (IP CTS) another form of *iTRS*, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an Internet-connected device.⁹⁶ Providers must be certified by the Commission to provide VRS and IP CTS⁹⁷ and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.⁹⁸

20. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard.⁹⁹ Internet Service Providers (ISPs) and Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry.¹⁰⁰ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as

⁸⁷ *Id.*

⁸⁸ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁸⁹ 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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?q=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁹⁰ *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹¹ 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>.

⁹² *Id.*

⁹³ 47 U.S.C. § 225(a)(3).

⁹⁴ 47 CFR § 64.601(a)(22). Except as authorized or required by the Commission, Internet-based TRS does not include the use of a text telephone (TTY) or RTT over an interconnected Voice over Internet Protocol service.

⁹⁵ *Id.* § 64.601(a)(51).

⁹⁶ *Id.* § 64.601(a)(23).

⁹⁷ *Id.* § 64.606(a)(2).

⁹⁸ *Id.* § 64.604(c)(5)(iii)(F).

⁹⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁰⁰ *Id.*

small.¹⁰¹ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁰² Of those firms, 1,039 had revenue of less than \$25 million.¹⁰³ Based on Commission data there are ten certified *iTRS* providers.¹⁰⁴ The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

21. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁰⁵ 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.¹⁰⁶ Providers of Internet services (e.g. dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry.¹⁰⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁰⁸ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁰⁹ Of those firms, 1,039 had revenue of less than \$25 million.¹¹⁰ 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

22. In the Notice, the Commission seeks comment on further reforms to the regulations governing incarcerated people’s communications services, which could potentially affect potential reporting and compliance requirements for small entities and for providers of incarcerated people’s communications services of all sizes. For example, the Notice seeks comment on whether to continue

¹⁰¹ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁰² 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>.

¹⁰³ *Id.* The available U.S. Census Bureau data do 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.

¹⁰⁴ See *Internet-Based TRS Providers | Federal Communications Commission (fcc.gov)*, <https://www.fcc.gov/general/internet-based-trs-providers> (last visited February 15, 2023).

¹⁰⁵ See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications,”* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁰⁹ 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>.

¹¹⁰ *Id.* The available U.S. Census Bureau data do 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.

using a “total industry cost” approach in setting rate caps, which would result in the same per-unit rate caps for interstate and intrastate voice services. Were the Commission to follow this approach in implementing the Act’s “just and reasonable rates” requirement—resulting in a unitary rate cap for any providers of incarcerated people’s interstate and intrastate communications services—it would potentially reduce the compliance burden on smaller providers.

23. The Commission’s implementation of the Martha Wright-Reed Act may require entities, including small entities and incarcerated people’s communications services providers of all sizes, currently subject to our inmate calling services rules to be subject to modified or new reporting or other compliance obligations. This may also be the case for providers newly subject to the Commission’s expanded regulatory authority, such as providers offering only intrastate or certain advanced communications. In addition, we recognize that our actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. In assessing the cost of compliance for small entities and for providers of incarcerated people’s communications services of all sizes, at this time the Commission is not in a position to determine whether the proposed rules in the Notice will impose any significant costs for compliance in general, or whether it will require small entities to hire attorneys, engineers, consultants, or other professionals to comply. It is also undetermined at this time if any new software, or modifications to existing software, will be necessary for small entities and for providers of incarcerated people’s communications services of all sizes to effectively comply with the proposed rules.

24. Within 18-24 months following enactment, the Commission is required by the Martha Wright-Reed Act to adopt rules to ensure that the rates and fees for incarcerated people’s communications services are just and reasonable. This may include new ratemaking methodologies, such as the use of industry-wide average costs of telephonic service and advanced communications data; new services, such as any audio or video communications service used to communicate with persons outside of the facility, regardless of technology used; and new entities, such as providers that are newly subject to our authority. In the Notice, the Commission seeks comment on the collection and use of existing and additional data in determining just and reasonable rates and charges for incarcerated people’s communications services, as well as on the implementation of its newly expanded jurisdictional authority. If rules are adopted pursuant to these proposals, they would apply to incarcerated people’s communications services providers of all sizes, including small providers.

25. The Commission seeks comment on updating and restructuring its current (third) mandatory data collection. First, to the extent that the Commission updates and restructures its most recent data collection, providers of incarcerated people’s communications services of all sizes, including small providers, would need to maintain and report their cost data in accordance with the Commission’s rules. Similarly, if the Commission imposes data collection requirements, or other new rules specific to implementation of the Martha Wright-Reed Act, the data collection requirements and other rules will be applicable to incarcerated people’s communications services providers of all sizes. The Commission also seeks comment on how it should proceed if a particular provider or providers do not provide reliable and accurate information in response to the updated data collection. Any procedures it may adopt would impact reporting requirements for all relevant entities, including small entities. Additionally, the Commission seeks comment on how to proceed if information submitted by providers does not allow it to determine with precision the costs attributable to any particular service or function, or groups of services or functions. Any steps the Commission would take to ensure the accuracy or precision of providers’ data submissions could also potentially affect reporting requirements for all relevant entities, including small entities and providers of incarcerated people’s communications services of all sizes.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements

or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.¹¹¹

27. In the Notice, the Commission seeks to fulfill Congress's intent via the implementation of the Martha Wright-Reed Act, including its directive that the Commission ensure just and reasonable rates and charges for incarcerated people's audio and video communications services. While doing so, the Commission is mindful of the potential impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face in complying with any rules the Commission may adopt. Below we discuss several steps the Commission has taken that could reduce the economic impact for small entities.

28. Allowing additional time for small and medium-sized businesses to comply with the proposed rules, including the timeframe for compliance, could reduce the economic impact for small entities. We considered and seek comment on whether such an approach would serve the public interest. In doing so, we have provided small entities the opportunity to offer alternatives not already considered, giving small entities ample time to minimize whatever potential burdens they may face.

29. The Commission also seeks comment on the Martha Wright-Reed Act's directive to consider the size of incarceration facilities in setting just and reasonable rates and charges for services.¹¹² The Commission seeks comment on whether the "industry-wide" average cost language in the Martha Wright-Reed Act refers only to some subset of providers of incarcerated people's communications services or all such providers.¹¹³ In doing so, the Commission seeks information that will help to determine the appropriate approach to ensuring just and reasonable rates as required by the Act. The Commission would also benefit by using the information obtained from comments to inform its evaluation of its regulatory options, including those that may potentially be less burdensome for smaller providers.

30. The Martha Wright-Reed Act states that the Commission "shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics," as part of its rate-setting process.¹¹⁴ The Commission seeks comment on how to interpret "small, medium, or large facilities."¹¹⁵ We considered and seek comment on whether the Commission is obligated to consider potential cost differences associated with serving different-sized facilities if it sets rates based on something other than industry-wide average costs. This information will assist the Commission in considering alternatives such as whether it should implement more or fewer rate tiers based on the type or size of facility, and whether the Commission should set the same rates for small, medium, and large facilities after considering cost differences, if any.

31. Considering the economic impact on small entities through comments filed in response to the Notice and this IRFA, as part of its efforts to implement the Martha Wright-Reed Act and promulgate rules in these proceedings, could allow the Commission to potentially obtain cost-benefit analyses and other input that would enable it to identify reasonable alternatives that may not be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities.

¹¹¹ 5 U.S.C. § 603(c)(1)-(4).

¹¹² Martha Wright-Reed Act § 3(b).

¹¹³ *Id.* § 3(b)(1).

¹¹⁴ *Id.* § 3(b)(2).

¹¹⁵ *Id.*

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

32. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking and Order (March 16, 2023).

It was twenty years ago a grandmother named Martha filed a petition calling on the Federal Communications Commission to do something about the unconscionably high phone rates charged to incarcerated people and their loved ones. You see, she just wanted to stay in touch with her grandson, who was in prison. She wanted to make sure he heard what was happening at home and in her church and that he kept in contact with his young nephews.

Justice delayed can be justice denied. And it took this agency far too long to pick up that petition. It took us longer still to act on it and try to address the outrageous charges families of the incarcerated pay for phone service. When we did, we made headway. We cut rates for calls. We limited ancillary service fees. We put restrictions on site commissions. But our work was not always embraced by the courts. We were told—over and over again—that we did not have the authority to address every aspect of these rates, because while interstate calls fell within our jurisdiction, intrastate calls did not. This limited our ability to provide families relief and meaningfully address that petition filed so long ago.

No more. At the start of this year, President Biden signed into law the Martha Wright-Reed Just and Reasonable Communications Act. It is a piece of legislation that honors the trailblazing work of a grandmother who knew something was wrong and set out to make it right.

In the United States we are home to the largest incarcerated population in the world. No other country comes close. We spend so much to keep our criminal justice system in place. But that understates the real cost—swelling despair, destroyed potential, and diminished possibilities for rehabilitation. And phone calls, simple as they are, are important. Because those in prison are often separated from their families by hundreds of miles and families may lack the time and means to make regular visits. Phone calls are the only way to stay connected. But when the price of a single phone call can be as much as most of us spend for unlimited monthly plans, it can be hard to stay in touch. This is not just a strain on the household budget. It harms all of us because regular contact with kin can reduce recidivism.

We are now due for some speed. We are going to use this new law and the expanded authority it provides to ensure the rates for prison phone calls—both interstate and intrastate—are just and reasonable. We are going to use it to address advanced communications services like video. And we are going to use it to ensure access to these communications by those with disabilities. Along the way, we will work to integrate these new efforts with what we have done before, so that across the board these policies are fair and sustainable.

Like I said, we are going to move fast. Because the Martha Wright-Reed Just and Reasonable Communications Act demands we produce results between 18 and 24 months after enactment and too many have waited too long for us to address these usurious rates.

Martha Wright-Reed passed away eight years ago. But we would not be here today without her. We also would not be here without the work of my friend and former colleague Mignon Clyburn who was the one to tell this agency to pick up that petition. Her conscience informs this proceeding and everything in this new law.

Thank you also to the Congressional leaders who worked for years on this new law, putting a more just system within reach, including Senator Tammy Duckworth and former Congressman Bobby Rush, as well as the many co-sponsors of this legislation. Thank you also to the advocates who supported this effort and the work of this agency. We would not be here without you.

In addition to these leaders, I want to thank the Commission staff for their continued efforts to

this work, including Susan Bahr, Ahuva Battams, Peter Bean, Callie Coker, Victoria Goldberg, Amy Goodman, Trent Harkrader, William Kehoe, Lee McFarland, Stephen Meil, Terri Natoli, Simon Solemani, Hayley Steffen, Gil Strobel, Jennifer Best Vickers, and David Zesiger from the Wireline Competition Bureau; Robert Aldrich, Diane Burstein, Darryl Cooper, Aaron Garza, Eliot Greenwald, Alejandro Roark, and Michael Scott from the Consumer and Governmental Affairs Bureau; Connor Altman, Amanda Betag, Paula Cech, Zaira Gonzalez, Eugene Kiselev, Richard Kwiatkowski, Giulia McHenry, Eric Ralph, Michelle Schaefer, and Geoff Waldau from the Office of Economics and Analytics; Sarah Citrin, Michele Ellison, Valerie Hill, Marcus Maher, Richard Mallen, Joel Rabinovitz, William Richardson, and Chin Yoo from the Office of General Counsel; Jim Balaguer and Brian Moulton from the Office of Legislative Affairs; Anne Veigle and Will Wiquist from the Office of Media Relations; and Cara Grayer, Michael Gussow, and Joy Ragsdale from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking and Order (March 16, 2023).

Over the last few years, I've had the chance to hear directly from families who have experienced firsthand the difficulties of maintaining contact with their incarcerated loved ones. I've also listened to formerly incarcerated individuals who underscored the decline in mental and emotional health that can result from a lack of external communications.

Indeed, studies have repeatedly shown just how vital increased communication between incarcerated people and their families, friends, and other outside resources is and that these types of connections also help reduce recidivism rates. This is no coincidence. Successful reintroduction to society largely turns on having a meaningful support network, including access to job and housing resources.

A big part of enabling this increased communication is ensuring that providers are limited to charging just and reasonable rates for inmate calling services. But the marketplace for these services has long been broken—providers face no competition and market forces do not operate to constrain the charges they pass along to consumers.

The FCC has had a critical role to play in regulating certain aspects of this marketplace, and it has taken actions to address providers' abusive practices. But courts have turned aside several FCC actions that they deemed in excess of agency authority. With that string of D.C. Circuit decisions, the FCC has been unable to alter the status quo, despite broad consensus on the types of reforms that are necessary.

For this reason, I welcomed Congress' passage of the Martha Wright-Reed Act, which provides the FCC with the authority to establish rules for intrastate and international prison calls, as well as for a broader range of advanced communications services.

This will be increasingly important as more incarcerated individuals rely on video communications to stay in touch with their family, friends, and other important resources, such as attorneys and medical professionals.

As we move to implement the Martha Wright-Reed Act, I am hopeful that we will do a top-to-bottom review of the costs borne today by the families of incarcerated individuals. This proceeding presents a unique opportunity to think outside of the box and explore new ways of ensuring that the rates charged are just and reasonable. This includes exploring the role that site commissions play in the rates charged and whether the Commission can and should do more to address those charges, which can add to the cost of providing services inside correctional facilities.

The Martha Wright-Reed Act also requires the Commission to ensure that these advanced communications services are accessible to incarcerated individuals with disabilities, including those with hearing or speech loss. This remains an important issue for the FCC and I hope we move expeditiously to ensure that all incarcerated individuals have equal and affordable access to equivalent communications services in prisons and jails.

This item will have a meaningful impact on incarcerated individuals and their families and friends, so I want to thank the Wireline Competition Bureau for their work on this item. And I want to thank the Wright Petitioners for their diligent work to bring these issues to light and for their efforts over this now two decade long fight.

The item has my support.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act*, WC Docket No. 23-62; *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking and Order (March 16, 2023).

"The arc of the moral universe is long, but it bends towards justice." Famous words from Dr. Martin Luther King, Jr.

More than 20 years ago, Mrs. Martha Wright-Reed began her fight for affordable and fair rates for communications services for incarcerated individuals and their families. Many of you know her story, but it is worthwhile to revisit it briefly. As a blind, elderly woman, her options to stay in touch with her grandson were limited when he was moved to a correctional facility in Arizona, some 2000 miles from her home in Washington, DC. Without the ability to communicate via letters or in-person, her only option to stay in contact was via a weekly phone call on Sunday after church. Calling her grandson a few times a month turned out to be a struggle—the per-minute rates were very expensive on top of various fees that added up to hundreds of dollars a month. She was forced to decide between staying in touch with her grandson, providing him a connection to the outside world, and paying for her other expenses like medication and groceries. Sometimes something had to give. It was never her connection with her grandson.

But here's what she realized—if she was struggling to afford paying for these calls, surely other families were as well. Over the next 23 years, what started with her personal phone bill turned into a nationwide movement dedicated to lowering the communication rates in incarceration facilities. When Wright-Reed started her efforts, a call from Washington to an incarceration facility in California used to cost as much as \$17 for 15 minutes. That same call can now be as low as \$3-4 dollars.

The Commission has worked, going back to then Commissioner Mignon Clyburn's leadership nearly 10 years ago, to stop exorbitant charges. However, the Commission was at the time limited in what it could do with regard to the rates for intrastate calls, which represent over 80% of total calls from incarceration facilities.³²⁴ Following Wright-Reed's passing in 2015, others picked up her mantle, including Senator Duckworth alongside her co-sponsors, Senators Blumenthal, Booker, Casey, Coons, Gillibrand, King, Klobuchar, Lujan, Markey, Portman, Schatz, Warren, and Wyden, and Congressman Rush. And last year, Congress passed the Martha Wright-Reed Act which, for the first time, gives the FCC authority to regulate intrastate rates at incarceration facilities.

By clearly extending the Commission's authority over intrastate communications services, we can now work towards ensuring that rates charged are just and reasonable, consistent with the Commission's standard in Section 202. This is a huge step.

Equally important, the Martha Wright-Reed Act expands our authority to ensure that rates are just and reasonable for advanced communications systems—such as video visitation services—that many incarcerated persons and correctional facilities use to stay connected while also protecting security.

Ensuring that rates for advanced communications services offered to incarcerated individuals are just is also long overdue to support incarcerated populations that are deaf and hard of hearing or face other communications disabilities. Last September, we adopted a *Report and Order and Notice of Proposed Rulemaking*³²⁵ focused specifically on ensuring that incarcerated people with communications disabilities have functionally equivalent services as those without disabilities. The Martha Wright-Reed

³²⁴ Shira Hoffer, *Mother or Money? The Exorbitant Cost of Phone Calls from Jail*, HARVARD POLITICAL REVIEW (Jan. 15, 2022), <https://harvardpolitics.com/jail-phone-calls>.

³²⁵ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (2022).

Act will help ensure the advanced communications services, such as IP CTS, will be charged at a just and reasonable rate, and help support that proceeding as well.

Martha Wright-Reed's call to action moved our world. Millions of incarcerated individuals, their families, and our society are all beneficiaries of her powerful work. What a legacy.

I look forward to seeing the record develop from the Notice as we work to implement the Act. I applaud the Commission's fantastic staff for their dedicated work on this issue, as well as Commissioner Clyburn and Chairwoman Rosenworcel's continued leadership. I strongly approve.

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

In the Matter of	)	
	)	
Video Description: Implementation of the	)	MB Docket No. 11-43
Twenty-First Century Communications and	)	
Video Accessibility Act of 2010	)	

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 16, 2023

Released: March 17, 2023

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (FNPRM), we propose to expand our support for individuals who are blind or visually impaired and ensure they have nationwide access to video programming by expanding our audio description requirements to additional market areas. Consistent with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),¹ we propose to phase in an additional 10 designated market areas (DMAs) each year until audio description is available in all such market areas. The proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

2. Audio description makes video programming more accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”² The Commission’s audio description rules currently require certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming they distribute to consumers.³ Audio description is required in DMAs 1 through 60, pursuant to an order adopted by the Commission in 2011.⁴ In 2020, the Commission expanded the audio description requirements to DMAs 61 through 100 on a phased schedule that will be complete on January 1, 2024.⁵

¹ Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv).

² See 47 CFR § 79.3(a)(3). Audio description is typically provided through the use of a secondary audio stream, which allows the consumer to choose whether to hear the narration by switching from the main program audio to the secondary audio.

³ See *id.* § 79.3(b).

⁴ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847, 11855-56, para. 16 (2011) (*2011 Audio Description Order*) (“The rules extend the requirement . . . to major network affiliates in the 60 largest markets beginning on July 1, 2015.”).

⁵ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 35 FCC Rcd 12577 (2020) (*2020 Audio Description Order*); 47 CFR § 79.3(b)(1). In the *2020 Audio Description Order*, the Commission also modernized its terminology by

(continued....)

In that Order, the Commission also committed to determining in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year.⁶ There are currently a total of 210 DMAs. Through this FNPRM, we seek comment on our proposal to expand the audio description requirements using a phased schedule until all DMAs are covered by the audio description rules. In particular, we seek comment on whether the costs associated with expansion beyond DMA 100 are reasonable and whether the consumer need for expansion outweighs such costs, including whether there are any unique circumstances applicable to these smaller markets from DMA 101 through DMA 210 that the Commission should consider. We also seek comment on what rules, procedures, or schedule adjustment the Commission could consider to balance or minimize such costs against the consumer benefits of providing nationwide audio description.

II. BACKGROUND

3. As required by section 202 of the CVAA, the Commission adopted rules in 2011 requiring certain television broadcast stations and MVPDs to provide audio description for a portion of the video programming that they offer to consumers on television.⁷ The current audio description rules require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top television markets to provide 50 hours of audio-described programming per calendar quarter during prime time or on children's programming, as well as an additional 37.5 hours of audio-described programming per calendar quarter at any time between 6 a.m. and 11:59 p.m.⁸

4. The CVAA directed the Commission to submit two reports to Congress related to audio description, and the second such report is relevant to this FNPRM. In the Second Report, the CVAA required the Commission to assess, among other topics, "the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [audio-described] programming" and "the need for additional described programming in [DMAs] outside the top 60."⁹ The Bureau submitted the Second Report to Congress in October 2019, describing the consumer desire for application of the audio description rules outside the top 60 DMAs but stating that commenters did not offer "detailed or

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replacing the term "video description" with the synonymous term "audio description." See *2020 Audio Description Order*, 35 FCC Red at 12584-86, paras. 14-15.

⁶ *2020 Audio Description Order*, 35 FCC Red at 12584, para. 13.

⁷ *2011 Audio Description Order*, 47 CFR § 79.3. In accordance with the CVAA, the *2011 Audio Description Order* reinstated with certain modifications the Commission's audio description rules that the United States Court of Appeals for the District of Columbia Circuit previously had vacated due to its finding that the Commission had insufficient authority. See *Motion Picture Ass'n of America, Inc. v. Federal Communications Comm.*, 309 F.3d 796 (D.C. Cir. 2002).

⁸ 47 CFR § 79.3(b)(1). The rules also require "[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description." *Id.* § 79.3(b)(3). In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of audio description per calendar quarter during prime time or on children's programming, as well as an additional 37.5 hours of audio description per calendar quarter at any time between 6 a.m. and 11:59 p.m., on each of the top five national nonbroadcast networks that they carry on those systems. *Id.* § 79.3(b)(4). The rules also require MVPD systems of any size to pass through audio description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming. *Id.* § 79.3(b)(5)(i)-(ii).

⁹ 47 U.S.C. § 613(f)(4)(C)(iii)(IV), (VII).

conclusive information” as to the costs of such an expansion or a station’s ability to bear those costs.¹⁰ It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable, explaining that, “[s]hould the Commission seek to expand the [audio] description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine that ‘the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable.’”¹¹

5. The CVAA provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year,” “based upon the findings, conclusions, and recommendations contained in the [Second Report],” “(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”¹² Exercising this authority, the Commission adopted a phased expansion of the audio description rules, finding that the costs of the expansion to DMAs 61 through 100 are reasonable for program owners, providers, and distributors.¹³ The audio description requirements extended to DMAs 61 through 70 on January 1, 2021, to DMAs 71 through 80 on January 1, 2022, and to DMAs 81 through 90 on January 1, 2023.¹⁴ The requirements will extend to DMAs 91 through 100 on January 1, 2024.¹⁵ Thus far, the timetable for the phased expansion has been successful, with no requests for relief under either the rule governing exemptions due to economic burden or the more general waiver rule.¹⁶

6. The *2020 Audio Description Order* also indicated that the Commission would consider in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year, after assessing the reasonableness of the associated costs.¹⁷ The Commission explained that deferring a determination on the application of the audio description rules beyond DMA 100 “will best enable us to consider the unique circumstances that may be applicable” to the smallest markets, and provides “the additional benefit of . . . any additional information gleaned from [the] practical experience” of expansion beyond DMA 60.¹⁸

¹⁰ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report to Congress, 34 FCC Rcd 9350, 9362-63, paras. 26-28 (MB 2019) (Second Report). See also *id.* at 9361, paras. 23-24 (indicating that the maximum cost of creating audio-described programming remains consistent with the Commission’s 2017 estimate of \$4,202.50 per hour, while the cost of described pre-recorded programming can be as low as \$1,000 per hour).

¹¹ *Id.* at 9363, para. 28 (quoting 47 U.S.C. § 613(f)(4)(C)(iv)(I)).

¹² 47 U.S.C. § 613(f)(4)(C)(iv).

¹³ See *2020 Audio Description Order*, 35 FCC Rcd 12577. The Commission’s audio description rules define a “video programming distributor” as “[a]ny television broadcast station licensed by the Commission and any [MVPD], and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.” 47 CFR § 79.3(a)(5). The rules also define a “video programming provider” as “[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming.” *Id.* § 79.3(a)(2). The Commission’s audio description rules do not separately define the term “owner.”

¹⁴ *Id.* § 79.3(b)(1).

¹⁵ *Id.*

¹⁶ *Id.* §§ 79.3(d), 1.3.

¹⁷ *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

¹⁸ *Id.*

III. DISCUSSION

7. Consistent with the CVAA, we propose to continue phasing in the audio description requirements for an additional 10 DMAs each year until all 210 DMAs are covered, and we invite comment on this proposal. Specifically, we invite comment on whether the costs of implementing the audio description regulations in markets 101 through 210 are reasonable.

8. We seek comment on the benefits of expanding the audio description requirements to DMAs 101 through 210. The Second Report indicated that consumers seek expansion of the audio description requirements to additional DMAs,¹⁹ and we believe that even in the smallest DMAs, our proposal will provide significant benefits to consumers who are blind or visually impaired. As the Commission has previously stated, “[i]t is indisputable that [audio] description enhances the accessibility of video programming to consumers who are blind or visually impaired.”²⁰ In addition to the benefits for consumers who are blind or visually impaired, when the Commission expanded the audio description requirements to DMAs 61 through 100, it found that “consumers who are not blind or visually impaired and live in those markets also would benefit from the expansion, such as consumers with other sensory or cognitive impairments, individuals learning the language, and those who listen to video programming while multitasking.”²¹ We invite comment on the benefits of the proposed expansion to consumers in DMAs 101 through 210. Commenters should provide specific data on the amount of audio-described programming currently available in DMAs 101 through 210, including comparing that data to the amount that would be available if the Commission were to expand the audio description requirements to such DMAs. We also invite commenters to discuss any other benefits of the proposed expansion.

9. We also seek comment on the costs of expanding the audio description requirements to DMAs 101 through 210. Specifically, the CVAA permits the Commission to extend the audio description requirements to additional DMAs “if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission.”²² When the Commission extended the audio description requirements to DMAs 61 through 100, it concluded that the costs of compliance were reasonable.²³ We thus ask commenters to discuss whether the Commission’s analysis in 2020 for DMAs 61-100 similarly applies today to DMAs 101 through 210. Specifically, have the costs of adding audio description to television programming, which held steady between 2017 and 2020, remained steady today?²⁴ We encourage commenters to provide figures demonstrating the estimated costs of complying with the audio description regulations for program owners, providers, and distributors in DMAs 101 through 210.

10. We anticipate that any cost caused by application of the audio description requirements to additional DMAs will be minimized because covered broadcasters are already required to have the equipment and infrastructure needed to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size.²⁵ In addition, we

¹⁹ Second Report, 34 FCC Rcd at 9362, para. 26.

²⁰ See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 35 FCC Rcd 4293, 4298, para. 12 (2020) (*2020 Audio Description NPRM*).

²¹ *2020 Audio Description Order*, 35 FCC Rcd at 12581-82, para. 9.

²² 47 U.S.C. § 613(f)(4)(C)(iv).

²³ *2020 Audio Description Order*, 35 FCC Rcd at 12580-81, para. 8.

²⁴ See *id.* at 12580, para. 8 (stating that the steadiness of these costs “indicat[ed] that the costs are at a level the Commission previously deemed ‘minimal’”).

²⁵ See 47 CFR § 79.2(b)(2)(ii) (requiring video programming distributors or video programming providers that create visual emergency information content and add it to the programming stream to provide an aural representation of the information on a secondary audio stream, and requiring video programming distributors to ensure (continued....))

anticipate that any such cost will be further minimized because network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed, provided the station has the necessary technical capability and is not using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.²⁶ We seek comment on this analysis. How many broadcasters in DMAs 101 through 210 currently lack the equipment or infrastructure needed to deliver a secondary audio stream, and would the costs of implementing such equipment or infrastructure be minimal? To the extent any broadcasters that currently lack the necessary equipment or infrastructure believe that the implementation costs would be significant, could this best be addressed through the existing process for exemptions due to economic burden?²⁷

11. As an alternative to expanding the audio description requirements to all DMAs 101 through 210, should the Commission consider phasing in a smaller subset of DMAs? If so, what would be the appropriate cutoff? Is there a certain DMA beyond which expansion of the audio description requirements would create unreasonable costs? Would this limitation mitigate the cost of expanding the audio description requirements? Should the Commission consider expanding to a smaller number of DMAs, such as five DMAs per year, in recognition of the fact that the markets are smaller?²⁸ If so, why and what factors would support such a modification of the phased schedule? Would such modifications of the schedule mitigate the potential costs or burden of our proposal?

12. We invite comment on any other issues relevant to our analysis of the costs of creating audio-described programming in DMAs 101 through 210. For example, when the Commission expanded the audio description requirements to DMAs 61 through 100, it “sought comment on several additional issues related to analyzing the costs, including information on the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates; whether there are any network affiliates in any DMA that do not receive programming via a network feed; whether network affiliated stations in markets 61 through 100 would be able to satisfy the audio description requirements entirely by using the programming they receive via a network feed; and whether there are differing costs incurred by stations owned by large station group owners as compared to smaller station

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that the aural representation of emergency information gets passed through to consumers); *2020 Audio Description Order*, 35 FCC Rcd at 12580, para. 8 (in concluding that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable, stating that “[c]overed broadcasters already are required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size”). As stated above, the Commission’s audio description rules define a video programming provider to include any video programming distributor, and the rules define a video programming distributor to include any Commission-licensed television broadcast station. 47 CFR § 79.3(a)(2), (5). Accordingly, television broadcasters clearly fall within the statutory reference to program providers and distributors. 47 U.S.C. § 613(f)(4)(C)(iv).

²⁶ See 47 CFR § 79.3(b)(3) (requiring network affiliated stations to “pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description”); *2011 Audio Description Order*, 26 FCC Rcd at 11850, para. 4 (noting that the pass-through requirement applies to any network-affiliated broadcast station, “regardless of its market size,” provided that the technical requirements are satisfied); Second Report, 34 FCC Rcd at 9362, para. 27; *2020 Audio Description Order*, 35 FCC Rcd at 12580-81, para. 8 (in concluding that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable, stating that “network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed, which will mitigate any costs associated with the rule expansion”) (footnotes omitted).

²⁷ See 47 CFR § 79.3(d).

²⁸ See 47 U.S.C. § 613(f)(4)(C)(iv) (providing the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year” if it finds that the costs are reasonable for program owners, providers, and distributors).

group owners or single stations.”²⁹ However, commenters did not address these issues in the record at that time. To the extent any such issues are relevant to our proposed extension of the audio description requirements to DMAs 101 through 210, we invite comment.

13. If the Commission determines that the costs of implementing the audio description regulations to program owners, providers, and distributors in DMAs 101 through 210 are “reasonable,” we invite comment on the compliance deadline for the expansion. In 2020, the Commission adopted an audio description phase-in that will conclude with DMAs 91 through 100 on January 1, 2024.³⁰ Accordingly we propose to continue the phase-in with DMAs 101 through 110 on January 1, 2025, extending to 10 additional DMAs per year until the phase-in concludes with DMAs 201 through 210 on January 1, 2035, consistent with the expansion allowable under the CVAA. We invite comment on whether this approach, which provides the smallest DMAs with the longest timeframe for compliance, provides entities with sufficient time for compliance.

14. We seek comment on whether any extension of the rules to additional DMAs should be based on an updated Nielsen determination, consistent with Commission precedent and the CVAA, or whether we should consider other metrics. When the Commission expanded the application of the rules from the top 25 to the top 60 markets beginning on July 1, 2015, it did so based on updated Nielsen DMA ratings as of January 1, 2015.³¹ Similarly, when the Commission again expanded the application of the rules to the top 100 markets beginning January 1, 2021, it did so based on updated Nielsen DMA ratings as of January 1, 2020.³² We propose to now update our audio description rules to base the phased expansion as well as the current requirements on updated Nielsen DMA ratings as of January 1, 2023, and we invite comment on this proposal. We note that television broadcast stations in the top 90 markets are subject to the audio description requirements today. If we utilize updated Nielsen figures, what should be the compliance deadline for stations in a DMA that was not in the top 90 markets as of January 1, 2020, but is within the top 90 markets as of January 1, 2023? In the *2020 Audio Description Order*, we provided that stations in a DMA that was not in the top 60 markets as of January 1, 2015, but was within the top 60 markets as of January 1, 2020, must come into compliance with the audio description rules by the compliance deadline for DMAs 61 through 70.³³ Similarly, should we require here that any such station come into compliance with the audio description rules by the next phased compliance deadline, which will be the January 1, 2024 deadline applicable to DMAs 91 through 100? Should that next phased compliance deadline be based on the updated Nielsen DMA rankings, in addition to any subsequent compliance deadlines that we adopt as a result of this FNPRM? As in 2020, we expect that “using updated Nielsen data will facilitate the efficient roll out of audio description obligations to more television households,”³⁴ and we invite comment on this analysis.

15. If the Commission expands the audio description rules to additional DMAs, we propose that section 79.3(d) of our rules will govern any petitions for exemption due to economic burden.³⁵ The audio description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome.³⁶ Although

²⁹ *2020 Audio Description NPRM*, 35 FCC Rcd at 4298, para. 11; *2020 Audio Description Order*, 35 FCC Rcd at 12581, n.29.

³⁰ 47 CFR § 79.3(b)(1).

³¹ *2011 Audio Description Order*, 26 FCC Rcd at 11856, para. 16.

³² *2020 Audio Description Order*, 35 FCC Rcd at 12583, para. 11; 47 CFR § 79.3(b)(1).

³³ *2020 Audio Description Order*, 35 FCC Rcd at 12583, para. 11.

³⁴ *Id.*

³⁵ 47 CFR § 79.3(d).

³⁶ *See id.* The term “economically burdensome” means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for audio description would be (continued....)

we propose that section 79.3(d) will continue to apply to instances in which an entity seeks to demonstrate that the extension to additional DMAs is economically burdensome, we recognize that the CVAA also provides that if an expansion of the audio description rules to additional DMAs occurs, “the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”³⁷ Section 1.3 of the Commission’s rules governs waivers of the Commission’s rules generally.³⁸ Accordingly, to the extent a broadcaster subject to the extension believes it needs relief due to some reason other than economic burden, we propose that it may seek a waiver under section 1.3. We tentatively conclude that sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the audio description rules to additional DMAs, and we invite comment on this conclusion.³⁹

16. We seek information on whether there is additional information garnered from the practical experience of expanding to DMAs 61 through 100 that may inform our decision on whether to expand our requirements to DMAs 101 through 210.⁴⁰ We also seek comment on whether there are any other issues with respect to our proposal to extend the audio description rules to additional DMAs of which we should be aware.

17. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁴¹ 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 considerations⁴² and

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economically burdensome: (i) the nature and cost of providing audio description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. *Id.* §§ 79.3(d)(2)(i)-(iv). In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the audio description requirements, and it evaluates economic burden with regard to the individual outlet. *Id.* § 79.3(d)(3). In the first audio description report that the Commission submitted to Congress in accordance with the CVAA, the Media Bureau stated its belief “that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015.” *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report to Congress, MB Docket No. 11-43, 29 FCC Rcd 8011, 8033, para. 49 (2014).

³⁷ 47 U.S.C. § 613(f)(4)(C)(iv)(II).

³⁸ 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

³⁹ See *2020 Audio Description Order*, 35 FCC Rcd at 12583-84, para. 12 (adopting the similar tentative conclusion that the Commission made in the context of proposing the extension to DMAs 61 through 100). We note additionally that we have not received any requests for relief under either section 79.3(d) or section 1.3 resulting from the expansion to DMAs 61 through 100.

⁴⁰ *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

⁴¹ 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.

⁴² 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.

IV. PROCEDURAL MATTERS

18. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁴³ 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.”⁴⁴ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this Further Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B.

19. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.⁴⁵ In addition, therefore, it does not contain any proposed 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).

20. *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.⁴⁶ 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.

21. *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*

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Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

⁴³ *See* 5 U.S.C. § 603.

⁴⁴ *See id.* § 605(b).

⁴⁵ If the Commission adopts its proposal to extend the audio description requirements to additional DMAs, it will file a non-substantive modification to the information collection that contains section 79.3 (OMB 3060-1148) to clarify that the audio description requirements have been extended to additional DMAs.

⁴⁶ 47 CFR § 1.1200 *et seq.*

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-19.⁴⁷
- 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.

22. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

23. *Additional Information.* For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

V. ORDERING CLAUSES

24. **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority contained in section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613, this Further Notice of Proposed Rulemaking **IS ADOPTED**.

25. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Further 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

⁴⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

APPENDIX A

Proposed Rules

For ease of review, the proposed rules set forth below show amendments in **bold/underline** (for additions) and ~~strikethrough~~ (for deletions).

The Federal Communications Commission proposes to amend 47 CFR part 79 to read as follows:

PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

2. Amend § 79.3 by revising paragraph (b)(1) to read as follows:

§ 79.3 Audio description of video programming.

* * * * *

(b) * * *

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 960 DMAs, as determined by The Nielsen Company as of January 1, 20230, must provide 50 hours of audio description per calendar quarter, either during prime time or on children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a previously unaffiliated station in one of these markets becomes affiliated with one of these networks, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized. On January 1, 20241, and on January 1 each year thereafter until January 1, 20243, the requirements of this paragraph (b)(1) shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 20230, as follows: ~~On January 1, 2021, the requirements shall extend to DMAs 61 through 70; on January 1, 2022, the requirements shall extend to DMAs 71 through 80; on January 1, 2023, the requirements shall extend to DMAs 81 through 90; and on January 1, 2024, the requirements shall extend to DMAs 91 through 100;~~

* * * * *

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 present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the FNPRM, we propose to expand our support for individuals who are blind or visually impaired and ensure they have nationwide access to video programming by expanding our audio description requirements to additional market areas. Audio description makes video programming more accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”⁴ The Commission’s audio description rules require certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming they distribute to consumers.⁵ In 2011, the Commission required audio description in designated market areas (DMAs) 1 through 60.⁶ In 2020, the Commission expanded the audio description requirements to DMAs 61 through 100 on a phased schedule that will be complete on January 1, 2024.⁷ In that Order, the Commission also committed to determining in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year.⁸

3. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year,” “based upon the findings, conclusions, and recommendations

¹ 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).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ See 47 CFR § 79.3(a)(3). Audio description is typically provided through the use of a secondary audio stream, which allows the consumer to choose whether to hear the narration by switching from the main program audio to the secondary audio.

⁵ See *id.* § 79.3(b).

⁶ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847, 11855-56, para. 16 (2011) (*2011 Audio Description Order*) (“The rules extend the requirement . . . to major network affiliates in the 60 largest markets beginning on July 1, 2015.”).

⁷ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 35 FCC Rcd 12577 (2020) (*2020 Audio Description Order*); 47 CFR § 79.3(b)(1). In the *2020 Audio Description Order*, the Commission also modernized its terminology by replacing the term “video description” with the synonymous term “audio description.” See *2020 Audio Description Order*, 35 FCC Rcd at 12584-86, paras. 14-15.

⁸ *Id.* at 12584, para. 13.

contained in the [Second Report],” “(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”⁹ Consistent with the CVAA, we propose to phase in an additional 10 DMAs each year until audio description is available in all such market areas. There are currently 210 DMAs. The proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

B. Legal Basis

4. The authority for the action proposed in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² 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.¹³ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”¹⁴ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁵ 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.¹⁶ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

⁹ Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv).

¹⁰ 5 U.S.C. § 603(b)(3).

¹¹ *Id.* § 601(6).

¹² *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).

¹³ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹⁴ See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹⁵ *Id.*

¹⁶ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.¹⁷ Of that number, 657 firms had revenue of less than \$25,000,000.¹⁸ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

7. As of December 31, 2022, there were 1,375 licensed commercial television stations.¹⁹ Of this total, 1,282 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Media Access Pro Online Television Database (MAPro) on January 13, 2023,²⁰ and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2022, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,912 LPTV stations and 3,122 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.

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²² 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.²³ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁴ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁵

¹⁷ 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>.

¹⁸ *Id.* The 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.

¹⁹ *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022) (*December 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>.

²⁰ BIA Advisory Services, BIAKelsey Media Access Pro Online Television Database, <http://www.biakelsey.com/data-platforms/media-access-pro> (last visited on Jan. 13, 2023).

²¹ *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022) (*December 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>.

²² See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²³ *Id.*

²⁴ *Id.*

²⁵ 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.

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁷ Of this number, 2,964 firms operated with fewer than 250 employees.²⁸ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.²⁹ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.³⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *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.³¹ 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.³² The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.³³ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.³⁴ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.³⁵ 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.³⁶ Based on this data, the Commission estimates that a majority of firms in this industry are small.

11. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its

²⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁷ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&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.

²⁹ 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>.

³⁰ *Id.*

³¹ 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>.

³² *Id.*

³³ *Id.*

³⁴ See 13 CFR § 121.201, NAICS Code 515210.

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 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).

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 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.

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.³⁷ Based on industry data, there are about 420 cable companies in the U.S.³⁸ Of these, only seven have more than 400,000 subscribers.³⁹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁴⁰ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.⁴¹ Of these, about 639 have more than 15,000 subscribers.⁴² Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

12. *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."⁴³ 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.⁴⁴ Based on industry data, only six cable system operators have more than 677,000 subscribers.⁴⁵ 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.⁴⁶ 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.

13. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed

³⁷ 47 CFR § 76.901(d).

³⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

³⁹ 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).

⁴⁰ 47 CFR § 76.901(c).

⁴¹ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

⁴² S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

⁴³ 47 U.S.C. § 543(m)(2).

⁴⁴ *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).

⁴⁵ 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).

⁴⁶ 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).

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.⁴⁷ Transmission facilities may be based on a single technology or combination of technologies.⁴⁸ 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.⁴⁹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁵⁰

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵¹ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.⁵² Of this number, 2,964 firms operated with fewer than 250 employees.⁵³ 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.⁵⁴ 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 for Small Entities

15. The FNPRM proposes certain new or revised reporting, recordkeeping, or other compliance requirements that would be applicable to small entities. Specifically, it proposes phasing in the existing audio description requirements for an additional 10 DMAs each year, beginning with DMAs 101 through 110 on January 1, 2025 and continuing until all 210 DMAs are covered, which will be on January 1, 2035. The substance of the audio description requirements would not change, but rather, this would be an expansion of the DMAs in which broadcast television stations are required to comply with the requirements. In determining the deadline applicable to each DMA, the FNPRM proposes that the Commission should base the extension on an updated Nielsen determination. Finally, if the Commission

⁴⁷ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁸ *Id.*

⁴⁹ 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).

⁵⁰ *Id.*

⁵¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵² 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=EC1700SIZEEMPFI&hidePreview=false>.

⁵³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁴ 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).

expands the audio description requirements to additional DMAs, the FNPRM proposes that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden, and the FNPRM also states that section 1.3 of the Commission's rules governs waivers of the Commission's rules generally. In section E below we describe steps taken to minimize the impact on small entities.

16. The Commission is not in a position to determine whether, if adopted, phasing in the existing audio description requirements for an additional 10 DMAs each year until all 210 DMAs are covered 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. To help the Commission more fully evaluate the cost of compliance, in the FNPRM we seek comment on any other issues relevant to our analysis of the costs, "including information on the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates; whether there are any network affiliates in any DMA that do not receive programming via a network feed; whether network affiliated stations in markets [101] through [210] would be able to satisfy the audio description requirements entirely by using the programming they receive via a network feed; and whether there are differing costs incurred by stations owned by large station group owners as compared to smaller station group owners or single stations."⁵⁵ Comments should be accompanied by specific data and analysis supporting claimed costs and benefits. In addition, we seek comment on whether there is any additional information garnered from the practical experience of expanding to DMAs 61 through 100 that may inform our decision, and on any other issues related to phasing in the existing audio description requirements for additional DMAs. We expect the comments that we receive from the parties in the proceeding, including cost and benefit analyses, to help the Commission identify and evaluate compliance costs and burdens for small entities that may result from the matters discussed in the FNPRM.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."⁵⁶

18. The FNPRM proposes rules intended to expand consumer access to audio-described programming. When the Commission expanded the audio description requirements to DMAs 61 through 100, it indicated that the Commission would consider in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year, after assessing the reasonableness of the associated costs.⁵⁷ Thus, the FNPRM focuses on engaging in a cost-benefit analysis to determine the effects the expansion would have. It invites comment on whether the costs of implementing the audio description regulations in markets 101 through 210 are reasonable. The FNPRM explains that we anticipate any cost would be minimized because covered broadcasters are already required to have the equipment and infrastructure needed to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size. In addition, it states that we anticipate that any cost would be further minimized because network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed, provided the station has the necessary technical capability and is not using the technology used to provide audio

⁵⁵ See *2020 Audio Description Order*, 35 FCC Rcd at 12581, n.29.

⁵⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

⁵⁷ *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

description for another purpose related to the programming that would conflict with providing the audio description. The FNPRM states that even in the smallest DMAs, the Commission believes that the proposal will provide significant benefits to consumers who are blind or visually impaired. Comments on the FNPRM will help us evaluate the benefits and costs of the proposed expansion and whether the costs would be reasonable.

19. Additionally, the Commission has made proposals that would minimize the impact of the rules on small entities. First, by proposing to continue the phase-in by extending the requirements to an additional 10 DMAs per year, the Commission will ensure that the smallest DMAs have the longest timeframe for compliance. As an alternative to expanding the audio description requirements to all DMAs 101 through 210, the FNPRM also asks if the Commission should phase in a smaller subset of DMAs, and if the Commission should consider expanding to a smaller number of DMAs each year, such as five, both of which could mitigate the costs of the expansion. Second, by discussing application of exemption and waiver procedures, the Commission ensure that there will be a means of relief for all entities, including smaller entities. Specifically, the FNPRM proposes that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden. The audio description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome. The FNPRM also states that section 1.3 of the Commission's rules governs waivers of the Commission's rules generally. Small entities will be able to seek relief from the proposed expansion in appropriate situations in accordance with sections 79.3(d) and 1.3, just as they are able to under the current audio description requirements. The FNPRM tentatively concludes that sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the audio description rules to additional DMAs, and it invites comment on this conclusion.

20. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the FNPRM. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

21. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Further Notice of Proposed Rulemaking (March 16, 2023)

So many shows, so little time. That is what it feels like for most of us turning on the television today. But if you are one of the millions of people in this country with vision loss, what you can watch depends on the availability of audio description. This is a technology that inserts narrated descriptions of the key visual elements of a television program during the natural pauses in dialogue. It helps those who are blind or visually impaired follow along so that they do not miss facial expressions, physical gags, or key scene changes.

It was more than a decade ago that Congress made audio description generally available when it passed the Twenty-First Century Communications and Video Accessibility Act. It's a law I know well because I worked on it as counsel to the United States Senate Committee on Commerce, Science and Transportation. When it was passed, it required that the Commission make audio description available on programming in the largest 60 television markets across the country. A little over two years ago, the Commission expanded this requirement to roll it out to the largest 100 television markets. Today we propose to finish the job by reaching all 210 markets in the United States. In other words, we want to deliver to everyone, everywhere on the promise of this law—so let's get to it. After all, there is a lot of programming out there to watch.

Thank you to the staff who worked on this effort, including Hillary DeNigro, Maria Mullarkey, and Diana Sokolow from the Media Bureau; Diane Burstein, Will Schell, Suzy Singleton, and Ross Slutsky from the Consumer and Governmental Affairs Bureau; and Susan Aaron, Dave Konczal, and Bill Richardson from the Office of General Counsel.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Further Notice of Proposed Rulemaking (March 16, 2023)

I frequently speak about the importance of ensuring that all Americans have access to communications technology. Universal service is the cornerstone of the law that established the FCC, the Communications Act of 1934, and that principle – understood broadly – underlies many of our actions to this day. From administering and conducting outreach for the Affordable Connectivity Program, to regulating and funding telecommunications relay services, to expanding and enforcing closed captioning and audio description requirements – all of these efforts are motivated by that long-term, animating principle.

So it's only appropriate that today we make a long-term commitment to bringing the benefit of audio description to all Americans who are blind or visually impaired, wherever they live. This technology makes video accessible by inserting narrative descriptions of key visual elements into television programming, so that everyone can appreciate moments like costuming choices, facial expressions, and visual gags. We've seen – and reported to Congress on – audio description's benefits in the largest markets. Today, consistent with our prior actions and as contemplated by the Twenty-First Century Communications and Video Accessibility Act, or CVAA, we propose to bring those benefits to all 210 DMAs – the entire country – on a phased approach. Or to put it another way, we propose to make the service of audio description universal.

My thanks to the staff of the Media Bureau for their ongoing oversight of the reinstatement and expansion of the audio description requirements under the CVAA over the last decade plus, and for their good work on this item. It has my strong support.

**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	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 16, 2023

Released: March 17, 2023

Comment Date (30 days after date of publication in the Federal Register)

Reply Comment Date (60 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	6
III. REPORT AND ORDER	13
A. Mandatory Blocking of Texts that are Highly Likely to be Illegal	16
B. Point of Contact	27
C. Other Proposals	32
D. Legal Authority	38
E. Cost-Benefit Analysis	43
IV. FURTHER NOTICE OF PROPOSED RULEMAKING	48
A. Block Texts Upon Commission Notification	50
B. Text Message Authentication and Spoofing	54
C. Clarifying Do-Not-Call Protections for Text Messages	55
D. Closing the Lead Generator Loophole	58
E. Digital Equity and Inclusion	63
F. Legal Authority	64
V. PROCEDURAL MATTERS	66
VI. ORDERING CLAUSES	76
APPENDIX A—FINAL RULES	
APPENDIX B—LIST OF COMMENTERS	
APPENDIX C—PROPOSED RULES	
APPENDIX D—FINAL REGULATORY FLEXIBILITY ANALYSIS	
APPENDIX E—INITIAL REGULATORY FLEXIBILITY ANALYSIS	

I. INTRODUCTION

1. Text messaging is among our most popular forms of communication, quickly connecting people to friends and family, businesses to customers, and governments to constituents. However, with that popularity comes unique risks. On many devices, consumers can immediately see some or all of these messages, potentially piquing their interest and enticing them to open the message. Data shows consumers read nearly all texts, and do so nearly immediately; whereas calls from unknown callers are often ignored by consumers. While some text messages may present similar problems as unwanted calls—they invade consumer privacy and are vehicles for consumer fraud and identity theft¹—they also present harms beyond robocalls that can exacerbate the problem of such scams. Text message-based scams can include links to well-designed phishing websites that appear identical to the website of a legitimate company and can fool a victim into providing personal or financial information. Texted links can also load unwanted software onto a device, including malware that steals passwords, credentials, or other personal information. We are therefore, for the first time, requiring all mobile wireless providers to block certain text messages that are highly likely to be illegal, so that all subscribers have a basic level of protection.² This action will help to ensure that all wireless consumers receive the same protections, regardless of which mobile wireless provider they use to receive SMS and MMS messages.

2. Mobile wireless providers and others have taken steps to protect consumers from potentially harmful text messages; nevertheless, unlawful text messaging is trending in the wrong direction. One source, for example, reports that consumer losses from scam texts were \$231 million for the first three quarters of 2022, up from \$86 million for all of 2020. The time is therefore right for us to take steps to protect consumers.

3. In this Report and Order, we take Commission action to require mobile wireless providers to block certain robotext messages³ that are highly likely to be illegal.⁴ Building on our call blocking work, we require mobile wireless providers to block—at the network level—texts purporting to be from North American Numbering Plan (NANP)⁵ numbers on a reasonable Do-Not-Originate (DNO)⁶

¹ The scope of our decision here is text messaging originating from NANP numbers that use the wireless networks, e.g., Short Message Service (SMS) and Multimedia Messaging Service (MMS), not over-the-top (OTT) messaging, such as iMessage and WhatsApp or Rich Communications Services (RCS). See 47 CFR § 64.1600(o) *et seq.*

² Commenters share this goal of protecting consumers from illegal text messages. NCLC/EPIC Joint Reply at 1.

³ Texting (SMS and MMS) is not a common-carrier service. *Petitions for Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, WT Docket No. 08-7, Declaratory Ruling, 33 FCC Rcd 12075, 12082-12089, paras. 17-32 (2018) (*Messaging Declaratory Ruling*), *recon. pending*, [Rept. No. 3011](#) (Feb. 5, 2019). SMS and MMS wireless messaging services are not the functional equivalent of commercial mobile services (CMRS). *Messaging Declaratory Ruling*, 33 FCC Rcd at 12093, para. 37.

⁴ *Targeting and Eliminating Unlawful Text Messages*, CG Docket No. 21-402, Notice of Proposed Rulemaking, FCC 22-72, 2022 WL 4545905 (2022) (*NPRM*). The list of comments, replies, and *ex parte* filings is in Appendix B. We use “robotexts” to include text messages that may be legal or illegal. Some robotext messages are both legal and wanted, just as some robocalls are legal and wanted. Text messages may be illegal because they violate the Telephone Consumer Protection Act, such as by being made with an autodialer and being sent without the necessary consent, because the number displayed is illegally spoofed, which violates the Truth in Caller ID Act, or for other reasons, particularly if they are fraudulent.

⁵ The “North American Numbering Plan” is the basic numbering scheme for the telecommunications networks located in American Samoa, 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, the Commonwealth of the Northern Mariana Islands). 47 CFR § 52.5(d).

⁶ The Commission explained in the 2017 *Call Blocking Report and Order* that calls from a DNO list, i.e., purporting to be from a telephone number that the subscriber did not consent to being used for outgoing calls, are very likely fraudulent and in violation of the Commission’s anti-spoofing rule, and therefore, no reasonable consumer would

(continued....)

list, which include 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. At the same time, we take steps to ensure that any erroneous blocking can be quickly remedied by requiring providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

4. We also propose a set of additional protections that could further stem the tide of illegal text messages. We propose to require terminating providers to block texts from a sender after they are on notice from the Commission that the sender is sending illegal texts, to extend the National Do-Not-Call Registry's protections to text messages, and to ban the practice of marketers purporting to have written consent for numerous parties to contact a consumer, based on one consent.

5. We anticipate that the rules we adopt here will result in fewer illegal text messages to consumers.

II. BACKGROUND

6. *The Illegal Text Problem.* Illegal robocall messages present the same problems as illegal robocalls—beyond nuisance, they invade a consumer's privacy and are vehicles for fraud.⁷ Commission data show that consumers are receiving increasing numbers of these types of text messages.⁸ The Commission's Consumer Advisory Committee (CAC)⁹ recently reported that bad actors use a variety of tactics to commit fraud using text messages.¹⁰ According to CTIA, between 2015 and 2020, while the total volume of text messages roughly doubled, the number of spam text messages that wireless providers blocked grew ten times, from an estimated 1.4 billion in 2015 to 14 billion in 2020.¹¹ The App Association observes that automated text messages have jumped nationally from 1 billion in July 2021 to 12 billion in June 2022.¹² This commenter also observes that illegal texts impose significant harm to

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wish to receive such a call. *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, WC Docket No. 17-97, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9710, para. 10 (2017) (*2017 Call Blocking Report and Order*). The rules we adopt in this Report and Order define the group of numbers that shall be on a "reasonable DNO list." *See infra* para. 13. We do not require mobile wireless providers to use the same reasonable DNO list for purposes of our text message blocking rules as they use for purposes of our call blocking rules. "Reasonable" for these purposes is determined in the context of text messaging only. However, a list so limited in scope that it leaves out obvious numbers that could be included with little effort may be deemed unreasonable.

⁷ For more information on how to avoid or report unwanted calls and texts, *see* FCC, Consumer Guides, *Stop Unwanted Robocalls and Texts*, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Dec. 19, 2022); Federal Trade Commission, Consumer Advice, *How to Recognize and Report Spam Text Messages*, <https://consumer.ftc.gov/articles/how-recognize-and-report-spam-text-messages> (last visited Feb. 2, 2023).

⁸ Since 2015, the Commission has seen a more than 500% increase in unwanted text complaints, from approximately 3,300 in 2015 to 18,900 in 2022.

⁹ The CAC is a committee that makes recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and facilitates the participation of all consumers in proceedings before the Commission. FCC, Consumer Advisory Committee, *About CAC*, <https://www.fcc.gov/consumer-advisory-committee> (last visited Jan. 18, 2023).

¹⁰ FCC, Consumer Advisory Committee, Report on the State of Text Messaging at 11-12 (2022) (CAC Report).

¹¹ CTIA Comments at 2.

¹² The App Association Reply at 2, citing Daisy Gonzalez-Perez, *Rise of the robotexts: As new rules curbed spam calls, texts took off*, Cronkite News, (July 21, 2022), <https://cronkitenews.azpbs.org/2022/07/21/rise-of-the-robotexts-as-new-rules-curbed-spam-calls-texts-took-off>.

consumers, particularly for aging Americans struggling with digital literacy.¹³ Robokiller reports 47.2 billion spam texts were sent in November 2022 alone.¹⁴ Consumer comments filed in this proceeding also describe personal experiences with unwanted and scam texts.¹⁵ And consumer groups note that, according to the Federal Trade Commission (FTC), consumers have reported greater losses, at \$231 million, from text message scams in the first three quarters of 2022 than in all of 2020 and 2021 combined.¹⁶ Robokiller projects a 179% increase in the dollars lost from text messages between 2021 and 2022.¹⁷

7. In their schemes, text scammers exploit emergencies such as the COVID-19 pandemic and natural disasters, along with other important topics that grab consumers' attention such as student loans and unemployment insurance.¹⁸ Illegal texts can include links to phishing¹⁹ websites that appear to be the website of a legitimate company and deceive the victim into providing personal or financial information.²⁰ Reports indicate that "smishing" fraud increased by 700% last year.²¹ The potential harm

¹³ The App Association Reply at 2.

¹⁴ See Robokiller, United States Spam Text Trends, 2022 United States Robotext Trends, <https://www.robokiller.com/spam-text-insights> (last visited Dec. 19, 2022).

¹⁵ See, e.g., Omoigui Express Comment (receiving scam text messages from unknown numbers with "Hi" or with a link, claiming to be a company like Amazon or CVS reaching out with a gift card); Anna K. Comment at 1; Boyd Express Comment; Hillenburg Comment at 1; Schmidt Comment at 1 ("I am in support of the proposed rule. I am tired of receiving weird, questionable, and risky texts.").

¹⁶ NCLC/EPIC Joint Reply at 5, citing FTC, Consumer Sentinel Network, *Fraud Reports*, <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts> (adding the first three quarters of 2022, totaling \$231M; the total for 2021 was \$131M, and for 2020 was \$86M) (last visited Feb. 2, 2023).

¹⁷ NCLC/EPIC Joint Reply at 5, citing Robokiller, The Robokiller Report, *2022 Mid-Year Phone Scam Insights*, <https://www.robokiller.com/the-robokiller-report> (last visited Feb. 2, 2023).

¹⁸ See, e.g., FCC, *COVID-19 Text Scams*, <https://www.fcc.gov/covid-19-text-scams> (last visited Sept. 26, 2022); FCC, *Fear Fuels COVID-19 Contact Tracing Scams*, <https://www.fcc.gov/fear-fuels-covid-19-contact-tracing-scams> (last visited Dec. 21, 2022); FCC, Consumer Alert, *Scam Robotexts are a Rising Threat*, (Jul. 28, 2022), <https://www.fcc.gov/robotext-scams-rise>; FCC, Consumer Guides, *Stop Unwanted Robocalls and Texts*, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Dec. 19, 2022); Federal Trade Commission, Consumer Advice, *How to Recognize and Report Spam Text Messages*, <https://consumer.ftc.gov/articles/how-recognize-and-report-spam-text-messages> (last visited Feb. 2, 2023); Department of Justice, Federal Bureau of Investigations, Cyber Division, *Cyber Criminals Create Fraudulent Cryptocurrency Investment Applications to Defraud US Investors*, (Jul. 18, 2022), <https://www.ic3.gov/Media/News/2022/220718.pdf>; Internal Revenue Service, News Releases, *IRS Reports Significant Increase in Texting Scams; Warns Taxpayers to Remain Vigilant*, (Sept. 28, 2022), <https://www.irs.gov/newsroom/irs-reports-significant-increase-in-texting-scams-warns-taxpayers-to-remain-vigilant>; NBC News, Kevin Collier, *Odd Text from a Wrong Number? It's Probably a Scam*, (Jul. 29, 2022), <https://www.nbcnews.com/tech/security/wrong-number-text-scam-rcna39793>; WMC Global Comments at 4 (Millions of consumers are receiving links to phishing websites and phishing messages purportedly from their state's workforce agency in an extensive and far-reaching campaign targeting U.S. consumers.).

¹⁹ WMC Global Comments at 2 (The most significant cyber threats to mobile users revolve around compromising their personal information, often through brand impersonation or phishing. SMS phishing—commonly referred to as "smishing"—is an extremely effective method and scammers are learning just how simple and profitable it is.). "Smishing" is a term that combines SMS and phishing. Scammers use smishing to target consumers with deceptive text messages sent to their smart devices. FCC, *Avoid the Temptation of Smishing Scams*, <https://www.fcc.gov/avoid-temptation-smishing-scams> (last visited Feb. 8, 2023).

²⁰ See, e.g., Federal Trade Commission, Consumer Advice, *How to Recognize and Avoid Phishing Scams*, <https://consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams> (last visited Dec. 21, 2022); AT&T, *Cyber Aware, Text Message Scams*, https://about.att.com/pages/cyberaware/ni/blog/text_scams (last visited Dec. 21, 2022); Verizon, *Smishing and Spam Text Messages*, <https://www.verizon.com/about/account-security/smishing-and-> (continued....)

from illegal texts is more than just economic in nature; fraudulent, misleading texts can also erode trust in our country's political and campaign infrastructure.²² Scam links can load malware onto phones that steals passwords and other credentials.²³ WMC Global explains that account takeover is one of the most prevalent methods used to deliver phishing attacks to consumers.²⁴ In perpetrating these attacks, a scammer can use a stolen application programming interface (API) key assigned to a legitimate business to send SMS phishing messages to victims.²⁵

8. *Commission Action on Call Blocking.* The Commission has adopted call blocking²⁶ rules to address illegal and unwanted robocalls. Since 2017, the Commission has authorized voice service providers to block certain calls without consumers' consent.²⁷ In 2017, the Commission authorized voice service providers to block, at the network level, calls purporting to be from invalid, unallocated, or unused NANP numbers, and numbers on a DNO list.²⁸ In 2019, it clarified that voice service providers may offer call blocking services on an opt-out basis to new and existing customers, and that such services may block calls where the blocking is based on reasonable analytics designed to identify unwanted calls.²⁹ In the *Call Blocking Third Report and Order*, the Commission enabled additional voice service provider blocking, establishing two safe harbors from liability under the Communications Act and the Commission's rules for erroneous call blocking.³⁰ Subsequently, the Commission expanded one of those safe harbors, allowing terminating voice service providers to block calls at the network level, without consumer consent, if that blocking is based on reasonable analytics that incorporate caller ID authentication information designed to identify calls and call patterns that are highly likely to be illegal.³¹

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[spam-text-messages](#) (last visited Dec. 21, 2022). See WMC Global Comments at 2 (During the COVID-19 pandemic, scammers began leveraging phishing kits, i.e., back-end source code packages used to launch phishing attacks, to defraud both U.S. citizens and government agencies out of unemployment payments.)

²¹ Infobip Reply at 2-3, citing Weston Sabina. "Smishing attacks increased 700% in first six months of 2021," ITPro, (Sept. 14, 2021), <https://www.itpro.co.uk/security/scams/360873/smishing-attacks-increase-700-percent-2021>.

²² Campaign Verify Comments at 3.

²³ Public Knowledge Reply at 2.

²⁴ WMC Global Comments at 3.

²⁵ *Id.* The API keys are typically stolen through data breaches, business email compromise, and insider threats. *Id.*

²⁶ Call blocking is "stopping calls outright so that they do not ring a phone, routing the calls directly to voicemail without ringing the phone, or some other treatment, such as interactive voice response session or voice call screening." *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4884 n.47 (2019) (*2019 Call Blocking Declaratory Ruling*).

²⁷ *2017 Call Blocking Report and Order*, 32 FCC Rcd at 9710-21, paras. 10-40; *2019 Call Blocking Declaratory Ruling*, 34 FCC Rcd at 4886-88, paras. 33-34; 47 CFR § 64.1200(k)(1), (2).

²⁸ *2017 Call Blocking Report and Order*, 32 FCC Rcd at 9710-21, paras. 10-40. Phone numbers that are only used by their subscribers to receive inbound calls can be placed on a DNO list. *Id.* at 9710, para. 10.

²⁹ *2019 Call Blocking Declaratory Ruling*, 34 FCC Rcd at 4886-88, paras. 33-34.

³⁰ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7623-31, paras. 20-45 (2020) (*Call Blocking Third Report and Order*). The first of these safe harbors protects terminating voice service providers that block calls based on reasonable analytics, including caller ID authentication information, designed to identify unwanted calls so long as the consumer is given the opportunity to opt out. *Id.* at 7625-27, paras. 25-34. The second safe harbor protects any voice service provider that blocks calls from a bad-actor upstream voice service provider that fails to effectively mitigate illegal traffic when notified of such traffic by the Commission. *Id.* at 7627-31, paras. 35-45.

The *Call Blocking Fourth Report and Order* also required voice service providers to take steps to stop illegal traffic on their networks and assist the Commission, law enforcement, and the industry traceback consortium³² in tracking down callers that make such calls.³³

9. The Commission expanded these rules further last year in the *Gateway Provider Order*, making its previously permissive blocking policy mandatory in certain circumstances.³⁴ That Order, among other things, required gateway providers to block calls based on any reasonable DNO list, block illegal traffic upon Commission notification, respond to traceback requests within 24 hours, and adopted a know-your-upstream-provider policy for gateway providers.³⁵

10. *The TCPA and Do-Not-Call.* In addition to the rules described above, the Commission has other protections for consumers, specifically in the Telephone Consumer Protection Act (TCPA)³⁶ and the Do Not Call (DNC) rules. For example, certain calls and texts sent using an automatic telephone dialing system and calls made using a prerecorded or artificial voice to mobile telephone numbers require consumer consent.³⁷ In 2015, the Commission also clarified that Internet-to-phone text messages, which are sent via the Internet to a mobile wireless provider and then routed to a consumer's phone over the provider's wireless network, are also covered by the TCPA's protections.³⁸

11. The Commission's DNC rules also protect consumers from unwanted telephone solicitations or telemarketing calls to wireless and wireline phones when the consumer has added their

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³¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221, 15236, at para. 42 (2020) (*Call Blocking Fourth Report and Order*). The Commission made clear that this blocking must be managed “with human oversight and network monitoring sufficient to ensure that the blocking works as intended,” which “must include a process that reasonably determines that the particular call pattern is highly likely to be illegal prior to blocking calls that are part of that pattern.” *Id.* at 15234-5, 15236, paras. 39, 42-43.

³² The current industry traceback consortium is the Industry Traceback Group (ITG), which is a group of voice service providers, wireline, wireless, and VoIP, that are tracing and identifying the source of illegal robocalls. See ITG, <https://tracebacks.org> (last visited Dec. 21, 2022).

³³ *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15226-27, para 13. See 47 CFR § 64.1200(n)(2). In our Further Notice of Proposed Rulemaking we are seeking comment on extending to text messages the existing requirement that voice service providers take steps to effectively mitigate illegal traffic when a voice service provider receives actual written notice of such traffic from the Commission.

³⁴ *Advanced Methods to Target and Eliminate Illegal Robocalls*, 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, 2022 WL 1631842 at paras. 74-86, FCC 22-31 (rel. May 20, 2022) (*Gateway Provider Report and Order*).

³⁵ See 47 CFR §§ 64.1200 (k)(5), (k)(6), (n)(1), (f)(19), (n)(4), (n)(5), (n)(6), (o), (p).

³⁶ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (*2003 TCPA Order*). The DNC rules apply to calls to wireline and wireless phones. *Id.* at 14115-16, paras. 165-66.

³⁷ 47 U.S.C. § 227(b)(1)(A). 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, 1171 (2021) (*Facebook*). The Commission made clear in 2003 that “calls” include text messages to wireless numbers including, for example, SMS calls, provided the call is made to a telephone number assigned to such service. *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165.

³⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, 30 FCC Rcd 7961, 8019-20, para. 113-15 (2015) (*2015 TCPA Declaratory Ruling and Order*).

wireline or wireless number to the National DNC Registry.³⁹ DNC rules state that telemarketers, subject to certain exceptions,⁴⁰ are prohibited from initiating any telephone solicitation to “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations”;⁴¹ this rule also applies to wireless telephone numbers.⁴² Yet, while the Commission included both wireless and wireline numbers in the DNC protections, it has not explicitly included text messages in the DNC rules.⁴³

12. *Text Blocking Notice of Proposed Rulemaking.* In the *NPRM*, we proposed to protect consumers from the increasing numbers of illegal text messages by extending to text messages some of the consumer protections that have been successful against illegal voice calls.⁴⁴ We proposed to adopt a rule requiring mandatory blocking of texts that purport to be from numbers on a reasonable DNO list. We also sought comment on whether to adopt a requirement that mobile service providers maintain a single point of contact for senders to report erroneously blocked texts. We also sought comment on the extent to which spoofing⁴⁵ is a problem with regard to text messaging and on applying caller ID authentication standards to text messaging.⁴⁶

III. REPORT AND ORDER

13. In this Report and Order, we for the first time require mobile wireless providers⁴⁷ to take action to protect consumers from certain text messages that are highly likely to be illegal. We require these mobile wireless providers to block texts that purport to be from NANP numbers on a reasonable DNO list, which include 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; these are texts that no reasonable consumer would wish to receive because they are highly likely to be illegal. At the same time, and also consistent with our work on call blocking, we take steps to mitigate the risk of erroneous blocking by requiring mobile wireless providers to ensure that senders have access to points of contact to report erroneously blocked texts.

³⁹ 2003 *TCPA Order*, 18 FCC Rcd at 14115-16, paras. 165-66.

⁴⁰ *Id.* at 14042-46, paras. 42-47; 47 CFR § 64.1200(f)(15)(i)-(iii) (exempting certain types of calls from the definition of “telephone solicitation”). Telemarketers may claim a safe harbor by demonstrating that any violation was the result of an error. 2003 *TCPA Order*, 18 FCC Rcd at 14040, para. 38; 47 CFR § 64.1200(c)(2)(i)-(iii).

⁴¹ 47 CFR § 64.1200(c)(2). *See also* 2003 *TCPA Order*, 18 FCC Rcd at 14034, para. 28.

⁴² 47 CFR § 64.1200(e).

⁴³ The Commission has previously concluded that SMS and MMS text messaging is an information service and not a common-carrier service. *See Messaging Declaratory Ruling*, 33 FCC Rcd at 12082-12089, paras. 17-32, *recon. pending*, [Rept. No. 3011](#) (Feb. 5, 2019).

⁴⁴ *NPRM* at para. 18.

⁴⁵ Spoofing is falsifying the caller ID information that appears on the called party’s phone with the intent to defraud, cause harm, or wrongfully obtain something of value. 47 U.S.C. § 227(e).

⁴⁶ We are not adopting a caller ID authentication requirement here. Commenters generally opposed this and explained that illegal and unwanted messages rarely come from spoofed numbers and a caller ID authentication solution, even if feasible, would be unlikely to reduce unwanted and illegal text messages. *See, e.g.*, CTIA Comments at 4-5, 11; EZ Texting Comments at 5-6; M³AAWG Comments at 10; NetNumber Comments at 7 & Reply at 2-3; Sinch Comments at 6-7; Telesign Comments at 2-3; T-Mobile Comments at 9-10; Verizon Comments at 7 & Reply at 4-5; WMC Global Comments at 2; AT&T Reply at 9-10; Cloud Communications Reply at 1-2; RWA Reply at 3-5; Vibes Reply at 2-4.

⁴⁷ The rules we adopt in this Order are limited to SMS and MMS text messaging; therefore, for purposes of this Order, the service providers offering SMS and MMS text messaging are “mobile wireless providers.”

14. We recognize at the outset the efforts providers and others have made in protecting consumers from illegal, or otherwise harmful, texts.⁴⁸ As commenters have discussed, providers and others have adopted measures to protect consumers from such text messages, such as upfront vetting for bulk message senders, the CTIA Messaging Principles and Best Practices, and providers' own requirements and guidance.⁴⁹ We believe that our actions and proposals today complement those efforts while ensuring customers of all providers get a baseline of protection. While we believe industry efforts to date are important to protect consumers, the increases in consumer complaints and consumer harm from robocall messages convinces us to take additional measures to protect consumers. As some commenters note, robocalls will likely increase as scammers migrate from calling to texting.⁵⁰ We agree with industry commenters that say fostering information and collaboration is an important part of the effort. But, in light of increased scams robbing consumers of their money and time, we disagree that we should wait to take targeted action.

15. We choose to act now and, for the first time, require text blocking by all mobile wireless providers so that all subscribers have the same basic level of protection.⁵¹ As the number of illegal text messages grows, so does the risk to consumers. Our action ensures protection for all wireless consumers, regardless of which mobile wireless provider they use to receive messages. We therefore disagree with CTIA, that we could undermine current efforts by mobile wireless providers to protect consumers from scam texts because there is a risk that some providers will "divert resources away from innovative solutions that can more accurately and effectively target spam text messages."⁵² Given the limited nature of the rules we adopt and the unchallenged record data that consumers are increasingly harmed by text scams, we are not persuaded that mobile wireless providers would divert significant resources from other anti-spam initiatives and that they are not needed at this time. Nor does anything in the rules we adopt here prevent mobile wireless providers from engaging in existing or future anti-spam efforts or require them to block messages from short codes or OTT applications.⁵³

A. Mandatory Blocking of Texts that are Highly Likely to be Illegal

16. We adopt our proposal to require mobile wireless providers to block text messages at the network level (i.e., without requiring consumer opt in or opt out). The rule we adopt requires that they block texts purporting to be from numbers on a reasonable DNO list.⁵⁴ As the Commission determined

⁴⁸ See, e.g. CTIA Comments at 8-9; INCOMPAS Comments at 6; T-Mobile Comments at 6; VON Comments at 3; AT&T Reply at 5; NCLC/EPIC Joint Reply at 5.

⁴⁹ See, e.g., CTIA Comments at 9; Sinch Comments at 3; T-Mobile Comments at 4-7; Verizon Comments at 2; AT&T Reply at 3-6.

⁵⁰ NORC Reply at 1.

⁵¹ Commenters share this goal of protecting consumers from illegal text messages. See, e.g., AB Handshake Comments at 1; Campaign Verify Comments at 3; CCA Comments at 4; CTIA Comments at 2-3; T-Mobile Comments at 10-11; Verizon Comments at 2; VON Comments at 2; AT&T Reply at 5-6; NCLC/EPIC Joint Reply at 1; Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 12, 2023) at 1 (CTIA 3/12/23 *ex parte*); Letter from Christopher L. Shipley, INCOMPAS; David Casem, Telnyx; Paula Boyd, Microsoft; Helen Marie Berg, Google, Michael Pryor, Cloud Communications Alliance; Greg Rogers, Bandwidth to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 10, 2023) at 1 (INCOMPAS Joint *ex parte*).

⁵² CTIA Comments at 13-14.

⁵³ See *id.* (expressing concerns about blocking of legitimate text messages).

⁵⁴ *NPRM* at para. 19. The text messaging services discussed in this proceeding are information services that route messages through the wireless mobile provider networks. *Messaging Declaratory Ruling*, 33 FCC Rcd at 12078, para. 8. In the *NPRM*, we observed that the definition of text message includes SMS messages but "does not include . . . a message sent over an IP-enabled messaging service to another user of the same messaging service." *NPRM* at para. 23. Commenters generally agree that OTT messaging is not covered by our current definition of text

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with calls, we find that no reasonable consumer would wish to receive text messages that spoof a number that is not in operation or, worse, purports to be from a well-known, trusted organization that does not send text messages and thus is highly likely to be a scam. Our requirement to block texts that purport to be from numbers on a reasonable DNO list does not include text messages from short codes.

17. We find it appropriate to adopt a mandatory rule here for blocking texts that purport to be from numbers on a reasonable DNO list for several reasons: (i) the texts from such numbers are likely to be illegal; (ii) illegal text messages can have links to malware, a problem that voice calls do not have; (iii) the volume of illegal text messages is increasing, particularly since we adopted measures to block such voice calls; (iv) consumers expect to receive texts from unfamiliar numbers, e.g., as appointment reminders and for double factor authentication, and therefore are more likely to open such messages even when they do not recognize the sending party; and (v) our approach provides benefits to consumers while imposing minimal burden on mobile wireless providers.

18. Our decision to require blocking here, rather than simply rely on industry's voluntary efforts to block, as we have done in the past with certain call blocking, is in part the result of the heightened risk of text messages as both annoyance and vehicles for fraud. The ubiquity and familiarity of text messaging and the alerts that accompany texts contribute to consumers' receptiveness to text messages.⁵⁵ Data indicates that consumers read nearly all texts they receive, and do so nearly immediately.⁵⁶ Indeed, industry data suggests that consumers open a far larger percentage of text messages than email, and open such messages much more quickly.⁵⁷ This stands in contrast to calls where, as we have said repeatedly, consumers report no longer trusting calls from an unfamiliar number and refusing to answer them. Further, we believe this requirement does not impede text messaging by legitimate businesses because our rule is narrowly focused on a set of messages that are highly likely to be illegal: they purport to be from numbers from which no consumer should receive a text message.⁵⁸

19. As the Senate Committee on Commerce, Science, and Transportation (Senate Commerce Committee) observed: "In recent years, spoofing scams in the United States have used text messaging services and other alternative voice communications services."⁵⁹ And Senator Schatz explains, "[t]exts

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messaging. *See, e.g.*, ABA Joint Commenters at 8; CRC Comments at 3; INCOMPAS Comments at 7 & Reply at 7. The App Association contends, and we agree, that imposing such new rules on OTT messaging services could disproportionately burden smaller carriers and OTT providers and suppress the development of new innovative solutions. App Association Reply at 5. Therefore, for purposes of this rule, we use the same definition of text message that the Commission has used for purposes of the Truth-in-Caller ID Act. *See* 47 CFR § 64.1600(o) *et seq.* That is, a "text message" is a "message consisting of text, images, sounds or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number or N11 service code." *Id.* It includes SMS and MMS messages, but does not include voice communication or messages sent over an IP-enabled messaging service to another user of the same messaging service. *See id.*

⁵⁵ *Messaging Declaratory Ruling*, 33 FCC Rcd at 12079-80, para 12 & n.41.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *See* ABA Joint Commenters at 3; Weave Reply at 2-3. We agree with commenters that this step will help combat the rise of text message scams that rely on spoofing. *See, e.g.*, Ad Hoc Comments at 3; ABA Joint Commenters at 5; Public Knowledge Reply at 3-4; Neustar Comments at 1; Schatz Letter at 1; State AGs Reply at 3-4. For example, iconectiv observes that SMS fraudsters often use unallocated numbers from foreign jurisdictions. iconectiv Comments at 1-2. For this reason, some mobile wireless providers already incorporate this DNO information into their blocking algorithms. iconectiv Comments at 2.

⁵⁹ *See Spoofing Prevention Act of 2017, Report of the S. Comm. On Commerce, Sci. & Transp. On S. 134*, S. Rep. No. 115-91, at 2 (2017) (Spoofing Prevention Act of 2017), available at <https://www.congress.gov/congressional-report/115th-congress/senate-report/91/1> (last visited Feb. 22, 2023) (explaining proposed changes to 47 U.S.C. § 227(e)).

from these numbers are surely illegal or unwanted, and it makes sense that mobile wireless carriers should block them.”⁶⁰ Fifty-one State Attorneys General, a frontline of law enforcement, observe that they are receiving an increasing number of consumer complaints concerning illegal and/or unwanted text messages.⁶¹ They contend:

As with voice calls purporting to be from [a reasonable DNO list], text messages from such numbers are also highly likely to be illegal. Simply stated, no wireless subscriber should be receiving any voice call or text message from these numbers. For example, a person receiving a text message from a number purporting to have an area code “000” would be receiving a text message from an invalid phone number. In this circumstance, a scammer has most likely spoofed an invalid number when sending the text message, and this type of fraudulent and misleading representation of information by the purported sender of the text message should not be permitted.⁶²

We agree with the State AGs that this is a commonsense approach to blocking because it attacks those texts that are most likely to be fraudulent.⁶³

20. Even if the number of texts using such spoofing is small, the costs to individual consumers that receive them can be high. For example, AB Handshake observes that the daily damage caused by “smishing” cases to the consumers of a single financial institution can reach \$85,000.⁶⁴ AB Handshake agrees that blocking invalid numbers can help to filter out some illegal messages.⁶⁵ Further, the Senate Commerce Committee mentioned in its report accompanying the Spoofing Prevention Act of 2017 that phone fraud cost Americans \$8.6 billion in 2014.⁶⁶ We further agree with Public Knowledge, which notes that current voluntary text blocking means that mandatory blocking may not have considerable additional effect for some providers’ customers, but it also means that implementation should be relatively easy, inexpensive, and unlikely to result in excessive blocking.⁶⁷ Indeed, commenters do not argue otherwise.⁶⁸

21. We also find that the rule we adopt today will impose a minimal burden on mobile wireless providers while providing a necessary baseline level of protection to consumers. As many industry commenters note, many mobile wireless providers already employ measures to block text messages.⁶⁹ These efforts include DNO-based blocking.⁷⁰ For providers that already employ such

⁶⁰ Schatz Letter at 1.

⁶¹ State AGs Reply at 2.

⁶² *Id.* at 3.

⁶³ State AGs Reply at 3.

⁶⁴ AB Handshake Comments at 1.

⁶⁵ *Id.* at 3.

⁶⁶ *See* Spoofing Prevention Act of 2017 at 2.

⁶⁷ Public Knowledge Reply at 3.

⁶⁸ *See, e.g.*, CTIA Comments at 17 (mobile messaging networks already incorporate a substantial degree of authentication, and the wireless industry is working to improve its authentication capabilities today); T-Mobile Comments at 7 (T-Mobile only allows active, provisioned telephone numbers to originate text messages on the T-Mobile network); Vibes Reply at 3 (the industry already includes substantial registration and verification processes that are not present in the voice world).

⁶⁹ *See, e.g.*, AAPC Comments at 2; Blooston Comments at 3; CCA Comments at 3; CTIA Comments at 6-11 & Reply at 3-7; EZ Texting Comments at 6; M³AAWG Comments at 10; iconectiv Comments at 2; Pinger Comments at 2; Sinch Comments at 7-8; Somos Comments at 7-8; Telesign Comments at 3; T-Mobile Comments at 3, 7-8; Verizon Comments at 2; VON Comments at 3; AT&T Reply at 5; Infobip Reply at 2. Such efforts include a common means for consumers to report unwanted text messages through “7726 (SPAM).” *See* CTIA Comments at (continued....)

measures, our rule imposes no additional burden. For the limited number of providers that do not currently employ such measures, our rule will provide consumers with a baseline level of protection against illegal and fraudulent text messages. We believe the rule we adopt today strikes the best balance between protecting consumers from illegal text messages while imposing minimal burden on mobile wireless providers.

22. We disagree with commenters who argue that consumers will become accustomed to seeing their text messages periodically blocked and will seek other messaging solutions.⁷¹ Because this blocking will occur at the network level, consumer recipients will not be aware of each blocked text, but will be protected before illegal robotexts ever reach their phones. We do not believe that any reasonable consumer would seek other messaging solutions because illegal texts, particularly scam texts, did not reach their phones. And we agree with Public Knowledge that commenters opposing this step have provided no evidence that texts are not delivered using such numbers or that their current voluntary blocking already stops them.⁷²

23. We disagree with CTIA's argument that "given that the Commission's call blocking rules for voice services—a service generally governed by Title II common carrier obligations—are largely *permissive*, it would be highly incongruous for the Commission to adopt *mandatory* blocking rules for text messaging, a Title I information service."⁷³ We recognize that, historically, our rules for voice calls generally permit and do not mandate blocking.⁷⁴ However, we have recently adopted mandatory blocking requirements for gateway providers, some of which are not Title II services.⁷⁵ Furthermore, the unique concerns of text messaging as vehicles for malware and as a more trusted form of communications than

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8-9. Wireless providers use information from this reporting mechanism to "track and aggregate the information that consumers report . . . and further calibrate their spam filters and blocking tools." *Id.*

⁷⁰ See, e.g., CTIA Comments at 11 (explaining that existing countermeasures prevent messages from invalid, unallocated, unused, or DNO telephone numbers from being transmitted to consumer's wireless devices); T-Mobile Comments at 7-8 (messages on T-Mobile's network are either consumer messages, directly originated on a device with a valid number and sent to another device with a valid number, or they are non-consumer messages that must be part of a pre-approved campaign with validated origination information).

⁷¹ CCA Comments at 8.

⁷² Public Knowledge Reply at 3.

⁷³ CTIA Comments at 15 n.44.

⁷⁴ See 47 CFR § 64.1200(k)(1), (2).

⁷⁵ 47 CFR § 64.1200(o) provides:

A provider that serves as a gateway provider for particular calls must, with respect to those calls, block any calls purporting to originate from a number on a reasonable do-not-originate list. A list so limited in scope that it leaves out obvious numbers that could be included with little effort may be deemed unreasonable. The do-not-originate list may include only:

- (i) Numbers for which the subscriber to which the number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only;
- (ii) North American Numbering Plan numbers that are not valid;
- (iii) Valid North American Numbering Plan Numbers that are not allocated to a provider by the North American Numbering Plan Administrator; and
- (iv) Valid North American Numbering Plan numbers that are allocated to a provider by the North American Numbering Plan Administrator, but are unused, so long as the provider blocking the calls is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of blocking.

calling, convince us that we should act quickly to mandate specific blocking of a narrow set of texts that are highly likely to be illegal.

24. We also disagree with AT&T's contention that our estimation of costs to consumers due to illegal texts, at \$6.3 billion, gives us the ability to justify any regulation as long as it costs the industry less than \$6.3 billion to implement.⁷⁶ Although AT&T disagrees with our estimate of the cost to consumers, it has not provided an estimate of industry's cost to block texts that purport to be from numbers on a reasonable DNO list—a cost that we believe will be minimal due to the industry existing voluntary actions. These actions are reasonable responses to the harm and specifically focused to mitigate the ongoing damages consumers face from illegal, fraudulent text messages that mobile wireless providers transmit today.

25. Our requirement for mandatory blocking of texts that purport to be from numbers on a reasonable DNO list is straightforward and does not define “highly likely to be illegal” or ask mobile wireless providers to determine whether particular messages are “highly likely to be illegal.” We therefore disagree with CTIA that regulation of criteria used by mobile wireless providers to determine which text messages are “highly likely to be illegal” would be inconsistent with the classification of wireless messaging as Title I information service.⁷⁷

26. We recognize that the Commission earlier concluded that, in the absence of Title II regulation, mobile wireless providers have employed effective methods to protect consumers from unwanted messages and thereby made wireless messaging a trusted and reliable form of communication for millions of Americans.⁷⁸ The rule we adopt here does not affect providers' ability to continue to employ such methods to protect consumers. Under our rules, mobile wireless providers are now required to block texts that purport to be from numbers on a reasonable DNO list.⁷⁹ Mobile wireless providers remain free to continue the measures they are currently using to protect consumers from unwanted and illegal text messages.⁸⁰

B. Point of Contact

27. We require each mobile wireless provider to establish a point of contact for text senders, or have providers require their aggregator partners or blocking contractors to establish such a point of contact.⁸¹ This point of contact will enable texters to contact mobile wireless providers, with the goal of swiftly receiving and resolving complaints of unwarranted blocking of text messages.⁸² Several

⁷⁶ AT&T Reply at 14.

⁷⁷ CTIA Comments at 15.

⁷⁸ *Messaging Declaratory Ruling*, 33 FCC Rcd at 12095, para. 43.

⁷⁹ CCA asks whether a subscriber request for blocking a number as part of a reasonable DNO list would apply to blocking network-wide. Letter from Angela Simpson, Senior Vice President and General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023) at 1 (CCA *ex parte*). CCA is not clear as to their concern. As a general matter, however a number on a reasonable DNO list would be blocked by any provider in the text path.

⁸⁰ We recognize that CTIA and the industry has established guidelines to encourage the innovative use of messaging, while also guarding against unwanted and unlawful text messages. For example, CTIA's Messaging Principles and Best Practices promote the establishment of expectations that non-consumer message senders will obtain consumer consent *prior* to messaging consumers, and that they will honor consumer opt-outs, among other practices. CTIA Comments at 8. The rules we adopt here are not inconsistent with the measures that the industry has taken already.

⁸¹ See *NPRM* at para. 27 (seeking comment on requiring such single point of contact for resolving issues of erroneous blocking).

⁸² We recognize that there may be instances where a sender cannot readily identify the mobile wireless provider that blocked the text message. In such cases, we encourage the sender to work with its mobile wireless provider to

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commenters observe that it would be helpful to have a point of contact, as already exists for blocked voice calls, in order to address and mitigate any text blocking issues.

28. In order to ensure the effectiveness of this requirement as a means of curing blocking of legitimate text messages, we adopt certain safeguards to protect providers from unscrupulous texters. First, we require that providers need only accept blocking complaints from senders that can provide documented, objective evidence of blocking.⁸³ We agree with CTIA that, without this restriction, unscrupulous texters could flood the points of contact with bogus claims of erroneous blocking and thus divert focus from legitimate blocking concerns.

29. We also agree with CTIA that entities other than mobile wireless providers, such as aggregators or contractors, could be responsible for blocking.⁸⁴ We therefore give providers flexibility to either establish their own point of contact⁸⁵ or to require their aggregator partners and blocking contractors to establish such a point of contact, which we would expect could resolve the blocking more quickly than the provider. In any case, we emphasize that any legitimate sender of text messages with documented, objective evidence of blocking should be able to easily contact the entity responsible for that blocking to resolve the dispute and expect providers, aggregators and contractors to respond appropriately.

30. Just as for blocked voice calls, we find that an easy means for texters to resolve potentially erroneous blocking will help ensure that consumers are not deprived of texts they would want to receive. While we anticipate minimal risk from our rule above, requiring mandatory blocking of texts from certain types of numbers,⁸⁶ there may be instances of erroneous blocking due to providers' voluntary blocking.⁸⁷ For example, a provider or its blocking partners could choose to block texts of a sender who fails to comply with its terms of usage or who exhibits suspicious texting behavior. For these and other reasons where otherwise legal texts may be blocked, it is important for senders to easily resolve their texting problems with providers.

31. We decline to set time limits on resolving blocking error complaints.⁸⁸ The ABA Joint Commenters contend that, when a sender makes a credible claim of erroneous blocking and the blocker determines that the text message should not have been blocked, the blocker should be required to cease

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identify the appropriate contact. *See Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15246 & n.175 (discussing requiring a point of contact for blocked calls).

⁸³ *CTIA 3/7/23 ex parte* at 4.

⁸⁴ *Id.*

⁸⁵ Such point of contact may be the same point of contact for voice call blocking error complaints.

⁸⁶ *Sinch Comments* at 10 (the risk of erroneous blocking is minimal when only text messages deemed "highly likely" to be illegal are subject to blocking); *Public Knowledge Reply* at 4.

⁸⁷ *See, e.g., ABA Joint Commenters* at 7; *CCA Comments* at 10-11; *Coalition for Open Messaging Comments* at 3 (contending that wireless carriers impose barriers that prevent organizations' ability to use person-to-person (P2P) messaging because such messaging is classified by the providers as business-to-consumer (A2P), thereby requiring the sender to register with carrier programs); *INCOMPAS Comments* at 3 & *Reply* at 4 (observing that some of the wireless carriers' methods, like The Campaign Registry, carry significant operational burdens, privacy concerns, and high costs, but with little demonstrable consumer value being added); *NORC Comments* at 6 & *Reply* at 5 (contending that discretion in blocking legal texts should not be unbounded and that carriers use non-transparent "trust scores" to block); *Pinger Comments* at 2 (stating that overly broad carrier classifications can lead to situations where analytics programs indiscriminately block essential, urgent, and wanted messages and such indiscriminate blocking jeopardizes individuals' health and safety); *State Voices Comments* at 12 (explaining that, if the text message sender exceeds a threshold of 0.1% of texts reported by consumers as spam, service providers may suspend services for that texter); *Cloud Communications Reply* at 2-5.

⁸⁸ *See NPRM* at para. 27.

blocking text messages from that number until circumstances change.⁸⁹ We cannot, based on the record, adopt a standard to determine whether a text should be blocked or a reasonable time for the provider to make such a determination. These commenters also ask us to require that blocking disputes be resolved immediately, and no longer than six hours after receiving the dispute.⁹⁰ We do not have any information in the record regarding a reasonable amount of time to resolve a dispute.

C. Other Proposals

32. We decline to adopt rules for several of the other topics on which we sought comment.⁹¹ First, we decline to require text blocking notifications.⁹² The record indicates that service providers are already providing adequate notice when they block texts.⁹³ For instance, NORC states that “wireless carriers already have an established response system that consists of approximately 2,000 codes” and, “[w]hen a text fails to send, the sender will receive a code reply from a specific carrier’s number with granular information about why the text failed, e.g., ‘Failed because of analytics blocking by carriers.’”⁹⁴

33. We also decline at this time to enact rules regarding safeguarding against blocking of texts to 911 and other emergency numbers based on the record. For example, the Texas 911 Entities state that illegal texting to 911 currently does not appear to be a problem at Public Safety Answering Points (PSAPs).⁹⁵ We will continue to monitor potential threats from unauthorized 911 communications to public safety and PSAPs, as these commenters suggest.⁹⁶ Should industry or consumer complaints indicate that the situation has changed and that this category of texts is being blocked in a way that is problematic, we will not hesitate to revisit the issue.

34. Additionally, we are not adopting standards to ensure competitively neutral and content-neutral grounds for blocking;⁹⁷ the rule we are adopting here, mandatory blocking of texts that purport to be from numbers on a reasonable DNO list, does not require a mobile wireless provider to examine the content of texts themselves. Mandatory blocking is based solely on the spoofed number associated with

⁸⁹ ABA Joint Commenters at 7.

⁹⁰ *Id.*

⁹¹ In the *NPRM*, we sought comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility. One commenter observed that our proposal may have a disparate effect on deaf, hard of hearing, visually impaired, impoverished, and neurodivergent people because they are more likely to rely on text messages than phone calls. CRC Comments at 3-4. However, the rules we adopt here should protect all consumers, including deaf, hard of hearing, visually impaired, impoverished, and neurodivergent persons from illegal texts. We do not find, based on the record, that this Report and Order will inhibit advances in diversity, equity, inclusion, and accessibility.

⁹² See, e.g., ABA Joint Commenters at 7; Ad Hoc Comments at 4-5; CCA Comments at 10-11; INCOMPAS Reply at 4-5; Weave Reply at 5-6.

⁹³ See, e.g., NORC Comments at 5; Campaign Registry Reply at 3 (parties can track messaging back to its origins so that they can conduct the necessary follow up for the messaging in question); Verizon Reply at 3. Consumers may use apps or features on their mobile device to filter or block texts; the reply code discussed by commenters would apply to texts blocked by the mobile wireless providers.

⁹⁴ NORC Comments at 5. Likewise, providers following CTIA’s “Messaging Security Best Practices” consent requirements, or similar standards, are blocking texts that fail to comply with such best practices. See *Messaging Security Best Practices*, <https://api.ctia.org/wp-content/uploads/2022/06/Messaging-Security-Best-Practices-June-2022.pdf>. The CTIA Messaging Security Best Practices provides that “parties should respond within a reasonable timeframe to lawful inquiries from other stakeholders regarding the sending of Unwanted Messages or other potential abuses.” CTIA Messaging Security Best Practices at 3.22.

⁹⁵ Texas 911 Entities Comments at 2.

⁹⁶ *Id.*

⁹⁷ See *NPRM* at para. 24.

the text message. We also decline to adopt a safe harbor for text blocking.⁹⁸ Because the blocking we adopt is mandatory rather than discretionary, and because the texts that may be blocked are highly likely to be illegal, we do not believe a safe harbor is necessary.

35. In the *NPRM*, we asked how consumer education and outreach could help address the problem and if there are ways the Commission can enhance its spam text message consumer education outreach and content.⁹⁹ We are encouraged by the measures that mobile wireless providers are taking to inform their customers about unwanted and illegal text messages and the ways that they have facilitated consumer reporting of such texts, such as forwarding spam to 7726 in order to report spam to wireless service providers.¹⁰⁰ As CTIA explains, wireless providers have established 7726 (SPAM) for consumers to report unwanted text messages.¹⁰¹ Mobile wireless providers use information consumers report through 7726 to further calibrate their spam filters and blocking tools.¹⁰² Further, reporting tools native to wireless device operating systems, from both Apple and Google, provide consumers with a more streamlined means of reporting spam text messages.¹⁰³ In addition, our website and the FTC's website offer helpful information on spam prevention to assist consumers.¹⁰⁴

36. We also decline to adopt PACE's proposals regarding the maintenance of a DNO list.¹⁰⁵ PACE suggests that the Commission clarify who is responsible for maintaining a DNO list and adopt a centralized DNO list maintained by a single body; it also asks that the Commission require that the DNO list be scrubbed against the Reassigned Numbers Database and that any reassigned numbers be removed from the DNO list.¹⁰⁶ We decline to do so because PACE does not identify why our current approach for DNO lists is flawed and thus how its proposal would correct a problem.

37. Finally, we decline to adopt caller ID authentication requirements for text messages based on record uncertainty about the current feasibility of such a requirement.¹⁰⁷ For example, CTIA

⁹⁸ See *id.* at para. 27.

⁹⁹ See *id.* at paras. 37-38.

¹⁰⁰ See, e.g., CTIA Comments at 8-9; M³AAG Comments at 4; Sinch Comments at 4; T-Mobile Comments at 6 (explaining that consumers can report spam by forwarding the message to 7726 (SPAM) and responding with the message sender's telephone number or other identifier); AT&T Reply at 5. T-Mobile also notes that it works with Apple and Google to allow customers to report spam text messages. T-Mobile Comments at 6-7. Commenters observe that device software automatically asks the device holder if a deleted message should be reported as "junk," which streamlines the spam reporting process for consumers and yields useful information about bad actors. Telesign Comments at 4; T-Mobile Comments at 6-7.

¹⁰¹ CTIA Comments at 8.

¹⁰² *Id.* at 8-9.

¹⁰³ *Id.* at 9, citing Apple, *Block, filter, and report messages on iPhone*, <https://support.apple.com/guide/iphone/block-filter-and-report-messages-iph203ab0be4/ios>; Google Android, *Report Spam*, <https://support.google.com/messages/answer/9061432?hl=en>. See also Apple, *Recognize and avoid phishing messages, phony support calls, and other scams*, <https://support.apple.com/en-us/HT204759> (last visited Feb. 17, 2023).

¹⁰⁴ See, e.g., FCC, Consumer Alert, *Scam Robotexts are a Rising Threat*, (Jul. 28, 2022), <https://www.fcc.gov/robotext-scams-rise>; FCC, Consumer Guides, *Stop Unwanted Robocalls and Texts*, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Dec. 19, 2022); Federal Trade Commission, Consumer Advice, *How to Recognize and Report Spam Text Messages*, <https://consumer.ftc.gov/articles/how-recognize-and-report-spam-text-messages> (last visited Feb. 2, 2023).

¹⁰⁵ PACE *ex parte* at 2-3.

¹⁰⁶ *Id.*

¹⁰⁷ See CTIA Comments at 18 (noting that STIR/SHAKEN applies exclusively to SIP technology, which does not apply to the majority of text messages). Commenters explain that illegal and unwanted messages rarely come from (continued....)

explains that the architecture of wireless messaging platforms is such that wireless providers already know the transmitting provider (e.g., wireless provider or messaging solutions aggregator) and user identifier (whether long code, short code, or other marker) for text messages.¹⁰⁸ CTIA notes that mobile wireless providers use this information to deliver text messages typically only from authorized providers and user identifiers using valid originating information through appropriate routing channels, and to more readily identify unauthorized traffic using illegitimate channels.¹⁰⁹ T-Mobile also notes that the current anti-robocall regime is targeted at the primary sources of illegal robocalls, i.e., unverified telephone caller ID information and a common carrier regulatory regime, which does not apply to text messages.¹¹⁰ Other commenters explain that STIR/SHAKEN would not be a viable solution if spoofing were more prevalent, because among other reasons, STIR/SHAKEN only works on the Session Internet Protocol (SIP).¹¹¹ We agree with providers, who argue that caller authentication solutions are “being actively considered that may be able to complement the vetting and monitoring solutions in use today,” but that these efforts are preliminary and require more study.¹¹² In the *Further Notice*, we seek comment on whether and how the Commission can encourage efforts to develop technical solutions for text message authentication.

D. Legal Authority

38. We find that we have legal authority to require providers to block certain text messages originating from NANP numbers and to require blockers to establish a point of contact for receiving and resolving blocking complaints. First, we find that, under the TCPA, the Commission has authority over the unsolicited text messages that fall within the scope of this order.¹¹³ The TCPA restricts certain autodialed and prerecorded or artificial voice calls to residential and wireless telephone numbers absent the prior express consent of the called party.¹¹⁴ The Commission has found that, for the purposes of the TCPA, texts are included in the term “call.”¹¹⁵ Because 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 have legal authority for the rules we adopt today.

39. Second, we find that we have authority under the Truth in Caller ID Act to adopt a blocking requirement. The Truth in Caller ID Act makes unlawful the spoofing of caller ID information “in connection with any voice service or text messaging service . . . with the intent to defraud, cause harm, or wrongfully obtain anything of value.”¹¹⁶ We find that adopting this requirement is necessary to

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spoofed numbers and a caller ID authentication solution, even if feasible, would be unlikely to reduce unwanted and illegal text messages. *See, e.g.*, CTIA Comments at 4-5, 11; EZ Texting Comments at 5-6; M³AAWG Comments at 10; NetNumber Comments at 7 & Reply at 2-3; Sinch Comments at 6-7; Telesign Comments at 2-3; T-Mobile Comments at 9-10; Verizon Comments at 7 & Reply at 4-5; WMC Global Comments at 2; Cloud Communications Reply at 1-2; RWA Reply at 3-5; Vibes Reply at 2-4.

¹⁰⁸ CTIA Comments at 17.

¹⁰⁹ *Id.*

¹¹⁰ T-Mobile Comments at 2.

¹¹¹ CTIA Comments at 18-19; Verizon Comments at 8; AT&T Reply at 9-10.

¹¹² *See, e.g.*, CTIA Comments at 18-19 & Reply at 13; iconectiv Comments at 3; NTCA Comments at 2-3; Sinch Comments at 14; T-Mobile Comments at 10.

¹¹³ 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.

¹¹⁴ 47 U.S.C. § 227(b)(1)(A).

¹¹⁵ *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165.

¹¹⁶ 47 U.S.C. § 227(e)(1).

block calls that unlawfully spoof numbers on reasonable DNO lists, and thus is authorized by the Truth in Caller ID Act.

40. Finally, we find that we have authority under Title III of the Act to adopt these measures. As courts have recognized, 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.””¹¹⁷ 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.¹¹⁸ 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 mandatory blocking rule addresses here.¹¹⁹ 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.¹²⁰ We find the requirements we adopt for mobile wireless providers here are necessary to protect the public from illegal text messages and that such a requirement is in the public interest. 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.

41. We disagree with AT&T’s position that our regulatory intervention would have “an enormous economic impact, and in view of the lack of clear statutory authority . . . the Commission should await more direct authorization from Congress before proceeding to rules.”¹²¹ First, AT&T’s reliance on the Supreme Court’s decision in *West Virginia v. EPA* is inapt in this regulatory context, where Congress has granted the Commission “expansive powers” and a “comprehensive mandate” to “encourage the larger and more effective use of radio in the public interest” in Title III of the Act.¹²² Congress’s delegation of broad spectrum management authority to the Commission—which is longstanding and remains unaltered—recognizes that the field of radio communications is “dynamic” and rapidly changing, and court decisions such as *Cellco Partnership* have recognized that the Commission has broad authority under Title III to adopt rules addressing what services must be rendered by licensees.¹²³ Second, the limited obligations on mobile wireless providers adopted here are far from the “extraordinary case” involving the kind of “transformative” regulations at issue in *West Virginia v.*

¹¹⁷ *Cellco P’ship 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.*)).

¹¹⁸ 47 U.S.C. § 303.

¹¹⁹ See *Cellco P’ship*, 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]”).

¹²⁰ See 47 U.S.C. § 307; 316; see also *Cellco P’ship*, 700 F.3d at 543 (recognizing section 316 as additional Title III authority for our data roaming rules).

¹²¹ AT&T Reply at 14 (citing *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022)).

¹²² *Nat’l Broad. Co.*, 319 U.S. at 219.

¹²³ See *Cellco P’ship*, 700 F.3d at 542-43; see also *Implementation of the National Suicide Hotline Improvement Act of 2018*, Second Report and Order, 36 FCC Rcd 16901, 16933 (2021) (relying on the Commission’s Title III authority, including sections 303, 307, and 316, to impose text-to-988 obligations on CMRS providers).

EPA,¹²⁴ especially given the record evidence regarding licensees' existing blocking practices.¹²⁵

42. AT&T's argument is based on the premise that we would be adopting rules on the full range of issues on which we sought comment in the *NPRM*, including caller ID authentication for text messages, as well as an unsupported assertion that the rules would have an "enormous economic impact."¹²⁶ However, we are adopting only two narrow rules in this Report and Order, and we find that these rules will not have an enormous economic impact and will not be overly burdensome for mobile wireless providers to implement (in part, because some providers, like AT&T, are already "broadly block[ing] text messages sent from invalid, unallocated, unassigned, and spoofed numbers").¹²⁷ Further, AT&T has not provided any evidence that the rules adopted here would, in fact, have an enormous economic impact. For the reasons explained above, we find that the Commission does have ample authority to adopt these new rules.

E. Cost-Benefit Analysis

43. AT&T challenges the proposed cost benefit analysis in the *NPRM*, but it provides no basis for challenging the assumptions behind it.¹²⁸ In the analysis of the expected benefits, we estimated that consumers incur a 5 cent nuisance harm for each spam text received.¹²⁹ Further, we estimated that consumers incur \$2 billion in harm due to fraudulent spam texts annually.¹³⁰ Our estimates were based on our experience estimating the harms caused by illegal robocalls. In that context, we assumed that each robocall causes a 10 cent nuisance harm and that fraudulent robocalls result in annual harm of \$10.5 billion.¹³¹ We proposed to attribute a lower nuisance harm of 5 cents to a spam text because we believed that they are less disruptive to consumers, e.g., because consumers can simply delete a text instead of having to listen to a robocall first then delete it. Further, we assumed that harm from fraudulent spam texts is about 20% of the harm caused by fraudulent robocalls fraud costs.

44. Our estimate of the harm due to fraudulent texts was conservative. For example, one source puts financial losses due to spam texts at \$28 billion in 2022.¹³² In total, we estimated that the blocking of illegal robotexts would achieve an annual benefit of at least \$6.3 billion.¹³³ In the *NPRM* we sought comment on these assumptions and received no alternatives in the record.¹³⁴

¹²⁴ *West Virginia v. EPA*, 142 S. Ct. at 2608, 2610.

¹²⁵ See, e.g., AAPC Comments at 2; Blooston Comments at 3; CCA Comments at 3; CTIA Comments at 6-11 & Reply at 3-7; EZ Texting Comments at 6; M³AAWG Comments at 10; iconectiv Comments at 2; Infobip Reply at 2; Pinger Comments at 2; Sinch Comments at 7-8; Somos Comments at 7-8; Telesign Comments at 3; T-Mobile Comments at 3; Verizon Comments at 2; VON Comments at 3; AT&T Reply at 5 (AT&T employs a multi-layered defense against illegal and unwanted text messages that incorporates technological innovation and proactive collaboration).

¹²⁶ AT&T Reply at 5.

¹²⁷ *Id.*

¹²⁸ *Id.* at 13-14.

¹²⁹ *NPRM* at para. 43.

¹³⁰ *Id.* at para. 44.

¹³¹ *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, 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3263, paras. 47-48 (2020) (*STIR/SHAKEN Order*).

¹³² Robokiller, *The Robokiller Report: 2022 Mid-Year Phone Scam Insights* at 9 (2022), <https://www.robokiller.com/the-robokiller-report> (last visited Feb. 14, 2023).

¹³³ See *NPRM* at para. 43.

45. Since we released the *NPRM*, the number of spam texts has increased to an estimated 147 billion annually.¹³⁵ Assuming a 5 cent nuisance cost per spam text and a conservative \$2 billion fraud cost for all spam texts, the total harm of spam texts would be \$9.35 billion annually.¹³⁶ While the rule we adopt today will not block all spam texts, it will block some percentage of them. Even a small reduction in spam texts would result in benefit to consumers of many millions of dollars annually. Because costs to providers are expected to be modest, given the record evidence regarding licensees' existing blocking practices,¹³⁷ we expect the benefits of this policy to exceed its costs.

46. In our analysis of the expected costs in the *NPRM*, we estimated that the text blocking requirement would result in an overall *reduction* of costs to text service providers due to the expected reduction in network congestion costs incurred by providers as a result of spam texts.¹³⁸ We sought comment on these estimated net cost savings due to reduction in network congestion,¹³⁹ and received no comments challenging this estimate.¹⁴⁰ In addition, we estimate that out-of-pocket costs to mobile wireless providers to comply with the new blocking rule will be modest given the record evidence regarding providers' existing blocking practices and, as noted above, that any such costs will be more than offset by cost savings from reduced network congestion.

47. Based on the analysis of the anticipated benefits and costs discussed above, and in light of the record evidence regarding mobile wireless providers' existing blocking practices, we believe the benefits of the rules adopted in this Report and Order significantly outweigh their costs.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

48. In this Further Notice of Proposed Rulemaking, we seek comment on additional protections for consumers against illegal robotexts. We first seek comment on whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams. We also seek comment on text message authentication. Next, we propose to extend Do-Not-Call protections to marketing text messages. We also seek to ban the practice of obtaining a single consumer consent as justification for calls and texts from multiple, sometimes hundreds, of sellers and potential fraudsters.

49. Our action in the Report and Order above provides a baseline level of consumer protection from spoofed text messages. The actions we propose below would address more potentially illegal messages. Consumers have come to rely on texts from trusted institutions that may not be on a DNO list, such as a child's school, a doctor's office, state and local governments, utility providers, and financial institutions. The messages they carry are often brief and consumers' expectation upon receipt is that such messages contain important, and perhaps urgent, information. For that reason, consumers may have a more difficult time recognizing these scams.¹⁴¹

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¹³⁴ We note that AT&T offers no alternative estimate of the economic benefit from blocking illegal texts. See AT&T Reply at 13-14.

¹³⁵ *Id.* at 4.

¹³⁶ $\$0.05 \times 147 \text{ billion} + \$2 \text{ billion} = \$9.35 \text{ billion}$.

¹³⁷ See para. 21, *supra*.

¹³⁸ See *NPRM* at para. 47.

¹³⁹ See *id.* at para. 46. The *NPRM* stated that the Commission would analyze "any detailed cost data" received in comments. See *id.* at para. 47. However, no detailed cost data was submitted in the record.

¹⁴⁰ We note that AT&T does not challenge this point. See AT&T Reply at 13-14.

¹⁴¹ Public Knowledge Reply at 2.

A. Block Texts Upon Commission Notification

50. We propose to require terminating mobile wireless providers to investigate and potentially block texts from a sender after they are on notice from the Commission that the sender is transmitting suspected illegal texts, similar to our requirement for gateway providers with respect to voice calls. Where texts are clearly illegal, and where the Commission has put providers on notice of the illegal texts, we believe mobile wireless providers have no legitimate reason to transmit the texts. We therefore seek comment on extending this approach, which the Commission has in place for call blocking, to text blocking.¹⁴²

51. In the *Gateway Provider Report and Order*, the Commission required gateway providers to block illegal voice traffic when notified of such traffic by the Commission through the Enforcement Bureau.¹⁴³ We seek comment on whether we should adopt the same process here for mobile wireless providers and texts, as we did there for gateway providers and voice calls.

52. Specifically, our rules (in section 64.1200(n)(5)) require the Enforcement Bureau to issue a Notification of Suspected Illegal Traffic that: (1) identifies with as much particularity as possible the suspected illegal traffic; (2) provides the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful; (3) cites the statutory or regulatory provisions the suspected illegal traffic appears to violate; and (4) directs the provider receiving the notice that it must comply with the requirements in section 64.1200(n)(5) of the Commission's rules by a specified date that gives the provider a minimum of 14 days to comply.¹⁴⁴ Notified gateway voice providers must then promptly investigate the identified traffic and either block the identified traffic and substantially similar traffic on an ongoing basis or respond to the Commission that the provider has a reasonable basis for concluding that the identified calls are not illegal.¹⁴⁵ If a provider fails to comply, the Commission established a process through which the Enforcement Bureau can require all providers immediately downstream from that gateway provider to block all traffic from that provider.¹⁴⁶

53. We seek comment on whether there are any differences between calling and texting that would suggest that this model would not work well for texting. What would be the cost to providers of implementing such a requirement? Can providers and the Commission's Enforcement Bureau properly trace text messages to their originating provider to effectuate these rules? Are there additional requirements the Commission should adopt to ease any traceback efforts for text messaging? Because providers state that they already do a considerable amount of text blocking,¹⁴⁷ we would not expect our proposal to impose material additional costs. Is that correct? We seek comment on these questions specifically and this recommendation generally.

B. Text Message Authentication and Spoofing

54. In the *Order*, we declined to adopt caller ID authentication requirements for text

¹⁴² See 47 CFR § 64.1200(n)(2).

¹⁴³ *Gateway Provider Report and Order*, 2022 WL 1631842 at paras. 74-86; see 47 CFR § 64.1200(n)(5).

¹⁴⁴ 47 CFR § 64.1200(n)(5)(i)(A); see also *Gateway Provider Report and Order*, 2022 WL 1631842 at para. 80.

¹⁴⁵ 47 CFR § 64.1200(n)(5)(i)(A), (B); see also *Gateway Provider Report and Order*, 2022 WL 1631842 at para. 83.

¹⁴⁶ 47 CFR §§ 64.1200(n)(5)(ii), (iii), 64.1200(o); see also *Gateway Provider Report and Order*, 2022 WL 1631842 at paras. 84-86.

¹⁴⁷ See, e.g., AAPC Comments at 2; Blooston Comments at 3; CCA Comments at 3; CTIA Comments at 6-11 & Reply at 3-7; EZ Texting Comments at 6; M³AAWG Comments at 10; iconectiv Comments at 2; Infobip Reply at 2; Pinger Comments at 2; Sinch Comments at 7-8; Somos Comments at 7-8; Telesign Comments at 3; T-Mobile Comments at 3; Verizon Comments at 2; VON Comments at 3; AT&T Reply at 5.

messages based on the current record.¹⁴⁸ We seek comment on the extent of number spoofing and if there are other solutions that are better targeted to address the problem of spoofed text messages. If so, what are they and how can the Commission encourage their development and adoption? We note that, while some commenters say number spoofing is not a problem for text messages,¹⁴⁹ others say bad actors spoof their phone numbers or identities.¹⁵⁰ In the robocalling context, the Commission has found that a subset of small voice service providers are responsible for a large number of illegal robocalls.¹⁵¹ Is a similar dynamic at issue with robotexts? If so, how might the Commission target these specific providers? How might the Commission encourage industry members to collaborate and finalize technical solutions for authenticating text messages and mitigating illegal text messages? For example, should the Commission adopt a deadline for providers to develop a text message authentication solution or an alternative technical solution for addressing the problem of spoofed text messages? Commenters should address how the Commission can ensure non-discriminatory policies in adopting text authentication measures.¹⁵²

C. Clarifying Do-Not-Call Protections for Text Messages

55. To the extent it remains unclear, we propose to clarify that National DNC Registry protections apply to text messages as well as voice calls and to codify this clarification in our rules. The National Do-Not-Call Registry has been operational for almost two decades and currently protects over 246 million telephone numbers from telemarketing sales calls, or “telephone solicitations.”¹⁵³ As such, it represents a critical component of our policy strategy against unwanted calls. Although the Commission has stated that “text messages” are “calls” for TCPA purposes,¹⁵⁴ it has not explicitly included text messages in the codified DNC rules.¹⁵⁵ The Commission’s DNC rules protect wireless phone subscribers

¹⁴⁸ Most commenters to our NPRM observe that illegal and unwanted messages rarely come from spoofed numbers and a caller ID authentication solution, even if feasible, would be unlikely to reduce unwanted and illegal text messages. *See, e.g.*, CTIA Comments at 4-5, 11; EZ Texting Comments at 5-6; M³AAWG Comments at 10; NetNumber Comments at 7 & Reply at 2-3; Sinch Comments at 6-7; Telesign Comments at 2-3; T-Mobile Comments at 9-10; Verizon Comments at 7 & Reply at 4-5; WMC Global Comments at 2; Cloud Communications Reply at 1-2; RWA Reply at 3-5; Vibes Reply at 2-4.

¹⁴⁹ CTIA Comments at 4-5.

¹⁵⁰ ABA Joint Commenters Comment at 3 (stating that “[o]ur members report that bad actors illegally ‘spoof’ phone numbers belonging to legitimate businesses when sending text messages – i.e., the bad actor sends a text message from a number that appears to belong to the legitimate business or sends a text message from the bad actor’s own number, making it appear that it is from a legitimate business, with the intent to defraud the recipient”).

¹⁵¹ *Call Blocking Fourth Report and Order*, 36 FCC Rcd at 17844-17845, paras. 10-13.

¹⁵² *See, e.g.*, VON Comments at 5 (observing that competitive neutrality must be at the forefront of any solution to illegal texting and solutions must not endorse or enable anti-competitive practices that providers have seen in the industry); Cloud Communications Reply at 3 (noting concerns that the industry’s application of current principles and practices has led to discriminatory conduct and the blocking of legitimate texts); NORC Reply at 2 (noting that the record demonstrates that there is a lack of transparency and accountability in blocking by mobile wireless providers).

¹⁵³ *See* FTC National Do-Not-Call Registry Data Book for Fiscal Year 2022, <https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2022> (last visited Feb. 2, 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)(3).

¹⁵⁴ *2003 TCPA Order*, 18 FCC Rcd at 14115, para. 165.

¹⁵⁵ Although the inclusion of text messages in the National DNC Registry protections has not been codified, the Commission has previously taken the position that the National DNC Registry protects consumers from unwanted text messages that contain marketing when the consumer has placed their number on the National DNC Registry. *See Emanuel (Manny) Hernandez, Click Cash Marketing, LLC, and Rock Solid Traffic, Citation and Order*,

(continued....)

by requiring prior express invitation or permission in writing for calls to wireless numbers on the DNC Registry.¹⁵⁶

56. Commenters ask us to clarify that the DNC rules apply to both voice calls and texts.¹⁵⁷ As these commenters note, the DNC rules would bring considerable protection for recipients of marketing texts. Specifically, our rules require that, before sending a marketing text to consumers, the texter must have the consumer's prior express invitation or permission, which 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.¹⁵⁸

57. We seek comment on this proposal. Would codifying the DNC protections to marketing texts further protect consumers from unwanted marketing text messages? We note that the DNC protections do not depend on whether the caller uses an autodialer, unlike some provisions of the TCPA.¹⁵⁹ In this regard, would our proposal also represent an important codification of consumer protections? Are there downsides to our proposal?

D. Closing the Lead Generator Loophole

58. We propose to ban the practice of obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent.

59. In an illustration of the issue, Assurance IQ describes a website that purports to enable consumers to comparison shop for insurance.¹⁶⁰ The website sought consumer consent for calls and texts from insurance companies and other various entities, including Assurance IQ's "partner companies."¹⁶¹ The "partner companies" were listed in a hyperlink on the web page (i.e., they were not displayed on the website without clicking on the link) and the list of "partner companies" included both insurance companies and other entities that did not appear to be related to insurance.¹⁶²

60. Public Knowledge argues that lead generators and data brokers use hyperlinked lists to harvest consumer telephone numbers and consent agreements on a website and pass that information to

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Unauthorized Text Message Violations, 33 FCC Rcd 12382 (EB 2018) (*Hernandez Citation*) (Mr. Hernandez was responsive to the citation and no fine was issued.).

¹⁵⁶ 47 CFR § 64.1200(e), (c)(2)(ii); *2003 TCPA Order*, 18 FCC Rcd at 14034, paras. 28, 36. As we stated in the *2003 TCPA Order*, "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. *Id.* at 14039, para. 36.

¹⁵⁷ NCLC/EPIC Joint Reply at 7 (the prohibition against making telephone solicitation calls to telephone numbers registered on the National DNC Registry without consent applies to texts and calls that include solicitations).

¹⁵⁸ 47 CFR 64.1200(c)(2)(ii).

¹⁵⁹ See 47 U.S.C. §§ 227(b)(1)(A), (b)(1)(D), (d)(1)(A).

¹⁶⁰ Assurance IQ filed a petition before the Commission seeking clarification that a caller may rely on presumed consent from online forms for TCPA purposes, among other things. Comments were due July 6, 2020. Assurance IQ Petition (CG Docket No. 02-278, filed May 12, 2020) (Assurance IQ Petition). A request to withdraw the Assurance IQ Petition was submitted May 10, 2022. Letter from Paul C. Besozzi, counsel for Assurance IQ, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 10, 2022), filed in CG Docket No. 02-278.

¹⁶¹ Assurance IQ Petition at 2-3 (CG Docket No. 02-278, filed May 12, 2020).

¹⁶² *Id.*

telemarketers and scam callers.¹⁶³ Commenters also provide an example of another insurance company website that has 8,423 entities on the hyperlinked page.¹⁶⁴ The telemarketer that obtains the consumer's contact information from the lead generator may believe that it has the consumer's prior express consent, but, commenters argue, the consumer has not consented to the particular caller or callers, which may be listed as "partner companies" in these arrangements.¹⁶⁵

61. We seek 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.¹⁶⁶ The Commission has not addressed this aspect of consent in the past. Would our proposal better protect consumers from receiving large numbers of calls and texts they do not wish to receive when they visit websites such as comparison shopping websites? Consumers may find comparison shopping websites helpful; how can we ensure that they can consent to obtain further information from the site without receiving numerous calls and texts from unrelated companies? Commenters should discuss whether our proposal would limit the value of comparison-shopping sites to consumers. Are there alternatives to our proposal that would better protect consumers from the harms we have identified? We also seek comment on Public Knowledge's request that prior express consent to receive calls or texts must be made directly to one entity at a time.¹⁶⁷

62. More broadly, we seek comment on the extent of the problem, our proposed rule, and whether the proposed rule will clarify consent and help to eliminate illegal text messages and calls.¹⁶⁸ Are there different or additional limitations on multi-party consent we should consider?

E. Digital Equity and Inclusion

63. The Commission, as part of its continuing effort to advance digital equity for all,¹⁶⁹

¹⁶³ Public Knowledge Reply at 5-6. Commenters explain that telemarketers ignore the requirement that the express invitation or permission can only be provided by the consumer directly to the seller. NCLC/EPIC Joint Reply at 7-8.

¹⁶⁴ Letter from Margot Saunders, National Consumer Law Center, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 16, 2022) at slide 10-11 (NCLC/EPIC 12/16 *ex parte*).

¹⁶⁵ NCLC/EPIC Joint Comments at 4; NCLC/EPIC Joint Reply at 8 (explaining that clicking on a link that contains a hidden URL with the names of thousands of sellers does not meet the E-Sign definition of an "electronic signature," because there was no separate agreement with each seller, and the consumer could not have had the intent to sign such a separate agreement with each of the thousands of sellers listed on the webpage connected with the URL).

¹⁶⁶ Under our Truth in Billing rules, "clear and conspicuous" is notice that would be apparent to a reasonable consumer. 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.).

¹⁶⁷ Public Knowledge Reply at 5. REACH contends that its standards limit the number of partners that may be included in a disclosure, clearly advise the consumer that telemarketing calls will result from an online submission, and prevent the use of prerecorded calls as the first contact to a consumer providing their information online. REACH *ex parte* at 3. QuinStreet argues that any approach to consent should continue to enable consumer choice and website owner flexibility, because many high-quality site owners are small- and medium-sized businesses. Letter from Yaron Dori, Covington and Burling, LLP, counsel to QuinStreet, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023).

¹⁶⁸ One commenter contends that the lack of standards in the lead generation industry is to blame for between 500,000,000 and 1 billion unwanted calls per month. REACH *ex parte* at 2.

¹⁶⁹ 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.

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 considerations¹⁷⁰ 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.

F. Legal Authority

64. In the Further Notice of Proposed Rulemaking, we seek comment on four issues: (i) whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams; (ii) text message authentication; (iii) extending Do-Not-Call protections to marketing text messages; and (iv) preventing marketers from using a single consumer consent as justification for calls and texts from numerous parties.

65. We seek comment on our authority to adopt each of the measures. We note that 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 for the proposed rules under the TCPA. Do the TRACED Act or the TCPA provide authority for our proposals? Do 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?”¹⁷¹ The Commission found authority to implement STIR/SHAKEN for voice service providers under section 251(e) in order to prevent the fraudulent exploitation of numbering resources.¹⁷² Does section 251(e) of the Act grant us authority to adopt implementation of authentication for text messages? We seek comment on whether that authority extends to text messages. We seek comment on our authority under the Truth in Caller ID Act for these proposals. The Commission 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.”¹⁷³ We believe that same reasoning applies here, especially given Congress’s focus on text messages, and seek comment on that conclusion.

V. PROCEDURAL MATTERS

66. *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 this present document, we have assessed the effects of our requirement that mobile wireless providers block texts purporting to be from NANP numbers on a reasonable DNO list, which include numbers that purport to be from invalid, unallocated, or unused numbers, and NANP

¹⁷⁰ 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).

¹⁷¹ 47 U.S.C. § 251(e).

¹⁷² *STIR/SHAKEN Order*, 35 FCC Red at 3260-61, para. 42.

¹⁷³ *Id.* at 3262, para. 44.

numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked. 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.

67. The Further Notice of Proposed Rulemaking may 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 OMB to comment on any 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.

68. *Compliance Deadline.* We acknowledge that mobile wireless providers will need sufficient time in which to comply with these new requirements.¹⁷⁴ We therefore require mobile wireless providers to comply with both rules we adopt here no later than six months after publication of notice of OMB approval under the Paperwork Reduction Act. This allows parties sufficient time to update their processes and come into compliance.

69. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁷⁵ 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.”¹⁷⁶ 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. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule changes contained in the Further Notice on small entities. The IRFA is set forth in Appendix E.

70. *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).

71. *Ex Parte Rules.* The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁷⁷ 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

¹⁷⁴ Several parties have requested the Commission give them additional time to implement these new requirements. *See, e.g.*, Blooston Comments at 4 (small providers should have additional time to comply); Weave Reply at 8 (same); RWA Reply at 5 (small providers should not have to comply until after the larger carriers have implemented the new rule); CTIA *ex parte* at 4 (requesting 12 months at minimum, and longer for smaller providers); Letter from Angela Simpson, Senior Vice President and General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023) at 1 (CCA *ex parte*) (30 days is insufficient).

¹⁷⁵ *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). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

¹⁷⁶ *Id.* § 605(b).

¹⁷⁷ 47 CFR §§ 1.1200 *et seq.*

must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.¹⁷⁸

72. *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: <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, 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).

73. *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).

74. *Availability of Documents.* Comments, reply comments, *ex parte* submissions, and the Report and Order and Further Notice of Proposed Rulemaking 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.

75. *Additional Information.* For additional information on this proceeding, contact Mika Savir, mika.savir@fcc.gov or 202 418-0384, of the Consumer and Governmental Affairs Bureau,

¹⁷⁸ 47 CFR § 1.49(f).

Consumer Policy Division.

VI. ORDERING CLAUSES

76. Accordingly, **IT IS ORDERED**, 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, that this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED.

77. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and reply comments on or before 60 days after publication in the Federal Register.

78. **IT IS FURTHER ORDERED** that the Report and Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register. Compliance with sections 64.1200(p) and (r) of the Commission's rules, 47 CFR §§ 64.1200(p), (r), which may contain new or modified information collection requirements, will not be required until six months after the Office of Management and Budget completes review of any information collection requirements that the Consumer and Governmental Affairs Bureau determines are required under the Paperwork Reduction Act. The Commission directs the Consumer and Governmental Affairs Bureau to announce the compliance date for sections 64.1200(p) and (r) by subsequent Public Notice and to cause section 64.1200 to be revised accordingly.

79. **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 and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

80. **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 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**Final Rules****PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS****Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising**

1. Amend § 64.1200 by adding new paragraphs (p) and (q) to read:

(p) A mobile wireless provider must block a text message purporting to originate from a North American Numbering Plan number on a reasonable do-not-originate list. A list so limited in scope that it leaves out obvious North American Numbering Plan numbers that could be included with little effort may be deemed unreasonable. The do-not-originate list may include only:

(1) North American Numbering Plan Numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked;

(2) North American Numbering Plan numbers that are not valid;

(3) Valid North American Numbering Plan numbers that are not allocated to a provider by the North American Numbering Plan Administrator; and

(4) Valid North American Numbering Plan numbers that are allocated to a provider by the North American Numbering Plan Administrator, but are unused, so long as the provider blocking the message is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of blocking.

(q) Paragraph (p) of this section may contain an information-collection and/or recordkeeping requirement. Compliance with paragraph (p) will not be required until this paragraph (q) is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or until after the Consumer and Governmental Affairs Bureau determines that such review is not required. The Commission directs the Consumer and Governmental Affairs Bureau to announce a compliance date for paragraph (p) by subsequent Public Notice and to cause this section 64.1200 to be revised accordingly.

2. Amend § 64.1200 by adding new paragraph (r) to read:

(r) A mobile wireless provider must provide a point of contact or ensure its aggregator partners or blocking contractors that block text messages on its network provide a point of contact to resolve complaints about erroneous blocking from message senders that can document that their messages have been blocked. Such point of contact may be the same point of contact for voice call blocking error complaints.

APPENDIX B

List of Commenters

Commenter	Abbreviated Name	Date Filed
Aaron Read	Aaron Read	10/3/22
AB Handshake Corporation	AB Handshake	11/10/22
Ad Hoc Telecom Users Committee	Ad Hoc	11/10/22
Aigbe Omoigui et al	Omoigui Express Comment	10/11/22
American Association of Political Consultants	AAPC	11/10/22
American Bankers Association, ACA International, American Financial Services Association, 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	ABA Joint Commenters	11/10/22
Anna K.	Anna K. Express Comment	10/18/22
Anonymous		10/13/22
Belle Hillenburg	Hillenburg	10/10/22
Blooston Rural Carriers	Blooston	11/10/22
Cameron Boyd	Boyd Express Comment	11/9/22
CallFire, Inc. (EZ Texting)	EZ Texting	11/10/22
Campaign Verify, Inc.	Campaign Verify	11/10/22
Cloud Communications Alliance	Cloud Communications	11/10/22
Coalition for Open Messaging	Coalition for Open Messaging	11/10/22
Competitive Carriers Association	CCA	11/10/22
Consumer Relations Consortium	CRC	11/9/22
CTIA—The Wireless Association®	CTIA	11/10/22
Electronic Privacy Information Center (EPIC), the National Consumer Law (NCLC) on behalf of its low-income clients, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumers League, Public Knowledge, and U.S. PIRG	NCLC/EPIC Joint Commenters	11/10/22

INCOMPAS	INCOMPAS	11/10/22
iconectiv, LLC	iconectiv	11/10/22
Messaging Malware Mobile Anti-Abuse Working Group	M ³ AAWG	11/8/22
National Opinion Research Center	NORC	11/10/22
NetNumber, Inc.	NetNumber	11/10/22
Neustar, Inc.	Neustar	11/10/22
NTCA—The Rural Broadband Association	NTCA	11/10/22
Pinger, Inc.	Pinger	11/9/22
Professional Associations for Customer Engagement	PACE	11/10/22
Rebekah Schmidt	Schmidt	11/21/22
Sinch America, Inc.	Sinch	11/10/22
Somos, Inc.	Somos	11/10/22
State Voices	State Voices	11/10/22
Telesign Corporation	Telesign	11/9/22
Terra Nova Telecom, Inc.	Terra Nova	11/10/22
Texas 9-1-1 Alliance, the Texas Commission on State Emergency Communications, and the Municipal Emergency Communication Districts Association	Texas 911 Entities	11/10/22
T-Mobile USA, Inc.	T-Mobile	11/10/22
Verizon	Verizon	11/10/22
Voice on the Net Coalition	VON	11/10/22
WMC Global	WMC	10/21/22

Reply Commenter	Abbreviated Name	Date Filed
ACT The App Association	App Association	12/9/22
AT&T Services, Inc.	AT&T	12/9/22
Campaign Registry, Inc.	Campaign Registry	12/9/22
Cloud Communications Alliance	Cloud Communications	12/9/22
CTIA—The Wireless Association®	CTIA	12/9/22
Fifty-one State Attorneys General	State AGs	12/9/22
INCOMPAS	INCOMPAS	12/11/22
Infobip, Inc.	Infobip	12/9/22

NetNumber, Inc.	NetNumber	12/9/22
National Consumer Law Center (NCLC), Electronic Privacy Information Center (EPIC) on behalf of NCLC's low-income clients, Appleseed Foundation, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Jacksonville Area Legal Aid, Inc. (FL), Legal Services of New Jersey, Mobilization for Justice (NY), Mountain State Justice (WV), National Association of Consumer Advocates, National Consumers League, Shriver Center on Poverty Law (IL), South Carolina Appleseed, Texas Appleseed, Tzedek DC, U.S. PIRG, and Virginia Poverty Law Center.	NCLC/EPIC Joint Reply	12/9/22
National Opinion Research Center	NORC	12/9/22
Overwhelmed Citizen		11/28/22
Public Knowledge	Public Knowledge	11/25/22
Rural Wireless Association, Inc.	RWA	12/9/22
Twilio, Inc.	Twilio	12/9/22
Verizon	Verizon	12/9/22
Vibes Media, LLC	Vibes	12/9/22
Weave Communications, Inc.	Weave	12/8/22

Ex Parte Filing/Congressional	Abbreviated Name	Date filed
Letter from The Honorable Brian Schatz, U.S. Senate, to Jessica Rosenworcel, Chairwoman, Federal Communications Commission	Schatz Letter	12/19/22
Letter from Nadejda Papernaia, AB Handshake Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 4, 2022)	AB Handshake 11/4 <i>ex parte</i>	11/4/22
Letter from Nadejda Papernaia, AB Handshake Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 13, 2022)	AB Handshake 12/13 <i>ex parte</i>	12/13/22
Letter from Harold Feld, Public Knowledge, to Marlene H. Dortch,	Public Knowledge 12/5 <i>ex</i>	12/5/22

Secretary, Federal Communications Commission (Dec. 5, 2022)	<i>parte</i>	
Letter from Margot Saunders, National Consumer Law Center, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 16, 2022)	NCLC/EPIC 12/16 <i>ex parte</i>	12/16/22
Letter from Coalition for Open Messaging and State Voices to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023)	Coalition for Open Messaging and State Voices Joint <i>ex parte</i>	3/9/23
Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 7, 2023)	CTIA 3/8/23 <i>ex parte</i>	3/8/23
Letter from Leah Dempsey, Counsel, ACA International, Elizabeth M. Sullivan, Senior Director of Advocacy and Counsel, Credit Union National Association, Celia Winslow, Senior Vice President, American Financial Services Association, Ann Petros, Vice President of Regulatory Affairs, National Association of Federally-Insured Credit Unions to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023)	ACA Joint <i>ex parte</i>	3/9/23
Letter from Yaron Dori, Covington and Burling, LLP, counsel to Quinstreet, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023)	Quinstreet <i>ex parte</i>	3/9/23
Letter from Angela Simpson, Senior Vice President and General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023)	CCA <i>ex parte</i>	3/9/23
Letter from Michele A. Shuster, MacMurray and Shuster, counsel for Professional Associations for Customer Engagement to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar.	PACE <i>ex parte</i>	3/9/23

9, 2023)		
Letter from Eric J. Troutman, President, Responsible Enterprises Against Consumer Harassment to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 9, 2023)	REACH <i>ex parte</i>	3/9/23
Letter from Christopher L. Shipley, INCOMPAS; David Casem, Telnix; Paula Boyd, Microsoft; Helen Marie Berg, Google, Michael Pryor, Cloud Communications Alliance; Greg Rogers, Bandwidth to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 10, 2023)	INCOMPAS Joint <i>ex parte</i>	3/10/23
Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 10, 2023)	CTIA 3/10/23 <i>ex parte</i>	3/10/23
Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 12, 2023)	CTIA 3/12/23 <i>ex parte</i>	3/12/23

APPENDIX C**Proposed Rules****PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS****Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising**

1. Amend § 64.1200 by revising section (e) to add “or texts” 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 texts 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.”

2. Amend § 64.1200 by revising section (f)(9) to read as follows:

(f)(9) The term prior express written consent 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. Prior express written consent for a call or text may be to a single entity, or to multiple entities logically and topically associated. If the prior express written consent is to multiple entities, the entire list of entities to which the consumer is giving consent must be clearly and conspicuously displayed to the consumer at the time consent is requested. To be clearly and conspicuously displayed, the list must, at a minimum, be displayed on the same web page where the consumer gives consent.

APPENDIX D

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980,¹ as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM).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 in response to 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 *Order* requires mobile wireless providers to block texts, at the network level, that purport to be from numbers on a reasonable Do-Not-Originate (DNO) list. Such texts are highly likely to be illegal and for that reason the Commission is adopting a requirement to block at the network level. The *Order* also requires providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

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. None. 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 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 See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Targeting and Eliminating Unlawful Text Messages*, CG Docket No. 21-402, Notice of Proposed Rulemaking, FCC 22-72, 2022 WL 4545905 (2022) (NPRM).

³ See 5 U.S.C. § 604.

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 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.”

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

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.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 32.5 million businesses.¹⁰

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.”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

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.”¹⁴ U.S. Census Bureau data from the 2017 Census of Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general

⁷ 15 U.S.C. § 632.

⁸ See 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf> (Nov 2021).

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 small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ See 5 U.S.C. § 601(5).

¹⁵ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

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 township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts¹⁹ 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

10. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.²² 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.²³ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.²⁵ Of that number, 2,837 firms employed fewer than 250 employees.²⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report,

¹⁶ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

¹⁹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

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 *Id.*

²⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=EC1700SIZEEMPFI&hidePreview=false>.

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.

as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.²⁷ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.²⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *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.²⁹ 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.³⁰ 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.³¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³² U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.³³ Of those firms, 1,039 had revenue of less than \$25 million.³⁴ 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

12. This *Order* may include new or modified information collection requirements. The Order adopts a requirement that mobile wireless providers block texts purporting to be from NANP numbers on a reasonable DNO list, which include 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. In addition, the *Order* requires providers to establish a point of contact for senders to resolve issues of erroneously blocked texts. To the extent these new requirements constitute an information collection, such collection will not present a substantial burden for small business concerns with fewer than 25 employees; any such burdens would be far outweighed by the benefits to consumers from blocking text messages that are highly likely to be illegal. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternatives that it has considered

²⁷ 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>.

²⁸ *Id.*

²⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³⁰ *Id.*

³¹ *Id.*

³² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

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 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

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.

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 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 small entities.”³⁵

14. The *Order* requires mobile wireless providers to block texts, at the network level, that purport to be from numbers on a reasonable Do-Not-Originate list. Such texts are highly likely to be illegal and for that reason the Commission is adopting a requirement to block at the network level. The Commission recognizes that mobile wireless providers, including small entities, already take measures to block illegal text messages from reaching their customers’ phones and this requirement should not be burdensome. The *Order* also requires providers and other entities to establish a point of contact for texters to report erroneously blocked texts. Because many of these providers and entities maintain a point of contact for call blocking purposes, and because the *Order* states that providers and entities may use the same point of contact for the text blocking requirement, the requirement should not be burdensome.

F. Report to Congress

15. 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.³⁶ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the Federal Register.³⁷

³⁵ 5 U.S.C. § 603(c)(1)–(c)(4).

³⁶ See 5 U.S.C. § 801(a)(1)(A).

³⁷ See *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 *Further Notice of Proposed Rulemaking* (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of the FNPRM. The Commission will send a copy of this entire FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the FNPRM and the IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The *Notice* seeks comment on several issues, specifically, (i) whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams; (ii) text message authentication; (iii) extending Do-Not-Call protections to marketing text messages; and (iv) banning the practice of obtaining a single consumer consent as justification for calls and texts from multiple sellers and potential fraudsters.

B. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections 4(i), 4(j), 201(b), 227(e), 254, 257, 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 227(e), 254, 257, 301, and 303.

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 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

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 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 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.

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 32.5 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 Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were

⁸ See 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

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 small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ See 5 U.S.C. § 601(5).

¹⁵ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁶ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes Local Governments by Type and State_2017.

36,931 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts¹⁹ 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.²² 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.²³ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.²⁵ Of that number, 2,837 firms employed fewer than 250 employees.²⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.²⁷ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.²⁸ Consequently, using the SBA’s small business size standard, most of these providers can be

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 *Id.*

²⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

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.

²⁷ 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>.

²⁸ *Id.*

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.²⁹ 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.³⁰ 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.³¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³² U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.³³ Of those firms, 1,039 had revenue of less than \$25 million.³⁴ 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. This *Notice* may include a change to the Commission’s current information collection, reporting, recordkeeping, or compliance requirements.

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 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.”

12. The *Notice* seeks comment on (i) whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams; (ii) text message authentication; (iii) extending Do-Not-Call protections to marketing text messages; and (iv) banning the practice of obtaining a single consumer consent as justification for calls and texts from multiple sellers and potential fraudsters.

13. These proposals would probably not be burdensome for small entities. The proposal to require those seeking consent from consumers to a list of entities, to clearly and conspicuously display the

²⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³⁰ *Id.*

³¹ *Id.*

³² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

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 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

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.

list where consent is requested would, if adopted, prevent those lead generators or telemarketers from failing to advise the consumer of the list of entities; instead the list would be displayed where the consent is requested. This should not be burdensome to small entities, as it merely requires disclosing the list where consent is requested, instead of in a hyperlink, and should reduce unwanted text messages and calls to consumers. The proposal to include texts in the DNC rules should not have an impact on small entities. Wireline and wireless phones are already included and this would just clarify that not only calls to wireless phones on the DNC list are covered, but text messages, too. The Commission anticipates that these rules, if adopted, would also reduce unwanted calls and texts to small entities. The proposal to require service providers to block texts after notice from the Commission of suspected illegality, including fraud should not be burdensome for small entities. Mobile wireless providers are already diligent in blocking fraudulent calls and texts to their customers and this would assist them in those efforts.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.

**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; Report and Order and Further Notice of Proposed Rulemaking (March 16, 2023)

More than a century ago, physiologist Ivan Pavlov did a series of experiments with food, buzzers, and dogs. He was able to train the dogs to associate a buzzing noise with food, so much so that they began to drool whenever they heard this sound, even if there was no food around.

Sometimes I wonder what Pavlov would think about us and our smartphones. Because most of us are conditioned to reach for our phones anytime we hear the familiar buzz telling us a text is incoming. In our defense, those noises have become an effective way to stay connected. They help us keep up with family and friends and receive timely information from those we trust.

But there are those who want to take advantage of this trust—and our instinct, like the subjects of Pavlov’s experiment, to assume something needs attention every time we hear our devices buzz. We see this clearly in the growing number of junk texts showing up on our phones. Scam artists have found that sending us messages about a package you 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 engage on our devices and fall prey to fraud.

These robotexts are making a mess of our phones. They are reducing trust in a powerful way to communicate. So today we take our first step to stop these unwanted texts at the network level. We put in place rules that require mobile wireless carriers to block texts that come from invalid, unallocated, or unused numbers. In other words, we require providers to stop the texts that are most likely to be illegal. This approach has the support of Attorneys General from all 50 states and the District of Columbia. It’s good stuff. But we are not stopping here. Because we also adopt a rulemaking to explore other way stop unwanted text messages, including authentication measures and rules to prevent the abuse of consumer consent.

Thank you to those at the agency who worked on this effort, including Mika Savir, Kim Wild, James Brown, Zac Champ, Kristi Thornton, Aaron Garza, Mark Stone, and Jerusha Burnett from the Consumer and Governmental Affairs Bureau; Rakesh Patel, Lisa Zaina, Daniel Stepanicich, Kristi Thompson, Cait Barbas, Jessica Manuel, and Alexander Hobbs from the Enforcement Bureau; Susanna Larson, Garnet Hanley, Kari Hicks, and Jennifer Salhus from the Wireless Telecommunications Bureau; Elizabeth Drogula, Jonathan Lechter, and Connor Ferraro from the Wireline Competition Bureau; Kenneth Carlberg and David Furth from the Public Safety and Homeland Security Bureau; Joycelyn James, Cara Grayer and Joy Ragsdale from the Office of Communications Business Opportunities; Emily Talaga, Kim Makuch, Mark Montano, Michelle Schaefer, Patrick Brogan from the Office of Economics and Analytics; and Derek Yeo, Bill Richardson, Rick Mallen, and Valerie Hill 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; Report and Order and Further Notice of Proposed Rulemaking (March 16, 2023)

Texting is increasingly becoming Americans' preferred way to communicate.¹ But unfortunately, as we've seen before, the more popular a communications service is, the more it's targeted by spammers and bad actors. The rise of robotexts – unwanted or illegal text messages – means a similar rise in harm to consumers, in the form of phishing attacks, malware, and scams. And robotexts are different than robocalls. Recipients of a robocall have the ability to either pick up the phone or not. But on most devices, recipients of a robotext see at least some of an unwanted message immediately, exposing them – and potentially luring them into – harm.

And you know as well as I do that we've been getting more of these unwanted texts. In 2022, Americans received over 225 billion robotexts – a 157 percent year-over-year increase, and a 307 percent increase from 2020.² Last month, February 2023, 10.7 billion spam texts were reported – nearly 39 for every person in the United States.³ Given this growth, failure to act could lead to robotexting to become so pervasive that it negatively affects texting, just as robocalls have done for phone calls. I can confidently say that's the last thing we want.

It is time for the Commission to act. We build upon our experience combatting robocalls, and today move to protect consumers from the threat of illegal or harmful robotexts. Industry has taken impressive steps on its own, but more needs to be done. The item we adopt today will require providers, at the network level, to take important steps to stop robotexts before they reach consumers. Adopting mandatory blocking of texts that are highly likely to be illegal based on a Do-Not-Originate list based on invalid, unallocated, or unused numbers is a reasonable first step to stem the flow of these texts. At the same time, we require providers to adopt a single point of contact for texters to report erroneously blocked messages, to balance the needs of industry and consumers. And finally, we recognize that this is just the first step, and seek additional comment on further proposals to protect consumers.

I will stay vigilant in pushing the Commission to do all it can to eliminate these illegal and unwanted text messages going forward, especially at a time where we have seen the expansion of texting to 988 and as part of NG911. I thank the Commission staff who work on robocall and robotext issues – I know there are many – for their hard work. I approve.

¹ Aaron Weiche, *SURVEY: Texting Is The Preferred Way To Communicate*, Leadferno, <https://leadferno.com/blog/survey-texting-is-the-preferred-way-to-communicate> (last visited Mar. 14, 2023).

² Robokiller, *The Robokiller phone scam report: 2022 insights & analysis*, <https://www.robokiller.com/robokiller-2022-phone-scam-report> (last visited Mar. 14, 2023).

³ Robokiller, *2023 United States robotext trends*, <https://www.robokiller.com/spam-text-insights> (last visited Mar. 14, 2023).

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

In the Matter of	)	
	)	
Single Network Future: Supplemental Coverage	)	GN Docket No. 23-65
from Space	)	
	)	
Space Innovation	)	IB Docket No. 22-271

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel and Commissioners Carr, Starks, and Simington issuing separate statements

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	3
A. Market Developments and Terrestrial/Satellite Partnership Efforts	3
B. FCC Actions to Facilitate Satellite and Terrestrial Collaborations.....	10
C. Current U.S. and International Allocations of Bands Subject to Notice Proposal	16
III. DISCUSSION	24
A. Adding a Co-Primary Mobile-Satellite Service Allocation to Certain Bands Allocated to Terrestrial Services	25
1. Addition of Mobile-Satellite Service Allocation.....	26
2. Further Discussion of Bands Proposed for Supplemental Coverage from Space	33
B. Closing Terrestrial Service Area Coverage Gaps Through Supplemental Coverage from Space	42
1. Geographically Independent Area.....	44
2. Assigning New Mobile-Satellite-Service Rights for Supplemental Coverage from Space	47
3. Leasing	68
4. Service Rules.....	81
5. Technical Issues	110
C. International Coordination	131
D. Extension of Supplemental Satellite Framework to Additional Scenarios	136
1. Spectrum Bands with Non-Flexible-Use Incumbent Licensees	138
2. Geographically Independent Areas Where Collaborating Terrestrial Licensees Hold All Co-Channel Licenses and Seek to Provide SCS.....	141
3. Adjacent Geographic Areas Containing Non-Collaborating Licensees	145
E. Space-Based Coverage to Consumer Devices in Spectrum Already Allocated for Mobile Satellite Service Communications	149

F. Other Issues.....	151
IV. PROCEDURAL MATTERS.....	152
V. ORDERING CLAUSES.....	158
APPENDIX A – PROPOSED RULES	
APPENDIX B – INITIAL REGULATORY FLEXIBILITY ANALYSIS	

I. INTRODUCTION

1. In this item, we take a global leadership role in facilitating the integration of satellite and terrestrial networks by proposing a new regulatory framework for Supplemental Coverage from Space (SCS). Through this novel approach, satellite operators collaborating with terrestrial service providers would be able to obtain Commission authorization to operate space stations on currently licensed, flexible-use spectrum allocated to terrestrial services, thus expanding coverage to the terrestrial licensee’s subscribers, especially in remote, unserved, and underserved areas. This framework could enable innovation and investment in nascent satellite and terrestrial interoperable technologies and cross-industry stakeholder partnerships to flourish in the United States, and play a key role towards fulfilling other Commission goals in the public interest. These goals include facilitating ubiquitous wireless coverage across the nation; expanding the availability of emergency communications to consumers and the geographic range of first responders to provide emergency services; and promoting competition in the provision of wireless services to consumers, among others.

2. We anticipate that our proposed SCS approach will incentivize creative partnerships between terrestrial network and space station operators and will provide additional tools to close wireless coverage gaps, while retaining high service quality among our nation’s 4G and 5G terrestrial networks, protecting spectrum usage rights, and avoiding harmful interference. Moreover, by carefully examining potential regulatory changes required to facilitate provision of emerging global services through tailored business arrangements in the context of a rulemaking proceeding, rather than relying exclusively on an ad-hoc waiver approach, we aim to foster widespread stakeholder interest through clear rules generally applicable to all, thus yielding a robust record for Commission consideration of long-term solutions in the public interest.

II. BACKGROUND

A. Market Developments and Terrestrial/Satellite Partnership Efforts

3. As technologies with advanced capabilities evolve and wireless customers’ demand for seamless connectivity grows, even in remote locations currently lacking wireless coverage, stakeholders are seeking ways to leverage satellite communications to provide expanded coverage to consumer handsets. Recent news reports have highlighted interest in this evolving market with partnerships between satellite service¹ providers and terrestrial wireless service² providers to facilitate this type of enhanced capability. According to these reports, in addition to increased consumer demand, other factors driving this trend include lower satellite bandwidth prices and the “broad acceptance of the [3rd Generation Partnership Project (3GPP)] wireless standard.”³

¹ We use the term “satellite service” to mean “space radiocommunications.” See ITU Radio Regulations Article 1.8 (defining space radiocommunications as “[a]ny radio communications involving the use of one or more space stations or the use of one or more reflecting satellites or other objects in space.”).

² We use the term “terrestrial wireless service,” “terrestrial service,” or “wireless service” to mean fixed and mobile services. See ITU Radio Regulations Article 1.7, 1.20, and 1.24.

³ See, e.g., Jeffrey Hill, *Satellite, Cellular ‘Convergence’ Takes Center Stage at Mobile World Congress Las Vegas*, (Oct. 3, 2022), <https://www.satellitetoday.com/5g/2022/10/03/satellite-cellular-convergence-takes-center-stage-at-mobile-world-congress-las-vegas/>.

4. *Use of Current Satellite-Allocated Spectrum to Serve Commercial Handsets.* Some recently announced collaborations rely on the use of spectrum currently allocated to satellite services to provide expanded service options to subscribers using smartphones, as distinct from specially-provisioned satellite phones.⁴ For example, in November 2022, Globalstar and Apple jointly announced a proprietary service using Globalstar’s licensed satellite spectrum to provide emergency messaging for Apple’s iPhone 14 and 14 Pro devices when no cellular or Wi-Fi service is available.⁵ According to Apple, its iPhone 14 communicates with the existing Globalstar satellite network for emergency purposes,⁶ and this technology has already been used to enable emergency services in at least one instance.⁷ Bullitt, a UK-based smartphone maker, announced plans to leverage 3GPP-based 5G technology standards, specifically the 2022 3GPP Release 17 specifications, in its ongoing efforts to connect its smartphones directly to satellites on spectrum allocated to satellite services.⁸ Iridium, a satellite communications provider, and chip maker Qualcomm recently announced their partnership and plans to connect smartphones with Iridium’s satellite constellation with a product called Snapdragon Satellite, enabling emergency messaging in late 2023.⁹ Other established satellite service providers, such as EchoStar and Viasat, have also indicated that they would be interested “in operating satellites that may connect to phones.”¹⁰ Similar collaborative efforts are underway by other operators, as well.

5. 3GPP’s Release 17 standards were the first to include input from non-terrestrial network (NTN) groups and to address satellite’s role in the development of 5G systems worldwide. Its specifications will support New Radio (NR) based satellite access deployed in the Frequency Range 1 bands¹¹ serving handsets as well as NB-IoT (narrowband Internet of Things) and LTE-M based access for

⁴ In these scenarios, satellite operators are authorized under part 25 of the Commission’s rules to use spectrum currently allocated for mobile-satellite service to provide such service (space-to-Earth) to smartphones.

⁵ See Press Release, Apple, *Emergency SOS via Satellite Available Today on the iPhone 14 Lineup in the US and Canada* (Nov. 15, 2022), <https://www.apple.com/newsroom/2022/11/emergency-sos-via-satellite-available-today-on-iphone-14-lineup/>; Mitchell Clark, *Satellite-to-Phone Companies are Thrilled About SpaceX and T-Mobile, Actually*, (Aug. 27, 2022), <https://www.theverge.com/2022/8/27/23324128/t-mobile-spacex-satellite-to-phone-technology-astronomy-industry-reactions-apple> (Satellite-to-Phone Companies Aug. 27, 2022 Article).

⁶ See Rachel Jewett, *Apple to Debut iPhone with Emergency Messaging Enabled by Globalstar Satellites*, (Sept. 7, 2022), <https://www.satellitetoday.com/telecom/2022/09/07/apple-to-debut-iphone-with-emergency-messaging-enabled-by-globalstar-satellites/>.

⁷ See Emily Mae Czachor, *iPhone Emergency Feature Helps Rescue 2 After Canyon Plunge in California*, (Dec. 15, 2022), <https://www.cbsnews.com/news/iphone-emergency-sos-satellite-car-crash-canyon/>.

⁸ See Mike Dano, *In the Race to Space, Bullitt Eschews Proprietary Approaches*, (Nov. 2, 2022), <https://www.lightreading.com/satellite/in-race-to-space-bullitt-eschews-proprietary-approaches/d/d-id/781489>.

⁹ See Press Release, Qualcomm, *Qualcomm Introduces Snapdragon Satellite, The World’s First Satellite-Based Solution Capable of Supporting Two-Way Messaging for Premium Smartphones and Beyond* (Jan. 5, 2023), <https://www.qualcomm.com/news/releases/2023/01/qualcomm-introduces-snapdragon-satellite-the-world-s-first-sate>; Jason Rainbow, *Iridium and Qualcomm to Bring Satellite Connectivity to Smartphones this Year*, (Jan. 5, 2023), <https://spacenews.com/iridium-and-qualcomm-to-bring-satellite-connectivity-to-smartphones-this-year/>. The companies claim that potential uses include emergency SOS services, SMS texts, and other low-bandwidth messaging applications in areas outside terrestrial networks and where Iridium’s global constellation is licensed to operate.

¹⁰ See Mike Dano, *Viasat, EchoStar and Iridium Hint at Cellular-to-Satellite Interest*, (Nov. 9, 2022), <https://www.lightreading.com/satellite/viasat-echostar-and-iridium-hint-at-cellular-to-satellite-interest/d/d-id/781663/>.

¹¹ Frequency Range 1 bands refers to bands below 24 GHz. Release 17 identified two bands with existing MSS allocations for 5G NTN provision: band 255 (1525 MHz – 1559 MHz and 1626.5 MHz – 1660.5 MHz) and band 256 (1980 MHz – 2010 MHz and 2170 MHz – 2200 MHz). See Munira Jaffar & Nicolas Chuberre, *NTN & Satellite* (continued....)

eMTC (enhanced machine-type communication) using satellites.¹² In addition, 3GPP Releases 17 and 18 include extension of NTN to Frequency Range 2, including operation in the Ku-band. Satellite companies, such as EchoStar, have long encouraged 3GPP to incorporate satellite components.¹³ These companies recognize that satellites can be an important means to provide connectivity to underserved and unserved areas.

6. *Efforts to Use Spectrum Currently Allocated to Terrestrial Services to Directly Serve Handsets and Other End-user Devices from Satellites.* A growing number of satellite companies are seeking to partner with mobile service providers to provide mobile-satellite services through interoperable technologies. Such an approach proposes to rely on satellite operators using spectrum currently allocated for terrestrial mobile service that is exclusively-licensed to terrestrial service providers and subject to an existing terrestrial service regulatory framework, and therefore requires further Commission action to enable satellite use.

7. In August 2022, Space Exploration Technologies Corporation (SpaceX) announced that the second generation of its Starlink satellites will be able to connect T-Mobile's subscribers in rural and remote locations to fill coverage gaps in T-Mobile's terrestrial network by providing a text messaging service anticipated to be available in late 2023.¹⁴ Specifically, SpaceX and T-Mobile are proposing a partnership whereby SpaceX would use a block of T-Mobile's mid-band Personal Communications Services (PCS) spectrum held over a nationwide footprint.¹⁵ If authorized, SpaceX's Starlink, a constellation of satellites in low Earth orbit (LEO), would enable the provision of service in areas outside the reach of T-Mobile's current network. On February 7, 2023, SpaceX filed an application with the Commission detailing its proposed partnered service, including a request for authorization for SpaceX to use T-Mobile's PCS G block spectrum for "direct-to-cellular" operations.¹⁶ The application includes

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in Rel-17 & 18, (July 1, 2022), <https://www.3gpp.org/news-events/partner-news/ntn-rel17> (NTN & Satellite July 1, 2022 Article). Frequency Range 2 bands refers to bands above 24 GHz, specifically 24.25 GHz to 52.6 GHz.

¹² See NTN & Satellite July 1, 2022 Article, *supra* note 11. The authors suggest that terrestrial/satellite partnerships "will enable the full integration of satellite in the 3GPP ecosystem and define a global standard for future satellite networks. This will address the challenges of reachability and service continuity in unserved/underserved areas, enhance reliability through connectivity between various access technologies, and improve network resilience and dependability in responding to natural and man-made disasters." *Id.*

¹³ See The Hughes Team, *Upcoming 3GPP Release 17 to Include Satellite in Global 5G Standard*, (June 22, 2021), <https://www.hughes.com/resources/insights/5g/upcoming-3gpp-release-17-include-satellite-global-5g-standard>; see also Press Release, EchoStar, *EchoStar Begins Construction of Global S-band Network* (Feb. 1, 2023), <https://ir.echostar.com/news-releases/news-release-details/echostar-begins-construction-global-s-band-network> (announcing EchoStar's agreement with Astro Digital for the construction of a global S-band MSS network to deliver global IoT, machine-to-machine (M2M) and other data services through a constellation intended "to serve as a foundation for EchoStar to engineer 5G New Radio (NR) based NTN capabilities according to 3GPP release 17 specifications"); Skylo Team, *MediaTek and Skylo Collaborate on Next-Gen 3GPP NTN Satellite Solutions on Smartphones and Wearables*, (Feb. 14, 2023), <https://www.skylo.tech/newsroom/mediatek-and-skylo-collaborate-on-next-gen-3gpp-ntn-satellite-solutions-on-smartphones-and-wearables> (announcing the continuing partnership between Skylo, an NTN service provider, and chipset manufacturer MediaTek, to work toward the integration of "cellular and satellite connectivity into the same device").

¹⁴ See *T-Mobile Takes Coverage Above and Beyond with SpaceX*, (Aug. 25, 2022), <https://www.t-mobile.com/news/un-carrier/t-mobile-takes-coverage-above-and-beyond-with-spacex> (T-Mobile Aug. 25, 2022 Article); Rachel Jewett, *Elon Musk Announces SpaceX Starlink Cellular Partnership with T-Mobile*, (Aug. 25, 2022), <https://www.satellitetoday.com/telecom/2022/08/25/elon-musk-announces-spacex-starlink-cellular-partnership-with-t-mobile/> (SpaceX Aug. 25, 2022 Article).

¹⁵ SpaceX Aug. 25, 2022 Article, *supra* note 14.

¹⁶ See Space Exploration Holdings, LLC Application for Modification of Authorization for the SpaceX Gen2 NGSO Satellite System to Add a Direct-to-Cellular System, IBFS File No. SAT-MOD-20230207-00021 Call Sign S3069

(continued....)

several requests for waiver of various Commission rules in part 25 and the United States Table of Frequency Allocations (U.S. Table) to implement the proposed service.¹⁷ The parties also filed a notification of a spectrum manager lease arrangement between themselves that requests, if associated waivers are granted, authority for SpaceX to operate from a space-based radiofrequency communications system on broadband PCS spectrum licensed to T-Mobile's operating subsidiaries in the contiguous United States (CONUS), parts of Alaska, Hawaii, and Puerto Rico.¹⁸

8. For the past few years, other companies have been exploring this type of satellite-terrestrial collaboration. Outside of the United States, Lynk Global (Lynk) has partnered with a number of mobile network operators (MNOs) around the world to enable their customers to send texts using Lynk's satellite network.¹⁹ Lynk operates with mobile devices using frequencies already used for terrestrial mobile service.²⁰ Like the SpaceX/T-Mobile proposal, Lynk has emphasized the public safety importance of this type of service during emergencies and natural disasters, such as hurricanes, wildfires, flooding, or earthquakes, which often cause the destruction of or damage to terrestrial mobile network equipment and resulting service outages. Lynk has launched several satellites and is in the process of launching additional satellites for its network and, as discussed in more detail below, has received Commission authority to test communications between satellites and mobile devices, and conditional authority to deploy and operate its 10-satellite system for service to locations outside the United States.²¹

9. AST SpaceMobile (AST) is also engaged in this trend and deployed its test BlueWalker 3 satellite in November 2022, indicating its plans to develop a global network to provide service directly from its satellites to smartphones.²² BlueWalker 3 is AST's second test satellite, and AST plans to begin deploying its operational BlueBird satellites in late 2023. Like Lynk, AST has partnered with several MNOs for its planned service, including AT&T and Vodafone, and the partnerships are described as being capable of bringing service to remote and "off-grid" locations.²³ AST has filed applications for market access to the United States, but following several amendments, its current request is limited to

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(filed Feb. 7, 2023) (SpaceX and T-Mobile Application). The SpaceX and T-Mobile Application requests authority to modify an existing SpaceX authorization for its second-generation NGSO FSS license. *See infra* para. 15.

¹⁷ SpaceX and T-Mobile Application.

¹⁸ *See* ULS File Nos. 0010303032, 0010303146, 0010303124, and 0010303084 (filed Dec. 6, 2022, and amended Feb. 7, 2023).

¹⁹ Lynk claims that, in early 2020, it was the first company to send a text message to an unmodified cell phone from space. *See* Satellite-to-Phone Companies Aug. 27, 2022 Article, *supra* note 5.

²⁰ *Lynk Global, Inc., Application to Deploy and Operate Space Stations Filed Under the FCC Streamlined Small Space Station Authorization Process*, 47 CFR § 25.122, IBFS File No. SAT-LOA-20210511-00064 Call Sign S3087, Order and Authorization, DA 22-969, 2022 WL 4358414, at *1 (IB Sept. 16, 2022) (*Lynk Order*).

²¹ *See infra* paras. 12-13.

²² *See* Michael Sheetz, *AST SpaceMobile Hits Key Milestone Toward Satellite-to-Smartphone 5G Service*, (Nov. 14, 2022), <https://www.cnbc.com/2022/11/14/ast-spacemobile-deploys-bluewalker-3-satellite-antenna.html>.

²³ *Id.*; *see also* *Vodafone's Collaboration with AST SpaceMobile and What it Means for Customers*, (Feb. 16, 2022), <https://www.vodafone.com/news/technology/vodafone-ast-space-mobile-collaboration> (reporting that initial phase of AST's partnership with Vodafone is planned to cover "the 49 largest countries in the equatorial regions, including a number of markets where [Vodafone] operates in Africa, subject to regulatory approval."); Sue Marek, *AT&T CEO Says Company is Ahead in Satellite-to-Cellular Connectivity*, (Oct. 6, 2022), <https://www.fiercewireless.com/wireless/att-ceo-says-company-ahead-satellite-cellular-connectivity> (reporting that AT&T is also partnering with AST to ultimately provide connectivity in dead zones in the United States); Scott Moritz, *AT&T CEO Says His Satellite Service Has Lead on Musk's*, (Oct. 5, 2022), <https://www.bloomberg.com/news/articles/2022-10-05/at-t-ceo-says-his-satellite-phone-service-has-lead-over-musk-s>.

frequencies for feeder links only, with no current request for direct-to-handset market access.²⁴ Other satellite companies have indicated interest in using terrestrial spectrum for satellites to communicate with Internet of Things (IoT) devices. Lacuna Space plans to offer communication to IoT devices with satellites that will communicate using the LoRaWAN protocol designed to connect IoT devices to terrestrial networks using 902-928 MHz terrestrial spectrum, and has announced collaborations with equipment manufacturers and other providers in this effort.²⁵ The company has successfully launched some satellites licensed by another administration, but has not yet applied for U.S. market access.²⁶

B. FCC Actions to Facilitate Satellite and Terrestrial Collaborations

10. The Commission has granted a number of experimental licenses and other satellite authorizations to facilitate innovation and investment and to support the development of collaborations between satellite service providers and terrestrial wireless providers that will better serve consumers, particularly in underserved and remote locations and in emergency situations. These Commission actions enable companies to test interoperability between satellites and mobile services in various bands, as well as encourage innovation in the provision of satellite services to smartphones and other end-user devices.

11. *Experimental Authorizations.* In 2017, the Commission's International Bureau (IB) and Office of Engineering and Technology (OET) granted Higher Ground LLC (Higher Ground) a waiver of the Table of Frequency Allocations and the fixed-satellite service (FSS) coordination rules for the company to use satellites in the 6 GHz band (allocated for the FSS and Fixed Service) to provide a commercially available text messaging service using a sleeve that attaches to smartphones.²⁷ This grant followed Higher Ground's initial operations under experimental licenses dating back to 2014.²⁸ In 2021 and 2022, OET granted Totum Labs, Inc. (Totum) two experimental licenses: one for a satellite communicating with a single earth station in San Diego, CA, and the other for satellite communications with the San Diego earth station as well as "mobile station locations."²⁹ These experimental licenses allow Totum to test satellite communication and tracking of IoT devices in the 2400-2483.5 MHz band using spread spectrum waveforms.³⁰ In 2021 and 2022, OET granted several experimental licenses allowing Lynk to test communications between satellites and "mobile station locations" in the 800 MHz

²⁴ See AST & Science LLC, Application for Fixed Satellite Service Mobile Satellite Service, IBFS File Nos. SAT-PDR-20200413-00034 (filed Apr. 13, 2020), SAT-APL-20200727-00088 (filed July 27, 2020), SAT-APL-20201028-00126 (filed Oct. 28, 2020), Call Sign S3065.

²⁵ See Lacuna.Space, *Omnispace and Lacuna Announce Collaboration to Deliver Global LoRaWAN® IoT Service*, (Mar. 9, 2021), <https://lacuna.space/omnispace-and-lacuna-announce-collaboration-to-deliver-global-lorawan-iot-service/>; Lacuna.Space, *Lacuna and Semtech Expand LoRaWAN® Coverage through IoT to Satellite Connectivity*, (Jan. 11, 2022), <https://lacuna.space/lacuna-and-semtech-expand-lorawan-coverage-through-iot-to-satellite-connectivity/>.

²⁶ Lacuna.Space, *First Successful LacunaSat Launch in 2021!*, (Mar. 22, 2021), <https://lacuna.space/first-successful-lacunasat-launch-in-2021/#:~:text=22%20March%202021,onboard%20the%20Soyuz%2D2%20launcher>.

²⁷ See *Higher Ground Application for Blanket Earth Station License*, IBFS File No. SES-LIC-20150616-00357 Call Sign E150095, Order and Authorization, 32 FCC Rcd 728 (Jan. 18, 2017) (*Higher Ground Waiver Order*). Higher Ground is required to prevent the devices from transmitting where they may cause interference to the microwave links in the band. *Id.*

²⁸ *Higher Ground Waiver Order*, 32 FCC Rcd at 731 n.8.

²⁹ See ELS File No. 0391-EX-CN-2020 (granted Jan. 14, 2021); ELS File No. 0044-EX-CM-2022 (granted May 12, 2022). The relevant satellites are operated by Loft Orbital Solutions, Inc. pursuant to a satellite license conditional grant from IB in May 2021. See Loft Orbital Solutions, Inc., Application for Earth Exploration Satellite Service Other, IBFS File No. SAT-LOA-20200907-00105 (granted May 24, 2021).

³⁰ See ELS File No. 0391-EX-CN-2020; ELS File No. 0044-EX-CM-2022.

band.³¹ In 2022, OET also granted an experimental license to AST for earth stations to communicate with a satellite licensed by Papua New Guinea and to be registered with the International Telecommunication Union (ITU) by Spain.³² AST's experimental license will allow testing that will inform its plan to provide 4G and 5G broadband connectivity in unserved and underserved areas.³³ OET has also granted experimental licenses to Omnispace LLC for testing communications with its Medium Earth Orbit satellite in the 2 GHz S band.³⁴ Various parties continue to file experimental license applications to test space-based communications with points on Earth, and the Commission will continue to process them accordingly.

12. *Lynk Order.* In 2021, Lynk filed an application for authority to operate a non-geostationary satellite orbit (NGSO)³⁵ satellite system that would enable text message communications at locations outside the United States, and in countries where Lynk has obtained agreements with MNOs and the requisite local regulatory authority to provide service.³⁶ In its application, Lynk sought: (1) authority to deploy ten NGSO mobile-satellite service (MSS) and FSS satellites as part of a "cellular-based satellite communications network" that will provide connectivity by operating on most cellular frequencies used globally in the 617-960 MHz band in international markets only; and (2) feeder link and telemetry, tracking, and command (TT&C) operations in the Ka-band both domestically and outside of the United States, with the S-band serving as backup for emergency TT&C.³⁷

13. On September 16, 2022, IB granted, with conditions, Lynk's application to construct, deploy, and operate NGSO satellites in low-Earth orbit (LEO).³⁸ In granting the application, IB found it in the public interest to begin making Lynk's services accessible, with the goal of providing connectivity in remote areas during emergencies, contingent upon obtaining appropriate approval in the relevant jurisdictions and the completion of coordination with other operators.³⁹ In limiting its approval to transmissions with earth stations outside of the United States, IB specifically noted that its decision was without prejudice to action on any applications to provide similar service in the United States.⁴⁰ Given the limited scope of Lynk's authority to provide service outside of the United States and grant conditions imposed to ensure operations do not cause harmful interference, IB found that it was unnecessary to deny or defer action on the Lynk application until the Commission could conduct a rulemaking or related

³¹ See ELS File No. 0931-EX-CN-2020 (granted May 17, 2021); ELS File No. 0162-EX-CN-2021 (granted Mar. 19, 2021); ELS File No. 0656-EX-CN-2021 (granted Nov. 19, 2021). In May 2022, OET granted licenses to Lynk for additional satellites that were expected to launch in late 2022 and early 2023. See ELS File No. 0117-EX-CN-2021 (granted May 25, 2022); ELS File No. 0113-EX-CN-2022 (granted May 25, 2022). Lynk deployed and began operating the first satellite, Lynk Tower 1, in April 2022 pursuant to experimental authority. See ELS File No. 0656-EX-CN-2021 (granted Nov. 19, 2021); Letter from Shawn Marcum, Director of Legal and Regulatory Affairs to Lynk, to Marlene H. Dortch, Secretary, FCC, at 1 (Apr. 12, 2022).

³² See ELS File No. 1059-EX-CN-2020 (granted June 2, 2022). This license was modified in early 2023 to add a mobile station location in Hana, Hawaii. See ELS File No. 0208-EX-CN-2022 (granted Feb. 9, 2023).

³³ See Narrative attached to AST & Science LLC application for ELS File No. 1059-EX-CN-2020 (granted June 2, 2022).

³⁴ See, e.g., ELS File No. 0018-EX-CN-2023 (granted Feb. 14, 2023), which modifies ELS File No. 1343-EX-CN-2022 (granted Jan. 9, 2023) to add two station locations in Brewster, Washington, and Tysons, Virginia, to the already authorized location in Gainesville, Georgia.

³⁵ See 47 CFR § 25.103.

³⁶ See Lynk Global, Inc., IBFS File No. SAT-LOA-20210511-00064, Narrative at 2 (Lynk Application).

³⁷ *Id.*

³⁸ See generally *Lynk Order*.

³⁹ See *id.* at 3-4, para. 7.

⁴⁰ *Id.* at 7, para. 15.

proceeding to determine whether the Commission should adopt rules of general applicability to permit use of terrestrial wireless frequencies for satellite communications and how such services should be regulated.⁴¹

14. *AST Applications.* AST has pending applications with the Commission requesting U.S. market access for gateway links in the V-band for its SpaceMobile satellite system, which would be comprised of 243 LEO satellites.⁴² Although AST requests authority to operate in the United States, it clarifies that it is not seeking to operate on terrestrial frequencies independent of a terrestrial licensee partner,⁴³ and intends to seek specific authority to operate on terrestrial spectrum through future lease arrangements with a terrestrial partner.⁴⁴ Further, AST states that it is not seeking changes to the Table of Frequency Allocations or waivers related to terrestrial frequencies allocated to parts 24 and 27 of the Commission's rules.⁴⁵ AST contends that its SpaceMobile system will enable terrestrial licensee partners to extend coverage to areas where terrestrial service is otherwise unavailable due to financial or environmental challenges to further access to broadband cellular connectivity.⁴⁶

15. *SpaceX NGSO Gen2 Starlink Order.* The Commission recently authorized SpaceX's efforts to develop and expand its Starlink satellite network.⁴⁷ On December 1, 2022, the Commission granted SpaceX authority to construct, deploy, and operate up to 7,500 NGSO satellites, using frequencies in the Ku- and Ka-bands to provide FSS, as part of its "second-generation" Starlink constellation (Gen2 Starlink), subject to certain conditions.⁴⁸ We note that the Gen2 Starlink Order does not authorize SpaceX to use frequencies allocated only for terrestrial operations.⁴⁹

C. Current U.S. and International Allocations of Bands Subject to Notice Proposal

16. The Table of Frequency Allocations (Table) is comprised of the International Table of Frequency Allocations (International Table) and the United States Table of Frequency Allocations (U.S. Table).⁵⁰ Our rules require the use of frequencies and frequency bands to be in accordance with the U.S.

⁴¹ *Id.* at 5-7, paras. 11-12, 16.

⁴² See AST & Science LLC, Amendment to Petition for Declaratory Ruling, IBFS File No. SAT-APL-20201028-00126 Call Sign S3065 (filed Oct. 28, 2020), amending IBFS File Nos. SAT-PDR-20200413-00034 and SAT-APL-20200727-00088.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ On March 28, 2018, the Commission granted SpaceX authority to deploy and operate its first-generation NGSO satellite system comprising 4,425 satellites operating in the Ku- and Ka-bands for provision of FSS (Gen1 Starlink). Subsequently, the Commission granted three license modifications for the Gen1 Starlink system, and a number of requests for Special Temporary Authority (STA) for LEOP and payload testing operations, and to adjust earth station elevation angles. See *In the Matter of 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 Call Sign S3069, Order and Authorization, FCC 22-91, 2022 WL 17413767, at *3 (Dec. 1, 2022) (*SpaceX Gen2 Order*), *appeals pending sub nom. Int'l Dark Sky Ass'n v. FCC*, No. 22-1337 (D.C. Cir. filed Dec. 30, 2022), *Dish Network Corp. v. FCC*, No. 23-1001 (D.C. Cir. filed Jan. 3, 2023).

⁴⁸ See *SpaceX Gen2 Order* at para. 1.

⁴⁹ As discussed above, SpaceX recently filed an application to modify its Gen2 Starlink authorization. See *supra* para. 7.

⁵⁰ The International Table is described in 47 CFR § 2.104 and the U.S. Table is described in 47 CFR § 2.105. The International Telecommunication Union (ITU) has divided the world into three geographic Regions (Region 1, Region 2, and Region 3). As a member administration, the United States is included in Region 2. See *List of ITU Member States*, https://www.itu.int/en/ITU-R/terrestrial/fmd/Pages/administrations_members.aspx (last visited Feb. (continued....))

Table,⁵¹ and where such use is inconsistent with the International Table, operations must be on a non-interference basis, meaning they cannot cause harmful interference to nor claim protection from harmful interference caused by other services that operate in accordance with ITU Radio Regulations in other countries.⁵² A proposed SCS system involving space and earth station transmissions on spectrum bands allocated only for fixed and/or mobile service would require that the U.S. Table be modified to enable Earth-to-space and space-to-Earth operations in the relevant bands.

17. Below we describe the current state of allocations, both in the U.S. Table and the International Table, for select bands currently allocated and assigned for terrestrial mobile service and containing licensee(s) meeting certain entry criteria proposed in this Notice, for possible use in the provision of SCS to close terrestrial network coverage gaps.⁵³ We note that there are coordination requirements within the National Radio Quiet Zone in each of the six bands.⁵⁴

18. *600 MHz Band.* The 600 MHz band consists of seven paired five-megahertz blocks at 614-698 MHz, with each block having five megahertz in the uplink band (663-698 MHz) and five megahertz in the downlink band (617-652 MHz).⁵⁵ In the U.S. Table, the band has no federal allocation and is allocated on a primary basis for non-federal fixed and mobile services.⁵⁶ Internationally, in Region 2, the band is allocated on a primary basis to broadcasting and on a secondary basis for fixed and mobile services, but international country footnotes elevate the fixed and mobile allocation to primary status in the United States and certain other countries in Region 2 for International Mobile Telecommunications (IMT).⁵⁷ In Region 3, the band is allocated on a primary basis to broadcasting, fixed, and mobile operations.⁵⁸ We note that some LPTV/translator TV stations remain in the band, but are permitted to operate only on a secondary basis to flexible-use wireless operations.⁵⁹ In addition to the LPTV/translator stations, there are also wireless microphones and white space devices operating on a license-by-rule basis.⁶⁰ In Region 1, the band is allocated to broadcasting on a primary basis.⁶¹

(Continued from previous page)

15, 2023); *see also* 47 CFR §§ 2.104(b), 2.105(a). The U.S. Table is subdivided into the Federal Table of Frequency Allocations, displaying allocations for Federal use, and the non-Federal Table of Frequency Allocations, displaying the allocations for non-Federal use that the FCC administers. The U.S. Table applies to the use of radio frequencies in those areas subject to the jurisdiction of the United States.

⁵¹ 47 CFR § 2.102(a).

⁵² *Id.* § 2.102(b); ITU Radio Regulations Article 4.4, Edition of 2020 (stating that non-conforming uses “shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the [ITU] Constitution, the Convention and these Regulations.”).

⁵³ We note that, in some cases, only a portion (e.g., block) of a given band might contain licensees able to meet the proposed entry criteria to be eligible for licensing to provide SCS.

⁵⁴ *See* 47 CFR § 1.924.

⁵⁵ *See id.* § 2.106.

⁵⁶ *Id.*; *see also* 47 CFR § 2.105(c) (describing the categories of services and noting that stations of a secondary status shall not cause harmful interference to stations of a primary status and cannot claim protection from harmful interference from stations of a primary service).

⁵⁷ *See* 47 CFR § 2.106 nn.5.293 & 5.308A.

⁵⁸ *Id.*

⁵⁹ *Id.* § 2.106 n.NG33.

⁶⁰ *Id.* § 2.106 n.NG115.

⁶¹ We note that spectrum use in the 470-960 MHz band in Region 1 will be reviewed by WRC-23 agenda item 1.5 in accordance with Resolution 235 (WRC-15). In particular, the review will consider the spectrum requirements of the broadcasting and mobile, except aeronautical mobile, service in 470-960 MHz.

19. *700 MHz Band.* The 700 MHz service is divided into two sub-bands: the Lower 700 MHz Service (698-746 MHz) and the Upper 700 MHz (746-758 MHz, 775-788 MHz, and 805-806 MHz).⁶² The Lower 700 MHz Band is divided into eight 6 megahertz blocks—three paired sets (A, B, and C blocks) and two unpaired blocks (D and C blocks).⁶³ The Upper 700 MHz Band is divided into 4 blocks: A and B blocks (paired 1 megahertz blocks), C block (paired 11 megahertz blocks), and D block (paired 10 megahertz blocks, with two spectrum bands devoted to public safety operations (758-775 MHz and 788-805 MHz).⁶⁴ These sub-bands are allocated on a primary basis for fixed, mobile, and broadcasting, both in the U.S. and International Tables, as part of larger allocations at 698-763 MHz and 775-793 MHz.⁶⁵ There are no federal or secondary allocations for the band.⁶⁶ In Region 1, the band is allocated to broadcasting and mobile except aeronautical on a co-primary basis.⁶⁷

20. *800 MHz Cellular Band.* The 800 MHz Cellular Radiotelephone Service (824-849 MHz and 869-894 MHz) provided the original foundation for the commercial wireless industry, with rules dating back to 1981.⁶⁸ It is divided into two 25 megahertz blocks.⁶⁹ Today, this band has been updated to mirror most of the flexible use rules found in other commercial bands, and is now used in modern LTE networks.⁷⁰ The band is allocated for non-federal fixed and land mobile use on a co-primary basis in the U.S. Table, with no federal allocation. Internationally, most of the band is allocated for fixed, mobile, and broadcasting in Regions 2 and 3, but the uppermost portion of the band (890-894 MHz) has different allocations in Regions 2 and 3: in Region 2, the band is allocated for fixed and mobile (except aeronautical) use on a primary basis and for radiolocation on a secondary basis; in Region 3, it is allocated for fixed, mobile, and broadcasting use on a co-primary basis and for radiolocation on a secondary basis. In Region 1, the band is allocated to broadcasting and mobile except aeronautical on a co-primary basis.⁷¹

21. *Broadband PCS.* Broadband PCS consists of paired blocks, with the lower blocks between 1850-1915 MHz and the upper blocks between 1930-1995 MHz. The A, B, and C blocks are 15

⁶² See FCC, *Revised 700 MHz Band Plan for Commercial Services*, <https://www.fcc.gov/sites/default/files/wireless/auctions/data/bandplans/700MHzBandPlan.pdf> (last visited Jan. 23, 2023).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See 47 CFR § 2.106.

⁶⁶ *Id.* Pursuant to section 27.303 of our rules, operators must submit information about certain operations in the 776-787 MHz band to a public safety coordinator to ensure non-interference with operations in the public safety spectrum, which sits within the Upper 700 MHz band. *Id.* § 27.303.

⁶⁷ *Id.* § 2.106 n.NG57.

⁶⁸ See *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27 et al.*, WT Docket No. 12-40 et al., Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518, 2521 at para. 3 (2017) (*800 MHz Second R&O*).

⁶⁹ The 800 MHz Cellular band was originally divided into two sets of two 10 megahertz blocks (Block A and Block B). *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, CC Docket No. 79-318, Report and Order, 86 F.C.C.2d 469 (1981). Later, 10 more megahertz of spectrum was added and divided between Block A and Block B, with the bands being reconfigured to take advantage of this new spectrum. *Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems et al.*, GEN Docket No. 84-1231 et al., Report and Order, 2 FCC Rcd 1825, 1828 at paras. 25-26 (1986).

⁷⁰ *800 MHz Second R&O*, 32 FCC Rcd at 2521, para. 3.

⁷¹ 47 CFR § 2.106 n.NG57.

megahertz wide, and the D, E, F, and G⁷² blocks are 5 megahertz wide.⁷³ The band is currently allocated on a primary basis for non-federal fixed and mobile use in the U.S. Table as part of a larger 1850-2000 MHz block.⁷⁴ Internationally, the 1930-1970 MHz portion of the band has a secondary mobile-satellite service (Earth-to-space) allocation in Region 2, and the 1980-1995 portion of the band has a primary mobile-satellite service (Earth-to-space) allocation across all regions.⁷⁵ Further, in Region 1, the band is allocated to the fixed and mobile services on a co-primary basis, and the ITU has identified much of this band for IMT in all three Regions.⁷⁶ There are no federal or secondary allocations for the band,⁷⁷ but stations authorized under part 74 of our rules are permitted to operate on a secondary basis in the band.⁷⁸

22. *AWS-H Block.* The Commission's Advanced Wireless Service (AWS) refers to a series of bands licensed under part 27 of our rules.⁷⁹ AWS includes the AWS-H Block, a set of paired 5 megahertz sub-bands at 1915-1920 MHz and 1995-2000 MHz.⁸⁰ Both sub-bands are allocated in the U.S. Table for non-federal fixed and mobile use on a primary basis, with no federal allocations.⁸¹ Internationally, the lower sub-band's allocation mirrors that of the United States, but the 1995-2000 MHz band is also allocated internationally for mobile-satellite service (Earth-to-space) operations.⁸²

23. *WCS.* The 2.3 GHz Wireless Communications Service (WCS) band spans 2305-2320 MHz and 2345-2360 MHz and consists of 2 paired five-megahertz blocks (A and B) and 2 unpaired five-megahertz blocks (C and D).⁸³ The two segments of the 2.3 GHz WCS band straddle the Satellite Digital Audio Radio Service (SDARS), which is located at 2320-2345 MHz.⁸⁴ The Lower A Block (2305-2310 MHz) is allocated for non-federal fixed, mobile (except aeronautical), and radiolocation on a primary basis.⁸⁵ In addition to a prohibition on airborne operations at 2305-2310 MHz, licensees near NASA's Goldstone, CA facility are subject to a coordination requirement.⁸⁶ The Lower A Block is also allocated for amateur use on a secondary basis.⁸⁷ The remainder of the band is allocated for non-federal fixed,

⁷² This spectrum block is the subject of the recent part 25 modification application, waiver request and leasing application jointly filed by SpaceX and T-Mobile. See SpaceX and T-Mobile Application.

⁷³ See *FCC Broadband PCS Band Plan*, <https://www.fcc.gov/sites/default/files/wireless/auctions/data/bandplans/pcsband.pdf> (last visited Jan. 23, 2023).

⁷⁴ See 47 CFR § 2.106.

⁷⁵ *Id.*

⁷⁶ See *id.* § 2.106 nn.5.384A, 5.388 & 5.388A.

⁷⁷ *Id.*

⁷⁸ *Id.* § 2.106 n.NG159.

⁷⁹ 47 CFR part 27.

⁸⁰ See, *H Block Band Plan*, available at <https://www.fcc.gov/sites/default/files/wireless/auctions/data/bandplans/HBlockBandPlan.pdf> (last visited: March 13, 2023).

⁸¹ 47 CFR § 2.106.

⁸² *Id.*

⁸³ See *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, WT Docket No. 07-293, Order on Reconsideration, 27 FCC Rcd 13651, 13654-55 (2012).

⁸⁴ *Id.*

⁸⁵ See 47 CFR § 2.106. Note that, pursuant to n.US97, space-to-Earth operations are currently prohibited.

⁸⁶ *Id.*

⁸⁷ See *id.* § 2.106.

mobile, broadcasting-satellite (sound), and radiolocation use on a primary basis, and federal aeronautical telemetry/telecommand operations are permitted on a secondary basis.⁸⁸ However, to protect adjacent SDARS operations, mobile operations are prohibited in the C Block (2315-2320 MHz) and D Block (2345-2350 MHz).⁸⁹ Internationally, for Regions 2 and 3, the WCS band is allocated for fixed, mobile, and radiolocation uses on a primary basis, and amateur uses on a secondary basis.⁹⁰ In Region 1, the band is allocated to the fixed and mobile service on a co-primary basis, and radiolocation and amateur use on a secondary basis. Further, the ITU has identified much of this band for IMT in all three Regions.⁹¹

III. DISCUSSION

24. The Commission has a longstanding commitment to ensuring that the country's scarce and valuable spectrum resource is put to its highest and best use. Technological innovation and creative applications can pave the way for new spectrum use cases that promote spectrum efficiencies and serve the public interest. In this Notice of Proposed Rulemaking (Notice), we propose a novel framework for SCS⁹² that would provide coverage to a terrestrial mobile service licensee's subscribers operating in underserved and/or unserved areas within a terrestrial mobile service licensee's license area, only through a collaboration between an existing NGSO operator and a terrestrial mobile service licensee, involving transmissions between space stations and mobile end-user devices on spectrum that is currently allocated and licensed exclusively on a terrestrial basis.⁹³ Specifically, given the complexity of this undertaking, and particularly due to technical considerations, we confine our initial proposal to spectrum and locations where (1) there is only a single terrestrial entity that holds, either directly or indirectly, all co-channel licenses for the relevant frequencies in a given geographically independent area (GIA),⁹⁴ such as CONUS; and (2) there are no primary, non-flexible-use legacy incumbent operations (whether federal or non-federal) in the band.⁹⁵ As discussed below, we also seek comment on potentially extending our proposed framework to a range of alternative licensing scenarios that do not currently meet our proposed entry criteria, including instances where multiple co-channel terrestrial licensees are authorized in a given GIA.

⁸⁸ *Id.*

⁸⁹ *See id.* § 27.50(a) (limiting operations in the C and D blocks of the band to fixed use only).

⁹⁰ *See id.* § 2.106.

⁹¹ *Id.* § 2.106 n. NG72.

⁹² Commenters generally support the Commission's initiation of a rulemaking on this issue. *See, e.g.,* Letter from Alison Minea, Vice President and Associate General Counsel, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, at 1 (filed Mar. 8, 2023) and Letter from Alison Minea, Vice President and Associate General Counsel, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, at 1 (filed Mar. 9, 2023) (expressing support for the initiation of a rulemaking to explore a new regulatory framework to facilitate the integration of satellite and terrestrial networks); Letter from Robert Vitanza, Assistant Vice President, Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, IB Docket No. 22-271, at 1 (filed Mar. 9, 2023) (AT&T *Ex Parte* Letter) (expressing support for efforts to allow terrestrial mobile networks to integrate SCS through collaboration with a satellite operator); Letter from Jameson Dempsey, Principal, Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, IB Docket No. 22-271, at 1 (filed Mar. 8, 2023) (SpaceX *Ex Parte* Letter) (expressing support for the draft Notice that would enable satellite connectivity over licensed terrestrial mobile spectrum for SCS).

⁹³ We note that our proposed framework does not make proposals regarding, or seek comment on, the issue of satellite service to airborne devices, e.g., handsets in any type of aircraft, from commercial airlines to unmanned aircraft systems, nor does it address transmissions originating from high altitude platforms.

⁹⁴ *See infra* paras. 44-46.

⁹⁵ We do not propose to treat non-flexible-use secondary licensees as incumbents, given that these licensees may not cause interference and must accept all interference. We therefore propose to include within the SCS framework bands that have at least one block in a given GIA where a single terrestrial licensee holds all co-channel licenses, even where that band might contain such secondary licensees.

This proposed framework would be subject to the United States' international treaty obligations, including those under the auspices of the ITU.⁹⁶

A. Adding a Co-Primary Mobile-Satellite Service Allocation to Certain Bands Allocated to Terrestrial Services

25. We propose to modify the U.S. Table to authorize mobile-satellite service (space-to-Earth and Earth-to-space) operations in certain terrestrial bands that have no primary, federal or non-federal satellite allocations to permit supplemental coverage from space to the subscribers of the relevant terrestrial networks using those bands. Adding such allocations as co-primary to certain terrestrial “flexible-use” bands⁹⁷ would enhance the Commission’s efforts to provide ubiquitous coverage across the United States, including in areas that are currently unserved or underserved. Our proposal could also create significant public safety benefits, including rural service and emergency coverage in areas that terrestrial networks do not reach. In addition, we believe that our proposal to permit use of these flexible-use bands for supplemental coverage from space to close coverage gaps in terrestrial service would serve the public interest by enabling more intensive spectrum use and would be consistent with our goals to allocate increasingly scarce spectrum resources in the most efficient and effective manner possible. As discussed further below,⁹⁸ any proposed allocation would remain subject to the United States’ international obligations under treaties, bilateral or multilateral agreements, the International Table, and other instruments of the ITU.

1. Addition of Mobile-Satellite Service Allocation

26. *Mobile Satellite Footnote Allocation.* We propose to add the following non-federal footnote⁹⁹ to the U.S. Table authorizing mobile-satellite service operations on a co-primary basis¹⁰⁰ with existing allocations in a number of terrestrial flexible-use bands. Specifically, we propose to add the footnote allocation in bands where we are aware of at least one block of the band with an incumbent terrestrial licensee that holds all co-channel licenses throughout a GIA, sufficient to satisfy our proposed entry criteria.

⁹⁶ For example, Article I of the ITU Radio Regulations provides definitions of “space station” and “earth station” that are repeated in our Part 25 rules. Under those definitions, the provision of SCS capabilities would involve the use of space stations and earth stations authorized under part 25 of the Commission’s rules. When a handset is intended for communications with a space station, it becomes an earth station subject to rules governing earth stations. ITU Radio Regulations § 1.63 (“*earth station*: A station located either on the Earth’s surface or within the major portion of the Earth’s atmosphere and intended for communication: with one or more space stations; or with one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.”); ITU Radio Regulations § 1.64 (“*space station*: A station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth’s atmosphere.”). See also 47 CFR § 25.103.

⁹⁷ The term “flexible-use spectrum” or “flexible-use bands,” refers to services or spectrum bands for which the Commission’s rules do not prescribe specific uses or applications. See *Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems*, WT Docket 22-232, Notice of Proposed Rulemaking, 2023 WL 120684, *40, para. 111 n.247 (2023).

⁹⁸ See *infra* Section III.C.

⁹⁹ Non-federal footnotes consist of the letters “NG” followed by one or more digits and denote a stipulation applicable only to non-Federal operations. They only appear in the non-federal portion of the U.S. Table. 47 CFR § 2.105(d)(5)(iii).

¹⁰⁰ Where there is no international MSS allocation in a band, proposed SCS operations discussed below would be on a co-primary basis domestically, but assignment of such SCS authorizations will be expressly conditioned not to cause harmful interference to, or claim protection from harmful interference caused by, a station operating in accordance with the provisions of the ITU Radio Regulations internationally. See ITU Radio Regulations Article 4.4, Edition of 2020. We note that the 1980-1995 MHz segment of the PCS band has an existing primary MSS (Earth-to-space) allocation across all regions. See 47 CFR § 2.106.

NG33A The bands 614-652 MHz and 663-758 MHz, 775 MHz-788 MHz, and 805-806 MHz, 824-849 MHz and 869-894 MHz, 1850-1920 MHz and 1930-2000 MHz, and 2305-2320 MHz and 2345-2360 MHz are allocated to the mobile-satellite service (MSS) on a co-primary basis. MSS operations in these frequency bands are subject to the Commission's rules for Supplemental Coverage from Space set forth in part 25 of this chapter.

This footnote allocation—which would indicate that bidirectional mobile-satellite service operations (space-to-Earth and Earth-to-space) apply to the provision of SCS—would be added for the entire spectrum range of each listed band. Under this proposal, the footnote would be used in each relevant band in lieu of adding a mobile-satellite service listing (i.e., a “direct table entry”). As discussed below, this proposed allocation would not directly authorize bidirectional mobile-satellite service, and any SCS operations would be subject to compliance with our licensing rules and the relevant band's service rules that might limit use of a spectrum block to uplink or downlink. We seek comment on this approach, including on whether the footnote should be more restrictive and specifically authorize transmission in one direction (space-to-Earth or Earth-to-space) in certain terrestrial bands where our technical rules currently include such a limitation, or where other factors such as adjacent band compatibility would necessitate such a restriction. We also seek comment on whether the proposed footnote allocation should be on a secondary basis as opposed to a co-primary basis.

27. We clarify that some spectrum blocks within a proposed band for the new MSS allocation may not currently meet the proposed entry criteria and licensing requirements discussed further below, but note that evolving technologies, issuance of new licenses, and future secondary market transactions may result over time in an increased number of entities and spectrum blocks eligible to provide SCS under our proposed framework. Thus, we believe it would be administratively efficient to apply a footnote allocation, tied to meeting specific entry criteria and licensing rules, that would minimize the need for future allocation rulemakings as eligibility under the framework is subsequently achieved. We emphasize that, despite the proposed broader allocation, we propose to license operations under our initial SCS framework only for spectrum blocks where applicants can meet our entry criteria and licensing requirements. We seek comment on this proposal, including its costs and benefits. Further, we intend to direct the Wireless Telecommunications Bureau (WTB) and IB¹⁰¹ to jointly maintain and periodically update a Commission web page providing a list of entities, GIAs, and spectrum bands/blocks that meet our entry criteria if adopted and that become authorized to provide SCS.

28. In the interest of exploring a wide variety of approaches, we also seek comment on adding direct allocations to the U.S. Table for the mobile-satellite service on a co-primary basis in the applicable bands and creating an associated footnote that would limit such use to SCS operations. Are there any benefits to this approach as opposed to employing the more narrowly tailored footnote allocation approach proposed above? If we add direct allocations, is a designation of co-primary use sufficient?

29. The flexible-use terrestrial bands for which we propose at this time to add a non-federal mobile-satellite service footnote allocation are:

¹⁰¹ In January 2023, the Commission released an order approving the reorganization of the International Bureau into: (1) a Space Bureau to handle policy and licensing matters related to satellite communications and other in-space activities under the Commission's jurisdiction; and (2) an Office of International Affairs to handle issues involving foreign and international regulatory authorities, as well as international telecommunications and submarine cable licensing. See *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, FCC 23-1 (2023). The reorganization will not become effective until the appropriate clearance has been obtained, and the order has been published in the Federal Register. See *id.* at para. 25. Post-reorganization, IB will cease to exist, and the Space Bureau would handle, along with WTB, the proposed web page updates as well as the evaluation and coordination of the processing of any SCS applications.

- 600 MHz: 614-652 MHz and 663-698 MHz;¹⁰²
- 700 MHz: 698-758 MHz, 775 MHz-788 MHz, and 805-806 MHz;
- 800 MHz: 824-849 MHz and 869-894 MHz;
- Broadband PCS: 1850-1915 MHz and 1930-1995 MHz;
- AWS-H Block: 1915-1920 MHz and 1995-2000 MHz; and
- WCS: 2305-2320 MHz and 2345-2360 MHz

We believe these flexible-use terrestrial bands can benefit from provision of SCS because commercial wireless services have been deployed on these bands and because the bands include at least one spectrum block with an existing licensee that holds rights sufficient to provide the basis for a satellite applicant to satisfy our proposed entry criteria. We seek comment on the inclusion of each band (or block within a band) in our proposed framework. We also seek comment generally on this approach and any alternative methods of selecting bands that may be better suited to achieving the Commission's goals as set forth in this Notice, or any additional bands that commenters believe should be included in our proposal, for example, certain bands dedicated to public safety use.¹⁰³ As stated, these bands were selected because of the presence today of an existing licensee with exclusive rights to a frequency block throughout an entire GIA. However, in light of our proposed entry criteria, which would require an applicant for SCS operation to show evidence of a pending lease application with such a terrestrial entity, is this an appropriate basis upon which to limit the bands to which the new allocation would be applied, or should some other method be used?

30. *Use of Fixed Devices within MSS.* The primary focus of this proceeding is to foster collaborative efforts to enable satellites to fill mobile service coverage gaps on terrestrial spectrum, and for that reason we propose to add a mobile-satellite service footnote allocation to these terrestrial bands. We note, however, that the Commission has previously adopted a flexible-use approach to many of these bands, with current allocations allowing terrestrial service to fixed or mobile devices. Accordingly, we seek comment on whether we should adopt a footnote allocation that would permit mobile satellite use to communicate with fixed, as well as mobile, devices.¹⁰⁴ Would permitting fixed devices to be used within the MSS allocation be consistent with our past flexible-use approach and our goals in this proceeding, for example, by enabling a wider array of IoT devices¹⁰⁵ and customer premises equipment (CPE) to operate in unserved areas? Are there any technical concerns with enabling mobile supplemental satellite operations to communicate with fixed devices in these bands?

31. *Fixed-Satellite Service.* In addition, we note that current satellite services offer some flexibility of use and operation. For example, in certain cases, FSS operators are permitted to provide service to earth stations in motion (ESIM). Similarly, a single satellite constellation can be licensed to provide both FSS and MSS. Thus, we seek comment on whether we should expressly include an allocation for the proposed bands authorizing FSS operations in an SCS context or whether, as proposed, we should only adopt an MSS allocation for those bands. Given the goal of allowing SCS to seamlessly complement terrestrial operations in these bands, what allocation and service rule changes would facilitate this goal without unnecessarily disrupting reliable terrestrial services? We seek comment on the

¹⁰² As discussed below, we exclude from this allocation the 600 MHz duplex gap at 652-663 MHz. See *infra* para 34, note 108.

¹⁰³ See *infra* para. 35.

¹⁰⁴ See 47 CFR § 2.106 n.US320 (permitting links with "earth stations at fixed locations" in certain mobile-satellite service bands).

¹⁰⁵ As noted, on February 7, 2023, T-Mobile/SpaceX jointly requested various types of Commission relief to provide a satellite service on terrestrial spectrum that is intended to service consumer handsets and also IoT devices. See SpaceX and T-Mobile Application. We note that certain IoT devices may be attached to fixed equipment to monitor utilities or critical infrastructure.

implications of our allocation proposal and whether a different allocation/service rules approach might better serve our goal. What are the costs and benefits of each approach?

32. *Bi-Directional Allocation.* As discussed, we propose a bi-directional footnote allocation to the U.S. Table, and applicants seeking authorization for specific frequencies would be required to comply with our current service rules in conjunction with the implementation of SCS to expand terrestrial coverage. Accordingly, we do not find it necessary to specify in the mobile-satellite service footnote allocation those bands that may be used for uplink or downlink operations, or those bands that may utilize Time-Division Duplexing (TDD) or Frequency-Division Duplexing (FDD) operations.¹⁰⁶ In certain instances, technical practicalities as reflected in applicable service rules may limit use of certain frequencies to uplink only or downlink only,¹⁰⁷ and prospective licensees would need to configure SCS operations to comply with these restrictions. Further, adjacent band compatibility requirements may also result in the need for additional restrictions. We seek comment on this approach, including associated costs and benefits.

2. Further Discussion of Bands Proposed for Supplemental Coverage from Space

33. As a threshold matter, SCS operators would be required to protect adjacent band and cross-border operations to the same extent required today under current rules for terrestrial use. In this proceeding, we seek to facilitate SCS through operations that are fully capable of complying with current technical rules and restrictions intended to prevent harmful interference. We do not seek to modify current, long-standing and carefully considered protection requirements. We seek comment on this approach below in the technical section of this Notice, and on whether there are alternatives to ensure that any SCS offerings in these terrestrially allocated bands preserve the spectrum landscape to prevent harmful interference. We also seek comment on whether new adjacent band and cross-border operation protections are required to prevent harmful interference.

34. We propose to allow SCS in the 600 MHz band, excluding the duplex gap,¹⁰⁸ which is allocated on a primary basis for non-federal fixed and mobile operations. We note, however, that radio astronomy operations exist immediately below the 600 MHz band on TV channel 37 (608-614 MHz)¹⁰⁹ and could be susceptible to interference from satellite downlink operations unless the SCS operator fully coordinates with the geographically distributed radio astronomy operations. Below, we separately discuss and seek comment on the potential impact of SCS on radio astronomy.¹¹⁰ In addition, the 600 MHz band

¹⁰⁶ Time-Division Duplexing is a radio communications technique where uplink and downlink communications are duplexed by time, such that they share the same channel to communicate back and forth in orthogonal time slots. Frequency-Division Duplexing is a radio communication technique where uplink and downlink communications are duplexed by frequency, such that transmissions are sent on separate designated frequencies (e.g., base station frequencies for downlink versus mobile station frequencies for uplink).

¹⁰⁷ Below we seek comment on expansion of our proposed framework to areas other than an entire GIA, including considerations of how to avoid co-channel interference where multiple licensees exist in a given area where SCS is sought by one or many such licensees. See *infra* Section D.

¹⁰⁸ The duplex gap (which comprises 11 megahertz between the uplink and downlink sections of the 600 MHz band) hosts licensed and unlicensed wireless microphone operations. See *generally Promoting Spectrum Access for Wireless Microphone Operations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket Nos. 14-166 and 12-268, Report and Order, 30 FCC Rcd 8739 (2015); *Promoting Spectrum Access for Wireless Microphone Operations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket Nos. 14-166 and 12-268, Order on Reconsideration and Further Notice of Proposed Rulemaking, 32 FCC Rcd 6077, 6080-81, para. 4 (2017).

¹⁰⁹ See 47 CFR § 2.106 n.US74; 47 CFR § 27.1321.

¹¹⁰ See *infra* paras. 123-126.

service rules specify particular frequencies for uplink (663-698 MHz) and downlink (617-652 MHz).¹¹¹ Under our proposal, SCS operations would need to be similarly configured to comply with part 27 service rules, notwithstanding the footnote allocating a full frequency range in a band for bi-directional operations.

35. We propose to authorize SCS in the 700 MHz band, which is allocated on a primary basis for fixed, mobile, and broadcasting operations, and in the Broadband PCS band, which is allocated on a primary basis for non-federal fixed and mobile use. While neither the 700 MHz band nor the Broadband PCS band hosts federal allocations, the immediately adjacent 1780-1850 MHz band hosts Federal fixed, mobile, and space operation allocations and extensive Federal uses, and the near adjacent 2025-2110 MHz band hosts Federal fixed, mobile, space operation, space research, and Earth exploration-satellite allocations and numerous Federal uses. We further note that substantial commercial wireless operations exist in each these bands and there are no non-flexible-use legacy incumbent operations but, as with the 600 MHz band, we recognize that licensees may be limited in the selection of uplink and downlink frequencies to satisfy band-specific service rule requirements. We seek comment on the extent to which satellite and terrestrial partners can provide SCS in these bands while complying with applicable terrestrial service rules designed to prevent harmful interference. In addition, we seek comment on whether to include within the SCS framework 700 MHz spectrum that is not currently licensed for commercial use to serve consumer handsets, but that is used to provide public safety benefits. For example, as some commenters suggest,¹¹² should we include 700 MHz public safety spectrum licensed to FirstNet on a nationwide basis?¹¹³ What are the costs and benefits, including any statutory, technical or regulatory challenges, of applying the SCS framework to FirstNet's 700 MHz public safety spectrum? Could inclusion of FirstNet's 700 MHz spectrum within the SCS framework provide broadband connectivity to first responders without increasing the potential for harmful interference? What specific changes to our rules would be needed to incorporate this spectrum into the proposed SCS framework?

36. We also propose to authorize SCS in the AWS-H block, which hosts terrestrial fixed and mobile allocations. As discussed above, although we propose a bi-directional footnote allocation to the U.S. Table, applicants seeking authorization for specific frequencies would be required to comply with our current service rules with regard to their network design, which may conflict with certain international allocations.¹¹⁴ For example, we note that, as with other bands, our AWS service rules specify frequencies available for uplink and downlink.¹¹⁵ Although the 1995-2000 MHz portion of the AWS-H block is specified for downlink operations in our service rules,¹¹⁶ this band hosts an allocation in the International

¹¹¹ See 47 CFR § 27.11(k).

¹¹² See Letter from Tim Bransford and Denise Wood, Morgan, Lewis & Bockius LLP, Counsel to AST SpaceMobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, at 6-7 (filed Mar. 3, 2023) (AST Mar. 3 *Ex Parte* Letter); Letter from Tim Bransford and Denise Wood, Morgan, Lewis & Bockius LLP, Counsel to AST SpaceMobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, IB Docket No. 22-271, at 2 (filed Mar. 8, 2023); Letter from Tim Bransford and Denise Wood, Morgan, Lewis & Bockius LLP, Counsel to AST SpaceMobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, IB Docket No. 22-271, at 1-2 (filed Mar. 9, 2023); AT&T *Ex Parte* Letter at 1-2.

¹¹³ The 700 MHz band is allocated for public safety use on 758-775 MHz and 788-805 MHz, with the 758-769 MHz and 788-799 MHz segments licensed to FirstNet. See, e.g., *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012*, WT Docket No. 06-150, Report and Order, 27 FCC Rcd 10953 (2012) (discussing the reallocation of the 700 MHz D Block for public safety use, the nature of the FirstNet license, and the broadband and narrowband nature of this spectrum); see also 47 CFR § 90.532.

¹¹⁴ See *supra* para. 32.

¹¹⁵ See 47 CFR § 27.50(d).

¹¹⁶ *Id.*

Table for mobile satellite uplink operations.¹¹⁷ We seek comment on the impact this would have on the deployment of SCS in the AWS-H block.

37. Further, we propose to authorize SCS in the WCS band, which hosts both terrestrial fixed and mobile, as well as satellite broadcasting allocations. The operations in the band are subject to a variety of restrictions to protect adjacent-band operations,¹¹⁸ including limiting some portions of the band to fixed operations only.¹¹⁹ The near adjacent 2200-2290 MHz band hosts Federal fixed, mobile, space operation, space research, and Earth exploration-satellite allocations and extensive Federal uses. The adjacent 2360-2395 MHz band hosts Federal mobile (2360-2395 MHz) and radiolocation (2360-2390 MHz) allocations and numerous Federal uses. We seek comment on how to ensure compliance with our service rules for any SCS offering in this band.

38. Finally, we propose to authorize SCS in the 800 MHz Cellular Radiotelephone Service, which is allocated on a primary basis for fixed and land mobile, and which does not have a federal allocation. We recognize, however, that this band was the first established wideband mobile phone band dating back to the 1980s, and therefore existing legacy licensing rules might complicate the provision of SCS intended by terrestrial and satellite partners to provide service in otherwise *unserved* areas in a given GIA. Specifically, unlike most flexible use bands, the 800 MHz cellular service continues to employ a licensing mechanism whereby a licensee's licensed area is essentially the composite of service areas where service in fact *can be* provided, known as a Cellular Geographic Service Area (CGSA). Unlike most commercial spectrum bands, unserved areas beyond the 800 MHz cellular licensee's coverage remain unlicensed in the Commission's spectrum inventory. Provided that an unserved area in a market is at least 50 contiguous square miles in size,¹²⁰ an unserved area is available to any applicant through site-based filings that specify the location of base station transmitter(s), either for the current licensee to expand its licensed area or for new entrants seeking to serve the area, and licensees are required to construct new base stations in these areas within one year of grant.¹²¹ Moreover, applications for unserved areas are placed on Public Notice, and competing mutually exclusive applications for an area are accepted and are resolved through competitive bidding under Section 309 of the Act.¹²² Cellular licensees also may operate outside of their CGSA on a secondary basis, but such operations receive no interference protection.¹²³

39. In sum, the current 800 MHz cellular licensing scheme may present unique challenges for the provision of SCS, which is premised on satellite downlinks covering unserved areas within a terrestrial licensee's authorized service area. Under our proposal, SCS would not be authorized to operate in the 800 MHz cellular service until the terrestrial licensee expands its CGSA to include such adjacent unserved areas, reaches a lease arrangement with a satellite operator to include the newly licensed area, and, with the satellite operator, obtains part 25 authorizations as required under our proposed SCS entry criteria and licensing requirements. The entry of a new 800 MHz co-channel terrestrial licensee entitled to protection from SCS operations in a GIA substantially held by a terrestrial licensee collaborating with a satellite operator would likely present significant technical challenges. We seek comment on how to account for these scenarios and create regulatory flexibility to facilitate SCS where possible. Should we

¹¹⁷ See 47 CFR § 2.106.

¹¹⁸ See *id.* § 27.50(a) (specifying power level, duty cycle, and bandwidth for devices in order to protect SDARs, and prohibiting aeronautical mobile operations to protect NASA operations in Goldstone, CA).

¹¹⁹ *Id.* (limiting operations in the C and D blocks of the band to fixed use only).

¹²⁰ See *id.* §§ 22.911, 22.949.

¹²¹ See *id.* § 22.946.

¹²² See 47 U.S.C. § 309(j).

¹²³ See 47 CFR § 22.912.

permit SCS leasing arrangements with 800 MHz cellular terrestrial partners only where there is less than 50 contiguous square miles of unserved area remaining in a GIA? Alternatively, should SCS operations be permitted in unserved areas within a GIA that are adjacent to a terrestrial partner's licensed area, but only on a secondary basis, similar to current cellular licensees' expansions? Should we permit a cellular licensee to expand its CGSA by using the coverage provided by SCS? We seek comment on all aspects of this issue, including the costs and benefits of any proposed alternatives.

40. *Testing and Future Bands.* To inform our review of the overall record, commenters should indicate the flexible-use bands in which they are currently, or are interested in, testing SCS capabilities.¹²⁴ We seek comment on the status of such testing and prospective timelines for each proposed band. We also ask commenters to identify the type of communication contemplated, e.g., voice, SOS/emergency communications, texting, service to IoT devices, 4G/5G broadband, as well as the type of technology or infrastructure needed to support such use.

41. In addition, we seek detailed comment regarding whether there are other flexible-use terrestrial bands, besides those proposed in this Notice, that may be of interest for future SCS operations. What specific additional bands should we consider? Are there bands that might be particularly suited to providing SCS to terrestrial devices beyond consumer handsets, for example, potential SCS to a wider range of IoT devices? For each band, what type of allocation is needed and what, if any, limitations should be established to complement terrestrial operations without causing harmful interference? We ask commenters to identify the types of other operations contemplated, the desired bands, and the technology and infrastructure needed to support such use.

B. Closing Terrestrial Service Area Coverage Gaps Through Supplemental Coverage from Space

42. We see the potential for achieving significant public interest benefits by facilitating satellite coverage to close terrestrial service coverage gaps using spectrum currently allocated for terrestrial service. We strive to realize these public interest benefits as rapidly as possible, while minimizing the risk of harmful interference. To avoid technical complexities that could arise where SCS is introduced in areas where multiple co-channel terrestrial licensees are present on a particular spectrum block, we propose as an initial step to adopt rules that authorize SCS only in cases where a single terrestrial licensee holds all co-channel licenses on the relevant band in a GIA. Likewise, we propose initially to limit our SCS framework to NGSO operators with an existing part 25 license or an existing part 25 grant of market access (for non-U.S. licensed satellite operators) (together, "authorization"), because such satellite operators are likely to rapidly deploy these space stations after receiving any needed modification to their existing authorizations to implement SCS. We believe that proposing this initial step, while seeking comment on potential expansion of the framework, presents the fewest practical and technical complexities and provides the most efficient path for enabling SCS in the near-term.

43. We recognize, however, that even as we propose to accelerate SCS operations that present less technically complex interference protection scenarios, we do not wish to discourage or delay the development of other innovative solutions for supplemental satellite coverage.¹²⁵ We note that, during the pendency of this proceeding, we will continue to consider filings made by interested parties, for example, requests for rule waiver, special temporary authority, and experimental authorization, relating to supplemental satellite coverage proposals, including those that do not meet the initial criteria we propose for SCS. In addition, any action on such applications would be subject to the outcome of this proceeding. We believe that proposing a measured approach permits rapid consideration of innovative solutions in the

¹²⁴ See, e.g., AST Mar. 3 *Ex Parte* Letter at 6 (AST states that it is currently testing SCS capabilities on FirstNet spectrum pursuant to a grant of experimental authority issued by OET under call sign WL2XRE).

¹²⁵ See Letter from Angela Simpson, Senior Vice President & General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, IB Docket No. 22-271, at 1-2 (Mar. 9, 2023) (CCA *Ex Parte* Letter); AT&T *Ex Parte* Letter at 1; AST Mar. 3 *Ex Parte* Letter.

dynamic satellite-terrestrial marketplace, while also developing a robust record to consider policies and rules that may ultimately permit expansion to new or other types of satellite entrants collaborating with terrestrial licensees authorized on additional spectrum blocks that do not meet our proposed SCS framework.

1. Geographically Independent Area

44. Introducing satellite operations in flexible-use terrestrial spectrum presents novel challenges for managing potential co-channel interference in adjacent markets. For example, in terrestrial wireless services, the Commission typically requires co-channel terrestrial licensees in adjacent markets to comply with a field strength limit at the common boundary of their geographically licensed markets, while permitting such licensees to negotiate a mutually agreeable alternative limit.¹²⁶ In proposing to permit satellite operation on spectrum bands currently allocated for terrestrial-only use, we note that our typical field strength limit at the wireless terrestrial service area boundary may not fully reflect the impact of a satellite-transmitted signal on adjacent market areas. This concern stems from differences in interference metrics and mechanics between satellite and terrestrial-based networks, as well as the increased potential for harmful interference caused by satellite signals that may have a larger footprint into an adjacent service area than a terrestrial network's limited operations near service area borders. We note that modeling the field strength at a service area boundary from a static terrestrial base station, while considering terrain losses, antenna tilt, tower height, etc., is a relatively straightforward, verifiable task. Moreover, the strength of a terrestrial transmission into an adjacent market typically drops off quickly the further the signal travels into that market. In contrast, signals from a satellite are subject to free space propagation, have substantially larger footprints, arrive from varying angles, and could change in a dynamic fashion depending on orbital mechanics. Accordingly, a co-channel satellite transmission into an adjacent market is not as likely to drop off in strength as a terrestrial transmission, and is less affected by terrain-based mitigation factors commonly experienced by terrestrial systems. Further, given the inherent constant movement of NGSO satellites, which can affect signal strengths as measured at a given point, the satellite operator may have difficulty ensuring that a signal strength limit applicable to terrestrial networks is not periodically exceeded over time. Finally, we note that an undesired satellite signal into unauthorized markets can also impact terrestrial service in those markets by increasing the noise floor.

45. Therefore, to minimize the possibility for interference between geographically adjacent markets, we propose, as an initial step in this proceeding, to limit the provision of supplemental coverage from space to instances where a single terrestrial licensee holds all co-channel licenses in the relevant band throughout one of six GIAs.¹²⁷ The proposed GIAs are: (1) CONUS; (2) Alaska; (3) Hawaii; (4) American Samoa; (5) Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands. Notably, there are no Commission licensed land areas adjacent to each proposed GIA, and there is a significant geographic separation between GIAs. By applying these proposed criteria to satellite use of terrestrial spectrum, we seek to ensure that collaborating satellite and terrestrial licensees may provide SCS without the presence in each GIA of co-channel terrestrial licensees requiring interference protection.¹²⁸ We seek comment on this proposal, including the associated costs and benefits.

¹²⁶ See, e.g., 47 CFR §§ 24.236, 27.55.

¹²⁷ Although we would require a single licensee to hold all relevant co-channel licenses throughout a GIA under our proposed framework, we note that each GIA, depending on the subject band, may consist of a range of different geographic area licenses, e.g., Regional Economic Area Groupings, Economic Area Groupings, Partial Economic Areas, Component Economic Areas, Cellular Market Areas, etc.

¹²⁸ We recognize that there may be instances where a single licensee holds all relevant co-channel licenses in a GIA, but has entered into lease arrangements. Although we propose that such a licensee would still qualify to participate in the proposed SCS framework because it holds all relevant co-channel licenses in the GIA, we discuss further below the issue of protections to be afforded to its lessees in this circumstance. See *infra* paras. 111-112.

46. Our initial proposal is intentionally limited in scope in order to enable prompt action, while reducing technical challenges. We recognize, however, that stakeholders may explore solutions to provide SCS in other circumstances, such as in bands with existing non-flexible-use legacy incumbents, whether federal or non-federal. Further, a satellite operator may want to collaborate with multiple terrestrial licensees that collectively hold all co-channel licenses in a GIA. Alternatively, it is possible terrestrial and satellite collaborators may be interested in offering SCS in an area where the terrestrial licensee does not hold all co-channel licenses for the relevant spectrum block throughout the entire GIA, meaning their license areas are adjacent to those of unaffiliated and non-participating licensees that require additional interference protection. Below, we seek comment on a range of possible scenarios involving various licensee configurations and geographic combinations.¹²⁹

2. Assigning New Mobile-Satellite Service Rights for Supplemental Coverage from Space

47. Supplementing terrestrial service with coverage from space requires the granting of transmission rights involving two distinct links—the transmission link from a space station to a terrestrial device (downlink/space-to-Earth) and the transmission link from a terrestrial device to a space station (uplink/Earth-to-space), along with the right to receive such transmissions. In the terrestrial licensing context, rights for both links vest in a single licensee; for satellite operations, licenses will typically include both the transmit and receive frequencies for the facilities involved, whether a space station or earth station, and the rights for operations of any such facilities can be held by two different licensees, one for the space station and one for the earth station.

48. *Space Station Operations.* Space stations are licensed through the Commission’s part 25 licensing framework. Terrestrial licensees operating on exclusively held, flexible-use spectrum do not currently have the right to transmit from space stations (or to consent to having a satellite entity make such a transmission on its behalf), except to the extent our rules provide for operations within a particular frequency band in all allocated services. To effectuate SCS in certain flexible-use bands allocated solely for terrestrial use, we propose to authorize mobile satellite operations (downlink/space-to-Earth and uplink/Earth-to-space) in these bands (when newly allocated for such use) by allowing an NGSO satellite operator with an existing part 25 authorization to apply to modify such authorization where that entity meets certain prerequisites, or “entry criteria.” Specifically, we propose that such a licensee may apply to modify its part 25 authorization only if it has: (1) an application on file with the Commission to lease the exclusive-use spectrum throughout an entire GIA, allocated for MSS provision of SCS, of a terrestrial licensee that holds all co-channel licenses, either directly or indirectly, throughout the GIA; (2) a current part 25 space station license or part 25 grant of market access for NGSO satellite operation sufficient to cover the leased GIA; and (3) proof of an application on file from the satellite operator’s terrestrial partner for a part 25 blanket earth station license covering all of its subscribers’ terrestrial devices that will be transmitting and receiving from the space station in conjunction with the provision of SCS. Are these the correct entry criteria to serve as prerequisites for the provision of SCS? We seek specific comment on these criteria and whether other criteria would be better suited to facilitate SCS. Given the required nexus of one satellite operator collaborating with one terrestrial licensee, as discussed further below, our proposed framework precludes the possibility of the filing of mutually exclusive applications that would implicate the competitive bidding provisions of section 309(j)(1) of the Act.¹³⁰

49. Under our proposed framework, meeting certain entry criteria would allow an entity to apply to modify its existing satellite authorization. We propose that this modification application (using FCC Form 312, Main Form and Schedule S) include a comprehensive proposal for each space station in the applicant’s SCS system, together with applicable certifications regarding related pending SCS applications. We further propose that applications that are acceptable for filing be placed on public notice

¹²⁹ See *infra* Section D.

¹³⁰ 47 U.S.C. § 309(j)(1); see *infra* para. 60.

to provide interested parties an opportunity to file pleadings in response to the application. We clarify that *all* related SCS applications—modification application or request for modification of a grant of market access, lease application, and blanket earth station application—must first be granted before a satellite and terrestrial operator can provide supplemental coverage from space. As discussed in detail below, we seek comment on our proposed approach, including the associated costs and benefits. Is there specific technical or other information that should be requested from applicants seeking a modification of a space station authorization to provide SCS? Are these the correct licensing requirements to apply for authorization to provide SCS or would other, or additional, criteria be more appropriate? Commenters are requested to provide specific support for any alternative approaches.

50. We intend to direct WTB and IB to evaluate and coordinate simultaneous processing of all applications required to be filed under our proposed entry criteria if adopted. We note that the bands we initially include in the proposed framework do not conform to the International Table.¹³¹ Given this non-conformance, we propose to modify section 25.112(a)(3) of our rules to permit the filing of applications notwithstanding the non-conformance.¹³² We seek comment on this approach, including the associated costs and benefits.

51. We seek comment as to whether an SCS framework should permit the filing of applications from licensees holding authorizations for geostationary satellite orbit (GSO)¹³³ operation. Is the provision of SCS feasible from a space station in geostationary orbit and, if so, are the considerations to facilitate such capabilities different than for NGSO systems? What are those differences and how should we address them in our policy framework and rules? What benefits and limitations are presented by providing SCS via NGSO versus GSO space stations? Further, we seek comment on what part 25 rule amendments are necessary to reflect our proposed eligibility limitations placed on applicants seeking authority to provide SCS. For example, should we amend Commission rule sections 25.156, 25.157, or 25.158, or other relevant rules, to reflect our proposed entry criteria, or should we adopt a new rule section?¹³⁴

52. We expect that satellite operators, working in collaboration with terrestrial licensees, will be able to deploy SCS to rapidly fill coverage gaps that are challenging and costly for the terrestrial licensee to serve. We recognize that our existing regulatory terrestrial licensing framework protects exclusive-use spectrum rights, which typically are acquired through competitive bidding or secondary market transactions. We believe it would not serve the public interest to propose to allow, absent a

¹³¹ We note that any such use would be on a non-interference basis only, and “shall not cause harmful interference to, claim protection from harmful interference caused by a station operating in accordance with the provisions of the [ITU] Constitution, the Convention and these Regulations.” ITU Radio Regulations Article 4.4, Edition of 2020.

¹³² Pursuant to current section 25.112 of the Commission’s rules, with some exemptions, an application requesting authority to operate a satellite in a frequency band that is not allocated internationally for such operation under the ITU Radio Regulations is deemed unacceptable for filing regardless of whether a waiver of the Table of Frequency Allocations is requested. See 47 CFR § 25.112(a)(3), (b). In an effort to expedite the processing of satellite and earth station applications, the Commission has proposed to streamline the acceptability for filing of satellite applications by removing section 25.112(a)(3) in its entirety and providing guidance on waiver requests for satellite operations not in conformance with the International Table so as to be accepted for filing. See *Expediting Initial Processing of Satellite and Earth Station Applications*, IB Docket No. 22-411, *Space Innovation*, IB Docket No. 22-271, Notice of Proposed Rulemaking, FCC 22-95 (Dec. 22, 2022). In that NPRM, the Commission also sought comment on other revisions to part 25 of its rules intended to facilitate acceptability for the filing of satellite applications. To the extent the Commission takes action to remove section 25.112(a)(3) in IB Docket No. 22-411 before the Commission takes action on SCS proposed herein, the proposal here to modify Section 25.112(a)(3) will be moot.

¹³³ See 47 CFR § 25.103. A geostationary-orbit satellite is a geosynchronous satellite whose circular and direct orbit lies in the plane of the Earth’s equator and remains approximately fixed relative to the Earth.

¹³⁴ See *id.* §§ 25.156, 25.157, 25.158.

collaboration with a terrestrial licensee, a satellite operator to apply for, and be granted, an independent part 25 co-channel authorization to use spectrum for SCS that is already exclusively licensed to a terrestrial licensee.¹³⁵ Instead, we believe a part 25 license, necessarily coupled with a lease between a terrestrial licensee and satellite operator, is a readily available means for authorizing SCS on a terrestrial licensee's exclusive-use spectrum. Under our proposed framework, a lease arrangement would also serve as a means of expressing a terrestrial licensee's consent to the satellite operator's use of the terrestrial licensee's exclusively held spectrum usage rights.

53. Our proposal to authorize SCS via the combination of a lease coupled with a part 25 authorization for transmissions to and from a terrestrial device and a space station seeks to leverage the Commission's long-established leasing regime under part 1 of our rules consistent with section 310(d) of the Communications Act of 1934, as amended. We note that our secondary markets rules provide for flexibility in leasing arrangements.¹³⁶ In a spectrum manager lease arrangement, the licensee retains both *de facto* and *de jure* control of the license.¹³⁷ In a *de facto* spectrum lease arrangement, the licensee retains *de jure* control of its license, while *de facto* control of the leased spectrum is transferred to the lessee.¹³⁸ As the Commission explained when it adopted the *de facto* leasing rule, "[t]he lease does not involve a complete and permanent transfer of control, and the licensee retains *de jure* control of the license as well as some degree of actual control, such that it retains some responsibility to the Commission for operations on spectrum encompassed within its license."¹³⁹ Thus, we propose to require the satellite operator's use of a terrestrial licensee's exclusive-use spectrum to be subject to a lease arrangement with that terrestrial licensee, coupled with the satellite operator's part 25 authorization. We seek comment on this proposal, including any associated costs and benefits. Given the collaboration required by our proposed entry criteria, are there specific legal considerations that need to be addressed if transmission rights to and from a terrestrial device are assigned to more than one entity? For example, which entity would be the responsible party if there are instances of harmful interference from a satellite transmission or from a terrestrial device (licensed as an earth station) transmission? In such cases, would both licensees—earth station and space station—be jointly liable or only one of the licensees?

54. In the alternative, we seek comment on a similar entry criterion where the satellite operator, in lieu of a leasing arrangement pursuant to part 1 of the Commission's rules, has an operating agreement with a terrestrial licensee holding all necessary geographic area co-channel licenses. Unlike the Commission's part 1 leasing regime, which requires the parties to seek Commission approval of a leasing arrangement, by filing an FCC Form 608 containing a description of the underlying lease, among other things, the Commission does not review or approve satellite operating agreements. We note that such operating agreements are typical in the satellite context for use of spectrum allocated and licensed for space radiocommunication services, and seek comment on whether such agreements would be an appropriate alternative to leasing arrangements, provided the parties are able to comply with section 310(d) of the Act.¹⁴⁰ Would other contractual arrangements be preferable for achieving the Commission's goals in this context? What are the costs and benefits of any alternative approaches?

¹³⁵ See *id.* § 1.934(e)(1) (providing that the Commission may dismiss applications that request spectrum which is unavailable because "[i]t was previously assigned to another licensee on an exclusive basis").

¹³⁶ *Id.* § 1.9003.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604, 20664, para. 136 (2003) (*Secondary Markets R&O*).

¹⁴⁰ 47 U.S.C. § 310(d).

55. We also seek comment on other approaches for satellite operators to seek such authority particularly related to the timing for acquiring such rights. For example, should we permit an existing satellite operator with a part 25 space station authorization to apply to modify its authorization without first having identified a terrestrial licensee partner, provided we condition any future satellite operation to provide SCS on reaching a subsequent lease or other contractual arrangement with a terrestrial licensee? Would such a process encourage investment and enable rapid provisioning of services when a lease or other contractual arrangement is in place, or increase interest in providing SCS? Alternatively, would it potentially result in an uneven playing field or adversely impact negotiating incentives among interested parties, as a terrestrial licensee's choice of satellite operator partner would necessarily be limited?

56. *New Satellite Entrants.* Further, although we limit our initial proposal to modifications of existing NGSO satellite authorizations, we seek comment in the alternative on other approaches that might permit new satellite entrants to participate in this framework. Should we modify our proposed framework to include new satellite entrants seeking to provide SCS in collaboration with a terrestrial partner? Allowing new satellite entrants would allow interested terrestrial operators to apply for an NGSO space station constellation authorization to provide SCS and enhance existing network coverage. Would such an approach increase flexibility, foster increased stakeholder interest in providing SCS, and facilitate near-term deployments to close terrestrial coverage gaps in the public interest? Are there sufficient economic incentives for new entrants seeking to offer SCS in collaboration with a terrestrial partner? What are the costs and benefits of permitting new entrants to participate in the provision of SCS?

57. If we determine that new satellite entrants should be permitted in an SCS framework, what changes would be necessary to our current part 25 authorization processes? We note that our current part 25 rules for authorizing new NGSO systems typically involve a processing round procedure where applicants for licenses or petitioners for U.S. market access are considered in groups based on frequencies requested and filing date.¹⁴¹ Pursuant to the Commission's rules, a license application for "NGSO-like"¹⁴² satellite operation that satisfies the acceptability for filing requirements¹⁴³ is reviewed to determine whether it is a "competing application" or a "lead application."¹⁴⁴ Lead applications are placed on public notice, which initiates a processing round, establishes a cut-off date for competing NGSO-like satellite system applications, and provides interested parties an opportunity to file pleadings in response to the application.¹⁴⁵ The Commission reviews each application in the processing round and all the pleadings filed in response to each application.¹⁴⁶ Based upon this review and consideration of such other matters as it may officially notice, the Commission will grant all the applications for which the Commission finds that (1) the applicant is legally, technically, and otherwise qualified; (2) the proposed facilities and operations comply with all applicable rules, regulations, and policies; and (3) grant of the application will serve the public interest, convenience and necessity.¹⁴⁷ The Commission will deny the other applications.¹⁴⁸ In the event that there is insufficient spectrum in the frequency band to

¹⁴¹ See 47 CFR §§ 25.137, 25.157.

¹⁴² The term "NGSO-like satellite operation" is defined as: "(1) Operation of any NGSO satellite system; and (2) Operation of a GSO [geostationary satellite orbit] MSS [mobile-satellite service] satellite to communicate with earth stations with non-directional antennas." *Id.* § 25.157(a).

¹⁴³ *Id.* § 25.112.

¹⁴⁴ A competing application is one filed in response to a public notice initiating a processing round; any other application is a lead application. See *id.* §§ 25.156(d)(1), 25.157(c).

¹⁴⁵ *Id.* § 25.157(c)(2). Competing applications are also placed on public notice to provide interested parties an opportunity to file pleadings in response to the application. *Id.* § 25.157(c)(1).

¹⁴⁶ *Id.* § 25.157(d).

¹⁴⁷ *Id.* § 25.156(a).

accommodate all qualified applicants in a processing round, the Commission will typically divide the available spectrum equally among the licensees whose applications were granted.¹⁴⁹

58. In contrast to the existing part 25 satellite licensing procedures involving processing rounds and opportunities for segmented or shared spectrum bands, the proposed SCS framework would facilitate direct access by an existing satellite operator to a specific terrestrial spectrum band through the combination of a part 25 authorization (for both space and earth stations) and a lease arrangement with a terrestrial licensee. This proposed framework contemplates a one-to-one relationship between parties to jointly operate in an exclusive band, thus precluding the filing of competing applications. Therefore, existing satellite authorization processes may not be well suited for authorizing new entrants seeking to offer SCS. What changes to existing part 25 rules would be necessary to facilitate the receipt and processing of applications for new entrants seeking to provide SCS in collaboration with a terrestrial partner, consistent with our proposed entry criteria that precludes the filing of mutually exclusive applications? For example, do processing rounds serve a meaningful purpose where our proposed framework requires a nexus between a single satellite operator and a single terrestrial licensee, or would adherence to the existing processing rounds procedure create unnecessary complexity without concomitant benefit?

59. *Terrestrial End-User Device Limitation.* At this time, we envision SCS as an enhancement to the provision of existing terrestrial service. This targeted offering directly to the terrestrial licensee-partner's subscribers will facilitate the Commission's immediate goal of closing coverage gaps in terrestrial service, particularly to consumer handsets. For this reason, the proposed framework does not contemplate authorizing a standalone satellite service to specially provisioned satellite-only devices using terrestrial spectrum.¹⁵⁰ Rather, we propose to limit a satellite operator's modified part 25 authorization to build, deploy, and operate a space station to transmit and receive in the terrestrial band for purposes of communications with the terrestrial wireless licensees' subscribers' end user devices that are to be licensed as earth stations for purposes of SCS as described below. We seek comment on this proposal, including the associated costs and benefits. Are any changes to our proposed framework necessary depending on the type of terrestrial device to be served, i.e., consumer handset or IoT device?

60. *Section 309(j)(1) and the ORBIT Act.* We propose to accept applications for SCS authority only where a satellite operator has partnered, through a lease arrangement, with a terrestrial operator holding exclusive-use co-channel spectrum rights in an entire GIA. Our proposed framework precludes the possibility of the filing of mutually exclusive applications and thus would not require competitive bidding under section 309(j)(1) of the Act.¹⁵¹ We also note that the ORBIT Act expressly prohibits the Commission from "assign[ing] by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services."¹⁵² As we do not propose to specifically limit traffic carried by SCS to domestic communications, we believe the ORBIT Act would

(Continued from previous page)

¹⁴⁸ See *id.* § 25.157(d).

¹⁴⁹ *Id.* § 25.157(e)(1).

¹⁵⁰ Considered below is the development of terrestrial devices that may use mobile satellite spectrum as well as separate terrestrial frequencies. See *infra* paras. 149-150.

¹⁵¹ 47 U.S.C. § 309(j)(1). The Act requires the Commission to consider whether it would be in the public interest "to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." *Id.* § 309(j)(6)(E); see *M2Z Networks, Inc. v. FCC*, 558 F.3d 554, 563-64 (D.C. Cir. 2009).

¹⁵² 47 U.S.C. § 765(f).

preclude assignment of part 25 licenses for the provision of SCS by competitive bidding.¹⁵³ We seek comment on this analysis.

61. *Earth station operations.* In addition to authorizing space station operations, we must also consider the appropriate method for authorizing terrestrial devices communicating with a space station. In this respect, the terrestrial devices would be operating as earth stations in a space radiocommunication service.¹⁵⁴ As discussed below, we propose that a terrestrial licensee seeking to collaborate with a satellite operator to offer SCS must apply for and obtain a blanket earth station license for all of its subscribers' terrestrial devices that will be transmitting to space stations for SCS operations, and we seek comment on this approach and any other approaches that will be consistent with our statutory and international obligations.¹⁵⁵ We also seek comment below on how we can streamline earth station licensing processes and forms for SCS blanket earth station applications to eliminate any undue burden.¹⁵⁶

62. Our current part 25 rules require an applicant to seek prior authorization before transmitting from an earth station in the United States to FCC-authorized space stations.¹⁵⁷ The earth stations are licensed on either an individual or blanket-license basis. Under a blanket license, earth stations may be deployed anywhere within the geographic area specified in the license without site-specific coordination.¹⁵⁸ An application for transmitting earth station authority must be filed on FCC Form 312, Main Form and include a Schedule B.¹⁵⁹ Earth station applicants must include any certifications, showings, or other information required by section 25.115.¹⁶⁰ If the Commission finds a license application acceptable for filing, it will be placed on public notice.¹⁶¹ After consideration of any petitions or comments filed on an application, the Commission will grant the application if doing so will serve the public interest, convenience, and necessity.¹⁶²

¹⁵³ See *Northpoint Tech., Ltd. v. FCC*, 412 F.3d 145 (D.C. Cir. 2005).

¹⁵⁴ Under Article I of the ITU Radio Regulations and our rules, an "earth station" is any station located on the earth intended for communications with a "space station." See *supra* para. 24 & n.96. Both the Communications Act (e.g., section 301) and the ITU Radio Regulations (e.g., Art. 18) obligate us to control the use of spectrum and license any transmitting station for the use allowed under the license. See 47 U.S.C. §§ 301, 303; ITU Radio Regulations (R.R.), Art. 18.1. For terrestrial services, operations of all transmitting stations, base stations and mobile stations, are typically authorized in a single license for the terrestrial use allowed under that license; for satellite services, stations in space and on earth are typically licensed separately and the licenses of any such facilities can be held by two different licensees, one for space stations and one for earth stations. Unlike terrestrial base stations, space stations require orbital location and other coordination internationally. See *generally* ITU R.R. Preamble; ITU R.R. Art. 7. See also *supra* para. 48.

¹⁵⁵ See Letter from Steven B. Sharkey, Vice President, Government Affairs Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, IB Docket No. 22-271, IBFS File No. SAT-MOD-20230207-00021, at 2 (filed Mar. 10, 2023) (T-Mobile *Ex Parte* Letter); SpaceX *Ex Parte* Letter at 2.

¹⁵⁶ See SpaceX *Ex Parte* Letter at 2; T-Mobile *Ex Parte* Letter at 2.

¹⁵⁷ See 47 CFR §§ 25.102(a), 25.115(a)(1)(i).

¹⁵⁸ See *id.* § 25.103 (definition of blanket license); see, e.g., *id.* § 25.115(c)(1), (c)(3), (d), (f)(2), (i) (application provisions for blanket-licensed earth stations).

¹⁵⁹ *Id.* § 25.115(a)(1). A completed Schedule B provides a technical and operational description of the proposed earth station(s), with the quantity and size of antennas to be deployed, antenna gain, power and transmission characteristics, and any frequency coordination and siting information. It may also include the antenna model and manufacturer. See *generally* FCC Form 312 Schedule B.

¹⁶⁰ See 47 CFR § 25.115(a)(1). Earth station applicants must also address human safety and environmental requirements found in other Commission rule parts. See *id.* §§ 25.115(p), (j), 25.271(g).

¹⁶¹ See *id.* § 25.151.

¹⁶² See *id.* § 25.156(a).

63. Under current rules, an earth station or network of blanket-licensed earth stations must be brought into operation within 12 months after initial licensing, unless a different build-out period is specified by the Commission.¹⁶³ An earth station blanket licensee may file a minor modification to its license to add additional remote terminals operating on a primary basis to its blanket license without prior Commission authorization.¹⁶⁴ The blanket earth station licensee must file a notification with the Commission to modify its license to add such remote terminals within 30 days of the modification.¹⁶⁵ As stated, the Commission authorizes space stations separately from earth stations/user terminals. In contrast, under our part 1 Wireless Radio Services (WRS) rules, there is no separate licensing process for the operations of terrestrial base stations versus mobile or fixed station/user terminals, and authority for a licensee's subscribers to operate mobile or fixed stations in the WRS is included in the licensee's authorization.¹⁶⁶

64. We propose to modify our part 25 rules to require a terrestrial licensee that has partnered with a satellite operator to seek a blanket earth station license for all of its subscribers' terrestrial devices that will operate with space stations, and are otherwise authorized under the terrestrial license.¹⁶⁷ Further, we propose to include such terrestrial devices within our part 25 blanket earth station licensing regime, but seek comment on what portions of that regime are necessary in the context of the proposed framework in this proceeding.¹⁶⁸ Thus, we propose that the terrestrial licensee would file for such authorization using FCC Form 312, Main Form and Schedule B, but seek comment on whether applications that are acceptable for filing should be placed on public notice to provide interested parties an opportunity to file pleadings in response to the application. Is there specific technical or other information that should be requested from applicants seeking a blanket earth station license to provide SCS? To what extent would approval of devices in the equipment certification process render information ordinarily required in a blanket earth station application unnecessary?¹⁶⁹ Would it be necessary to specify in these circumstances the number of units to be covered by the blanket license? To streamline the licensing process, we seek comment on what information currently collected in Schedule B might be eliminated and perhaps be replaced by a certification(s). If a certification approach is adopted, what certifications would be necessary? For example, instead of listing the devices that would be covered, would it be sufficient to require a certification stating that: (1) the earth station applicant meets all SCS requirements; (2) the blanket earth station license will cover all of the current and future subscribers' devices activated in the relevant terrestrial network; and (3) the devices covered by the blanket earth station license have already received equipment authorizations under Commission rules? We believe that the terrestrial licensee is best positioned to seek and hold a blanket earth station license for the provision of SCS for a variety of reasons. Specifically, because SCS is envisioned as an enhancement to terrestrial service and not a standalone satellite service, a terrestrial licensee's subscribers would use the same device for terrestrial service and SCS. Thus, the terrestrial licensee arguably should hold the authorizations for both the terrestrial and SCS uses of the device. In addition, such subscriber devices are already subject to contractual agreements between the terrestrial licensee and subscriber, and we anticipate that terrestrial

¹⁶³ See *id.* § 25.133(a).

¹⁶⁴ *Id.* § 25.118(a).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* § 1.903(c).

¹⁶⁷ We reiterate that if proposed uplink transmissions do not conform to the International Table, such use would be on a non-interference basis only. ITU Radio Regulations Article 4.4, Edition of 2020.

¹⁶⁸ See SpaceX *Ex Parte* Letter at 2.

¹⁶⁹ See *infra* paras. 128-129 (proposing that SCS devices with existing equipment authorizations not be required to undergo separate part 25 equipment authorization where such devices would not need technical modifications and would not exceed current power levels in the provision of SCS).

licensees would provide SCS capability on subscriber devices under such contracts. We seek comment on our proposal, including the costs and benefits.

65. We also seek comment on whether the terrestrial partner should be required in all cases to hold the part 25 blanket earth station license, or whether we should permit the space station licensee also to hold the earth station license associated with the terrestrial devices, provided other proposed entry criteria are met to give additional flexibility to the parties based on their business needs. Once a terrestrial licensee has a part 25 authorization for earth station operations, should the terrestrial licensee be allowed to lease such rights under our existing leasing regime, or should the part 25 earth station license be treated under current policies that typically involve use of operating agreements in the event a third party seeks to utilize the communications capabilities of earth stations?

66. We also propose that once the terrestrial licensee receives a part 25 blanket earth station license for its subscribers' terrestrial devices, it may avail itself of the minor modification procedures for blanket earth station licenses under part 25 to add additional terrestrial devices without prior Commission approval. We note that the terrestrial licensee will continue to control its subscribers' terrestrial devices, whether they are transmitting to terrestrial base stations or to space stations licensed to a satellite operator. Thus, once the terrestrial licensee has a blanket earth station license for its initial terrestrial devices, we do not find it necessary under the proposed framework to require specific prior authorization to add additional devices to the blanket authorization. We seek comment on this approach. We also seek comment on whether a notification to the Commission to add new terrestrial devices to the terrestrial licensee's blanket license, which is required under the current blanket earth station licensing process, provides administrative or technical benefits under the proposed SCS framework. Should we modify any other aspects of the blanket earth station licensing rules in the context of our proposed SCS framework? Is there an alternative to the blanket earth station licensing approach proposed above that could more efficiently and effectively authorize SCS communications from terrestrial devices consistent with our international obligations and statutory mandates?

67. *License Alienability.* The framework we propose today would require a collaboration between a satellite operator and a terrestrial licensee that holds all relevant co-channel licenses within the GIA. Successful provision of SCS relies on the parties' ability to negotiate adequate technical protections for their collective co-channel operations in potentially overlapping geographic areas within a terrestrial licensee's license area. Accordingly, what limitations, if any, are necessary to place on a satellite operator or terrestrial licensee's ability to assign or transfer its rights under its licenses? Should a terrestrial licensee be prohibited, for example, from assigning, partitioning, or disaggregating rights in any of the licenses that cover a part of the GIA? Should we prohibit a satellite licensee from assigning its part 25 authorization granted solely to provide SCS in conjunction with a specified terrestrial partner? Alternatively, should we adopt a minimum holding period for such licenses (either terrestrial or satellite), and if so, what is the appropriate period and how would the expiration of that period affect the existing satellite-terrestrial arrangement? Commenters should address the costs and benefits of these potential limitations and any other alternatives related to license alienability.

3. Leasing

68. When the Commission adopted the first set of comprehensive secondary markets rules in 2003 to allow WRS licensees to enter into a variety of leasing arrangements, it recognized the public interest benefits of permitting "additional spectrum users to gain ready access to spectrum," thus enabling the "provision of new and diverse services and applications to help meet the ever-changing needs of the public."¹⁷⁰ Under these long-standing rules, a licensee in any of the "included services" set forth in section 1.9005 of the Commission's rules may lease its exclusive spectrum usage rights for any purpose

¹⁷⁰ *Secondary Markets R&O*, 18 FCC Rcd at 20619, para. 32.

permitted and authorized under the license.¹⁷¹ We propose to leverage this existing leasing framework to facilitate the provision of SCS through our proposed entry criteria. This proposed approach enables the rapid provision of SCS on a terrestrial licensee's exclusively licensed spectrum operating in a relevant GIA.

69. We recognize, however, that our proposed framework does not squarely fit within the existing leasing regime. Thus, we also seek comment on the extent to which our leasing rules require amendment to effectuate SCS. For example, under section 1.9003, a spectrum lessee is defined as “[a]ny third-party entity that leases ... certain spectrum usage rights held by a licensee.”¹⁷² Although a terrestrial licensee has the exclusive right to use its spectrum in its authorized geographic area, it is not authorized under part 25 of the Commission's rules to operate a space station to close coverage gaps in its network, notwithstanding the proposed MSS footnote allocation. Should we amend our leasing rules to specifically include in the definition of spectrum lessee a satellite operator that collaborates with a terrestrial licensee/lessor to provide SCS under our proposed framework? Should we also amend the definition of “spectrum leasing agreement,”¹⁷³ discussed below, to include leases involving the provision of SCS? Further, our current leasing rules require only a brief description of the lease as part of a Commission filing. Would it be in the public interest to require disclosure of any particular lease terms to the Commission in the application process, subject to any appropriate protections for proprietary information? Should we revise other current rules or add new rules in part 1, subpart X to effectuate the provision of SCS? What are the costs and benefits of taking such an approach?

70. *Spectrum Leasing Arrangements.* Although we propose to require licensees providing SCS to use the Commission's existing leasing regime, we seek comment on whether all aspects of the regime are appropriate in this novel context, or whether certain refinements are necessary. Spectrum leasing arrangements can take two forms:¹⁷⁴ spectrum manager leasing arrangements,¹⁷⁵ or *de facto* transfer leasing arrangements, which can be either long-term (more than one year) or short-term (one year or less).¹⁷⁶ Spectrum manager leasing arrangements generally do not require prior Commission approval; rather, the licensee/lessor must notify the Commission in advance of commencing operations.¹⁷⁷ In

¹⁷¹ See 47 CFR § 1.9001 *et seq.* Licensees holding exclusive use rights are permitted to engage in spectrum leasing whether their operations are characterized as commercial, common carrier, private, or non-common carrier. *Id.* § 1.9001(b).

¹⁷² *Id.* § 1.9003.

¹⁷³ Section 1.9003 defines a “spectrum leasing arrangement” as “[a]n arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights in the licensed spectrum to the third-party entity, the spectrum lessee.” 47 CFR § 1.9003.

¹⁷⁴ *Id.* The arrangement may involve the leasing of any amount of licensed spectrum, in any geographic area or site encompassed by the license, for any period of time during the term of the license authorization. *Id.*

¹⁷⁵ *Id.* §§ 1.9010, 1.9020. A licensee/lessor is deemed to have *de facto* control over the leased spectrum if it satisfies two conditions: (i) the licensee/lessor retains responsibility for lessee compliance with Commission policy and rules; and (ii) the licensee/lessor retains responsibility for interactions with the Commission, including all filings required under the license authorization and applicable service rules directly related to the leased spectrum. *Id.* § 1.9010(b).

¹⁷⁶ *Id.* §§ 1.9003, 1.9030(b).

¹⁷⁷ *Id.* § 1.9020(e) (requiring 21 days advance notice for spectrum manager leasing arrangements greater than one year in length, or 10 days advance notice for arrangements of one year or less in length). The Commission reviews the notifications to ensure that all necessary technical and other information is correctly submitted, but the subject spectrum leasing arrangement may be implemented without waiting for such review, unless the parties to the spectrum manager leasing arrangement have requested on the form that the arrangement become effective upon Commission acceptance of the notification. Spectrum manager leasing notifications require no prior public notice before the Commission may accept them. As noted in paragraph 7, *supra*, T-Mobile filed a spectrum manager lease notification for SpaceX satellites' use of T-Mobile's PCS spectrum. The T-Mobile/SpaceX lease applications

(continued....)

contrast, *de facto* transfer spectrum leasing arrangements are typically subject to the Commission's general approval procedures, under which the Commission must grant the application prior to the parties putting the proposed spectrum leasing arrangement into effect.¹⁷⁸ Should all forms of leasing, including spectrum manager and *de facto* transfer (short- and long-term), be available in the SCS framework we propose today, or does the construct we propose, involving combined terrestrial and space components, warrant more limited leasing options? As SCS is intended solely to supplement coverage to a terrestrial licensee's subscribers, should we only permit spectrum manager leasing and prohibit *de facto* transfer lease arrangements, thus ensuring that a terrestrial licensee retains both *de jure* and *de facto* control of its spectrum? Does the introduction of a part 25 authorization on the same leased spectrum require us to re-examine our approach to control of spectrum, as it relates to leasing in the SCS context? Also, given the novel nature of SCS, should we require spectrum manager leases for such operations to obtain prior Commission approval, notwithstanding the procedures typically applicable to such leases? If commenters seek to limit leasing options, which options should be limited, and would such limitations deter investment in SCS?

71. Our proposal to authorize SCS through a leasing component would involve permitting a terrestrial licensee to lease to an expanded group of potential lessees that includes satellite operators. A terrestrial licensee currently has the right to serve the identical geographic area on the same spectrum under its existing licenses, and SCS would simply involve a new method (through a combination of part 25 licensing and part 1 lease arrangement) of providing gap coverage. We therefore tentatively conclude that our proposal would not be a modification of any terrestrial licenses under section 316 of the Communications Act.¹⁷⁹ We seek comment on this analysis.

72. *Construction Attribution.* Under certain leasing arrangements, our current rules allow a lessor to attribute the construction activities of its lessee to the lessor's performance requirements. Thus, under a spectrum manager leasing arrangement, the licensee/lessor remains responsible for compliance with any construction and performance requirements applicable to the leased spectrum, but may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of compliance with any such requirements.¹⁸⁰ Similarly, under a long-term *de facto* transfer spectrum leasing arrangement, the licensee/lessor may attribute to itself the buildout or performance activities of its spectrum lessee(s) for purposes of compliance with any such requirements.¹⁸¹ We seek comment on whether such attribution rules should remain available to terrestrial licensees where SCS is intended to supplement existing terrestrial service to fill coverage gaps.

73. We recognize that our performance rules in most flexible-use terrestrial bands were created in parallel with the advent and subsequent implementation of competitive bidding for licenses. Accordingly, market forces and incentives resulted in virtually all of the performance metrics in flexible-use bands (e.g., coverage of a certain percentage of population) being met with the provision of evolving

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remain pending, and the spectrum leasing arrangement has not been implemented. See ULS File Nos. 0010303032 (lead), 0010303146, 0010303124, and 0010303084.

¹⁷⁸ 47 CFR §§ 1.9030(a), 1.9035(a). Both long-term and short-term *de facto* transfer spectrum leasing applications are subject to overnight processing under the Commission's immediate approval procedures if the filing meets certain conditions. *Id.* §§ 1.9030(e)(2) (immediate approval procedures), 1.9035(e) (certain conditions still must be met in order for a short-term *de facto* transfer lease to qualify for immediate processing).

¹⁷⁹ See 47 U.S.C. § 316.

¹⁸⁰ 47 CFR § 1.9020(d)(5).

¹⁸¹ However, such attribution is not available to a licensee/lessor under a short-term *de facto* transfer spectrum leasing arrangement. See 47 CFR §§ 1.9030(d)(5), 1.9035(d)(3). See also *Secondary Markets R&O*, 18 FCC Rcd at 20676, para. 177 (“[S]hort-term leasing arrangements are expressly designed to be temporary in nature, and therefore cannot be counted to establish that the licensee is meeting the purposes and policies underlying our buildout rules, including the goal of ensuring establishment of service in rural areas.”).

4G and 5G technologies serving commercial handsets. As stated, SCS is intended to fill coverage gaps in rural and other unserved areas to supplement existing terrestrial service. As we do not intend for this new paradigm to alter market incentives in the provision of core coverage to licensed areas, should we revise our leasing rules in the alternative to permit terrestrial licensees to enter lease arrangements with satellite partners to extend existing coverage only after the terrestrial licensee has first met all of its final performance obligations for each underlying license that is part of the GIA? Also, given that our proposed framework would permit satellite operators to access spectrum previously allocated for terrestrial use to effectuate the provision of SCS, and recognizing that SCS service options initially may be more limited than a terrestrial licensee's core service offerings, should we permit a terrestrial licensee to rely on its satellite lessee partner's coverage to meet underlying terrestrial performance obligations? Would this potentially result in circumvention of our existing performance rules? If we permit such attribution, should we also pair that flexibility with increased performance requirement metrics applicable to the terrestrial licensee? If so, what are the appropriate benchmarks to ensure that service is provided in the public interest?

74. *License Term of Part 25 License and Length of Lease.* Under our rules, the term of a spectrum leasing arrangement may not be longer than the term of the underlying lessor's license.¹⁸² However, a licensee and spectrum lessee that have entered into an arrangement with a term continuing to the end of the current license authorization may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement into the term of the renewed license authorization.¹⁸³ Below, we propose to apply the current part 25 rule regarding license terms to satellite licensees seeking to provide SCS through license modification; such licensees would retain their current license term of 15 years.¹⁸⁴ This license term, however, is unlikely to consistently align with the license term (and concomitant lease term) of the underlying terrestrial license. Given the integral nature of the lease-based collaboration between satellite operator and terrestrial licensee in our proposed SCS framework, how should we account for differences in the length of a part 25 space station authorization to transmit and receive signals and the length of the associated lease, which is tied to the remaining term of the underlying terrestrial license? What provisions should we make in the framework in the event that the terrestrial licensee loses some or all of the licenses that comprise the leased area, for example, as a result of automatic termination for failure to meet performance obligations, failure to receive a license renewal, license revocation, or assignment or transfer?

75. *Interference-Related Leasing Rules.* Our current leasing rules require all lessees to comply with rules requiring responsibility for ensuring non-interference with co-channel and adjacent channel licensees applicable to the lessor/licensee under the license authorization.¹⁸⁵ However, primary responsibility for such compliance depends on the type of lease. With a spectrum manager lease, the lessor/licensee has "direct responsibility and accountability for ensuring that their spectrum lessees comply with [the interference-related service] rules, including responsibility for resolving all interference

¹⁸² All spectrum leasing arrangements must provide that "[i]f the license is revoked, cancelled, terminated, or otherwise ceases to be in effect, the spectrum lessee has no continuing authority or right to use the leased spectrum unless otherwise authorized by the Commission." 47 CFR § 1.9040(a)(2).

¹⁸³ *Id.* §§ 1.9020(m) (spectrum manager leases), 1.9030(l) (long-term *de facto* transfer leases), 1.9035(n) (short-term *de facto* transfer leases). The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (see § 1.949). In addition, the spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization.

¹⁸⁴ See *infra* para. 98.

¹⁸⁵ *Secondary Markets R&O*, 18 FCC Rcd at 20665, para. 142; see also 47 CFR §§ 1.9010(b)(1)(ii), 1.9020(d)(1), 1.9030(d)(1), 1.9035(d).

disputes.”¹⁸⁶ In contrast, under a *de facto* transfer lease, the spectrum lessee has primary responsibility for ensuring compliance with the Commission’s policies and rules, including interference rules applicable to the lessor/licensee.¹⁸⁷ Thus, in the event of an interference issue under a *de facto* transfer lease, the “Enforcement Bureau will first approach the authorized spectrum lessee, and the lessee will be expected to bring its operations into compliance with the Commission’s requirements.”¹⁸⁸ We seek comment on whether to retain this existing hierarchy of responsibility in the context of our proposed SCS framework.¹⁸⁹ Does the introduction of authority, through a combination of part 25 licensing and part 1 leasing, to communicate with space stations on previously allocated terrestrial-only spectrum warrant revisions to our rules as they relate to interference resolution? In the case of a spectrum manager lease under our proposed SCS framework, is it practical and appropriate for direct responsibility and accountability to apply to the lessor/licensee, or should the lessee, given that it has been issued a separate part 25 authorization, be responsible for interference resolution?

76. *Lease Severability.* As emphasized in this Notice, a lease agreement between a satellite operator and a terrestrial licensee is an integral part of our proposed framework to foster SCS. We seek to provide flexibility in leasing arrangements and acknowledge business realities, while ensuring against potential abuse of Commission processes. Accordingly, we seek comment on how our proposed SCS framework should address the potential for severability of a lease agreement. For example, what limitations, if any, are necessary regarding the parties’ ability to terminate the lease that forms a substantial basis of the SCS licensing structure? Should we implement minimum lease terms to ensure continued gap coverage and, if so, what is the appropriate period? Should a part 25 space station authorization for SCS automatically terminate if the underlying lease is terminated? Or should we include a condition indicating that operations in the relevant frequencies must stop if the underlying lease is terminated? Likewise, what should be the effect of such lease termination on a part 25 blanket earth station license? If the parties decide not to renew a lease, should the associated part 25 space station and blanket earth station authorizations terminate? Alternatively, if the satellite operator’s part 25 authorization is not renewed, or terminates for failure to meet applicable milestones, or is revoked, or if the terrestrial operator’s earth station license is not renewed, should the associated lease terminate? Should that termination be automatic? What provisions should we consider to ensure gap service is achieved for a limited period in the event the underlying lease is terminated? How should we account for these and other scenarios related to lease severability? We seek comment on these issues, including the costs and benefits of proposed solutions.

77. *Subleasing.* Our leasing regime allows a spectrum lessee in a spectrum manager or long-term *de facto* transfer leasing arrangement to sublease its leased spectrum usage rights with the licensee’s consent and through the licensee’s establishment of privity with the spectrum sublessee.¹⁹⁰ In our proposed framework, a satellite operator that is also the lessee would be providing SCS gap coverage to the subscribers of the terrestrial licensee that is the earth station licensee and the lessor, and the ability to sublease to a third party may raise practical or technical issues regarding the continued provision of sufficient service quality to subscribers. Accordingly, we seek comment on whether subleasing is appropriate in the proposed framework, which relies on the direct collaboration between the lessee and the lessor. Could subleasing introduce unintended consequences, including adversely affecting supplemental coverage or increasing the potential for harmful interference?

¹⁸⁶ *Secondary Markets R&O*, 18 FCC Rcd at 20653, para. 108.

¹⁸⁷ *Id.* at 20664, 20675, paras. 137, 172-73.

¹⁸⁸ *Id.* at 20664, para. 138.

¹⁸⁹ *See supra* para. 53.

¹⁹⁰ 47 CFR §§ 1.9020(l), 1.9030(k). The licensee must submit a notification regarding the spectrum subleasing arrangement in accordance with the applicable notification procedures set forth in this section. *Id.* §§ 1.9020(l), 1.9030(k). Subleasing is not permitted under a short-term *de facto* transfer lease. *Id.* § 1.9035(m).

78. *Eligibility for ECIP Participation.* In July 2022, the Commission established the Enhanced Competition Incentive Program (ECIP), which among other things, modified the Commission's leasing rules to provide incentives for stakeholders to engage in qualifying transactions that make spectrum available in rural areas for advanced wireless services.¹⁹¹ In adopting ECIP,¹⁹² the Commission sought to facilitate new opportunities for small carriers and Tribal Nations to increase access to spectrum, while incorporating provisions to ensure against program waste, fraud and abuse.¹⁹³ Given that our proposed framework is primarily intended to facilitate SCS to existing consumer handsets, and ECIP was adopted with requirements tailored specifically towards provision of service through terrestrial base stations, we seek comment on whether to make SCS participants, necessarily engaged in leasing arrangements, eligible for ECIP benefits.

79. Specifically, under ECIP, parties can become eligible to receive program benefits, including lengthened license terms and extended timeframes to meet performance requirements, under either of two prongs, one focusing on transactions with small carriers or Tribal Nations and a second focusing on transactions resulting in construction in rural areas.¹⁹⁴ In the rural transactions-focused prong of the program, various requirements apply to receive program benefits and to prevent waste, fraud and abuse. For example, leasing arrangements must be for a minimum of five years, a lessee is required to construct an area of between 300 and 15,000 square miles (Qualifying Geography), depending upon the size of the lessor's licensed area, within two years of the ECIP grant, and a lessee must maintain continuous operations in that entire Qualifying Geography area for three consecutive years.¹⁹⁵ As our proposed SCS framework requires a single terrestrial licensee to hold all relevant co-channel licenses covering an entire GIA (e.g., CONUS), how would prospective ECIP applicants meet the eligibility requirements and requisite Qualifying Geography thresholds through provision of a satellite service primarily intended to fill-in terrestrial coverage gaps in select areas that currently experience limited to no coverage? We seek comment on a range of possible concerns in applying to SCS stakeholders a program that was created to incentivize transactions to facilitate terrestrial build-out through a terrestrial-based regulatory licensing paradigm. Among these concerns, we seek comment on how we would apply ECIP rules requiring specific lessee action under the rural transactions-focused prong to a part 25 satellite-licensed lessee, with particular focus on the requirement that a lessee provide service for the entire Qualifying Geography for three continuous years and that service must commence no later than two years after entering the lease. How would we address any potential conflict between these ECIP obligations, terrestrial licensee performance requirements, and part 25 milestones applicable to the satellite licensee? Can parties meet ECIP requirements in an SCS context, or would the tailored conditions of ECIP participation reduce the flexibility of potential terrestrial-satellite collaborators and thus operate as a disincentive to participate in the program even if permitted?

80. *911-Related Leasing Rules.* Finally, we seek comment on whether we should modify existing leasing rules related to the provision of 911 service. For example, a lessee's obligation to comply with Enhanced 911 (E911) requirements under section 9.10 of our rules depends on the type of lease entered into by the parties.¹⁹⁶ Given that we are separately considering below whether to impose

¹⁹¹ *Partitioning, Disaggregation, & Leasing of Spectrum*, WT Docket No. 19-38, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 22-53, paras. 1-2 (July 18, 2022) (*ECIP R&O*).

¹⁹² We note that, to date, the rules substantially implementing the ECIP program have not become effective, as the Commission has not received the required OMB approval under the Paperwork Reduction Act.

¹⁹³ *ECIP R&O*, paras. 1-2.

¹⁹⁴ *Id.* at paras. 64-66.

¹⁹⁵ *ECIP R&O*, Appx. A; 47 CFR § 1.60004.

¹⁹⁶ See 47 CFR §§ 1.9020(d)(8) (under spectrum manager leases "[i]f E911 obligations apply to the licensee (see § 9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum."), 1.9030(d)(8) (under long-term de facto transfer leases, "to the extent the licensee is required to meet E911 obligations (see § 9.10 of this chapter) (continued....)

independent 911 obligations on satellite operators seeking to provide SCS as part of their part 25 authorization, how should we address any potential inconsistencies between the E911 requirements under the satellite operator's lease and any independent 911 obligation under the satellite operators license?¹⁹⁷

4. Service Rules

81. When adopting service rules for licensing spectrum, the Commission seeks to encourage investment, promote efficient spectrum use, and spur robust deployment, while tailoring its approach to the unique characteristics of each band.¹⁹⁸ Here, we propose a framework to facilitate the closing of terrestrial network coverage gaps through satellite transmissions on currently licensed terrestrial, flexible-use spectrum. Accordingly, in this section, we address existing service rule obligations for satellite operators and terrestrial wireless providers, by proposing to apply certain relevant rules, or seeking comment on the applicability of other rules in the context of the proposed part 25 licensing framework to authorize SCS. In addressing these issues, commenters should discuss the costs and benefits associated with application of these obligations and any alternatives that commenters propose.

82. *Regulatory Status.* Pursuant to the Commission's part 25 rules, a space station licensee must select its regulatory status—common-carrier or non-common carrier—when it files an application for a space station authorization.¹⁹⁹ Currently, Commission licensing records reflect that satellite space station licenses typically have a non-common carrier status, even if operated with earth stations that have a common carrier status. In contrast, in the vast majority of cases, terrestrial wireless licensees in flexible-use bands are regulated as Commercial Mobile Radio Service (CMRS) providers.²⁰⁰ We propose that the space station licensee would retain its existing regulatory status when applying to modify its license to provide SCS. We seek comment on what circumstances might warrant a change in the space station licensee's regulatory status. For example, how should we address circumstances in which a satellite operator has a different regulatory status than its terrestrial licensee partner? Further, in the event we expand the proposed framework to include new satellite entrants, should we adopt a similar approach for any new part 25 applicants seeking to provide commercial services from a space station to the subscribers of a terrestrial service provider? In addition, as part of the revised part 25 blanket earth station licensing process discussed above, we seek comment on the issue of a terrestrial licensee seeking blanket earth station licensing for its subscriber devices selecting its regulatory status when filing an earth station application. Are there circumstances in which the regulatory status specified for the blanket earth station license could be different than the status for the terrestrial mobile service provider offering SCS,

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chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed within the E911 obligations.”), 1.9035(d)(4) (under short-term de facto transfer leases: “[i]f E911 obligations apply to the licensee (see § 9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term de facto transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum.”).

¹⁹⁷ See *infra* paras. 83-91.

¹⁹⁸ For example, when adopting licensing approaches for mid-band spectrum, for the 3.45 GHz band and the 3.7-4.2 GHz band, the Commission adopted similar rules for licensing pursuant to its flexible-use part 27 rules, which permit licensees to provide any fixed or mobile service consistent with the permitted allocations, subject to rules necessary to prevent or minimize harmful interference, with minor differences due to the needs of each band. See *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987 (2021) (*3.45 GHz Band Second R&O*); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Service Order*).

¹⁹⁹ See 47 CFR § 25.114(c)(11).

²⁰⁰ See 47 U.S.C. § 332; 47 CFR pt. 20. CMRS licensees are regulated as common carriers. 47 CFR pt. 20.

and if so, how should we address any regulatory anomaly?²⁰¹ We note that a licensee's regulatory status may affect the applicability of certain Commission rules, e.g., payment of regulatory fees (including amount and timing of payment) and compliance with applicable Title II and Title III statutory obligations. We seek comment on our proposal and any alternatives, including the costs and benefits.

83. *911 Requirements.* 911 service is a vital part of our nation's emergency response and disaster preparedness system, and the Commission is committed to increasing public safety by encouraging and coordinating development of a nationwide, seamless communications system for emergency services that is regularly upgraded. We seek comment on whether to extend our wireless 911 requirements to the proposed provision of SCS that would enable satellite transmissions to terrestrial devices.²⁰² Section 9.10 of the Commission's rules describes 911 requirements applicable to CMRS providers, including requirements to support basic 911 and Enhanced 911 (E911), outdoor and indoor location accuracy, and text-to-911.²⁰³ MSS providers, however, are exempt from these requirements,²⁰⁴ but are required to support emergency call center service to the extent that they offer two-way interconnected voice service.²⁰⁵

84. Given that a key benefit of SCS is to provide connectivity to Americans in areas where they may have no other option for communications service, we seek comment on how best to facilitate access to our nation's emergency response system for consumers using SCS. In addition, because consumers using commercial wireless handsets typically have an expectation that they can connect to 911 operators, we seek comment on how best to inform consumers using SCS of the extent of their connectivity to 911. We seek comment on the technical and operational challenges, costs, and public interest benefits of extending wireless 911 requirements to CMRS providers and satellite providers that offer SCS. We also seek comment on whether it is technically or otherwise feasible for terrestrial service providers to satisfy the requirements in section 9.10 when incorporating their satellite operator collaborator's supplemental service, and if not, which particular requirements are not feasible and why.

85. As we propose to issue part 25 modified authorizations to satellite operators on previously terrestrial-only spectrum to facilitate improved terrestrial service coverage, we also seek comment on whether we should revise our rules to require specific satellite operator compliance with certain 911 requirements. In other words, should all or some of the CMRS 911 and E911 rules apply to both SCS partners, individually or together? Similarly, should our text-to-911 rules for covered text providers apply to terrestrial and satellite SCS collaborators that support interconnected text via satellite, individually or together?

86. Further, we propose to modify our part 25 rules to require a terrestrial licensee that seeks to collaborate with a satellite operator to provide SCS, to apply for a blanket earth station license for all of its subscribers' terrestrial devices that are otherwise authorized under its terrestrial license, to operate using transmissions to and from the satellite operator's space stations. As noted, under existing rules, an MSS blanket earth station licensee would be excluded from complying with section 9.10 of the

²⁰¹ The existing part 25 earth station licensing process requires the applicant to indicate a regulatory status when filing FCC Form 312. See 47 CFR § 25.115(a)(1)(i).

²⁰² For example, as noted above, T-Mobile and SpaceX announced a partnership that envisions complete coverage of the United States, beginning with text service (i.e., SMS and MMS), followed by voice and data service. See *supra* note 14 (T-Mobile announcing plans to leverage Starlink, SpaceX's constellation of satellites in low Earth orbit, and T-Mobile's wireless network to give customers an additional layer of connectivity and provide "near complete coverage in most places in the U.S. – even in many of the most remote locations previously unreachable by traditional cell signals.").

²⁰³ See 47 CFR § 9.10.

²⁰⁴ See *id.* § 9.10(a).

²⁰⁵ *Id.* § 9.18.

Commission's rules.²⁰⁶ Should we amend this section given that the earth station license will likely be used to supplement an existing CMRS service to which 911, E911, and text-to-911 requirements apply? We seek specific comment on any revisions necessary to existing section 9.10 rules for CMRS providers as applied to SCS that would promote the public interest.

87. We also seek detailed information on the process by which SCS is activated when a consumer attempts to access 911 services during emergencies, including when no cellular or Wi-Fi service is available. Commenters should address the criteria and the processes for triggering SCS to support 911 calls and text when commercial mobile networks and Wi-Fi are unavailable, including incident specific timing (i.e., once a commercial mobile network is determined to be unavailable, how much time is needed to connect to 911?). For purposes of initiating a 911 call or text, how would the device with access to SCS determine the Radio Access Network on which to transmit the call? Is satellite service for a call or text to 911 lower in priority than other CMRS networks or Wi-Fi networks? How would the order of priority impact the availability of various 911 services such as voice calls to 911 or texts to 911 or the quality of 911 location data?

88. We ask commenters to discuss how satellite providers would route 911 services, including voice and text-to-911. For 911 calls made over SCS, is it feasible to route 911 calls to the appropriate Public Safety Answering Point (PSAP) with the caller's location information? What are the costs associated with enabling SCS to deliver location information to PSAPs? Commenters should address 911 callback capabilities for 911 access and the technical, cost, and implementation timelines. In addition, we seek comment on consumer expectations for using SCS to reach 911, and any consumer privacy concerns with SCS. We seek comment on standards development and best practices needed to facilitate 911 services using SCS, including who should develop them and required timelines.

89. We also seek comment on the feasibility, availability, and cost of provisioning consumer devices to support SCS for 911. Could handset models be enabled to automatically seek and try to connect to any available partnering satellite networks when 911 is dialed without users having to select a satellite network? Would such handset capability require new hardware or software, and what are the likely costs and development cycles for such technology? What are the capabilities of device-based hybrid technologies to enhance location accuracy of SCS in outdoor and indoor environments? How would an SCS offering support members of the public who have non-service initialized (NSI) phones (phones without a contractual relationship with a CMRS provider)? We seek comment on congestion issues that could be associated with SCS supporting 911 calls and texts.

90. The Commission's rules also require that providers of MSS to end-user customers comply with certain requirements regarding emergency call centers in certain circumstances and annual reporting requirements on call center traffic.²⁰⁷ We seek comment on how we should apply these current obligations in the context of an SCS offering in which the part 25 license or grant of market access holder modifies its existing part 25 authorization and leases exclusive-use spectrum, most likely from a CMRS wireless provider. Should all the existing obligations continue to apply to the satellite operator? Should we amend our rules to reflect that MSS usage of the specific terrestrial bands where we propose a satellite allocation results in a requirement to comply with section 9.18? Given the manner in which SCS would be licensed and provided, are other rule revisions necessary? As stated above, we propose an approach under part 25 whereby a terrestrial licensee would seek a blanket earth station license for all its subscribers' terrestrial devices. To the extent a CMRS licensee fills in coverage gaps using a part 25 blanket earth station license, is it appropriate to apply current section 9.18 requirements? Should we consider applying additional 911 or E911 obligations to a new blanket earth station license issued in the terrestrial satellite partner context?

²⁰⁶ See *id.* § 9.10(a).

²⁰⁷ See *id.* § 9.18.

91. We seek comment on the anticipated public safety impacts of supplemental voice and text satellite coverage in areas that have not previously received service or during emergencies when the CMRS network is otherwise unavailable. Have terrestrial satellite partners engaged in or planned any outreach or coordination with public safety entities ahead of implementation? Further, do providers plan to alert subscribers in any way of any limitations on calling or texting 911 from a handset connected to satellite services? We seek comment on whether we should modify any of the Commission's part 9 rules, including those that apply to CMRS, MSS, or covered text providers, to accommodate increased use of this service and ensure reliable connectivity to 911.

92. *Wireless Emergency Alerts (WEA)*. We seek comment on how satellite operators participating in anticipated collaborations with terrestrial licensees intend to support WEA and any accompanying public safety benefits.²⁰⁸ Could satellite operators' support for WEA improve WEA's availability and reliability in areas underserved by terrestrial wireless providers? Conversely, we seek comment on whether satellite operators that supplement terrestrial wireless providers' coverage areas could adversely affect WEA's reliability and availability or change the nature of a provider's participation in WEA from in whole to in part if the SCS satellite operators were to not participate in WEA.²⁰⁹ Should CMRS providers that elect to participate in WEA update their election status to reflect the extent to which their arrangement with satellite operators changes the nature of the WEA service that they provide? We also seek comment on whether the proposed SCS framework is compatible with the Federal Emergency Management Agency's Integrated Public Alert & Warning System (IPAWS).

93. We seek comment on satellite operators' technical capability to geographically target (geo-target) WEAs and limit overshoot. For technically capable networks, the Commission requires participating CMRS providers to "match" the target area specified by an alert originator (i.e., deliver a WEA alert to 100% of the geographic area specified by an alert originator with no more than 0.1 mile overshoot).²¹⁰ Are satellite operators' systems technically capable of matching the target area by delivering target area coordinates to mobile devices because, for instance, they offer a satellite equivalent of 4G and 5G? Are the mobile devices capable of receiving wireless services from satellite operators generally newer devices capable of geofencing? If a participating CMRS provider's network infrastructure is technically incapable of matching the specified target area, the Commission's rules require that the provider deliver the alert message to an area that "best approximates" the specified target area.²¹¹ According to CTIA, as of July 2022, approximately 40% of active smartphones are technically incapable of geofencing the receipt of WEA alerts, a technology necessary to meet the matching standard.²¹² Those handsets are eligible to receive WEA alerts whenever they are connected to a wireless network facility that a participating CMRS provider uses to transmit a WEA, even if they are located far outside of the geo-targeted area. If satellite operators participate in WEA, in how large of a geographic

²⁰⁸ The Warning, Alert and Response Network (WARN) Act directed the Commission to adopt technical requirements to enable this alerting capability for CMRS providers. Warning, Alert and Response Network (WARN) Act, Pub. L. No. 109-347, Title VI, § 602(a), 120 Stat. 1936 (2006) (WARN Act) (codified at 47 U.S.C. § 1201(a)). Currently, no satellite operators participate in WEA, however, in meetings with the Commission's Public Safety and Homeland Security Bureau staff, representatives from the T-Mobile-SpaceX and Apple-Globalstar partnerships stated that they intend to support WEA.

²⁰⁹ See 47 CFR §§ 10.240-10.250.

²¹⁰ See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Second Report and Order and Second Order on Reconsideration, 33 FCC Rcd 1320, 1324-25, para. 6 (2018); 47 CFR § 10.450.

²¹¹ See 47 CFR § 10.450.

²¹² See Letter from Amy Bender, Vice President, Regulatory Affairs, CTIA to Debra Jordan, Chief, Public Safety and Homeland Security Bureau, FCC, PS Docket No. 15-91, at 2 (July 28, 2022). WEA geofencing enables capable mobile devices to suppress the presentation of received WEA alerts when they are located outside of the targeted area.

area would mobile devices connected to the satellite receive WEA messages by virtue of the technical parameters of satellite beamforming? Would this exacerbate the issue of WEA overshoot? What steps, if any, could satellite operators take to contain the potential for overshooting the targeted area? Timely delivery of WEA alert messages also is an important factor in warning the public. How would the technical parameters of satellite beamforming affect the amount of time that it takes for WEAs to reach the public from the time they are transmitted by alert originators?

94. *Competition Policies.* As the Commission has often stated, spectrum is a necessary input for the provision of mobile wireless services, and the Commission has developed policies to ensure that spectrum is assigned in a manner that promotes competition, innovation, and efficient use.²¹³ In this proceeding, we seek comment on spectrum aggregation and other potential competitive issues in the context of a collaboration that, as proposed, allows a satellite operator to gain access to previously allocated terrestrial-only spectrum, and includes a lessor-lessee relationship between a satellite operator and its terrestrial collaborator.

95. In evaluating the potential competitive effects of spectrum aggregation in secondary market transactions, including long-term spectrum leasing arrangements, the Commission uses a spectrum screen to help it identify, on a case-by-case basis, those local markets that may warrant further competitive analysis.²¹⁴ The spectrum screen trigger is approximately one-third of the total spectrum that the Commission has determined is suitable and available for mobile voice/mobile broadband use.²¹⁵ Further, below-1-GHz spectrum concentration is an enhanced factor in the Commission's review if, post-transaction, the acquiring entity would hold more than one-third of the currently available and suitable

²¹³ The Communications Act requires the Commission to examine closely the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum to ensure that spectrum is assigned in a manner that serves the public interest, convenience, and necessity. See 47 U.S.C. §§ 303(g), 307, 308(b), 310. Section 309(j)(3) of the Act provides that, in designing systems of competitive bidding, the Commission must “include safeguards to protect the public interest in the use of the spectrum,” and must seek to promote various objectives, including “promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants,” and promoting the “efficient and intensive use” of spectrum. *Id.* § 309(j)(3). In addition, Congress did not intend, in limiting the Commission's ability to deny licenses to auction winners who meet the required licensed qualifications, to “affect any authority the Commission has to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.” *Id.* § 309(j)(17)(B).

²¹⁴ *Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6221-22, paras. 225, 245 n.656 (2014) (*Mobile Spectrum Holdings Report and Order*); see also 2022 *Communications Marketplace Report*, GN Docket No. 22-203, Report, FCC 22-103 at para. 83 (2022) (2022 *Communications Marketplace Report*), <https://www.fcc.gov/reports-research/reports/consolidated-communications-marketplace-reports/CMR-2022> (last visited Jan. 3, 2023). The Commission has explained that the main purpose of the spectrum screen is to act as an analytical tool in identifying markets where: (1) there could be an increased likelihood that rival service providers or potential new entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market; and (2) rivals' costs could be increased to the extent that they would be less likely to compete robustly. See, e.g., *3.45 GHz R&O and FNPRM* at para. 109.

²¹⁵ 2022 *Communications Marketplace Report* at para. 84 n.215, Fig. II.B.9. The Commission has listed the following bands as included in the spectrum screen: 600 MHz, 700 MHz, Cellular, SMR, Broadband PCS, AWS-1, AWS-3, AWS-4, H Block, WCS, BRS, EBS, 3.7 GHz, and 3.45 GHz.

spectrum below 1 GHz.²¹⁶ Commission rules and policies specify how spectrum holdings are attributed to particular entities, including the attribution of spectrum holdings to both the lessor and lessee.²¹⁷

96. We seek comment on applying our existing secondary market policies on spectrum attribution and aggregation to the proposed satellite-terrestrial leasing framework. In other words, to the extent that a satellite operator leases spectrum that is attributed to the lessor for purposes of our existing secondary market aggregation policies, should that spectrum be attributed to the satellite operator for the same purposes?²¹⁸ Are there any changes that we should make to our existing secondary market spectrum policies in the context of the proposed satellite-terrestrial leasing framework? To the extent that we adopt a different framework to facilitate SCS, such as a part 25 co-channel authorization for satellite operators without leasing from terrestrial licensees (e.g., through operating agreements or other types of arrangements), should we apply or change our existing secondary market policies on spectrum attribution and aggregation and, if so, how?

97. Further, are there any additional competitive or public interest concerns that we should consider that would weigh in favor of placing limits on the collaboration? For example, stakeholders have indicated that the initial provision of SCS is likely to focus on messaging-type services in areas that terrestrial networks have difficulty covering, but could evolve to include increased capacity with enhanced capabilities and functionality. To what extent would authorizing SCS as proposed impact current commercial agreements (e.g., secondary markets and/or roaming arrangements), particularly those involving smaller carriers, or impact stakeholders' prospective participation in the Commission's recently adopted ECIP program? We seek comment on whether and to what extent the proposed SCS framework, if adopted, could impact marketplace incentives to negotiate such future commercial agreements.²¹⁹ We also seek comment on whether we should apply the current policies that ensure competition to satellite operators that enter into these kinds of arrangements and, if so, how? Is there a need to limit the number and scope of arrangements that a particular terrestrial service provider or satellite operator can enter, or is the provision of SCS too nascent to adopt such limits at this time? Conversely, should our eligibility criteria for such a partnership consider any limitations on the ability of either party to restrict the other's entry into such arrangements with third parties with respect to other frequency bands? Should the assessment be a case-by-case public interest analysis? Commenters should discuss and quantify any costs and benefits associated with applying restrictions to the flexible-use spectrum proposed for use in providing SCS.

98. *License Term and Renewal.* Under section 25.121(a) of the Commission's rules, with some exceptions, licenses for facilities governed by part 25 are issued for a period of 15 years.²²⁰ Consistent with our proposed framework, a part 25 space station license that is modified to add SCS would retain whatever license term remains under its existing license, and a new part 25 blanket earth station license granted to provide SCS would be granted for a term of 15 years. A modification of an existing part 25 grant of market access to add SCS would not alter the effectiveness of that grant, but to continue operations to provide SCS in the United States, there would need to be a valid blanket U.S. earth station license for purposes of communicating with the non-U.S.-licensed space station with SCS market

²¹⁶ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, paras. 282-88. With respect to 600 MHz licenses acquired in the Broadcast Incentive Auction, the Commission adopted rules prohibiting secondary market transactions within a specified time period. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6212, paras. 197-98; 47 CFR § 20.22(c).

²¹⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6228, para. 246 n.656, paras. 301-02; 47 CFR § 20.22(b)(5).

²¹⁸ See, e.g., *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6228, para. 246 n.656.

²¹⁹ See CCA Ex Parte Letter at 1.

²²⁰ 47 CFR § 25.121(a)(1).

access.²²¹ In other words, if the associated blanket earth station license is not renewed at the end of its term or is terminated for some reason, the SCS portion of the market access grant should also be automatically terminated. We seek comment on applying this approach in the SCS context, including its costs and benefits. Pursuant to section 25.121 of the Commission's rules, an application seeking renewal of an earth station license must be submitted no earlier than 90 days, and no later than 30 days, before the expiration date of the license, and an application for a space station system replacement authorization (comparable to what is considered a renewal in the context of terrestrial mobile licensing) for NGSO satellites must be filed no earlier than 90 days, and no later than 30 days, prior to the end of the twelfth year of the existing license term.²²² We propose to apply current part 25 rules for modified part 25 licenses and for new blanket earth station licenses, and we seek comment on this approach.

99. We note that for terrestrial wireless service providers, section 1.949 of the Commission's rules provides that a licensee seeking renewal must file a renewal application and satisfy a renewal standard.²²³ Specifically, a licensee must demonstrate a level of service over the course of the license term by meeting a safe harbor or making a renewal showing independent of the relevant performance requirements, as a condition of renewal.²²⁴ A failure to meet the renewal standard results in denial of the renewal application and return of the licensed spectrum to the Commission's inventory for reassignment.²²⁵ We seek comment on whether we should amend our part 25 rules to require a similar renewal showing for a satellite operator seeking to renew a part 25 license that was modified under our proposed SCS framework. In addition, we seek comment on any relevant changes to the terrestrial licensee renewal rules. For example, should a terrestrial licensee that has not provided terrestrial coverage to a particular licensed area over the course of its license term be able to use SCS operations to meet the end of term renewal standard in section 1.949?²²⁶

100. *Deployment Milestones for Part 25 Licensees.* As a general matter, the Commission establishes performance requirements for licensees to ensure that spectrum is intensely and efficiently used.²²⁷ The Commission has applied varying performance requirements to different spectrum bands based on their unique circumstances.²²⁸ Given our proposal to authorize SCS in the public interest, we

²²¹ Under Commission rules, terrestrial wireless service licenses and U.S. granted space station licenses are subject to license terms and renewal obligations. See, e.g., 47 CFR §§ 1.949, 24.15, 25.121. Earth station licenses granted in accordance with the terms of a market access grant are subject to the same license terms and renewal obligations as earth stations authorized to communicate with U.S.-licensed space stations. See, e.g., OneWeb 2019 Blanket Earth Station Application for User Terminals, IBFS File No. SES-LIC-20190930-01237, Exhibit A, Narrative Statement (filed Sept. 30, 2019) (OneWeb incorporates by reference the OneWeb Market Access grant to demonstrate compliance with the requirements of section 25.137 of the Commission's rules for earth station applicants proposing to communicate with non-U.S.-licensed space stations). The earth station license was granted with a license term of 15 years. IBFS File No. SES-LIC-20190930-01237 (granted Apr. 29, 2021).

²²² 47 CFR § 25.121(e).

²²³ See *id.* § 1.949(d).

²²⁴ See *id.* § 1.949(f).

²²⁵ See *id.* § 1.949(h).

²²⁶ See *id.* § 1.949(d).

²²⁷ See 47 U.S.C. § 309(i).

²²⁸ See, e.g., *Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357, Report and Order, 28 FCC Rcd 9483, 9558-59, para. 195 (2013) (requiring 40% population coverage within four years of initial grant and 75% population coverage within 10 years of initial grant). See also *AWS-3 Report and Order*, 29 FCC Rcd at 4659-60, para. 135 (requiring 40% population coverage within six years of initial grant and 75% population coverage within 12 years of initial grant); *Expanding the Economic and Innovation*

(continued....)

must consider what type of performance requirements should apply to the licensees involved in this new framework.

101. In terrestrial wireless services, spectrum lessees do not have construction or operational requirements separate from the spectrum lessor's responsibilities. For example, in spectrum manager leasing arrangements and long-term *de facto* transfer leasing arrangements, any performance requirements remain a condition of the underlying license, and the lessor's legal responsibility for compliance cannot be delegated to the lessee.²²⁹ The Commission enforces the applicable performance requirement against the licensee.²³⁰ In the proposed SCS approach, the spectrum lessee would be the satellite operator and, at least pursuant to existing terrestrial service rules, would not have independent performance requirements.

102. Section 25.164 of the Commission's rules describes the milestones applicable to recipients of licenses for an NGSO satellite system.²³¹ Specifically, NGSO satellite system authorizations require the launch of 50 percent of the maximum number of space stations and operation of the stations no later than six years after grant of the authorization, with the launch of the remaining stations occurring no later than nine years after grant.²³² We propose to retain the satellite spectrum milestones applicable to current part 25 NGSO satellite operators to provide SCS. We seek comment on our proposal, including its costs and benefits. Should application of current milestones differ if the proposed modification seeks to add frequencies for the provision of SCS, but does not request the addition of more space stations (i.e., because the number of required satellites in a constellation may have been previously authorized)? Would our proposal promote prompt and efficient spectrum usage in the public interest? Alternatively, should we consider modifying these existing milestones relative to the supplemental coverage we propose today? What modifications would be warranted to ensure efficient satellite usage and prevent warehousing? Moreover, should we revise our rules to address the interplay between satellite milestones and terrestrial performance requirements, and if so, how?

103. We also note that, pursuant to section 25.165 of the Commission's rules, space station licensees generally must post a surety bond within a certain time period after grant of the license, and failure to post a bond causes the license to be rendered automatically null and void.²³³ We propose to apply the bond requirements applicable to current part 25 NGSO satellite operators to the satellite operators seeking to provide SCS.²³⁴ We seek detailed comment on these issues, including the associated costs and benefits. Are any modifications needed to these requirements? In particular, how can we promote competition and deter companies from effectively blocking future competition by failing to follow through promptly with their deployment plans? Would more stringent milestone or bond requirements be appropriate in conjunction with the provision of SCS?

104. Section 25.133 of our rules requires an earth station or network of blanket-licensed earth stations to be brought into operation within 12 months after initial licensing, or six months after the bringing into operation of the NGSO system under section 25.164(b)(1) with which the earth station or earth station network was authorized to communicate, unless a different build-out period is determined by the Commission.²³⁵ We note that our WRS rules provide no corresponding specific build-out requirement

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Opportunities of Spectrum through Incentive Auctions, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6877-78, para. 764 (2014).

²²⁹ See 47 CFR §§ 1.9020(d)(5), 1.9030(d)(5).

²³⁰ *Id.*

²³¹ See *id.* §§ 25.164(a), (b)(1)-(2).

²³² *Id.*

²³³ See *id.* § 25.165.

²³⁴ See *id.*

²³⁵ See 47 CFR § 25.133(a); see also 47 CFR § 25.164(b)(1).

for terrestrial end-user devices, such as handsets, because authority for subscribers to operate mobile or fixed stations, with certain exceptions, is included in the authorization held by the licensee providing service. As noted, our WRS rules typically require the terrestrial licensee to meet performance requirements and offer service.²³⁶ Should we apply a similar 12-month period to bring terrestrial devices into operation that are also licensed under a blanket earth station license?²³⁷ Is this necessary to ensure prompt supplemental coverage, or would this conflict with existing performance requirements applicable to the terrestrial licensee? Should we specifically apply those performance requirements for purposes of bringing terrestrial devices into operation under the earth station license?

105. *Automatic Termination.* To promote spectrum efficiency, the Commission establishes performance requirements or deployment milestones, depending on the radio service, with attendant consequences for failing to timely meet the requirements. The Commission also defines permanent discontinuance of service resulting in automatic license termination.²³⁸ For geographic-area terrestrial licensees authorized by market, for example, permanent discontinuance of service or operations is defined as 180 consecutive days during which a licensee does not operate or, in the case of CMRS providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee.²³⁹ The Commission's permanent discontinuance rule is intended to work in concert with its construction and renewal obligations "to ensure that licensees provide service in a timely manner, continue to provide service over the term of the license, and do not discontinue service for such an extended period of time that it should be deemed permanent."²⁴⁰ Similarly, for part 25 satellite operators, the Commission has adopted an automatic termination rule that describes the consequences for failing to meet applicable milestones.²⁴¹ Specifically, a station authorization will automatically terminate for failure to maintain the 50 percent of the maximum number of NGSO space stations authorized for service following the 9-year milestone period, which failure will result in termination of the stations not in orbit on the date of noncompliance.²⁴² Station authorizations will also terminate for the removal or modification of the facilities, which renders the station not operational for more than 90 days.²⁴³

106. We propose to retain the current part 25 rules regarding automatic termination of station authorizations to satellite licensees seeking to provide SCS jointly with a terrestrial collaborator.²⁴⁴ We seek comment on our proposal and whether any rule amendments are required in the public interest. For example, we recognize that, for the terrestrial licensee, the applicable part 1 rules governing permanent discontinuance of service set forth different standards and timeframes for determining what constitutes a discontinuance of service for purposes of license termination.²⁴⁵ Given these differences, we seek comment on whether part 25 rule amendments are necessary to harmonize the terrestrial and satellite automatic termination standards, considering that the proposed new service is a joint offering intended to

²³⁶ See *id.* §§ 1.903(c), 27.14.

²³⁷ See *id.* § 25.133(a).

²³⁸ See *id.* § 1.953.

²³⁹ See *id.* § 1.953(b).

²⁴⁰ See *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874, 8894 (2017).

²⁴¹ See 47 CFR § 25.161.

²⁴² See *id.* § 25.161(d).

²⁴³ See *id.* § 25.161(c).

²⁴⁴ See *id.* § 25.161.

²⁴⁵ See *id.* § 1.953.

supplement existing terrestrial coverage. Should more stringent requirements and shorter timeframes be applied to a satellite operator providing SCS? Further, should the terrestrial service provider in a proposed SCS collaboration be held to more rigorous discontinuance rules, necessitating part 1 rule revisions?

107. *Permissible Communications.* Our proposed licensing framework for the provision of SCS involves the addition of MSS allocations to previously terrestrial-only spectrum. Many of our WRS rules applicable to terrestrial operators set forth parameters for permissible, or required, communications on terrestrial spectrum. For example, rule section 24.3 permits a PCS licensee to provide any mobile communications service on its assigned spectrum;²⁴⁶ rule section 22.901 requires that an 800 MHz Cellular Radiotelephone Service licensee provide either mobile service, fixed service, or a combination thereof;²⁴⁷ and rule section 27.2 provides that WCS licensees, with some exceptions, may provide any services for which their frequency bands are allocated, as indicated in the U.S. Table.²⁴⁸ Our proposed SCS framework, intended to close terrestrial service coverage gaps, would specifically permit the provision of MSS through space station transmissions authorized under part 25 of the Commission's rules. Although we require a satellite operator to enter into a leasing arrangement with a terrestrial licensee as part of our proposed entry criteria to provide SCS, we recognize that the transmissions necessary to supplement terrestrial coverage are not generated by the terrestrial licensee authorized under our WRS rules. As a result, we tentatively conclude that it is unnecessary to revise our parts 22, 24, and 27 rules related to permissible communications to enable the provision of SCS. We seek comment on this tentative conclusion.

108. *Other Existing Obligations.* We seek comment on whether any other existing service rule obligations applicable to terrestrial providers offering commercial service in the flexible-use bands specified above need to be addressed in our proposed part 25 licensing framework. In establishing service rules in other proceedings, the Commission typically seeks to achieve regulatory parity and to provide flexibility as much as possible, while accommodating differences in particular bands where necessary. Are there public interest reasons that part 25 satellite operator/lessees should be subject to additional terrestrial licensee partners' service obligations? For example, should our roaming rules in part 20²⁴⁹ apply to a satellite operator providing SCS under our proposed framework? Are these rules relevant in a scenario where we propose SCS as an enhancement to existing terrestrial service and not a standalone service where SCS would initially be authorized throughout a given GIA? We ask commenters that support modifying any existing obligations, as applied to the terrestrial licensees or the satellite operators, to articulate the reasons why different treatment here is justified. We also propose to apply current part 25 obligations to an applicant seeking authorization modification as part of a collaboration with a terrestrial licensee, such as section 25.114 requirements regarding applications for space station authorizations, including submitting a plan describing the design and operational strategies that will be used to mitigate orbital debris. We seek comment on this proposal. Are there any part 25 rules that may be inconsistent with our proposed framework? Commenters should be specific regarding any requested changes to the rules, including support for why the rule should not apply to our proposed SCS framework or should be modified.

109. *Potential New Obligations.* In conjunction with our proposal to permit use of valuable terrestrial spectrum to provide SCS, we must consider whether there are new obligations that should be imposed on collaborating licensees. Specifically, we seek comment on whether—in jointly authorizing SCS through a satellite authorization modification and a lease of terrestrial exclusive-use licenses—the Commission should consider creating new or additional obligations in the public interest. Further, we

²⁴⁶ See *id.* § 24.3.

²⁴⁷ See *id.* § 22.901.

²⁴⁸ See *id.* § 27.2(a).

²⁴⁹ See *id.* § 20.12.

seek comment on the appropriate parties upon which to apply any such obligations. For example, should we impose accelerated satellite deployment milestones or enhanced terrestrial coverage requirements, to ensure SCS is more rapidly made available to the public? Would applying quality of service metrics to SCS promote the public interest? We seek specific comment on the costs and benefits of imposing new or additional obligations on stakeholders in the context of authorizing SCS.

5. Technical Issues

110. Under our proposed framework, a satellite operator would enter into a lease arrangement with a terrestrial licensee. Under our current secondary markets rules, a lessee would typically be subject to the same technical requirements as the lessor, as set forth in band-specific service rules (e.g., complying with out-of-band emission limits to protect adjacent band licensees).²⁵⁰ In this section, we discuss certain technical considerations applicable to the provision of SCS.

111. *Terrestrial Partners with Existing Lease Arrangements.* Where a terrestrial licensee holds all relevant co-channel licenses in a GIA, but has pre-existing lease arrangements with lessees (other than its collaborating satellite operator) in any of its licensed areas making up the GIA, we expect that the terrestrial licensee, as lessor, will afford necessary protections to its lessees to account for its co-channel satellite collaborator's transmissions entering the market. Currently, in spectrum manager leasing arrangements, through contractual provisions and oversight and enforcement of such provisions, the licensee must act in a manner sufficient to ensure that the spectrum lessee operates in conformance with applicable technical and use rules governing the license authorization.²⁵¹ The licensee's responsibilities include overseeing the spectrum lessee's system "to ensure compliance with Commission rules regarding non-interference with co-channel and adjacent channel licensees"²⁵² Further, the licensee is responsible for resolving all interference-related matters, including conflicts between its spectrum lessee and any other spectrum lessee or licensee (or authorized spectrum user).²⁵³

112. We seek comment on the sufficiency of an approach that relies on a terrestrial licensee, in collaboration with a satellite operator to provide SCS, to protect its pre-existing lessees from harmful interference through engineering solutions specified in lease terms and conditions. Should we modify our rules to further protect a terrestrial licensee/lessor's pre-existing lessees from potential harmful interference from the operations of a new lessee satellite operator and what are those necessary protections? Given the technical complexity in the interference environment created by additional co-channel entities within a GIA, should we prohibit future terrestrial leasing arrangements after a terrestrial licensee has entered into a lease for SCS in a GIA? If we allow future leasing within a GIA that is leased for SCS operations, should we allow the parties to contract for necessary protections, or should we amend our rules to provide additional protections against harmful interference? We seek comment on whether additional technical protections are necessary in these contexts, and if so, we request that commenters be specific regarding what protections are warranted.

113. *In-Market Downlink Power Flux Density (PFD) Limits.* We propose a framework with entry criteria that would permit satellite operators and terrestrial collaborators to enter into private contractual agreements to establish necessary protections for their respective co-channel operations to provide SCS using spectrum previously allocated for terrestrial-only use. Some satellite operators have

²⁵⁰ See, e.g., *id.* §§ 24.236, 24.238.

²⁵¹ See *id.* § 1.9010(b)(1)(i).

²⁵² *Id.* § 1.9010(b)(1)(ii).

²⁵³ *Id.*

indicated that their satellites can produce narrow spot beams that focus signal energy on small unserved areas of terrestrial markets, without otherwise impinging on the terrestrial licensee's operations.²⁵⁴

114. We note that part 25 does not provide PFD limits in terrestrially allocated bands at issue in this Notice, and parts 24 and 27 base station power limits would not be appropriate to regulate satellite downlinks. Therefore, we seek comment on an appropriate in-band PFD limit that should be applied to each of the bands in which SCS is contemplated. We further note that the ITU Radio Regulations include PFD limits for various satellite downlink operations in different bands to enable coexistence between different services.²⁵⁵ Should we implement in-market PFD limits for the bands under consideration in this Notice or should we allow these technical details to be negotiated between satellite and terrestrial partners? If we allow privately negotiated in-market PFD limits as proposed, should we require the SCS partners to specify in their lease notifications the PFD limit to which they agreed? Regardless of the approach we take, would an appropriate in-band PFD limit be based upon whether the downlink signal only operates in areas unserved by the terrestrial system or is there a need for other PFD limits in areas that potentially have overlapping coverage? We recognize that a variety of factors (e.g., partners' service plans, network configuration, and technological developments) could affect the amount of satellite energy present on the ground in a given service area. Should we establish additional technical rules to ensure terrestrial services are not degraded? Commenters making proposals for technical limits on satellite signals within authorized markets should include technical justifications for their proposals and analyses demonstrating that terrestrial services would not be degraded by supplemental operations.

115. *Market Area Boundary Limits.* We do not believe it necessary to amend the existing market area boundary limits in parts 22, 24, and 27 of the Commission's rules, respectively, in the context of SCS.²⁵⁶ We recognize that co-channel neighbors in our proposed SCS context are not two licensees operating terrestrial base stations in adjacent geographic areas that share a common terrestrial boundary. Rather, our proposed entry criteria ensure that a single terrestrial licensee holds all relevant co-channel licenses in a GIA, and that the co-channel "neighbor" seeking to provide coverage in proximate geography is a collaborating satellite operator. We anticipate that a terrestrial licensee and its co-channel satellite partner seeking to provide SCS would coordinate regarding technical parameters to jointly ensure that their co-channel operations do not cause harmful interference to one another. We recognize, however, that boundary limits may be applicable at the margins of a GIA, for example, at international borders through treaty obligations, or at a market boundary extending into water. We seek comment on this approach, including the associated costs and benefits.

116. We note that the existing technical rules for each radio service were tailored to account for the allocations in the band(s) where the services were authorized to operate. Where, as here, we propose to modify the allocation to facilitate supplemental coverage, such new operations could raise technical issues that were not anticipated when technical rules were initially adopted for a service. Accordingly, given the novel satellite use of terrestrial spectrum, we seek comment on whether, in a framework requiring a single licensee to hold relevant co-channel spectrum rights throughout a GIA, modified or additional technical protections are required, as well as the costs and benefits of any alternative approach.

117. *Out of Band Emission (OOBE) Limits.* To protect against harmful interference to adjacent band licensees, we propose to apply the existing OOBE limits for the relevant band of operation

²⁵⁴ See SpaceX and T-Mobile Application, Technical Annex at 9 (indicating SpaceX and T-Mobile have agreed to an unspecified in-market PFD limit for their proposed joint operations).

²⁵⁵ See, e.g., Recommendation ITU-R SF.358-5, Maximum Permissible Values of Power Flux Density at the Surface of the Earth Produced by Satellites in the Fixed Satellite Service Using the Same Frequency Bands Above 1 GHz as Line-of-Sight Radio Relay Systems.

²⁵⁶ See 47 CFR §§ 22.983, 24.236, 27.55.

for satellite transmitters providing space-to-Earth transmissions.²⁵⁷ While section 25.202 provides a range of OOB limits, from relaxed narrowband emissions to stringent emissions for other bands,²⁵⁸ we propose to implement the current terrestrial service rule OOB limits deemed necessary to protect adjacent operations in the relevant bands of operation. We note that the pending T-Mobile/SpaceX proposal contends that their satellite system was designed to meet the PCS Block G requirements in rule section 24.238,²⁵⁹ which is a stricter limit than certain emission limits permitted for satellites in rule section 25.202.²⁶⁰ We seek comment on our proposal and whether the emissions limits pertaining to satellites should be different than those currently applied to terrestrial base station emissions in each relevant band. We recognize that, in many bands, terrestrial-only operations are more viable with coordination or spectrum separation, and that satellite downlinks may not be viable in all cases. Are our current terrestrial OOB limits sufficient to protect the range of adjacent band services if these limits are applied to new supplemental satellite operations? Are additional OOB limits required for satellite transmissions to protect Federal receivers in space? Commenters should address specific concerns and potential solutions for each band of concern.

118. We also acknowledge that the interference metrics are different for satellite transmissions insofar as near-far interference caused by the proximity of an adjacent band device to a terrestrial base station is not present in SCS. However, a satellite signal can place undesired signal energy into adjacent bands and can cover large geographic areas, potentially affecting many terrestrial and space-based devices. While this undesired signal may not rise to a level of causing harmful interference, it could degrade adjacent licensees' operations and cause dropped calls for those at the outer edges of coverage. Accordingly, we seek comment on how satellite downlinks meeting existing terrestrial OOB limits would affect adjacent channel operations if the satellite downlinks become widespread. That is, would satellite downlinks meeting current terrestrial OOB limits across a large portion of an adjacent channel licensee's service area raise the noise floor or potentially harm adjacent channel services? Would the effect be limited in scope or potentially affect a significant portion of adjacent channel operations? We also seek comment on whether certain applications require changes to our OOB limits. For example, section 27.53 of our rules, which is applicable to various 700 MHz blocks, requires a resolution bandwidth of 30 kilohertz for emissions immediately outside the band edge, instead of the often used 1% of the emission bandwidth standard.²⁶¹ As a result, any technology, such as NB-IoT, with a bandwidth less than 3 megahertz is required to meet a stricter limit. Should we adjust the resolution bandwidth for 700 MHz devices to enable narrowband applications? Commenters supporting different emission limits for satellite downlinks should make specific proposals, supported by technical justifications and analyses on how those emissions would affect adjacent channel operations.

119. *Elevation Angle for Satellite Downlinks.* Further, our proposal limits terrestrial and satellite collaborations seeking to supplement terrestrial service to the use of NGSO satellites. As these satellites move across the sky, their signal beams will also move to provide service and will be arriving on the ground from varying elevation angles. Our part 25 rules often use elevation angle limits on earth stations to facilitate sharing with terrestrial operations.²⁶² We recognize that under our proposed SCS framework, all relevant co-channel licenses in a given GIA must be held by the terrestrial licensee, and that collaborating terrestrial and satellite operators will coordinate to prevent harmful interference. Is this approach sufficient to avoid harmful interference, including protection for spectrally adjacent licensees?

²⁵⁷ See *id.* §§ 22.917, 24.238, 27.53.

²⁵⁸ See *id.* § 25.202.

²⁵⁹ See Technical Narrative attached to T-Mobile and SpaceX Application at 11; see also 47 CFR § 24.238.

²⁶⁰ See 47 CFR § 25.202.

²⁶¹ See *id.* § 27.53(g).

²⁶² See, e.g., *id.* § 25.205.

Should we establish a minimum elevation angle to minimize focused signal energy into terrestrial base station antennas? If so, what elevation angle would be appropriate, e.g., 5 degrees? We seek comment on this and other alternatives that might be necessary to minimize the potential for harmful interference.

120. *Other Technical Limits.* We seek comment on the applicability of other technical limits that currently apply to terrestrial operations in each of the subject bands proposed for SCS. For example, should we apply the existing frequency stability, duty cycle, synchronization requirements and other limits that apply to terrestrial base stations and terrestrial devices, as set forth in the service rules for the respective band of operation, to new SCS operations? Are there factors in the existing technical limits that could hinder the range of services we explore in this Notice? Would it be feasible or necessary to apply one set of technical limits when communicating with terrestrial towers, but a different set of technical limits when communicating with a satellite? If existing technical limits are insufficient to protect against harmful interference caused by the types of partnered supplemental operations we propose in this Notice, commenters should offer specific limits, with a justification of why those limits are needed and an analysis of how they might impact adjacent operations in the bands under consideration. With respect to additional technical rules pertaining to base stations, we note that section 25.202 specifies frequency bands, frequency tolerance, and OOB limits for certain satellite operations. Given our proposals to: (1) add a footnote allocation to the U.S. Table; and (2) apply various technical limits from parts 22, 24, and 27 to MSS downlinks depending on the band of operation, we seek comment on the applicability of various base station technical limits on supplemental space station operations. For example, section 27.50 specifies a range of base station power limits, coordination requirements, power measure methods, tower height limits, peak-to-average ratio limits, and other limits applicable to the bands under consideration in this Notice.²⁶³ We seek comment on the extent to which SCS operations can be effectuated in compliance with these restrictions. Further, we seek comment on the applicability to SCS of section 25.203 regarding frequency and location choice in bands shared by satellite and terrestrial services, including whether we should create an exception for MSS operations that provide SCS.

121. Also, as our proposal seeks to afford flexibility to subsequently add bands for SCS operations, where our proposed entry criteria subsequently are able to be met, is there an efficient way to incorporate by reference into part 25 applicable base station limits applicable to satellite downlink operations? Alternatively, should various bands, entry criteria, and technical requirements be listed in part 25 and if so, where? Or is it more efficient simply to include a cross reference to the proposed footnote to the U.S. Table, where entry criteria and other specifications would be specified?

122. We also seek comment on the applicability to SCS of various coordination, notification, and other rules applicable to 800 MHz cellular terrestrial base stations to protect public safety operations. As an SCS signal originates from space, public safety operations would not be subject to, as discussed, the “near-far interference” situation caused by operations near a terrestrial base station. To help resolve the near-far issue and protect public safety, the Commission, among other actions, implemented sections 22.913(b) and (c), 22.970, 22.971, 22.972, and 22.973.²⁶⁴ These rules may not directly apply to SCS downlink transmissions, but we nonetheless seek comment on whether some form of accommodation is needed for SCS at 800 MHz or any other bands adjacent to public safety operations to ensure the continued reliability of public safety networks and avoid harmful interference.

123. *Protection of Radio Astronomy and Space Sciences.* The novel aspects of our proposal introduce new spectrum management challenges that warrant consideration, including the introduction of satellite downlinks and the continuing need to protect radio astronomy and other services that may be susceptible to signals emanating from the sky. The advent of new technologies presents an opportunity to explore satellite downlinks in a range of previously terrestrial-only bands provided proper safeguards are in place. In general, terrestrial operations in bands adjacent to radio astronomy have proven viable with

²⁶³ See *id.* § 27.50.

²⁶⁴ See *id.* §§ 22.913(b)-(c), 22.970, 22.971, 22.972, 22.973.

coordination requirements, and because highly directional radio astronomy antennas point to the sky and are protected from terrain obstacles. These spectrum management tools do not exist (e.g., terrain) or are complicated (e.g., coordination and angle of arrival)²⁶⁵ in the case of satellite operations.

124. IB addressed this type of situation in the recent Lynk Order, where the National Radio Astronomy Observatory (NRAO) opposed Lynk's application to operate in the 600 MHz band due to its potential to interfere with radio astronomy operations in the lower adjacent band.²⁶⁶ After reviewing the record, IB granted the application for operations outside the United States with various conditions, including Lynk providing 180 dB of signal isolation to radio astronomy facilities, a minimum of 3 megahertz of frequency separation, and on Lynk avoiding space-to-Earth transmissions into Radio Quiet Zones in the United States and on a global basis consistent with protection measures necessary for individual Radio Quiet Zones.²⁶⁷ Generally, NRAO remains concerned about the impact of space radiocommunication in mobile service spectrum in terms of its potential to undermine the protections for radio astronomy, and has separately filed a petition for declaratory ruling or rulemaking requesting that the Commission address these concerns.²⁶⁸

125. Section 1.924 of the Commission's rules applies to WRS applications and requires the coordination of fixed terrestrial wireless transmitters (including those operating in the terrestrial bands under consideration in this Notice) to protect a number of sensitive facilities.²⁶⁹ Although our part 25 rules address some protections to certain scientific facilities or bands,²⁷⁰ section 1.924 does not specifically address satellite downlink operations.²⁷¹ Further, although we propose to apply terrestrial OOB limits to satellite downlink operations as discussed above, such limits may not be sufficient to protect sensitive scientific services, depending on the bands for which we ultimately may authorize SCS.

126. Accordingly, we seek comment on whether existing rules addressing the protection of sensitive operations would be adequate in the context of the provision of SCS, and whether we should consider updated approaches to maintaining the unique characteristics of the areas covered by section 1.924. Specifically, what new coordination requirements would be necessary for radio astronomy stations in certain geographic locations to enable the same level of protection currently afforded via coordination with terrestrial systems? Should we implement conditions similar to those applied in the Lynk Order in the SCS context? Should we adopt more stringent OOB limits for these situations and if so, what should they be? Should we amend section 1.924 or part 25 to require supplemental satellite downlink or other operations to coordinate with the facilities specified in section 1.924 and section 25.203? Could such coordination successfully take into account the dynamic nature of NGSO satellites, including their operation across the entire globe, with capabilities such as steerable spot beams and flexible frequency use, thereby protecting the sensitivity and varying nature of scientific observations looking to the sky? Should we be concerned about the aggregate impacts of multiple systems providing SCS, and if so, what

²⁶⁵ See, e.g., 47 CFR § 2.106 n.US131 (requiring NGSO FSS (space-to-Earth) licensees operating in the 10.7-11.7 GHz band to coordinate with multiple radio astronomy observatories to achieve a mutually acceptable agreement to protect adjacent band radio telescope facilities).

²⁶⁶ See *Lynk Order* at paras. 22-25.

²⁶⁷ *Id.*

²⁶⁸ See Petition of NRAO for Declaratory Ruling or Rulemaking (filed Feb. 8, 2023), <https://www.fcc.gov/ecfs/document/10208273939421/1> (NRAO Petition). NRAO specifically requests that the Commission issue a declaratory ruling or initiate a rulemaking proceeding to clarify the status, class of service and conditions under which terrestrial mobile phones operate when they are used for space radiocommunication in spectrum bands allocated to the mobile service. See *id.* at 3, para. 16.

²⁶⁹ 47 CFR § 1.924.

²⁷⁰ See, e.g., 47 CFR §§ 25.203(e-f), 25.142(a)(2), 25.254.

²⁷¹ See 47 CFR § 1.924.

additional information would be necessary to address any concerns? What is the appropriate approach to ensure that SCS can supplement existing terrestrial services and adequately protect the Nation's valuable scientific enterprise? Are other rule changes required? We seek comment on all aspects of this issue so that we might facilitate SCS while preventing harmful interference to sensitive passive services, such as radio astronomy and Earth exploration.

127. *Terrestrial Device Power Limits.* We propose to maintain the current power limits applicable in each band to a range of terrestrial devices that would also be licensed as earth stations under SCS operation. We therefore propose to amend section 25.204 (power limits for earth stations) to reflect that SCS earth stations would be required to meet the power limits applicable to terrestrial transceivers for the bands in which they seek to operate.²⁷² We seek comment on this proposal, in particular how such existing power limits would work, in practice, for the proposed SCS, given that consumer devices often do not operate at maximum power limits currently permitted because of other limiting factors, such as battery life. As device standards and designs change, would existing power levels be sufficient for mobile devices to communicate with satellites? How could the proposed SCS be leveraged to provide fixed broadband services to unserved areas, which continues to be a challenge in many areas? Are existing device power limits sufficient to make applications for the provision of fixed broadband in rural or unserved areas feasible? Commenters should provide technical details for their suggestions and provide analysis supporting their proposals and evaluate the impact of their proposals on other services.

128. *Equipment Authorization for SCS.* Our terrestrial (parts 22, 24, and 27) and satellite (part 25) service rules require all transmitting devices to meet the relevant technical rules and receive equipment authorization.²⁷³ Accordingly, for new devices certified after the effective date of any rules adopted in this proceeding, we propose to require that the equipment certification applicant specifically seek certification under part 25²⁷⁴ as well as the relevant terrestrial rule part(s) for all intended uses of the device. To receive part 25 equipment authorization, the applicant is required to demonstrate through testing that the device meets the technical requirements under the relevant terrestrial service rules. We do not believe this will add additional cost or time for equipment certification because no additional testing beyond the testing done to show compliance with existing terrestrial rules parts would be required under our proposal. We seek comment on this proposal and any alternatives, including the costs and benefits. In addition, if we adopt different technical rules for terrestrial transmitters specifically for operation with satellites for SCS, should those technical rules be in part 25 or identified for SCS in the terrestrial service rules, and how should the equipment authorization process change from our proposal?

129. We recognize, however, that there are a significant number of terrestrial devices that have already received equipment authorizations, which terrestrial licensees may choose to serve using SCS. We believe it is impractical and would not provide a tangible benefit to require re-certification of such devices to add part 25 SCS to existing equipment certifications, so long as the provision of service to such existing devices would not require technical modifications. Accordingly, for purposes of equipment authorization, we propose to treat as authorized-by-rule under part 25 existing terrestrial devices designed for use in the relevant flexible-use bands that are intended for SCS use, and we propose not to require a separate equipment authorization for such existing devices under part 2. However, if the Commission adopts rules for terrestrial devices that differ from existing rules that permit terrestrial operation (e.g., additional power for SCS), devices modified to operate under any new rules where the new rules would permit emissions to exceed current technical limits would be required to be recertified under the relevant rule part(s). We also propose to direct OET to use its delegated authority to administer the Equipment Authorization program to take all appropriate actions to implement our decisions. We seek comment on this proposal and its costs and benefits. Would another approach be more practical? For example, should

²⁷² See proposed section 25.204(g) in Appendix A.

²⁷³ See 47 CFR §§ 22.377, 24.51, 25.129, 27.51.

²⁷⁴ See *id.* § 25.129 (Equipment authorization for portable earth-station transceivers).

we require manufacturers to seek permissive changes to their equipment authorization for existing devices to add part 25 usage to existing equipment?

130. *3GPP and Other International Efforts.* We are aware that the 3GPP standards group is exploring similar applications of satellite service to handsets, which it refers to as NTN for broadband and NB-IoT applications.²⁷⁵ These discussions, however, are primarily focused on incorporating bands allocated for satellite services into terrestrial devices.²⁷⁶ For example, there are some initial studies exploring coexistence in the S band and for operation above 10 GHz, including the Ka-band.²⁷⁷ We recognize, nonetheless, that some of the bands under consideration by 3GPP, such as the S band and the Ku-band, include overlapping terrestrial allocations. Thus, we seek comment and stakeholder input on the status of any work being done by 3GPP to address interference and other concerns associated with satellite-based operations in flexible-use spectrum currently designated for terrestrial networks, and whether any such work should be incorporated by the Commission through this proceeding. Are other organizations, such as the ITU or the European Telecommunications Standards Institute, examining these issues? We seek comment on other efforts, both domestically and internationally, to establish standards or conduct related work regarding satellite service to handsets.

C. International Coordination

131. As stated, we propose to apply to SCS operations all existing signal level limits and coordination requirements that apply to the subject terrestrial bands.²⁷⁸ We reiterate that any limit we ultimately adopt in this proceeding will be subject to current and future agreements reached with border countries. Further, as many of the terrestrial bands proposed for SCS are not allocated for mobile-satellite service use internationally, any such use would be considered a non-conforming use under the ITU Radio Regulations. Accordingly, SCS operations could only be conducted on the condition that a station using such a frequency assignment shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, an international station operating in accordance with the provisions of the Constitution, the Convention, and the Radio Regulations of the ITU.²⁷⁹

132. Further, use of the bands identified in this Notice in the United States or its territories near international borders are subject to international agreements, with various rules and restrictions depending on the spectrum band and type of operation.²⁸⁰ These restrictions are subject to bilateral

²⁷⁵ See 3GPP TR 38.821, Solutions for NR to Support Non-Terrestrial Networks (NTN) (Release 16), <https://portal.3gpp.org/desktopmodules/Specifications/SpecificationDetails.aspx?specificationId=3525>; 3GPP TR 38.863, Solutions for NR to Support Non-Terrestrial Networks (NTN): Non-Terrestrial Networks (NTN) Related RF and Co-Existence Aspects (Release 17), <https://portal.3gpp.org/desktopmodules/Specifications/SpecificationDetails.aspx?specificationId=3926>.

²⁷⁶ We recognize that one application of NTN as defined in 3GPP is the use of High Altitudes Platforms (HAPS) to provide access to a user terminal. As noted, however, this proceeding does not propose, or seek comment on, the inclusion of HAPS within the SCS framework. See *supra* note 93.

²⁷⁷ 3GPP RP-222812, Status Report for WI NR NTN (Non-Terrestrial Networks) Enhancements.

²⁷⁸ See, e.g., *id.* §§ 22.169, 22.983(c), 24.236, 27.55, 27.57.

²⁷⁹ See ITU Radio Regulations Article 4.4, Edition of 2020 (stating that “Administrations of the Member States shall not assign to a station any frequency in derogation of either the Table of Frequency Allocations in this Chapter or the other provisions of these Regulations, except on the express condition that such a station, when using such a frequency assignment, shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the Constitution, the Convention and these Regulations.”).

²⁸⁰ See, e.g., FCC, *Canadian Agreements by Frequency*, <https://www.fcc.gov/canadian-agreements-frequency> (last visited Sept. 6, 2022); FCC, *Mexican Agreements by Frequency*, <https://www.fcc.gov/mexican-agreements-frequency> (last visited Sept. 6, 2022).

agreements²⁸¹ that typically focus on ensuring that terrestrial licensees meet a particular signal level limit at the relevant international border (e.g., field strength limit or PFD), unless licensees and the relevant agencies agree to alternative limits along with, in some cases, a coordination requirement for base stations placed within a certain distance of the border.²⁸² Although existing bilateral agreements do not contemplate SCS in these terrestrial bands, we believe appropriate limits on cross-border transmissions from supplemental satellite operations will prevent harmful interference to operations across international borders. Given the need to comply with existing Treaty obligations relative to SCS operations, we seek comment on appropriate cross-border protections for SCS operations.

133. We also recognize that interference metrics are different between satellites and terrestrial stations and that any interference analysis must be band-specific. Therefore, we seek comment on appropriate procedures for these analyses, as well as the relevant factors to include for specific bands. For example, we seek comment on whether we should look to relevant parts of the ITU Radio Regulations, including Resolutions addressing bands that are shared between terrestrial mobile and SCS operations.²⁸³ We seek comment on the use of the guidance found in these resolutions in our efforts to ensure that the potential for harmful interference is not increased across our borders.

134. In implementing our proposal, we also seek comment on the viability of coordination between domestic satellite operators and terrestrial operators in bordering countries. Should we consider allowing deviations from our signal strength limits where such agreements can be reached? What other

²⁸¹ As these agreements are bilateral, agreements covering the Canadian/U.S. and Mexican/U.S. borders may use different technical rules for the same bands. For example, the 700 MHz agreements between the United States and Canada requires coordination of base stations within 120 km of the border. If there is no base station within 120 km of the other side of the border, then a power flux density (PFD) of no more than -96 dBW/m² in any 1 MHz bandwidth in the other country's territory would apply. If there is another licensee on the other side of the border and no agreement is met, then a PFD of no more than -116 dBW/m² in any 1 MHz bandwidth would apply. In contrast, the U.S. and Mexican 700 MHz agreement provides that licensees within 110 km of the border are limited to in-band emissions to -106 dBW/m² within the authorized bandwidth and out-of-band emission in the -120 dBW/m² per 1 kHz at any point at or beyond the common border, with higher limits permitted with mutual agreement. See Sharing Arrangement Between the Department of Industry of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Frequency Bands 806-824 MHz, and 851-869 MHz by the Land Mobile Service Along the Canada-United States Border (Aug. 2011) (Arrangement F); Sharing Arrangement Between the Department of Industry of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Frequency Bands 768-776 MHz and 798-806 MHz by the Land Mobile Service Along the Canada-United States Border (May 2013) (Arrangement Q).

²⁸² See, e.g., Sharing Arrangement Between the Department of Industry of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Frequency Bands 806-824 MHz, and 851-869 MHz by the Land Mobile Service Along the Canada-United States Border (Aug. 2011) (Arrangement F); Sharing Arrangement Between the Department of Industry of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Frequency Bands 768-776 MHz and 798-806 MHz by the Land Mobile Service Along the Canada-United States Border (May 2013) (Arrangement Q). We note that SpaceX/T-Mobile state in their pending application that SpaceX can "maintain PFD levels below the equivalent PFD value [converted from the field strength limits specified in section 24.236] at national borders and space downlink beams appropriately from those borders to protect primary terrestrial mobile operations from interference." See Technical Narrative attached to T-Mobile and SpaceX Application at 11.

²⁸³ For example, Resolution 212 (rev. WRC-19) outlines guidance on technical and operation measures that administrations should consider when deploying satellite or terrestrial mobile stations in the 1885-2025 MHz and 2110-2200 MHz bands. See Resolution 212 (REV.WRC-19) titled Implementation of International Mobile Telecommunications in the Frequency Bands 1885-2025 MHz and 2110-2200 MHz. In particular, the annex to this resolution provides examples of technical and operational measures to facilitate coexistence between terrestrial and satellite components of International Mobile Telecommunications in the frequency bands 1980-2010 MHz and 2170-2200 MHz.

border limits, conditions, or coordination should we adopt to ensure efficient and adequate transitions, and sufficient protection from harmful interference, at the borders? For example, we seek comment on how we should address the roaming of SCS-capable devices across the U.S. border where supplemental satellite operations are not authorized. Also, what steps may be needed if the border country also permits supplemental satellite operations? As discussed above, satellite propagation mechanics, angles of signal arrival, the dynamic nature of a satellite service resulting from moving transmitters, and other factors change how signals can affect border locations, and therefore site-by-site coordination may not be viable in every instance. Accordingly, commenters should address how SCS can operate near borders in compliance with international agreements and without impacting other service providers.

135. Finally, we note that certain bands under consideration in this Notice involve licenses that cover Alaska (including the Aleutian islands), Puerto Rico, Florida and the USVI, respectively. Depending on the scope of deployment and the bands ultimately permitted to provide SCS, satellite operations could impact co-channel or adjacent band operations, if any, in Russia, Cuba, and the British Virgin Islands. We seek comment on the appropriate protections in instances where countries do not have a common land border, but are adjacent over nominal water distances.

D. Extension of Supplemental Satellite Framework to Additional Scenarios

136. In this Notice, we propose a comprehensive and novel framework to enable transmissions directly between satellites and consumer handsets and other terrestrial devices using spectrum currently only available on terrestrial networks. We reiterate that, given key technical considerations, our initial proposal is limited to only spectrum and locations where (1) there is only one terrestrial entity that holds, either directly or indirectly, all co-channel licenses for the relevant frequencies in the given GIA (such as CONUS); and (2) there are no primary, non-flexible-use legacy incumbent operations (whether federal or non-federal) in the band. These limitations allow us to enable a potentially valuable supplemental service, while substantially minimizing the risks of harmful interference to the existing terrestrial networks on which so much of the nation's communications rely. As stated above, we will continue to consider filings made by interested parties, for example, requests for rule waiver, special temporary authority, and experimental authorization, relating to supplemental satellite coverage proposals, including those that do not meet the initial criteria we propose, during the pendency of this proceeding. Any action on such applications would be subject to the outcome of this proceeding.

137. We seek comment, however, on the potential for expanding our proposal to permit these innovative new operations in bands and in locations which do not meet the proposed entry criteria.²⁸⁴ Commenters are encouraged to address technical and legal concerns with each deviation from our proposal, and to offer suggestions on ways we can modify our proposed framework in a given scenario to enable increased provision of SCS.

1. Spectrum Bands with Non-Flexible-Use Incumbent Licensees

138. We seek comment on whether it is possible to enable supplemental coverage from space in any bands that host non-flexible-use legacy incumbent operations other than those of the wireless licensee(s) seeking to offer SCS. We recognize that each such band will require individual analysis of the technical characteristics of the spectrum to be deployed, as well as the nature and location of the relevant incumbent operations, but we seek comment on whether there are common features among different bands that would allow us to enable SCS with similar rules.

139. For example, are there bands for which non-flexible-use incumbent operations are sufficiently localized such that protection zones would provide sufficient protection and, if so, what are

²⁸⁴ See, e.g., AST Mar. 3 *Ex Parte* Letter at 4-6 (expressing concern that the SCS framework is too limited and should include other scenarios, including spectrum where a single terrestrial wireless licensee does not hold all co-channel licenses in a given GIA); AT&T *Ex Parte* Letter at 1 (expressing the view that limiting SCS to spectrum bands where a single MNO holds all licenses in a given block across a GIA is too restrictive).

those zones and protection requirements? Alternatively, are there bands where the non-flexible-use incumbent operations are concentrated in particular areas (for example, CONUS) such that other GIAs (for example, Alaska) are free of such incumbents? An example for either scenario would be the AWS-1 and AWS-3 bands, which consist of paired sub-bands at 1710-1755 MHz and 2100-2155 MHz²⁸⁵ and 1755-1780 MHz, and 2155-2180 MHz,²⁸⁶ and an unpaired band at 1695-1710 MHz. All sub-bands are allocated in the U.S. Table for non-federal, primary, fixed and mobile use. All these sub-bands host federal systems at specific locations, which terrestrial networks are currently required to protect.²⁸⁷ Similarly, the 1670-1675 MHz band is allocated and licensed for commercial wireless operations, but such operations must protect three federal earth stations through advanced coordination.²⁸⁸

140. For these and similarly-situated bands, what types of coordination requirements would be required, either in addition to, or as a replacement for, coordination requirements already applicable to terrestrial uses?²⁸⁹ If we require licensees to provide proof of consent from potentially affected non-flexible-use incumbents as a condition of providing supplemental coverage, what terms should be included as part of these consent agreements to protect subscribers from service interruption? Given the nature of SCS as proposed, we encourage commenters to engage on the important consumer protection concerns that could arise. For example, how should we address circumstances where a terrestrial provider offers and potentially advertises a new capability for use in life-saving situations, which might be terminated without notice where an incumbent withdraws its consent?

2. Geographically Independent Areas Where Collaborating Terrestrial Licensees Hold All Co-Channel Licenses and Seek to Provide SCS

141. We seek comment on whether we should extend our proposal to include scenarios in which there are multiple unaffiliated flexible-use licensees in a given GIA, but all licensees in that area agree to jointly provide supplemental coverage from space to their customers in cooperation with a satellite provider. We seek comment on the likelihood, in this scenario, of stakeholders reaching agreements where all relevant terrestrial network operators would be coordinating to enable this innovative new capability without causing harmful interference. Is this most likely to occur in bands where one licensee holds the vast majority of the licenses in a given area?²⁹⁰ Are there legal or technical concerns with expanding beyond a scenario where a single entity holds all co-channel licenses in the geographic area? How would market arrangements address issues concerning potential harmful

²⁸⁵ See FCC, *Advanced Wireless Services (AWS-1) Band Plan*, <https://www.fcc.gov/sites/default/files/wireless/services/aws/data/AWS1bandplan.pdf> (last visited Dec. 22, 2022).

²⁸⁶ See FCC, *AWS-3 Band Plans*, <https://www.fcc.gov/sites/default/files/wireless/services/aws/data/AWS3bandplan.pdf> (last visited Dec. 22, 2022).

²⁸⁷ See 47 CFR § 2.106 nn.US91 & US378. Specifically, the AWS-3 band previously hosted a number of federal operations, with most of these operations being transitioned to other bands. *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, GN Docket No. 13-185, Report and Order, 29 FCC Rcd 4610, 4690-94, paras. 216-24 (2014). This transition began after the auction of these frequencies in 2015, and the transition is scheduled to be complete by 2025, leaving only a small number of legacy systems in the band. *Id.* The AWS-1 band hosts some legacy federal operations on a co-primary basis and is used by the National Aeronautical Space Administration (NASA)'s Deep Space Communications Complex in Goldstone, CA for radio astronomy observations. 47 CFR § 2.106 nn.US378 & US252.

²⁸⁸ See 47 CFR § 2.106 n.US362.

²⁸⁹ See, e.g., *The Federal Communications Commission and the National Telecommunications and Information Administration: Coordination Procedures in the 1695-1710 MHz and 1755-1780 Bands*, GN Docket No. 13-185, Public Notice, 29 FCC Rcd 8527 (WTB/NTIA 2014).

²⁹⁰ For example, T-Mobile holds over 90% of the CONUS licenses for 600 MHz B, C, and D blocks, and DISH holds a similar proportion of the CONUS licenses for the Lower 700 MHz E block.

interference among several co-channel licensees and incursions on exclusive spectrum rights? What types of changes to our proposed SCS framework would be required were we to adopt such an expansion? We also seek comment on whether to permit SCS where a terrestrial licensee seeks to collaborate with more than one satellite provider. Are there reasons such an arrangement might be preferable or necessary to provide SCS (e.g., back-up coverage)? Would such an approach raise technical concerns, including increasing the complexity of providing SCS without causing harmful interference? What regulatory changes would be required to accommodate multiple satellite entrants seeking to collaborate with a terrestrial licensee? We seek comment on the practicality, costs, and benefits of expanding our proposal to allow this type of SCS configuration.

142. We seek comment on how to address issues where parties to a consortium withdraw from the collective agreement, resulting in non-participating co-channel licensees requiring protection in the geographic area. Should we require the consortium of licensees to cease SCS operations immediately upon one or more licensees withdrawing from the shared network agreement? This would ensure that licensees retain full exclusive use rights to their licensed frequencies in their licensed geographic area. Or should we place requirements on a continuation of SCS for a given period of time after withdrawal in order to protect consumers that rely on expanded coverage? Should we impose any requirements on the relative rights of different licensees to ensure comparable capability is provided to the customers of all participating terrestrial providers? What, if any, restrictions should we place on a terrestrial licensee's rights to terminate an agreement at-will or for cause? Should the Commission leave these decisions to the private negotiations among the parties?

143. Finally, we seek comment on the unique circumstances regarding the 2.5 GHz band. Although some licenses from Auction 108 have been issued for the 2.5 GHz band, the results indicate that T-Mobile may ultimately hold most licenses for a given co-channel block in some GIAs. We note, however, that the band also hosts a large number of Educational Broadband Service²⁹¹ licensees, many of which lease their spectrum rights to T-Mobile.²⁹² Further, the Commission enabled Tribal Nations to obtain access to the band through a priority window prior to commencement of the 2.5 GHz auction.²⁹³ Accordingly, the auction results may not fully indicate the nature of T-Mobile's holdings in the band. Given these complexities, we did not include the 2.5 GHz band in our proposal, but we seek comment on whether SCS would be viable in the 2.5 GHz band. How would our proposed SCS framework accommodate a circumstance where the provider seeking to enable SCS is the lessee, not the lessor, of the relevant spectrum? What are the costs and benefits to allowing this service, and what, if any, different rules should apply to this or similar bands?

144. Commenters discussing SCS in bands where a licensee assembles access to all co-channel licenses throughout an entire GIA through agreements with other licensees should focus in particular on the potential harm to customers from the loss or interruption of supplemental coverage, and the potential for such coverage to be no longer provided due to competitive considerations. We seek to create incentives to foster SCS and therefore request that commenters address the extent to which imposing excessive restrictions would reduce contractual flexibility or reduce incentives to negotiate agreements to provide SCS.

²⁹¹ See *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (2019) (2.5 GHz R&O). The 2.5 GHz band also hosts the Broadband Radio Service (BRS), but BRS licenses are adjacent, not co-channel, to 2.5 GHz licenses for Channels 1 and 2. While some BRS licenses cover frequencies that separate two parts of Channel 3, they are not co-channel with those operations. See FCC, *2.5 GHz Band Plan*, <https://www.fcc.gov/25-ghz-band-plan> (last visited Jan. 30, 2023).

²⁹² See *2.5 GHz R&O*, 34 FCC Rcd at 5474, para. 79 (noting that there are 2,087 active leases in the band for only 2,193 licensees and that "[t]he majority of [EBS] leases are with Sprint," which is now part of T-Mobile).

²⁹³ *Id.* at paras. 47-65.

3. Adjacent Geographic Areas Containing Non-Collaborating Licensees

145. Next, we seek comment on scenarios where the geographic area subject to potential SCS contains non-partner, co-channel licensees in adjacent markets located within a GIA. For example, a terrestrial wireless licensee that does not hold all co-channel licenses within a GIA, for example, CONUS, may nonetheless seek to collaborate with a satellite licensee to offer supplemental coverage to some portion of CONUS. Such scenarios can present complex legal and technical challenges, and we seek comment on how these challenges, particularly the potential for harmful interference to adjacent market, co-channel licensees that are in no way collaborating with the joint providers of supplemental satellite coverage, can be overcome. We also seek comment on whether the provision of such supplemental coverage is technically and/or financially viable without 100 percent CONUS coverage.

146. Of particular technical concern in these scenarios is the difficulty with which satellite-based transmissions can abide by our field strength limits at license area boundaries. Further, depending on the angle of transmission between the satellite and the ground,²⁹⁴ the limit on emissions may in fact be exceeded above ground level, even if it not exceeded at ground level.²⁹⁵ Should we apply our existing limits in parts 22, 24, and 27 to SCS operations in this context, recognizing the substantial difference in interference and propagation metrics of satellite signals versus terrestrial base station signals? We understand stakeholders may seek to deploy satellites using narrow spot beams to avoid harmful interference. To what extent can meaningful supplemental coverage be achieved without exceeding the field strength limit at an adjacent license area boundary of a non-partner licensee? What would be the impact on non-collaborating adjacent area licensees if these satellite signal levels were present? What is the most appropriate metric to use for the satellite service area boundary limit: field strength, power flux density, or some other metric?

147. We note that where the area for which supplemental coverage is sought contains non-partner co-channel licensees, our current rules would require that the signal transmitted by the satellite satisfy the service-specific field strength limit or power flux density at the boundary of the co-channel licensee's adjacent license area.²⁹⁶ Our rules, however, specifically provide for adjacent market co-channel licensees to reach agreement to establish an alternative limit.²⁹⁷ We seek comment on whether this is a feasible option to overcome technical challenges presented in the context of newly introduced satellite-based transmissions where non-collaborating licensees are present. Could application of our current rule permitting co-channel neighbors to mutually agree to an alternative field strength limit in a given band be effective in minimizing harmful interference where satellites are deployed to expand terrestrial service? As in the case of potential collaborative agreements to provide SCS to an entire GIA, what rules, if any, should we impose on such agreements with adjacent market non-collaborating licensees to ensure customers do not lose supplemental coverage? We seek comment on these and any other issues related to market area boundary limits for SCS if the proposed framework is expanded to permit SCS operations notwithstanding the presence of non-collaborating co-channel licensees in adjacent markets. Commenters should address the costs and benefits of any alternative technical approaches and provide detailed technical analyses in support.

²⁹⁴ Where the satellite is directly over the license area, it will be easier for the transmissions to be contained exclusively within that license area. However, where the satellite is transmitting at a steeper angle with the ground, the transmission is likely to pass through other license areas on its way to reaching its destination.

²⁹⁵ We note that some, but not all, bands specify the height above ground level at which the relevant emissions measurement takes place. *See, e.g.*, 47 CFR § 27.55(d).

²⁹⁶ For example, for the 3.45 GHz service, that limit is -76 dBm/m2/MHz, and for the 600 MHz band, it is 40 dBμV/m. *See, e.g.*, 47 CFR § 27.55(e), (a)(2).

²⁹⁷ *See, e.g., id.* § 27.55.

148. Finally, in the event that we were to expand the scope of the SCS framework, we seek comment on how to assign responsibility for mitigating harmful interference between non-partner, co-channel terrestrial licensees and SCS operators in adjacent markets located within a GIA. Absent specific rules, the Commission generally uses the first in-time principle in such instances; that is, the last station built and implemented generally has to take actions necessary to address any harmful interference that occurs to an earlier implemented station. However, terrestrial mobile service and SCS operators would be able to supplement their systems with additional stations in accordance with their license or authorization; under our flexible-use WRS rules, terrestrial mobile service licensees may build new stations as needed to add additional capacity without notifying the Commission (except where antenna registration is required) and NGSO operators may launch additional satellites in accordance with the provisions of their authorization regarding the maximum number of satellites and permitted orbits. In both cases, it may not be possible to track the relative timing for when any given station was implemented. Could or should the first in-time principle apply here? Should the Commission specify rules to delineate responsibility for interference mitigation? For example, should both services be treated as equals if harmful interference occurs notwithstanding both licensees' operating in compliance with Commission rules? Alternatively, as SCS is contemplated as a method of supplementing a collaborating terrestrial licensee's coverage, should priority be given to a non-collaborating co-channel terrestrial licensee's base station regardless of when they deploy, such that the NGSO operator must always take action to resolve such instances of harmful interference?²⁹⁸ Under such a regime, could the Commission establish certain technical parameters that would substantially eliminate instances of harmful interference to a non-collaborating co-channel terrestrial station that would make SCS feasible, e.g., by pointing the terrestrial station's antenna above a certain azimuth? Are there particular rules that the Commission should consider for this co-primary situation?

E. Space-Based Coverage to Consumer Devices in Spectrum Already Allocated for Mobile-Satellite Service Communications

149. The framework for SCS proposed in this Notice would allow transmissions between satellites and terrestrial devices on spectrum licensed for terrestrial flexible-use wireless networks. However, as noted above, there are other models for providing service to consumer devices via satellite.²⁹⁹ For example, some established satellite operators are serving mass-market consumer devices, which are designed primarily to operate on terrestrial commercial wireless networks, but that can also function as handheld mobile earth stations using spectrum allocated for mobile-satellite service.³⁰⁰ Additionally, substantial work has been done in 3GPP to incorporate some satellite bands into the 5G NR specifications, which may provide a path for future interworking of satellite and terrestrial networks.³⁰¹

150. From a regulatory perspective, we believe that such proposals are distinguishable from the SCS framework discussed in this Notice and may not raise the same novel legal and technical complexities as providing supplemental coverage from space using terrestrial spectrum. However, from a consumer perspective, these two scenarios appear identical; in each case, a consumer device is able to

²⁹⁸ For example, under current rules, the Allocation Table (47 CFR § 2.106) note 5.487A specifies that for the 12.2-12.7 GHz band, NGSO FSS are allocated co-primary with GSO satellites in the broadcasting-satellite service, but that such NGSO FSS stations "shall not claim protection from geostationary-satellite networks in the broadcasting-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the Bureau of the complete coordination or notification information" for stations in either service. It further provides that "[n]on-geostationary-satellite systems in the fixed-satellite service in the above bands shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated." *Id.*

²⁹⁹ See *supra* para. 4.

³⁰⁰ *Id.*

³⁰¹ See *supra* para. 5.

receive service via satellite in areas where the terrestrial network does not provide coverage. Accordingly, we seek comment on whether there are any particular considerations or actions needed related to providing supplemental satellite coverage to terrestrial devices besides the SCS framework proposed in this Notice. We seek specific comment on how we can promote access to emergency 911 services and the availability of WEA in models that use currently allocated satellite spectrum and are therefore outside of the proposed SCS framework. How should our 911 requirements apply to collaborations serving consumer devices in these models? More generally, are there other changes to our rules or processes required to help promote the development of such supplemental coverage? Are there regulatory or competitive issues that we should consider related to these models?

F. Other Issues

151. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,³⁰² 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 considerations³⁰³ and any potential benefits that may be associated with the various approaches and issues discussed herein. Specifically, we seek comment on how the various approaches that the Commission may consider 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

152. *Ex Parte Presentations.* 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

³⁰² 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.

³⁰³ 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 Executive Office of the President, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

153. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701, U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). (<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>)

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 (voice), 202-418-0432 (TTY).

155. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),³⁰⁴ requires that a regulatory flexibility analysis be prepared 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."³⁰⁵ 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.

156. *Initial Paperwork Reduction Act Analysis.* This Notice of Proposed Rulemaking may contain potential new or revised information collection requirements. Therefore, we seek comment on potential new or revised information collections subject to the Paperwork Reduction Act of 1995.³⁰⁶ If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the Federal Register inviting the general public and the Office of Management and Budget to comment on the information collection requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of

³⁰⁴ 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).

³⁰⁵ 5 U.S.C. § 605(b).

³⁰⁶ Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

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.

157. *Further Information.* For additional information on this proceeding, contact Melissa Conway of the Mobility Division, Wireless Telecommunication Bureau, at Melissa.Conway@fcc.gov or (202) 418-2887, or Merissa Velez of the Satellite Division, International Bureau, at Merissa.Velez@fcc.gov or (202) 418-0751.

V. ORDERING CLAUSES

158. IT IS ORDERED that, pursuant to sections 1, 4(i), 157, 301, 303, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 301, 303, 307, 308, 309, and 310, the Notice of Proposed Rulemaking IS ADOPTED.

159. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analyses, 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 parts 2 and 25 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 as follows:

- a. Revise pages 30, 36, 37, and 38.

- b. In the list of Non-Federal Government (NG) Footnotes, add footnote NG33A.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

5.149 5.291A 5.294 5.296 5.300 5.304 5.306 5.311A 5.312 694-790 MOBILE except aeronautical mobile 5.312A 5.317A BROADCASTING	614-698 BROADCASTING Fixed Mobile 5.293 5.308 5.308A 5.309 5.311A 698-806 MOBILE 5.317A BROADCASTING Fixed	614-890	614-698 FIXED MOBILE NG5 NG14 NG33 NG33A NG115 NG149 698-758 FIXED MOBILE BROADCASTING NG33A NG159 758-775 FIXED MOBILE NG34 NG159 775-788 FIXED MOBILE BROADCASTING NG33A NG159 788-805 FIXED MOBILE NG34 NG159 805-806 FIXED MOBILE BROADCASTING NG33A NG159 806-809 LAND MOBILE 809-849 FIXED LAND MOBILE NG33A 849-851 AERONAUTICAL MOBILE 851-854 LAND MOBILE 854-894 FIXED LAND MOBILE	RF Devices (15) Satellite Communications (25) Wireless Communications (27) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H) Satellite Communications (25) Wireless Communications (27) LPTV and TV Translator (74G) Public Safety Land Mobile (90R) Satellite Communications (25) Wireless Communications (27) LPTV and TV Translator (74G) Public Safety Land Mobile (90R) Satellite Communications (25) Wireless Communications (27) LPTV and TV Translator (74G) Public Safety Land Mobile (90S) Public Mobile (22) Satellite Communications (25) Private Land Mobile (90) Public Mobile (22) Public Safety Land Mobile (90S) Public Mobile (22) Satellite Communications (25) Private Land Mobile (90)
5.300 5.311A 5.312 790-862 FIXED MOBILE except aeronautical mobile 5.316B 5.317A BROADCASTING	5.293 5.309 5.311A 806-890 FIXED MOBILE 5.317A BROADCASTING		US116 US268 NG33A	
5.312 5.319 862-890 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 5.319 5.323	5.317 5.318		5.149 5.305 5.306 5.307 5.311A 5.320	

1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	5.289 5.341 1710-1930	5.341 1710-1761	5.341 US88 1710-1780 FIXED MOBILE	Satellite Communications (25) Wireless Communications (27)
5.289 5.341 1710-1930 FIXED MOBILE 5.384A 5.388A 5.388B	5.289 5.341 5.384 1710-1930 FIXED MOBILE 5.384A 5.388A 5.388B	5.341 US91 US378 US385 1761-1780 SPACE OPERATION (Earth-to-space) G42 US91	5.341 US91 US378 US385 1780-1850	5.341 US91 US378 US385 1780-1850	
5.149 5.341 5.385 5.386 5.387 5.388 1930-1970 FIXED MOBILE 5.388A 5.388B	5.149 5.341 5.385 5.386 5.387 5.388 1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space)	1780-1850 FIXED MOBILE SPACE OPERATION (Earth-to-space) G42 1850-2025	1850-2000 FIXED MOBILE	1850-2000 FIXED MOBILE	RF Devices (15) Personal Communications (24) Satellite Communications (25) Wireless Communications (27) Fixed Microwave (101)
5.388 1970-1980 FIXED MOBILE 5.388A 5.388B	5.388 1970-1980 FIXED MOBILE 5.388A 5.388B	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space)	1930-1970 FIXED MOBILE 5.388A 5.388B	1930-1970 FIXED MOBILE 5.388A 5.388B	
5.388 1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351/A	5.388 1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351/A	1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	
5.388 5.389A 5.389B 5.389F 2010-2025 FIXED MOBILE 5.388A 5.388B	5.388 5.389A 5.389B 5.389F 2010-2025 FIXED MOBILE 5.388A 5.388B	2010-2025 FIXED MOBILE 5.388A 5.388B	2010-2025 FIXED MOBILE 5.388A 5.388B	2010-2025 FIXED MOBILE 5.388A 5.388B	Satellite Communications (25) Wireless Communications (27)
5.388 2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)	5.388 2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)	2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) FIXED MOBILE 5.391	2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) FIXED MOBILE 5.391	2025-2110 FIXED NG118 MOBILE 5.391	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
5.392	5.392	5.392 US90 US92 US222 US346 US347	5.392 US90 US92 US222 US346 US347	5.392 US90 US92 US222 US346 US347	Page 36

Table of Frequency Allocations				2110-2483.5 MHz (UHF)		Page 37	
International Table				United States Table		FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table		Non-Federal Table		
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space)			2110-2120		2110-2120 FIXED MOBILE	Public Mobile (22) Satellite Communications (25) Wireless Communications (27) Fixed Microwave (101)	
5.388 2120-2170 FIXED MOBILE 5.388A 5.388B	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth)	2120-2170 FIXED MOBILE 5.388A 5.388B	US252 2120-2200		US252 2120-2180 FIXED MOBILE		
5.388 2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	5.388 5.388C 5.389E	NG41 2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)		2200-2290	Satellite Communications (25) Wireless Communications (27)	
5.392 2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) US96 EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303		US96 US303 2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)		
2300-2450 FIXED MOBILE 5.384A Amateur Radiolocation	2300-2450 FIXED MOBILE 5.384A RADIOLOCATION Amateur		2300-2305 G122 2305-2310		2300-2305 Amateur 2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US97 G122	Amateur Radio (97) Satellite Communications (25) Wireless Communications (27) Amateur Radio (97)	

5.150 5.282 5.395 2450-2483.5 FIXED MOBILE Radiolocation	5.150 5.282 5.393 5.394 5.396 2450-2483.5 FIXED MOBILE RADIOLOCATION	2310-2320 Fixed Mobile US100 Radiolocation G2	2310-2320 FIXED MOBILE BROADCASTING-SATELLITE RADIOLOCATION 5.396 US97 US100 US327 NG33A	Satellite Communications (25) Wireless Communications (27)
		2320-2345 Fixed Radiolocation G2	2320-2345 BROADCASTING-SATELLITE	Satellite Communications (25)
5.150	5.150	US327 2345-2360 Fixed Mobile US100 Radiolocation G2	5.396 US327 2345-2360 FIXED MOBILE US100 BROADCASTING-SATELLITE RADIOLOCATION 5.396 US327 NG33A	Satellite Communications (25) Wireless Communications (27)
		US327 2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed	2360-2390 MOBILE US276	Aviation (87) Personal Radio (95)
5.150	5.150	US101 2390-2395 MOBILE US276	US101 2390-2395 AMATEUR MOBILE US276	Aviation (87) Personal Radio (95) Amateur Radio (97)
		US101 2395-2400	US101 2395-2400 AMATEUR	Personal Radio (95) Amateur Radio (97)
5.150	5.150	US101 G122 2400-2417	US101 2400-2417 AMATEUR	RF Devices (15) ISM Equipment (18) Amateur Radio (97)
		5.150 G122 2417-2450 Radiolocation G2	5.150 5.282 2417-2450 Amateur	
5.150	5.150	5.150 2450-2483.5	5.150 5.282 2450-2483.5	
		5.150 2450-2483.5 FIXED MOBILE RADIOLOCATION	5.150 2450-2483.5 FIXED MOBILE Radiolocation	RF Devices (15) ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101)

* * * * *

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NG33A The bands 614-652 MHz and 663-758 MHz, 775 MHz-788 MHz, and 805-806 MHz, 824-849 MHz and 869-894 MHz, 1850-1920 MHz and 1930-2000 MHz, and 2305-2320 MHz and 2345-2360 MHz are allocated to the mobile-satellite service (MSS) on a co-primary basis. MSS operations in these frequency bands are subject to the Commission's rules for Supplemental Coverage from Space set forth in part 25 of this chapter.

* * * * *

PART 25 - SATELLITE COMMUNICATIONS

3. The authority citation for part 25 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

4. Amend § 25.103 by adding the following definitions:

§ 25.103 Definitions.

* * * * *

Geographically independent area (GIA). Any of the following six areas: (1) CONUS; (2) Alaska; (3) Hawaii; (4) American Samoa; (5) Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands.

* * * * *

Supplemental Coverage from Space (SCS). The provision of coverage to a terrestrial mobile service licensee's subscribers operating in underserved and/or unserved areas within a terrestrial mobile service licensee's license area, comprising a GIA, only through a collaboration between an existing NGSO operator and a terrestrial mobile service licensee involving transmissions between space stations and mobile end-user devices. NGSO operators and terrestrial mobile service licensees seeking to provide SCS must be authorized in compliance with § 25.125.

* * * * *

5. Amend § 25.109 by adding a new paragraph (f) to read as follows:

§ 25.109 Cross-reference.

* * * * *

(f) Space and earth stations providing Supplemental Coverage from Space are subject to technical rules in parts 22, 24, and 27 of this chapter where applicable.

6. Amend § 25.112 by revising paragraph (a)(3) to read as follows:

§ 25.112 Dismissal and return of applications.

(a) * * *

(3) The application requests authority to operate a space station in a frequency band that is not allocated internationally for such operations under the Radio Regulations of the International Telecommunication Union, unless the application is filed pursuant to § 25.122, § 25.123, or § 25.125.

* * * * *

7. Amend § 25.115 by adding a new paragraph (q) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(q) A blanket license application for an earth station authorization to provide Supplemental Coverage from Space must comply with § 25.125.

8. Amend § 25.117 by adding a new paragraph (i) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(i) An application for modification of a space station authorization to provide Supplemental Coverage from Space must comply with § 25.125.

9. Add new § 25.125 to read as follows:

§ 25.125 Applications for supplemental coverage from space (SCS).

(a) *SCS entry criteria.* This section shall only apply to applicants seeking to provide Supplemental Coverage from Space (SCS). An applicant for SCS space station authorization must be a holder of either an existing part 25 NGSO license or grant of U.S. market access collaborating with a terrestrial mobile service provider that holds all co-channel licenses throughout a Geographically Independent Area (GIA) in a band allocated to Mobile-Satellite Service (MSS) operation through footnote NG33A in the United States Table of Frequency Allocations under § 2.106 of this chapter. Applicants for SCS space stations must comply with the requirements set forth in paragraph (b) of this section. Applicants for SCS earth stations must comply with the requirements set forth in paragraph (c) of this section.

(b) *SCS space station application requirements.* An applicant seeking a space station authorization for the provision of SCS shall submit an application requesting modification of a current part 25 NGSO license or grant of U.S. market access.

(1) The application shall include a certification to the following:

(i) an application is on file with the Commission to lease spectrum allocated for MSS provision of SCS from a terrestrial mobile service provider that holds, either directly or indirectly, all co-channel licenses throughout a GIA;

(ii) the current part 25 space station license or part 25 grant of market access for NGSO satellite operation is sufficient to cover the leased GIA; and

(iii) a blanket license application is on file, pursuant to paragraph (c) of this section, from the satellite operator's terrestrial licensee partner for earth stations, covering all of its subscribers' terrestrial devices that will be transmitting and receiving from the space station in conjunction with the provision of SCS.

(2) The application shall include a comprehensive proposal for each space station in the proposed SCS system on FCC Form 312, Main Form and Schedule S, as described in § 25.114(a) through (d), together with the certification described in paragraph (b)(1) of this section.

(3) Applications that are acceptable for filing will be placed on public notice pursuant to § 25.151 to provide interested parties an opportunity to file pleadings in response to the application pursuant to § 25.154.

(4) The Commission will review the application and all the pleadings filed in response to the application, and will grant applications that meet the standards of this section, § 25.156(a), and are otherwise in accordance with applicable Commission rules.

(5) Applications to modify a part 25 authorization to provide SCS will not be subject to the processing round procedures in §§ 25.137 and 25.157.

(c) *SCS earth station application requirements.* A terrestrial licensee collaborating with an NGSO satellite operator to provide SCS shall submit an application for a blanket earth station license for all of its subscribers' terrestrial end-user devices that will communicate with the NGSO operator's space stations.

(1) The terrestrial licensee must file for such earth station authorization using FCC Form 312, Main Form and Schedule B, as described in § 25.115(a), specifying the number of units to be covered by the blanket license.

(2) Applications that are acceptable for filing will be placed on public notice pursuant to § 25.151 to provide interested parties an opportunity to file pleadings in response to the application pursuant to § 25.154.

(3) The Commission will review the application and all the pleadings filed in response to the application, and will grant applications that meet the standards of this section, § 25.156(a), and are otherwise in accordance with applicable Commission rules.

(4) Once the terrestrial licensee receives a part 25 blanket license for its subscribers' terrestrial devices, it may avail itself of the minor modification procedures for blanket earth station licenses pursuant to § 25.118 to add additional terrestrial devices without prior Commission approval.

(d) *SCS joint licensing requirement.* Authorization to provide SCS requires grant of three applications: part 25 modification application or request for modification of a grant of market access; part 1 lease application; and part 25 blanket earth station license application.

(e) *Equipment authorization for SCS earth stations.*

(1) Each SCS earth station used for the provision of SCS under this section shall meet the equipment authorization requirements under § 25.129 and all equipment authorization requirements for all intended uses of the device as specified in parts 22, 24, and 27 of this chapter (e.g., §§ 22.377, 24.51, 27.51).

(2) Terrestrial devices with existing equipment authorizations under parts 22, 24, or 27 of this chapter as of [[EFFECTIVE DATE OF FINAL RULE]] are authorized by rule for SCS use under this section, consistent with their existing equipment authorizations.

10. Amend § 25.129 by adding a new paragraph (e) to read as follows:

§ 25.129 Equipment authorization for portable earth-station transceivers.

* * * * *

(e) Earth station transceivers used for the provision of SCS shall comply with § 25.125.

11. Amend § 25.137 by revising paragraph (f) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

* * * * *

(f) A non-U.S.-licensed space station operator that has been granted access to the United States market pursuant to a declaratory ruling may modify its U.S. operations under the procedures set forth in §§ 25.117(d), (h), and (i) and 25.118(e).

12. Amend § 25.202 by adding a new paragraph (k) to read as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

* * * * *

(k) Space station downlinks operating as SCS under the provisions of NG33A of the U.S. Table of Allocations and § 25.125 are subject to the following rules.

(1) *Out of band emission limits.* Space station downlink emissions on spectrum allocated for mobile-satellite service and used in providing SCS shall meet the out-of-band emission limits applicable to the terrestrial base stations of its terrestrial partner, as set forth in parts 22, 24, or 27 of this chapter (e.g., §§ 22.917, 24.238, 27.53), respectively.

(2) Reserved.

13. Amend § 25.204 by adding a new paragraph (g) to read as follows:

§ 25.204 Power limits for earth stations.

* * * * *

(g) Earth stations operating in conjunction with the provision of SCS pursuant to § 25.125 shall comply with the power requirements for the respective band of operation of the terrestrial partner for terrestrial transceivers in parts 22, 24, or 27 of this chapter (e.g., §§ 22.913, 24.232, 27.50).

14. Amend § 25.208 by adding a new paragraph (w) to read as follows:

§ 25.208 Power flux-density limits.

* * * * *

(w) SCS operations in bands authorized by NG33A in the Table of Frequency Allocations and § 25.125 must meet the relevant boundary signal level limits and coordination requirements for the relevant terrestrial band of operation, as specified by treaty and in parts 22, 24, and 27 of this chapter (e.g., §§ 22.169, 22.983(c), 24.236, 27.55, 27.57), at applicable international borders. Conversion from field strength to PFD shall be done using accepted engineering techniques.

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 (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).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. In the *Notice*, the Commission proposes a new regulatory framework for Supplemental Coverage from Space (SCS) in which satellite operators collaborating with terrestrial mobile service providers would be able to obtain Commission authorization to operate space stations on currently licensed, flexible-use spectrum allocated to terrestrial services, thus expanding coverage to the terrestrial licensee's subscribers, especially in remote, unserved, and underserved areas. This framework could enable innovation and investment in nascent satellite and terrestrial interoperable technologies and cross-industry stakeholder partnerships to flourish in the United States. The goals of the proposed framework include facilitating ubiquitous wireless coverage across the nation; expanding the availability of emergency communications to consumers and the geographic range of first responders to provide emergency services; and promoting competition in the provision of wireless services to consumers. The proposal also enables more intensive spectrum use and would be consistent with the Commission's goal to allocate increasingly scarce spectrum resources in the most efficient and effective manner possible. The Commission anticipates that the proposed SCS approach will incentivize creative partnerships between terrestrial network and space station operators and will provide additional tools to close wireless coverage gaps while at the same time retaining high service quality among 4G and 5G terrestrial networks, protect spectrum usage rights, and avoid harmful interference.

3. The Commission's rules require the use of frequencies and frequency bands to be in accordance with the United States Table of Frequency Allocations (U.S. Table). To permit SCS to the subscribers of the relevant terrestrial networks using certain terrestrial bands, the Commission proposes to modify the U.S. Table to authorize mobile-satellite service (space-to-Earth and Earth-to-space) operations in certain terrestrial bands that have no primary, federal or non-federal satellite allocations. The Commission proposes to add a non-federal footnote to the U.S. Table authorizing mobile-satellite service operations on a co-primary basis with existing allocations in a number of terrestrial flexible-use bands. Specifically, given the complexity of the proposed approach (particularly in terms of technical considerations), the Commission limits its initial proposal to spectrum and locations where (1) there is only a single terrestrial entity that holds, either directly or indirectly, all co-channel licenses for the relevant frequencies in a given geographically independent area (GIA); and (2) there are no primary, non-flexible use legacy incumbent operations (whether federal or non-federal) in the band. The flexible-use terrestrial bands for which the Commission proposes at this time to add a non-federal mobile-satellite service footnote allocation are:

- 600 MHz: 614-652 MHz and 663-698 MHz;

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.*

- 700 MHz: 698-758 MHz, 775 MHz-788 MHz, and 805-806 MHz;
- 800 MHz: 824-849 MHz and 869-894 MHz;
- Broadband PCS: 1850-1915 MHz and 1930-1995 MHz;
- AWS-H Block: 1915-1920 MHz and 1995-2000 MHz; and
- WCS: 2305-2320 MHz and 2345-2360 MHz

The *Notice* discusses features of each band in detail, including the status of incumbents and relevant service rules that may impact the band's potential use under the proposed framework. The allocation is limited to transmissions between a space station and an end user device (e.g., smartphone or IoT device) of a subscriber of a terrestrial service that is designed to be used in the relevant terrestrial flexible-use band.

4. The Commission strives to realize the public interest benefits of SCS as rapidly as possible, while minimizing the risk of harmful interference. To avoid technical complexities that could arise where SCS is introduced in areas where multiple co-channel licensees are present on a particular spectrum block, the Commission proposes to initially authorize SCS only in cases where a single terrestrial licensee holds all co-channel licenses on the relevant band in one of the following GIAs: (1) the contiguous United States (CONUS); (2) Alaska; (3) Hawaii; (4) American Samoa; (5) Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands. In addition, the Commission proposes initially to limit the SCS framework to non-geostationary satellite orbit (NGSO) satellite operators with an existing part 25 license or an existing part 25 grant of market access (for non-U.S. licensed satellite operators) (together, "authorization"), because such operators are best positioned for rapid implementation of supplemental coverage from space. To apply for authorization to provide SCS, a satellite operator with an existing part 25 authorization for NGSO operation must be able to certify that it has: (1) an application on file with the Commission to lease the exclusive-use spectrum, allocated for mobile-satellite service (MSS) provision of SCS, of a terrestrial licensee that holds all co-channel licenses throughout a GIA; (2) a current part 25 space station license or part 25 grant of market access for NGSO satellite operation sufficient to cover the GIA specified in the lease; and (3) proof of an application on file from the satellite operator's terrestrial partner for a part 25 blanket earth station license covering all of its subscribers' terrestrial devices that will be transmitting and receiving from the space station in conjunction with the provision of SCS. In addition to the proposed approach to authorizing space station operations, the *Notice* proposes to authorize earth station operations by modifying the Commission's part 25 rules to require a terrestrial licensee that has partnered with a satellite operator to seek a blanket earth station license for all of its subscribers' terrestrial devices that will operate with space stations, and are otherwise authorized under the terrestrial license.

5. In the *Notice*, the Commission proposes a novel framework to facilitate SCS, a service offering that leverages currently licensed terrestrial, flexible-use spectrum. The Commission addresses existing service rule obligations for satellite operators and terrestrial wireless providers, by proposing to apply certain relevant rules, or seeking comment on the applicability of other rules in the context of the proposed part 25 licensing framework to authorize SCS. Additionally, the Commission notes that SCS operators would be required to protect adjacent band operations to the same extent required today under current rules for terrestrial use, and seeks to facilitate SCS through operations that are fully capable of complying with current technical rules and restrictions intended to prevent harmful interference. The Commission does not seek to modify the current, long-standing and carefully considered protection requirements, but instead seeks comment on this approach in the *Notice*, and on whether there are alternatives to ensure that any SCS offerings in these previously terrestrial-only allocated bands preserve the spectrum landscape to prevent harmful interference.

B. Legal Basis

6. The proposed action is authorized pursuant to sections 1, 4(i), 157, 301, 303, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 307, 308, 309, and 310.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe 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 32.5 million businesses.¹⁰

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual 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

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). 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, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

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. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

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 (continued....)

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ U.S. Census Bureau data from the 2017 Census of Governments¹⁵ 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 (county¹⁷, municipal and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts¹⁹ 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

11. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”²² Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business

(Continued from previous page)

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 5 U.S.C. § 601(5).

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”. See also *Census of Governments*, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁶ See U.S. Census Bureau, 2017 Census of Governments – Organization, Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ See *id* at tbl.5, County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id* at tbl.6, Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

¹⁹ See *id* at tbl.10, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

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 tbl.5, 6, & 10.

²² See U.S. Census Bureau, 2017 NAICS Definition, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

with \$38.5 million or less in annual receipts as small.²³ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.²⁴ Of this number, 242 firms had revenue of less than \$25 million.²⁵ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services.²⁶ Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees.²⁷ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

12. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.²⁸ 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.²⁹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.³¹ Of that number, 2,837 firms employed fewer than 250 employees.³² Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.³³ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.³⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications

²³ See 13 CFR § 121.201, NAICS Code 517410.

²⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

²⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

²⁷ *Id.*

²⁸ 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>.

²⁹ *Id.*

³⁰ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

³² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³⁴ *Id.*

telemetry, and radar station operation.³⁵ 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.³⁶ 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.³⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³⁸ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.³⁹ Of those firms, 1,039 had revenue of less than \$25 million.⁴⁰ 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

14. To effectuate SCS in certain flexible-use bands previously allocated solely for terrestrial use, the Commission proposes to authorize satellite-to-terrestrial (uplink and downlink) operations in these bands by allowing an NGSO satellite operator with an existing part 25 authorization to apply to modify such authorization where that entity meets certain prerequisites, or “entry criteria.” The proposed framework and requirements upon which the Commission seeks comment, if adopted, may impose new and/or additional reporting, recordkeeping and other compliance requirements on small entities as well as other licensees to allow those licensees seeking to provide SCS.

15. Specifically, the Commission proposes that a satellite operator authorized for NGSO satellite operation may apply to modify its part 25 authorization only if the satellite operator has: (1) an application on file with the Commission to lease the exclusive-use spectrum, allocated for MSS provision of SCS, of a terrestrial licensee that holds all co-channel licenses, directly or indirectly, throughout a GIA; (2) a current part 25 space station license or part 25 grant of market access for NGSO satellite operation sufficient to cover the leased GIA; and (3) proof of an application on file from the satellite operator’s terrestrial partner for a part 25 blanket earth station license covering all of its subscribers’ terrestrial devices that will be transmitting and receiving from the space station in conjunction with the provision of SCS.

16. Under the Commission’s proposed framework, meeting the proposed entry criteria would allow an entity to apply to modify its existing satellite authorization. However, all related applications including those seeking modification, lease applications, and blanket earth station applications—must first be granted to provide supplemental coverage from space. Thus, the requirements proposed in the *Notice* are in addition to the existing underlying reporting, recordkeeping, and compliance requirements. The *Notice* seeks comment on the Commission’s proposed approach, including the costs, benefits, and

³⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

³⁹ 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>.

⁴⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

burdens associated with alternative methods of authorizing SCS, and any incremental burdens associated with adding SCS, such as additional recordkeeping that may be required.

17. At this time, the Commission is not in a position to determine whether the proposed rules and associated requirements raised in the *Notice* would require small entities to hire attorneys, engineers, consultants, or other professionals, and cannot quantify the cost of compliance with the potential rule changes and compliance obligations raised herein. The Commission invites comment on the costs and burdens of the proposals in the *Notice* and expects the information received in comments including, where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the *Notice* are adopted.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant, specifically small business, alternatives for small businesses 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.”⁴¹

19. The Commission has a longstanding commitment to ensuring that the country’s scarce and valuable spectrum resource is put to its highest and best use. Consistent with this commitment, in the *Notice*, the Commission has proposed a novel framework for SCS that would allow, through a collaboration between a terrestrial mobile service provider and satellite operator, transmissions directly from satellites to terrestrial devices on spectrum that is currently allocated and licensed exclusively on a terrestrial basis. In the discussion of the proposals and matters upon which the *Notice* seeks comment, the Commission raises alternatives and seeks input such as costs and benefits analyses from small and other entities. By requesting such information, the Commission has given small entities the opportunity to broaden the scope of the Commission’s understanding of impacts which may not be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities.

20. Although the Commission limits its initial SCS framework proposal to NGSO operators with an existing part 25 license or an existing part 25 grant of market access (for non-U.S. licensed satellite operators) because these operators are in the best position to rapidly implement supplemental coverage from space, the Commission considered that there may be other alternatives, and in the *Notice* seeks comment on other approaches that might permit new entrants to participate in this framework. Current part 25 authorization for NGSO systems typically involves a processing round procedure whereby applicants for licenses or petitioners for U.S. market access are considered in groups based on frequencies requested and filing date.⁴² The issuance of a modified part 25 satellite authorization, coupled with a leasing requirement included in the proposed entry criteria, would appropriately encompass the necessary arrangement for the provision of supplemental coverage from space. Thus, the initial proposal would not allow a satellite operator to be granted an independent part 25 co-channel authorization to use terrestrial spectrum in a GIA without an arrangement with the terrestrial license holder.

21. In the *Notice*, the Commission considered and asked whether a satellite operator with an existing part 25 space authorization should be permitted to apply for a conditional license to modify its authorization (in order to provide terrestrial coverage) without first having identified a terrestrial license partner. The Commission further considered and asked whether such an approach would provide

⁴¹ 5 U.S.C. § 603(c)(1)-(4).

⁴² See 47 CFR §§ 25.137(c), 25.157.

additional flexibility to facilitate the participation of small businesses. Using the measured approach the Commission described above will allow the Commission to fully develop a robust record to consider policies and rules that may ultimately permit expansion to new or other types of satellite entrants collaborating with terrestrial licensees such as small entities authorized on additional spectrum blocks that do not meet the proposed SCS framework.

22. As part of the SCS framework, the Commission proposes that a terrestrial licensee seeking to collaborate with a satellite operator to offer SCS must apply for and obtain a blanket earth station license for all of its subscribers' terrestrial devices that will be transmitting to space stations for SCS operations, and the Commission seeks comment on this approach and any other approaches that will be consistent with statutory and international obligations. The Commission also seeks comment on how it can streamline earth station licensing processes and forms for SCS blanket earth station applications to eliminate any undue burden. For example, the *Notice* asks to what extent approval of devices in the equipment certification process would render information ordinarily required in a blanket earth station application unnecessary. To streamline the licensing process, the *Notice* seeks comment on what information currently collected in Schedule B might be eliminated and perhaps be replaced by a certification(s). If a certification approach is adopted, the *Notice* seeks comment on what certifications would be necessary. For example, instead of listing the devices that would be covered, the *Notice* asks whether it would be sufficient to require a certification stating that: (1) the earth station applicant meets all SCS requirements; (2) the blanket earth station license will cover all of the current and future subscribers' devices activated in the relevant terrestrial network; and (3) the devices covered by the blanket earth station license have already received equipment authorizations under Commission rules.

23. The *Notice* also seeks comment on eligibility for the Enhanced Competition Incentive Program (ECIP), which the Commission established in July 2022⁴³ to facilitate new opportunities for small carriers and tribal nations to increase access to spectrum, while incorporating provisions to ensure against program waste, fraud and abuse.⁴⁴ Given that the proposed framework is primarily intended to facilitate provision of SCS to existing consumer handsets, and ECIP was adopted with requirements tailored specifically towards provision of service through terrestrial base stations, the Commission seeks comment on whether to make SCS participants, necessarily engaged in leasing arrangements, eligible for ECIP benefits which could reduce the economic impacts for small carriers and tribal nations.

24. The ECIP rules were designed to facilitate broader access to wireless spectrum under two prongs, one focused on transactions with small carriers or tribal nations and one focused on transactions resulting in construction in rural areas. The program benefits include lengthened license terms and extended timeframes to meet program requirements, but the program also incorporates recordkeeping elements designed to prevent waste, fraud, and abuse. The Commission considered and the *Notice* seeks comment on how to integrate these safeguards and the ECIP program's goals with the expansion of SCS. Specifically, the *Notice* requests comment on how the Commission would apply ECIP rules requiring specific lessee action under the rural transactions-focused prong, as stated above, to a part 25 satellite-licensed lessee, with particular focus on the requirement that a lessee provide service for the entire Qualifying Geography for three continuous years and that service must commence no later than two years after entering the lease. The Commission also considered and seeks comment on how to address any potential conflict between these ECIP obligations and part 25 milestones applicable to a satellite licensee, and asks whether parties can meet ECIP requirements in an SCS context, or whether the tailored conditions of ECIP participation would reduce the flexibility of potential terrestrial-satellite collaborators

⁴³ We note that, to date, the rules substantially implementing the ECIP program have not become effective, as the Commission has not received the required OMB approval under the Paperwork Reduction Act.

⁴⁴ *Partitioning, Disaggregation, & Leasing of Spectrum, Report and Order and Second FNPRM*, FCC 22-53 (2022), paras. 1-2.

and thus operate as a disincentive for SCS providers to participate in the ECIP program regardless of whether it is permitted.

25. Further, the Commission asks whether there are any additional competitive or public interest concerns that it should consider that would weigh in favor of placing limits on the proposed collaboration. The *Notice* seeks comment on the extent to which authorizing SCS as proposed would impact current commercial agreements (e.g., secondary markets and/or roaming arrangements), particularly those involving smaller carriers, or impact stakeholders' prospective participation in the Commission's recently adopted ECIP program. The *Notice* also seeks comment on whether and to what extent the proposed SCS framework, if adopted, could impact marketplace incentives to negotiate such future commercial agreements.

26. Allowing smaller entities to collaborate to provide SCS service could facilitate increased small business participation. The Commission considered extending the provision of SCS to geographically independent areas where collaborating terrestrial licensees hold all co-channel licenses and seek to provide SCS, and seeks comment on this alternative in the *Notice*. Specifically, the Commission asks whether it should extend the proposal to include scenarios in which there are multiple unaffiliated flexible-use licensees in a given GIA, but all licensees in that area agree to jointly provide supplemental coverage from space to their customers in cooperation with a satellite provider. The *Notice* also seeks comment on the likelihood, in this scenario, of stakeholders reaching agreements where all relevant terrestrial network operators would be coordinating to enable this innovative new capability without causing harmful interference, the market arrangements that might be required, and the types of changes to the proposed SCS framework that such a change would entail.

27. In addition, the Commission considered scenarios where the geographic area subject to potential SCS contains non-partner, co-channel licensees in adjacent markets located within a GIA, which could impact small businesses. For example, a terrestrial wireless licensee that does not hold all co-channel licenses in a given GIA, for example CONUS, may nonetheless seek to partner with a satellite licensee to offer supplemental coverage in a part of CONUS. Such scenarios can present complex legal and technical challenges, and the *Notice* therefore seeks comment on how these challenges, particularly the potential for harmful interference to adjacent market, co-channel licensees that are not seeking to collaborate with the joint providers of supplemental satellite coverage, and that could include small businesses, can be overcome. Consequently, the *Notice* seeks comment on the technical and/or financial viability of SCS expansion in scenarios without 100 percent CONUS coverage. Further, the *Notice* seeks comment on whether it is possible to enable SCS in bands that have non-flexible use legacy incumbent operations entitled to protection under Commission rules, which could consist of small business incumbent licensees. The Commission recognizes that each such band will require individual analysis of the technical characteristics of the spectrum to be deployed, as well as the nature and location of the relevant incumbent operations. The Commission therefore considered and seeks comment on whether there are common features among different bands that would allow provision of SCS with similar rules. For example, the *Notice* seeks comment on whether there are bands for which non-flexible use incumbent operations are sufficiently localized such that protection zones would provide sufficient protection and, if so, what are those zones and protection requirements.

28. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the *Notice*. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

29. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Single Network Future: Supplemental Coverage from Space, Space Innovation, GN Docket No. 23-65, IB Docket No. 22-271, Notice of Proposed Rulemaking (March 16, 2023)*

We are fast heading to a world where next-generation wireless networks will connect everyone and everything around us. They will open up possibilities for communications that we cannot even fully imagine today. But we will not be successful in our effort to make this always-on connectivity available to everyone, everywhere if we limit ourselves to using only one technology. We are going to need it all—fiber networks, licensed terrestrial wireless systems, next-generation unlicensed technology, and satellite broadband. But if we do this right, these networks will seamlessly interact in a way that is invisible to the user. We won't need to think about what network, where, and what services are available. Connections will just work everywhere, all the time.

That vision is what we call the Single Network Future—and the opportunities are big. But the path to this future is going to require many steps—and we take an important one today.

Instead of talking just in generalities about what lies ahead, let me provide a clear example of what it means to have a Single Network Future with coverage everywhere.

Consider Angeles National Forest in California. This is a wilderness area nestled between the San Gabriel Mountains and the Sierra Pelona Mountains. That puts it just north of Los Angeles. The area is welcome retreat from the hustle and bustle of the city.

The landscapes here are pretty amazing, but the topography makes it difficult to get a consistent wireless signal. Back in December, a couple was traveling in this area and their car went off the road. In fact, it fell 300 feet from the Angeles Forest Highway. This is a really remote area. There was no cell service. No one would have known to look for them. Plus, this is the kind of environment that—beautiful as it is—gets really treacherous at night, when the temperatures drop to dangerous levels.

Now this story could have happened in lots of places. And it could have ended for this couple right there, but it did not. They survived, with some grit, some luck, and some new technology. They had a phone that had a new feature: the ability to connect directly to satellite signals delivered from space. A help message reached first responders with their precise location. Within 30 minutes, a rescue helicopter was airlifting the couple to a hospital.

What is so striking about this story is that it demonstrates how bringing satellite and terrestrial wireless capabilities together can accomplish what neither network can do on its own. We are starting to see direct satellite-to-smartphone communication move from sci-fi fantasy to real-world prospect. Because small startups, big operators, handset providers, and even software companies have all announced new plans to connect satellites directly to our devices so that we stay always connected—especially when the unthinkable occurs.

This is really neat. But it is important to remember for now these early space communications projects may not provide high-speed broadband from the stratosphere to our phones. But to start, they could deliver low-bandwidth connectivity suitable for emergency calls and texts in remote settings where terrestrial networks do not reach.

For this innovation to have a chance to deliver at scale—and for us to move toward a full Single Network Future with more providers, in more spectrum bands, and a global footprint—regulators will need to develop frameworks that support its development. After all, not everyone will have all the pieces to make this work. Some business and technology models will require new and different regulatory approvals before they can get off the ground. There are challenges with access to airwaves, frequencies

that are not all globally aligned, possibilities for interference that must be managed, and standards work that could help grow these capabilities. But what is clear is that with the growing interest in the possibilities of convergence of satellite and terrestrial services, an ad-hoc, case-by-case approach to these new ventures is not enough.

Last month I spoke about this vision of the Single Network Future at Mobile World Congress in Barcelona. There was a lot of interest from regulators and companies around the globe. Because the framework we are proposing is the first of its kind anywhere in the world. We are going to lead.

This is what that leadership looks like—today we are proposing a way forward for Supplemental Coverage from Space. This would allow a satellite operator to partner with a terrestrial mobile licensee to get access to their terrestrial spectrum through a lease arrangement and modification to the satellite operator's license. Then the satellite system can provide service directly to the subscribers of the wireless carrier in areas where the carrier lacks coverage. While our starting proposal focuses on frequency bands where the wireless licensee has nationwide service, we do not want to limit our efforts. So we also seek comment on how this could work if the mobile carrier has less than a nationwide footprint and still protects spectrum rights and prevents harmful interference.

Our approach is designed to make it easier for satellite operators collaborating with terrestrial providers to obtain authorization for converged services. By providing clear rules, I believe we can kick start more innovation in the space economy while also expanding wireless coverage in remote, unserved, and underserved areas. We can make mobile dead zones a thing of the past. But even better, we have an opportunity to bring our spectrum policies into the future and move past the binary choices between mobile spectrum on the one hand or satellite spectrum on the other. That means we can reshape the airwave access debates of old and develop new ways to get more out of our spectrum resources.

This is exciting, so let's get to it.

Thank you to the staff who have made this latest entry in our Space Innovation Agenda possible, including Steve Buenzow, Melissa Conway, Lloyd Coward, Peter Daronco, Tom Derenge, Kaya DeRose, Kamran Etemad, Garnet Hanly, Kari Hicks, Joyce Jones, Alice Koethe, Lamine Kone, Susannah Larson, John Lockwood, Jon Markman, Roger Noel, Jess Quinley, John Schauble, Blaise Scinto, Larry Somers, Joel Taubenblatt, and Janet Young from the Wireless Telecommunications Bureau; Gregory Baker, Jennifer Gilseman, Nese Guendelsberger, Dante Ibarra, Karl Kensinger, Kathryn Medley, Kerry Murray, Robert Nelson, Stephanie Neville, Kathy O'Brien, Jim Schlichting, Tom Sullivan, Troy Tanner, and Merissa Velez from the International Bureau; Jamie Coleman, Michael Ha, Ira Keltz, Juan Montenegro, Nick Oros, Jamison Prime, Ron Repasi, Dana Shaffer, Tom Struble, and Anika Tahsin from the Office of Engineering and Technology; Doug Klein, David Konczal, and Bill Richardson from the Office of General Counsel; Judith Dempsey, Lonnie Hofmann, Kate Mataves, Giulia McHenry, Daniel Shiman, Don Stockdale, and Patrick Sun from the Office of Economics and Analytics; Brenda Boykin, John Evanoff, David Furth, Shabbir Hamid, Debra Jordan, David Kirschner, Ahmed Lahjouji, Erika Olsen, Rasoul Safavian, Rachel Wehr, and James Wiley from the Public Safety and Homeland Security Bureau; Loyaan Egal, Eric Ehrenreich, Kathy Harvey, Jeremy Marcus, Victoria Randazzo, and Salomon Satche from the Enforcement Bureau; and Michael Gussow, Joy Ragsdale, and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of Single Network Future: Supplemental Coverage from Space, Space Innovation*,
GN Docket No. 23-65, IB Docket No. 22-271, Notice of Proposed Rulemaking (March 16, 2023)

Just a few weeks back, I was in Barcelona for this year's Mobile World Congress where regulators and industry stakeholders from across the globe gather to discuss the latest hot topics in wireless.

From the panels to the pull-asides, one issue in particular kept coming up: the emerging convergence of space and terrestrial mobile services.

And it's easy to understand why. These innovative new services embody the changing competitive landscape that consumers enjoy today. We no longer live in a world where wireline simply competes with wireline or where mobile just competes with mobile.

Increasingly we're seeing cable providers serve mobile wireless customers, while traditional mobile wireless carriers add customers to their in-home broadband services. The silos are fading away, and consumers are reaping the rewards.

The item we adopt today recognizes that consumers don't care whether the signal was beamed to their device from a tower on top of an office building or from a satellite orbiting the Earth.

They only care that they have access to an affordable, high-quality connection. Space mobile services, like those envisioned by this item, will help extend coverage even further across the country to keep consumers connected across rural and remote areas.

Today's item also helps us take another step towards extending America's space leadership. And that is good for our economy and national security.

Indeed, space—as they say—is the ultimate high ground. And space leadership has long been a priority for the U.S. However, with the space economy growing at an accelerating clip thanks to new investments from public and private sectors around the world, we must re-double our efforts to ensure America is in the driver's seat. So I have been pleased with the Commission's work in recent years towards getting our policies right.

With this new proceeding we also need to keep walking and chewing gum at the same time.

That means we need to modernize our broader regulatory framework for sat in a way that accelerates the processing of applications and encourages more providers to base their operations right here in the United States. The bipartisan "SAT Streamlining Act" by the leaders of the House Energy and Commerce Committee would do just that. I look forward to working alongside my colleagues here at the agency and Congress to advance our shared interest in extending our global leadership in space.

As we move forward in this proceeding with standing up this framework we also need to move quickly to process and approve space mobile applications that are already pending at the FCC. We can't let this new proceeding slow down those ongoing reviews.

In closing, I want to thank the staff from the Wireless Telecommunications Bureau and International Bureau for their hard work on the item before us today. It has my support.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *In the Matter of Single Network Future: Supplemental Coverage from Space, Space Innovation*,
GN Docket No. 23-65, IB Docket No. 22-271, Notice of Proposed Rulemaking (March 16, 2023)

As we reach for new heights in the space economy, I'm proud that American companies are continuing to lead the way. Satellite-cellular partnerships are just the latest example. By my count, they involve at least three established U.S. LEO operators, several U.S. satellite startups, leading U.S. handset and software companies, a U.S. chipmaker, and of course, our wireless carriers. That doesn't even include the U.S. satellite companies that have announced plans to deliver satellite 5G on their own or companies that have yet to announce their plans as they explore these capabilities.

As you've now heard, the satellite SOS feature on an iPhone 14 allowed a couple to reach help after their car crashed 300 feet into a canyon, with no cell service, deep in the Angeles National Forest. In the future, we're bound to see more of these examples, not just from motorists and parkgoers but from people leading their everyday lives. But the potential here goes beyond just emergency access in a rural or Tribal area, as critical as that capability may be. In particular, integrated terrestrial-satellite connectivity could also lead to a more robust and powerful IoT. I've heard time and again that the lack of coverage in the fields is holding back precision agriculture, a concern that I know many in Congress share. And don't forget the potential security benefits. In fact, the U.S. Space Force just announced plans to create a "satellite-to-cellular marketplace" so that our men and women in uniform can benefit from these systems, both on and behind the front lines. That the marketplace is intended to leverage commercial solutions should have us all stop and take notice.

How far the capability advances remains to be seen, and critical questions remain about its ultimate level of performance and the delivery models that will prevail. But given the potential here, and the surge in recent activity, we are right to make sure our rules follow suit. That's why I strongly support today's Notice of Proposed Rulemaking. The NPRM proposes a new framework for offering Supplemental Coverage from Space, or SCS. If adopted, the rules would allow satellites to step in and provide connectivity where terrestrial coverage is unavailable using terrestrial spectrum, as if they were a seamless component of the terrestrial network itself.

But building a framework that works for every conceivable commercial arrangement and every technology is no easy feat and risks bogging down progress as we work toward new rules. To address this concern, the NPRM smartly proposes a narrow set of initial entry criteria so that we can move full speed ahead on proposals that raise the fewest technical challenges, while seeking comment on how one day we might broaden the scope.

I'm glad my colleagues accepted my edits to clarify that in taking this approach, we in no way propose to shut the door on systems that do not meet our initial criteria. We've already seen signs of interest in SCS from wireless carriers that do not have nationwide spectrum, and from carriers that do but believe their non-nationwide holdings offer a better fit for the service. We've also seen interest in SCS from satellite operators that are still experimenting or do not yet have a commercial license covering the full scale of their system. And we've seen smaller and regional carriers raise concerns about being left behind, even if they join forces in the same channel to clear the way for a competitive offering. None of these scenarios would meet the initial criteria we propose due to their added complexity. But in a

marketplace this dynamic, we shouldn't stall innovation as parties work to meet the policy considerations we lay out today—especially with technologies that have the potential to improve our safety and security and bridge the digital divide.

I thank the Commission staff who worked hard to develop this outstanding proposal. It has my full support.

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of Single Network Future: Supplemental Coverage from Space, Space Innovation*,
GN Docket No. 23-65, IB Docket No. 22-271, Notice of Proposed Rulemaking (March 16, 2023)

Today the Commission adopts a proposal for a regulatory framework that allows satellite operators to offer direct-to-handset service, or as the item newly defines it, to provide “supplemental coverage from space” by combining satellite and terrestrial networks to provide service in “remote, unserved and underserved areas.”

This item explores crucial changes to FCC rules that will ensure vital and innovative services are delivered to those who need them most. It is no secret that I am a big fan of the satellite industry and I remain astounded by the rapid growth of the NGSO sector which has brought new and robust competition to the broadband marketplace. NGSO has—in fact—created a seismic shift in how FCC policymakers, Congress and others do and must assess the broadband marketplace as a whole, including how and whether to revamp the subsidy programs available to serve the very areas this service is designed to reach, and whether and how to redefine broadband service as these services come online and begin to proliferate.

As stated so succinctly in a recent article, “There is not a single regulatory framework that addresses mobile cellular devices with satellite capabilities—this unaddressed dichotomy belongs to the past [and] national satellite service licensing frameworks need to be flexible enough to allow for the smartphones of the present, because satellite direct-to-handset connectivity is an industry development that is here to stay.”

That is precisely what this item proposes to do. To wed two regulatory frameworks for a combination that, is at least intended to flexibly address the needs of all providers in this space, *for lack of a better word*. To the extent it doesn’t do that, it seeks comment on what else the FCC should and can do to facilitate these innovative services.

In that sense, this item is the beginning of the discussion about a new regulatory model and the FCC needs industry and others to tell us how to get it right. And so I look forward to a fulsome record. That said, in the meantime I do not want to see this proceeding get in the way of the FCC approving the waiver applications of providers who have sought permission to launch direct-to-handset services right now. The FCC must ensure those waiver applications move forward at a rapid clip to avoid thwarting business plans and future innovation.

I’d like to thank the staff of the wireless and international bureaus for their hard work on this item. It has my support.

Thank you.

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

In the Matter of	)	
	)	
Implementation of the	)	MB Docket No. 23-126
Low Power Protection Act	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 29, 2023

Released: March 30, 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:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
A. Low Power Television Service	2
B. Class A Television Stations	4
C. Low Power Protection Act	7
III. DISCUSSION	9
A. Application Period	10
B. Eligibility Requirements	12
1. Definition of Low Power TV Station	12
2. Eligibility Criteria	15
3. Interference Requirements	25
4. Designated Market Area (DMA)	31
5. License Standards (Ongoing Eligibility Requirements)	35
C. Application Process	39
D. TV Broadcast Incentive Auction, Post-Auction Transition, and Reimbursement	42
E. Digital Equity and Inclusion	44
IV. PROCEDURAL MATTERS	45
V. ORDERING CLAUSES	51
Appendix A – Proposed Rules	
Appendix B – Initial Regulatory Flexibility Act Analysis	

I. INTRODUCTION

1. We initiate this proceeding to implement the Low Power Protection Act (LPPA or Act)¹, as enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a

¹ Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023) (LPPA).

“limited window of opportunity” to apply for primary spectrum use status as Class A television stations.² This *Notice of Proposed Rulemaking* seeks comment on how to implement the window consistent with Congressional direction.

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.³ 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.⁴ 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 the LPTV station.

3. Currently, there are approximately 1,912 licensed LPTV stations.⁵ These stations operate in all states and territories, and serve both rural and urban audiences.⁶ 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.⁷ As the name suggests, LPTV stations have lower authorized power levels than full power TV stations.⁸ 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.⁹

² LPPA Sec.2(b).

³ *Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, Notice of Proposed Rulemaking, 45 FR 69178, para. 1 (Oct. 17, 1980) (*LPTV NPRM*); *Low Power Television Service*, 51 RR 2d 476 (1982) (*LPTV Order*), *recon. granted in part*, 48 FR 21478 (1983) (*LPTV MO&O*). 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).

⁴ *LPTV Order*, 51 RR 2d at para. 17.

⁵ See *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 23-21 (rel. Jan. 11, 2023), available at <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>.

⁶ 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*).

⁷ 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).

⁸ Digital LPTV stations may radiate up to 3 kilowatts of power for stations operating on the VHF band (channels 2 through 13), and 15 kilowatts of power for stations operating on the UHF band (channels 14 through 36). By comparison, digital full power stations radiate up to 45 kilowatts of power on VHF channels 2 through 6, 160 kilowatts of power on VHF channels 7 through 13, and up to 1,000 kilowatts of power on UHF channels. See 47 CFR §§ 74.735(a), 73.622(a)(1). 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. *Class A Order*, 15 FCC Rcd at 6357, n.4.

⁹ 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 service¹⁰ to implement the Community Broadcasters Protection Act of 1999 (CBPA).¹¹ 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.¹²

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.¹³ 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.¹⁴ 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.¹⁵ 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.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, 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 LPTV stations one year to apply for a Class A license, from the date that the Commission's rules become

¹⁰ See *Class A Order*, 15 FCC Rcd 6355 (2000).

¹¹ 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).

¹² See *Class A Order*, 15 FCC Rcd 6355, para. 1.

¹³ 47 U.S.C. § 336(f)(2)(A)(i).

¹⁴ 47 U.S.C. § 336(f)(2)(A)(ii).

¹⁵ 47 U.S.C. § 336(f)(1)(B). Licensees intending to seek Class A designation were required to submit a certification of eligibility to the Commission within 60 days after November 29, 1999 (the date the CBPA was enacted).

¹⁶ 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).

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 statute 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 requirements of 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 paragraph (c)(2)(B) of the statute during the term of the license.²⁶

III. DISCUSSION

9. In this *Notice of Proposed Rulemaking*, we propose rules to provide LPTV stations with a limited opportunity to apply for primary spectrum use status as Class A television stations, consistent

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). *See infra* para. 20.

²³ LPPA Sec.2(c)(2)(B)(ii); 47 U.S.C. § 336(f)(7). *See also infra* Sec. III.B.3 (noting exceptions for those provisions that are now obsolete given the transition of all television stations from analog to digital operations).

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).

with Congress's directive in the LPPA.²⁷

A. Application Period

10. The LPPA provides LPTV stations a period of one year to apply for Class A status.²⁸ We tentatively conclude that the application window will be limited to the one year application window specified in the Act.²⁹ We note that 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, as amended (which codifies the CBPA).³⁰ This provision sets forth the eligibility criteria for stations qualifying for Class A status,³¹ and gives the Commission discretion to determine whether a station not satisfying such criteria should otherwise qualify.³² 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.³³ 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 stations.³⁴ 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.³⁵ The Commission noted that LPTV stations were originally licensed on a secondary basis and allowed to convert to Class A status only under limited eligibility criteria established in the CBPA based upon their beneficial past service to the public, and that it was not appropriate to expand generally the group of

²⁷ The Commission is currently revising 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 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, Order and Sixth Notice of Proposed Rulemaking, FCC 22-58 (rel. July 13, 2022), Erratum, FCC 22-58 (rel. Sept. 9, 2022) (*Parts 73 and 74 Amendment Order and NPRM*); *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Notice of Proposed Rulemaking, FCC 22-73 (rel. Sept. 29, 2022) (*Part 73 Amendment NPRM*). Among other revisions, we eliminated all analog rules, references to analog, and references to out-of-core channels; updated information such as filing dates, locations, and form numbers; and sought comment on reorganizing and modifying technical rules to make them more accessible to licensees and other users. Any additional rule changes that are adopted and that are relevant to Class A stations will apply to stations that converted to Class A status pursuant to the CBPA and we tentatively conclude that we will apply these rule changes to all stations that convert to Class A status pursuant to the LPPA. We invite comment on this approach.

²⁸ LPPA Sec.2(c)(2)(A). The rules implementing the LPPA adopted in this proceeding will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995, Public Law 104-13, Oct. 1, 1995, 44 U.S.C. § 3507. After OMB review, the Commission will issue a public notice announcing the effective date of the rules and the date by which LPTV stations seeking to convert to Class A status under the LPPA must submit an application.

²⁹ LPPA Sec.2(c)(2)(A).

³⁰ LPPA Sec.2(c)(2)(B).

³¹ 47 U.S.C. § 336(f)(2)(A).

³² 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”).

³³ 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; *infra* paras. 22-23.

³⁴ See *Class A Order*, 15 FCC Rcd at 6361, para. 11; *Class A MO&O*, 16 FCC Rcd at 8251-52, para. 18.

³⁵ *Class A MO&O*, 16 FCC Rcd at 8251-52, para. 18.

LPTV stations eligible to convert to Class A beyond that established by Congress.³⁶ The Commission did, however, state that, where potential applicants “face circumstances beyond their control that prevent them from filing” a Class A application within the 6-month time frame that applied to Class A conversions, the Commission “would examine those instances on a case-by-case basis to determine their eligibility for filing.”³⁷

11. Similar to the CBPA, we tentatively find that the purpose of the LPPA is to provide for a one-time conversion of a discrete pool of eligible LPTV stations that meet the specific criteria set forth in the LPPA. We tentatively find that the public interest would not be served by providing for conversion to Class A status beyond the one year period contemplated in the LPPA, nor do we find anything in the LPPA to suggest that Congress intended anything more than a limited window of opportunity. Although we tentatively conclude that the application window will be limited to the one year application window specified in the Act, we propose that if a potential applicant faces circumstances beyond its control that prevents them from filing by the application deadline, we will examine those instances on a case-by-case basis to determine the potential applicant’s eligibility for filing.³⁸ We invite comment on this approach.

B. Eligibility Requirements

1. Definition of Low Power TV Station

12. We propose to 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. 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.³⁹ Section 74.701 formerly contained a definition of the term “digital lower power TV station” but we recently revised that rule to remove references to digital and analog television service, as all LPTV stations have now ceased analog operations and there is no further need to differentiate between digital and analog in the rules.⁴⁰ 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.”⁴¹ We propose to apply this recently updated definition of an LPTV station for purposes of determining which stations are eligible for Class A status under the LPPA. We invite comment on this approach.

13. Consistent with this definition, we tentatively conclude that eligibility for Class A status under the LPPA should be limited to LPTV stations, and that television translator stations should not be eligible.⁴² 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

³⁶ *Id.*

³⁷ *Class A Order*, 15 FCC Rcd at 6362, para. 14. The Commission, however, declined to accept license applications from LPTV licensees who did not timely file certifications of eligibility as required under the CBPA. *Id.*

³⁸ When filing an application to convert to Class A status, *see infra* paras. 39-40, we propose that an LPTV station will be able to request a waiver of the one-year period specified in the LPPA, and the staff will act on the waiver request.

³⁹ Section 2(a)(3) of 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 title 47, Code of Federal Regulations, or any successor regulation.” LPPA Sec.2(a)(3).

⁴⁰ *See supra* nn.7, 27.

⁴¹ 47 CFR § 74.701(k).

⁴² *See* 47 CFR § 74.790 (Permissible service of TV translator and LPTV stations). *See also supra* n.3 (TV translator stations are limited in the amount of programming they may originate).

than its frequency and amplitude,”⁴³ and thus, are not permitted to “originate programming” as defined in the rules.⁴⁴ Given this limitation, for the following reasons we tentatively conclude that “television broadcast translator stations” as defined under our rules would not be able to satisfy the locally produced programming eligibility requirement of the LPPA.⁴⁵ 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 tentatively conclude 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.⁴⁶ 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. For similar reasons, the Commission specifically found that translator stations were not eligible for Class A status under the CBPA,⁴⁷ and there is no indication that Congress intended to be more inclusive in the LPPA. In addition, we tentatively conclude that the LPPA’s inclusion of reference to “low power” stations and failure to specifically reference “translator” stations can be read as an intentional inclusion of the former and exclusion of the latter and is the best reading of the statute. We invite comment on this tentative conclusion that translator stations should not be eligible for Class A status under the LPPA.

14. We tentatively conclude that LPTV stations that have not completed their digital transition are not eligible to apply for Class A designation. A small number of analog LPTV stations have not yet completed construction of their digital facilities and have been granted additional time to do so.⁴⁸ Since analog television operations are no longer permitted, these LPTV stations are silent and must remain silent until such time as they complete construction of their digital facilities.⁴⁹ 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.⁵⁰ As any LPTV station that was silent during this period would not meet these requirements, we tentatively conclude that such stations would not be eligible to apply for Class A designation under the LPPA. We invite comment on this interpretation.

2. Eligibility Criteria

15. We propose to codify in our rules the eligibility criteria set forth in the LPPA. As noted

⁴³ 47 CFR § 74.701(a).

⁴⁴ 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).

⁴⁵ See *supra* para. 8.

⁴⁶ 47 CFR § 74.787(a)(5). This practical limitation applies with the exception of replacement translators, which are located within the noise limited contour of a full power television station and protected from interference. However, as discussed further in this paragraph, we tentatively conclude that the best reading of the LPPA is that Congress intended to include low power stations and exclude translator stations, including replacement translators.

⁴⁷ See *Class A R&O*, 15 FCC Rcd at 6369-70, para. 35 (“We will not adopt separate eligibility criteria for translator stations under the CBPA, as requested by the . . . NTA. The statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations.”).

⁴⁸ See *Parts 73 and 74 Amendment Order and NPRM* at para. 4.

⁴⁹ *Id.* See also 47 CFR § 74.790(m).

⁵⁰ See LPPA Sec.2(c)(2)(B)(i)(I).

above,⁵¹ 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 under the LPPA if the station, during the 90-day period preceding the date of enactment of the LPPA, meets the same requirements in 47 U.S.C. section 336(f)(2) applicable to stations that qualified for Class A status under the CBPA, “including the requirements. . . with respect to locally produced programming.”⁵² Thus, to qualify for Class A status in the 90 days preceding the LPPA’s January 5, 2023 effective date, an LPTV station must have met the following requirements between October 7, 2022 and January 5, 2023 (the 90 day eligibility period): (1) the station must have broadcast a minimum of 18 hours per day;⁵³ (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;⁵⁴ and (3) the station must have been in compliance with the Commission’s requirements applicable to LPTV stations.⁵⁵ 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.⁵⁶

16. Locally Produced Programming. In implementing the LPPA, we propose to define “locally produced programming” in the same manner as our rules that apply to stations that converted to Class A status pursuant to the CBPA. 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.⁵⁷ Section 73.6000 of our rules contains a definition of “locally produced programming” applicable to Class A stations.⁵⁸ In the *Part 73 Amendment NPRM*, the Commission has proposed to update its definition of locally produced programming for Class A stations in section 73.6000 of the rules, as “programming produced within the predicted noise-limited contour . . . 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.”⁵⁹ We propose to apply the definition in section 73.6000 of the rules, including any future changes, 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 and invite comment on this approach.

17. Operating Requirements. We tentatively conclude that all applicants seeking to convert

⁵¹ See *supra* para. 8.

⁵² LPPA Sec.2(c)(2)(B)(i)(I).

⁵³ 47 U.S.C. § 336(f)(2)(A)(i)(I).

⁵⁴ 47 U.S.C. § 336(f)(2)(A)(i)(II).

⁵⁵ 47 U.S.C. § 336(f)(2)(A)(i)(III). See also *supra* para. 8.

⁵⁶ LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

⁵⁷ LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(i)(II).

⁵⁸ 47 CFR § 73.6000 (Definitions). This provision currently defines “locally produced programming” as “programming: (1) [p]roduced within the predicted Grade B contour of the station broadcasting the program or within the contiguous predicted Grade B contours of any of the stations in a commonly owned group; or (2) [p]roduced within the predicted DTV noise-limited contour (see § 73.622(e)) of a digital Class A station broadcasting the program or within the contiguous predicted DTV noise-limited contours of any of the digital Class A stations in a commonly owned group.” *Id.*

⁵⁹ See *Part 73 Amendment NPRM* at Appendix A (Proposed Rules) Section 73.6000. The proposed revision to the definition of “locally produced programming” eliminates the reference to the “predicted Grade B contour” as that reference applies to the protected contour of analog LPTV stations, which have now ceased operation. In addition, the proposed rule revision deletes the terms “DTV” and “digital” as references to digital versus analog operation are now outdated, and makes other conforming changes to the rule. *Id.* at para. 6 and n.10.

to Class A status under the LPPA be required to certify that they have complied with the Commission's requirements for LPTV stations, during the 90 day eligibility period.⁶⁰ As noted 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.⁶¹ We seek comment on this tentative conclusion.

18. The LPPA requires that a station "be in compliance with the Commission's operating rules for full-power stations" beginning on the date of its application for a Class A license and thereafter.⁶² 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.⁶³ For example, existing Class A stations must comply with children's programming and online public inspection file regulations.⁶⁴ We propose to take this same approach with respect to stations that seek to convert to Class A status pursuant to the LPPA. We propose that applicants for Class A designation pursuant to the LPPA, and Class A stations awarded licenses pursuant to that statute, will be required to comply with the same Part 73 rules applied in implementing the CBPA.⁶⁵ We invite comment on this approach.

19. We also propose that all stations that receive a Class A license under the LPPA must comply with all Class A regulations. LPPA section (2)(c)(3)(B) provides that a Class A license granted pursuant to the rules established under the LPPA shall "require the low power TV station to remain in compliance with [section (2)(c)(2)(B) of the LPPA] during the term of the license."⁶⁶ 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.⁶⁷ Beyond the requirements specified in section (2)(c)(2)(B) of the LPPA, we also tentatively conclude there is no reason to exempt LPTV stations converting to Class A status under the LPPA from other rules applicable to LPTV stations converting to Class A status under the CBPA, given that the service requirements in the LPPA closely track those in the CBPA and that the stations will be converting to Class A status and so it makes sense for Class A rules generally to apply.⁶⁸ We seek comment on this approach.

⁶⁰ The LPTV requirements are set forth in Title 47, Part 74, Subpart G of our rules. As noted above, the Commission recently revised its Part 74 rules to delete outdated references to analog television service. *See supra* n. 27.

⁶¹ LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(i)(III).

⁶² LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

⁶³ *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, for instance the full power principal city coverage requirement currently set forth in 47 CFR § 73.625(a) and must comply with maximum power levels applicable to LPTV stations. *Class A Order*, 15 FCC Rcd at 6367-68, paras. 28-29.

⁶⁴ *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.

⁶⁵ *See supra* nn.63-64. Some other examples of rules that cannot apply to Class A stations for technical reasons are the so-called "largest station in the market" rule, 47 CFR § 73.622(f)(5), 47 CFR § 73.616 (Post-transition DTV station interference protection), and 47 CFR §§ 73.622(f)(6)-(8) (allowable antenna heights and power levels for full power stations). *See also supra* n.27.

⁶⁶ LPPA Sec.2(c)(3)(B).

⁶⁷ LPPA Sec.2(c)(2)(B). *See also* 47 CFR § 73.6001(b)-(c).

⁶⁸ *See supra* para. 8.

20. We also seek comment on whether the requirement to comply with the Class A eligibility requirements set forth in LPPA section (2)(c)(2)(B) should run from when an LPTV station's application is submitted. To that end, we note that LPPA section 2(c)(2)(B)(i)(II) 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,"⁶⁹ which contains the requirements that Class A stations 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. We seek comment on how to interpret the statutory language providing that the station "submitting the application" must "satisfy" these requirements. We note that 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, 2023.⁷⁰ Should this language be interpreted to require the applicant for a Class A license to satisfy the requirements of 47 CFR § 73.6001(b)-(d) from the time it submits its application? Indeed, because LPPA section (2)(c)(3)(B) applies these requirements after a Class A license is granted,⁷¹ would LPPA section 2(c)(2)(B)(i)(II) be rendered superfluous if we did not interpret it to apply these requirements from the time the Class A application is submitted?⁷²

21. License Application and Documentation. In order to assist with the orderly processing of all applications received under the LPPA, we propose that an applicant will be required to certify that its station meets the operating and programming requirements of the LPPA. Specifically, with respect to the statutory requirement that stations air 18 hours of programming each day during the 90 day eligibility period, we propose to require applicants to certify that the station was fully operational for at least 18 hours on each day during the 90 day eligibility period. In addition, with respect to the requirement that stations air three hours of locally produced programming, we propose to require an applicant to certify that it was providing such programming during each day during the 90 day eligibility period. We invite comment generally on this approach.

22. We tentatively conclude that an applicant be required to submit, as part of its application, documents to support its certification that it meets the operating and programming requirements of the LPPA.⁷³ We seek comment on the kind of documentation that we should require stations to submit in support of their application in order to ensure orderly processing. Should we require specific documents or categories of documentation or should we provide examples of the kinds of documentation that stations could provide thereby giving stations more latitude with respect to the types of documentation they may use to support their application?⁷⁴ To support its certification that the station was on the air at least 18 hours each day during the eligibility period, a station could, for example, submit electric power bills from a third party vendor that specify the station or station's broadcast facility location for the designated period,⁷⁵ and/or copies of any program guides, EAS logs, or agreements to purchase and air programming

⁶⁹ LPPA Sec.2(c)(2)(B)(i)(II).

⁷⁰ LPPA Sec.2(c)(2)(B)(i)(I).

⁷¹ LPPA Sec.2(c)(3)(B).

⁷² *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)).

⁷³ 47 U.S.C. § 308(b).

⁷⁴ See, e.g., *LPTV, TV Translator, and FM Broadcast Station Reimbursement, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket No. 18-214, Report and Order, 34 FCC Rcd 1690, 1733-34, para. 92 (2019) (*LPTV Reimbursement R&O*).

⁷⁵ 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.

on the specified station in an amount sufficient to satisfy this programming requirement.⁷⁶ If the station was silent during any portion of this period of time, we will require the station to identify any silent periods and the reasons why the station was silent.⁷⁷ To support its certification that a station aired three hours of locally produced programming, the station could, for example, submit copies of any agreements to purchase and air such programming and/or 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. We invite commenters to provide examples of other kinds of documentation a station could provide to support its certifications that it meets the eligibility requirements of the LPPA. In order to expedite processing, and ensure the Commission maximizes opportunities for applicants, Commission staff may request additional documentation if necessary during consideration of the application.⁷⁸

23. Alternative Eligibility Criteria. As discussed above,⁷⁹ 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.⁸⁰ 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.”⁸¹ 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.”⁸² 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.”⁸³

24. We tentatively conclude that we should apply this same approach in the context of the LPPA. Accordingly, we propose to 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. We tentatively conclude 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. We invite comment on this approach.

⁷⁶ 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.

⁷⁷ 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 FCC. 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).

⁷⁸ See 47 U.S.C. § 308(b).

⁷⁹ See *supra* para. 10.

⁸⁰ LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A).

⁸¹ 47 U.S.C. § 336(f)(2)(B).

⁸² *Class A Order*, 15 FCC Rcd at 6369, para. 33.

⁸³ *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.

3. Interference Requirements

25. We tentatively conclude that LPTV stations proposing to convert to Class A status under the LPPA must demonstrate compliance 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. 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. . . .”⁸⁴ Section 336(f)(7) describes the interference protection requirements for LPTV stations that sought Class A status under the CBPA vis-à-vis full power television, LPTV, TV translator, and land mobile stations. Because the CBPA was adopted in 1999, section 336(f)(7) refers to a number of interference protection standards that are now obsolete.⁸⁵

26. We tentatively conclude that LPTV stations proposing to convert to Class A status must satisfy the requirement in section 2(c)(2)(B)(ii) of the LPPA by demonstrating compliance with the same operating rules and policies, including interference requirements, applicable to existing digital Class A licensees, including requirements that were adopted subsequent to the enactment of section 336(f)(7). When LPTV stations converted to Class A status pursuant to the CBPA in 2000, they began their primary status operations as analog stations. In 2004, the Commission adopted rules and policies to allow LPTV and Class A stations to operate with digital facilities.⁸⁶ In 2011, the Commission established a hard deadline of September 1, 2015 for all Class A stations to terminate analog operations.⁸⁷ With very limited exceptions, all existing LPTV stations are now operating in digital format.⁸⁸ Our rules applicable to Class A stations set forth the interference protection Class A stations now must provide to digital full power, Class A, LPTV, and TV translator stations,⁸⁹ and supersede certain interference requirements referenced in the CBPA, as that statute was adopted prior to the digital transition. We recognize that the LPPA specifically referenced the interference requirements “described in section 336(f)(7).” Nonetheless, we tentatively find that this does not evince an intent on the part of Congress to compel applicants, in fulfilling the requirements under the LPPA, to demonstrate compliance with outdated and superseded interference rules referenced in 336(f)(7).⁹⁰ Rather, we tentatively find that by requiring applicants to demonstrate compliance with current interference requirements applicable to Class A stations, we will ensure that the purpose of the statutory provision—i.e., to ensure that a Class A station will not cause interference—will be served because the licensed or previously proposed facilities of full power, low power and TV translator, and land mobile stations will be afforded interference protection when LPTV stations convert to Class A status pursuant to the LPPA. Accordingly, we tentatively conclude that our rules applicable to existing Class A stations, including interference requirements, will apply to stations that convert to Class A status pursuant to the LPPA. We seek comment generally on this analysis and

⁸⁴ LPPA Sec. 2(c)(2)(B)(ii).

⁸⁵ See *infra* paras. 26-27.

⁸⁶ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Red 19331 (2004).

⁸⁷ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Red 10732, 10735, para. 7 (2011).

⁸⁸ See *supra* n.48.

⁸⁹ Class A stations must also protect certain land mobile operations. See *infra* para. 30.

⁹⁰ See, e.g., *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).

tentative conclusion.

27. Protection of Full Power Television Stations. We tentatively conclude that Class A-eligible LPTV stations need not comply with certain CBPA interference showings that are obsolete due to the completion of the digital transition. These obsolete provisions would include the following: (1) prohibition on causing interference to the predicted Grade B contour of an analog full power television station or a modification application filed on or before November 1, 1999;⁹¹ (2) protection of the original DTV Table of Allotments,⁹² which has now been superseded and deleted from the Commission's rules;⁹³ and (3) two additional requirements that are both obsolete due to the passage of time.⁹⁴ We seek comment on our tentative conclusion.

28. Further, we tentatively conclude that Class A-eligible stations seeking primary status under the LPPA must demonstrate that they do not cause interference to areas protected under our rules, including any future updates to those rules. Section 336(f)(7)(A)(ii)(II) of the CBPA required LPTV stations to demonstrate that they did not cause interference "to the areas protected in the Commission's digital television regulations (47 CFR §§ 73.622(e) and (f))."⁹⁵ We recently proposed updates to these requirements.⁹⁶ Accordingly, we tentatively conclude that these rule changes to sections 73.622(e) and 73.622(f), if adopted, will also apply to Class A-eligible LPTV stations seeking primary status under the LPPA and seek comment on this tentative conclusion.

29. Protection of Low Power and Television Translator Stations. We tentatively conclude that an LPTV station that files an application to convert to Class A status under the LPPA will be required to protect LPTV and TV translator stations. The LPPA references the CBPA in requiring the protection of previously authorized LPTV/TV stations, as well as previously filed applications for these facilities.⁹⁷ We note that when the CBPA was implemented, the Commission required Class A stations to protect "the LPTV and TV translator protected contours on the basis of the standards given in section 74.707, i.e., on the basis of compliance with certain desired-to-undesired signal strength ratios of the LPTV rules."⁹⁸ We recently deleted this provision.⁹⁹ The digital-to-digital interference protection standards are now found in sections 74.792 and 74.793.¹⁰⁰ We tentatively conclude that LPTV stations that file applications to

⁹¹ 47 U.S.C. § 336(f)(7)(A)(i).

⁹² 47 U.S.C. § 336(f)(7)(A)(ii)(I).

⁹³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order, 36 FCC Rcd 15891, 15896, para. 12 (2021) (*October 2021 Table Order*).

⁹⁴ 47 U.S.C. § 336(f)(7)(A)(ii)(III) and (IV). 47 U.S.C. § 336(f)(7)(A)(ii)(III) required Class A eligible LPTV stations under the CBPA to protect the digital service areas of stations "subsequently granted by the Commission prior to the filing of the Class A application." In the *Class A Order*, the Commission noted that there were no such applications on file at that time. In addition, 47 U.S.C. § 336(f)(7)(A)(ii)(IV) required the protection of certain full power maximization notifications which at this point have been applied for and licensed, or dismissed, for more than a decade. See *Community Broadcasters Protection Act of 1999 Sets Deadline of December 31, 1999 for Full Service Stations to File Letters of Intent to Maximize Their DTV Facilities*, Public Notice, 14 FCC Rcd 207448 (MMB 1999) (explanation of digital maximization applications and notifications).

⁹⁵ 47 U.S.C. § 336(f)(7)(A)(ii)(II).

⁹⁶ See *Part 73 Amendment NPRM* at para. 12, nn. 28, 46, 50, 90. We also proposed to reorganize and update other rules relevant to Class A stations. See *id.* at para. 12 & nn. 28, 46, 97.

⁹⁷ LPPA Sec.2.(c)(2)(B)(ii).

⁹⁸ *Class A NPRM*, 15 FCC Rcd at 1186, para. 38. See also *Class A Order*, 15 FCC Rcd at 6389-90, para. 81.

⁹⁹ See *Parts 73 and 74 Amendment Order and NPRM* at para. 5 and n.20.

¹⁰⁰ *Id.* at n.20; 47 CFR §§ 74.792 (Low power TV and TV translator station protected contour) and 74.793 (Low power TV and TV translator station protection of broadcast stations).

convert to Class A station under the LPPA will be required to make an absence of interference showing using these updated digital-to-digital rules, and seek comment on this tentative conclusion.

30. Protection of Land Mobile Stations. We tentatively conclude that an LPTV station that converts to a Class A station under the LPPA will continue to be required to protect land mobile stations. LPTV stations are currently required to protect land mobile stations.¹⁰¹ 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.¹⁰² This protects land mobile radio services 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. In implementing the CBPA, the Commission implemented these protections in the manner prescribed in section 74.709 of the LPTV rules.¹⁰³ These rules have not changed.¹⁰⁴ Thus, we tentatively conclude that LPTV stations that file applications to convert to Class A station under the LPPA will be required to make an absence of interference showing using these land mobile protection rules.

4. Designated Market Area

31. We seek comment on multiple issues involving the LPPA's requirements related to Designated Market Areas (DMAs). 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."¹⁰⁵ 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 . . ."¹⁰⁶ We seek comment on: (1) the meaning of the word "operates" in the LPPA,¹⁰⁷ and (2) whether we should adopt the Nielsen Local TV Station Information Report (Local TV Report) for determining DMAs or an equivalent alternative local market system.¹⁰⁸

32. In limiting eligibility to LPTV stations operating in a DMA or an equivalent with not more than 95,000 television households (a "qualifying DMA"), Congress apparently intended to convey the benefits of primary Class A status under the LPPA to small market LPTV stations that reach a

¹⁰¹ See 47 CFR § 74.709. As discussed herein, protected land mobile stations are located in highly populated urban areas, while Class A eligible LPTV stations under the LPPA are required to be located in DMAs with no more than 95,000 TV households.

¹⁰² Specifically, land mobile stations are protected 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.

¹⁰³ *Class A Order*, 15 FCC Rcd at 6390-91, para. 84.

¹⁰⁴ In the *Parts 73 and 74 Amendment Order and NPRM*, the Commission added an explanatory note to section 74.709 to reference the existence of a granted waiver with respect to the community of Los Angeles, California to allow the County of Los Angeles to use channel 15 for public safety communications. This note is of no or limited pertinence to the LPPA, which grants primary eligibility to stations operating in Designated Markets Areas with not more than 95,000 television households who meet other eligibility requirements as well. See *infra* Section III.B.4.

¹⁰⁵ LPPA Sec.2(c)(2)(B)(iii). January 5, 2023 reflects the date of enactment of the LPPA. As discussed below, we interpret the DMA requirement to be ongoing for the term of the Class A license, and seek comment on this interpretation. See *infra* para. 38.

¹⁰⁶ 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).

¹⁰⁷ LPPA Sec.2(c)(2)(B)(iii).

¹⁰⁸ See LPPA Sec.2(a)(2)(B).

relatively small number of potential viewers. “Operate” in the LPPA could mean that an LPTV station’s protected contour¹⁰⁹ extends into the geographic area of a qualifying DMA. It could also mean that the station’s transmission facilities, which includes the tower or building on which its antenna is mounted, are located within the qualifying DMA. We tentatively conclude that the LPTV station applying for Class A status under the LPPA must demonstrate that its transmission facilities are located within the qualifying DMA. We believe this interpretation is consistent with the apparent Congressional intent to limit Class A status to stations currently operating in small markets. We also propose that in order to make the necessary demonstration, applicants be required to provide the following information, as it existed as of the enactment date of the LPPA, January 5, 2023: (1) the coordinates of the station’s transmission facilities (i.e., the tower or building 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. We seek comment on this proposal.

33. We propose to use the Nielsen Local TV Station Information Report (Local TV Report) in determining the DMA where the LPTV station’s transmission facilities were located as of January 5, 2023 consistent with the Commission’s recent *Nielsen DMA Determination Update Order*,¹¹⁰ and seek comment on this proposal. In November 2022, we 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.¹¹¹ The record in that proceeding indicated that the Local TV Report is the sole source of information regarding DMA determinations and that there is no company currently accredited to determine the local market area of broadcast television stations.¹¹²

34. As noted above, the LPPA also permits the Commission to adopt an equivalent alternative local market system to Nielsen’s DMA.¹¹³ The LPTV Broadcasters’ Association (LPTVBA) requests that the Commission use, for purposes of the LPPA, Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by the Office of Management and Budget (OMB).¹¹⁴ The general concept of an MSA is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.¹¹⁵ The Census Bureau does not actually define “rural.” Rather, rural areas include all geographic areas that are

¹⁰⁹ See 47 CFR § 74.792.

¹¹⁰ 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,” and that it will begin offering DMA maps to non-clients at “a reasonable charge”).

¹¹¹ *Id.* at para. 4.

¹¹² *Id.* We note 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.

¹¹³ LPPA Sec.2(a)(2)(B).

¹¹⁴ E-mail from Frank Copsidas, President and Founder, LPTV Broadcasters’ Association, to Holly Saurer, Chief, Media Bureau, FCC (Feb. 27, 2023). Although LPTVBA also makes a number of accusations regarding the character and business dealings of Nielsen Media Research, as we explain above, 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 *supra* n.112 and accompanying text. However, we do seek comment herein on any alternative publications that are equivalent to the system established by Nielsen Media Research.

¹¹⁵ <https://www.census.gov/programs-surveys/metro-micro/about.html> (last visited Feb. 27, 2023)

not classified as urban.¹¹⁶ LPTVBA does not specify or explain which areas, which are based on Census Bureau data, it would have us use. We also note that these classifications, which are based on population, appear to have nothing to do with market assignment information or determining television broadcast station markets, unlike Nielsen DMAs.¹¹⁷ We seek comment on LPTVBA's position and on any alternative means of delineating DMAs using a system of dividing television broadcast station licensees into local markets that is equivalent to the system established by the Nielsen Media Research. Any commenter suggesting an alternative publication to the Nielsen Local TV Report should identify the publication as well as the similarities and differences in assigning stations to television markets, and explain why the alternative publication is preferable.

5. License Standards (Ongoing Eligibility Requirements)

35. The LPPA provides 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, and that such licensees are required to remain in compliance with the LPPA's eligibility requirements for the term of their Class A license.¹¹⁸ We propose to implement these provisions as discussed below.

36. As discussed above, we propose to require that converting stations comply with the Commission's operating rules for full power stations.¹¹⁹ We invite comment on this proposal.

37. Next, we propose to require that these converting stations remain in compliance with eligibility requirements set forth above. As described in Section III.B.2. above, such stations must continue, during the term of the Class A license, to: (1) broadcast a minimum of 18 hours of programming per day, and (2) broadcast an average of at least 3 hours per week of "locally produced programming," as defined above.¹²⁰ In addition, the station must continue to comply with the interference requirements adopted in this proceeding.¹²¹ We invite comment on this proposal.

38. Finally, we believe that in order to fulfill the continuing compliance mandate, 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.¹²² We invite comment on this proposed interpretation. Also, under our proposal, a station that converted to Class A 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 and propose to consider compliance with this element during the license renewal process. We seek comment on this proposal. What if Nielsen or another equivalent entity were to merge a qualifying DMA into another DMA such that the combined DMA has more than 95,000 television households? How likely is this to occur? Should a station affected by a decision of Nielsen to combine DMAs for purposes of the station's Class A eligibility under these proposed rules be allowed to file a

¹¹⁶ Census data indicates that about 61 million people, or 19 percent of the population, lived in rural areas of the United States in 2016, and that although less than one-fifth of the U.S. population lives in rural areas, these areas encompass about 97 percent of the total land area in the United States.
https://www.census.gov/content/dam/Census/library/publications/2019/acs/ACS_rural_handbook_2019_ch01.pdf (Mar. 1, 2023).

¹¹⁷ See *Nielsen DMA Determination Update Order* at para. 4.

¹¹⁸ LPPA Sec.2(c)(3)(A) – (B). 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 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."

¹¹⁹ See *supra* para. 18.

¹²⁰ See *supra* Section III.B.2. See also 47 U.S.C. § 336(f)(2)(A)(i)(I) - (II).

¹²¹ See *supra* Section III.B.3.

¹²² See LPPA Sec.2(c)(2)(B)(iii).

complaint with the FCC and if so what procedure should be implemented to consider such challenges? What if the boundaries of a DMA are changed such that the number of TV households in the DMA increases to a number above the 95,000 TV household threshold under the LPPA? Should our interpretation of the LPPA DMA requirement depend on whether the station itself initiates a move to a non-qualifying DMA, or whether the change is beyond the station's control?

C. Application Process

39. Applications for Class A Status. We propose to evaluate Class A status to eligible LPTV stations as a modification of the station's existing license. We propose that, for purposes of the LPPA, Class A applications be limited to the conversion of existing facilities as they exist at the time of application, without consideration of modifications to those facilities.¹²³ We tentatively conclude that this approach is consistent with the limited opportunity intended by the LPPA. It will also allow 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 modification after the Commission has processed the applications from the window. We invite comment on this approach.

40. 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."¹²⁴ We tentatively conclude for the same reason that local public notice of applications pursuant to the LPPA should also be required. We seek comment on this tentative conclusion.

41. Application Form. We propose that an application for modification of the LPTV station's existing license to convert to Class A status be filed using FCC Form 2100, Schedule F.¹²⁵ We propose to require that such applications be filed electronically. Effective March 2, 2023, the filing fee for an application to convert to Class A designation is \$425.¹²⁶ We invite comment on these matters.

D. TV Broadcast Incentive Auction, Post-Auction Transition, and Reimbursement

42. The LPPA provides that it may not affect the Commission's work related to the Broadcast Incentive Auction.¹²⁷ In 2012, Congress passed the Spectrum Act that authorized the Commission to reorganize the ultra-high frequency (UHF) band using a two-sided incentive auction that

¹²³ In other words, stations will not be permitted to seek technical modification of their facilities in conjunction with their Class A conversion application.

¹²⁴ *Class A R&O*, 15 FCC Rcd at 6398, para. 108.

¹²⁵ The Commission plans to 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 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.

¹²⁶ See *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, Order, MD Docket No. 20-270, FCC 22-94 (rel. Dec. 16, 2022) at Appendix (§1.1104 Schedule of charges for applications and other filings for media services; Full Power Commercial and Class A Television Stations). The new fee schedule will be effective March 2, 2023. See 88 FR 6169 (Jan. 31, 2023). The fee for an application for a "new license" for a Class A station is \$ 425.00.

¹²⁷ LPPA Sec.2(e) states that "[n]othing in this section may be construed to affect a decision of the Commission related to completion of the transition, relocation, or reimbursement of entities as a result of the systems of competitive bidding conducted pursuant to title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401 et seq.) and the amendments made by that title, that are collectively commonly referred to as the 'Television Broadcast Incentive Auction.'"

reallocated broadcast television spectrum for mobile broadband services.¹²⁸ The post-incentive auction transition period ended on July 13, 2020, by which time full power and Class A television stations that were reassigned to new channels were required to vacate their pre-auction channels.¹²⁹ Although LPTV stations were not eligible to participate in the incentive auction, some LPTV stations were displaced as a result of the reorganization of broadcast spectrum,¹³⁰ and the Commission held a special displacement window to allow such LPTV stations to request construction permits for new channels in the smaller broadcast television band.¹³¹ The Spectrum Act also requires the Commission to reimburse full power and Class A broadcast television licensees for costs reasonably incurred in relocating to new channels assigned in the repacking process. In 2018, Congress adopted the Reimbursement Expansion Act (REA), directing the Commission also to reimburse costs reasonably incurred by a eligible LPTV stations consistent with authorizations awarded in the special displacement window.¹³² Reimbursement of eligible relocation expenses is ongoing.

43. Given that the transition and reimbursement programs have established rules and procedures and that substantial progress has been made toward completion of the reimbursement process, we tentatively conclude that nothing in the LPPA or in implementation of the LPPA with a change in a station's status from LPTV to Class A, or in the proposals herein, can or will affect the Commission's work related to the Broadcast Incentive Auction. We seek comment on this tentative conclusion.

E. Digital Equity and Inclusion.

44. Finally, the Commission, as part of its continuing effort to advance digital equity for all,¹³³ 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

¹²⁸ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) *aff'd*, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*); *Incentive Auction Closing and Channel Reassignment Public Notice*; *The Broadcast Television Incentive Auction Closes*; *Reverse Auction and Forward Auction Results Announced*; *Final Television Band Channel Assignments Announced*; *Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF, MB, and WTB 2017) (*Closing and Channel Reassignment PN*).

¹²⁹ *Id.* See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858 (IATF/MB 2017); *The Incentive Auction Task Force and Media Bureau Announce Procedures for Submitting Financial Information Required for Disbursement of Reimbursement Payments*, Public Notice, 34 FCC Rcd 7070 (MB/IATF Aug. 15, 2019).

¹³⁰ See *Incentive Auction R&O*, 29 FCC Rcd at 6716-17, para. 352, and 6813, para. 601.

¹³¹ See *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657; *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860 (IATF and MB 2017); *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (IATF and MB 2017); *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, And Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234 (IATF and MB 2018); *Incentive Auction Task Force and Media Bureau Extend Post-Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF and MB 2018).

¹³² 47 U.S.C. § 1452(k)(1). See also *LPTV Reimbursement R&O*.

¹³³ 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.

poverty or inequality, invites comment on any equity-related considerations¹³⁴ 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

45. *Ex Parte Rules - Permit-But-Disclose.* The proceeding this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³⁵ 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.

46. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <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.

¹³⁴ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

¹³⁵ 47 CFR §§ 1.1200 *et seq.*

- 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-19.¹³⁶
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

47. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹³⁷ 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.”¹³⁸ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this *NPRM* on small entities. The IRFA is set forth in Appendix B.

48. *Paperwork Reduction Act.* This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. 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.

49. *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.

50. *Additional Information.* For additional information on this proceeding, contact Kim Matthews, Kim.Matthews@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2154, or Joyce Bernstein, Joyce.Bernstein@fcc.gov, of the Video Division, Media Bureau, (202) 418-1647.

V. ORDERING CLAUSES

51. 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 *Notice of Proposed Rulemaking* **IS ADOPTED**.

52. **IT IS FURTHER ORDERED** that the Commission's Consumer and Government Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

¹³⁶ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹³⁷ See 5 U.S.C. § 603.

¹³⁸ See *id.* § 605(b).

Marlene H. Dortch
Secretary

APPENDIX A**Proposed 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. 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 tower or building on which its antenna is mounted) are located. DMAs are determined by Nielsen Media Research and published in the Nielsen Local TV Station Information Report. 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 a minimum 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, documentation sufficient 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.

(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 §§ 73.6001(b)-(d) and 73.6026 of this chapter for the term of their Class A license. Except as otherwise provided in this paragraph (§ 73.6030), the regulations in Part 73, Subpart J of the Commission's rules (§§ 73.6000 – 73.6029) shall apply to stations that apply to convert, and that convert, to Class A status pursuant to the Low Power Protection Act. Stations that convert to Class A status pursuant to the Low Power Protection Act must comply with the requirements applicable to Class A stations specified in § 73.6026 of this chapter for the term of their Class A license.

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) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of 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 Commission initiates this rulemaking proceeding to implement the Low Power Protection Act (LPPA or Act)⁴, as 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 *NPRM* also seeks comment on how to implement the window consistent with Congressional direction.

3. We tentatively 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 tentatively 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 propose to 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 to codify in our rules the eligibility criteria set forth in the LPPA. We also propose to 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, and that such licensees are required to remain in compliance with the LPPA’s eligibility requirements for the term of their Class A license. We propose to evaluate Class A status to eligible LPTV stations as a modification of the station’s existing license. We seek comment on our tentative conclusion that nothing in the LPPA, or in the proposals in the *NPRM*, affects the Commission’s work related to the Broadcast Incentive Auction. Lastly, 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.

B. Legal Basis

4. The proposed action is authorized pursuant to 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).

C. Description and Estimate of the Number of Small Entities To Which the Proposed

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023) (LPPA).

⁵ *Id.* at Sec.2(b).

Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.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 Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”¹⁰ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹¹ 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.¹² 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.¹³ Of that number, 657 firms had revenue of less than \$25,000,000.¹⁴ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

7. As of December 31, 2022, there were 1,375 licensed commercial television stations.¹⁵ Of this total, 1,282 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIAKelsey Media Access Pro Online Television Database (MAPro) on

⁶ 5 U.S.C. § 603(b)(3).

⁷ *Id.* § 601(6).

⁸ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 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).

⁹ 15 U.S.C. § 632.

¹⁰ See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹¹ *Id.*

¹² See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

¹³ 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&hidePrevious=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. 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.

¹⁵ *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022) (*December 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>.

January 13, 2023,¹⁶ and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2022, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,912 LPTV stations, and 3,122 TV translator stations.¹⁷ 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

8. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the *NPRM* and consider whether small entities are affected disproportionately by any such requirements. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with the proposed rules that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *NPRM* will require small entities to hire professionals to comply. We expect the information we receive in comments, including cost information where requested, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *NPRM*.

9. 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 station¹⁸ and have been in compliance with the Commission's requirements for LPTV stations.¹⁹ We propose to require that small and other applicants seeking to convert to Class A status under the LPPA be required to 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. We also propose to require applicants to provide documentation as part of their application supporting their certifications, and we propose that the Commission staff could also request additional documentation if necessary during consideration of the application.

10. Beginning on the date of its application for a Class A license and thereafter, a station "must be in compliance with the Commission's operating rules for full-power stations."²⁰ We propose to 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. The *NPRM* invites comment on this proposed approach.

11. 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

¹⁶ BIA Advisory Services, BIAKelsey Media Access Pro Online Television Database, <http://www.biakelsey.com/data-platforms/media-access-pro> (last visited on Jan. 13, 2023).

¹⁷ *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022) (*December 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>.

¹⁸ LPPA Sec.2(c)(2)(B)(i)(I), 47 U.S.C. § 336(f)(2)(A)(i)(II).

¹⁹ LPPA Sec.2(c)(2)(B)(i)(I), 47 U.S.C. § 336(f)(2)(A)(i)(III).

²⁰ LPPA Sec.2(c)(2)(B)(i)(I); 47 U.S.C. § 336(f)(2)(A)(ii).

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.²¹ 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.”²² We propose to 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, and invite comment on this proposed interpretation. In addition, licensed Class A stations must also continue to meet the minimum operating requirements for Class A status.²³ 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.²⁴ The *NPRM* also proposes 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.

12. The *NPRM* proposes to require 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 *NPRM* invites comment on whether the Commission should continue to accept applications to convert to Class A status under the LPPA beyond the one-year application period set forth in the statute and/or allow deviation from the strict statutory eligibility criteria under the statute.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

13. 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.”²⁵

14. The *NPRM* seeks comment generally on its proposals implementing the LPPA’s statutory mandates. In one area that may have a significant impact on small entities, the LPPA gives the Commission discretion to determine that “the public interest, convenience, and necessity would be served” by treating a station as a qualifying LPTV station, or that a station should be considered to qualify for such status “for other reasons determined by the Commission.”²⁶ In light of this discretion, the *NPRM* invites comment on whether the Commission should continue to accept applications to convert to Class A status under the LPPA beyond the one-year application period set forth in the statute and/or allow deviation from the strict statutory eligibility criteria set forth in the statute, particularly when potential applicants are not able to file in a timely manner based on circumstances beyond their control. The *NPRM* also considers whether the Commission should require small and other applicants to submit specific documents to support certification or whether we should give stations more latitude with respect

²¹ LPPA Sec.2(c)(2)(B)(iii).

²² LPPA Sec.2(c)(3)(B).

²³ 47 CFR § 73.6001(c).

²⁴ *Id.* § 73.6001(d).

²⁵ 5 U.S.C. § 603(c)(1)-(c)(4).

²⁶ Section 336(f)(2)(B) provides 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.” 47 U.S.C. § 336(f)(2)(B).

to the types of documentation they submit with their application. Providing this flexibility may reduce the economic burden for small entities. Another action we take in the *NPRM* which could reduce the economic impact for small entities is to seek comment on whether the Commission should deviate from our strict statutory eligibility criteria for small and other applicants where deviations of insignificant or compelling circumstance such as equity require a deviation. In determining how an applicant will demonstrate whether they operate within a DMA required by the LPPA, we seek comment on whether we should use the Nielsen Local TV Station Information Report (Local TV Report) or consider requests to use other reputable alternative data sources to make this determination. In the *NPRM*, we also invite comment on the all the proposed approaches and on any alternatives, which will provide the Commission additional information on possible steps that can be taken to minimize any significant impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

15. None.